NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 CA 1562 C/W
NOS. 2008 CA 1563-2008 CA 1571

DONALD SINGER AND ILENE SINGER, INDIVIDUALLY AND ON BEHALF OF KERRI SINGER (DECEASED) AND THE SUCCESSION OF KERRI SINGER

VERSUS

DR. DAVID JARROTT AND ABC INSURANCE COMPANY

Judgment rendered JUL 2 9 2009

* * * * * *

Appealed from the
21st Judicial District Court
in and for the Parish of Tangipahoa, Louisiana
Trial Court Nos. 9804048 c/w 2000-001707 – 2000-001715
Honorable Bruce C. Bennett, Judge

* * * * * *

RON S. MACALUSO HAMMOND, LA	ATTORNEY FOR PLAINTIFFS-3RD APPELLANTS DONALD SINGER & ILENE SINGER
C. WILLIAM BRADLEY, JR. NEW ORLEANS, LA	ATTORNEY FOR DEFENDANT-2ND APPELLANT DR. DAVID JARROTT
STEPHANIE B. LaBORDE BATON ROUGE, LA	ATTORNEY FOR INTERVENOR-1ST APPELLANT LOUISIANA PATIENTS' COMPENSATION FUND OVERSIGHT BOARD

* * * * * *

BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ.

Hughes, J. Concurs without Reasons

McDonald, J Concurs in Part and Dissents in Part.

PETTIGREW, J.

This is a medical malpractice action filed by the surviving parents of a deceased chronic pain patient against their daughter's treating physician. Plaintiffs allege in their wrongful death action that their daughter died from an overdose of drugs that they claim were negligently prescribed to her by defendant physician. In consolidated survival actions, plaintiffs claim that prior to their daughter's death, drugs negligently prescribed to her by the defendant caused her to overdose nine times. The district court rendered a judgment awarding damages in favor of plaintiffs and against defendant. From this judgment, defendant now appeals.

FACTS

Kerri Singer ("Kerri") was a deeply troubled young woman with a 20-year history of automobile accidents, falls, and other injuries, coupled with an addiction to alcohol and prescription pain medications. These struggles led to repeated detoxification and psychiatric confinements as well as multiple suicide attempts. Ultimately, she came to be treated by defendant, Dr. David M. Jarrott ("Dr. Jarrott"), a board-certified neurosurgeon. The Louisiana State Board of Medical Examiners rendered an opinion based upon the information contained in Dr. Jarrott's chart and his testimony. From a review of the record, we glean the following history.

On July 18, 1995, Kerri was referred by an attorney, who represented her in a worker's compensation claim, to the care of Dr. Jarrott due to her persistent complaints of neck and back pain and history of past accidents. Kerri provided a history of a work-related injury in October 1993, and expressed continued complaints of lower back pain, neck pain, headaches, nausea, and left leg pain. She brought with her an MRI of her spine taken in October 1993, that revealed a small protrusion at the L4-L5 interspace. Kerri related she was taking Valium, Serzone, and Lorcet 10, three times a day for six months. Dr. Jarrott's medical records did not reflect the names of other physicians treating Kerri, nor were any prior medical records obtained.

Based on Kerri's MRI and his own physical examination, Dr. Jarrott diagnosed a disc syndrome, with a small extrusion. Dr. Jarrott recommended a current MRI, a lumbar

laminectomy with fusion, and prescribed pain medicine, thirty Lorcet 10, and muscle relaxant medicine, sixty Soma 350, with no refills. Kerri was asked to return in two weeks.[1] Kerri apparently called Dr. Jarrott's office on July 27, 1995, requesting more Lorcet 10, but this request was denied pending a return visit. Kerri did not return to Dr. Jarrott until October 17, 1995, almost three months later.

On October 17, 1995, Kerri related complaints of low back pain, right leg numbness, and neck pain. Dr. Jarrott further recorded a complaint of pain radiating into her left leg. Dr. Jarrott noted that Kerri was receiving Desyrel prescribed to her by a Dr. Taylor. Upon physical examination, Dr. Jarrott diagnosed an L4-L5 disc rupture, with left L-4 radiculopathy and reactive depression, and prescribed ten Lorcet Plus, with 2 refills, and twenty Soma 350, with 2 refills, and asked Kerri to return in six weeks. Again, there is no indication Dr. Jarrott sought any information regarding Kerri from Dr. Taylor.

On October 23, 1995, Kerri called Dr. Jarrott's office and advised she had lost her Lorcet Plus and requested more. This request was denied as being too soon following her office visit.[2] On December 7, 1995, Kerri requested additional medication, and she was given a prescription for twenty Lorcet Plus and twenty Soma 350. Kerri requested medication again on January 2, 1996; this request was denied, and she was instructed to come into the office.

Kerri returned for an office visit on January 4, 1996, with complaints of pain in her lower back and left leg. Kerri's chart indicated that at the time she was taking Naprosyn, an anti-inflammatory drug; Ultram, a non-narcotic pain reliever; and Desyrel, for depression and chronic pain. Dr. Jarrott assumed these medications were prescribed by Taylor, and noted Kerri was permanently and totally disabled as a result of the accident in

---

[1] **Overdose #1** (Suit # 2000-001715) - On July 19, 1995, Kerri was transported by ambulance to North Oaks Medical Center after a friend reported her ingestion of Lorcet and Soma. The contents of her stomach were pumped by means of a gastric lavage. She was reported to be lethargic, but cooperative. She was advised by the emergency room physician to "quit overdosing your medications."

[2] **Overdose #2** (Suit # 2000-001714) - On November 14, 1995, Kerri was admitted to North Oaks Medical Center after exhibiting bizarre behavior. She was found on the floor saying "I killed her," referring to a 1982 automobile accident that killed her friend. The emergency room physician described Kerri as having acute distress and surmised she "must have reacted (with) meds." The emergency room report further noted Kerri admitted that she had become addicted to pain medications.

October 1993. Dr. Jarrott prescribed sixty Lorcet Plus, sixty Soma 350, twenty Dalmane for insomnia, sixteen Decadron, for the left leg pain, and nausea medications. Dr. Jarrott also gave Kerri some exercises to do to relieve the pressure on the sciatic nerve.

