SUPREME COURT OF LOUISIANA

No. 97-CA-0055

CHRISTINA N. AND JOSEPH P. WILLIAMS, ET AL.

Versus

STATE OF LOUISIANA, DEPARTMENT OF HEALTH
AND HOSPITALS, ET AL.

ON APPEAL
FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
FOR THE PARISH OF JEFFERSON
HONORABLE PATRICK J. McCABE, JUDGE

KNOLL, J.[1]

In this medical malpractice suit, the plaintiffs attack the constitutionality of the $500,000 cap in favor of the State. The trial court determined that the portion of La.R.S. 40:1299.39[2] which imposes a $500,000 statutory medical malpractice cap on damages awarded against a state health care provider contravenes the state constitutional proscription against sovereign immunity, namely, La.Const. Art. XII, §

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[1] Marcus, J., not on panel. Rule IV, Part 2, § 3.

[2] Prior to 1988, the time when the alleged medical malpractice began, La.R.S. 40:1299.39(B) provided, in pertinent part:

> Limitation of liability. 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.

After 1988 La.R.S. 40:1299.39(B) was minimally rewritten with limited grammatical changes and renumbered as La.R.S. 40:1299.39(F).

10(A).[3] We reverse the trial court's ruling, finding this constitutional argument misplaced. Since non-governmental tortfeasors are afforded the same substantive defenses as governmental tortfeasors, La.R.S. 40:1299.39 does not contravene the proscription against sovereign immunity in La.Const. Art. X, § 10(A).

FACTS

From 1986-1989, Dr. Walter Prickett treated plaintiffs' minor son for attention-deficit disorder with hyperactivity. Treatment, consisting of prescribing various doses of ritalin, was dispensed at the East Jefferson Mental Health Center (East Jefferson), Dr. Prickett's former employer. The Louisiana Department of Health and Hospitals (the State) operates East Jefferson. On October 13, 1989, plaintiffs' son was admitted to F. Edward Hebert Hospital where he was diagnosed with ritalin dependency.

Plaintiffs then filed a medical malpractice complaint in October 1990 pursuant to the Malpractice Liability for State Services Act, La.R.S. 40:1299.39, et seq. A medical review panel determined that the evidence supported a finding that Dr. Prickett, the State, and East Jefferson failed to comply with the appropriate standard of care and that this failure caused plaintiffs' son to suffer substantial damage to his health.

Initially, plaintiffs sued the State, East Jefferson, and Dr. Prickett, alleging that the State and East Jefferson were liable under the doctrine of respondeat superior. Subsequently, the plaintiffs removed East Jefferson as a defendant, dismissed Dr. Prickett without prejudice, and reserved their rights to proceed against the State.

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[3] Prior to 1995, La.Const. Art. XII, § 10(A) read:

> Section 10. (A) No Immunity in Contract and Tort.
>
> Neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or for injury to personal property.

On the final day of trial, June 30, 1994, the plaintiffs hand-delivered a letter and a copy of our decision in *Chamberlain v. State through DOTD*, 624 So.2d 874 (La. 1993) to the State, advising them that they were challenging the $500,000 statutory cap placed on monetary damages in medical malpractice cases. After conducting a trial on the merits, the trial court found the State liable for plaintiffs' damages and awarded total damages of $2,019,800.86, well in excess of the $500,000 cap imposed by La.R.S. 40:1299.39. The trial court reasoned that La.R.S. 40:1299.39 was rendered unconstitutional by our opinion in *Chamberlain* wherein we held that the $500,000 limitation on damages set forth in La.R.S. 13:5106(B)(1) contravened the constitutional proscription against sovereign immunity provided in La.Const. Art. XII, § 10(A).

In accordance with La.Const. Art. V, § 5(D)[4] the State directly appealed to this court. Finding that the trial court prematurely declared La.R.S. 40:1299.39 unconstitutional because the plaintiffs failed to properly raise the constitutional issue, we set aside the trial court's ruling and remanded the case to the trial court for proper consideration. *Williams v. State*, 95-0713 (La. 1/26/96), 671 So.2d 899, 902.

On remand, the plaintiffs amended their petition to specifically challenge the constitutionality of La.R.S. 40:1299.39. Plaintiffs alleged that:

> LA R.S. 40:1299.39(B), establishing a limitation of liability for the State of Louisiana in medical malpractice cases, has been rendered unconstitutional by the case of Chamberlain v. State, 624 So.2d 874 (1993) and, therefore, [the] statutory cap of $500,000 does not apply.

After hearing further argument from the parties, the trial court again declared the statute unconstitutional "insofar as it limits damages recoverable by a plaintiff injured through malpractice committed by agents of the State of Louisiana." The trial court denied the State's motions for a new trial and clarification of judgment.

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[4] La.Const. Art. V, § 5(D) provides, in pertinent part, that "[i]n addition to other appeals provided by this constitution, a case shall be appealable to the supreme court if (1) a law or ordinance has been declared unconstitutional. . . ."

The State has again directly appealed to this court, contending: (1) La.R.S. 40:1299.39 is constitutional because it does not contravene the proscription against sovereign immunity; (2) if the statute was unconstitutional, amendments to La.Const. Art. XII, § 10 in 1995 cured the infirmity and are applicable retroactively; and (3) no other avenue of constitutional attack is properly before the court.

DISCUSSION

The jurisprudence is firmly established that we should not address the constitutionality of legislation unless it is essential to decide the case or controversy. *Commercial Nat'l Bank in Shreveport v. Scott*, 398 So.2d 1127 (La. 1981). Likewise, it is axiomatic that before we reach the question of whether La.R.S. 40:1299.39 violates Article XII, § 10(A) of the Louisiana Constitution, we must first inquire into whether the questioned statute calls prohibited sovereign immunity into play. For the following reasons we find that the trial court improperly resolved this case on constitutional grounds.

