

The Supreme Court of the State of Louisiana

SHANTELL JENKINS, INDIVIDUALLY AND
ON BEHALF OF MINOR CHILD, ASTON
JENKINS

No. 2021-CC-01662

VS.

ARBORS ON THE LAKE APARTMENTS,
PROVIDENCE INVESTMENTS, L.L.C., AND
ABC INSURANCE COMPANY

IN RE: Arbors on the Lake, 2018, LLC - Applicant Defendant; Providence
Investments, LLC - Applicant Defendant; Applying For Supervisory Writ, Parish of
Orleans Civil, Orleans Civil District Court Number(s) 2019-12458, Court of Appeal,
Fourth Circuit, Number(s) 2021-C-0568;

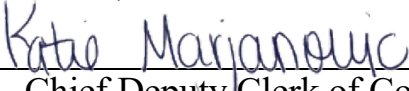
March 22, 2022

Writ application granted. See per curiam.

SJC
JLW
JDH
JTG
WJC
JBM

Griffin, J., would grant and docket.

Supreme Court of Louisiana
March 22, 2022



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2021-CC-01662

**SHANTELL JENKINS, INDIVIDUALLY AND ON BEHALF OF MINOR
CHILD, ASTON JENKINS**

VS.

**ARBORS ON THE LAKE APARTMENTS, PROVIDENCE
INVESTMENTS, L.L.C., AND ABC INSURANCE COMPANY**

On Supervisory Writ to the Orleans Civil District Court, Parish of Orleans

PER CURIAM

The issue presented in this case is whether the owners of an apartment building are entitled to summary judgment on the ground plaintiff has failed to produce evidence that her fall in the building resulted in complications in her pregnancy. For the reasons that follow, we conclude summary judgment is appropriate.

UNDERLYING FACTS AND PROCEDURAL HISTORY

This litigation arises from an accident which occurred at the Arbors on the Lake Apartments. Plaintiff, Shantell Jenkins, was on the premises for the purpose of conducting a final inspection of the apartment that she had previously occupied. As she did so, plaintiff alleges she slipped and fell over parts of a door lock which had been improperly left on the floor of the apartment by maintenance personnel. At the time of her fall, plaintiff was twenty-four weeks pregnant with her third child.

One week after her fall, plaintiff presented to her obstetrician/gynecologist, Dr. Sheena Pullman, complaining of increased vaginal leaking. Dr. Pullman diagnosed plaintiff with premature preterm rupture of the membrane (“PPROM”). Eighteen days later, plaintiff’s son was prematurely born.

Subsequently, plaintiff filed the instant suit against the owners of the apartment complex, Arbors on the Lake, 2018, LLC and Providence Investments,

LCC (collectively referred to hereinafter as “defendants”). Plaintiff alleged her fall caused her PPRM and son’s premature birth.

During discovery, the parties took the deposition of Dr. Pullman. Dr. Pullman testified she has been plaintiff’s treating physician for many years and had delivered plaintiff’s previous children without incident.

Dr. Pullman testified plaintiff’s fall could have been a risk factor for her PPRM and premature delivery. However, she admitted plaintiff had other conditions which also could have been risk factors, including uterine fibroids, bacterial vaginosis, and plaintiff’s job as a “pole-dancing instructor.” When asked whether she was able to say which of these risk factors caused the PPRM, Dr. Pullman replied, “I can’t say which one [may] have been linked to it, no.” Additionally, Dr. Pullman agreed that she was unable to say it was more probable than not that the trauma from the fall led to plaintiff’s PPRM.

Following discovery, defendants moved for summary judgment, arguing plaintiff cannot sustain her burden of proof at trial. In support, they relied on Dr. Pullman’s deposition in which she admitted she could not relate plaintiff’s PPRM or the premature birth of her son to the fall.

Plaintiff opposed the motion. Although she did not cite any direct evidence linking her injuries to the fall, she asserted she could rely on circumstantial evidence, such as the fact that Dr. Pullman stated she did not diagnose plaintiff with PPRM until after the fall, to carry her burden of proof at trial.

After a hearing, the district court denied defendants’ motion for summary judgment. Defendants applied for supervisory review, which the court of appeal denied.

Upon defendants' application to this court, we ordered written briefing pursuant to the provisions of La. Code Civ. P. art. 966(H).¹ Having received briefs from both parties, we now review the district court's ruling on the motion for summary judgment on the merits.

DISCUSSION

A ruling on a motion for summary judgment is reviewed under a de novo standard, with the appellate court using the same criteria that govern the trial court's determination of whether summary judgment is appropriate, i.e., whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Guidry v. Brookshire Grocery Co.*, 19-1999 (La. 2/26/20), 289 So.3d 1026, 1027; *Murphy v. Savannah*, 18-0991 (La. 5/8/19), 282 So.3d 1034, 1038; *Wright v. Louisiana Power & Light*, 06-1181 (La. 3/9/07), 951 So.2d 1058, 1070.

