

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 0796

RAYMOND COCKERHAM, JR.

VERSUS

ASCENSION PARISH, ET AL.

**Judgment rendered December 21, 2011.**

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Appealed from the  
23rd Judicial District Court  
in and for the Parish of Ascension, Louisiana  
Trial Court No. 94,309  
Honorable Thomas Kliebert, Jr., Judge

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RAYMOND COCKERHAM, JR.  
JACKSON, LA

PLAINTIFF-APPELLANT  
IN PROPER PERSON

JANIE LANGUIRAND COLES  
BATON ROUGE, LA

ATTORNEY FOR  
DEFENDANT-APPELLEE  
DR. STEPHEN HOLMES, MD

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**BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.**

*J.P.D.  
JEW*

*McClelland, J. Ancous.*

**PETTIGREW, J.**

In this case, plaintiff seeks review of the Twenty-Third Judicial District Court's judgment sustaining defendant's exception raising the objection of prematurity and dismissing, without prejudice, plaintiff's claim against defendant. For the reasons that follow, we reverse and remand.

**FACTS AND PROCEDURAL HISTORY**

On April 29, 2010, plaintiff, Raymond Cockerham, Jr., an inmate incarcerated at Ascension Parish Jail at the time, filed what he captioned a "Petition for Judicial Review."<sup>1</sup> However, in our view, plaintiff's petition is actually a claim for damages alleging medical malpractice against several defendants, including Dr. Stephen Holmes.<sup>2</sup> Plaintiff asserted, among other things, that Dr. Holmes "intentionally, willfully, maliciously, and with full knowledge caused [him] injury, pain and suffering, and mental anguish during the discharge of official duties and/or within the course and scope of employment."<sup>3</sup> There is clearly no prejudice to Dr. Holmes by the improper labeling of plaintiff's pleading. This result serves the interest of justice and judicial economy. See ANR Pipeline Co. v. Louisiana Tax Com'n, 2011-0425, pp. 9-10 (La. App. 1 Cir. 8/23/11), \_\_\_ So.3d \_\_\_.

In response to plaintiff's claim, Dr. Holmes filed an exception raising the objection of prematurity. Dr. Holmes alleged that plaintiff's claim was premature because he was a qualified health care provider and plaintiff had not first presented his claim to a medical

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<sup>1</sup> It is well-settled in Louisiana law that "[e]very pleading shall be so construed as to do substantial justice." La. Code Civ. P. art. 865. Furthermore, the jurisprudence holds that courts may overlook miscaptioning of a pleading where the other party is not prejudiced. **Higdon v. Higdon**, 385 So.2d 396, 398 (La. App. 1 Cir. 1980). Our courts look beyond the caption, style, and form of pleadings to determine from the substance of the pleadings the nature of the proceeding; thus, a pleading is construed for what it really is, not for what it is erroneously called. **Rochon v. Young**, 2008-1349, p. 3 (La. App. 1 Cir. 2/13/09), 6 So.3d 890, 892, writ denied, 2009-0745 (La. 1/29/10), 25 So.3d 824, cert. denied, \_\_\_ U.S. \_\_\_, 130 S.Ct. 3325, 176 L.Ed.2d 1216 (2010).

<sup>2</sup> We note that throughout the record Dr. Stephen Holmes is referred to as both "Stephen" and "Steven".

<sup>3</sup> Plaintiff further asserted that he had presented his complaint "in the prisoner's grievance procedure provided by Ascension Parish Jail," but that he had not yet received a response to his "Step One" in the process. However, the record is insufficient to support plaintiff's contention that he began the administrative remedy procedure as set forth in the Corrections Administrative Remedy Procedure Act, La. R.S. 15:1171 *et seq.*

review panel as required by La. R.S. 40:1299.47(B). The matter proceeded to hearing on August 9, 2010, at which time the attorney for Dr. Holmes noted that plaintiff had not filed any opposition to the exception. On August 18, 2010, plaintiff filed a "Notice of Opposition," wherein he set forth his argument against Dr. Holmes' prematurity exception and notified the district court that "in an abundance of caution," he had "filed a request for review of malpractice claim" against Dr. Holmes.<sup>4</sup>

