

Judgment rendered August 26, 2026.  
Application for rehearing may be filed  
within the delay allowed by Art. 2166,  
La. C.C.P.

No. 56,885-CA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

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|-----------------------|---------------------|
| ROSIE LEE CAUSEY EPPS | Plaintiff-Appellant |
| versus                |                     |

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| LOUISIANA DEPARTMENT OF<br>PUBLIC SAFETY AND<br>CORRECTIONS, STEVEN<br>VENTERS, UNION PARISH<br>DETENTION CENTER, AND<br>TAMRYA YOUNG | Defendants-Appellees |
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Appealed from the  
Third Judicial District Court for the  
Parish of Union, Louisiana  
Trial Court No. 49,204

Honorable Monique Babin Clement, Judge

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\* \* \* \* \*

Before COX, STEPHENS, and HUNTER, JJ.

## **HUNTER, J.**

Plaintiff, Rosie Lee Causey Epps, appeals a district court judgment granting motions for summary judgment filed by defendants, State of Louisiana, through the Department of Public Safety and Corrections, and Tamrya Young, and the Union Parish Detention Center. For the following reasons, we reverse the judgment of the district court and remand this matter for further proceedings.

### **FACTS**

On November 20, 2015, 52-year-old Sonya Epps Gray had a mammogram which showed she had a benign mass in her right breast with “no evidence of malignancy.” The mammogram also revealed abnormalities and an ultrasound was recommended. On December 1, 2015, she underwent an ultrasound of her right breast which revealed she had “benign cysts” but “no concerning masses or suspicious characteristics.” The ultrasound of the left breast revealed “numerous simple appearing benign cyst[s] of varying sizes” but “no concerning masses or suspicious characteristics” were noted.

In late 2015 or early 2016, Ms. Gray was arrested and detained at the Union Parish Detention Center (“UPDC”). On May 18, 2016, a UPDC nurse examined Ms. Gray and discovered the lump on her right breast. Thereafter, defendant, Dr. Steven Venters, a UPDC physician, ordered a mammogram, and a request for payment for the mammogram was submitted to the Department of Public Safety and Corrections (“DPSC”). The request for the mammogram was processed and denied by defendant, Tamrya Young, a registered nurse formerly employed by DPSC. The stated reason for the denial was that the mammogram constituted “routine primary care”

and was not the financial responsibility of DPSC for inmates not housed at state facilities.<sup>1</sup>

On November 15, 2017, Ms. Gray was sentenced to imprisonment and was later transferred to the Richland Parish Detention Center. On August 21, 2018, Ms. Gray reported to medical providers that she had discovered a large “knot the size of a fist” in her left breast. One week later, she reported that breast had been “swollen” for approximately one week and appeared to be “getting bigger.” On August 29, 2018, Ms. Gray underwent a mammogram at Ochsner Health in Monroe, Louisiana, and the results of the mammogram were “highly suggestive of malignancy.” A subsequent needle biopsy revealed that Ms. Gray had triple negative invasive lobular cancer of the left breast. After she was diagnosed, Ms. Gray was transferred to the Louisiana Correctional Institute for Women in St. Gabriel, Louisiana, where further testing revealed extensive metastasis to her bones and brain. Ms. Gray was admitted into hospice care, and she died on December 10, 2018.

On December 10, 2019, Ms. Gray’s mother, Rosie Lee Causey Epps, filed a survival and wrongful death lawsuit arising from the death of her daughter. She alleged that Gray should have received annual mammograms due to a mass in her right breast, and the mammograms would have detected the cancer that Gray later developed in her left breast. UPDC, Dr. Venters, DPSC, and Young were named as defendants. Plaintiff alleged that Young and DPSC were negligent in incorrectly determining that the requested mammogram constituted routine primary care and in denying the request,

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<sup>1</sup> In his deposition, Dr. Venters testified that he did not follow up on the denial because Ms. Gray informed him she had a mammogram and ultrasound of the right breast in November, and “everything was okay.” Therefore, he did not believe an additional mammogram was “necessary at that time.” Dr. Venters also admitted that no follow up with additional mammography was done within 12 months.

