

SUPREME COURT OF LOUISIANA

No. 02-C-2193

**JAMES HUNTER, INDIVIDUALLY AND ON
BEHALF OF HIS DECEASED WIFE, HATTIE HUNTER**

versus

DR. ELMA LEDOUX, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
FOURTH CIRCUIT, PARISH OF ORLEANS

VICTORY, J., dissenting

Although I agree with the majority that the jury polling issue is not important, I dissent from the Court's action. The trial judge, Judge Tobias, at the request of the parties, did not order a new trial, but acted on the motion for JNOV filed by the defendants. Citing *Anderson v. New Orleans Public Serv., Inc.*, 583 So. 2d 829 (La. 1991), the trial judge granted the JNOV by written reasons on May 26, 2000, holding that the jury erred in finding that the defendants' negligence caused Ms. Hunter's death. The trial court's judgment dismissing the plaintiff's case was signed on the same day. Yet, the court of appeal held there was no judgment granting a JNOV for the court to review, and remanded the case for a new trial.

Since Judge Tobias is no longer on the district bench and has already ruled on the JNOV, I see no reason to have the defendants' JNOV decided again by a new judge who did not preside at the trial and who will have to decide the issue from reviewing the record. Under these circumstances, I would grant the writ and remand the case to the court of appeal for full review of the trial court's ruling on the defendants' JNOV.