In order to address this threshold issue, we will begin by referring to *Chamberlain v. State through DOTD*, 624 So.2d 874 (La. 1993). Although in *Chamberlain* we reached the constitutionality issue and found the offending statute violative of the abrogation of sovereign immunity, an outcome that differs from our resolution of the case *sub judice*, we find that the *Chamberlain* case presents us with a window to better view the question presently before us. In *Chamberlain* we noted that:

> In prohibiting immunity from liability as well as from suit, the framers [of La.Const. Art. XII, § 10(A)] clearly intended that the state not be afforded substantive defenses, unavailable to private litigants, based simply on its governmental status.

Chamberlain, 624 So.2d at 886.

Based upon this reasoning, we found that La.R.S. 13:5106(B)(1), a statute which limited general damage recovery from the State in all cases, was unconstitutional under La.Const. Art. XII, § 10(A) because no corresponding limitation of liability applied to private defendants. Such is not the case before us.

In *Butler v. Flint-Goodrich Hosp.*, 607 So.2d 517 (La. 1992), *cert. denied*, 508 U.S. 909 (1993), we upheld the constitutionality of the $500,000 cap on medical malpractice judgments available to ***suits against private defendants*** through the application of La.R.S. 40:1299.42(B)(1). In particular, we found that La.R.S. 40:1299.42(B)(1) did not contravene the provisions of the Louisiana Constitution and the Federal Constitution. Thus, it is evident that private defendants in the medical malpractice arena are afforded the benefits of a statutory cap on judgments against them.

La.R.S. 40:1299.39, the statute challenged in the present case, imparts to the governmental tortfeasor the same limitation of liability that is provided to non-governmental tortfeasors who commit medical malpractice. Therefore, since the legislature afforded the State a substantive defense, *vis-a-vis* a statutory limitation of damage, equally available to private citizens, it is clear that the statute under attack does not violate La.Const. Art. XII, § 10's proscription against sovereign immunity. *See Levron v. State*, 94-2094 (La.App. 4 Cir. 4/24/96), 673 So.2d 279, *writs den'd*, 96-1684, 96-1723 (La. 10/4/96), 679 So.2d 1387, 1391.

This pronouncement fully comports with our earliest rulings on sovereign immunity decided under the 1974 Constitution.[5] In *Segura v. Louisiana Architects*

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[5] We further note that our determination conforms with the interpretation of sovereign immunity prior to the 1974 constitution. In *Lewis v. State*, 207 La. 194, 20 So.2d 917 (1945), we stated:

> The Legislature, by adoption of Act 273 of 1942, having for its special purpose to permit Ms. Lewis to sue the State and to permit the State to stand in judgment in such a suit, and authorizing the payment of any judgment which might be rendered therein, placed the State

Selection Board, 362 So.2d 498 (La. 1978), we held La.R.S. 13:4521, a statute which purported to exempt governmental units from court costs, unconstitutional under La.Const. Art. XII, § 10 because it attempted to relieve the government from an aspect of liability which private litigants did not have at their disposal. Similarly, in *Jones v. City of Baton Rouge*, 388 So.2d 737 (La. 1980), we rejected the view of the appellate court that public bodies should be exempt from the strict liability recognized in La.Civ. Code art. 2317 (West 1971). Since private parties could be held liable on the basis of strict liability, we found that the appellate court's interpretation of La.Civ. Code art. 2317 impermissibly created an exception to liability which was prohibited by the State's waiver of sovereign immunity in La.Const. Art. XII, § 10.

These cases illustrate that we have consistently held that the abrogation of sovereign immunity demands that governments be limited to the substantive defenses that are available to private party defendants similarly situated. Simply stated, the abrogation of sovereign immunity necessitates the application of the law of the land equally to the sovereign and the private litigant. Accordingly, we find plaintiffs' constitutional attack misplaced, as the statute at issue is equally available to the sovereign and the private litigant; therefore, it does not contravene the proscription against sovereign immunity.

We further find that the issue of whether La.R.S. 40:1299.39 violates Article I, § 3 of the Louisiana Constitution[6] is not before us. As we enunciated in *Williams*, 671

> in the same situation as would be a private corporation which is made a defendant in a tort suit. The State in such a suit must be held just as responsible as a private corporation for the negligent acts of its agents or employees . . . When the Legislature grants authority to sue the State, the rules of law and procedure applicable to suits between individuals on a like or similar cause of action apply to such a suit so far as they are not negatived by the plain terms of the grant.

Lewis, 20 So.2d at 922.

[6] "No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or

So.2d 899, 901, "the unconstitutionality of the statute must be specially pleaded [in the trial court] and the grounds for the claim particularized." *Accord Vallo v. Gayle Oil Co., Inc.*, 646 So.2d 859 (La. 1994); *Johnson v. Welsh*, 334 So.2d 395 (La. 1976). As quoted *supra*, the Williams' sole particularization was that our decision in *Chamberlain* rendered La.R.S. 40:1299.39(B) unconstitutional. A review of *Chamberlain* shows that the sole constitutional issue raised was a violation of La.Const. Art. XII, § 10, prohibiting sovereign immunity. Since the Williams failed to particularize any other constitutional issue, we find that they are precluded from now raising any other constitutional violation.

For the foregoing reasons, the judgment of the trial court which declared La.R.S. 40:1299.39 unconstitutional is reversed and set aside. This matter is remanded to the trial court to render judgment in accordance with our reasoning herein and to allow the parties an opportunity to appeal the damage award to the appellate court should they so choose.

REVERSED AND REMANDED.

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unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime."