STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2026 CA 0087

KATHERINE B. KENNEDY, WIFE OF HUEY KENNEDY, DECEASED

VERSUS

OCEANS HEALTHCARE, L.L.C. AND OCEANS ACQUISITION, INC.

Judgment Rendered: SEP 23 2026

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On Appeal from the
21st Judicial District Court
Parish of Tangipahoa, State of Louisiana
Trial Court No. 2023-0004421

The Honorable Jeffrey S. Johnson, Judge Presiding

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BEFORE: WOLFE, STROMBERG, and BALFOUR, JJ.

WOLFE, J.

Plaintiff/appellant, Katherine B. Kennedy, wife of Huey Kennedy, deceased ("Mrs. Kennedy"), appeals a judgment rendered by the district court sustaining a dilatory exception raising the objection of prematurity filed by defendant/appellee, Oceans Behavioral Hospital of Kentwood, LLC d/b/a Oceans Behavioral Hospital of Hammond ("Oceans"), dismissing Mrs. Kennedy's claims against Oceans without prejudice. The district court concluded that Mrs. Kennedy's suit was premature because she had not submitted her claims to a medical review panel as required by the Louisiana Medical Malpractice Act ("LMMA"), La. R.S. 40:1231.1, *et seq.* For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On November 27, 2023, Mrs. Kennedy filed a Petition for Damages against Oceans, claiming that her deceased husband, Huey Kennedy ("Mr. Kennedy"), was a patient at Oceans with a diagnosis of dementia. Mr. Kennedy was housed in a secure, locked unit. Mrs. Kennedy further averred that, on June 17, 2023, Mr. Kennedy was allowed to leave his secured housing, without Oceans staff being aware of his absence, an alleged violation of facility protocols. After Oceans staff became aware of Mr. Kennedy's absence, Mrs. Kennedy claims it took them more than one hour to contact local law enforcement and, at that time, it had been over two hours since Mr. Kennedy left the Oceans property. Unfortunately, twenty-four hours later, Mr. Kennedy was found, deceased, in a ditch less than a half mile from the Oceans facility. In her petition, Mrs. Kennedy argued that Mr. Kennedy's eventual death would not have occurred "had the proper and appropriate custodial monitoring been taken in a timely manner by [Oceans]." More specifically, Mrs. Kennedy stated Oceans failed to "properly monitor their custodial patients[,]" "perform custodial rounds to locate patients[,]" "ensure all secured doors remained properly closed/locked/secured[,]" "take proper, timely and appropriate actions

after discovering that a patient was missing[,]" and "provide a safe setting for patients to be housed/confined under their custody and control[.]"

In response to Mrs. Kennedy's petition, Oceans filed a dilatory exception raising the objection of prematurity, maintaining that it is a qualified health care provider[1] under the LMMA. Oceans alleged that Mrs. Kennedy's claims against Oceans sound in medical malpractice, that Mrs. Kennedy had not submitted her claim to a medical review panel prior to filing suit, and, therefore, that Mrs. Kennedy's suit was premature. Specifically, Oceans argued expert medical evidence is necessary, "as certain allegations of negligence by [Mrs. Kennedy] revolve around an inadequate amount of custodial supervision and monitoring, also known as 'rounding[,]' which all were inherently linked to [Mr. Kennedy's] requisite treatment as a dementia patient." Ultimately, Oceans concluded:

> [T]he allegations set forth by [Mrs. Kennedy] all clearly occurred within the scope of activities that Oceans is licensed to perform [as] a behavioral health care provider, particularly the requisite monitoring for patients with dementia. Further, since [Mrs. Kennedy's] alleged injuries were related to and occurred during [Mr. Kennedy's] treatment at Oceans, there is no conceivable argument that the alleged injuries would have occurred had [Mr. Kennedy] not sought treatment.

Mrs. Kennedy opposed Oceans' exception, and generally asserted that her claims do not sound in medical malpractice, that the negligent injuries she alleged were neither treatment related nor a dereliction of professional skill, and that the wrongs she alleged do not require expert medical evidence to determine if the appropriate standard of care was breached by Oceans.[2] Moreover, Mrs. Kennedy argued:

> Simply put, general tort principles under La. C.C. art. 2315 apply to the case at bar. [Oceans] should be liable to [Mrs. Kennedy] in this claim for the failure to provide a secure facility. The operative facts

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[1] The parties do not dispute that Oceans is a qualified health care provider under the LMMA.

