Fifth Circuit Court of Appeal
State of Louisiana

No. 26-CA-155

RICKIE WATSON, ET AL.

versus

DOCTOR JULIE GAYLE, ET AL.

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 860-083, DIVISION "H"
HONORABLE DONALD L. FORET, JUDGE PRESIDING

November 25, 2026

TIMOTHY S. MARCEL

JUDGE

Panel composed of Judges Susan M. Chehardy,
Marc E. Johnson, and Timothy S. Marcel

AFFIRMED

TSM
SMC

DISSENTS IN PART WITH REASONS

MEJ

TRUE COPY



MORGAN NAQUIN
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLANT,
RICKIE WATSON & TANIESHA WATSON OBO RAYNE WATSON
Connie P. Trieu

COUNSEL FOR DEFENDANT/APPELLEE,
STATE OF LOUISIANA ON BEHALF OF DR. JULIE GAYLE, M.D.
Elizabeth B. Murrill
Jeannie C. Prudhomme

MARCEL, J.

In this case arising from the death of a baby born prematurely, plaintiffs Rickie and Taniesha Watson, individually and on behalf of their deceased child, R.W., appeal a March 19, 2026 judgment of the trial court that granted peremptory exceptions of prescription and no cause of action filed by defendant Julie Gayle, M.D., and dismissed plaintiffs' claims against her with prejudice. For the following reasons, we affirm the judgment of the trial court.

BACKGROUND

The child R.W. was born prematurely on April 21, 2021 at which time she was admitted to the neonatal intensive care unit at Ochsner Baptist hospital where she remained for approximately four months. At the time R.W. was discharged on August 21, 2021, she continued to experience respiratory insufficiency, compromised pulmonary function, and an impaired immune system. Over the next few months, R.W. underwent multiple surgical procedures to improve her respiratory function (including a supraglottoplasty following a diagnosis of laryngomalacia). On March 7, 2022, Ms. Watson found R.W. unresponsive and not breathing. The child was immediately rushed to the emergency room at Ochsner Medical Center where she was treated and became responsive. Prior to an approved transfer to the Louisiana Children's Medical Center ("Children's Hospital"), the doctors at Ochsner intubated the child. Following this, the child's vital signs dropped, and, after unsuccessful CPR, R.W. was pronounced dead.

Plaintiffs filed their Request for Medical Review panel on January 18, 2023. They filed their petition for damages on December 3, 2024. This petition named as defendants fived physicians and two hospitals (Ochsner and Children's), including defendant Julie Gayle, M.D. an anesthesiologist and state qualified healthcare provider. In their petition, plaintiffs alleged various incidents of medical malpractice / negligence, including improper surgical intervention, failure to diagnose, and delayed or inadequate medical care, particularly on the date of the baby's death, March 7, 2022, as well as intentional torts relating to claims made by the healthcare providers to the parents about the condition of their child.

In response to this petition, defendant Dr. Gayle filed peremptory exceptions of prescription, no cause of action, and nonjoinder of an essential party. A hearing on those exceptions was conducted on February 27, 2026 in which Defendant introduced as evidence in support of her motion: plaintiffs' request for medical review panel, certification showing Dr. Gayle is a qualified state health care provider, and the opinion and reasons of the medical review panel. On March 19, 2026 the court issued a written judgment sustaining Dr. Gayle's exceptions of prescription and no cause of action and declaring moot her exception of nonjoinder. Plaintiffs' claims against Dr. Gayle were dismissed with prejudice. Plaintiffs' timely appeal followed.

On appeal, plaintiffs argue that the trial court erred in sustaining the peremptory exceptions because their petition alleges operative facts establishing Dr. Gayle's liability and because their claims are not

prescribed on the face of the petition. We consider these arguments in our discussion below.[1]

DISCUSSION

Peremptory Exception of Prescription

Ordinarily, the exceptor bears the burden of proof at trial of the peremptory exception, including prescription; however, if prescription is evident on the face of the pleadings, the burden is on the plaintiff to show that the action has not prescribed. *In re Med. Review Panel of Gerard Lindquist*, 18-444, p. 3 (La. App. 5 Cir. 5/23/19), 274 So.3d 750, 754, *writ denied*, 2019-01034 (La. 10/1/19), 280 So.3d 165. In a case involving no dispute regarding material facts, but on the determination of a legal issue, a reviewing court applies the *de novo* standard of review. *Mitchell v. Baton Rouge Orthopedic Clinic, L.L.C.*, 2021-00061, p. 5 (La. 10/10/21), 333 So.3d 368, 373.

In specific response to paragraph six of the petition which states that plaintiffs are seeking recovery of damages for any intentional torts attributable to defendants, Dr. Gayle filed her peremptory exception of prescription. Unlike the other causes of action for medical malpractice stated in plaintiffs' petition, intentional torts are not covered by prescriptive periods set forth in the Louisiana Medical Malpractice Act. La. R.S. 40:1231.1; *Alonso v. Tulane Univ. Med. Ctr.*, 16-420, p. 3 (La. App. 5 Cir. 12/7/16), 215 So.3d 355, 358, ("the LMMA and its limitations on tort liability for a qualified health care provider apply only to claims

[1] Plaintiffs' appellate brief also contains arguments relating to qualified immunity under the Louisiana Health Emergency Powers Act, La. R.S. 29:771, which appear to be in response to exceptions filed by defendants other than Dr. Gayle, who made no claim of immunity in her exceptions. We therefore decline to consider plaintiffs' arguments on this issue.

arising from medical malpractice, while all other tort liability on the part of the qualified health care provider is governed by general tort law.") Instead, intentional torts alleged by plaintiffs are governed by La. C.C. art. 3492, which, when in effect at the time of plaintiffs' alleged injury, set forth a liberative prescriptive period of one year from the date of the injury.[2] According to the petition, March 7, 2022 was the date of Dr. Gayle's alleged tortious conduct, and therefore any intentional tort claims brought against her would have prescribed on March 7, 2023, one year later. In other words, plaintiffs' intentional tort claims are prescribed on the face of the petition which was filed December 3, 2024.

