Fifth Circuit Court of Appeal
State of Louisiana

No. 26-CA-102

BRETT A. BONIN

versus

THOMAS COSGRIFF, M.D.

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 865-979, DIVISION "C"
HONORABLE JUNE B. DARENSBURG, JUDGE PRESIDING

November 25, 2026

MARC E. JOHNSON

JUDGE

Panel composed of Judges Marc E. Johnson,
Stephen J. Windhorst, and Timothy S. Marcel

REVERSED AND REMANDED

MEJ
SJW
TSM

TRUE COPY



MORGAN NAQUIN
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLANT,
BRETT BONIN

Joseph S. Piacun

COUNSEL FOR DEFENDANT/APPELLEE,
THOMAS COSGRIFF, M.D.

Michael F. Nolan, Jr.
Sarah L. Johnson

JOHNSON, J.

Appellant/Plaintiff, Brett A. Bonin, appeals the judgment that sustained a dilatory exception of prematurity in favor of Appellee/Defendant, Thomas Cosgriff, M.D., and dismissed his medical malpractice action filed in the 24th Judicial District Court, Division "C". For the following reasons, we reverse the trial court's judgment and remand the matter for further proceedings.

FACTS AND PROCEDURAL HISTORY

The pertinent facts of this appeal are as follows:

According to the pleadings, Mr. Bonin filed a request for a medical malpractice review panel with the Louisiana Patient's Compensation Fund (hereinafter referred to as "the PCF") through the Louisiana Division of Administration against Dr. Thomas Cosgriff, East Jefferson General Hospital, LCMC Health, and their insurers on May 17, 2024. In his request, Mr. Bonin alleged that he presented to the East Jefferson General Hospital's Emergency Room on May 18, 2023, suffering from a pulmonary embolism with associated kidney trauma. He alleged that his injuries were caused by Dr. Cosgriff's discontinuance of his Xarelto medication. The PCF acknowledged receipt of Mr. Bonin's request on June 4, 2024 and informed him of deficiencies in his request, which included the failure to provide allegations against East Jefferson General Hospital and LCMC Health and the failure to provide the $100 filing fee for each defendant. On June 4, 2024, the PCF sent notice of Mr. Bonin's medical review panel request to Dr. Cosgriff at TVG NP Homecare Acquisition, Inc. (hereinafter referred to as "TVG") in Dallas, Texas by certified mail.

In a letter dated July 25, 2024, the PCF acknowledged receipt of Mr. Bonin's filing fee for Dr. Cosgriff and advised him to coordinate the selection of an attorney chairman with Dr. Cosgriff within one year of the filing of the request for review. On February 17, 2025, the PCF mailed Mr. Bonin a notice that the

medical review panel request would be dismissed due to the failure to appoint an attorney chairperson within one year of the May 17, 2024 filing date. The notice carbon copied Dr. Cosgriff. The PCF subsequently mailed Mr. Bonin notice on May 19, 2025 that the medical review panel request had been closed under the provisions of La. R.S. 40:1231.8(A)(2)(c), due to the failure to appoint an attorney chairman within the one-year timeframe. The parties were deemed to have waived the use of the medical review panel by the PCF. The notice informed Mr. Bonin that his lawsuit had to be filed within 90 days after the claim had been dismissed. Again, Dr. Cosgriff was carbon copied with the notice.

Mr. Bonin filed a petition for damages against Dr. Cosgriff on June 12, 2025. In his petition, Mr. Bonin reasserted his allegations set forth in his May 17, 2024 request for a medical review panel. He further alleged that his general and special damages were the result of Dr. Cosgriff's fault, negligence, and breaches of the applicable standards of care. Mr. Bonin stated that a timely-filed complaint for medical malpractice had been filed against Dr. Cosgriff on May 17, 2024, and the proceedings were dismissed due to the failure to appoint an attorney chairperson.

On September 3, 2025, the PCF notified the parties that the medical review panel request had been reinstated. In a letter dated September 10, 2025, the PCF informed the parties that the attorney chairperson had to be chosen by the revised date of December 9, 2025 or the request would be dismissed.

