

04/24/2015 "See News Release 020 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

NO. 2014-C-2591

**ROBERT THOMAS MCGREGOR, SON OF DONALD H. MCGREGOR,
AND RUTH MCGREGOR, INDIVIDUALLY AND ON BEHALF OF HER
DECEASED HUSBAND, DONALD H. MCGREGOR**

VERSUS

**HOSPICE CARE OF LOUISIANA IN BATON ROUGE, LLC, HOSPICE
CARE OF LOUISIANA, INC., THE HOSPICE FOUNDATION OF
GREATER BATON ROUGE D/B/A HOSPICE OF BATON ROUGE,
KATHRYN GRIGSBY, CYNTHIA LOGAN, MELANIE HYATT, AND
KATHERINE BRAUD**

CONSOLIDATED WITH

**ROBERT THOMAS MCGREGOR, INDIVIDUALLY AND RUTH
MCGREGOR, INDIVIDUALLY AND ON BEHALF OF THE SUCCESSION
OF DONALD H. MCGREGOR**

VERSUS

DR. GERALD P. MILETELLO AND DR. GEORGIA A. REINE

*ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT,
PARISH OF EAST BATON ROUGE*

PER CURIAM

The trial court erred in excluding the testimony of plaintiffs' expert. "Hospice nursing" and "partial refill prescriptions" are areas that are subsumed within the expertise of plaintiffs' expert; the fields are not separately recognized areas of expertise.

Where, as in this case, "the trial court has made a consequential but erroneous ruling on the exclusion or admission of evidence," and the record is otherwise complete, the general rule is that the appellate court should, if it can, render judgment on the record. **Gonzales v. Xerox Corporation**, 320 So.2d 163, 165-166 (La. 1975). However, an exception to this rule exists "where a view of the witnesses is essential to a fair resolution of conflicting evidence." **Ragas v.**

Argonaut Southwest Insurance Co., 388 So.2d 707,708 (La. 1980). “The appellate court must itself decide whether the record is such that the court can fairly find a preponderance of the evidence from the cold record.” **Id.** Accordingly, this matter is remanded to the court of appeal to determine whether the record is otherwise complete, *i.e.*, whether the excluded evidence has been properly proffered, and, if so, whether it can fairly find a preponderance of the evidence from the cold record. If it cannot, the case should be remanded for a new trial. **Id.**

We also conclude that the trial court erred in not allowing the substitution of the succession representative for the deceased plaintiff, Robert Thomas McGregor. This was not a new substantive matter brought before the court, but rather an administrative, housekeeping matter. Because defendants had nearly eight years before he died in which to depose Mr. McGregor, the defendants can demonstrate no prejudice in the matter.

Accordingly, this case is remanded to the court of appeal for further proceedings consistent with the rulings herein.

REVERSED AND REMANDED