Custody — Modification

Gregoire v. Wriborg, 24-1290 (La. App. 1 Cir. 7/11/25), ___ So.3d ___, 2025 WL 1911945.

Stephanie Wriborg filed a rule to modify custody and for contempt following the breakdown of co-parenting with John Gregoire. The parties shared physical custody under an April 2023 Consent Judgment, but Wriborg alleged that Gregoire refused to communicate, failed to honor the right of first refusal, disparaged her online and neglected the children's medical and educational needs. She requested modification of physical custody from a 7-day/7-day rotation to visitation by Gregoire every other weekend, designation as the domiciliary parent and an order appointing a parenting coordinator and the use of Our Family Wizard.

Days before trial, Gregoire moved to disqualify Wriborg's counsel, arguing a conflict based on former counsel's employment at opposing counsel's firm. He also moved to continue the hearing. The trial court denied both motions and proceeded with the trial. It granted Wriborg's request for modification, reduced Gregoire's physical custody to every other weekend, maintained Wriborg's status as domiciliary parent and found Gregoire in contempt. The court also awarded her $1,500 in attorney fees and ordered the use of a parenting coordinator and Our Family Wizard.

The 1st Circuit affirmed the trial court's judgment modifying custody, finding no abuse of discretion in the finding of a material change in circumstances due to the parties' failure to co-parent and communicate. It also found no manifest error in the trial court's finding that the physical custody arrangement should be modified. However, it reversed the trial court's judgment holding Gregoire in contempt of court and ordering him to pay $1,500 to Wriborg, finding that the trial court failed to articulate the required factual basis.

The 1st Circuit also affirmed the trial court's judgment denying the motion to continue. However, it reversed the judgment denying the motion to disqualify counsel and remanded for further proceedings, holding that the issue required a contradictory hearing.

Community Property

Orgeron v. Orgeron, 24-0676 (La. 6/27/25), 413 So.3d 390.

The Louisiana Supreme Court reversed the lower courts' judgments denying Kelly Orgeron a share of the $16,949,000 in liquidated damages paid to Ed Orgeron upon the termination of his employment as LSU's head football coach. The court held that the "Binding Term Sheet" executed during the community was a binding and enforceable contract, and that the long-form employment agreement ratified its terms, including the "termination without cause" provision. Because both agreements had an effective date during the community regime, the resulting liquidated damages were community property. The court awarded Kelly one-half of the net damages, or $8,134,500.

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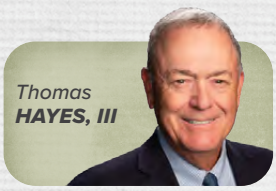

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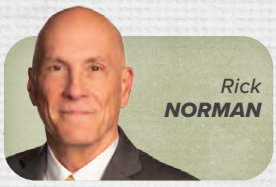

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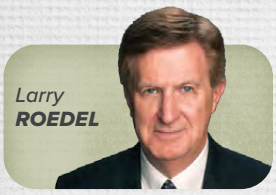

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Meet **DAN CARUSO**

A partner in the New Orleans law firm of Simon, Peragine, Smith & Redfearn for 42 years, Dan represented plaintiffs and defendants in a wide variety of matters involving maritime law, product liability, construction and surety, professional liability, environmental damage, and toxic torts. He has also been extensively involved in matters centered on the interpretation of insurance policy provisions. Dan's professional experience, along with his mediation training, can benefit your clients in resolving even the most complex disputes.

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Justice McCallum dissented, joined by Justice Cole, reasoning that the damages constituted separate property because they were received post-termination of the community and compensated Ed for future lost wages. Justice Bleich, sitting ad hoc, concurred, emphasizing Ed's fiduciary duties and criticizing an attempt by his agent to change the contract's effective date to classify the asset as separate property.

The court's composition included three appointed justices sitting ad hoc in place of three justices who recused themselves: Retired Judge John Conery, sitting for Chief Justice Weimer; Retired Judge E. Joseph Bleich, sitting for Justice Crain; and Retired Judge Martin E. Coady, sitting for Justice Guidry.

Contempt

Short v. Short, 24-0656 (La. App. 1 Cir. 7/11/25), ___ So.3d ___, 2025 WL 1910776.

