

**BERTHA LAZARD AND  
FRANK LAZARD**

**VERSUS**

**DR. JEFFREY W. COCO, ET  
AL.**

**\* NO. 2003-C-0268  
\* COURT OF APPEAL  
\* FOURTH CIRCUIT  
\* STATE OF LOUISIANA**

**\*  
\*  
\*  
\* \* \* \* \***

**ON APPLICATION FOR WRITS DIRECTED TO  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NOS. 98-06866, C/W 98-8788, C/W 98-12250, C/W 98-10420  
DIVISION "N"**

**Honorable Ethel Simms Julien, Judge**

**\* \* \* \* \***

**Judge Charles R. Jones**

**\* \* \* \* \***

**(Court composed of Judge Charles R. Jones, Judge James F. McKay III,  
Judge Max N. Tobias Jr.)**

**William K. Christovich  
Janet L. White  
CHRISTOVICH & KEARNEY, L.L.P.  
601 Poydras Street, Suite 2300  
New Orleans, La. 70130-6078**

**COUNSEL FOR RELATOR, JEFFEREY W. COCO, M.D.**

**WRIT DENIED**

The writ application filed by the Relator, Dr. Jeffrey Coco, M.D., seeking review of the judgment of the district court denying his motion for summary judgment in favor of the plaintiffs, Bertha and Frank Lazard, is hereby denied.

### **Facts/Procedural history**

The instant case arises out of a medical malpractice claim filed by Bertha and Frank Lazard (hereinafter “the Lazards”), prior to Mrs. Lazard’s death, against Dr. Coco and Mercy-Baptist Medical Center d/b/a Memorial Medical Center.

According to Dr. Coco, on March 29, 1998, Mrs. Lazard went to Memorial Medical Center’s emergency room complaining of swelling in her left hand and fingers. Earlier in that same month, Mrs. Lazard had been admitted and treated for a similar complaint involving her right hand. Mrs. Lazard’s treating physician, Dr. Marrero, admitted her and diagnosed her with cellulitis, which was incised and drained on March 30, 1998. Dr. Marrero also ordered bacterial cultures on the fluid drained from Mrs. Lazard’s arm, and as a result, a course of antibiotics was then prescribed.

On March 31, 1998, Mrs. Lazard began experiencing hallucinations from a 104-degree fever. Dr. Marrero consulted with Dr. Coco, an infectious disease specialist, to address Mrs. Lazard’s health problems.

During that same hospital stay, Mrs. Lazard was also seen by consulting physicians in the areas of gastroenterology, orthopedics, endocrinology, pulmonology, cardiology, dermatology, plastic surgery, and nephrology. Mrs. Lazard had a history of insulin-dependent diabetes, severe obstipation, hyponatremia, renal insufficiency, and gout. Additionally, Mrs. Lazard was obese weighing 320 pounds.

Dr. Coco examined Mrs. Lazard and prescribed an additional antibiotic. Dr. Coco also consulted with another of the physicians treating Mrs. Lazard regarding her gout; and on April 2, 1998, he prescribed colchicine to treat Mrs. Lazard's gout.

On April 7, 1998, the hospital's nursing staff notified Dr. Coco of Mrs. Lazard's urinalysis results, which suggested Mrs. Lazard had a urinary tract infection. Dr. Coco ordered a single dose of Claforan, an antibiotic, to be given intravenously to treat Mrs. Lazard's urinary tract infection.

Approximately six hours after receiving the Claforan, Mrs. Lazard developed fluid filled pustules behind her ears, on the back of her neck, on both of her feet, on her ankles, and on her abdomen. Mrs. Lazard was treated with antihistamines and steroids. A dermatologist was consulted and confirmed that Mrs. Lazard had developed Stevens-Johnson syndrome, and steroid treatment was continued. All non-essential medications being given

to Mrs. Lazard were discontinued.

Despite aggressive treatment, Mrs. Lazard developed toxic epidermal necrolysis. At approximately the same time, Mrs. Lazard was also experiencing gastrointestinal problems and severe intestinal obstruction. As a result, Mrs. Lazard's condition deteriorated and she passed away on April 22, 1998.

