

JUDITH ST. MARTIN

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NO. 2003-CA-0434

VERSUS

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COURT OF APPEAL

SHEILA SWEENEY, ET AL.

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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CANNIZZARO, J. DISSENTS WITH REASONS

I respectfully disagree with the majority opinion. Ms. Sweeny was a physical therapy student who was participating in a student internship at Touro Infirmary. Although the internship was unpaid, Ms. Sweeny did receive compensation in the form of living accommodations and meal tickets from the hospital in exchange for the services she performed while training as a physical therapist. From the point of view of Ms. St. Martin, Ms. Sweeny was certainly delivering healthcare under the auspices of Touro Infirmary, under whose control, care, and supervision Ms. Sweeny was acting. There was no indication whatsoever that Ms. Sweeny was not an employee of Touro Infirmary. Additionally, there was every indication that Ms. St. Martin should be entitled to rely on Ms. Sweeny being a Touro employee, especially when Ms. Sweeny was unsupervised by any other Touro employee at the time she was treating Ms. St. Martin. Ms. Sweeny should be considered as an employee or agent of Touro Infirmary for the purpose of payment by the Louisiana Patients' Compensation Fund. As the majority correctly points out, this case comes before us for an interpretation of an unpublished opinion dated November 28, 2001, in which this Court found that there was no error in the jury's failure to find that Ms. Sweeny was an employee of Touro Infirmary. I respectfully disagree with that finding.

It is impossible to determine from the interrogatories whether or not the jury decided that Ms. Sweeny was an employee of Touro. Even if the

jury found that Ms. Sweeny were an employee of Touro, there was no way to indicate this in the interrogatories that were given to them. Additionally, there is also no way to determine whether the twenty percent fault attributed to the “other person or events” listed in the jury interrogatories is attributable to Ms. Sweeny or to some other person. Finally, one cannot tell from the jury interrogatories whether the jury intended Ms. Sweeny’s fault to be included as part of Touro’s fault. All of these issues are confusing. At the very least, there were erroneous jury instructions in this case.

We should reverse our finding regarding Ms. Sweeny’s employment status. This Court should hold that Ms. Sweeny was, in fact, a de facto employee of Touro Infirmary and that the Louisiana Patients’ Compensation Fund is liable for the damages associated with Ms. Sweeny’s fault in this case.