[2] Attached to Mrs. Kennedy's opposition were printouts of two appellate court decisions: **Tucker v. Seaside Behavioral Center, LLC**, 2023-0132 (La. App. 5th Cir. 12/27/23), 378 So.3d 879, writ denied, 2024-00140 (La. 3/19/24), 381 So.3d 713 and **LaCoste v. Pendleton Methodist Hosp., L.L.C.**, 2007-0008 (La. 9/5/07), 966 So.2d 519.

> in the case at bar are unrelated to any medical treatment or any physician-related decisions or even nursing-related decisions by [Oceans]. How and why Mr. Kennedy was allowed to leave a secure, lockdown facility relates to [Oceans'] failure to have effective security measures in place to prevent same.

Following a hearing on August 26, 2024, the district court sustained Oceans' exception, stating:

> Here is what I think – this is my ruling. If you want to take out all of the allegations regarding failure to monitor and failure to perform custodial rounds, if you want to take out all of the allegations that would reference a standard of care that they are required to perform and just say, he was at a hospital that was secured, they allowed him to escape – basically plead *res ipsa*, I think it stands, because I do think it is a hybrid. But if you want to go down the road of, they should have been doing it every 15 minutes and they were only doing it every 30 minutes or this is a secure facility based for dementia patients and here is what the standard of care speaks to with regard to dementia patients, I think it is a medmal case.

The district court executed a written judgment on October 10, 2024, which granted Oceans' exception, allowed Mrs. Kennedy two weeks from the date of hearing to amend her petition and remove all allegations of medical malpractice, and, in the absence of such an amendment, dismissed Mrs. Kennedy's petition without prejudice. However, when Mrs. Kennedy did not amend her petition, the district court executed a second written judgment, on August 13, 2025, again granting Oceans' exception and dismissing Mrs. Kennedy's claims without prejudice. It is from this judgment that Mrs. Kennedy now appeals.

ASSIGNMENT OF ERROR

Mrs. Kennedy advances one assignment of error in this appeal: whether the district court erred in finding her allegations are rooted in medical malpractice and, resultantly, granting Oceans' dilatory exception raising the objection of prematurity?

APPLICABLE LAW

The dilatory exception raising the objection of prematurity is provided in La. Code Civ. P. art. 926; **Wilson v. St. Helena School Board**, 2018-1532 (La. App.

1st Cir. 6/3/19), 393 So.3d 358, 360. The exception raising the objection of prematurity questions whether a cause of action has matured to the point where it is ripe for judicial determination. An action will be deemed prematurity when it is brought before the right to enforce it has accrued. La. Code Civ. P. art. 423; **Id.**

Generally, a judgment sustaining an exception raising the objection of prematurity and dismissing a cause of action on that basis is reversed under the manifest error standard of review. **N'Dakpri v. Louisiana State Board of Cosmetology**, 2023-1213 (La. App. 1st Cir. 6/21/24), 392 So.3d 407, 415, writ denied, 2024-00932 (La. 11/6/24), 395 So.3d 1176. However, where a purely legal question is presented, the judgment is reviewed *de novo*. **Id.** On the trial of a dilatory exception, such as prematurity, evidence may be introduced to support or controvert the objection pleaded, when the grounds thereof do not appear from the petition. See La. Code Civ. P. art. 930. Where no evidence is introduced at the hearing, the trial court must render its decision on the exception based upon the facts as alleged in the petition, and all allegations therein must be accepted as true. **N'Dakpri**, 392 So.3d at 415.

The exception raising the objection of prematurity is the proper procedural mechanism for a qualified health care provider to invoke when a medical malpractice plaintiff has failed to submit the claim for an opinion by a medical review panel before filing suit against the provider. **Prejean v. Rodrigue**, 2023-0646 (La. App. 1st Cir. 12/27/23), 381 So.3d 98, 102. If a lawsuit against a health care provider covered by the LMMA has been filed in district court and the claim has not been first presented to a medical review panel in accordance with La. R.S. 40:1231.8(A)(1)(a), the exception raising the objection of prematurity must be sustained, and the suit dismissed. **Prejean**, 381 So.3d at 102. The burden is on the defendant to prove prematurity and initial immunity from a suit as a qualified health care provider under the LMMA. **Id.** The defendant must also show he is

entitled to a medical review panel because the allegations fall within the LMMA. **Id.**

Louisiana Revised Statutes 40:1231.1(A)(13) defines "malpractice" as, in pertinent part: "any unintentional tort [...] including but not limited to failure to render services timely and the handling of a patient [..., or] in the staffing, training, or supervision of health care providers[.]" The LMMA further defines "malpractice" as "all acts associated with the medical treatment of an individual, whether directly related to clinical care or performed in an administrative or managerial capacity necessary for the delivery of such care." Additionally, La. R.S. 40:1231.1(A)(9) defines "health care," in pertinent part, as "any act, treatment, administration, service, or care related to policies and procedures and the administration thereof [...] performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement[.]"

When reviewing whether claims in a petition sound in medical malpractice under the LMMA, courts must "scrutinize[] the allegations for their factual content and determine[] whether they involve healthcare, fall under the LMMA, and must proceed to [a medical review panel]." **Reynolds v. Oaks Nursing & Rehabilitation**, 55,516 (La. App. 2d Cir. 4/10/24), 383 So.3d 1107, 1114, writ denied, 2024-00598 (La. 9/24/24), 392 So.3d 1142. The fact that the plaintiff may have made allegations sounding in both medical malpractice and general tort law does not remove the petition from the penumbra of the LMMA, if a claim for medical malpractice is stated. **Andrews v. Our Lady of the Lake Ascension Community Hosp., Inc.**, 2013-1237 (La. App. 1st Cir. 2/18/14), 142 So.3d 36, 38.

In addition, the Louisiana Supreme Court has emphasized that the LMMA and its limitations for tort liability for a qualified health care provider apply strictly to claims "arising from medical malpractice." **Williamson v. Hospital Service**

Dist. No. 1 of Jefferson, 2004-0451 (La. 12/1/04), 888 So.2d 782, 786. This is so because the LMMA's limitations on the liability of health care providers are special legislation in derogation of the rights of tort victims, and as such, the coverage of the act should be strictly construed. **Billeaudeau v. Opelousas General Hospital Authority**, 2016-0846 (La. 10/19/16), 218 So.3d 513, 520. Therefore, to assist courts in determining whether a certain conduct by a qualified health care provider constitutes "malpractice," the Louisiana Supreme Court has set forth the following six factors:

> (1) whether the particular wrong is 'treatment related' or caused by a dereliction of professional skill;
>
> (2) whether the wrong requires expert medical evidence to determine whether the appropriate standard of care was breached;
>
> (3) whether the pertinent act or omission involved assessment of the patient's condition;
>
> (4) whether an incident occurred in the context of a physician-patient relationship, or was within the scope of activities which a hospital is licensed to perform;
>
> (5) whether the injury would have occurred if the patient had not sought treatment; and
>
> (6) whether the tort alleged was intentional.

Coleman v. Deno, 2001-1517 (La. 1/25/02), 813 So.2d 303, 315-16.

DISCUSSION

As we apply the **Coleman** factors to the instant proceeding, we rely on prior cases involving unsupervised/escapee nursing home residents. Although the cases do not have identical issues to the facts presented herein, we find them to be helpful and instructive. In **McKnight v. D&W Health Services, Inc.**, 2002-2552 (La. App. 1st Cir. 11/7/03), 873 So.2d 18, 20, the mother of a nursing home resident filed suit against a nursing home operator, alleging her son died of injury, heat exhaustion, exposure, and other causes after wandering off the nursing home premises. **Id.** In response, the defendant nursing home operator filed a dilatory

exception raising the objection of prematurity, claiming it is qualified health care provider entitled to the benefit of a medical review panel prior to filing suit. **Id.** On appeal, after the district court denied the nursing home's exception, this court noted that "character of plaintiff's cause of action must be determined from an examination of her petition's allegations[,]" which included that the nursing home had the "care, custody and control" of her son, a "resident" and "patient" of the nursing home. **Id.** at 21. The plaintiff further alleged that, while a resident and patient, her son "was generally in a confused state of mind and was physically unable to care for himself." **Id.** Plaintiff expressly alleged the nursing home operator's "actions in allowing her son to wander off its premises and in failing to locate him and 'return him to proper care' constituted abuse and/or neglect'[.]" **Id.** at 21.

After presenting the relevant allegations, this court then reviewed the definitions of "malpractice" and "health care" under the LMMA, giving particular attention to the lack of a definition for the word "handling," a specified activity encompassed within the definition of "malpractice." Therefore, this court defined "handling" as the "management or having overall responsibility for supervising or directing a patient." **Id.** Ultimately, this court concluded that the alleged negligent conduct would, if proven, amount to a "dereliction of professional skill" as the nursing home allegedly "failed to properly supervise and restrain her late son from leaving the premises[.]" **Id.** at 22. Further, this court concluded that the plaintiff's allegations "clearly bring her claims within the requisite context of 'health care' rendered to a 'patient' during his 'confinement' at a nursing home[,]" and found that the first, second, fourth, fifth, and sixth **Coleman** factors weigh in favor of the conclusion that the plaintiff's claims were grounded in malpractice. **Id.** at 22.

