

**SUPREME COURT OF LOUISIANA**

**No. 2018-CC-1568**

**JAMES E. GUFFEY, ET AL.**

**VERSUS**

**LEXINGTON HOUSE, LLC**

**ON SUPERVISORY WRITS TO THE NINTH JUDICIAL DISTRICT**

**COURT, PARISH OF RAPIDES**

**JOHNSON, Chief Justice, dissents and assigns reasons.**

This case involves a wrongful death and survival action under the Louisiana Medical Malpractice Act (MMA) brought by two children of the decedent, Geneva Guffey. Ms. Guffey was a 91-year-old resident at Lexington House nursing home in January of 2016, suffering from pneumonia, respiratory distress, chronic heart failure, dementia, chronic obstructive pulmonary disease, peripheral vascular disease, and varicose veins. On January 19, 2016, a Lexington House employee dropped Ms. Guffey while transferring her from a bath chair to her bed. Ms. Guffey died on May 16, 2016, allegedly because the injuries she received caused an insurmountable decline in her overall condition.

Ms. Guffey's granddaughter, Deana Fredrick, requested the formation of a medical review panel on November 2, 2016. On May 19, 2017, Deana filed an amended complaint to include Ms. Guffey's son, James, as a claimant and stating that she was the representative of Ms. Guffey's estate. Defendant filed an exception of no right of action grounded on the assertion that Deana was not a proper party claimant because, as Ms. Guffey's granddaughter, she is not included in the list of beneficiaries who have the right to file a survival action under La. C.C. art. 2315.1

or a wrongful death action under La. C.C. art. 2315.2. Defendant's exception was denied. The medical review panel issued an opinion on November 15, 2017, finding that Lexington House breached the standard of care. On January 26, 2018, two of Ms. Guffey's children, James and George, filed suit individually and on behalf of Ms. Guffey. Defendant filed an exception of prescription, arguing (as it did in support of its prior exception of no right of action) that Deana was not a proper "claimant" under La. R.S. 40:1231.1(A)(4) and thus prescription was not suspended when she filed her request for a medical review panel. Defendant's exception was denied by the district court, and the court of appeal denied defendant's writ application. However, the majority of this court now sustains defendant's exception. I respectfully dissent.

Contrary to the majority, I find Deana was a proper claimant pursuant to La. R.S. 40:1231.1(A)(4) and thus her filing of the request for the formation of a medical review panel suspended prescription as to all potential plaintiffs. In my view, the majority applies a hyper-technical definition of "claimant" by limiting it to one who has a right of action to seek recovery of wrongful death or survival action damages pursuant to La. C.C. arts. 2315.1 or 2315.2. By so ruling, this court is effectively writing out the MMA's definitions of "claimant" and "representative."

The medical malpractice act defines "claimant" as "a patient *or representative or any person, including a decedent's estate*, seeking or who has sought recovery of damages or future medical care and related benefits under this Part." La. R.S. 40:1231.1(A)(4)(emphasis added). Further, "representative" is defined as "the spouse, parent, guardian, trustee, attorney or other legal agent of the patient." La. R.S. 40:1231.1(A)(18). This statutory language is undoubtedly broad enough to include Deana. Deana had a power of attorney from Ms. Guffey for two years prior to her death. Deana was named executrix and sole beneficiary in Ms. Guffey's will.

Although Deana did not specifically designate herself as the succession representative when the original complaint was filed, the complaint makes clear that she was filing on behalf of her deceased grandmother. Deana amended the complaint to reflect that she was the representative of the estate. When defendant filed its exception of no right of action, Deana introduced documents proving that she was the succession representative. *See Guffey v. Lexington House, LLC*, 18-475 (La. App. 3 Cir. 8/22/18), 254 So. 3d 1, 8. Although the legislature could have defined “claimant” as those who have a right of action under either La. C.C. arts. 2315.1 or 2315.2, it did not do so; rather, the legislature specifically included the language “representative” and “a decedent's estate.” La. R.S. 40:1231.1(A)(4). Furthermore, La. R.S. 40:1231.1(A)(4) does not state that the representative or the estate can be a claimant only when the classes of persons listed in La. C.C. arts. 2315.1 and 2315.2 do not exist.

The legislature’s choice of more expansive statutory language is logical given the fundamental difference between a medical review panel and a suit for medical malpractice. As recognized by the court of appeal, “a request for a medical review panel is a prerequisite to and not the equivalent of a suit for medical malpractice.” *Guffey*, 254 So. 3d at 8 (citing *Houghton v. Our Lady of the Lake Hosp., Inc.*, 03-0135 (La. App. 1 Cir. 7/16/03), 859 So. 2d 103, 105-106). Unlike a judge or jury in a civil judicial proceeding, the medical review panel does not have the power to adjudicate the rights of any party. The panel is a body of experts assembled to evaluate a medical claim and provide an expert opinion. The panel makes no findings as to damages, and the findings of the medical review panel are not binding on the litigants. There is no focus whatsoever on the claimants during the medical review panel process. *See Truxillo*, 200 So. 3d at 976. Although persons who are allowed to eventually file a claim in a court is limited by law, it makes no difference when the

judicial process begins who initiated the panel proceedings, or who or when others joined or not. Moreover, as explained by the court of appeal, the precise wording of La. R.S. 40:1231.1(A)(4) provides that “all persons claiming to have sustained damages as a result of injuries to or death of any one patient are considered a single claimant,” clearly contemplates the filing of a single request for a medical review panel, with the intent that the rights of all potential plaintiffs are protected.” *Guffey*, 254 So. 3d at 9 (citing *Truxillo*, 200 So. 3d at 975).

For the above reasons, I find Deana was a proper claimant under La. R.S. 40:1231.1(A)(4) and her filing of the request for the formation of the medical review panel interrupted prescription as to all potential plaintiffs, including James and George. I would deny defendant’s exception of prescription. Thus, I respectfully dissent.