

# Supreme Court of Louisiana

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NEWS RELEASE #049

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **10th day of December, 2021** are as follows:

**BY Crain, J.:**

*2020-CC-01167*

*ANN MARIE AURICCHIO AND PATRICK HOGAN VS. LYNEIGH J. HARRISTON (PARISH OF ORLEANS CIVIL)*

ORDER GRANTING LEAVE TO FILE OPPOSITION REVERSED.  
SUMMARY JUDGMENT VACATED. REMANDED. SEE OPINION.

Hughes, J., additionally concurs and assigns reasons.

Griffin, J., additionally concurs and assigns reasons.

**SUPREME COURT OF LOUISIANA**

**No. 2020-CC-01167**

**ANN MARIE AURICCHIO AND PATRICK HOGAN**

**VS.**

**LYNEIGH J. HARRISTON**

On Supervisory Writ to the Orleans Civil District Court, Parish of Orleans Civil

**CRAIN, J.**

We granted this writ to resolve a split between the courts of appeal relative to the interpretation of Louisiana Code of Civil Procedure article 966(B)(2). We hold that, in the absence of consent by the parties, a trial court has no discretion to extend that article’s fifteen-day deadline for filing an opposition. We remand for the trial court to rule on the motion for summary judgment without the late-filed opposition.

**FACTS AND PROCEDURAL HISTORY**

Plaintiffs, Anne Marie Auricchio and Patrick Hogan, and defendant, Lynleigh Harriston, are the owners of neighboring properties.<sup>1</sup> Harriston’s brother lived in a rental apartment on her property. Plaintiffs sued Harriston, contending she refused to stop her brother’s drug use on the property, which interfered with the peaceable use of Plaintiffs’ property. Ultimately, Plaintiffs claimed they moved due to the drug activities.

Plaintiffs filed a motion for summary judgment on March 3, 2020, asserting no genuine issues of material fact existed with regard to the following: Harriston invited her brother to live in the apartment despite having full knowledge he was a drug addict who had been repeatedly incarcerated for heroin use, that the brother’s

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<sup>1</sup> The correct spelling of Harriston’s name is “Lynleigh.” We note the misspelling used in the caption and filings below and use the correct spelling.

occupancy and drug activity was causing harm to Plaintiffs, and that Harriston did nothing to prevent or eliminate the harm.

The trial court set the summary judgment hearing for July 31, 2020. On July 20, 2020, Harriston filed a motion for continuance and, alternatively, a motion to file opposition evidence after the Article 966(B)(2) fifteen-day deadline. Harriston's motion explained her counsel had "some difficulties with COVID-19." Ten days before the hearing, Harriston filed an opposition to the summary judgment motion. Plaintiffs opposed both the motion for continuance and the motion for leave to file the late opposition.

The trial court denied the motion to continue, but allowed the late opposition. Plaintiffs sought supervisory review, and the court of appeal denied the writ. *Auricchio v. Harriston*, 20-0394 (La. App. 4 Cir. 09/14/20) (unpublished). The motion for summary judgment was heard on July 31, 2020, and denied, with the trial court finding the late-filed opposition raised genuine issues of material fact. Plaintiffs sought a writ, which the court of appeal again denied. *Auricchio v. Harriston*, 20-0428 (La. App. 4 Cir. 10/06/20) (unpublished). We granted this writ to determine the proper interpretation and application of Louisiana Code of Civil Procedure article 966(B)(2). *Auricchio v. Harriston*, 2020-01167 (La. 3/16/21), 312 So. 3d 589.

## DISCUSSION

Louisiana Code of Civil Procedure article 966(B)(2) provides:

B. Unless extended by the court and agreed to by all of the parties, a motion for summary judgment shall be filed, opposed, or replied to in accordance with the following provisions:

...

(2) Any opposition to the motion and all documents in support of the opposition *shall be filed* and served in accordance with Article 1313 *not less than fifteen days prior to the hearing on the motion*. [emphasis added].

Harriston argues the trial court's denial of the continuance and consideration of the late-filed opposition was not an abuse of discretion under Louisiana Code of Civil Procedure article 966(C)(2), which expressly allows the trial court to continue a summary judgment hearing for "good cause." Because the hearing could have been continued, thus allowing additional time to file an opposition, Harriston contends the trial court acted within its discretion by simply allowing the late-filed opposition and having the hearing. While Harriston's argument has some logical appeal, the express language of Article 966(B)(2) requires a different conclusion.

Before it was amended in 2015, Louisiana Code of Civil Procedure article 966(B) mandated that "[f]or good cause, the court shall give the adverse party additional time to file a response, including opposing affidavits or depositions." This language was consistently interpreted to allow an opposition to a motion for summary judgment to be filed after the statutory delay. In 2015, the legislature amended Article 966(B) and, in subpart (2), required an opposition to be filed no later than fifteen days before the hearing. Plaintiffs contend the 2015 amendments removed the trial court's discretion to allow a late-filed opposition.