In this high-conflict divorce, the trial court found James Short in contempt for multiple violations of two stipulated judgments and a permanent injunction related to community property management. The court ordered him to pay Gina Short over $344,000 in community reimbursements, rental income, attorney fees and fines. James appealed, challenging the contempt findings, the award of unpaid rental income and the attorney-fee calculation.

The 1st Circuit reversed in part, vacated in part and affirmed in part as amended. It reversed several contempt findings, including those for failing to report life insurance and misleading discovery responses, on grounds of insufficient evidence or lack of intent, and vacated associated penalties. It also reversed the award of $18,284.86 in unpaid rental income, finding it duplicative of a prior property award. However, the court affirmed other findings of contempt for unauthorized dissipation of community assets, refusal to cooperate with financial disclosures and obstruction of access to joint accounts. The amended judgment reduced James's total liability to $320,533.66, including $144,770.12 in attorney fees and $15,000 in fines. The court denied both parties' requests for additional relief on appeal.

Domestic Abuse Assistance Act

Whatley v. Garrison, 56,311 (La. App. 2 Cir. 7/16/25), 2025 WL 1945304.

Farran Garrison appealed a protective order issued under the Domestic Abuse Assistance Act that prohibited her from having any contact with her five minor children or her mother, Ammer Gayle Whatley, until May 23, 2036, when the youngest children become adults. The protective order was based on allegations of physical and emotional abuse, including testimony that Garrison had struck or thrown objects at her children, disciplined them harshly, neglected their education and basic needs and assaulted Whatley on multiple occasions. The trial court found Whatley's and other witnesses' testimony credible and granted the protective order, awarding Whatley temporary custody and ordering Garrison to complete anger-management and parenting classes.

The 2nd Circuit affirmed the issuance of the protective order, finding that Whatley met her burden of proving an immediate and present danger of abuse. However, it reversed the portion of the judgment setting the duration of the protective order to extend until May 23, 2036, holding that La. R.S. 46:2136(F) limits protective orders to a maximum of 18 months unless extended following a contradictory hearing. The matter was remanded for the trial court to amend the order's duration and to conduct such hearings as may be necessary to evaluate Garrison's compliance and the children's safety.

Spousal Support

Gambel v. Gambel, 24-1026 (La. App. 1 Cir. 6/16/25), ___So.3d ___, 2025 WL 1689496.

Harriet Gambel appealed a judgment awarding her interim spousal support and denying her motion for a new trial. She argued that the trial court erred in awarding her only $8,000 per month in interim spousal support, despite her income-and-expense statement establishing her need at $11,331, the uncontroverted testimony of two CPA experts and Gary Gambel's ability to pay. Further, she argued that in setting the award, the trial court improperly considered her potential future receipt of community property, and that it failed to remedy discovery violations by Gary Gambel.

The 1st Circuit affirmed. It found no error in the trial court's treatment of the expert testimony, noting that courts may accept or reject expert opinions in whole or in part. The record showed that both experts made assumptions or relied on incomplete documentation. The appellate court also found no indication that the trial court considered Harriet's prospective share of community assets in setting the award. Instead, it emphasized the couple's historically unsustainable lifestyle, maintained through credit lines,

and found that the $8,000 award reasonably reflected Harriet's needs and Gary's ability to pay as a named partner of his law firm.

Finally, the appellate court rejected Harriet's argument that the trial court erred in denying a new trial due to outstanding discovery issues, observing that she had other avenues available to protect her position and failed to show that the judgment was contrary to the law or evidence. A dissent would have remanded for resolution of the outstanding motion to compel prior to ruling on the motion for new trial.

Rasbury v. Rasbury, 56,391 (La. App. 2 Cir. 7/16/25), ___So.3d ___, 2025 WL 1947741.

Amber Rasbury appealed the denial of final spousal support and the designation of Gregory Rasbury as domiciliary parent in a shared-custody arrangement. The parties divorced following a contentious marriage marked by allegations of infidelity, emotional instability and dysfunctional parenting. At trial, both sides introduced evidence of misconduct: Gregory testified to Amber's marijuana use, frequent conflict and extramarital affair, while Amber accused Gregory of infidelity and emotional neglect. The trial court found both parties at fault in the breakup of the marriage and denied Amber's request for spousal support, concluding that she failed to prove she was free from fault under Louisiana Civil Code article 111.

