

Judgment rendered August 18, 2003.

No. 38,059-CW

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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B. J. PIPPEN, JR. and RHONDA PIPPEN Plaintiffs
ON BEHALF OF MORGAN PIPPEN,
DECEASED

versus

MOREHOUSE GENERAL HOSPITAL Defendants-Appellant
and DR. MAMDOUH MICKAIL

* * * * *

On application for Supervisory Writ from the
Fourth Judicial District Court for the
Parish of Morehouse, Louisiana
Trial Court No. 98-205

Honorable J. N. Dimos, Judge

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HUDSON, POTTS & BERNSTEIN
By: Gordon L. James

Counsel for Appellant,
Dr. Mamdouh Mickail

RICHARD FEWELL, JR.

Counsel for Appellees

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Before BROWN, GASKINS, CARAWAY,
PEATROSS and MOORE, JJ.

CARAWAY, J., concurs with written reasons.
BROWN, C.J., dissents with written reasons.
GASKINS, J., dissents for the reasons articulated by J. Brown.

STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
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NO: 38059-CW

B.J. PIPPEN, JR. AND RHONDA PIPPEN
ON BEHALF OF MORGAN PIPPEN,
DECEASED

VERSUS

MOREHOUSE GENERAL HOSPITAL
AND DR. MAMDOUH MICKAIL

FILED: 08/14/03
RECEIVED: HD 08/14/03

On Application of Dr. Mamdouh Mickail for Supervisory Writ in No. 98-205
on the docket of the Fourth Judicial District Court, Parish of Morehouse,
Judge J.N. Dimos.

HUDSON, POTTS & BERNSTEIN
Gordon L. James

Counsel for:
Dr. Mamdouh Mickail

Richard Fewell, Jr.

Counsel for:
B.J. Pippen, Jr.
Rhonda Pippen

Before BROWN, GASKINS, CARAWAY, PEATROSS and MOORE, JJ

WRIT GRANTED AND MADE PEREMPTORY

In this medical malpractice action set for jury trial, applicant, Dr. Mamdouh Mickail, seeks review of a ruling that would allow evidence relating to his substance abuse problems and treatment therefor.

The plaintiffs have made several allegations against applicant of failure to act, and the ultimate question the jury must answer is whether the applicant, through failure to act, breached the appropriate standard of care in treatment of the infant, Morgan Pippen.

Under the circumstances, we have severe reservations concerning whether the evidence at issue should be assigned any probative value in this case. However, assuming probative value arguendo, and after carefully reviewing the entire writ application, we are persuaded that the trial court erred in deciding to allow the admission of the evidence at issue.

CARAWAY, J., concurring.

I concur to add the legal authority missing from the majority opinion.

I can assume no probative value for this evidence in view of that authority.

The disputed evidence falls into the category of evidence addressed in La. C.E. arts. 608(B) and 404. *State v. Williams*, 575 So.2d 452 (La. App. 4th Cir. 1991). I assign the evidence no probative value because Article 404(A) makes such assignment by barring its introduction. While Article 404(B) allows for an exception to Article 404(A) as to Dr. Mamdouh Mickail's prior acts of drug abuse, the plaintiffs in response to the motion in limine did not demonstrate any disputed issue in the case for which the evidence has any particular probative value under Article 404(B) other than as character evidence.

BROWN, C.J., Dissenting,

In this medical malpractice case, defendant, Dr. Mamdouh Mickail, moved the trial court to prohibit any mention, by any party, their attorney, or witness, of defendant's history of substance abuse. The trial court denied the motion, and this writ application followed. Dr. Mickail is a 46-year-old pediatrician who has a long and significant history of alcohol and drug abuse, both before and after the alleged malpractice. In January of 2003, he was in a treatment program at Palmetto Addition Recovery Center (PARC) due to alcohol and hydrocodone use. The gravamen of this malpractice case involves both acts and omissions in the treatment administered by Dr. Mickail to a newborn infant in September 1994. The baby died the next month. A year earlier, in 1993, Dr. Mickail was in substance abuse treatment for four and a half months at COPAC. He had relapses in 1997, 2001, 2002 and 2003. It appears from statements in the trial court that Dr. Mickail is no longer in practice. Other than Dr. Mickail's statements found in substance abuse reports, no evidence was presented by defendant to show that he was not abusing drugs during the care of the infant. The trial court ruled "in light of the fact that this is a physician who takes life into his hands . . . I think they (the jury) ought to be able to determine his qualifications and whether he was subject to drugs" at the time he cared for this child. The trial court believed that this evidence was probative and that the jury is capable of discerning the facts and circumstances. I agree.

I question how the majority determined that this evidence was not probative or if of some value, was greatly outweighed by its prejudicial effect. That appears to be a factual finding based only on what Dr. Mickail's attorney chose to present in his application and even that was redacted.

Thus, I must dissent, respectfully.