In a judgment signed August 20, 2010, the district court sustained Dr. Holmes' prematurity exception, dismissing plaintiff's claim against Dr. Holmes, without prejudice. It is from this judgment that plaintiff has appealed, arguing the district court erred in sustaining the prematurity exception and erred in failing to comply with the provisions of La. R.S. 15:1177.<sup>5</sup>

#### DISCUSSION

Prematurity is determined by the facts existing at the time the suit is filed. **Metro Riverboat Associates, Inc. v. Louisiana Gaming Control Bd.**, 99-2241, pp. 5-6 (La. App. 1 Cir. 3/7/01), 798 So.2d 143, 147, writ denied, 2001-0818 (La. 1/4/02), 805 So.2d 1188. Prematurity raises the issue of whether a cause of action has not yet come into existence because some prerequisite condition is unfulfilled. *Id.* The standard of review of a judgment sustaining a dilatory exception raising the objection of prematurity is that of manifest error. **Pinegar v. Harris**, 2008-1112, p. 10 (La. App. 1 Cir. 6/12/09), 20 So.3d 1081, 1088.

As previously discussed by this court in **Walker v. Appurao**, 2009-0821, p. 3 (La. App. 1 Cir. 10/23/09), 29 So.3d 575, 576, writ denied, 2009-2822 (La. 3/5/10), 28

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<sup>4</sup> We note that this opposition was filed after the hearing on the exception and was not considered by the district court.

<sup>5</sup> According to the record, plaintiff originally sought supervisory writs with this court from the August 20, 2010 judgment of the district court. In an order dated January 31, 2011, this court granted the writ for the limited purpose of remanding the case to the district court with instructions that the district court grant plaintiff an appeal. See **Cockerham v. Ascension Parish, et al.**, 2010-2212 (La. App. 1 Cir. 1/31/11) (unpublished writ action).

So.3d 1010, the plain language of La. R.S. 40:1299.39.1(A)(1)(a)<sup>6</sup> exempts prisoners with medical malpractice claims from the medical review panel process. However, this does not mean that prisoners are completely exempt from administrative review in the realm of medical malpractice claims. Louisiana Revised Statutes 40:1299.39(E)(1) clearly states that the medical malpractice claims of prisoners arising under the Malpractice Liability for State Services Act "shall be submitted to correctional administrative review procedures established for administrative hearings in the correctional environment or established in accordance with express law, including R.S. 15:1171 et seq., R.S. 49:964, and the administrative rules and regulations pertaining thereto." La. R.S. 40:1299.39(E)(1). Thus, because plaintiff was not required by statute to submit his medical malpractice claim against Dr. Holmes to a medical review panel, the trial court erred in sustaining Dr. Holmes' prematurity exception.

### **CONCLUSION**

For the foregoing reasons, the August 20, 2010 judgment of the district court is reversed, and the matter is remanded for further proceedings consistent with this opinion. All costs associated with this appeal are assessed against defendant.

**REVERSED AND REMANDED.**

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<sup>6</sup> At all times pertinent hereto, La. R.S. 40:1299.39.1(A)(1)(a) provided, in pertinent part, as follows:

A. (1)(a) All malpractice claims against the state, its agencies, or other persons covered by this Part, other than claims wherein the patients are prisoners and claims compromised or settled by the claimant and the division of administration with the concurrence of designated legal counsel for the state, shall be reviewed by a state medical review panel established as provided in this Section, to be administered by the commissioner of administration, hereinafter referred to as commissioner.

The statute was amended in 2010 by La. Acts 2010, No. 398, §1, when the legislature substituted "subject to administrative review in a correctional facility in accordance with R.S. 40:1299.39(E)" for "wherein the patients are prisoners" in the first sentence of subparagraph (A)(1)(a).