

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

KIMBERLY CHIASSON,
INDIVIDUALLY AND ON BEHALF
OF HER MINOR SON, CAMERON
CHIASSON

NO. 2018 CW 1288

VERSUS

LOUISIANA MEDICAL MUTUAL
INSURANCE COMPANY AND JOHN
WHITAKER, M.D.

SEPTEMBER 21, 2018

In Re: Kimberly Chiasson, Individually and on behalf of her minor son, Cameron Chiasson, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 612927.

BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

WRIT GRANTED IN PART AND DENIED IN PART. In this matter, with respect to payment of the jury bond, the court's case management order stated as follows: "[j]ury bond in the amount of \$3,600 is to be filed 45 days prior to trial by requesting party; 35 days prior to trial by non-requesting party." In this case, both defendants and plaintiff "requested" a jury trial. The right of a litigant to a jury trial is fundamental in character, and the courts will indulge every presumption against a waiver, loss, or forfeiture thereof. **Alkazin v. City of Baton Rouge**, 97-0738 (La. App. 1st Cir. 11/7/97), 705 So.2d 208, 211-12, citing **Champagne v. American Southern Insurance Company**, 295 So.2d 437, 439 (La. 1974). Regarding payment of the bond, the language of Louisiana Code of Civil Procedure articles 1734 and 1734.1 are guiding and provide that "[i]f the [deposit or bond] is not timely made, any other party shall have an additional ten days" to file the required bond or make the required deposit. (Emphasis added). The articles do not distinguish between requesting and non-requesting parties, they simply preserve the right to a jury trial for "any other party" if a party failed to timely make the deposit. Since every presumption is against forfeiture of the right to a jury trial, when there are multiple requesting parties, if one party fails to timely deposit the bond, the other party should have an opportunity to remedy the defect and post the bond. Here, after realizing the defendants, as one requesting party, did not file the jury bond at the 45 day deadline, plaintiff, as "any other party" filed the jury bond within the second timeframe provided by the court, and within the timeframe provided by Louisiana Code of Civil Procedure article 1734.1. Plaintiff acted to preserve her right to a jury trial, and this right should not be taken away. Thus, in this respect, the writ is granted, judgment of the trial court granting defendants' motion to strike jury trial reversed, and right to a jury trial reinstated. For the remaining assignments of error, we decline to exercise our supervisory jurisdiction. **Herlitz Construction Co., Inc. v. Hotel Investors of New Iberia, Inc.**, 396 So.2d 878 (La. 1981) (*per curiam*).

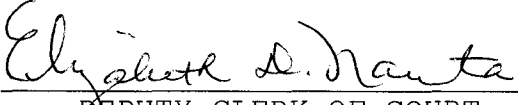
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**JMM
WJC**

Holdridge, J., concurs in the result.

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DEPUTY CLERK OF COURT
FOR THE COURT