

GINGER BAILEY, ET AL.

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NO. 2002-C-0049

VERSUS

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COURT OF APPEAL

**DR. GREGORY KHOURY, ET
AL.**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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LANDRIEU, JUDGE PRO TEMPORE, CONCURS WITH REASONS:

Article 26 of the Louisiana Civil Code provides that an unborn child shall be considered a natural person for whatever relates to its interests from the moment of conception. It was clearly enacted to protect unborn children and not to disadvantage them.

La. C.C. art 25 states that natural personality commences from the moment of live birth. Hence, it would appear that it is at that moment that minority begins, and it is at 18 years of age that it ends.

La. C.C. art. 3468 emphasizes that prescription runs even against minors except where there is legislative exception, but it does not mention unborn children. There are various exceptions to prescription in the case of minors. See C.C. arts. 3492 and 3496.1. However, there are no exceptions provided for unborn children unless an unborn child is considered to be a

minor. That, of course, would require a strained and uncommon use of the term.

It seems quite clear that the legislature did not consider the unborn child when it addressed prescription or the exceptions to it.

Article 4 of the Civil Code states: “When no rule for a particular situation can be derived from legislation or custom, the court is bound to proceed according to equity. To decide equitably, resort is made to justice, reason, and prevailing usages.”

To interpret these articles contrary to the interest of the unborn child does immense damage to the child. To interpret them contrary to the interest of the defendant does not in any way prejudice their ability to defend their claims.

Equity argues persuasively in favor of permitting the child to sue within one year from the date of birth.