On April 20, 1998, the Lazards filed their medical malpractice claim with the Patient's Compensation Fund Oversight Board against Dr. Coco and Memorial Medical Center. A medical review panel was formed, and on June 10, 1999, the panel found neither Dr. Coco nor the hospital had breached the standard of care.

The Lazards filed suit in the district court. Dr. Coco answered the petition and subsequently filed his Motion for Summary Judgment.

After a hearing on Dr. Coco's motion on October 18, 2002, the district court took the matter under advisement. On January 6, 2003, the district court rendered its judgment denying the motion.

### **Legal Analysis**

Dr. Coco argues that the district court erred in denying his Motion for Summary Judgment. Specifically, Dr. Coco argues that the Lazards have failed to show they have sufficient evidence to support their argument that

the medication Dr. Coco prescribed caused Mrs. Lazard's death as a result of developing Stevens-Johnson syndrome.

Appellate courts review summary judgment de novo, using the same criteria applied by the trial courts to determine whether the summary judgment is appropriate. Independent Fire Ins. Co. v. Sunbeam Corp., 99-2181, (La. 2/29/2000), 755 So.2d 226, 230.

La. C.C.P. art. 966 provides in pertinent part:

A (2) The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by Article 969. The procedure is favored and shall be construed to accomplish these ends.

B The judgment sought should be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is not genuine issue as to material fact, and that mover is entitled to judgment as a matter of law.

C (2) 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, action or defense, but rather to 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, action, or defense. 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.

La. C.C.P.art. 967 provides in part:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or by further affidavits.

When a motion for summary judgment is made and supported as provided above, an adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided above, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be rendered against him.

In order to determine whether liability exists under the facts of a particular case, the court must apply a duty-risk analysis. The plaintiff must prove: (1) the conduct in question was the cause-in-fact of the resulting harm; (2) the defendant owed a duty of care to the plaintiff; (3) the requisite duty was breached by the defendant; and (4) the risk of harm was within the scope of protection afforded by the duty breached. Stroik v. Penseti, 96-2897 p.6 (La. 9/9/97), 699 So.2d 1072, 1077.

Cause-in-fact is generally a “but for” inquiry. If the plaintiff probably

would not have sustained the injuries but for the defendant's conduct, such conduct is a cause-in-fact. Id.

To support his argument, Dr. Coco points to the review panel's findings, and the findings of Dr. David Martin, all infectious disease specialists, who found that Dr. Coco did not breach the standard of care in his treatment of Mrs. Lazard. Dr. Coco further argues that the Claforan he prescribed could not have been the cause of the onset of Mrs. Lazard's Stevens-Johnson syndrome, because the Claforan was administered approximately four to six hours prior to the syndrome's manifestation. According to Dr. Coco, Stevens-Johnson syndrome, a severe reaction to certain medications, usually manifests itself seven to twenty-one days after a patient is administered medication to which that patient is allergic. Additionally, Dr. Coco argues that he checked Mrs. Lazard's medical history, and determined that she had been given Claforan in the past without any adverse reaction to the medication.

The Lazards argue that it was the Claforan prescribed by Dr. Coco that triggered the onset of Mrs. Lazard's Stevens-Johnson syndrome, and that Dr. Coco breached his duty of care by prescribing the medication without first running additional tests to determine if Mrs. Lazard actually had a urinary tract infection. It was later determined that Mrs. Lazard did

not have a urinary tract infection, but her urine was cloudy because of the presence of white blood cells. To support their argument, the Lazards point to the findings of Dr. Michael Bergman, an infectious disease specialist, who found, after reviewing Mrs. Lazard's medical records, that Dr. Coco did in fact breach the standard of care in his treatment of Mrs. Lazard. Dr. Bergman also found that Claforan was most likely the cause of the onset of the Stevens-Johnson syndrome.

The district court found the conflicting opinions on which drug caused Mrs. Lazard to develop Stevens-Johnson syndrome created a genuine issue of material fact. Therefore, we find that the district court did not err in denying Dr. Coco's Motion for Summary Judgment. In the transcript of the motion hearing both parties agreed that it was one of the many medications prescribed to Mrs. Lazard, which caused the severe skin reaction, and ultimately her death. The determination of which medication possibly led to Mrs. Lazard's death creates a genuine issue of material fact. For the reasons stated, this writ application is denied.

**WRIT DENIED**



