

NOT DESIGNATED FOR PUBLICATION

DEBORAH CULOTTA * **NO. 2004-CA-0580**
VERSUS * **COURT OF APPEAL**
VERNON VANBOLDEN, III, * **FOURTH CIRCUIT**
M.D. AND ST. CLAUDE * **STATE OF LOUISIANA**
MEDICAL CENTER, L.L.C. *
D/B/A AND UNITED MEDICAL *
CENTER OF NEW ORLEANS *

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-13233, DIVISION "D-16"
Honorable Lloyd J. Medley, Judge

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Judge Dennis R. Bagneris, Sr.

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(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray,
and Judge Dennis R. Bagneris, Sr.)

MURRAY, J., DISSENTS AND ASSIGNS REASONS

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**APPEAL CONVERTED TO WRIT APPLICATION; WRIT
GRANTED IN PART AND DENIED IN PART**

In this appeal, the Louisiana Patients' Compensation Fund (hereinafter the "PCF") takes issue with a trial court judgment as it pertains to: (1) the causation of damages for Plaintiff's, Deborah Cullotta's, injuries; and (2) the denial of Plaintiff's motion for partial summary judgment regarding liability of the PCF and its coverage of the St. Claude Medical Center d/b/a United Medical Center of New Orleans ("United Medical Center"). The January 27, 2004 judgment states, in pertinent part:

ORDERED, ADJUDGED AND DECREED that plaintiff's Motion for Partial Summary Judgment Regarding Liability be, and hereby is, **GRANTED** as it pertains to both liability (both fault and causation) of Vernon Vanbolden, II, M.D., and the Louisiana Patient's Compensation Fund Oversight Board to the extent of its coverage of Vernon Vanbolden, II, M.D., as a qualified health care provider, for damages in excess of one hundred thousand dollars.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion for Partial Summary Judgment Regarding Liability as it pertains to the liability of the Louisiana Patient's Compensation Fund Oversight Board regarding its coverage of St. Claude Medical Center, L.L.C. d/b/a United Medical Center of New Orleans be, and hereby is, **DENIED**.

First, we note that the trial court has not certified this judgment as final and appealable pursuant to La. C.C.P. art 1915(B)(1), which states:

B. (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories, whether in an original demand, reconventional demand, cross-claim, third party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.

Nevertheless, exercising our general supervisory jurisdiction and the statutory authority granted to us by La.C.C.P. art. 2164, and in the interest of judicial economy, we convert the PCF's appeal to an application for a supervisory writ of review and render herein below a decision on the merits.

On appeal, both the Plaintiff and the PCF agree that a claimant in a medical malpractice action must show that the admitted malpractice caused damages in excess of \$100,000.00 in order to collect further damages from the PCF. Further, our review of current case law supports the parties' belief that a plaintiff must prove causation at trial against the PCF, even after liability has been admitted. *See Hall v. Brookshire Brothers, LTD*, 2002-2404 (La. 9/27/03), 848 So.2d 559. As such, we reverse that part of the January 27, 2004 judgment, which granted partial summary judgment as to causation, and find that Plaintiff must prove causation, at trial, against the PCF.

In regard to the denial of Plaintiff's motion for partial summary judgment regarding liability of the PCF and its coverage of the United Medical Center, the PCF requests this Court to clarify the trial court's judgment by finding that the acts of the United Medical Center in granting surgical privileges to Dr. Vanbolden, were not acts covered by the Medical Malpractice Act and therefore do not constitute medical malpractice for which the PCF can be held liable. However, because this ruling was in favor of the PCF, we find no reason to alter the trial court judgment.

For these reasons, we convert the PCF's appeal to an application for a supervisory writ of review. We grant the writ in part and reverse that part of the January 27, 2004 judgment, which granted Plaintiff's motion for partial summary judgment as it pertains to causation. In all other respects, the writ application is denied.**APPEAL CONVERTED TO WRIT APPLICATION; WRIT GRANTED IN PART AND DENIED IN PART.**