

SUPREME COURT OF LOUISIANA

No. 97-C-1224

LAWRENCE and MARIE TRAHAN

Versus

DR. ROBERT L. McMANUS and ST. PAUL FIRE and MARINE INSURANCE

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
THIRD CIRCUIT, PARISH OF ACADIA

JOHNSON, J., Concurring in part, Dissenting in part

I join with the majority in holding clearly for the first time that a claimant may recover bystander damages under the Louisiana Medical Malpractice Act ("the Act"), La. Rev. Stat. Ann. § 40:1299.41 et seq. Prior jurisprudence limited recovery to claims by the patient or statutory survivors for bodily injuries to or death of the patient on account of malpractice by a covered health care provider. Today, the majority recognizes that bystander damages are recoverable under the Medical Malpractice Act and that claimants may recover for their own mental anguish damages caused by negligence in the treatment of a patient.

Having determined that the Medical Malpractice Act covers the damages recognized in Lejeune v. Rayne Memorial Hospital, 556 So. 2d 559 (La. 1990), the majority concludes that these plaintiffs are not entitled to recovery because the event which caused Terry Trahan's injury and death was the automobile accident. In my view, Dr. McManus' negligence in reading the wrong chart, and his discharge of the patient without correct diagnosis and treatment was the event which caused the patient to lose his chance of survival. This was the injury-causing event which resulted in claimants being entitled to recovery under La. Civ. Code art. 2315.6.

Dr. McManus testified that American Legion Hospital had diagnostic tools available which could detect internal bleeding and that he would have performed some of these procedures had he not read the wrong chart. His testimony was as follows:

Q. So, with modern medicine, and all the technology we have today, that type of condition [internal bleeding], if

properly cared for, you'd reasonably expect that this guy's life could be saved. There would be a good chance to be saved, is that right?

A. I think there's a chance. I don't think that I could basically say that his life would be saved, but there was a chance.

Q. But as a reasonable medical probability, if you had applied yourself, and applied all the diagnostic tools to locate this and control this, as a reasonable medical probability, you would say this man's life could have been saved?

A. Yes, sir. (emphasis added).

Q. Now, as far as you're concerned, Doctor, this person, Mr. Trahan, as you stated earlier, was an otherwise healthy person. So, the cause of his death was a loss of blood that resulted from the lack of attention, is that correct?

A. Yes, sir. This is what was stated yesterday by the pathologist.

In light of the evidence adduced at trial, the Third Circuit was correct in reversing the jury's verdict and awarding damages to the plaintiffs. The testimony of Dr. McManus clearly demonstrates that but for the negligent discharge, Terry Trahan would have had an excellent chance of survival. The assertion by the majority that the event which caused Terry's injury and death was the automobile accident is untenable.

Finally, turning to the question of whether these plaintiffs have satisfied all the prerequisites for receiving bystander damages. Lejeune effectively established the criteria for recovery of mental pain and anguish damages arising out of injury to third persons. Before damages are awarded, the following must be proven:

1. A claimant must show that he either viewed the accident or injury causing event or arrived upon the accident scene soon thereafter and before the victim's condition substantially changed.
2. The direct victim of the traumatic injury must suffer such harm that it can reasonably be expected that one in claimant's position would suffer serious mental anguish from the experience.
3. The emotional distress sustained by claimant was serious and reasonably foreseeable, and compensation should only be allowed where the emotional injury is both severe and debilitating.

4. A close relationship existed between the direct victim and the claimant.<sup>1</sup>

The parties have stipulated that a close relationship existed between Terry and the plaintiffs. As such, the question is whether the remaining criteria are present. The facts in this case show that Mrs. Trahan picked her son up from the hospital, signed for his discharge and was personally instructed by McManus to put Terry to bed and watch over him. She then assisted Terry in getting into their vehicle. During their drive home, he kept falling on her. When they arrived at home, both Mr. and Mrs. Trahan walked Terry into the house. Once inside, Mrs. Trahan maintained a watchful eye over her son. Terry complained of back pain and discomfort. In an attempt to relieve the pain, Mrs. Trahan helped to turn him on his side. When it became apparent that Terry's condition was deteriorating, Mrs. Trahan called for an ambulance and accompanied her son back to the hospital. She further testified that because of Terry's death, she cannot sleep at night and constantly thinks about him. Despite getting very emotional, she and her husband visit Terry's grave almost daily. His death has left her in a state of constant grief for which she sought the professional help of Dr. Lyle LaCorgne, a licensed clinical psychologist.

Mr. Trahan was equally traumatized by his son's death. After assisting his son into the house and putting him in the bed, Mr. Trahan performed some outdoor chores and periodically checked on his son. Each time Mr. Trahan checked on Terry, he watched his son's face reflect a person experiencing severe pain. After hearing, "help me daddy my back is killing me", he turned Terry on his side and noticed that Terry's abdominal area had begun to swell. When he noticed that Terry was no longer breathing, Mr. Trahan desperately tried to provide Terry with what turned out to be his last few breaths by performing CPR.

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<sup>1</sup> Under La. Civ. Code art. 2315.6, this class is restricted to close relatives such as the spouse, children, parents, grandparents and siblings.

The majority takes the position that there was no observable harm to Terry at the time of the negligent discharge, no contemporaneous awareness of harm caused by this negligence, and that the negligent discharge was not an emotionally shocking event. However, the record in this case shows that both plaintiffs viewed the graphic effects of the negligent discharge of their son. In essence, Terry died right before plaintiffs' eyes, as they desperately tried to relieve the agony he suffered during his last hours. Without question, the emotional distress they incurred as a result of his death was serious and it is reasonably foreseeable that parents would suffer emotional distress from witnessing the death of their son. The expert testimony proves that the plaintiffs experienced and continue to experience severe and debilitating emotional distress from Terry's death. The appellate court was correct in concluding that the injury-causing event was the negligent discharge of the patient and that Mr. and Mrs. Trahan suffered from emotional distress that was severe, debilitating, and foreseeable. The Court of Appeal's award to each plaintiff for mental anguish resulting from Terry's negligent discharge and death was correct.

For the aforementioned reasons, I concur in the portion of the judgment recognizing the right to recover 2315.6 bystander damages under the Medical Malpractice Act and respectfully dissent from the majority's holding that the plaintiffs have not met the prerequisites for recovery under La. Civ. Code art. 2315.6.