and they failed to provide Ms. Gray with any testing, treatment, or care for her breast cancer. She alleged that UPDC was negligent for refusing to provide Ms. Gray with a mammogram as ordered by the physician, failing to perform any follow-up care for the lump in her right breast, and failing to transfer Ms. Gray to a medical facility that would have provided her with proper medical care. Further, plaintiff alleged that Dr. Venters was negligent for failing to make reasonable efforts to ensure that Ms. Gray received a mammogram, such as transferring her to a medical facility and for failing to respond to her subsequent complaints about the knot in her breast.<sup>2</sup> Subsequently, plaintiff amended the petition to add as a defendant the Union Parish Detention Center Commission, alleging the entity was responsible for maintaining, operating, or supporting UPDC.

On June 14, 2021, the district court issued an order regarding various exceptions and discovery motions. At issue was DPSC's contention that it did not owe a duty to provide care for Ms. Gray when the mammogram was requested in 2016 because, at that time, Ms. Gray was a pretrial detainee and was not in the custody of DPSC. Further, the Richland Parish Detention Center is not run by DPSC; it is run by the Richland Parish Sheriff's Office. In response to DPSC's arguments, the district court stayed any ruling on whether DPSC owed a duty, pending further discovery on whether any practice, policy, or contract established a duty to provide medical care to detainees or inmates at UPDC. The court allowed plaintiff to depose Young, a representative from UPDC, and a representative of the UPDC Commission

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<sup>2</sup> The proceedings have been stayed regarding Dr. Venters pending a decision from a medical review panel.

“regarding the existence of any policy or agreement that may or may not exist with DPSC as well as any standard practice that exist[s].”

On November 22, 2021, UPDC filed a motion for summary judgment on the issue of causation. UPDC argued that plaintiff has the burden of proving, through medical testimony, that the failure to secure a mammogram caused or contributed to Ms. Gray’s development of breast cancer and her ultimate death. According to UPDC, plaintiff was unable to produce expert medical evidence sufficient to prove medical causation.

On January 27, 2022, Young and DPSC (collectively “DPSC”) filed a motion for summary judgment, arguing that UPDC was not a state facility, and plaintiff had not presented any evidence to establish that either DPSC or Young owed a duty to provide medical care to Ms. Gray. DPSC also argued that no genuine issue of material fact exists to establish that the failure to approve the mammogram of the *right* breast caused or contributed to the development of triple negative invasive lobular breast cancer in the *left* breast. In support of the motion, DPSC submitted the affidavit of Dr. Scott Boniol, an oncologist/hematologist. Dr. Boniol attested that he had reviewed Ms. Gray’s medical records and concluded that her “development of inflammatory breast cancer in the left breast in 2018 bears no causal relationship to the decision not to perform a mammogram in June 2016” while Gray was incarcerated at UPDC. He also attested that the 2016 records showed no need for further testing because Ms. Gray’s previous tests were completed less than a year before and were negative for breast cancer.

Plaintiff filed a motion to strike the motions for summary judgment, or alternatively, requested the trial court to issue a protective order and continuance to permit her the opportunity to obtain all discovery necessary

to prove the elements of her case. Plaintiff argued that she had obtained a preliminary report from a medical expert; however, DPSC had refused to respond to certain requests for discovery concerning medical reimbursement schedules governing payment for medical services at UPDC, communications between DPSC and UPDC relating to medical standards of care, and regulations regarding standards of medical care provided to incarcerated persons at UPDC from 2015-17. In support of the opposition to the motion for summary judgment, plaintiff attached an affidavit from her counsel in which he attested, *inter alia*: (1) the district court had issued an order limiting discovery to resolve what, if any, duty DPSC and UPDC owed to Ms. Gray; (2) plaintiff had not submitted her findings regarding the status of discovery; therefore, discovery on the issue of duty was incomplete; (3) UPDC's motion for summary judgment was based solely on causation; and (4) discovery on the issue of causation had not begun.

