

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**


**COURT OF APPEAL**

**FIRST CIRCUIT**

**NO. 2015 CA 1470**

 **JANE H. CLATTENBERG AND ALBERT CLATTENBERG**

**VERSUS**

 **OUR LADY OF THE LAKE HOSPITAL, INC. D/B/A OUR LADY OF  
THE LAKE REGIONAL MEDICAL CENTER AND JOHN DOE AND  
JAMES DOE, TWO UNKNOWN ORDERLIES IN ITS EMPLOY**

*Judgment Rendered:*    **APR 15 2016**

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**Appealed from the  
19th Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Case No. C626636**

**The Honorable Todd W. Hernandez, Judge Presiding**

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**BEFORE: McDONALD, McCLENDON, AND THERIOT, JJ.**

 *McCleendon, J. concurs*

**THERIOT, J.**

This appeal is taken from a summary judgment before the trial court, which granted in favor of the appellee, Our Lady of the Lake Hospital, Inc., d/b/a Our Lady of the Lake Regional Medical Center (“OLOL”), and which denied a motion in limine filed by the appellants, Jane H. and Albert Clattenberg, as moot. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

On or about December 9, 2011, Jane H. Clattenberg was a patient at OLOL due to a heart condition. Mrs. Clattenberg claimed that at the time she was admitted to OLOL, she had no compression fracture of the lumbar spine. A CT scan was ordered. OLOL orderlies transported Mrs. Clattenberg to the CT scan examination room. Mrs. Clattenberg alleged that as the orderlies attempted to move her from the gurney to the CT scan table, she was dropped on the side corner of the CT scan table. She claimed the drop fractured her spine at the L1 level and that the orderlies breached their standard of care when moving her to the CT scan table.

Mrs. Clattenberg claimed the compression fracture she sustained under the care of OLOL staff has caused her extensive physical and mental pain and suffering, and her stay at OLOL was extended so the fracture could be treated. She was discharged from OLOL on January 12, 2012, but continued to suffer physical and mental pain and suffering afterward. Albert Clattenberg, Mrs. Clattenberg’s husband, claimed he suffered a loss of consortium due to OLOL’s negligence.

A medical review panel (MRP) convened on November 21, 2013. The MRP unanimously found nothing in the record to suggest that Mrs. Clattenberg was mishandled by OLOL staff when she was transported to the CT scan table. Further, the MRP stated they had “little faith” in Mrs.

Clattenberg's statements, believing it was "very doubtful" that, if the drop had occurred as Mrs. Clattenberg claimed, which was only a drop of a few inches, that it would have caused her compression fracture.

The Clattenbergs filed a petition for damages on December 6, 2013. OLOL filed a motion for summary judgment on March 13, 2015, claiming there was no genuine issue of material fact as to the causation of Mrs. Clattenberg's injury. The Clattenbergs had also filed a motion in limine to exclude cumulative, misleading, and prejudicial evidence. The hearing on the motions was held on May 11, 2015. The trial court signed a judgment on June 4, 2015, that granted OLOL's motion for summary judgment, dismissed the Clattenbergs' claims with prejudice, and denied the Clattenbergs' motion in limine as moot.

In its reasons for judgment, the trial court stated that the evidence submitted on the issue of the legal cause of Mrs. Clattenberg's injury only suggested a "remote possibility" that the drop could have caused a compression fracture, which was insufficient to carry the burden at trial to prove the legal cause of the injury. The Clattenbergs filed the instant appeal on July 14, 2015.

### **ASSIGNMENTS OF ERROR**

The Clattenbergs raise six assignments of error. Although we do not address each assignment of error individually, this opinion disposes of all issues raised by the assignments of error. See *Pike v. National Union Fire Insurance Company*, 2000-1235 (La. App. 1 Cir. 6/22/01), 796 So.2d 696, 698 n. 6.

### **STANDARD OF REVIEW**

A motion for summary judgment is a procedural device used when there is no genuine issue of material fact for all or part of the relief prayed

for by a litigant. A summary judgment is reviewed on appeal *de novo*, with the appellate court using the same criteria that govern the trial court's determination of whether summary judgment is appropriate; i.e., whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Samaha v. Rau*, 2007-1726 (La. 2/26/08), 977 So.2d 880, 882.

Louisiana Code of Civil Procedure art. 966(C)(2) states:

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 ... but rather 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 .... 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.<sup>1</sup>

In ruling on a motion for summary judgment, we cannot simply disregard the movant's unopposed expert medical evidence. *Schultz v. Guoth*, 2010-0343 (La. 1/19/11), 57 So.3d 1002, 1009. Expert testimony is generally required to establish the applicable standard of care and whether the standard was breached, except where the negligence is so obvious that a lay person can infer negligence without the guidance of expert testimony. *Vanner v. Lakewood Quarters Retirement Community*, 2012-1828 (La. App. 1 Cir. 6/7/13), 120 So.3d 752, 756.

## DISCUSSION

Each of the Clattenbergs' assignments of error pertain to the correctness of the trial court's ruling on the motion for summary judgment. As we find the trial court's ruling to be correct, all of the Clattenbergs'

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<sup>1</sup> Louisiana Code of Civil Procedure art. 966 was amended and reenacted by 2015 La. Acts, No. 422, § 1, with an effective date of January 1, 2016. The amended version of Article 966 does not apply to any motion for summary judgment pending adjudication or appeal on the effective date of the Act; therefore, we refer to the former version of La. C.C.P. art. 966 in this case.

assignments of error are without merit. The dismissal of their claims also renders moot the Clattenbergs' motion in limine.

OLOL provided competent expert testimony to refute that any drop which may have occurred in Mrs. Clattenberg's transfer to the CT table caused her injury. This conclusion by the MRP, underscored by the choice of words that it is "very doubtful" that a drop of a few inches could have caused the compression fracture, suggests that the Clattenbergs' allegations do not satisfy the preponderance of evidence standard and do not establish a reasonable possibility that OLOL breached its standard of care. See Housley v. Cerise, 579 So.2d 973, 980 (La. 1991).

Along with the MRP's findings, OLOL provided a wealth of additional evidence, including affidavits of the medical staff who transferred Mrs. Clattenberg, medical records of Mrs. Clattenberg, deposition excerpts from treating physicians, and a deposition excerpt of Mrs. Clattenberg herself. After reviewing all of the evidence, we find the trial court's conclusions to be reasonable.

Once OLOL established there was no factual support on the element of causation, it became the Clattenbergs' burden to prove that a genuine issue of fact did exist with respect to causation. The Clattenbergs did not present any new evidence, expert or otherwise, to support the element of causation in their claim. Although the Clattenbergs argue that the deposition testimony of Dr. Kaycee Weaver, a member of the MRP, supports causation for the injury, Dr. Weaver actually testified that a compression fracture could be caused by a slight drop, *if the patient was in a perpendicular position* prior to falling. The record shows that Mrs. Clattenberg was not in a perpendicular position when she was transferred to the CT table. The failure of the non-moving party to produce evidence of a material factual

dispute mandates the granting of the motion for summary judgment. *Jones v. Estate of Santiago*, 2003-1424 (La. 4/14/04), 870 So.2d 1002, 1006.

**DECREE**

The Nineteenth Judicial District Court's judgment granting the motion for summary judgment, filed by Our Lady of the Lake Hospital, Inc., d/b/a Our Lady of the Lake Regional Medical Center, dismissing the claims of Jane H. and Albert Chattenberg with prejudice, and denying the Clattenbergs' motion in limine as moot, is affirmed. Costs of this appeal are assessed to the appellants, Jane H. and Albert Clattenberg.

**AFFIRMED.**