

Judgment rendered October 14, 2026.  
Application for rehearing may be filed  
within the delay allowed by Art. 2166,  
La. C.C.P.

No. 57,066-CA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

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| SHEILA BROWN LOGAN, JIMMY<br>BROWN, BESSIE BROWN<br>THOMAS, JAMES BROWN AND<br>SYLVESTER BROWN O/B/O<br>CORNELL BROWN | Plaintiffs-Appellants |
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versus

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| NETHERTON COMPANY, LLC<br>AND DONNIE RAY HARRIS | Defendants-Appellees |
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Appealed from the  
First Judicial District Court for the  
Parish of Caddo, Louisiana  
Trial Court No. 658,452

Honorable Ramon Lafitte, Judge

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| KING & NORRIS<br>By: Brian L. King<br>Justin Anthony Reese | Counsel for Appellants |
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THE NORRIS LAW GROUP  
By: Ebonee Rhodes Norris

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| BARRY ROME & SCOTT<br>By: Curt L. Rome | Counsel for Appellee,<br>Netherton Company, LLC |
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| LUNN IRION LAW FIRM, LLC<br>By: Alexander J. Mijalis | Counsel for Appellee,<br>Donnie Ray Harris |
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Before COX, STEPHENS, and HUNTER, JJ.

**STEPHENS, J.,**

This appeal arises out of the First Judicial District Court, the Honorable Ramon Lafitte, Judge, presiding. This is an action asserting both wrongful death and survival actions arising out of the death of Cornell Brown. The plaintiffs, Sheila Brown Logan, Jimmy Brown, Bessie Brown Thomas, James Brown, and Sylvester Brown o/b/o Cornell Brown, are the siblings of the decedent, Cornell Brown. The defendants are the Netherton Company, LLC, and Donnie Ray Harris. The plaintiffs have appealed from the trial court's dismissal of their claims in a judgment granting an exception of no right of action filed by the defendants. For the reasons set forth below, we affirm the trial court's ruling on the exception of no right of action, but reverse and remand the matter to the trial court to allow the plaintiffs to amend their petition.

#### **FACTS/PROCEDURAL BACKGROUND**

Cornell Brown died as a result of injuries he sustained when he was hit while riding his bicycle in Shreveport, Louisiana, on July 22, 2024. The defendant Harris, allegedly drunk while driving a vehicle owned by the defendant Netherton Company, in the course and scope of his employment with the company, struck Mr. Brown with the company vehicle and fled the scene without rendering aid to Mr. Brown. The plaintiffs are Cornell Brown's five siblings. The plaintiffs' petition against the defendants seeking wrongful death and survival damages arising out of this incident was filed on July 21, 2025.

The Netherton Company filed a peremptory exception of no right of action on August 22, 2025, in which it asserted that the plaintiffs lacked the standing to file the instant action because at the time of Mr. Brown's death,

he had a daughter and a mother, both of whom who were living.

Information about the daughter came from Cornell Brown's obituary which was written by one of his siblings. Under La. C.C. arts. 2315.1 and 2315.2, the existence of a child or a mother precludes the recovery of damages on the part of siblings, urged the Netherton Company. The exception was opposed by the plaintiffs, who submitted affidavits denying knowledge of any "legally recognized" daughter, pointing out that Brown's death certificate showed him as never married with no children, and their own birth certificates established their relationship to the deceased.

At the hearing on the exception, counsel for the plaintiffs acknowledged that one of the siblings wrote the obituary which listed a daughter as one of the surviving relatives of Cornell Brown. In response to further questioning by the trial court, counsel explained that the obituary information came from a Facebook message sent approximately two years prior to Mr. Brown's death in which a woman identifying herself as "Marieka Brown" related that "I think I am your niece." The attorney for the plaintiffs further explained that there had been no follow-up meeting or phone call, just the one Facebook message—the siblings had no idea where the alleged daughter was.