Further, plaintiff argued that the affidavit of her expert oncologist, Dr. Gerald Miletello, presented a genuine issue of material fact regarding whether the failure to conduct yearly mammograms led to a lost chance of survival. Dr. Miletello opined that had Ms. Gray received yearly mammograms while incarcerated, the cancer in her left breast would have been discovered sooner, and she would have potentially lived longer. According to Dr. Miletello, patients "live years with triple negative inflammatory breast cancer if it is diagnosed in a timely fashion."

Following a hearing, the district court granted the motions for summary judgment. The court also denied plaintiff's request to submit a supplemental affidavit from Dr. Miletello, finding that La. C.C.P. art. 966 does not permit such affidavits after the hearing on the motion for summary

judgment. The court also denied plaintiff's request for further discovery on the issue of causation. The court concluded:

The medical evidence in this case established that there was no causation between any of defendants' alleged failures to provide medical care to this plaintiff and her development of inflammatory LEFT breast cancer in 2018 nor to the prevention, diagnosis, or plaintiff's death from said breast cancer. Plaintiff has failed to meet her burden of showing, through expert medical testimony, that there is a genuine issue of material fact as to causation in this matter.

The district court dismissed all claims against UPDC, the UPDC Commission, and DPSC with prejudice. The wrongful death and survival claims against Young were also dismissed with prejudice.<sup>3</sup>

Plaintiff appeals.

## DISCUSSION

Plaintiff contends, *inter alia*, the district court erred in granting the motion for summary judgment. She argues that genuine issues of material fact exist as to causation.

A summary judgment is reviewed on appeal de novo, 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. *Samaha v. Rau*, 07-1726 (La. 2/26/08), 977 So. 2d 880; *Logan v. Richland Par. Hosp.*, 56,127 (La. App. 2 Cir. 4/9/25), 408 So. 3d 1208, *reh'g denied* (5/15/25), *writ denied*, 25-00760 (La. 10/1/25), 417 So. 3d 570. A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no

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<sup>3</sup> The claims against Young under 42 U.S.C. § 1983 remain, and the claims against Dr. Venter were referred to a medical review panel for consideration.

genuine issue as to a material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3); *Staten v. Glenwood Reg'l Med. Ctr.*, 53,220 (La. App. 2 Cir. 1/29/20), 290 So. 3d 280, writ denied, 20-00591 (La. 9/23/20), 301 So. 3d 1184.

The burden of proof on a summary judgment motion remains with the mover. La. C.C.P. art. 966(D)(1). However, if the moving party will not bear the burden of proof on the issue at trial and points out that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense, then the nonmoving party must produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. *Id.*; *Staten, supra*. If the opponent of the motion fails to do so, there is no genuine issue of material fact and summary judgment should be granted. *Staten, supra*.

A fact is "material" when its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery. *Peironnet v. Matador Res. Co.*, 12-2292 (La. 6/28/13), 144 So. 3d 791. *McGee v. Ashford Place Apartments, LLC*, 54,795 (La. App. 2 Cir. 11/16/22), 351 So. 3d 899. A genuine issue is one regarding which reasonable persons could disagree; if reasonable persons could reach only one conclusion, there is no need for a trial on that issue and summary judgment is appropriate. *Hines v. Garrett*, 04-0806 (La. 6/25/04), 876 So. 2d 764; *McGee, supra*.

Furthermore, in determining whether an issue is genuine, a court should not consider the merits, make credibility determinations, evaluate testimony, or weigh evidence. *McGee, supra*; *Marionaux v. Marionaux*, 52,212 (La. App. 2 Cir. 8/15/18), 254 So. 3d 13. The prohibition on making

credibility determinations on summary judgment extends to expert affidavits admitted without objection. *McGee, supra*; *Aziz v. Burnell*, 21-187 (La. App. 3 Cir. 11/3/21), 329 So. 3d 963; *Thompson v. Center for Pediatric and Adolescent Med., LLC* 17-1088 (La. App. 1 Cir. 3/15/18), 244 So. 3d 441. Finally, the court must draw those reasonable inferences from the undisputed facts which are most favorable to the party opposing the motion; likewise, all doubt must be resolved in the opposing party's favor. *McGee, supra*; *Wyrick v. Golden Nugget Lake Charles, LLC*, 20-0665 (La. App. 1 Cir. 12/30/20), 317 So. 3d 708.

