SUPREME COURT OF LOUISIANA

NO. 00-C-3170

NELSON NADINE WILLIAMS

versus

JACKSON PARISH HOSPITAL

Knoll, Justice, dissenting[*]

I dissent from the majority opinion in this case basically for the reasons espoused in Boutte v. Jefferson Parish Hospital Service District No. 1, 99-2402 (La. 4/11/00), 758 So. 2d 45, the case overruled in the majority opinion.[1] For the following reasons, I also find that the majority strays far from the applicable language of LA. REV. STAT. ANN. § 9:5628.

We unanimously held in Boutte that LA. REV. STAT. ANN. § 9:5628 is applicable to strict liability actions arising out of blood transfusions. In so doing, we reached the pragmatic and consistent result that the Medical Malpractice Act (MMA) and the prescriptive period that applies to medical malpractice actions procedurally governed a strict liability action arising out of blood transfusions. Today, a bare majority of this

---

[*] Retired Judge Robert L. Lobrano, assigned as Justice *Pro Tempore*, sitting for Associate Justice Harry T. Lemmon. Retired Judge Philip Ciaccio, assigned as Justice *Pro Tempore*, sitting for Associate Justice Bernette J. Johnson.

[1] "Fundamental and elementary principles recognize that certainty and constancy of the law are indispensable to orderly social intercourse, a sound economic climate, and a stable government." Johnson v. St. Paul Mercury Ins. Co., 236 So. 2d 216, 218 (La. 1970), overruled on other grounds, Jagers v. Royal Indem. Co., 276 So. 2d 309 (La. 1973). Certainty is a supreme value in the civil law system to which we are heirs. MERRYMAN, THE CIVIL LAW TRADITION 50 (Stanford University Press 1969). Although "one of the fundamental rules of [the civil law tradition] is that a tribunal is never bound by the decisions which it formerly rendered: it can always change its mind," 1 MARCEL PLANIOL, TREATISE ON THE CIVIL LAW § 123 (La. State Law Inst. Trans. 1959) (12th ed. 1939), we should be ever vigilant of our duty to foster certainty and constancy of the law and to provide *consistent* guidance to the courts of this state. Accordingly, we should remain faithful to our earlier decisions that establish a rule of law because there is a need in our civilian tradition to provide for the consistent interpretation of the law.

Court reaches the incongruous result of having declared the medical malpractice prescriptive statute inapplicable while concurrently declaring that the MMA's procedural mechanisms are applicable to the claim. Considering the close ties between the MMA and LA. REV. STAT. ANN. § 9:5628, as the majority acknowledges, I find the distinction imposed by the majority unwarranted.

The majority relies heavily on Branch v. Willis-Knighton Medical Center, 92-3086 (La. 4/28/94), 636 So. 2d 211, for the proposition that a cause of action must be one of "medical malpractice" for LA. REV. STAT. ANN. § 9:5628 to apply. In this regard, I find that the majority errs. In its determination that the "sale of blood, while closely related to patient care is not inherently a traditional medical malpractice action," the majority focuses on the defendant's conduct. Although I find no inherent problem in making the defendant's conduct the focal point, I believe, under such an examination, that the sale of defective blood falls within the legal category of medical malpractice.

The strict liability claim for the sale of defective blood cannot be viewed in a vacuum as a simple sale. The transfusion of blood is an integral part of the physician's or hospital's treatment of the patient in certain medical circumstances — one in which the sale of blood cannot reasonably be dissected from treatment. Therefore, the strict liability for the sale of defective blood should be considered medical malpractice for purposes of LA. REV. STAT. ANN. § 9:5628 as construed in Branch.

Even though I find that the plaintiff's claim is prescribed under the standard enunciated in Branch, a more straightforward manner exists to address LA. REV. STAT. ANN. § 9:5628. The Civil Code establishes only two sources of law in Louisiana: legislation and custom. See LA. CIV. CODE ANN. art. 1. Within these two categories,

legislation is superior to custom and will supersede it in every instance. See Revision Comments, LA. CIV. CODE ANN. art. 1; LA. CIV. CODE ANN. art. 3. In recognition of that well established principle, LA. CIV. CODE ANN. art. 3 further provides that "[w]hen the law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature."

I find that we strayed from this basic civilian tenet when we held in Branch that LA. REV. STAT. ANN. § 9:5628 "does not contain any provision that expressly or implicitly refers to strict liability or products liability." Branch, 636 So. 2d at 214. This artificially narrow interpretation led this Court to hold in Branch that LA. REV. STAT. ANN. § 9:5628 was only intended for actions traditionally classified under the general prevailing meaning of "medical malpractice." Id. The majority's reliance on Branch in this case, rather than the words of the statute, is misplaced.

A plain reading of LA. REV. STAT. ANN. § 9:5628 does not support the majority's conclusion that a strict liability action for defective blood is excluded from the application of LA. REV. STAT. ANN. § 9:5628. The statute reads:

> No action for damages or injury or death against . . . any hospital duly licensed under the laws of this state, . . . whether based upon *tort, or breach of contract,* or otherwise, *arising out of patient care* shall be brought . . . at the latest within a period of three years from the date of the alleged act, omission or neglect."

LA. REV. STAT. ANN. § 9:5628 (emphasis added).

The language "tort . . . arising out of patient care" clearly encompasses delictual actions based on strict liability for blood sold and used in transfusions. It is clear and well-established that strict liability is a legal theory which may form the basis of a tort action and, as such, is simply a subspecies of the fault recognized in LA. CIV. CODE ANN. art. 2315. WILLIAM CRAWFORD, 12 LOUISIANA CIVIL LAW TREATISE §§ 2.1,

2.5 (West Group 2000). Patients do not buy and sell blood as a pure commercial transaction; rather, blood is bought and used as an integral part of the care afforded patients at the time of medical treatment. Thus, although a transfusion of contaminated blood involves a defective product, the blood is inextricably tied to the patient's care under LA. REV. STAT. ANN. § 9:5628. I find that the sale and transfusion of blood arise out of patient care and the word "tort" utilized therein encompasses the action in strict liability. Therefore, I find that LA. REV. STAT. ANN. § 9:5628 applies to the plaintiff's claim and is perempted.

The Legislature's selection of the word "tort" and the statute's directive that it be applied to "all persons whether or not infirm or under disability of any kind and including minors and interdicts," evidence that LA. REV. STAT. ANN. § 9:5628 is a far-reaching statute. However harsh the application of LA. REV. STAT. ANN. § 9:5628, mincing words and linguistic gymnastics should not be utilized to disregard the statutory language. Rather, litigants should seek redress from the Legislature to change the law.

Although the result reached in cases such as this one is harsh, particularly with regard to the latent blood disease in the case sub judice, the language of the statute is clear and should be applied accordingly.

For these reasons, I respectfully dissent.