On January 18, 1996, a note in Kerri's medical record indicated her pain was persisting. An MRI was ordered, and Kerri was given sixty Lorcet Plus and sixty Soma 350. On January 23, 1996, Dr. Jarrott noted "her substance abuse is not a factor except in producing anxiety in her mother."

Kerri appeared again at Dr. Jarrott's office on January 24, 1996, with complaints of lower back pain and bilateral leg pain. A physical examination revealed the usual findings, and she was given a prescription for thirty Lorcet Plus, sixty Soma 350, and one hundred Clonadine. A note in Kerri's file stated, "Her mother confiscated her pain medication due to fear of her resorting to an overdose to relieve her pain (as nearly happened twice in recent past)."[3]

Dr. Jarrott prescribed medications for Kerri again on February 29, 1996. Kerri returned to Dr. Jarrott on March 21, 1996, expressing similar complaints. Kerri reported that following an orthopedic evaluation at Lallie Kemp Hospital, she was given physical therapy, but indicated that she discontinued this treatment because it increased her pain. Kerri was given a prescription for sixty Lorcet Plus and sixty Soma 350, with one refill each.

Pursuant to a phone request from Kerri, Dr. Jarrott gave her a prescription for thirty Lorcet Plus on April 4, 1996. Dr. Jarrott's records reflect that although Kerri called in a request for more medicine and was given a prescription for an additional twenty Lorcet Plus on April 29, 1996, this prescription was later cancelled.

On April 30, 1996, Kerri's mother telephoned Dr. Jarrott's office to advise that Kerri was being treated in the emergency room at Lallie Kemp Hospital following an overdose

---

[3] **Overdose #3** (Suit # 2000-001713) - On January 31, 1996, Kerri was taken by her parents to Lallie Kemp Medical Center for a prescription overdose of Lorcet, Soma, and Dalmane. The contents of her stomach were pumped by means of a gastric lavage. She was reported to be lethargic and was transferred to Charity Hospital in New Orleans for a psychiatric evaluation.

of medication.[4] In speaking with the emergency room physician, Dr. Jarrott requested a 72-hour psychological evaluation. The emergency room physician noted the conversation as follows:

> Spoke with Dr. Jarrott, patient's neurosurgeon. She has ruptured disk [sic] in back which will need surgery. Says patient has long history of drug and alcohol abuse. She called office yesterday requesting 20 Lorcet [he] says she has plenty at home. Says she's very manipulative with chronic depression. Believes this was not accidental drug ingestion.

Dr. Jarrott's notes corroborate his request for a 72-hour evaluation, and note Kerri was transferred to Charity Hospital in New Orleans, where it was felt that admission was not necessary.

Kerri underwent an MRI of her back on April 4, 1996, and returned to Dr. Jarrott's office on May 23, 1996, with complaints of leg pain and severe lower back pain. She advised she was on no medication other than birth control pills. Dr. Jarrott prescribed no medication, but recommended Alpha TENS therapy, continued exercise, and a lumber laminectomy and fusion.

On June 17, 1996, Kerri saw Dr. Larry G. Ferachi, a board certified orthopedic surgeon, for a second opinion regarding her need for back surgery. After reviewing Kerri's surgical reports, x-rays, MRI scans, and conducting his own physical examination, Dr. Ferachi recalled that he found low back pain and recommended that Kerri discontinue all pain medications because she apparently had some type of "addiction problem." It was Dr. Ferachi's opinion that Kerri needed to perform back exercises, and based upon his clinical examination, he did not recommend any type of surgical intervention." Dr. Jarrott denied having been advised of this consultation.

Kerri failed to appear for a July 16, 1996 appointment with Dr. Jarrott, but

---

[4] **Overdose #4** (Suit # 2000-001712) - On April 30, 1996, Kerri was transported by ambulance to Lallie Kemp Medical Center for a prescription overdose of Lorcet and Soma. The contents of her stomach were pumped by means of a gastric lavage. Kerri was reported to be lethargic and was transferred to Charity Hospital in New Orleans for a psychiatric evaluation. She denied any suicidal ideations and was deemed not to be in need of psychiatric admission. Kerri was released the following day.

returned again on October 1, 1996.[5] On this visit, Kerri advised that she had settled her worker's compensation case, and complained of insomnia and right leg pain that she was tolerating without medication. Dr. Jarrott gave her some sleeping pills for insomnia. Two days later, Kerri called in, and was given a prescription for forty Soma Compound with four refills.

At about this time, Kerri, who had obtained a degree in social work and had acquired some experience working in psychiatric units, was employed part-time as a social worker in Dr. Jarrott's office conducting group therapy sessions. She also was continued to be seen by Dr. Jarrott as a patient.

On October 8, 1996, Kerri returned to Dr. Jarrott, claiming to have fallen in a bathtub and exhibiting a bruise on her left buttock. Dr. Jarrott prescribed for her twenty Lorcet 10. Kerri returned again on October 28, 1996, and claimed to have fallen when a chair broke. Due to her complaints of pain, Dr. Jarrott gave her a prescription for another twenty Lorcet 10 with one refill.

Kerri returned to Dr. Jarrott's office again on November 7, 1996, and advised she was receiving chiropractic treatment, and expressed complaints of pain in her left buttock and leg, nausea, vomiting, and weight loss. Dr. Jarrott diagnosed sciatic neuralgia and an L5-S1 disc syndrome; however, he failed to perform any tests or any other workup to corroborate this new diagnosis. Dr. Jarrott gave Kerri a prescription for thirty Lorcet 10 and thirty Soma 350, with one refill each, and also prescribed Alpha TENS therapy for neuromuscular stimulation. His chart noted that he warned Kerri about medicine addiction.

A note in Kerri's file indicated that Kerri was taking Lorcet 10, four times daily for back, left hip, and left leg pain. On November 21, 1996, she was given a prescription for sixty Lorcet 10 and sixty Soma 350, with one refill each. Dr. Jarrott's file reflected that

---

[5] **Overdose #5** (Suit # 2000-001711) - On July 16, 1996, Kerri was transported by ambulance to North Oaks Medical Center for a prescription overdose of Soma. Kerri was reported to be alert but confused and was visibly experiencing seizure-like shaking and vomiting. The contents of her stomach were pumped by means of a gastric lavage. She was discharged to her home three hours later. Following this incident, Kerri entered a detoxification program until October 1996.