The trial court found that the siblings having written the obituary was "even more convincing" evidence that Marieka Brown was Cornell Brown's daughter. Addressing the Netherton Company's alternative argument, the trial court queried whether Mr. Brown's mother Helen Logan had a right of action at the time of her son's death over that of the siblings. The plaintiffs' counsel conceded that Mrs. Logan "would be before the siblings." The exception was sustained by the trial court on both grounds, and the plaintiffs'

claims were dismissed without prejudice. It is from this judgment that the plaintiffs have appealed.

## **DISCUSSION**

***Whether the trial court erred in finding that the Netherton Company established proof of filiation between the decedent and a previously unfiliated, unacknowledged daughter solely through introduction into evidence of the decedent's obituary***

The plaintiffs first argue that the trial court erred in finding that an obituary of their deceased brother which stated that he was survived by a daughter established his parenthood of said daughter or her legal filiation to him. Their second but related assignment of error is that the trial court erred in admitting into evidence the obituary of their brother Cornell Brown. While one of the siblings did write the obituary, concede the plaintiffs, they were merely acting on Marieka Brown's own statement expressed over Facebook, which was that she "might" be their niece. According to the plaintiffs, the obituary was hearsay and even if admissible, by itself it was insufficient to establish paternity.

The plaintiffs emphasize that at no point did defense counsel try to authenticate the obituary, but "asserted its provenance and offered it as evidence." However, even had it been authenticated, it was not admissible, contend the plaintiffs. The obituary, which was published in a newspaper, is hearsay offered to prove the truth of its contents as to proof of Marieka Brown's parentage, something hearsay is generally not allowed to do. La. C.E. arts. 801(C), 802.

The obituary was written after a woman identifying herself as "Marieka Brown" sent the siblings a Facebook message some two years prior to Cornell Brown's death in which she stated, "I think I am your

niece.” The plaintiffs never met this woman and had “little to no further contact.” They further claim to “have no idea where she is.” The plaintiffs point out that La. C.C. arts. 185-198 provide the exclusive means by which filiation to a father may be legally accomplished by a child born outside of marriage. This includes formal acknowledgment by the father (arts. 195-96); or an action by the child (art. 197).

The plaintiffs urge that an obituary written by siblings based on an unverified Facebook message does not involve the critical element of Cornell Brown’s own acknowledgement or legal recognition of a parent-child relationship. Louisiana law requires that the father acknowledge the alleged child or that a court adjudicate paternity. Neither of these happened in this case, contend the plaintiffs. Cornell Brown never formally acknowledged Marieka Brown as his daughter. There is no birth certificate identifying Cornell Brown as Marieka Brown’s father and no judgment of filiation. There is no evidence that Mr. Brown ever supported, publicly acknowledged, or ever had a relationship with Marieka Brown.

According to the Netherton Company, the trial court did not err in granting the exception of no right of action filed by the defendant objecting to the plaintiffs in their individual capacities as the siblings of the decedent Cornell Brown. Specifically, there was no error in the trial court’s use of the obituary which was evidence showing that Mr. Brown was survived by both a “purported” child and a mother at the time of his death. The Netherton Company contends that the obituary was not offered as evidence that Marieka Brown was properly filiated, but was introduced to show that the five plaintiffs, Cornell Brown’s siblings, were not the proper parties to bring the wrongful death suit.

The critical requirement for classification of a person as a child under La. C.C. arts. 2315.1 and 2315.2 is the biological relationship between the tort victim and the alleged child. *Jenkins v. Mangano Corp.*, 00-0790, p. 3 (La. 11/28/00), 774 So. 2d 101, 103; *Chatelain v. State, Through DOTD*, 586 So. 2d 1373, 1376 (La. 1991).<sup>1</sup> If a parent is deceased, a child not previously filiated to that parent must prove filiation to the deceased parent under La. C.C. art. 197. If the action is instituted after the death of the alleged father, a child must prove paternity by clear and convincing evidence. *Id.* The burden of proof by clear and convincing evidence requires a party to persuade the trier of fact that the fact or causation sought to be proved is highly probable, i.e., much more probable than its non-existence. *Chatelain, supra*; *In re Succession of Cook*, 50,111 (La. App. 2 Cir. 12/16/15), 189 So. 3d 409, *writ denied*, 16-0795 (La. 6/17/16), 192 So. 3d 768; *Hines v. Williams*, 567 So. 2d 1139 (La. App. 2 Cir. 1990), *writ denied*, 571 So. 2d 653 (La. 1990).