Additionally, in **Dutrey v. Plaquemine Manor Nursing Home**, 2012-1295 (La. App. 1st Cir. 6/17/13), 205 So.3d 934, 938, this court considered the death of

a nursing home resident, who, though blind and suffering from dementia, was nevertheless allowed to smoke a cigarette unsupervised. Unfortunately, the resident was severely burned when his shirt caught fire, untimely resulting in his death. The decedent's siblings filed suit against the nursing home, which then filed a dilatory exception raising the objection of prematurity. **Id.** Relying on **McKnight**, this court ruled that, even in the absence of an evidentiary hearing, the plaintiffs' allegations "clearly established the alleged tort was the result of [the nursing home's] failure to properly assess the decedent's physical and mental incapacities where it determined his smoking status did not require supervision." **Id.** at 948. Ultimately, this court sustained the district court's granting of the nursing home's exception, finding the first, second, third, and sixth **Coleman** factors weighed in favor of the petition's allegations sounding in medical malpractice. **Id.**

Lastly, in **In re Medical Review Panel Proceedings of Lyons**, 51,750 (La. App. 2d Cir. 11/15/17), 245 So.3d 254, 255, an assisted living facility resident who suffered from dementia, was found wandering in the parking lot of the facility looking for her car. The resident was redirected inside the facility and reportedly participated in activities later that afternoon. The resident "was present in her room at the 9:00 p.m. bed check, but she was not there for the 11:00 p.m. bed check. She was subsequently discovered lying unconscious on the ground outside the building below and open third-story window" and it was "determined that she had fallen [twenty-one] feet from an open window." **Id.** at 255-56. On review, the appellate court noted:

> It is indisputable that Alzheimer's disease and the associated dementia that [the patient] suffered from was a medical condition that required health care treatment. In our view, by virtue of its agreement to monitor her health and needs for special services and to take the appropriate measures to provide such care, its failure to secure the safety of [the patient] was an omission constituting health care as defined by the Act as it was 'any act or treatment performed or

> furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.'

Id. at 262-63.

Here, the plain language of Mrs. Kennedy's petition notes that Mr. Kennedy was a "patient admitted to [Oceans] with a diagnosis that included dementia[,]" and that Oceans erred, in pertinent part, by failing to "monitor their custodial patients[,]" "perform custodial rounds to locate patients[,]" and "ensure all secured doors remained properly closed/locked/secured[.]" Additionally, and similar to **Lyons**, Mrs. Kennedy alleged in her petition that Oceans knew Mr. Kennedy had a propensity to wander, as less than one week before his unfortunate death, Mr. Kennedy "was permitted to walk into another patient's room and was struck multiple times in the face by the resident of that room, causing lacerations near his eye and on his forehead."

We, therefore, find that the first **Coleman** factor weighs in favor of a finding of malpractice. In addition, as expert testimony will likely be required regarding the appropriate intervals to conduct patient custodial rounds, we find the second and fourth **Coleman** factors likewise weigh in favor of a finding of medical malpractice. Lastly, had Mr. Kennedy not been a patient at Oceans, he would not have suffered his injuries. In fact, Mrs. Kennedy admits that Mr. Kennedy's eventual death would not have occurred "had the proper and appropriate custodial monitoring been taken in a timely manner by [Oceans]." Therefore, the fifth **Coleman** factor weighs in favor of a finding of medical malpractice. Finally, as neither party suggests Mr. Kennedy's death was a result of an intentional tort, we do not consider the sixth **Coleman** factor.

We recognize the tragic nature of Mr. Kennedy's death, but must find that the facts, as alleged by Mrs. Kennedy and accepted as true, as well as analogous Louisiana jurisprudence, support the district court's ruling that Mrs. Kennedy's

claims sound in medical malpractice and must first be brought before a medical review panel as required by the LMMA. Accordingly, after a thorough *de novo* review of the record, we find no error in the district court's ruling.

CONCLUSION

For the reasons set forth above, we affirm the district court's August 13, 2025 judgment, sustaining the dilatory exception raising the objection of prematurity, and dismissing, without prejudice, plaintiff/appellant, Katherine B. Kennedy, wife of Huey Kennedy, deceased's claims against defendant/appellee, Oceans Behavioral Hospital of Kentwood, LLC d/b/a Oceans Behavioral Hospital of Hammond. Costs of this appeal are assessed to Katherine B. Kennedy, wife of Huey Kennedy, deceased.

AFFIRMED.