To determine liability in a negligence claim, we apply the duty-risk analysis, which requires the plaintiffs to prove that the defendant's conduct was a cause-in-fact of the resulting harm, that defendant owed a duty of care to the plaintiffs, that the duty was breached, and that the risk of harm was within the scope of protection afforded by the duty breached. *Mathieu v. Imperial Toy Corp.*, 94-0952 (La. 11/30/94), 646 So. 2d 318; *Baham v. Compass Health Brand Corp.*, 54,693 (La. App. 2 Cir. 8/10/22), 345 So. 3d 1157; *Carney v. Eldorado Resort Casino Shreveport*, 48,761 (La. App. 2 Cir. 1/29/14), 132 So. 3d 546. A critical inquiry is whether a causal relationship exists between the plaintiff's harm and the alleged negligent conduct of the defendant. Cause-in-fact is generally a "but for" inquiry, which requires the plaintiff to show he or she would not have sustained the injury but for defendant's conduct. *Baham, supra*; *Carney, supra*. In a negligence action, each inquiry must be affirmatively answered in order for plaintiff to recover. *Id.*

In the instant case, the UPDC defendants filed a motion for summary judgment, arguing that plaintiff had the burden of proving a causal

connection between Ms. Gray's injury/death and the alleged negligent act, and plaintiff "has not adduced any proof via affidavit or otherwise, of medical causation." The DPSC defendants moved for summary judgment, in which they argued plaintiff failed to prove they had a duty to provide medical care to Ms. Gray. They also argued that plaintiff failed to prove the alleged negligence, i.e., the failure to provide a mammogram, caused Ms. Gray's injury and subsequent death.

In granting defendants' motion for summary judgment, the district court stated:

[Defense expert] Dr. Boniol<sup>4</sup> provided a detailed summary of the facts and medical overview in support of his specific opinions related to whether or not Gray's specific diagnosis could have been connected with the alleged failure of the defendants to provide a mammogram back in June of 2016, or up until the time of her first complaint regarding her left breast in 2018. Dr. Boniol did not discuss cancer in only general terms but instead discussed Gray's specific type of breast cancer. He opined that inflammatory breast cancer is its own distinct clinical entity. Inflammatory breast cancer is not a result of neglected, ignored or untreated breast cancer. It is not the natural progression of breast cancer to turn into inflammatory breast cancer over time. Neglected breast cancer is not the same thing as inflammatory breast cancer. Dr. Boniol cited various studies and publications to support his statements and opinions.

Although he clearly sets forth the distinction between inflammatory breast cancer and the progression of non-inflammatory breast cancer, he also sets forth the following with regard to Gray's right breast, based on his review of the 2015 mammogram and ultrasound and the 10/18/18 PET scan. The 2018 PET scan showed no mass of adenopathy and the benign lesions were similar in appearance to what they had been in the 2015 mammogram. He noted that Gray never developed a right breast cancer.

Dr. Boniol's opinion is that her development of LEFT sided inflammatory breast cancer did not occur until 2018. It is a rapidly progressive, most often fatal disease, characterized by

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<sup>4</sup> Dr. Boniol is a board certified oncologist and hematologist, who attested that he has routinely diagnosed and treated all types of breast cancer in his practice.