For purposes of succession only, the paternity action is subject to a peremptive period of one year, which begins to run from the day of death of the alleged father. Revision Comments—2005, Comment (a) to La. C.C. art. 197 provides that “[t]his article, for the most part, codifies prior jurisprudence interpreting former Civil Code Article 209 (rev. 1981).” Revision Comments—2005, Comment (c) provides that “[u]nder this article, all relevant evidence is admissible to prove paternity.”

The comments to former article 209 indicate that “[p]roof of filiation may include, but is not limited to: ‘informal’ acknowledgment; scientific test

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<sup>1</sup> *Chatelain, supra*, was legislatively overruled in part by Acts 2005, No. 192, § 1. See La. C.C. art. 195.

results; acknowledgment in a testament; and proof that the alleged parents lived in a state of concubinage at the time of conception.” *Sudwischer v. Estate of Hoffpauir*, 97-0785, p. 14 (La. 12/12/97), 705 So. 2d 724, 731. The Louisiana Supreme Court in *Chatelain*, *supra*, discussed the type of evidence considered by Louisiana courts in ruling on whether an informal acknowledgement has occurred:

In discussing informal acknowledgment, appellate decisions have generally referred to the standards set forth in the original Article 209 for proving paternity, such as the alleged father’s acknowledgment of the child in formal writings or in public or private conversations, causing the education of the child as his own, and living in concubinage with the mother in his home at the time of the child’s conception. Other conduct which has been considered to constitute ***informal acknowledgment by the alleged father*** includes rearing the child in his home, naming the child in his will, giving the child his surname, and holding the child out in the community as his own. Keene, *Irregular Successions in Louisiana*, 7 Loy. L. Rev. 94, 102-03 (1954), and cases cited therein. Moreover, courts have been reluctant to recognize an informal for purposes of filiation ***unless the father has recognized the child as his own unequivocally and on several occasions***. *Succession of Vince*, 110 La. 760, 23 So. 767 (1903) (one statement by the alleged father that the doctors were wrong in predicting his children would be afflicted because Eliza James was “as health as anybody” did not “suffice to invest [James] with the title of a legally acknowledged ... child”); *Succession of Corsey*, 171 La. 663, 131 So. 841 (1930) (statements by the alleged father acknowledging Ethel Casson as his child at various times to various parties constituted acknowledgment); *Succession of Matte*, 345 So. 2d 1345 (La. App. 3 Cir. 1977) (***an informal acknowledgment of filiation must be unequivocal and sufficiently frequent*** so that there is little doubt the alleged father truly believed he was the father of the child). (Emphasis added)

*Id.* at 1379; *Sudwischer*, 97-0785, p. 14, 705 So. 2d at 731.

The Netherton Company, as the exceptor, bore the burden of backing up its claim that Mr. Brown was survived by a child by clear and convincing evidence. One obituary, without more, such as evidence of some affirmative act or representation by Mr. Brown himself or scientific evidence of filiation,

does not constitute even an informal acknowledgment. Pretermittting a determination as to whether the obituary was admissible, we find that the trial court erred in concluding that there was clear and convincing evidence of a filial link between Mr. Brown and the alleged daughter based solely on an obituary written by one of the decedent's siblings from information contained in one Facebook message. The trial court also found that the plaintiffs had no right of action because Mr. Brown's mother, who was alive at the time of his death, was the codal beneficiary entitled to assert claims arising from his death.

