

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NO. 2015 CA 0752**

**NICKOL BELL AND HIS WIFE CHRISTY BELL**

**VERSUS**

**BATON ROUGE GENERAL MEDICAL CENTER  
AND JAMES LINFORD, M.D.**

*Judgment Rendered:* **APR 15 2016**

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**Appealed from the  
19th Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Case No. C623375**

**The Honorable Donald R. Johnson, Judge Presiding**

\* \* \* \* \*

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**BEFORE: McDONALD, McCLENDON, AND THERIOT, JJ.**

*PMC McCleendon J. Concurs.*

**THERIOT, J.**

This appeal is taken from a summary judgment of the Nineteenth Judicial District Court that was granted in favor of the defendant-appellee, Baton Rouge General Medical Center. The claims of the plaintiffs-appellants, Nickol Bell and his wife Christy Bell, were dismissed with prejudice. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

On July 27, 2011, Nickol Bell presented to the emergency room of Baton Rouge General Medical Center (“BRGMC”), complaining of nausea, vomiting, and diarrhea. He had also reported dizziness, a syncopal event, and maroon colored stools.

Mr. Bell alleged that rather than being treated for gastrointestinal bleeding, he was discharged from BRGMC and suffered further bleeding, syncope and hemorrhaging. Hours later, he was admitted to the Louisiana Heart Hospital in Lacombe, Louisiana and put into intensive care where he received a blood transfusion, cauterization of an antral ulcer, and other medical treatments.

Mr. and Mrs. Bell filed a petition for damages on July 29, 2013, in which they claimed BRGMC and Dr. James Linford, the treating physician, breached the standard of care insofar as they failed to make a proper assessment of Mr. Bell’s symptoms and did not provide proper treatment. Mr. Bell claimed physical and emotional pain and suffering, disfigurement, loss of enjoyment of life, disability, loss of earnings and earning capacity, and past and future medical expenses. Christy Bell claimed loss of consortium.

A medical review panel (MRP) convened and issued an opinion on May 23, 2013. The MRP’s opinion was that Dr. Linford met the applicable

standard of medical care. The MRP found that Dr. Linford had not been informed by nursing staff of the maroon stools, and therefore he provided adequate medical care based on the information he had been given. As to BRGMC, the MRP concluded that the hospital failed to meet the applicable standard of care, but that BRGMC's conduct was not a factor in the resultant damages. One nurse had the information about the maroon colored stools, but failed to pass that information along to Dr. Linford or any other medical personnel. As a result, Mr. Bell was merely inconvenienced by a delay in treatment, which he received several hours later at another facility.

BRGMC filed a motion for summary judgment on November 6, 2014, alleging there was no genuine issue of material fact as to whether BRGMC's breach of care resulted in compensable damage to the Bells. On March 17, 2015, the trial court signed a judgment in favor of BRGMC, dismissing the Bells' claims against BRGMC with prejudice.<sup>1</sup> It is from that judgment that the instant appeal follows.

### **ASSIGNMENT OF ERROR**

The Bells allege that the trial court committed error in granting BRGMC's motion for summary judgment, claiming they presented sufficient evidence to establish causation and met their burden of proof.

### **STANDARD OF REVIEW**

A motion for summary judgment is a procedural device used when there is no genuine issue of material fact for all or part of the relief prayed for by a litigant. A summary judgment is reviewed on appeal *de novo*, with the appellate court using the same criteria that govern the trial court's determination of whether summary judgment is appropriate; i.e., whether

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<sup>1</sup> Dr. Linford filed a motion for summary judgment on February 3, 2014, claiming that after the MRP had issued its opinion, there was no longer a genuine issue of material fact as to whether Dr. Linford breached the applicable standard of care. The trial court dismissed Dr. Linford from this case by summary judgment signed May 5, 2014.

there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Samaha v. Rau*, 2007-1726 (La. 2/26/08), 977 So.2d 880, 882.

Louisiana Code of Civil Procedure art. 966(C)(2) states:

The burden of proof remains with the movant. However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim ... but rather point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim .... Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact.<sup>2</sup>

## DISCUSSION

The MRP concluded unanimously that BRGMC breached its standard of care when the nursing staff failed to report to the treating physicians that Mr. Bell had maroon stools. However, the MRP also found unanimously that the “complained of conduct was not a factor in the resultant damages.” In a medical malpractice action against a physician, the plaintiff must establish by a preponderance of the evidence the applicable standard of care, a violation of that standard of care, and a causal connection between the alleged negligence and the plaintiff's injuries resulting therefrom. Likewise, in a medical malpractice action against a hospital, the plaintiff must prove that the hospital caused the injury when it breached its duty. *Cangelosi v. Our Lady of the Lake Regional Medical Center*, 564 So.2d 654, 661 (La. 1989); *Guardia v. Lakeview Regional Medical Center*, 08-1369 (La. App. 1 Cir. 5/8/09), 13 So.3d 625, 628.

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<sup>2</sup> Louisiana Code of Civil Procedure art. 966 was amended and reenacted by 2015 La. Acts, No. 422, § 1, with an effective date of January 1, 2016. The amended version of Article 966 does not apply to any motion for summary judgment pending adjudication or appeal on the effective date of the Act; therefore, we refer to the former version of La. C.C.P. art. 966 in this case.

BRGMC provided competent expert testimony to establish that the Bells incurred no compensable damages. According to La. C.C.P. art. 966(C)(2), it then became the Bells' burden to prove that they had suffered compensable damages. The Bells did not provide any expert testimony or evidence to prove their alleged damages.<sup>3</sup>

Mr. Bell alleges that due to BRGMC not treating him, he continued to have the same symptoms, and hours later he was in another hospital receiving the treatment he should have received at BRGMC. He did not claim in his petition that his symptoms worsened or that new complications arose from the delay in appropriate treatment. The MRP classified his injury as an inconvenience. With a lack of evidence, expert or otherwise, showing the injury rose above mere inconvenience, the damage is not legally compensable. See Mitchell v. East Baton Rouge Parish, 2009-1076 (La. App. 1 Cir. 7/16/10), 2010 WL 2889572 (unpublished), writ denied, 2010-2075 (La. 12/17/10), 51 So.3d 15.

#### **DECREE**

The summary judgment granted by the Nineteenth Judicial District Court in favor of Baton Rouge General Medical Center, dismissing the claims of Nickol and Christy Bell with prejudice, is affirmed. All costs of this appeal are assessed to the appellants, Nickol and Christy Bell.

**AFFIRMED.**

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<sup>3</sup> The Bells filed a motion to supplement the record on November 17, 2015, requesting that the record be supplemented with Mr. Bell's medical records from BRGMC and Louisiana Heart Hospital, as well as Mr. Bell's own affidavit. The trial court granted the motion on January 25, 2016. The record was then supplemented March 1, 2016 with these documents. After reviewing the supplemented evidence, we find that this evidence is consistent with the findings of the MRP insofar as the breach of standard of care by BRGMC, but does not affect the issue of causation. The supplementation therefore has no bearing on this Court's holding.