acute inflammatory changes of the breast presenting for medical attention within less than 3 months of developing the disease. This was consistent with Gray's medical records which he noted reflected a typical presentation of inflammatory breast cancer – there were no documented complaints related to her breast following the May 2016 complaint until August of 2018 when she developed a lump in her left breast with swelling and discomfort which was noted on the 8/29/18 record at E.A. Conway to have a one week history of complaint; on the 8/29/18 medical record it noted that Gray had reported feelings of a mass around her left nipple “for the last 2-3 months”; it was a very rapid onset with widespread metastasis to lymph nodes, bones, and her brain. Dr. Boniol's affidavit set forth that the inflammatory LEFT breast cancer was in no way related to or correlates with her previous RIGHT breast issues. In his opinion, **Gray not having a mammogram in June of 2018 regarding a knot in her RIGHT breast had no causality to the development of the inflammatory breast cancer in her LEFT breast in 2018 nor to the prevention, diagnosis, or her death from said breast cancer.** In his medical opinion, **“even if she would have had breast cancer in her right breast in 2016, that would not have resulted in inflammatory breast cancer in 2018.”**

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In opposition to Defendants' Motions for Summary Judgment, the plaintiff submitted the Affidavit of Dr. Gerald Miletello.<sup>[5]</sup> \*\*\* [Dr. Miletello] opined that the “medical standard of care” requires that women forty years old and older have a mammogram every year but gave no supporting authority for this statement. Based on this personal opinion, Dr. Miletello believed that Gray should have had yearly mammograms starting in 2016 despite the fact that she turned 40 years old in 2003. He provides no explanation for this contradiction. Although he lists Dr. Boniol's Affidavit as one of the documents he reviewed in reaching his opinion, Dr. Miletello did not set forth any specific facts or arguments to dispute or contradict Dr. Boniol's opinion with regard to causation of Gray's inflammatory breast cancer. In fact, Dr. Miletello only mentions the fact that Gray had inflammatory breast cancer twice in his thirty-two numbered statements, but even then does not discuss any specifics as to that particular type of breast cancer. His affidavit concludes with general blanket statements about breast cancer together with conclusory statements that Gray's situation “would have more than likely been” different had she received yearly mammograms. Although Dr. Miletello stated that his opinion was based on a review of the medical records, he did not specify any particular record or finding to support his opinion. He cites no supporting authority for any of the statements or opinions contained in his affidavit.

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<sup>5</sup> Dr. Miletello is a board certified medical oncologist.

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As Dr. Miletello provided not specified basis for any opinion he gave, his Affidavit is merely conclusory and devoid of facts to support a conclusion of ultimate fact. As such, it is improper evidence for summary judgment.

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(Emphasis in original).

The record clearly establishes that yearly mammograms are indicated for women over the age of 40. The record also establishes that Ms. Gray was over the age of 40, and she was not provided with mammograms in 2016 or 2017. Dr. Boniol attested that the failure to provide a mammogram of Ms. Gray's right breast did not cause Ms. Gray to develop inflammatory breast cancer in her left breast. Dr. Miletello attested that providing the recommended annual mammography, presumably of both breasts, could have led to an earlier detection of Ms. Gray's cancer, and earlier detection could have possibly extended her life. The determination of whether the failure to provide mammograms caused or contributed to the delay in the diagnosis, and Ms. Gray's ultimate death, requires factual findings by a trier of fact. We find there remain genuine issues of material fact that preclude granting summary judgment, and the district court usurped the function of the factfinder by improperly weighing the opinions set forth in the experts' affidavits. It is within the purview of the factfinder to weigh the evidence and expert opinions in order to determine whether plaintiff has met her burden of proving the elements of her claims. A jury, as the trier of fact, must consider the nature of the conduct of each party and the extent of the causal relationship between the alleged conduct and the damages claimed. Consequently, we reverse the district court's ruling granting summary

judgment in favor of defendants, and we remand this matter for further proceedings.

### **CONCLUSION**

For the reasons set forth herein, the district court's judgment granting summary judgment in favor of the defendants and dismissing plaintiff's claims, and we remand this matter for further proceedings. Because the plaintiff has been granted pauper status, costs of this appeal and expenses in the lower court are assessed in accordance with La. C.C.P. art. 5188.

**REVERSED AND REMANDED.**