***Whether the trial court erred in dismissing the plaintiffs' claim rather than allowing them an opportunity to amend their petition***

The plaintiffs assert that, even if their mother's prior right of action preempts theirs, the proper remedy was amendment, not dismissal. In *Alexander v. Wilson*, 93-518 (La. App. 3 Cir. 6/1/94), 640 So. 2d 687, a woman died leaving a surviving spouse and a mother. The woman's spouse died five months after the woman without having filed suit. The woman's mother filed suit, arguing that the spouse's death shifted the right to recover for the woman's wrongful death. The court found, however, that the right of action to recover wrongful death (and survival damages) is determined at the moment of the injured person's death. Because the woman's spouse survived her, he had the right of action, and the mother's right of recovery was precluded.

In the instant case Mrs. Logan was alive at the time of her son Cornell Brown's death on July 22, 2024. However, she died on June 23, 2025, before the instant suit was filed. The wrongful death and survival action rights that vested in Mrs. Logan at Cornell Brown's death passed to her heirs

when she died. The plaintiffs state that as Mrs. Logan's children, they are her heirs under Louisiana's intestacy laws, and they have the right to bring the wrongful death and survival actions in that capacity. They simply need to refile their action in the proper capacity as such. The trial court erred in not allowing them to amend their petition, urge the plaintiffs.

The Netherton Company contends that dismissal with prejudice rather than amendment was proper. The defendants take the position that the petition, as pled, could not have been amended. According to the Netherton Company, either Marieka Brown, the alleged daughter of Mr. Brown, or the representatives of the deceased mother's estate may be the proper parties to bring this action, not the current plaintiffs. In fact, the plaintiffs have conceded, both before the trial court and in their appellate brief, that *as Mr. Brown's siblings* they are not the proper parties and that Mr. Brown's mother, who was alive at the time of his death, had the right to bring the wrongful death and survival actions.

As a general principle, a legal action can be brought only by a person having a real and actual interest in doing so. La. C.C.P. art. 681. When the facts alleged in the petition provide a remedy under the law to someone, but the plaintiff who seeks the relief is not the person in whose favor the law extends the remedy, the proper objection is no right of action. *Caldwell v. Molina Healthcare, Inc.*, 18-1768, pp. 5-6 (La. 5/8/19), 283 So. 3d 472, 477. The objection of no right of action tests whether this particular plaintiff, as a matter of law, has an interest in the claim sued upon. The exception does not raise the question of the plaintiff's ability to prevail on the merits nor the question of whether the defendant may have a valid defense. *City of*

*Shreveport v. CDM Smith Inc.*, 56,567 (La. App. 2 Cir. 11/19/25), 426 So. 3d 186, writ denied, 25-01608 (La. 3/18/26), 427 So. 3d 1247.

The burden of showing that the plaintiff has no right of action is on the exceptor. *Caldwell*, 18-1768, p.6, 283 So. 3d at 477; *Succession of Braswell*, 56,133 (La. App. 2 Cir. 4/9/25), 409 So. 3d 522, writ denied, 25-00584 (La. 9/16/25), 416 So. 3d 476. If evidence is adduced at a hearing on a peremptory exception, the trial court's findings of fact are subject to the manifest error-clearly wrong standard of review, but other determinations are questions of law subject to de novo review. *Caldwell, supra*.

When the facts alleged in the petition provide a remedy under the law to someone, but the plaintiff who seeks the relief is not the person in whose favor the law extends the remedy, the proper objection is no right of action, or want of interest in the plaintiff to institute the suit. *Howard v. Administrators of Tulane Educ. Fund*, 07-2224, p. 16 (La. 7/1/08), 986 So. 2d 47, 59, citing Harry T. Lemmon & Frank L. Maraist, 1 *La. Civil Law Treatise, Civil Procedure* § 6.7, 121 (West 1999). If the pleadings fail to disclose a right of action, the claim may be dismissed without evidence, but “[w]here the grounds of an objection pleaded by peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court.” La. C.C.P. art. 934(B); *Robinson v. North American Royalties, Inc.*, 470 So. 2d 112, 114 (La. 1985). As noted by the Supreme Court in *Howard, supra*, the plaintiff should be permitted to amend to state a right of action if he or she can do so.