On the issue of custody, a court-appointed evaluator found that the children were "out of control" and that neither parent was an ideal solo caregiver. However, the evaluator recommended Gregory be named the domiciliary parent, citing his greater insight into his parenting weaknesses compared to Amber's permissive style and lack of awareness. The trial court adopted that recommendation, ordering week-on, week-off custody and naming Gregory as domiciliary parent after considering all factors under Louisiana Civil Code article 134 and interviewing both children in chambers.

The 2nd Circuit affirmed, finding no abuse of discretion in either the denial of final support or the custody determination.

Interlocutory Judgments

In *re Marriage of Treadway*, 24-1102 (La. App. 1 Cir. 7/9/25), ___So.3d ___, 2025 WL 1892436.

Carol Treadway filed a partition and support action, asserting a valid marriage with Harold Treadway. Harold's daughter, Karen Champagne, in her capacity as curatrix, filed exceptions of no right of action, no cause of action, *lis pendens* and lack of subject matter jurisdiction. She asserted that the parties did not intend to be legally married and that there was a pending action for damages, revocation of donation and injunctive relief arising from Carol's misuse of her durable power of attorney over Harold's affairs. She also filed a motion to quash a subpoena duces tecum for Harold's financial records, asserting that Carol had no right to his financial records because they were not legally married.

The Family Court overruled the exceptions and denied the motion, certifying the judgment as final for the purpose of an immediate appeal. Champagne appealed.

The 1st Circuit dismissed the appeal, holding that the judgment denying the exceptions was interlocutory and not subject to certification under Louisiana Code of Civil Procedure article 1915(B). The appellate court declined to convert the appeal into a writ application.

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"Guesswork All The Way Down:" Article III Standing Thresholds

For a tenuous connection to a complex theory, apologies to the late anthropologist, Clifford Geertz, who advocated deep contextual analysis of culture using the shorthand "turtles all the way down" (whose origination has been attributed to many different people) to argue that, below each cultural practice or feature, there is yet another practice or feature supporting the prior one and the explanations for seemingly superficial actions continue below the surface *ad infinitum*. Recently, the U.S. Fifth Circuit likely unknowingly repackaged that notion in an environmental case characterizing the standing of the plaintiffs as "…guesswork all the way down…" in a similar *ad infinitum* manner. *Deep South Center for Environmental Justice v. United States Environmental Protection Agency*, 138 F. 4th 310, 322 (2025) ("*Deep South*"). Perhaps Geertz's conception of the notion of explanations (or in this case, hypothetical situations) was more elegant, but with this observation from the court, the analysis in the recent *Deep South* matter illustrates important deep procedural requirements for juridical standing that merit a review.

The merits of *Deep South* reverberate in modern environmental law circles as well as in industry and in many community activist worlds: carbon sequestration. This case, brought directly to the Fifth Circuit by several environmental organizations (pursuant to an original jurisdiction grant to appellate courts under federal law), challenged the U.S. Environmental Protection Agency's ("EPA") certifying of the Louisiana Department of Energy and Natural Resources' (now the Department of Conservation and Energy) assumption of Class VI injection well primacy. This certification authorizes the State of Louisiana to permit carbon injection wells within its borders — a function generally reserved to the EPA. Under the federal Safe Water Drinking Act, the EPA holds primacy for permitting and regulating injection wells for the sequestration of carbon dioxide (CO_2). In many cases, this CO_2 is a byproduct of various energy generation activities and, contrary to its fairly innocuous sounding name, as the court observed, sequestered CO_2 is anything but innocuous because, "it typically contains chemicals that would pollute any subsurface drinking water" were it to escape from its permitted geological strata. *Deep South*, 138 F. 4th at 315.

The plaintiffs challenged the EPA's delegation of permitting and regulatory

authority to the State, arguing that this EPA action causes injury to the organizations and the organizations' members by requiring them to divert funds and resources to challenging permits under the State regulatory scheme and, in the event of a CO2 leak, direct harm to the public via drinking water contamination. Although discussed throughout the case, these claims on the merits were never meaningfully analyzed. Rather, the court used the claims to examine the procedural mechanisms of organizational and associational standing. With many environmental (and other) lawsuits brought by organizations, the standing analysis in *Deep South* provides important guidance for either side of a dispute in future such actions.

