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**SUPREME COURT OF LOUISIANA**

**NO. 15-CC-2205  
CONSOLIDATED WITH  
NO. 15-CC-2222**

**ALLEN GUIDRY AS THE SURVIVING SPOUSE OF SADIE GUIDRY  
(DECEDENT)**

**VERSUS**

**LAMMICO, ET AL.**

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

**CRICHTON, J.**, would grant and assigns reasons:

I would grant this application on the basis that, in my view, the plaintiff failed to show by a preponderance of the evidence that the breach of the standard of care deprived Mrs. Guidry of a chance of survival. The pulmonologist retained by the plaintiff opined that the 32 day delay caused by the breach probably did not impact Mrs. Guidry's ultimate outcome or the longevity of her life.<sup>1</sup> "[I]n a medical malpractice case seeking damages for the loss of a less-than-even chance of survival because of negligent treatment of a pre-existing condition, the plaintiff must prove by a preponderance of the evidence that the tort victim had a chance of survival at the time of the professional negligence and that the tortfeasor's action or inaction deprived the victim of all or part of that chance[.]" *Smith v. State, Dep't of Health & Hosps.*, 95-0038 (La. 6/25/96), 676 So.2d 543, 547. Thus, the plaintiff failed to meet the evidentiary burden established by *Smith*, and therefore failed to

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<sup>1</sup> The quote from the pulmonologist's deposition cited by both parties is as follows:

Q: Okay. So in sum, you can say that a 32 day delay probably didn't change her outcome and probably wouldn't have extended her life, but there is a possibility that it could have?

A: I think that's correct.

raise a genuine issue of material fact to survive summary judgment. Accordingly, I would reverse the lower courts' rulings.