

SUPREME COURT OF LOUISIANA

No. 2003-C-3188

PRINCESS MARTIN, INDIVIDUALLY AND ON BEHALF OF THE
ESTATE OF ISAIAH MARTIN, CARRIE N. MARTIN, CALVIN MARTIN,
MARILYN BALDWIN, SHARLYN TAYLOR, KENNETH MARTIN,
JANET MARTIN, MURRIEL JACKSON, JOHNNY MARTIN, LARRY
MARTIN, MICHAEL MARTIN, AND TERRY W. MARTIN

VERSUS

COMM-CARE CORPORATION D/B/A COMMUNITY CARE CENTER OF
RUSTON

ON APPLICATION FOR WRIT OF CERTIORARI

TO THE COURT OF APPEAL

SECOND CIRCUIT, PARISH OF LINCOLN

CALOGERO, Chief Justice dissents from the writ denial:

I continue to believe that the majority's resolution of this prescription issue in *LeBreton v. Rabito*, 97-2221 (La. 7/8/98), 714 So. 2d 1226, was wrong and that application of the faulty analysis in *LeBreton* serves in this case to cause a near-unconscionable result denying the rights of the survivors of the deceased asserted-victim of malpractice. I would grant and docket to reconsider the issue resolved in *LeBreton*. There is no conflict between the provisions of Louisiana Civ. Code art. 3462 and the provisions of La. Rev. Stat. 40:1299.47(A)(2)(a), as both provisions can be harmonized with the result of each provision being given full effect. As I recited in my dissent in *Washington v. Fustok*, 2001-1601 (La. 9/21/01), 797 So. 2d 56, "the purpose for denying claims that are prescribed is to avoid denying the defendant a timely opportunity to investigate a matter and prepare a defense." *Id.* As in *Washington*, that purpose is not served here, where the defendant was sued less than a year from the death of plaintiffs' decedent.