STATE OF LOUISIANA COURT OF APPEAL, SECOND CIRCUIT 430 Fannin Street Shreveport, LA 71101 (318) 227-3700

No. 55,429-CW

DIANE JOHNSON, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VERSUS

ROSEVIEW NURSING & REHABILITATION CENTER, L.L.C. AND CENTRAL MANAGEMENT COMPANY, L.L.C.

FILED: 07/05/23 RECEIVED: BY EMAIL 06/30/23

On application of Roseview Nursing & Rehabilitation Center, L.L.C. and Central Management Company, L.L.C. for SUPERVISORY WRIT in No. 636,719 on the docket of the First Judicial District, Parish of CADDO, Judge Brady D. O'Callaghan.

FAIRCLOTH, MELTON, SOBEL & BASH, LLC Jimmy Roy Faircloth, Jr. Mary Katherine Price Counsel for: Roseview Nursing & Rehabilitation Center, L.L.C. and Central Management Company, L.L.C.

GARCIA & ARTIGLIERE Matthew McKay Coman Jordan M. Jeansonne -and-HUBER THOMAS, LLP Stephen Michael Huber Christopher T. Whelen Counsel for: Diane Johnson, Individually and On Behalf Of All Others Similarly Situated

Before PITMAN, COX, and HUNTER, JJ.

WRIT GRANTED AND MADE PEREMPTORY; REVERSED.

Applicants, Roseview Nursing & Rehabilitation Center, L.L.C. and Central Management Company, L.L.C., seek review of the May 19, 2023 ruling of the trial court denying their exception of no cause/right of action, thereby allowing Diane

Johnson, both individually and as a representative, to maintain a private civil action under the Nursing Home Residents' Bill of Rights ("NHRBR") (La. R.S. 40:2010.6 *et seq.*) to recover attorney's fees and costs.

According to La. R.S. 40:2010.8, any violations of the residents' rights set forth in La. R.S. 40:2010.6 *et seq.*, shall constitute grounds for appropriate action by the Louisiana Department of Health and residents shall have a private right of action to enforce these rights as set forth in La. R.S. 40:2010.9. Under La. R.S. 40:2010.9, an individual claim for civil enforcement "may be brought by the resident or his curator, including a curator ad hoc." La. R.S. 40:2010.1(6) defines resident as any person who is a resident or client of a facility.

The filings in the record indicate that Diane Johnson was discharged from Roseview Nursing & Rehabilitation Center, L.L.C. well before the present lawsuit was initiated and, therefore, is not a resident as defined by NHRBR. After *de novo* review, we find that Diane Johnson, both individually and as a representative, has no right of action to bring a claim of civil enforcement under NHRBR. The writ is granted and that portion of the trial court's ruling denying applicant's exception of no cause/no right of action is reversed. The exception is sustained and the claims of plaintiffs are dismissed with prejudice.

Shreveport, Louisiana, this _	1 day of	August	, 2023.
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MZH HUNTER, J., would deny. I see no error in the trial court's denial of the exception of no cause/right of action. Plaintiff is a former resident of the facility, and I do not believe her discharge from the facility altered her rights under the NHRBR during her residency. Consequently, I believe plaintiff's petition was adequate to assert a cause/right of action under the NHRBR.

FILED: _____August 1, 2023_____

Shandra Jaylor DEPUTY CLERK