

Judgment rendered September 30, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 57,075-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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JOSHUA D. PORTER AND
YETTA LEE PORTER

Plaintiffs-Appellants

versus

QUEST DIAGNOSTIC, INC AND
WILLIS KNIGHTON MEDICAL
CENTER D/B/A WILLIS
KNIGHTON HEALTH SYSTEM
D/B/A WORK KARE BOSSIER

Defendants-Appellees

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Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Bossier, Louisiana
Trial Court No. 165,631

Honorable Michael Nerren, Judge

* * * * *

NELSON W. CAMERON

Counsel for Appellants

WATSON, BLANCHE,
WILSON & POSNER

Counsel for Appellees

By: Robert W. Robison, Jr.
J. Scott Dorman, II

* * * * *

Before COX, ROBINSON, and ELLENDER, JJ.

COX, J.

This case originates in the Twenty-Sixth Judicial District Court, Bossier Parish, Louisiana. Joshua D. Porter and Yetta Lee Porter (collectively referred to as “the Porters”) appeal the district court’s judgment granting summary judgment in favor of Willis Knighton Medical Center d/b/a Willis Knighton Health System d/b/a Work Kare Bossier (“Willis Knighton”). For the following reasons, we affirm the district court’s judgment.

FACTS

On August 24, 2021, the Porters filed a petition for damages against Quest Diagnostics, Inc. and Willis Knighton.¹ The Porters alleged that when Mr. Porter was an employee of Bossier City Fire Department, he was required to undergo a drug test at Willis Knighton on August 26, 2020. Mr. Porter stated that he did not use illicit drugs of any kind, but his urine sample tested positive for amphetamines. The Porters alleged that this false test was a result of Willis Knighton’s employees not following protocol and mishandling his sample.

Mr. Porter was suspended with pay while the City of Bossier conducted an internal investigation. During the investigation, Mr. Porter was retested, and those test results were negative. Mr. Porter claimed negligence and defamation and Mrs. Porter claimed loss of consortium, love, society and affection, mental distress, anxiety, and inconvenience.

On September 5, 2025, Willis Knighton filed a motion for summary judgment (“MSJ”), asserted that the Porters could not support their burden

¹ Quest Diagnostics, Inc. (“Quest”) was dismissed by the Porters.

of proof, and attached the following exhibits: first amended and supplemental petition for damages; excerpts of the transcript from Mr. Porter's deposition; excerpts of Mr. Porter's certified medical records from Willis Knighton; affidavit, expert report, and CV of Donna R. Smith, PhD; and the Porters' responses to request for admission, interrogatories, and requests for production of documents. Willis Knighton argued that the Porters cannot establish a genuine issue of material fact as to their defamation claims because the record affirmatively shows that Willis Knighton never made an unprivileged publication of Mr. Porter's drug screen results to a third party. It asserted that the Porters cannot show a genuine issue of material fact existed as to three of the essential elements of negligence: breach; cause in fact; and legal cause. It noted that because there is no genuine issue of material fact as to Willis Knighton's liability to Mr. Porter, Mrs. Porter's claims also fail.

Willis Knighton highlighted that Mr. Porter signed a release for his test results to be sent to his employer. Regarding the element of breach, Willis Knighton stated that the specimen ID number was the same on the urine sample bottle and the control form, and Mr. Porter signed the custody and control form which certified that the sample was properly labeled. Dr. Smith found no evidence of a break in the chain of custody while handling Mr. Porter's sample, and the collection of Mr. Porter's sample was compliant with drug testing procedures and policies. Mr. Porter stated in his deposition that his was the only sample in the collection area; therefore, it could not have been mixed up with someone else's sample. Dr. Smith also found that the medical review officer followed all applicable regulations in analyzing Mr. Porter's results.

For the element of cause in fact, Willis Knighton argued that it did nothing to cause Mr. Porter to “suffer ridicule and embarrassment” from his coworkers. Mr. Porter stated in his deposition that the employees of Willis Knighton did not communicate his result to anyone except his employer, but he told two people about the test. Willis Knighton argued that Mr. Porter could not claim breach during the collection process after signing the control form that the container was sealed and the information on the label was correct.

The Porters opposed Willis Knighton’s MSJ on October 8, 2025. They argued that their expert, Dr. Aimee Nefcy, provided several material opinions to dispute Willis Knighton’s arguments. Dr. Nefcy stated that the “chain of custody was more likely that (sic) not insufficient at [Willis Knighton], and therefore the validity of Mr. Porter’s initial urine test could legitimately be questioned.” She also stated, “In addition to problems with the chain of custody, the [urine] was borderline dilute because of a lack of supervision, absence of instruction of water consumption, and failure to limit donor’s water intake.” The Porters also highlighted Mr. Porter’s subsequent negative drug tests.