Kerri called again on December 12, 1996, and advised she had bent over and her back "popped." Kerri claimed to have left leg pain. Dr. Jarrott prescribed a Medrol Dose pack, thirty Lorcet 10, and thirty Dalmane.

On December 23, 1996, Dr. Jarrott prescribed for Kerri sixty Elavil 25, sixty Lorcet 10, and sixty Soma 350, all with no refills.[6] On January 2, 1997, Kerri returned to Dr. Jarrett with complaints of back pain, neck pain, left leg pain, and insomnia with no improvement. Dr. Jarrott's file indicated that following notification of Kerri's sponsor, he prescribed forty Elavil 100, sixty Valium 10, and ten Lorcet 10, for emergency use.

On January 17, 1997, Dr. Jarrott prescribed for Kerri twenty Lorcet 10. Kerri called again on January 23, 1997, and complained of severe pain in her left leg and spasms in her back, as a result of standing 5-6 hours per day. Kerri claimed the Valium was not helping, so Dr. Jarrott prescribed thirty Lorcet 10 and switched her to sixty Soma 350.

Kerri returned to Dr. Jarrott again on January 30, 1997, expressing complaints of back and left leg pain. Kerri claimed the Elavil and Lorcet were not helping, and the Lorcet, which she took four times a day, was causing stomach upset. Pursuant to Kerri's request, Dr. Jarrott prescribed sixty Methadone 10.

Kerri's file contained a note of February 6, 1997, stating that she was stable on Methadone and that she was taking two to three Soma tablets per day. On that date, Dr. Jarrott prescribed sixty Soma 350 and twenty Dalmane.

Kerri returned again on February 20, 1997, claiming she was out of Methadone and Soma. Dr. Jarrott gave her prescriptions for sixty Methadone 10 and sixty Soma 350. He further recommended a muscle stimulator trial. At her next visit, on March 13, 1997, Kerri related the muscle stimulator was helping a little bit, but expressed complaints of back and left leg pain. Dr. Jarrott ordered Kerri to continue using the muscle stimulator, and gave her prescriptions for sixty Soma 350, twenty Dalmane 30, sixty Phenergan 50,

---

[6] **Overdose #6** (Suit # 2000-001710) - On December 28, 1996, Kerri was transported by ambulance to North Oaks Medical Center for a prescription overdose. Kerri was found by a friend to have a staggering gait and changes in mental status. Kerri denied taking any pills, but tested positive for Lorcet, Soma and Dalmane. The contents of her stomach were pumped by means of a gastric lavage.

and sixty Methadone 10. Dr. Jarrott also increased Kerri's Methadone dosage to twenty mg., once or twice a day.

Kerri appeared on March 25, 1997, with complaints of migraine headaches in addition to pain in her back and left leg. Dr. Jarrott prescribed sixty Soma 350 and twenty Lorcet 10, with one refill each. A note in the file indicated Kerri was cautioned about addiction, and she signed indicating she accepted the risk of addiction.

On March 31, 1997, Dr. Jarrott called in a prescription for sixty Soma 350 and twenty Lorcet 10. On April 7, 1997, a file note indicated that Dr. Jarrott had called in a prescription for twelve Lorcet Plus.

Kerri was seen by Dr. Jarrott again on April 8, 1997, with complaints of headaches and left leg pain; however, no medicines were prescribed. On April 10, 1997, Kerri was seen again for the same problems, and was given a prescription for twenty Lorcet 10, with one refill, for her leg pain.[7] Kerri was seen by Dr. Jarrott again on April 24, 1997, with complaints of serious pain in her left leg, and was prescribed thirty Lorcet 10 and thirty Valium 10, with one refill each. Kerri called Dr. Jarrott again on May 6, 1997, and was prescribed forty Lorcet 10.[8]

On May 27, 1997, Kerri went to Dr. Jarrott's office with the usual complaints. A notation in her chart indicated she had a "seizure" in the office and was taken to the emergency room, where it was treated as an overdose. Dr. Jarrott had given her a prescription for one hundred Phenergan 50 and twelve Lortab 10, which was to last Kerri two weeks. On June 5, 1997, Kerri called in and advised Dr. Jarrott that Lorcet 10 was more effective than Lortab 10, and that she had been required to take more medicine than anticipated. Dr. Jarrott called in a prescription for twelve Lorcet 10. On June 19,

---

[7] **Overdose #7** (Suit # 2000-001708) - On April 16, 1997, Kerri was admitted to North Oaks Medical Center from work. She was vomiting and had diarrhea. Unable to prove this admission to be a prescription drug overdose, plaintiffs withdrew this overdose claim prior to trial.

[8] **Overdose #8** (Suit # 2000-001709) - On May 12, 1997, while working at Dr. Jarrott's office, Kerri was found on the floor by a co-worker. She appeared disoriented and shaking. Upon contacting Kerri's mother, the co-worker was directed to take Kerri to the emergency room at North Oaks Medical Center. The contents of her stomach were pumped by means of a gastric lavage. Kerri was diagnosed with poisoning by opiates. Dr. Jarrott later testified this was not an overdose but rather a hypoglycemic episode.

1997, Dr. Jarrott called in a prescription for fifteen Lorcet 10 and thirty Elavil 10. Kerri called Dr. Jarrott on July 3, 1997, and advised she was out of Lorcet 10. Dr. Jarrott called in a prescription on July 7, 1997, for twenty Lorcet 10; a prescription on July 18, 1997, for one hundred Elavil 10; and a prescription on July 24, 1997, for forty Lorcet 10.

