

The Supreme Court of the State of Louisiana

ANDRIA DOWNING, EXECUTRIX OF THE
ESTATE OF MELISSA DOWNING ON
BEHALF OF THE ESTATE OF MELISSA
DOWNING, DARON DOWNING, ANDRUS
DOWNING, ANDRIA DOWNING, ANDRE
DOWNING, AND AMARYD DOWNING

No. 2023-CC-00039

VS.

THE STATE OF LOUISIANA THROUGH
THE BOARD OF SUPERVISORS OF
LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICAL
COLLEGE, ET AL.

IN RE: State of Louisiana, through the Board of Supervisors of Louisiana State
University and Agricultural and Mechanical College, et al. - Applicant Defendant;
Applying For Supervisory Writ, Parish of Orleans Civil, Orleans Civil District Court
Number(s) 2015-9813 c/w 2020-1874, Court of Appeal, Fourth Circuit, Number(s)
2022-C-0809;

March 14, 2023

Writ application granted. See per curiam.

SJC

JTG

WJC

JBM

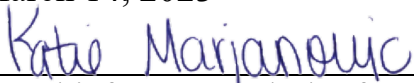
Weimer, C.J., would deny.

Hughes, J., would deny.

Griffin, J., would deny.

Supreme Court of Louisiana

March 14, 2023



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2023-CC-00039

**ANDRIA DOWNING, EXECUTRIX OF THE ESTATE OF MELISSA
DOWNING ON BEHALF OF THE ESTATE OF MELISSA DOWNING,
DARON DOWNING, ANDRUS DOWNING, ANDRIA DOWNING, ANDRE
DOWNING, AND AMARYD DOWNING**

VS.

**THE STATE OF LOUISIANA THROUGH THE BOARD OF
SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICAL COLLEGE ON BEHALF OF LSU
HEALTH SERVICES CENTER, CHARLES SPURGEON CLARK, JR.,
M.D., WILLIARD WARREN MOSIER, JR., M.D., JENNIFER MOONEY,
M.D., REBECCA WARNER SCHROLL, M.D., ALLEN BLAND MARR,
M.D., SAMUEL E. VICTORIA, JR., M.D.**

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

PER CURIAM

In this medical malpractice lawsuit, the defendants (State doctors) filed a motion for summary judgment. At the hearing on defendants’ motion for summary judgment, defendants acknowledged that plaintiffs’ opposition was timely filed on the fifteenth day before the hearing on their motion for summary judgment, but that they were not served until two days before said hearing in violation of La. Code Civ. P. art. 966(B)(2).¹ Thus, defendants objected to the introduction of plaintiffs’ supporting documentation in their opposition as untimely.

Plaintiffs’ counsel stated she attempted to serve defendants by e-mail with the opposition on the fifteenth day, but “the state server blocked that opposition from coming in” Counsel for defendants claimed that the state server could not block the sending of an e-mail, and if certain files were rejected as too large, then the sender would be instructed to create a link in order to send the file.

¹ La. Code Civ. P. art. 966(B)(2) states: “Any opposition to the motion and all documents in support of the opposition shall be filed and served in accordance with Article 1313 not less than fifteen days prior to the hearing on the motion.”

The trial court overruled defendants’ objection and denied their motion for summary judgment, stating: “Based on the arguments and the pleadings, and the memorandum supported, the motion for summary judgment is hereby denied.” Notably, the transcript is unclear, and this Court is unable to determine whether the alleged transmission is effective in accordance with La. Code Civ. P. art. 1313(A)(4).²

As a result, we remand this matter to the trial court to conduct a hearing to determine whether plaintiffs’ e-mail transmission of their opposition was timely filed according to La. Code Civ. P. art. 966(B)(2). In doing so, the trial court is instructed to decide the specific issue of whether plaintiffs have proven that the e-mail transmission of their opposition was effective and certified in accordance with La. Code Civ. P. art. 1313(A)(4).

Should plaintiffs prevail on this specific issue, defendants have the right of review of said ruling. Conversely, should defendants prevail on this specific issue, the trial court shall consider defendants’ motion for summary judgment without consideration of plaintiffs’ opposition.

REMANDED

² La. Code Civ. P. art. 1313(A)(4) states:

Transmitting a copy by electronic means to counsel of record, or if there is no counsel of record, to the adverse party, at the number or addresses expressly designated in a pleading or other writing for receipt of electronic service. Service by electronic means is complete upon transmission but is not effective and shall not be certified if the serving party learns the transmission did not reach the party to be served.