Because this suit was brought by organizations rather than individuals, a threshold question of whether those organizations had standing under U.S. Const. Art. III had to be answered before the merits could be reached. In this regard, the court observed that, "[i]n cases brought by organizational plaintiffs, it is of particular importance that 'standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy.'" *Deep South*, 138 F. 4th at 317. Plaintiff, Deep South, primarily brought its claims under organizational standing, "which permits it 'to sue on [its] own behalf for injuries [it has] sustained." *Deep South*, 138 F. 4th at 317. Plaintiffs, Healthy Gulf and Alliance for Affordable Energy based their claims on associational standing, "which permits organizations to assert injuries on behalf of their members." *Id*. Citing more than a half-century of jurisprudence defining these types of standing, the court ultimately held that all of the plaintiffs "fail[ed] to meet the injury-in-fact requirement" to sustain their cases. *Id*.

With regard to Deep South as a plaintiff in its own right, that organization alleged that it would have to divert time and funding to reviewing and challenging permits issued under Louisiana's delegated Class VI well permitting system. This, found the court, was insufficient when it characterized such injuries as "self-inflicted." *Deep South*, 138 F. 4th at 318. Citing prior Supreme Court jurisprudence to support its conclusion, the Fifth Circuit stated that "an organizational plaintiff 'cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action.'" *Id*. The court also found unavailing — for lack of supporting evidence — Deep South's additional standing claims of future organizational injuries and disrupting its advocacy, education, and training programs.

Healthy Gulf and AAE were found to have complex problems with their associational standing assertions. Because these entities' standing was based on specific members' alleged injuries, the court had to find injuries that were "concrete, particularized, and actual or imminent." *Deep South*, 138 F. 4th at 320. With regard to any of the members' claims being "imminent," the court found that "[t]he simplest and least attenuated injury" claimed by these associations' members — that their energy bills would increase due to Louisiana permitting Class VI wells — did not meet the standard for being an impending injury. *Deep South*, 138 F. 4th at 321. Indeed, the plaintiffs' theory of injury rested on the following possibilities: "utility companies will propose [sequestration] wells, receive permits, and construct the wells, but will never ultimately operate them [due to the risks associated with carbon sequestrations, thus]…pass[ing] along costs to consumers." *Id*. This series of five speculative steps to a tangible injury and an additional seven-step series of possible and chance events that could lead to environmental damage or ten steps of events leading to abandonment of the wells and environmental damage, led the court to invoke the *ad infinitum* characterization of all of the plaintiffs' standing in this case to be "guesswork all the way down." *Deep South*, 138 F. 4th at 322. The court observed that "[t]he Constitution does not countenance such contingency" and that, especially the ten-step theory, "stretches attenuation and speculation far beyond their breaking points," further noting that "[t]he Supreme Court and [the Fifth Circuit] have rejected far less" speculation as a basis for standing. *Deep South*, 138 F. 4th at 323, 324.

Almost as a footnote, the court observed that presumably the same risks from carbon sequestration would occur whether it was EPA or Louisiana issuing the permit. *Deep South*, 138 F. 4th at 325. This acknowledgement came in the penultimate paragraph of the decision, though it could have resolved the entire standing issue summarily. Because of the lateness of this observation and though there were several bases claimed for standing that were minimally discussed, it is clear that the court sought to elucidate the imminent injury component of the standing threshold.

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Louisiana Home Health-Care Workers Stand to Lose FLSA Protections Under New DOL Proposal

The Fair Labor Standards Act (FLSA) of 1938, which set a minimum wage and provided overtime protections for workers, excluded many engaged in domestic service, tipped work and agriculture. The testimony in 2021 Congressional hearings revealed that this labor force was predominantly composed of Black workers and women of all races; they were excluded in an effort to secure the backing of white Southern lawmakers who wanted to maintain the economic and social status quo of racial hierarchy. Testimony of Rebecca Dixon, Excluded to Essential: Tracing the Racist Exclusion of Farmworkers, Domestic Workers and Tipped Workers from the Fair Labor Standards Act: Hearing Before the Subcommittee on Workforce Protections, 117 Cong. 4-6 (2021).

