

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

HOWARD HALL AND MARVELL
SMITH

NO. 2013 CW 0913
PG. 1 of 2

VERSUS

HEALTH CARE CENTER, INC.
D/B/A BATON ROUGE HEALTH
CARE CENTER

consolidated with

HOWARD HALL AND MARVELL
SMITH

VERSUS

OCT. 31, 2013

RESTHAVEN LIVING CENTER, LLC

In Re: Howard Hall and Marvell Smith, applying for
supervisory writs, 19th Judicial District Court,
Parish of East Baton Rouge, No. 569,326 c/w 606,105.

BEFORE: PARRO, GUIDRY, PETTIGREW, McDONALD AND WELCH, JJ.

WRIT GRANTED IN PART WITH ORDER; DENIED IN PART. We find that the trial court erred in granting the peremptory exception raising the objection of prescription regarding plaintiffs' claim that the defendant, Resthaven Living Center, LLC (Resthaven), failed to perform labwork in accordance with physician's orders (the "labwork claim") and dismissing the labwork claim with prejudice at plaintiffs' costs. We find that the plaintiffs' labwork claim was presented to the medical review panel for review. See Miller v. Crescent City Health Care Center, 2008-1347 (La. App. 4th Cir. 5/28/09), 24 So.3d 891, 894; Williams v. Notami Hospitals of Louisiana, Inc., 2004-2289 (La. App. 1st Cir. 11/4/05), 927 So.2d 368; and La. R.S. 40:1299.47(G). This case is factually distinguishable from Warren v. Louisiana Medical Mutual Ins. Co., 2007-0492 (La. 2/13/09), 21 So.3d. 186, 202-03 (on rehearing) and we decline to extend the rule in LeBreton v. Rabito, 97-2221 (La. 7/8/98), 714 So.2d 1226, to the particular facts presented in this matter. Therefore, the writ is granted, that portion of the March 21, 2013 judgment is reversed, and judgment is entered in favor of plaintiffs overruling Resthaven's peremptory exception of prescription regarding that claim. We further reverse the portion of the March 21, 2013 judgment that strikes plaintiffs' claim that Resthaven failed to perform labwork in accordance with the physician's order and bars plaintiffs from introducing evidence regarding that claim or asserting the claim at trial.

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT


NO. 2013 CW 0913
PG. 2 of 2

We further find that the trial court abused its discretion where it prohibited plaintiffs' medical expert, Gary Sander, M.D., from testifying at trial as to the standard of care of a nursing home. Therefore, that portion of the March 21, 2013 judgment that prohibits Gary Sander, M.D. from testifying at trial regarding the applicable standard of care of a nursing home is reversed. It is further ordered that the matter be remanded with instructions to issue an order permitting Gary Sander, M.D. to testify at trial as to the standard of care of a nursing home and limiting such testimony to the specific areas of nursing care discussed in Dr. Sander's June 24, 2012 report. To the extent the application seeks other relief, it is denied.

JMG
JTP
JMM

Parro and Welch, JJ., concur in part and dissent in part. We concur with the majority's finding that the trial court abused its discretion in prohibiting Dr. Sander from testifying at trial as to the standard of care of a nursing home. However, we would decline to exercise this Court's supervisory jurisdiction in all other respects.

COURT OF APPEAL, FIRST CIRCUIT


DEPUTY CLERK OF COURT
FOR THE COURT