On September 19, 2025, Dr. Cosgriff filed a dilatory exception of prematurity. In his exception, Dr. Cosgriff argued that Mr. Bonin's lawsuit was premature because there was a pending medical review panel proceeding. He stated that the PCF reinstated the medical review panel because he never received notice of Mr. Bonin's complaint that was mailed to the administrative office of TVG—an affiliate—and he was first notified of the medical malpractice claims after being served with Mr. Bonin's lawsuit. Dr. Cosgriff alleged that the PCF

issued a letter reinstating the medical review panel after being informed of his lack of notice of Mr. Bonin's complaint. He maintained that Mr. Bonin's action was premature, and he was entitled to the medical review panel review.

In opposition, Mr. Bonin asserted that he complied with the Louisiana Medical Malpractice Act (hereinafter referred to as "the LMMA") by timely filing his request for a medical review panel and paying his filing fee for Dr. Cosgriff. He averred that the PCF sent Dr. Cosgriff notice of the medical malpractice complaint at his registered address on file with the PCF, along with the notices concerning the appointment of the attorney chairperson. He argued that Dr. Cosgriff never denied that the notices were received by someone at TVG; correspondence and enrollment applications to the PCF from Dr. Cosgriff listed the Dallas, Texas address; and Dr. Cosgriff actively defended himself in other malpractice claims after receiving notice of the claims from the PCF mailed to the same Dallas address. Mr. Bonin also argued that the medical review panel was dismissed by operation of law, and he appropriately filed his lawsuit to protect his rights and avoid prescription.

Dr. Cosgriff's reply argued that his involvement with TVG was marginal, yet he was properly qualified with the PCF under TVG because he provided medical services as its part-time medical director. He claimed that TVG failed to notify him of Mr. Bonin's complaint. He asserted that the PCF reinstated the medical review panel after acknowledging that the notice provided to him was deficient, and Mr. Bonin's contention should be directed towards the PCF.

A hearing on Dr. Cosgriff's exception was held on December 11, 2025. At the conclusion of the hearing, the trial judge orally found that, since there was a pending medical review panel proceeding, Mr. Bonin's petition for damages was not properly before the court. In a judgment rendered on December 11, 2025, the trial court sustained Dr. Cosgriff's exception and dismissed Mr. Bonin's petition

without prejudice. The instant appeal contesting the judgment followed.

ASSIGNMENTS OF ERROR

On appeal, Mr. Bonin alleges that the trial court legally erred by: 1) sustaining the exception of prematurity, despite La. R.S. 40:1231.8(A)(2)(c)'s mandatory dismissal of the medical review panel proceedings; 2) implicitly finding that Dr. Cosgriff did not receive sufficient notice from the PCF; and 3) failing to reverse the PCF's reinstatement of the medical review panel proceedings.

LAW AND ANALYSIS[1]

Exception of Prematurity

Mr. Bonin alleges that the trial court erred as a matter of law by sustaining Dr. Cosgriff's exception of prematurity. He contends that he timely filed a medical complaint with the Louisiana Division of Administration, and the medical review panel proceedings were appropriately dismissed because the parties failed to timely select an attorney chairperson. Mr. Bonin argues that, as a result of Dr. Cosgriff's failure to participate in the selection of the attorney chairperson, Dr. Cosgriff waived his right to a medical review panel. He further contends that the PCF's duties under the LMMA are purely ministerial, and the PCF has no statutory authority to reinstate an expired medical review panel proceeding *sua sponte*.

Conversely, Dr. Cosgriff argues that the sole issue before the trial court was whether Mr. Bonin's current lawsuit is ripe when there is a pending medical review panel, and the trial court properly sustained his exception of prematurity for this medical malpractice action. He contends that he was never given the opportunity to participate in the appointment of the attorney chairman for the medical review process because he did not personally receive notice of Mr. Bonin's allegations against him until he was served with the petition for damages. Dr. Cosgriff maintains that he was not obligated to prove he did not receive notice

[1] Mr. Bonin's assignments of error are interrelated and will be addressed together.

of Mr. Bonin's complaint, and he only needed to present the evidence that Mr. Bonin had not exhausted all of the administrative remedies or specified procedures (*e.g.*, the medical review panel) before he was entitled to judicial review.

The functions of the dilatory exception, such as prematurity, raise the objection that a judicial cause of action has not come into existence because some prerequisite condition has not been fulfilled. *Alexander v. Shaw-Halder*, 11-1136 (La. App. 5 Cir. 5/8/12), 95 So.3d 1100, 1105. A suit is premature if it is brought before the right to enforce the claim sued upon has accrued. *Id*. Prematurity is determined by the facts existing at the time a suit is filed. *Id*.