The Porters argued that in collecting Mr. Porter’s urine sample, Willis Knighton violated the applicable DOT guidelines to accurately maintain the identity of the sample, and the procedures regarding the testing of a “water log” donor were not followed. The Porters asserted that Willis Knighton failed in properly collecting the sample in the following ways: the collector did not split the sample between the two specimen bottles in Mr. Porter’s presence; the collector did not instruct Mr. Porter to read the certification; the collector failed to have Mr. Porter initial the labels after they were

affixed to the specimen bottles and seal the bottles in Mr. Porter's presence; the collector failed to have Mr. Porter date the custody and control form; the collection site was not secure, and other individuals walked through the area; Willis Knighton's employees did not observe Mr. Porter drinking water or limit the amount he consumed; and his sample was sent to Pennsylvania instead of Kansas, as stated on the form. The Porters asserted the evidence created a genuine issue of material fact.

The Porters attached the following to their opposition: the deposition transcript of Dr. Aaron Lirette, the medical review officer for this urine test; an unsigned, unnotarized two-page affidavit of Mr. Porter; Dr. Nefcy's deposition transcript; deposition transcript of Rebecca Rigsby, an employee at Willis Knighton; deposition transcript of Lynn Sherrer, an employee at Willis Knighton; deposition transcript of Fire Chief Brad Zagone; deposition transcript of Wendell Holmes, employee of the Bossier City Fire Department; deposition transcript of Mr. Porter; Dr. Nefcy's CV and expert report; the custody and control form dated August 26, 2020; the August 26, 2020, positive urine test result; the September 14, 2020, hair test result; a blank custody and control form; photographs of the split specimen; and medical records.

Willis Knighton replied and argued that Mr. Porter's affidavit should be excluded as it was unsigned. It stated that there could be no genuine issue of material fact as to breach because the only evidence cited in that section was Mr. Porter's unsigned affidavit. Willis Knighton asserted that Dr. Nefcy's opinion contradicts some of the Porters' arguments. It argued that the Porters did not address causation or defamation in their opposition to the MSJ. Willis Knighton attached Dr. Nefcy's deposition transcript.

On October 20, 2025, the Porters filed an opposed motion to supplement the record and alternatively to continue the hearing. They requested to file Mr. Porter's signed and notarized affidavit, which they alleged was available on October 8, 2025, but "through error it was not included." They attached the signed affidavit, which totaled four pages. They also attached a combined affidavit of Bonnie Rains and Victoria Adams, both employees of their counsel, who explained the technical difficulties they experienced in filing the opposition, which led to them overlooking the filing of the correct affidavit.

Willis Knighton opposed the motion to supplement. The MSJ hearing was scheduled for and held on October 23, 2023. Following the hearing, the trial court denied the Porters' motion to supplement/continue and granted Willis Knighton's MSJ with prejudice. The Porters filed a motion for devolutive appeal. Willis Knighton opposed the motion for appeal, arguing that the denial of the motion to supplement/continue is an interlocutory judgment and not subject to appeal. The trial court granted the appeal of the MSJ. The Porters sought supervisory review of the denial of their motion to supplement/continue. The writ was denied on the showing made. They now appeal.

DISCUSSION

Motion to Appeal

The Porters argue that the trial court abused its discretion and erred by not granting their appeal on the trial court's failure to grant their motion to continue or supplement their opposition to Willis Knighton's MSJ. The Porters argue that the issues of continuance, supplemental evidence, and summary judgment are so intertwined as to require an appellate review

because an error in either reverses the final judgment and is not interlocutory.

A judgment that does not determine the merits but determines only preliminary matters in the course of the action is an interlocutory judgment. La C.C.P. art. 1841(C). We note that normally when an appeal is taken from a final judgment, the appellant is entitled to seek review of all adverse interlocutory judgments prejudicial to him in addition to the review of the final judgment. *See Tubbs Rice Dryers, Inc. v. Martin*, 44,800 (La. App. 2 Cir. 2/24/10), 33 So. 3d 926, *writ not considered*, 10-1105 (La. 9/3/10), 44 So. 3d 702.

Here, the Porters designated the record for appeal and clearly stated their intent to appeal the granting of Willis Knighton's MSJ and the denial of their motion. Although the trial court did not grant their appeal as to the denial of their motion, which was an interlocutory judgment, we will review the denial of their motion, as it was briefed by the Porters.

Motion to Continue or Supplement

The Porters argue that the trial court abused its discretion and erred by not granting their motion to continue or supplement their opposition to Willis Knighton's MSJ. They assert that the trial court should have granted their motion for good cause because the filing of the unsigned affidavit was a mistake.

Willis Knighton argues that the law does not permit a supplementary opposition to a MSJ, and alternatively, the Porters' supplementary opposition and motion to continue were untimely filed.