Peremptory Exception of No Cause of Action

The exception of no cause of action tests the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. *Khoobehi Properties, LLC v. Baronne Dev. No. 2, L.L.C.*, 16-506, p. 9 (La. App. 5 Cir. 3/29/17), 216 So.3d 287, 297, *writ denied*, 2017-0893 (La. 9/29/17), 227 So.3d 288. A cause of action, when used in the context of the peremptory exception, is defined as the operative facts that give rise to the plaintiff's right to judicially assert the action against the defendant. *Kitziger v. Mire*, 19-87, p. 3 (La. App. 5 Cir. 9/24/19), 280 So.3d 302, 306, *writ denied*, 2019-01858 (La. 1/28/20), 291 So.3d 1055. No evidence may be introduced to support or

[2] On July 1, 2024, La. C.C. art. 3492 was repealed and replaced by La. C.C. art. 3491.1 which provides for a two-year liberative prescriptive period for all delictual actions arising after July 1, 2024. See *Hyginus v. Ochsner Clinic*, 24-263, p. 4 (La. App. 5 Cir. 1/29/25), 403 So.3d 1286, 1288. Even were we to apply the two-year prescriptive period set forth La. C.C. art. 3491.1 as incorrectly argued by plaintiffs, the petition would still be prescribed on its face since two years from the date of the alleged acts of malpractice on March 7, 2022 would be March 7, 2024, approximately nine months before plaintiffs filed their petition for damages.

controvert an exception of no cause of action. La. C.C.P. art. 931. Appellate courts review a trial court's ruling sustaining an exception of no cause of action *de novo* because the exception raises a question of law and the court's decision is based solely on the sufficiency of the petition. *Khoobehi Properties, LLC*, *supra.* The peremptory exception of no cause of action is triable on the face of the pleadings, and, for purposes of resolving issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. *Id.* Because Louisiana uses a system of fact pleading, a plaintiff is not required to plead the theory of recovery in his petition; however, mere conclusions of the plaintiff unsupported by facts will not set forth a cause of action. *Cangelosi v. Jefferson Par. Council*, 22-174, p. 3 (La. App. 5 Cir. 12/14/22), 362 So.3d 868, 872, *writ denied*, 2023-00036 (La. 3/14/23), 357 So.3d 827. A court cannot consider assertions of fact referred to by counsel in their briefs that are not pled in the petition. *5301 Jefferson Hwy, LLC v. A. Maloney Moving & Storage, Inc.*, 23-211, p. 10 (La. App. 5 Cir. 5/29/24), 392 So.3d 337, 349.

Turning now to the petition, Dr. Gayle is identified in paragraph five as having allegedly completed the intubation of R.W. on March 7, 2022. The petition makes no additional statements about the success or failure of this intubation, nor any other actions or inactions by Dr. Gayle. The only other mention of Dr. Gayle is in paragraph nine of the petition which states that the delay in calling Dr. Gayle to assist in intubation may have prolonged the child's critical condition and contributed to further complications. Plaintiffs make numerous claims in their appellate brief about what the allegations contained in their

petition state that either do not correspond with the facts stated in the petition or appear to confuse Dr. Gayle with her codefendants. On review of the petition, we find plaintiffs have alleged no facts that, if proven, would entitle plaintiffs to the relief sought. Plaintiffs have failed to state a claim upon which relief can be granted as to Dr. Gayle.

On *de novo* review, we find that the trial court correctly sustained defendant Dr. Gayle's peremptory exceptions of peremption and no cause of action. Plaintiffs' intentional tort claims are prescribed, and plaintiffs have failed to allege facts sufficient to state a cause of action against Dr. Gayle. We do not believe allowing plaintiffs the opportunity to amend the petition would cure these defects, and therefore find no error in the trial court's judgment dismissing all of plaintiffs' claims against Dr. Gayle with prejudice. The March 19, 2026 judgment of the trial court is affirmed.

AFFIRMED

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-CA-155

RICKIE WATSON, ET AL.

VERSUS

DOCTOR JULIE GAYLE, ET AL.

JOHNSON, J., DISSENTS IN PART WITH REASONS

I, respectfully, dissent in part from the majority opinion in this matter. I agree with the finding that the trial court correctly sustained Dr. Julie Gayle's peremptory exceptions of prescription and no cause of action. However, because I am unable to say that, as a matter of law, the objection pleaded by the exception no cause of action cannot be removed by an amendment relative to the medical malpractice and/or negligence claims, I would allow Plaintiffs an opportunity to amend their petition. *See*, *Bailey v. Pinnacle Polymers, LLC*, 24-490 (La. App. 5 Cir. 4/25/25), 412 So.3d 1063, 1076.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
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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-155

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE DONALD L. FORET (DISTRICT JUDGE)
CONNIE P. TRIEU (APPELLANT)
MICHAEL F. NOLAN, JR. (APPELLEE)
JEANNIE C. PRUDHOMME (APPELLEE)
CRANAY D. MURPHY (APPELLEE)
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MAILED