

**IN RE: TOMMEY HAWK**

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**NO. 2000-C-2383**

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**COURT OF APPEAL**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**SUPERVISORY WRIT DIRECTED TO  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 99-3518, DIVISION "A"  
HONORABLE CAROLYN GILL-JEFFERSON, JUDGE**

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**CHARLES R. JONES  
JUDGE**

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(Court composed of Chief Judge Robert J. Klees, Judge Joan Bernard  
Armstrong, and Judge Charles R. Jones)

***ARMSTRONG, J., CONCURS***

**GLYN J. GODWIN  
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COUNSEL FOR PLAINTIFFS**

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## COUNSEL FOR TOMMEY HAWK

**WRIT GRANTED;**  
**RELIEF DENIED**

On September 25, 1998, L. J. Craft died while he was a resident of Maison Orleans Nursing Home II (“Maison Orleans”). The circumstances surrounding his death are that during Hurricane Georges, the Maison Orleans evacuated all of its patients, including Mr. Craft. They were relocated to a nursing facility in Opelousas, Louisiana. After the threat of the hurricane was over, the Maison Orleans transferred all of the residents back to the facility in New Orleans, with the exception of Mr. Craft, who was left behind at the Opelousas facility. While at the Opelousas facility, Mr. Craft suffered some type of an attack. He was brought to an emergency room of a hospital but the physicians could not treat him because his identity was unknown; therefore, they were unable to obtain any medical records. As a result of the lack of treatment, Mr. Craft died.

Mr. Craft never married. However, at his funeral, twenty-year-old Tommy Hawk announced that he was the sole surviving child of the decedent. In addition to his alleged son, the decedent was also survived by his siblings, the relators in this matter. On October 26, 1998, Tommy Hawk

filed a petition asserting rights to bring both wrongful death and survival actions on behalf of his alleged father, L. J. Craft. On March 4, 1999, Mr. Hawk filed a petition to establish filiation. On March 24, 1999, I. C. Craft, Tysee Craft, Burnell Craft Manuel, and Inez Craft Dillon, the Relators, filed an answer denying that Mr. Hawk is the son of the decedent. After consolidation and deposition discovery, Mr. Hawk filed a rule to show cause why he should not be recognized as the son of the decedent. Shortly thereafter, the Relators filed a memorandum in opposition to blood testing. At the hearing of the rule to show cause, counsel entered into a Consent Decree in which all parties agreed to blood testing at the expense of Mr. Hawk. Dr. Wes Burkhardt, an expert chosen by Mr. Hawk, performed the blood test. Dr. Burkhardt opined in his affidavit that L. J. Craft, the decedent, is excluded as the biological father of Tommy Hawk. He further stated that the probability of the decedent being the biological father of Tommy Hawk is 0% compared to an untested, random man of the North American Black population.

Based on Dr. Burkhardt's affidavit and the deposition testimony of Mr. Hawk and his mother, the Relators filed a motion for summary judgment based on the premise that no issue of material fact exists, since the Relators' believe that the affidavit along with the depositions establish that Mr. Hawk

has not met his burden of proof of clear and convincing evidence that he is the son of the decedent. Contrarily, Mr. Hawk asserts that there still exist issues of material fact surrounding whether or not L.J. Craft is his biological father. He asserts that there is much testimony that needs to be heard from various persons who can attest that L.J. Craft acknowledged Mr. Hawk. After a hearing on the matter, the trial court denied the relators' motion for summary judgment.

The Relators have set forth what they believe to be two assignments of error by the trial court. We will address each issue separately.

First, the Relators claim that the trial court erred when it ruled that Dr. Burkhardt's uncontroverted affidavit and deposition testimony of Mr. Hawk and others established that Mr. Hawk could meet the clear and convincing degree of certainty in the filiation action.

After reviewing the record before us, we find this assignment of error to be without merit. The record does not contain a ruling nor does it contain a judgment in which the trial court ruled that Mr. Hawk could meet the clear and convincing burden based on the affidavit of Dr. Burkhardt and the deposition testimony of Mr. Hawk and others. Clearly, since the record is devoid of such a ruling, this Court is unable to find that this assignment of error is with merit.

The other assertion by the relators is that the trial court erred when it denied the relators' motion for summary judgment.

We have frequently set for the standard of review of a motion for summary judgment, and will not repeat ourselves herein. However, we have reviewed the Relators' writ application, and we conclude that the trial court correctly denied the relators' motion for summary judgment. In the case *sub judice*, the expert witness performed a paternity test. As stated by the relators in this appeal, the expert "opined" that Mr. Hawk is not the biological child of Mr. Craft. Clearly, the methodology used by the expert in determining the biological relationship between Mr. L.J. Craft and Tommy Hawk is subject to summary judgment review. But, the relators are not asking that the trial court review such methodology. Based on the relators' brief, they want the trial judge to weigh the evidence presented at the summary judgment hearing and make a credibility determination based on the expert's opinion. Clearly, this is contrary to the law as set forth in the Louisiana Supreme Court cases. As such, the trial court was correct in denying the motion for summary judgment thereby leaving the credibility determinations to the trier of fact at the trial on the merits.

Accordingly, we do not find that the trial court erred when it denied Relators' motion for summary judgment. Thus, the Relator's writ

application is granted, and the judgment of the trial court is affirmed.

**WRIT GRANTED;**  
**RELIEF DENIED**