FLSA expanded coverage to domestic-service workers in 1974. However, regulations by the U.S. Department of Labor (DOL) in 1975 narrowed the coverage by exempting domestic-service workers providing "'companionship services' to the elderly or individuals with illnesses, injuries or disabilities." Live-in domestic-service workers were also exempted from overtime provisions. 29 C.F.R.§ 552 (1975). Courts would later interpret the broadly defined "companionship services" exemption to exclude the scope of work that would increasingly be performed by a professional workforce made up of home-health aides who performed duties such as dressing, bathing and arranging for medical care.

Recognizing the industry's growth and the evolution of home-health-care work, in 2013, the DOL issued a final rule expanding minimum-wage and overtime coverage to many workers excluded in 1975, a workforce primarily composed of Blacks and women. 29 C.F.R.§ 552 (2013). Narrowing the definition of companionship services opened coverage for those whose duties went beyond providing "fellowship" and "protection" for the elderly and persons with disabilities. Importantly, the rule also prevented third-party employers, such as home-health-care agencies, from claiming companionship services or live-in domestic-service exemptions.

Placing special emphasis on the importance and value of the work provided by direct-care workers, the DOL noted that the 2013 revision would bring "important minimum wage and overtime protection to the many workers who, by their service, enable individuals with disabilities and the elderly to continue to live independently in their homes and participate in their communities." The revision was expected to bring fair compensation to help stabilize a workforce in a high-turnover industry and benefit consumers with access to a higher quality of care. See DOL Fact Sheet: Application of the Fair Labor Standards Act to Domestic Service, Final Rule (September 2013), *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfsFinalRule.pdf*.

New agency guidance and rulemaking aim to eliminate the 2013 protections. On July 2, stating concerns that regulations have weighed down the home-health-care industry with expensive labor and compliance costs, the DOL proposed to free third-party employers of the burden of the 2013 pay protections for "domestic service" workers. Application of the Fair Labor Standards Act to Domestic Service, 90 Fed. Reg. 28976 (July 2, 2025). The

new rule returns the broader "companionship services" and "live-in domestic" exemptions under 1975 FLSA regulations, restoring the ability of third-party employers to avoid paying minimum wage or overtime to workers who are not covered by state laws. Louisiana has no state minimum wage or overtime protections for any workers; thus, home-care workers in the state will have no such protections.

While the proposal's comment period is open through September 2, the agency has quickly suspended the enforcement of minimum-wage and overtime guarantees. The FAB 2025-4, Home Enforcement Guidance, published on July 25, directs field staff to immediately discontinue actions that enforce the 2013 final rule, including open cases. DOL Field Assistance Bulletin No 2025-4. (July 25, 2025). In effect, the new rule would leave a significant portion of the workforce with the same pay protections that existed when the FLSA was first enacted in 1938 — none.

The DOL justifies the move on the grounds that the 2013 regulations "might not reflect the best interpretation of FLSA and might discourage essential companionship services by making these services more expensive." Application of the Fair Labor Standards Act to Domestic Service," 90 Fed. Reg. 28976 (July 2, 2025). The agency aims now to reduce employer costs, setting off a ripple effect that will increase consumer savings and increase access to services.

The 1975 regulations, however, were intended to apply to casual babysitting arrangements, not to full-time working professionals performing skilled and medically related tasks. This makes a return to the 1975 rule irreconcilable with the realities of the work required to support vulnerable populations and the need for living wages.

Without state wage protections, workers in Louisiana will be among those greatest impacted by the new rule: workers who are predominantly women, people of color and over the age of 55. In spite of the home-health-care industry's incredible growth, workers' earnings are among the lowest. Nationally, the average hourly rate is $16.12. In Louisiana, the rate is even lower, about $12.00 an hour. Bureau of Labor Statistics, U.S. Department of Labor, Home Health and Personal Care Aides in Occupational Employment and Wages, May 2023, *https://www.bls.gov/oes/2023/may/oes311120.htm.* Nevertheless, the DOL points to such statistics to support its position that the loss of a federal minimum-wage guarantee would not have much impact on workers. Still, current wages are well below the living wage necessary for one adult with no children in Louisiana - $20.51 an hour. Living Wage Calculator, MIT *https://livingwage.mit.edu/states/22.*

