

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

RE: Docket Number 2009-CA-1357

Robert Thomas McGregor, Son of Donald H. McGregor
and Ruth S. McGregor, Individually and On Behalf of Her
Deceased Husband, Donald H. McGregor

- - Versus - -

Hospice Care of Louisiana in Baton Rouge, L.L.C., d/b/a
Hospice of Baton Rouge, Hospice Care of Louisiana, Inc.,
The Hospice Foundation of Greater Baton Rouge, d/b/a
Hospice of Baton Rouge, Katherine Grisby, Cynthia
Logan, Melanie Hyatt and Kathryn Braud

19th Judicial District Court
Case #: 512840
East Baton Rouge Parish

Consolidated with the following:

2009 - CA - 1358

Robert Thomas McGregor, Son of Donald H. McGregor and Ruth S. McGregor, Individually
and On Behalf of Her Deceased Husband, Donald H. McGregor

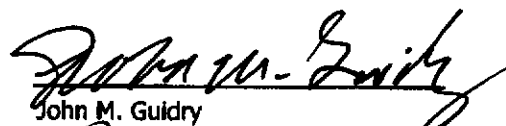
versus

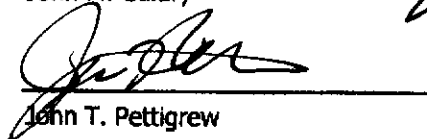
Dr. Gerald P. Miletello and Dr. Georgia A. Reine

On Application for Rehearing filed 02/24/2010

Rehearing Granted without oral argument for the limited purpose of clarification of the
original opinion. See attached opinion.


Burrell J. Carter


John M. Guidry


John T. Pettigrew

Filed MAR 11 2010


Christine L. Crow, Clerk

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1357

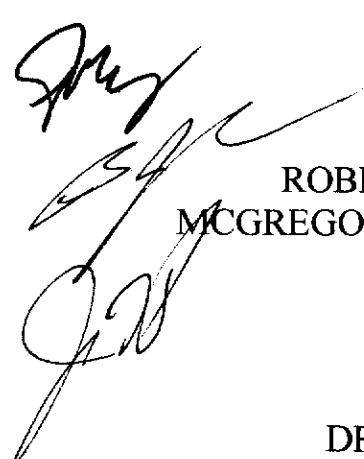
ROBERT THOMAS MCGREGOR, SON OF DONALD H. MCGREGOR,
AND RUTH MCGREGOR, INDIVIDUALLY AND ON BEHALF OF HER
DECEASED HUSBAND, DONALD H. MCGREGOR

VERSUS

HOSPICE CARE OF LOUISIANA IN BATON ROUGE, L.L.C. D/B/A
HOSPICE OF BATON ROUGE; HOSPICE CARE OF LOUISIANA, INC.; THE
HOSPICE FOUNDATION OF GREATER BATON ROUGE D/B/A HOSPICE
OF BATON ROUGE; KATHRYN GRIGSBY; CYNTHIA LOGAN;
MELANIE HYATT; AND KATHERINE BRAUD

CONSOLIDATED WITH

NUMBER 2009 CA 1358

 ROBERT THOMAS MCGREGOR, INDIVIDUALLY, AND RUTH
MCGREGOR, INDIVIDUALLY AND ON BEHALF OF THE SUCCESSION OF
DONALD H. MCGREGOR

VERSUS

DR. GERALD MILETELLO AND DR. GEORGIA A. REINE

Judgment Rendered: MAR 11 2010

Opinion Granting Rehearing for Limited Purpose

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Numbers 512,840 c/w 524,336

Honorable Bob H. Hester, Presiding

Roy A. Raspanti
Metairie, LA

and

Counsel for Plaintiffs/Appellants
Robert T. McGregor and Ruth
McGregor, individually and on behalf
of her deceased husband, Donald H.
McGregor

John Massicot
New Orleans, LA
Myron A. Walker
Baton Rouge, LA

Counsel for Defendants/Appellees
Hospice Foundation of Greater Baton
Rouge, Inc. d/b/a Hospice of Baton
Rouge, Melanie Hyatt, Katherine E.
Braud, and Kathryn Grigsby

Deborah J. Juneau
Linda C. Rodrigue
Vance A. Gibbs
Baton Rouge, LA

Counsel for Defendants/Appellees
Dr. Gerald Miletello, Dr. Georgia
Reine, and LAMMICO

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

GUIDRY, J., on rehearing.

We grant a rehearing for the limited purpose of clarifying our original opinion with regard to the motion for summary judgment as it relates to Kathryn Grigsby. As stated in our original opinion, Hospice Foundation of Greater Baton Rouge, Inc. d/b/a Hospice of Baton Rouge ("Hospice"), Melanie Hyatt, Katherine Braud, and Kathryn Grigsby filed a motion for summary judgment seeking dismissal of plaintiffs' claims against them based on a lack of expert testimony. In addition, Kathryn Grigsby asserted that she was entitled to summary judgment because she is not and never has been a health care provider. Therefore, according to Grigsby, because she is not a health care provider and never engaged in any medical or health care relationship with Donald McGregor, there is no basis for a medical malpractice suit against her.

Reading the plaintiffs' petition as a whole, the plaintiffs not only asserted claims in medical malpractice, but they also asserted claims for damages generally under La. C.C. art. 2315. Additionally, although Grigsby states in her affidavit that she did not play any part in the discharge of Donald McGregor, she was the Administrator of Hospice during the time at issue in the instant case and stated in her deposition testimony that almost all decisions we make, including discharging a patient, are done using an interdisciplinary team approach, unless the physician discharges the patient. Several Hospice employees indicated in their depositions that it was Dr. Georgia Reine, the on call physician for Donald McGregor, who discharged Donald from Hospice. However, Dr. Reine stated in her deposition that it was Hospice who made the decision to discharge Donald, and that she merely concurred in that decision.

Therefore, from our reading of the record, we find that plaintiffs have asserted claims against Grigsby not only in medical malpractice, but also for

negligence under La. C.C. art. 2315. Additionally, we find a genuine issue of material fact exists as to whether Grigsby had a role in discharging Donald McGregor from Hospice's care. Accordingly, having concluded that Grigsby is not entitled to summary judgment, we adhere to the result reached in our original opinion.

REHEARING GRANTED WITHOUT ORAL ARGUMENT FOR THE LIMITED PURPOSE OF CLARIFICATION OF THE ORIGINAL OPINION.