On August 5, 1997, Kerri was seen by Dr. Jarrott, and expressed the usual complaints. Kerri advised Dr. Jarrott she had been under treatment for depression at Lallie Kemp Hospital and was taking Elavil 100 mg. Dr. Jarrott gave her a prescription for one hundred Lorcet 10, sixty Soma 350, one hundred Phenergan 25, and thirty Dalmane 30. Dr. Jarrott claimed that he had given Kerri a month's supply of drugs at her request because Kerri wanted to be treated like other patients.[9]

Kerri was seen by Dr. Jarrott on September 2, 1997, and expressed the usual complaints. Kerri also related she had fallen three weeks previously and sprained her right ankle. Dr. Jarrott gave her a prescription for one hundred Lorcet 10, one hundred Soma 350, one hundred Phenergan 50, and thirty Dalmane 30.

On September 16, 1997, Kerri telephoned Dr. Jarrott and requested an early refill of her medication. Dr. Jarrott agreed to this request. The following night, Kerri died under circumstances that led to a finding by the coroner that she died from an overdose of controlled substances.[10] A final note in Dr. Jarrott's file indicates he did not learn of Kerri's death until February 16, 1998.

From the time of her initial visit to Dr. Jarrott on July 18, 1995, until her death on September 17, 1997, Kerri, while receiving prescriptions from Dr. Jarrott, had ten overdoses requiring hospitalization. The first overdose occurred the day after her initial

---

[9] **Overdose #9** (Suit # 2000-001707) - On August 16, 1997, Kerri was brought into Lallie Kemp Medical Center by her parents after arriving at their home late at night very incoherent. Upon contacting the coroner's office, her parents were advised to take her to the emergency room. Kerri insisted she was not suicidal, but a drug screen indicated she had taken Soma and Meprobamate. The diagnosis of the emergency room physician was "drug overdose."

[10] **Overdose #10** (Suit # 98-04048 Wrongful Death Claim) - On September 17, 1997, Kerri was found dead on the floor of her apartment from a prescription drug overdose. The Tangipahoa Parish Coroner's office reported her death as an accidental death caused by "Respiratory Depression due to Combination of Opiates and Benzodiazepines."

appointment; the final overdose took place the day after she received her last prescription: a total of 10 overdoses in 27 months.

MEDICAL MALPRACTICE CLAIM

Pursuant to the Medical Malpractice Act (La. R.S. 40:1299.41 et seq.), Kerri's parents, Donald and Ilene Singer ("Plaintiffs"), were initially required to pursue their complaint through a medical review panel. On August 19, 1998, plaintiffs, in their individual capacities and on behalf of their deceased daughter Kerri, filed a request for a Medical Review Panel against Dr. Jarrott. Plaintiffs further prayed for an expert opinion as to Dr. Jarrott's negligence in deviating from the standard of care with respect to his treatment of Kerri.

A Medical Review Panel comprised of three physicians reviewed the evidence and concluded that Dr. Jarrott had failed to meet the applicable standard of care as charged in the complaint. In a unanimous opinion signed March 22, 2000, the panel's physicians opined that "[a]t least by October of 1996, [Kerri] should have been referred by Dr. Jarrott for comprehensive pain management." The physicians further noted that "[t]he conduct complained of was a factor of resultant damages, to the extent that it contributed to the continuing mismanagement of [Kerri's] chronic pain problem."

Dr. Jarrott was thereafter formally charged by an administrative complaint with medical incompetency. In accordance with the provisions of the Administrative Procedures Act (La. R.S. 29:955-58), the State Board of Medical Examiners, which consists of a panel of doctors, began hearing the case against Dr. Jarrott on July 23, 2003. On September 26, 2003, the State Board of Medical Examiners, after weighing the testimony provided by the witnesses and experts called before it, rendered its opinion and found Dr. Jarrott guilty of all charges against him by a standard of clear and convincing evidence. In addition to imposition of a fine, the Board of Medical Examiners further suspended Dr. Jarrott's license to practice medicine for a period of three years, and placed him on probation for ten years following his reinstatement. Dr. Jarrott was further required to obtain not less than 50 hours of continuing medical education credits during each year that he was on probation.

Dr. Jarrott thereafter applied for supervisory writs to the Louisiana Supreme Court in November 2003 and March 2004. These writs were ultimately denied. See **Jarrott v. Louisiana State Board of Medical Examiners**, 03-2375 (La. 11/21/03), 860 So.2d 550, and **Jarrott v. Louisiana State Board of Medical Examiners**, 04-0768 (La. 3/31/04), 869 So.2d 862.

ACTION OF THE TRIAL COURT

After the Medical Review Panel's decision in March 2000, plaintiffs filed 10 separate actions on June 14, 2000, arising out of Dr. Jarrott's treatment of their daughter Kerri. Civil Action No. 1998-04048 sought damages for Kerri's wrongful death while Civil Action Nos. 2000-1707 through 2000-1715[11] sought survivorship damages for the suffering Kerri experienced as a result of each drug overdose. Plaintiffs argue that in accordance with La. R.S. 40:1299.47(M), legal interest shall accrue from the date of filing of the complaint; therefore, plaintiffs contend that legal interest must be calculated from August 18, 1998, the date they filed a complaint requesting a Medical Review Panel. On June 21, 2000, plaintiffs filed a Motion to Consolidate all pending actions that was subsequently granted by all divisions of court involved.

An initial trial date of March 11, 2002, was selected following a pre-trial conference. Dr. Jarrott thereafter filed for bankruptcy, and the initial trial date as well as a subsequent trial date was continued due to the pending bankruptcy proceedings. The stay order issued in connection with Dr. Jarrott's bankruptcy proceedings was ultimately lifted pursuant to an order dated August 12, 2004, and plaintiffs were allowed to proceed for the limited purposes of determining and liquidating their claims against Dr. Jarrott.

On August 25, 2005, plaintiffs stipulated that the survival actions are limited to no more than $50,000.00 each. This matter ultimately proceeded to a bench trial with the

---

[11] It should be noted that Civil Action No. 00-001708 sought survivorship damages for Kerri's April 16, 1997 admission to North Oaks Medical Center. Kerri was vomiting and had diarrhea; however, plaintiffs could not prove that said admission resulted from a prescription drug overdose. For this reason, said overdose claim was subsequently withdrawn.

parties submitting all evidence to the trial court either by deposition, or by transcript of testimony, previously taken in other proceedings. There were no live witnesses.