The defendant pleading the exception of prematurity has the initial burden of showing that an administrative remedy is available. *Members of Grand Lodge of State v. Elected Bd. of Directors of Grand Lodge of State*, 18-443 (La. App. 5 Cir. 2/6/19), 265 So.3d 976, 979. Upon such a showing, the burden then shifts to the plaintiff to show or prove that the present action is one of the exceptional situations where the plaintiff is entitled to judicial relief because any administrative remedy is irreparably inadequate. *Id*. On the trial of the dilatory exception, evidence may be introduced to support or controvert any of the objections pleaded when the grounds thereof do not appear from the petition. *Id*. When the determination of whether an exception of prematurity should have been granted involves a question of law, then the appellate court must determine whether the trial court was legally correct. *Id*. An appellate court reviews questions of law *de novo* to determine whether the trial court was legally correct or incorrect. *Hyginus v. Ochsner Clinic*, 24-263 (La. App. 5 Cir. 1/29/25), 403 So.3d 1286, 1288.

Here, Mr. Bonin's action alleges medical malpractice claims against Dr. Cosgriff, a qualified medical provider. La. R.S. 40:1231.1, *et seq.* (formerly La. R.S. 40:1299.41, *et seq*.), sets forth the limitations of liability for "qualified health care providers" and provides a procedural framework for the litigation of medical

malpractice claims. *Alexander*, *supra*. The LMMA's procedural requirements and limitations of liability apply only to medical malpractice claims. *Id*. No action against a health care provider covered under the LMMA, or the insurer, may be commenced in any court before the plaintiff's proposed complaint has been presented to a medical review panel. *Id*., citing La. R.S. 40:1231.8(A)(1)(a) (formerly La. R.S. 40:1299.47(B)(1)(a)(i)). If the plaintiff fails to submit the claim to a medical review panel before the institution of the suit, then the appropriate procedural remedy is a timely filed exception of prematurity. *Id*.

At the hearing, Dr. Cosgriff contended that Mr. Bonin's lawsuit is premature because there is a pending medical review panel. In opposition, Mr. Bonin argued that the PCF improperly reinstated the pending panel after it had been dismissed by operation of law for the failure to appoint an attorney chairman.

The LMMA provision setting forth the timeframe for the appointment of an attorney chairperson, La. R.S. 40:1231.8(A)(2)(c), states,

> An attorney chairman for the medical review panel shall be appointed within one year from the date the request for review of the claim was filed. Upon appointment of the attorney chairman, the parties shall notify the board of the name and address of the attorney chairman. If the board has not received notice of the appointment of an attorney chairman within nine months from the date the request for review of the claim was filed, then the board shall send notice to the parties by certified or registered mail that the claim will be dismissed in ninety days unless an attorney chairman is appointed within one year from the date the request for review of the claim was filed. ***If the board has not received notice of the appointment of an attorney chairman within one year from the date the request for review of the claim was filed, then the board shall promptly send notice to the parties by certified or registered mail that the claim has been dismissed for failure to appoint an attorney chairman and the parties shall be deemed to have waived the use of the medical review panel***. The filing of a request for a medical review panel shall suspend the time within which suit must be filed until ninety days after the claim has been dismissed in accordance with this Section. (Emphasis added).

In this matter, Mr. Bonin timely filed his request for a medical review panel on May 17, 2024. The PCF mailed notice of Mr. Bonin's request to Dr. Cosgriff at

an address in Dallas, Texas, which is admittedly associated with Dr. Cosgriff. However, neither Mr. Bonin nor Dr. Cosgriff participated in the appointment of an attorney chairman. The PCF complied with La. R.S. 40:1231.8(A)(2)(c) by sending notices to the parties on July 25, 2024 and February 17, 2025 that Mr. Bonin's claim would be dismissed if notice of the appointment of an attorney chairperson had been received within one year of the filing of the claim. Ultimately, the PCF dismissed Mr. Bonin's claim for failure to appoint an attorney chairperson by May 17, 2025 and deemed the use of the medical review panel waived by the parties. The PCF mailed notice of the dismissal to the parties on May 19, 2025. Mr. Bonin's claim was properly dismissed by the PCF by operation of law, pursuant to La. R.S. 40:1231.8(A)(2)(c).