At the time of its enactment, the 2013 final rule was considered a significant step toward increasing worker earnings. Wages, however, remain low and outpaced by inflation. Turnover rates remain high, helping to contribute to a persisting care crisis that is expected to continue to grow. Reinstating 1975 regulations could further exacerbate staff shortages and pay inequity, by keeping wages low and reducing compensation for long work weeks. Taking wage protections off the table does little socially or economically to incentivize a workforce that is already at a deficit and whose work was highlighted as essential during the Covid-19 pandemic. The explicit exclusion of home-health-care workers from FLSA devalues this work and continues a legacy that denies fundamental legal protections for indispensable workers.

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Contra Non Valentem

In *Re: Medical Review Panel Proceedings of Poree*, 23-1590 (La. 04/23/2025); 406So. 3d 1159.

On Feb. 10, 2022, Denielle Poree's dentist informed her that he had pulled the wrong tooth. He thereafter undertook a procedure that allegedly damaged her other teeth. In September 2022, Poree filed a lawsuit in state court. Over the course of the next four months, defense counsel requested multiple extensions to respond, each of which was agreed to by Poree. On Feb. 13, 2023, three days after the one-year prescription deadline passed, the defendants filed an exception of prematurity, asserting that they were qualified health-care providers and that the claims must first be presented to a medical-review panel. The district court sustained the exception, dismissing Poree's claims without prejudice.

On Feb. 14, 2023, one day after defendants filed their exception, Poree filed a request for a medical-review panel with the Louisiana Division of Administration. The defendants then filed an exception of prescription in the district court, positing that Poree's request for a medical-review panel was prescribed on its face because it was filed more than one year from the date of the alleged malpractice. Poree argued that she had given the defendants multiple extensions of time to answer, not having learned that the defendants were enrolled with the PCF until the defendants filed, strategically, their exception of prematurity three days after the prescription date. The district court granted the defendants' exception of prescription, and the appellate court affirmed.

The Supreme Court on review noted that "the principles of equity and justice which formed the mainstay of the doctrine of *contra non valentem* demand that prescription be suspended under certain circumstances, including instances wherein the defendant prevents the plaintiff from bringing suit." The doctrine applies when "a defendant has committed acts, including concealment, fraud, misrepresentation, or other ill practices, which tend to hinder, impede, or prevent the plaintiff from asserting his cause of action." In its *per curiam* opinion, the court found that the defendants' repeated requests for extensions within which to respond to Poree's lawsuit were "calculated actions to lull the applicant into inaction in order to escape liability and deprive her of her day in court." It added that the defendants had "negotiated in bad faith, abused professional courtesies extended to them in good faith, and requested extensions they did not need and never intended to honor," all of which supported the application of *contra non valentem*. The exception of prescription was overruled, and the case was remanded to the district court for further proceedings.

Vicarious Liability vs. Independent Negligence (Burden Of Proof)

Raborn v. Albea, 24-1128 (La. App. 1 Cir. 7/11/25), ___So.3d___, 2025 WL 1912382.

This action arose from a lumbar fusion surgery that the plaintiff, Frank Raborn, underwent at NeuroMedical Center (NMC) in June 2006. Dr. Jeffrey Albea, a neurosurgeon, performed the procedure, and subsequent care was rendered by other physicians at NMC, including Dr. Shawn Dunn. After experiencing post-operative complications, Raborn eventually underwent a second surgery by an out-of-state neurosurgeon.

Raborn timely filed a medical-review panel request in 2009, and later brought suit against multiple health-care providers, claiming that he had not been properly informed about a broken screw in his spine, as well as other surgical decisions made in his case. A number of the named defendants were dismissed before the case proceeded to trial against only Dr. Albea and NMC.

