

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 1232

DEBRA ANNE ADDIS

VERSUS

**STATE OF LOUISIANA, LSU MEDICAL CENTER-
LEONARD J. CHABERT MEDICAL CENTER,
AND MARY ESCHETTE, M.D.**

Judgment Rendered: March 27, 2009



On Appeal from the 32nd Judicial District Court
In and For the Parish of Terrebonne
Trial Court No. 133,588

Honorable Timothy C. Ellender, Judge Presiding

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Mary Eschete, M.D.

BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ.

HUGHES, J.

In this medical malpractice action, the plaintiff Debra Anne Addis appeals a summary judgment granted in favor of the defendants, State of Louisiana, LSU Medical Center – Leonard J. Chabert Medical Center and Mary Eschette, M.D., dismissing Ms. Addis’s claims with prejudice. The issue is whether the defendants presented sufficient evidence in support of their motion for summary judgment to shift the burden to the plaintiff to then produce evidence, and not rely merely on the pleadings in the record, to show that she would be able to meet her burden of proof at trial. For the following reasons, our *de novo* review reveals that the defendants met their initial burden of proof with the medical review panel opinion finding no breach of the standard of care. The plaintiff’s failure thereafter to produce any evidence showing there remained a genuine issue of material fact and that she would be able to meet her burden of proof at trial entitled the defendants to summary judgment as a matter of law. Therefore, we affirm.

BACKGROUND

On or about November 13, 2000, Ms. Addis filed a request for review with the Louisiana Patients’ Compensation Fund against LSU Medical Center – Leonard J. Chabert Medical Center and Mary Eschette, M.D., asserting that the defendants breached the standard of care owed to her in connection with an allegedly negligent change in her prescription medications and also alleging a deviation from the standard of care in failing to properly diagnose a problem with her left wrist.

The record reflects that numerous orders were issued over the years extending the terms for the medical review panel. The orders were granted at the request of each of the parties and with the authorization of the attorney

chairman for the medical review panel and were granted for discovery purposes. The matter ultimately was decided by the medical review panel on September 24, 2003.

Almost two and a half years later, the defendants filed the motion for summary judgment at issue in this appeal. In support of their motion, the defendants submitted the medical review panel opinion which concluded that the plaintiff failed to show that the defendants failed to meet the applicable standard of care in Ms. Addis's treatment. The defendants asserted that the plaintiff had been unable to name an expert notwithstanding almost six years of discovery. The record confirms that the plaintiff failed to submit any evidence to counter the medical review panel opinion or show that she would be able to meet her evidentiary burden at trial. Defendants are correct that under these circumstances they are entitled to summary judgment as a matter of law.

APPLICABLE LAW

This issue, in the context of a medical malpractice action was decided by our supreme court in **Samaha v. Rau**, 07-1726 (La. 2/6/08), 977 So.2d 880, holding that the defendant was entitled to summary judgment as a matter of law due to the plaintiff's failure to submit an affidavit or other expert evidence reflecting she would be able to bear her burden of proof at trial. We adopt by reference the law and analysis employed by the supreme court in that case, and reach the same result in this appeal.

In this appeal, the defendants' submission of the medical review panel opinion in support of their motion sufficiently shifted the burden to Ms. Addis, who was no longer permitted to rely on the allegations of her petition or pleadings, to present evidence establishing that genuine issues of material

fact exist and that she would be able to meet her evidentiary burden at trial. This the plaintiff failed to do, entitling the defendants to judgment as a matter of law.

CONCLUSION

Accordingly, and in compliance with Uniform Rules of Louisiana Courts of Appeal, Rule 2-16.2 (2) and (4), we affirm by summary disposition the summary judgment granted in favor of the defendants. All costs of this appeal are assessed to the plaintiff.

AFFIRMED.