In October 2007, the parties filed their respective post-trial memorandums. On February 19, 2008, the trial court, in written reasons for judgment stated in pertinent part:

> I am convinced by the totality of the evidence, and giving Dr. Jarrott the benefit of every reasonable standard existing at the time he began treatment of [Kerri], that he should not have prescribed any narcotic or pain medication to [Kerri] at all, at least by October 1996. Consequently, I am convinced that causes of action lie for medical malpractice causing damages for what has been outlined in plaintiff's [sic] memorandum as drug overdoses No. 6, 8, 9, and 10, which ultimately resulted in the death of the decedent. In that regard, the arguments and conclusions presented by the plaintiff [sic] in brief are adopted herein as written reasons unless otherwise inconsistent.

By virtue of a judgment rendered and signed on April 21, 2008, the trial court found in favor of plaintiffs and against Dr. Jarrott, awarding plaintiffs, as survivors of their daughter Kerri, $50,000.00 for each of four alleged drug overdoses. The trial court further awarded plaintiffs the sum of $250,000.00 each for Kerri's wrongful death, together with all costs, and bearing legal interest from August 18, 1998, the date of plaintiffs' request for a medical review panel. From this judgment, Dr. Jarrott has taken a suspensive appeal.

The Louisiana Patient's Compensation Fund ("LPCF") intervened and also sought to appeal the trial court's judgment. The plaintiffs thereafter filed for a devolutive appeal. The LPCF subsequently settled with the plaintiffs and dismissed its appeal. After filing an answer to Dr. Jarrott's appeal, plaintiffs moved to withdraw their earlier appeal.

ERRORS ASSIGNED ON APPEAL

In connection with his appeal in this matter, Dr. Jarrott contends that the trial court erred in the following respects:

1. In rendering a judgment in contravention of the orders of the Bankruptcy Court;
2. In awarding multiple-cap recovery;
3. In awarding wrongful death damages to plaintiffs;
4. In awarding damages for 3 of the 4 alleged overdoses; and
5. In awarding $50,000 for each alleged overdose.

STANDARD OF REVIEW

The Louisiana Constitution of 1974 provides that the appellate jurisdiction of the courts of appeal extends to both law and facts. La. Const., art. V, § 10(B). A court of appeal may not overturn a judgment of a trial court absent an error of law or a factual finding that is manifestly erroneous or clearly wrong. See **Stobart v. State, Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993). If the trial court or jury findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989).

LAW AND ANALYSIS

Effect of Dr. Jarrott's Bankruptcy Proceeding

The initial issue raised by Dr. Jarrott is that the trial court's rendition of a judgment in this case exceeded the authority given to it by order of the Bankruptcy Court.

The record in this matter reflects that on January 14, 2002, Dr. Jarrott filed a pleading in this matter notifying the court that a voluntary petition for bankruptcy had previously been filed in United States Bankruptcy Court, Eastern District of Louisiana, on October 23, 2001. The trial court nevertheless entered an Order for Bench Trial at a pre-trial conference held on April 10, 2002, and set this matter for trial. Dr. Jarrott thereafter moved to rescind and set aside the Order for Bench Trial, and following a hearing, the trial court signed a judgment to this effect on October 11, 2002.

The bankruptcy stay remained in effect for an additional 22 months until plaintiffs obtained an order from the Bankruptcy Court lifting the stay. The order from the Bankruptcy Court provided, in pertinent part, as follows:

> IT IS ORDERED that the Motion for Relief from Stay by Movers be and is hereby granted for the limited purposes of liquidating and determining the claim of Movers against Debtor, David M. Jarrott, M.D.; and

> IT IS FURTHER ORDERED that the lawsuit against David M. Jarrott, M.D. in the 21st Judicial District Court for the Parish of Tangipahoa, State of Louisiana entitled "Donald and Ilene Singer, Individually and on behalf of Kerri Singer (Deceased) vs. Dr. David M. Jarrott" Number 9804048 c/w 2000-001707 through 2000-001715 be allowed to proceed for the purposes of determining and liquidating the claim of Movers in the proceeding of Debtor, David M. Jarrott, M.D.; and
>
> IT IS FURTHER ORDERED that the Movers are prohibited from pursuing Debtor and/or attempting to collect or in anyway [sic] proceeding against Debtor, David Michael Jarrott, Individually and personally but in no way prohibits Movers from pursuing third parties.

The foregoing order from the Bankruptcy Court was attached to plaintiffs' Motion to Assign for Trial.

Dr. Jarrott contends that the trial court and this court lack authority and are "powerless" to render a judgment against him. It is the position of Dr. Jarrott that pursuant to the order from the Bankruptcy Court, the trial court was responsible only for advising the Bankruptcy Court, through counsel of record, of its findings as to liability and quantum, and the Bankruptcy Court would thereafter determine the legal effect of these determinations and issue further orders accordingly. Dr. Jarrott further contends this court, upon review of the trial court's findings on liability and quantum, should revise said findings as necessary and remand this matter to the trial court for the limited purposes of liquidating and determining the claim of plaintiffs. Dr. Jarrott argues it would thereafter become the responsibility of the Bankruptcy Court to proceed further.

We disagree. To proceed in this manner would be tantamount to rendition of an advisory opinion. Our jurisprudence has previously held that "courts will only act in cases of a present, justiciable controversy and will not render merely advisory opinions." **Church Point Wholesale Beverage Co., Inc. v. Tarver**, 614 So.2d 697, 701 (La. 1993).

Because of the almost infinite variety of factual scenarios with which courts may be presented, a precise definition of a justiciable controversy is neither practicable nor desirable. **Wooley v. State Farm Fire and Casualty Insurance Company**, 05-1490, p. 5 (La. App. 1 Cir. 2/10/06), 928 So.2d 618, 621-622. However, a justiciable controversy has been broadly defined as one involving "adverse parties with opposing

claims ripe for judicial determination," involving "specific adversarial questions asserted by interested parties based on existing facts." **Prator v. Caddo Parish**, 04-0794, p. 6 (La. 12/1/04, 888 So.2d 812, 816.