Pursuant to La. Code Civ. P. art. 966(D)(1), the burden on the party moving for summary judgment "does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense." *Reynolds v. Bordelon*, 14-2371 (La. 6/30/15), 172 So.3d 607, 610–11. When a motion for summary judgment is made and supported, an adverse party may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise, must set forth specific facts showing that there is a genuine issue for trial. La. Code Civ. P. art. 967(B); *Bufkin v. Felipe's Louisiana, LLC*, 14-0288 (La. 10/15/14), 171 So.3d 851, 858. Once a motion for

¹ As required by the article, we permitted the parties an opportunity to request oral argument and entertained plaintiff's request for argument. After careful consideration, we found oral argument was unnecessary under the facts of this case and therefore elected to exercise our discretion to consider the matter on written briefs only.

summary judgment has been properly supported by the moving party, the failure of the non-moving party to produce evidence of a material factual dispute mandates the granting of the motion. *Dauzat v. Curnest Guillot Logging Inc.*, 08-0528 (La. 12/2/08), 995 So.2d 1184, 1187 (citing *Babin v. Winn–Dixie Louisiana, Inc.*, 00-0078 (La. 6/30/00), 764 So.2d 37, 40).

In this case, plaintiff has alleged her fall caused her PPRM and premature delivery. The jurisprudence has generally recognized that “expert medical testimony is required when the conclusion regarding medical causation is one that is not within common knowledge.” *Jones v. Capitol Enterprises, Inc.*, 11-0956 (La. App. 4 Cir. 5/9/12), 89 So.3d 474, 505, *writ denied*, 12-1634 (La. 10/26/12), 99 So.3d 651. We find the complex nature of plaintiff’s injuries do not fall within the scope of common knowledge and must be established through expert testimony.

Medical certainty is not required to establish medical causation; rather, the plaintiff’s burden of proving causation is satisfied if medical evidence is presented establishing that it is more probable than not that the claimed condition was caused by the accident. *Chavers v. Travis*, 04-0992 (La. App. 4 Cir. 4/20/05), 902 So.2d 389, 400–01.

The only medical expert identified by plaintiff is Dr. Pullman. Dr. Pullman admitted she was unable to say that it was more probable than not that plaintiff’s injuries were caused by the fall. Therefore, we conclude defendants satisfied their burden of showing an absence of factual support for an essential element of plaintiff’s claim.

In response to defendants’ motion, plaintiff argues that even in the absence of direct medical evidence, she can satisfy her burden at trial through the use of circumstantial evidence. In particular, plaintiff relies on Dr. Pullman’s testimony indicating that prior to the accident, plaintiff had a normal pregnancy, but

approximately one week after the accident, she complained of leaking fluid, which Dr. Pullman noted was not “normal.”

If circumstantial evidence is relied upon, that evidence, taken as a whole, must exclude every other reasonable hypothesis with a fair amount of certainty.

Stephenson v. Bryce W. Hotard Sunbelt Rentals, Inc., 19-0478 (La. 5/20/19), 271 So.3d 190, 192; *Rando v. Anco Insulations Inc.*, 08-1163 (La. 5/22/09), 16 So.3d 1065, 1090.

As we have already observed, Dr. Pullman’s testimony, when considered as a whole, does not support the conclusion that it was more likely than not that the fall caused plaintiff’s injuries. To the contrary, Dr. Pullman identified the fall along with several other risk factors affecting plaintiff and admitted she could not say which of these factors were linked to plaintiff’s PPRM and premature delivery. Therefore, we find plaintiff has failed to exclude other reasonable explanations for her injuries other than the fall and cannot rely on circumstantial evidence to establish that there is a genuine issue of material fact.²

In conclusion, we find defendants satisfied their burden on summary judgment by showing an absence of factual support for an essential element of plaintiff’s claim. Plaintiff has failed to set forth any specific facts showing that there is a genuine issue of material fact which must be resolved at trial. Accordingly, summary judgment in defendants’ favor is mandated.

² Plaintiff also suggests she could benefit from the presumption set forth in *Housley v. Cerise*, 579 So.2d 973, 980 (La. 1991), in which we recognized a “disability is presumed to have resulted from an accident, if before the accident the injured person was in good health, but commencing with the accident the symptoms of the disabling condition appear and continuously manifest themselves afterwards, providing that the medical evidence shows there to be a reasonable possibility of causal connection between the accident and the disabling condition.” However, the presence of plaintiff’s other preexisting risk factors indicate she was not in complete good health prior to the accident. Additionally, in *Housley*, the plaintiff’s symptoms manifested immediately after the fall. In the instant case, plaintiff’s symptoms did not become apparent until a week later.

DECREE

For the reasons assigned, the writ is granted. The judgment of the district court is reversed. Summary judgment is granted in favor of Arbors on the Lake, 2018, LLC and Providence Investments, LCC, and plaintiff's action against these defendants is dismissed with prejudice.