The First and Third Circuit Courts of Appeal have held the amended version of Article 966 allows the trial court no discretion to consider a late-filed opposition. *See Winston v. Hall*, 2017-1097, (La. App. 1 Cir. 4/6/18), 2018 WL 1663020, recognizing, in a footnote, that Article 966, as amended and reenacted by 2015 Act No. 422, does not allow a trial court discretion to extend the mandatory filing deadlines. *See also Lewis v. Old Republic Ins. Co.*, 2017-456 (La App. 3 Cir. 8/23/17), 226 So. 3d 557, 559, finding the trial court lacked discretion to allow late-filed opposition evidence. In contrast, the Second, Fourth, and Fifth Circuits have held a trial court has discretion to consider an untimely opposition, even after the 2015 amendment. *See Reed v. Restorative Home Health Care, LLC*, 52,645 (La. App. 2 Cir. 6/5/19), 281 So. 3d 788; *Brown v. Jazz Casino Co, LLC*, 2018-0913 (La.

App. 4 Cir. 5/1/19) (unpublished); and *Gaudin & Gaudin v. IberiaBank Corp.*, 2019-459 (La. App. 5 Cir. 3/17/20), 293 So. 3d 755.

“The starting point for the interpretation of any statute is the language of the statute itself.” *Dejoie v. Medley*, 2008-2223 (La. 5/5/09), 9 So.3d 826, 829. When a statute is clear and unambiguous and its application does not lead to absurd consequences, the provision must be applied as written, with no further interpretation made in search of the legislature’s intent. *Id.*; La. Civ. Code art. 9; La. R.S. 1:4.

The clear and unambiguous language of Article 966(B)(2) says that, absent the consent of the parties and the court, an opposition *shall* be filed within the fifteen-day deadline established by the article. The word ‘shall’ is mandatory. La. R.S. 1:3. Under well-established rules of interpretation, the word “shall” excludes the possibility of being “optional” or even subject to “discretion,” but instead means “imperative, of similar effect and import with the word ‘must.’ ” *Louisiana Fed’n of Tchrs. v. State*, 2013-0120 (La. 5/7/13), 118 So. 3d 1033, 1051. This interpretation also does not lead to absurd consequences. Summary judgments are intended “to secure the just, speedy, and inexpensive determination of every action.” La. Code Civ. P. art. 966(A)(2). Limiting judicial discretion by setting a firm deadline for filing an opposition furthers this end. That is a rational legislative choice and must be applied as written.

The legislative history of Article 966(B) reinforces our interpretation of its clear wording. The 2015 amendment removed language that expressly gave the trial court the discretion, upon a showing of “good cause,” to afford additional time to oppose a motion for summary judgment. By removing the discretionary language and replacing it with mandatory language, we must assume the legislature intended to change the law to eliminate the previously afforded discretion. “[W]hen the

legislature changes the wording of a statute, it is presumed to have intended a change in the law.” *Borel v. Young*, 2007-0419 (La.11/27/07), 989 So.2d 42.

Harriston missed the deadline to file her opposition. Nevertheless, she argues Plaintiffs were not prejudiced by the late filing. But, prejudice is irrelevant. The statute mandates compliance without regard to cause or prejudice. While the trial court could have considered equitable concerns and continued the summary judgment hearing for “good cause” under Article 966(C)(2), all discretion to consider the late-filed opposition was eliminated when the continuance was denied. Thus, we remand for the trial court to rule on Plaintiffs’ motion for summary judgment without considering Harriston’s late-filed opposition.<sup>2</sup>

### CONCLUSION

We reverse the trial court’s grant of the motion for leave to file the opposition; vacate the denial of summary judgment; and remand the matter to the trial court for ruling on Plaintiffs’ motion for summary judgment without consideration of Harriston’s opposition.

**ORDER GRANTING LEAVE TO FILE OPPOSITION REVERSED;  
SUMMARY JUDGMENT VACATED; AND CASE REMANDED.**

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<sup>2</sup> “[T]he failure to file an opposition does not automatically require that the motion for summary judgment be granted, as the initial burden of proof is on the mover. *Crockerham v. Louisiana Med. Mut. Ins. Co.*, 2017-1590, p. 5 (La. App. 1 Cir. 6/21/18), 255 So.3d 604, 608. *See also* La. Code Civ. P. art. 966(B)(1)(“[A] motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact *and that the mover is entitled to judgment as a matter of law.*” [emphasis added]).

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**Hughes, J., additionally concurring.**

I believe that the trial court simply cut to the chase in order to be efficient, but if there is one area of the law where Procrustean justice seems to be the rule, it is summary judgment procedure.

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**GRIFFIN, J., additionally concurs and assigns reasons.**

I am in full agreement with the majority opinion. I write separately to emphasize that the Court's opinion in this matter is consistent with the result reached in *Zapata v. Seal*, 20-1148, p. 6 (La. 9/30/21), --- So.3d ---, 2021 WL 4472588 at \*3, wherein we noted that the trial court properly struck an untimely opposition to a motion for partial summary judgment under La. C.C.P. art. 966(B)(2); yet recognized its discretion to vacate its grant of the partial summary judgment under La. C.C.P. art. 1915(B)(2).