The plaintiffs' claims against Dr. Jarrott constituted a present, justiciable controversy ripe for judicial determination. The trial court determined and liquidated the plaintiffs' claims against Dr. Jarrott through its rendition of a judgment. The order from the Bankruptcy Court stayed the execution of any judgment rendered against Dr. Jarrott pending further orders from the Bankruptcy Court.

This assignment is without merit.

Limitation of Liability: One Cap vs. Multiple Caps

The second issue raised by Dr. Jarrott is whether the Medical Malpractice Act's ("MMA") limitation of liability applies to the consolidated actions filed by plaintiffs. Plaintiffs filed ten separate actions against Dr. Jarrott in connection with his treatment of their daughter Kerri, which were consolidated for trial. Plaintiffs assert they have alleged, and the trial court ultimately found, that each overdose incident constituted an act of negligence, and thus, a separate and divisible delictual tort. In its written reasons for judgment, the trial court found that the sixth, eighth, ninth, and tenth overdose incidents were "separate causes of action" and awarded plaintiffs $50,000.00 against Dr. Jarrott for each of four overdoses together with an additional $250,000.00 to each plaintiff for Kerri's wrongful death. Said awards total $700,000.00. With respect only to its $500,000.00 award to plaintiffs for Kerri's wrongful death, the trial court applied La. R.S. 40:1299.42(B)(2) and limited Dr. Jarrott's liability to $100,000.00, and condemned the LPCF to pay the remaining $400,000.00 pursuant to La. R.S. 40:1299.44.

The trial court expressly adopted, as part of its written reasons for judgment, the arguments and conclusions presented by the plaintiffs in their post-trial brief. Therein plaintiffs argued for the applicability of multiple liability caps and cited **Crump v. Sabine River Authority**, 98-2326, (La. 6/29/99), 737 So.2d 720, as authority for the proposition "[w]hen the operating cause of the injury is 'not a continuous one of daily occurrence', there is a multiplicity of causes of action and of corresponding prescriptive periods."

Crump, 98-2326 at p. 7, 737 So.2d at 726 (quoting A.N. Yiannopoulos, Predial Servitudes, § 63 (1983)).

Applying the reasoning of **Crump** to Dr. Jarrott's treatment of their daughter Kerri, plaintiffs further argued that their nine suits constituted separate causes of action because each incident occurred at a different period of time rather than on a daily basis. Plaintiffs further assert the trial court's finding as to separate causes of action is a finding of fact that must be affirmed unless it is manifestly erroneous.

It is the position of Dr. Jarrott that in accordance with La. R.S. 40:1299.42(B)(2), any amounts recovered by plaintiffs should be limited to $500,000.00 ($100,000.00 against Dr. Jarrott and $400,000.00 against the LPCF). Dr. Jarrott contends there was only one health care provider and one patient who received the same treatment, i.e., the use of prescription drugs, for the same complaints for the entire course of treatment. Accordingly, the trial court erred and a single cap should be applied to all of plaintiffs' claims.

In his brief to this court, Dr. Jarrott points out that the plaintiffs' reliance on **Crump** is misplaced as that case involved an alleged damage to property, and as the court's opinion did not address the issue of multiple caps from a medical malpractice standpoint, the decision is clearly inapposite to the facts presented here. The issue in **Crump** was whether the earlier excavation of a canal on defendant's property that subsequently caused damage to his neighbor, the plaintiff, constituted a continuous tort that would suspend the running of prescription. In **Crump**, our supreme court held that the operating cause of the injury was the excavation of the canal rather than the continued presence of the canal and the consequent continuous diversion of water, which, the court reasoned, were simply the continuing ill effects arising from a single tortious act. **Crump**, 98-2326 at p. 9, 737 So.2d at 727-728.

In our review of this matter, we note La. R.S. 40:1299.42(B)(1) of the MMA provides:

> The **total** amount recoverable for **all malpractice claims** for **injuries** to or death of **a patient**, exclusive of future medical care and

related benefits as provided in R.S. 40:1299.43, shall not exceed five hundred thousand dollars plus interest and cost. [Emphasis supplied]

In addition, R.S. 40:1299.42(B)(2) provides in pertinent part:

> A health care provider qualified under this Part is not liable for an amount in excess of one hundred thousand dollars plus interest thereon . . . and costs . . . for **all malpractice claims** because of **injuries** to or death of **any one patient**. [Emphasis supplied]

Any amount awarded from a judgment, settlement or arbitration in excess of one hundred thousand dollars shall be paid from the LPCF pursuant to the provisions of R.S. 40:1299.44(C). La. R.S. 40:1299.42(B)(3)(a).

Addressing the availability of multiple caps under the terms of the MMA, our brethren on the fourth circuit stated in **LaMark v. NME Hospitals, Inc.**, 542 So.2d 753 (La. App. 4 Cir. 1989):

> [W]e reject appellants' argument that [La.]R.S. 40:1299.42(B) should be interpreted as a limitation on each separate claim for a single act of malpractice, as opposed to a limitation on the total amount recoverable for all malpractice claims for injuries to or death of a patient. If we were to accept appellants' interpretation, we would inject incalculable instability into the computation of the surcharge levied against health care providers in funding the LPCF. This instability would undoubtedly increase the surcharge, the cost of which could be expected to be passed to the patients of Louisiana. Additionally, we believe that the language of [La.]R.S. 40:1299.42(B)(1) is clear that the limitation applies to all malpractice claims, for which recovery shall be limited to $500,000.00 in total. The clear language of the law shall not be ignored in search of the intent of the legislature. [La. Civ. Code art. 9].
> **LaMark**, 542 So.2d at 756 [emphasis in original].

