

2/5/01

SUPREME COURT OF LOUISIANA

NO. 01-CC-0326

KERRY WESTMORELAND

VS.

TOURO INFIRMARY HOSPITAL

Kimball, J., dissenting

I respectfully dissent from the court's decision to grant this writ. In my view, if the defendant, PCF, wished to have its case heard before a jury and was relying on the plaintiff's request for a jury trial in order to accomplish that end, the PCF should have at least inquired as to whether the jury bond was posted in a timely fashion. The trial court issued an order that the jury bond be posted not later than thirty days prior to the beginning of trial, or by January 2, 2001. The PCF was aware of that order and the January 2, 2001, deadline. When the plaintiff failed to post the bond, the defendant had an additional ten days to request a jury trial under La. Code Civ. Proc. art. 1733, and the defendant failed to do so. I find that the question of whether the PCF is actually required to post a jury bond is irrelevant, because the real issue is whether the PCF timely filed a request for a jury trial, which in my view, it clearly did not.