Within 90 days after the dismissal of the medical review panel, Mr. Bonin filed the instant medical malpractice action against Dr. Cosgriff on June 12, 2025. After the filing of Mr. Bonin's action in the trial court, the PCF unilaterally reinstated the medical review panel on September 3, 2025 and subsequently implemented a December 9, 2025 revised attorney chairperson deadline. The PCF made a *sua sponte* legal determination that it could reconvene the panel on its own. While Dr. Cosgriff asserts the reason was due to his lack of notice of Mr. Bonin's claim, we note that the record before us does not reflect any reasons from the PCF for the reinstatement of the medical review panel.

Nevertheless, even if there were reasons evidenced in the record, we find that the PCF improperly reconvened the medical review panel in this matter that had been dismissed by operation of law. La. R.S. 40:1231.8(A)(2)(c) shows neither a provision that allows the PCF the authority to reinstate a dismissed medical review panel, nor a provision that allows the PCF the authority to implement a revised attorney chairperson appointment due date after the original date has expired. The time delays are specifically set forth by the Legislature in

the LMMA and cannot be contravened by the PCF or the courts, once they have expired.

In addition to the lack of any provision provided in the LMMA that grants the PCF the authority to implement a revised attorney chairperson appointment due date, we cite *Alexander v. Shaw-Halder*, *supra*, to support our conclusion that the medical review panel was improperly reinstated by the PCF. In *Alexander*, we reviewed whether an exception of prematurity was properly sustained on the basis that an attorney chairperson had not been timely appointed in a medical malpractice action against a dentist. The PCF notified the parties that the timely-filed medical review panel request would be dismissed if an attorney chairperson had not been appointed within one year of the filing date. *Id*. at 1103. The year passed without an appointment, and the PCF notified the parties that the claim had been dismissed. The plaintiff then filed a medical malpractice action, to which the dentist filed an exception of prescription, and in the alternative, an exception of prematurity. *Id*. The trial court overruled the exception of prescription but sustained the exception of prematurity. The plaintiff's action was dismissed without prejudice. *Id*. at 1104.

On review, we found that, pursuant to La. R.S. 40:1231.8(A)(2)(c), it was incumbent upon the parties to appoint an attorney chairperson within the timeframe allotted. *Id*. at 1107. Because neither party took the steps to appoint an attorney chairperson, we further found that both parties waived the use of the medical review panel, and the matter was ripe to proceed to the trial court without a rendering of an opinion from a medical review panel. *Id*.

Although Dr. Cosgriff argues that he had insufficient notice of Mr. Bonin's request for a medical review panel, he does not deny his association with TVG or assert that the Dallas, Texas address listed by the PCF was an invalid mailing

address for him.[2] Thus, Dr. Cosgriff failed to show that he did not receive notice of Mr. Bonin's claim from the PCF at the Dallas address. Consequently, like the parties in *Alexander*, we also find that neither party took the appropriate steps to appoint an attorney chairperson, ultimately resulting in the waiver of the use of the medical review panel by both parties.

Because we conclude that the PCF improperly reinstated a medical review panel that had been dismissed by operation of law, we find that the trial court legally erred in sustaining Dr. Cosgriff's exception of prematurity on the basis that a medical review panel is pending. As previously cited, prematurity is determined by the facts existing at the time a suit is filed. *Alexander*, 95 So.3d at 1105. At the time Mr. Bonin filed his suit on June 12, 2025, both parties had waived the use of the medical review panel, and he had no other administrative remedies. The unauthorized reconstitution of a new medical review panel by the PCF months later in September is ultimately irrelevant. Therefore, we hold that Mr. Bonin's medical malpractice action is ripe to proceed to the trial court without an opinion from the medical review panel being rendered.

DECREE

For the foregoing reasons, we reverse the trial court's judgment that sustained the dilatory exception of prematurity as to Dr. Cosgriff and remand the matter to the trial court for further proceedings. Dr. Cosgriff is assessed the costs of this appeal.

REVERSED AND REMANDED

[2] Furthermore, the evidence that Dr. Cosgriff introduced at the hearing does not reflect the actual address he registered with the PCF for the timeframe at issue, 2024-2025.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **NOVEMBER 25, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

26-CA-102

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE JUNE B. DARENSBURG (DISTRICT JUDGE)
JOSEPH S. PIACUN (APPELLANT)
MICHAEL F. NOLAN, JR. (APPELLEE)
SARAH L. JOHNSON (APPELLEE)

MAILED