La. C.C.P. art. 966(B)(2) states that any opposition to the MSJ and all documents in support of the opposition shall be filed not less than 15 days

prior to the hearing on the motion. La. C.C.P. art. 966(C)(2) provides, “For good cause shown, the court may order a continuance of the hearing.” A continuance under La. C.C.P. art. 966(C)(2) cannot serve as a pretext to circumvent the deadlines set forth in La. C.C.P. art. 966(B)(2). *Mahe v. LCMC Health Holdings LLC*, 23-00025 (La. 3/14/23), 357 So. 3d 322.

The Porters filed their motion to continue or supplement on October 20, 2025, three days before the scheduled MSJ hearing. The Porters did not file a signed affidavit or request to supplement with a signed affidavit prior to the deadline set forth in La. C.C.P. art. 966(B)(2). The Porters asked for a continuance in order to supplement their opposition with the signed affidavit. Good cause does not exist to circumvent the filing deadlines.

Based on the facts of this case, we do not find that the trial court erred in denying the Porters’ motion to continue or supplement. As stated in *Mahe*, compliance with the deadline was mandatory. This assignment of error lacks merit. We affirm the trial court’s denial of the Porters’ motion to continue or supplement.

Motion for Summary Judgment

The Porters argue that the trial court erred by granting Willis Knighton’s MSJ when they presented sufficient summary judgment evidence. The Porters assert that there is a genuine issue of material fact as to the validity and integrity of the collection process.

Willis Knighton argues that the Porters did not have evidentiary support of violations of the standard of care, and there were no genuine issues of material fact regarding breach or causation.

A *de novo* standard of review is required when an appellate court considers rulings on summary judgment motions. The appellate court must

use the same criteria that governed the trial court's determination of whether summary judgment was appropriate. *Bank of New York Mellon v. Smith*, 15-0530 (La. 10/14/15), 180 So. 3d 1238; *Jackson v. Minden Police Dep't*, 54,799 (La. App. 2 Cir. 11/16/22), 351 So. 3d 880, *writ denied*, 22-01844 (La. 2/14/23), 355 So. 3d 616.

A court must grant a motion for summary judgment if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law, pursuant to La. C.C.P. art. 966(A)(3). *Jackson v. Minden Police Dep't*, *supra*.

A fact is material if it potentially ensures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. *Green v. Brookshire Grocery Co.*, 53,066 (La. App. 2 Cir. 9/25/19), 280 So. 3d 1256. A genuine issue of material fact is one as to which reasonable persons could disagree; if reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate. *Jackson v. City of New Orleans*, 12-2742 (La. 1/28/14), 144 So. 3d 876, *cert. denied*, 574 U.S. 869, 135 S. Ct. 197, 190 L. Ed. 2d 130 (2014); *Green v. Brookshire Grocery Co.*, *supra*. In determining whether an issue is genuine, a court should not consider the merits, make credibility determinations, evaluate testimony, or weigh evidence. *Green v. Brookshire Grocery Co.*, *supra*; *Jackson v. Minden Police Dep't*, *supra*.

To prevail on a negligence claim under La. C.C. arts. 2315 and 2316, a plaintiff must prove five separate elements: (1) the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) the defendant failed to conform his conduct to the appropriate standard (the

breach of duty element); (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and (5) actual damages (the damages element). A negative answer to any of the above inquiries will result in the determination of no liability. *Robert v. Turner Specialty Servs., L.L.C.*, 50,245 (La. App. 2 Cir. 11/18/15), 182 So. 3d 1069.

The Porters rely heavily on Mr. Porter's affidavit in their opposition memo. Mr. Porter's affidavit was unsigned; therefore, it cannot be considered. The Porters' expert, Dr. Nefcy, identified multiple violations in the collection process based on Mr. Porter's account and the dilution results, which caused her to question the validity of the test. She also stated that the dilution parameters were set to prevent false-*negatives* and tampering with urine. Dr. Nefcy stated that she could not definitively say that the violation of procedures caused the positive result, only that she considered the urine sample to be invalid. She stated the following in her report:

Because of the delay in repeat testing and the general poor reliability of hair testing with today's technology, I cannot say whether it is more or less likely that Mr. Porter truly had amphetamine in his system, but the fact remains that the original urine test in this case was not valid enough make a firm determination against him.

We appreciate Mr. Porter's commitment to a drug-free life. However, the Porters failed to present evidence that the alleged violations of procedures caused the *positive* test result. The Porters' own expert stated the procedures are in place to prevent a false-*negative* result. Based on the evidence presented in the MSJ and opposition, we do not find the existence of a genuine issue of material fact. Without the causation element, we

cannot connect the alleged violations with the alleged damages. Because this element of negligence fails, there can be no liability. We affirm the trial court's judgment granting Willis Knighton's MSJ.

CONCLUSION

For the reasons stated herein, we affirm the trial court's denial of the Porters' motion to supplement or continue and the granting of Willis Knighton's motion for summary judgment. Costs of this appeal are assessed to the appellants, the Porters.

AFFIRMED.