Later, the Louisiana Supreme Court, in **Rodriguez v. Louisiana Medical Mutual Insurance Company**, 618 So.2d 390 (La. 1993), discussed the rationale for liability caps and opined:

> The potential adverse effect of the [MMA] is that persons most grievously injured by medical negligence are subject to reduced quantum recovery as a consequence of the cap on damages. The purported corresponding advantage is the enhanced prospect of medical personnel staying in Louisiana with the result that medical care will be more available to the citizens of the state. In addition, those injured by medical malpractice will purportedly be better off in that there will be a solvent defendant from which to pursue compensation, at the least $100,000 from the health care provider and up to an additional $400,000 from the [LPCF].
>
> . . . .
>
> The Legislature has thus created a special scheme of compensation for those injured by medical malpractice. In the process, the substantive caps and discreet procedures established by the Legislature were particularly detailed.

Rodriguez, 618 So.2d at 393.

With respect to the case presently before us, we agree with the trial court's finding that the operating cause of plaintiffs' harm was Dr. Jarrott's repeated, negligent issuance of prescription pain medication to their daughter Kerri resulting in successive overdoses, with each such incident constituting a separate and distinct act of malpractice producing independent damages. Having found separate and distinct acts of negligence with independent damages, we nevertheless agree with Dr. Jarrott that the total amount recoverable for all malpractice claims resulting in injury or death to a single patient, as a result of the negligence of any number of health care providers within a continuous course of treatment, is statutorily limited to $500,000.00 plus interest and cost, with a single qualified health care provider not liable for an amount in excess of $100,000.00 plus interest and cost. The trial court erred in awarding multiple caps pursuant to the MMA; therefore, the awards made by the trial court must accordingly be reduced.

In the course of our review, we further note the language of La. R.S. 40:1299.39(F) of the Malpractice Liability for State Services Act ("MLSSA"), which provides:

> Notwithstanding any other provision of the law to the contrary, no judgment shall be rendered and no settlement or compromise shall be entered into for the injury or death of any patient in any action or claim for **an** alleged **act of malpractice** in excess of five hundred thousand dollars plus interest and costs, exclusive of future medical care and related benefits valued in excess of such five hundred thousand dollars. [Emphasis supplied].

The Louisiana Supreme Court in **Batson v. South Louisiana Medical Center**, 99-0232 (La. 11/19/99), 750 So.2d 949, interpreted the provisions of La. R.S. 40:1299.39(F) and stated:

> We hold that the MLSSA does not foreclose the possibility of a plaintiff recovering more than one cap for multiple injuries resulting from multiple acts of malpractice. The MLSSA limits recovery to $500,000.00 for "**the injury**" for "**an** alleged **act** of malpractice." The use of the singular nouns "injury" and "act" denotes that the legislature did not intend to limit a plaintiff to one recovery for multiple **injuries** resulting from multiple **acts** of malpractice. The plain language of the Act gives no indication that a plaintiff should be limited to a single recovery of $500,000.00, irrespective of how many acts of malpractice are performed against him or her. The language of [La.]R.S. 40:1299.39(F) should be interpreted to indicate by inference that the total amount recoverable for **each** act of malpractice

> shall not exceed $500,000.00. To hold that a plaintiff can only recover one cap regardless of how many times he or she is the victim of malpractice would imply that when a person enters a hospital and is the victim of an initial act of malpractice, all other health care providers have free reign to commit any number of additional negligent acts with full immunity. Clearly, the legislature did not intend such an outrageous result.
> **Batson**, 99-0232 at p. 11, 750 So.2d at 957 [emphasis in original].

This court is also mindful of the language found in **Conerly v. State**, 97-0871, p. 8 (La. 7/8/98), 714 So.2d 709, 713, wherein our supreme court noted that pursuant to 40:1299.39(D) of the MLSSA, "it was the legislature's intention that a claimant suing under the MLSSA [a/k/a the "public act"] should not recover more than a claimant suing under the private act [MMA] when the same circumstances are presented." The court further noted the discrepancies between the "public act" and the "private act" and went on to hold that when there is an act of malpractice causing the death of a patient, and plaintiffs bring survival action and wrongful death claims, La. R.S. 40:1299.39 [the "public act"] provides there is but one $500,000.00 cap applicable to all claims. **Conerly**, 97-0871 at p. 9, 714 So.2d at 714.

For the foregoing reasons, we hereby reduce the awards made by the trial court to $500,000.00 plus interest and cost, and find Dr. Jarrott not liable for an amount in excess of $100,000.00 plus interest and cost.

Negligence of Dr. Jarrott

The third issue put forth by Dr. Jarrott is whether the trial court erred in its determination that his negligence was responsible for Kerri's death. In his brief to this court, Dr. Jarrott cites apparent deviations from autopsy protocol together with discrepancies in the autopsy report and toxicology studies of fluids withdrawn from Kerri's body following her death. It is the position of Dr. Jarrott that Kerri's death did not result from medications that he prescribed, but was instead caused by medications prescribed to Kerri by another physician.

Prior to filing the instant consolidated actions in the trial court, plaintiffs filed on August 19, 1998, a request for a Medical Review Panel pursuant to the MMA seeking an expert opinion regarding Dr. Jarrott's treatment of their daughter Kerri. After reviewing the evidence, the Medical Review Panel composed of Dr. E. Thomas Cullom, III, Dr. R.C.

Llewellyn, and Dr. William J. Johnston unanimously found in an opinion rendered March 22, 2000, "that the evidence does support the conclusion that . . . [Dr. Jarrott] . . . failed to meet the applicable standard of care as charged in the complaint." In written reasons that followed, the aforesaid physicians opined:

> The management of the patient did not meet the standard of care. At least by October of 1996, the patient should have been referred by Dr. Jarrott for comprehensive pain management.
>
> The conduct complained of was a factor of resultant damages, to the extent that it contributed to the continuing mismanagement of her chronic pain problem.

Following the rendition of their opinion, the panel physicians appeared and answered questions under oath posed to them by counsel for Dr. Jarrott. The panel members agreed that while the individual doses of medication may not have been excessive, the types of medications, in combination with other prescribed medications, coupled with the fact that Kerri failed to show improvement after one year, should have indicated to Dr. Jarrott the need for referral for more appropriate treatment.

The panel was further questioned specifically regarding Dr. Jarrott's contention that the autopsy indicated not all of the medications ingested by Kerri had been prescribed by Dr. Jarrott. In response, Dr. Cullom stated that Dr. Jarrott's failure to manage Kerri's treatment contributed to her general downward spiral and pattern of repeated overdoses, which required that she obtain medications from anywhere in her attempt to obtain relief. Dr. Cullom surmised if that pattern could have been broken, perhaps a different result could have been reached.

