SUPREME COURT OF LOUISIANA

97-CC-2221

DIANA LEBRETON
versus
FELIX O. RABITO, M.D., PATRICK C. BREAUX, M.D., & THOMAS A KREFFT

****
ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
FOURTH CIRCUIT
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Calogero, C.J. dissenting.

The majority concludes that a medical malpractice plaintiff cannot simultaneously take advantage of an interruption of prescription, caused by the filing of suit in a court of competent jurisdiction under Civil Code article 3462, and a suspension of prescription, caused by the subsequent filing of a request for review of a medical malpractice claim before a medical review panel under LSA-RS 40:1299.47(A)(2)(a). This is so, the majority reasons because "the ***specific*** statutory provision providing for the suspension of prescription in the context of medical malpractice should . . . [be] applied alone, not complementary to the more ***general*** codal article which addresses interruption of prescription." Slip op. at 2 (emphasis added). I disagree.

Although the majority expressly recognizes the long-standing rule of statutory construction that "where two statutes deal with the same subject matter, they should be harmonized if possible . . . .," slip op. at 7, the majority ignores the fact that the two provisions at issue ***can*** be harmonized and that, because no conflict between the provisions exists, the court need not apply one provision to the exclusion of the other.

I find no conflict at all between the provisions at issue (Civil Code article 3462 and LSA-RS 40:1299.47(A)(2)(a)), as both provisions can easily be harmonized with the result of each provision being given full effect. Thus, the rule of statutory construction relied upon by the majority--that is, if there is a conflict, the statute specifically directed to the matter at issue must prevail as an exception to the statute more general in character[1]--is simply not applicable. Rather, the majority should have been guided by the principle set forth in Civil Code article 9, which reads as follows:

> When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and ***no further interpretation may be made in search of the intent of the legislature***.

LA. CIV. CODE ANN. art. 9 (West 1993) (emphasis added). In applying this rule, I note that neither Civil Code article 3462, which provides for the interruption of prescription, nor LSA-RS 40:1299.47(A)(2)(a), which provides a suspensive period during the pendency of a claim before the medical review panel, contains ***any*** ambiguous language as to the circumstances that trigger the interruption or suspension of prescription. I also note that both provisions can simultaneously be applied as written without conflict.

Under Civil Code article 3462, prescription is interrupted by the filing of a suit in a court of competent jurisdiction and venue--a simple, straightforward rule. Thus, because plaintiff initially filed suit on August 18, 1992 in a court of competent jurisdiction and venue within the one-year prescriptive period, as the majority

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[1]I also take issue with the majority's conclusion that LSA-RS 40:1299.47(A)(2)(a) is more specific than Civil Code article 3462. The two provisions do not address the same subject matter, as the former is concerned only with providing a suspensive period, whereas the latter is concerned only with the interruption of prescription. As such, I fail to see how two unrelated statutes could be compared as one being more specific or more general than the other.

concedes, prescription was interrupted as a matter of law on that date--plain and simple. Thus, the majority need not--and should not--have engaged in a further search for legislative intent as to whether prescription should be interrupted even though the suit was filed prior to the claim's being reviewed by the medical review panel.

Likewise, under LSA-RS 40:1299.47(A)(2)(a), prescription is suspended when a timely request for a medical review panel is made and remains suspended until ninety days after receipt of notification of the medical review panel's opinion. Period. Thus, because plaintiff made a timely request for such a review on August 19, 1992, prescription was suspended until November 12, 1996--ninety days after plaintiff's attorney was notified of the medical review panel's decision, and, again, the majority need not--and should not--have engaged in a further search for legislative intent of the applicability of the suspensive period where a suit was pending in the district court.

Usually, after prescription has been interrupted under Civil Code article 3462, the prescriptive period begins to run anew from the date of a judgment dismissing the suit without prejudice. However, in the instant case, prescription could not have begun to run anew from the July 20, 1993 judgment that dismissed plaintiff's suit without prejudice for prematurity because a suspension of prescription was in effect at that time pursuant to LSA-RS 40:1299.47(A)(2)(a). Thus, the running of the new prescriptive period must be delayed until the suspensive period is lifted--in this case until November 12, 1996, at which time the full one-year prescriptive period could begin to run anew. This result, which clearly harmonizes the two provision at issue, is, in fact, ***mandated*** by the long-standing jurisprudential rule: Where there are two permissible interpretations of a prescriptive statute, the courts must adopt the one

that favors maintaining rather than barring the action. ***Foster v. Breaux***, 270 So. 2d 526 (La. 1972).

As further support for its conclusion that the plaintiff cannot simultaneously take advantage of the interruption of prescription pursuant to Civil Code article 3462 and the suspension of prescription pursuant to LSA-RS 40:1299.47(A)(2)(a), the majority notes that a contrary finding would encourage medical malpractice plaintiffs to file premature suits in the district court, prior to filing requests for review before the medical review panel, in order to gain an additional year of prescription. Although I find the majority's concern to be unwarranted, I note that it is within the exclusive province of the Legislature to correct any such undesired "loophole" that might result from the courts' concurrent application of two unambiguous and non-conflicting statutory provisions.

For the reasons given above, I respectfully dissent.