A survival action “is transmitted to beneficiaries upon the victim’s death and permits recovery only for the damages suffered by the victim from

the time of injury to the moment of death.” *Taylor v. Giddens*, 618 So. 2d 834, 840 (La. 1993); *Myles v. Howell*, 52,460, p. 6 (La. App. 2 Cir. 1/16/19), 265 So. 3d 22, 26. Survival actions are governed by La. C.C. art. 2315.1, which states in pertinent part:

(A) If a person who has been injured by an offense or quasi offense dies, the right to recover all damages for injury to that person, his property or otherwise, caused by the offense or quasi offense, shall survive for a period of one year from the death of the deceased or two years from the day of that injury or damage is sustained, whichever is longer, in favor of:

(1) The surviving spouse and child and children of the deceased, or either the spouse or the child or children.

(2) The surviving father and mother of the deceased, or either of them if he left no spouse or child surviving.

(3) The surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving.

....

(C) The right of action granted under this Article is heritable, but the inheritance of it neither interrupts nor prolongs the prescriptive period defined in this Article.

A wrongful death action is a separate action that “does not arise until the victim dies and it compensates the beneficiaries for their own injuries which they suffer from the moment of the victim’s death and thereafter.”

*Taylor*, 618 So. 2d at 840; *Myles*, 52,460 at p. 6, 265 So. 2d at 27. La. C.C. art. 2315.2 provides as follows with respect to a wrongful death action:

(A) If a person dies due to the fault of another, suit may be brought by the following persons to recover damages which they sustained as a result of death:

(1) The surviving spouse and child or children of the deceased, or either the spouse or the child or children.

(2) The surviving father and mother of the deceased, or either of them if he left no spouse or child surviving.

(3) The surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving.

. . . .

(C) The right of action granted under this Article is heritable, but the inheritance of it neither interrupts nor prolongs the prescriptive period defined in this Article.

The existence of a member of the first class of beneficiaries in both the survival and wrongful action excludes all members of lesser classes. Thus, any member of a higher class preempts the claims of other classes of beneficiaries. *Warren v. Richard*, 296 So. 2d 813 (La. 1974). Additionally, should a beneficiary die, that beneficiary's right to bring suit passes to that beneficiary's heirs. La. C.C. arts. 2315.1(C) and 2315.2(C); *Miles, supra* at p. 10, 265 So. 3d 28; *Porche v. Sutherlands Lumber and Home Center, Inc.*, 18-551 (La. App. 3 Cir. 2/13/19), 265 So. 3d 56; *Alexander v. Wilson*, 93-1518 (La. App. 3 Cir. 6/1/94), 640 So. 2d 687.

According to both the Netherton Company and the plaintiffs, Cornell Brown's mother Helen Logan was alive at the time of his death, but she passed away on June 23, 2025. The plaintiffs claim to be her heirs via intestacy. Mrs. Logan's right to file suit for both Mr. Brown's wrongful death and her own survival action will devolve through her succession. If the plaintiffs are the heirs, then this right has passed to them upon Mrs. Logan's death. The trial court erred in dismissing the plaintiffs' action rather than giving them an opportunity to amend their petition. Pursuant to La. C.C.P. art. 934(B), the plaintiffs are entitled to an opportunity to amend their petition to cure the defect. *Howard, supra*; *Robinson, supra*.

## **CONCLUSION**

For the reasons set forth above, the judgment of the trial court is affirmed in part, reversed in part, and the matter is remanded to the trial court to allow the plaintiffs 30 days from the date of the issuance of this opinion to amend their original petition against the defendants. The costs of the appeal are assessed to the defendant, Netherton Company, LLC.

**AFFIRMED IN PART; REVERSED IN PART AND REMANDED.**