Dr. Jarrott was also charged by an administrative complaint with medical incompetency. In accordance with the provisions of the Administrative Procedures Act (La. R.S. 29:955-58), the State Board of Medical Examiners after weighing the testimony provided by the witnesses and experts called before it, rendered its opinion and by a standard of clear and convincing evidence concluded:

> We think it clear that Dr. Jarrott is guilty of the charges against him in all respects. Not only is he deficient in his documentation, but he continued to prescribe controlled substances to this patient, even after he was aware that she had a drug problem. After he learned, in October, 1996, that she had successfully completed a detoxification program, and

> was handling her pain without medication, he started her up on controlled substances again almost immediately. He made no inquiry of any of the other doctors or medical facilities of whom he was aware to learn what they had done for his patient, and what history they had for her. Even Dr. Jarrott, in retrospect, concedes that these things should have been done. We express no opinion as to whether his treatment of this patient resulted in her death.

Based upon the foregoing expert opinion, we think the trial court was within its considerable discretion in concluding Dr. Jarrott's negligence was responsible for Kerri's death. We find this assignment to be without merit.

Award of Damages for 3 of 4 Overdoses

The issue presently before us appears to be whether the trial court erred in awarding plaintiffs damages for 3 incidents for which Kerri was rushed to a hospital to have her stomach pumped where, Dr. Jarrott claims, there was no evidence to support the conclusion that Kerri overdosed on drugs prescribed to her by Dr. Jarrott.

In our disposition of the previous issue raised by Dr. Jarrott, we cited the opinion of the Medical Review Panel physicians charged with the investigation of this matter. We noted that it was the panel's belief that Dr. Jarrott's failure to manage Kerri's treatment contributed to her general downward spiral and pattern of repeated overdoses, which required that she obtain medications from anywhere in her attempt to obtain relief. This assignment is similarly without merit.

Quantum of Damages

The fifth and final issue put forth by Dr. Jarrott is whether the trial court erred in its award of $50,000.00 to plaintiffs for each alleged overdose. Each overdose incident necessitated Kerri being rushed to the hospital to have her stomach pumped. As part of their Post-Trial Memorandum, plaintiffs alleged "on the 25th day of August, 2005, plaintiffs' [sic] stipulated that the survival actions are limited to no more than $50,000.00 each." The trial court ultimately found Dr. Jarrott liable for four of the nine overdose episodes alleged by plaintiffs and awarded plaintiffs $50,000.00 for each incident.

It is the position of Dr. Jarrott that said awards are "grossly excessive" and in his brief to this court, Dr. Jarrott cites several cases involving food poisoning and chemical exposure wherein the maximum award was $25,000.00.

With respect to the trial court's award of damages, it is well settled that a trial court has much discretion in assessing damages in cases of offenses and quasi offenses. La. Civ. Code art. 2324.1. On appellate review, damage awards will be disturbed only when there has been a clear abuse of that discretion. **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1260 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994). Based upon our review of the record in this matter, we find the awards made by the trial court to be appropriate given the facts of this case. Although some may consider the sums awarded to be on the high side, the damages awarded to plaintiffs do not constitute an abuse of the trial court's much discretion. This assignment of error is also without merit.

CONCLUSION

For the above and foregoing reasons, we hereby amend the damages awarded by the trial court's judgment so as to comply with the MMA's statutory limitation of $500,000.00 plus interest and costs. In compliance with the statute, we further reduce Dr. Jarrott's responsibility for the damages awarded to $100,000.00 plus interest and costs. In all other respects, the judgment of the trial is affirmed. The costs of the instant appeal shall be assessed against defendant, Dr. David M. Jarrott.

AMENDED, AND AS AMENDED, AFFIRMED.

DONALD SINGER AND ILENE SINGER INDIVIDUALLY AND ON BEHALF OF KERRI SINGER (DECEASED) AND THE SUCCESSION OF KERRI SINGER

VERSUS

DR. DAVID JARROTT AND ABC INSURANCE COMPANY

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 CA 1562 C/W

NOS. 2008 CA 1563-2008 CA 1571

McDONALD, J. CONCURS IN PART AND DISSENTS IN PART:

I agree with the report in this case in most respects. I agree that the action taken by the district court was appropriate and allowed under the order from the Bankruptcy Court. I also agree with the finding that one rather than multiple caps applies under the facts of this case. I also agree with affirming the trial court's finding of negligence on the part of Dr. Jarrott. I disagree on the issue of the amount of quantum of damages.

I recognize the vast discretion that the trial court possesses on the issue of quantum. However, it is still reviewable under the abuse of discretion standard. One problem I have with the decision of the trial court in this case is that he did not use any discretion, he used a cookie cutter. To award the same quantum for four separate incidents with different facts seems to me an absence, not an abuse, of discretion. Also, the award of $50,000 for the September 17, 1997 overdose that resulted in her death is inexplicable. There is absolutely no evidence to support an award of $50,000 for the pain and suffering of a person who died of an overdose of tranquilizers and pain medication. In addition to the fact that the same award under different facts is an abuse (or lack) of discretion, I find a $50,000 award for any of the incidents to be an abuse of discretion.

Further, I believe that the law requires the comparative fault of Kerri Singer to be considered. This 35 year old person repeatedly engaged in the same negligent behavior that ultimately led to her death. Also, the emergency room records indicate the presence of drugs not prescribed by Dr. Jarrott, and on at least

one occasion, illegal drugs (marijuana). I realize this is a difficult determination for the trial court to make, especially under these tragic circumstances. Nevertheless, civil code article 2323 requires that "in any action for damages where a person suffers injury, death, or loss, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined." Further, paragraph B of that article provides that this determination "shall apply to any claim for recovery of damages for injury, death, or loss asserted under any law or legal doctrine or theory of liability, regardless of the basis of liability."

Therefore, I respectfully dissent on the issue of quantum and the failure to consider the comparative fault of the decedent.