

SUPREME COURT OF LOUISIANA

NO. 16-CC-2011

TANYA MADERE

VERSUS

**LOUISE GAUTREAUX COLLINS, M.D.,
AND OCHSNER MEDICAL CENTER-KENNER**

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

CRICHTON, J., additionally concurs and assigns reasons:

I agree that the district court abused its discretion and that a remand is warranted—ordering the district court to hear the motion for summary judgment without consideration of the untimely affidavit.

I write separately to spotlight my concern that district courts are improperly applying La. C.C.P. art. 966(B)(2) and ignoring La. D.Ct. R. 9.9(c). *See Newsome v. Homer Memorial Medical Center*, 10-0564 (La. 4/9/10), 32 So.3d 800 (holding that the district court abused its discretion in granting the plaintiff’s untimely motion for continuance in order to file an expert affidavit in support of its opposition); *see also Guillory v. Chapman*, 10-1370 (La. 9/24/10), 44 So.3d 272 (holding that the court of appeal erred in ruling that the district court abused its discretion in excluding an opposing affidavit to a motion for summary judgment). Before a district court can consider an untimely affidavit, a party must show “good cause under La. C.C.P. art. 966(B) why she should have been given additional time to file an opposing affidavit.” *See Sims. v. Hawkins-Sheppard*, 11-0678, p. 4 (La. 7/1/11), 65 So.3d 154, 157 (internal quotations removed).

This case adds to my concern. Despite the district court’s grant of a nearly three-month continuance on the hearing on the defendant’s motion for summary

judgment, the plaintiff waited until two days prior to the hearing to file an opposing affidavit. Doing so was impermissible under La. C.C.P. art. 966(B)(2). *Buggage v. Volks Constructors*, 2006-0175 (La. 5/5/06), 928 So.2d 536, 536 (“The time limitation established by La. C.C.P. art. 966(B) for the serving of affidavits in opposition to a motion for summary judgment is mandatory; affidavits not timely filed can be ruled inadmissible and properly excluded by the trial court.”). Under these circumstances, the district court abused its discretion.