

PEARL ANN DAVIS AND
WAYNE DAVIS,
INDIVIDUALLY AND ON
BEHALF OF THEIR MINOR
CHILD, KRISTINA DAVIS

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NO. 2003-CA-2219

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COURT OF APPEAL

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FOURTH CIRCUIT

VERSUS

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STATE OF LOUISIANA

THE BOARD OF
SUPERVISORS OF
LOUISIANA STATE
UNIVERSITY AND
AGRICULTURAL AND
MECHANICAL COLLEGE, DR.
JOSEPH M. MILLER, JR., DR.
YUAN S. KAO, AND JOHN
VAN BRUNT

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BELSOME, J., DISSENTS WITH REASONS

I respectfully dissent. The majority opinion cites La. Rev. Stat. 9:2794 (A) for the proposition that expert testimony is required to address the standard of care and breach thereof.

Expert testimony is not always needed to establish a medical malpractice claim. As stated by the Supreme Court in *Pfiffnerr v. Correa*:

We [the Supreme Court] hold that expert testimony is not always necessary in order for a plaintiff to meet his burden of proof in establishing a medical malpractice claim. Though in most cases, because of the complex medical and factual issues involved, a plaintiff will likely fail to sustain his burden of proving his claim under LSA-R.S. 9:2794's requirements without medical experts, there are instances in which the medical and factual issues are such that a **lay jury can perceive negligence** in the charged physician's conduct as well as any

expert can, or in which the defendant/physician testifies as to the standard of care and there is objective evidence, including the testimony of the defendant/physician, which demonstrates a breach thereof. (emphasis added.)

Pfiffner v. Correa, 94-0924 (La. 10/17/94), 94-0963 (La. 10/17/94), 94-0992 (La. 10/17/94), 643 So.2d 1228.

This is such a case, a lay jury did perceive negligence based on the medical and factual issues presented. Mrs. Davis elected to undergo an amniocentesis on June 28, 1990, understanding the results would take approximately two and one half weeks. On July 11, 1990, Dr. Miller reported to Dr. Jacobs that the results were normal. The Davis' were notified of these results. It was not until August 15, 1990, approximately seven weeks later, when the Davis' were notified by Dr. Miller's office of another result that reflected a chromosome abnormality.

Several doctors gave their opinion as to the delay in ascertaining the test results. First, Dr. Jacobs testified that he did not expect to be given a follow-up report. Next, Dr. Frist went so far as to testify that he was appalled at the length of time between the initial report and the subsequent finding. Finally, Dr. Hyman testified that he would have expected more information to be given indicating that the first report was not to be relied on. Clearly, the jury had factual information which enabled them to deduce, that the Davis' had no reason to believe the July 11, 1990, report was

preliminary. Each explanation led to a reasonable perception that Dr. Miller had negligently performed his duties.

Consequently, there was a permissible factual jury determination, of a breach of duty, which did not require expert testimony. I would affirm the trial court's ruling in denying the directed verdict.