

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

MARY EARTHLY ON BEHALF OF
DOROTHY JONES

NO. 2014 CW 1215

VERSUS

CPLACE UNIVERSITY SNF, LLC
D/B/A AFFINITY NURSING AND
REHAB CENTER AND ABC
INSURANCE COMPANY

OCT 21 2014

In Re: Cplace University, SNF, LLC d/b/a Affinity Nursing and Rehab Center, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 629257.

BEFORE: PARRO, McDONALD AND CRAIN, JJ.

WRIT GRANTED IN PART. The September 3, 2014 judgment of the trial court is hereby vacated in part. We find that the allegations contained in Paragraph 14, subsection B of the petition, which alleges intentional mental and physical abuse; Paragraph 14, subsection C of the petition, which alleges improper restraints with inappropriate materials and in an unreasonable, inappropriate and dangerous manner; and Paragraph 14, subsection E of the petition, which alleges other intentional acts as may be revealed at the trial of the merits on this case, arise in intentional tort and are therefore exempt from the provisions of La. R.S. 40:1299.47(B). The exception of prematurity is denied with respect to these claims.

The trial court erred in refusing to admit and consider evidence at the hearing of this matter pursuant to La. C.C.P. art. 930. The trial court is **ordered** to admit and consider evidence regarding whether the alleged negligence occurred during the patient's medical care, treatment or confinement, and to reconsider the exception of prematurity in light of such evidence and in light of **McKnight v. D & W Health Servs., Inc.**, 2002-2552 (La. App. 1st Cir. 11/7/03), 873 So.2d 18, and **Hamilton v. Baton Rouge Health Care**, 2009-0849 (La. App. 1st Cir. 12/8/10), 52 So.3d 330.

RHP
JMM

Crain, J., concurs.

COURT OF APPEAL, FIRST CIRCUIT


DEPUTY CLERK OF COURT