

LOUISIANA SUPREME COURT

2015-CC-0757

TAMMY F. KELLER, ET AL.

VS.

ALBERT E. ALEXANDER, M.D., ET AL.

ON SUPERVISORY WRIT TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF ST. JOHN

CRICHTON, J., would grant and assigns reasons:

I respectfully disagree with the majority's denial of this writ application. Based upon the record presented to this court, I believe the trial court abused its discretion in granting the plaintiffs' Motion to Strike the defendants' thirteen expert witnesses. While compliance with a pre-trial order is important for the efficient functioning of the court, I find the severity of the sanction in this instance does not fit the violation. This court, in an opinion by Justice Harry T. Lemmon, has stated that an extreme penalty such as this is to be reserved for "gross disregard for the authority and the efficient operation of the court. . . ." *Benware v. Means*, 99-1410 (La. 1/19/00), 752 So.2d 841, 847, citing J.A. Bryant, Jr., Annotation, Failure of Party or His Attorney to Appear at Pretrial Conference, 55 A.L.R. 3d 303 (1999). The court in *Benware* also noted that "the penalty for such a violation obviously should be less than one for repeated violations over a period of time that persistently obstruct the progress of the case and prevent the opposing attorneys from advancing the case and properly preparing for trial." *Id.* There is no evidence in this case of "repeated" or persistent conduct by the defense that would warrant the trial court's action. In my view, the trial court, in granting the plaintiff's Motion to Strike, had an obligation to examine "whether the client participated in the violation, the stage of the proceeding at which the violation

occurred, the presence or absence of prejudice to the opposing party's preparation of the case, and the nature and persistency of the misconduct that constitutes the violation." *Id.* Without a more thorough examination of these factors, I believe the trial court's ruling is unduly harsh.