At the close of Raborn's case-in-chief, NMC moved for a directed verdict. It contended that the claims against NMC were not predicted on NMC's vicarious liability, but rather were claims of its independent negligence, specifically for its failure to (1) timely tender medical records, (2) provide "adequate care coordination," (3) recognize and treat Raborn's post-surgery complication caused by Dr. Albea's alleged malpractice, and (4) properly diagnose and treat Raborn's post-op instability, cauda equina syndrome and arachnoiditis. NMC argued that Raborn had failed to establish these claims through expert testimony as to both the applicable standard of care and any breach thereof. The court denied the motion, and the trial proceeded to verdict, in which the jury unanimously found that Dr. Albea was not negligent, but that NMC was independently negligent, awarding damages of $472,916.69 solely against NMC. NMC again moved for a directed verdict, as well as a JNOV, or, alternatively, a new trial. The trial court denied all of the motions and entered judgment based on the verdict.

On appeal, NMC and the Louisiana Patient's Compensation Fund argued that the verdict was legally insupportable due to the absence of expert testimony establishing either a breach of the standard of care by NMC, or a causal relationship to Raborn's damages. The 1st Circuit agreed. Citing established jurisprudence requiring expert evidence in medical malpractice cases unless the negligence is obvious to a layperson, the court found that Raborn had failed to present expert testimony specific to NMC's independent conduct. None of Raborn's experts addressed the standard of care applicable to NMC, and the only experts who testified about NMC's actions were the expert neurosurgeons retained by the defense. These included a member of the medical review panel, who opined that NMC's care was appropriate.

While recognizing the rigorous standard for overturning jury verdicts, the court concluded that no reasonable jury could have found NMC liable based on the evidence presented at trial. Accordingly, it reversed both the lower court's denial of JNOV and the jury's damages award, entering judgment in favor of NMC and dismissing all claims against it.

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Payment of Sales Tax on Consumer Use Tax Return Upheld

Blue Bird of Happiness, LLC v. Caddo-Shreveport Sales & Use Tax Comm.., BTA Docket No. L01048 (5/8/25).

Blue Bird of Happiness, LLC is a Louisiana limited-liability company and disregarded entity for federal and state income-tax purposes. Blue Bird's only member is Brenda Evans Kennon. Kennon formed Blue Bird for the sole purpose of taking title to an aircraft that was purchased for $4,420,000. The aircraft was transported to Shreveport and hangared at the Shreveport Regional Airport. Blue Bird purchased the aircraft for Kennon's private use, and Blue Bird was not engaged in any business activity. On September 27, 2018, Kennon filed a Consumer Use Tax Return with the Louisiana Department of Revenue. With the return, Kennon paid $373,490 in use tax on the aircraft.

The Caddo-Shreveport Sales and Use Tax Commission (Collector) issued a formal Notice of Assessment, assessing additional local use tax on the aircraft. The Collector asserted that only individuals may elect to file the state Consumer Use Tax Return. The Collector asserted that Blue Bird cannot use the return because it is a dealer by virtue of its importation of tangible personal property (the aircraft) into Louisiana.

The Louisiana Board of Tax Appeals had to determine whether Kennon was permitted to pay use tax under La. R.S. 47:302(K) on the aircraft imported into the State of Louisiana for her personal non-business use by Blue Bird.

The Board noted that the exclusion in the sentence of La. R.S. 47:302(K)(5) does not encompass all dealers, but only dealers who are vendors. Blue Bird and Kennon were not vendors as neither engaged in the regular or systematic solicitation of a consumer market in Louisiana. The Board held that as neither were vendors, they were not precluded from remitting use tax to the LDR on the use of tangible personal property that the consumer purchased in another state tax free and subsequently imported into Louisiana. The Board noted the Consumer Use Tax Return is to provide a mechanism for taxpayers to remit use tax. The Board found reading the first sentence of La. R.S. 47:302(K)(5) to limit the Consumer Use Tax Return to vendors would defeat this purpose.

The Board held Blue Bird, nor Kennon, violated La. R.S. 47:302(K)(5) by paying tax on the aircraft on the Consumer Use Tax Return. The Collector was not entitled to any additional local sales tax, and the assessment appealed from was vacated by the Board.

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Dismissal of Levy Action Extinguishes Tax Court Jurisdiction

In Commissioner v. Zuch, 145 S.Ct. 1707 (2025), the United States Supreme Court held that the Tax Court lacks jurisdiction under Internal Revenue Code § 6330 once the IRS is no longer pursuing a levy action.

At issue was a levy initiated by the Internal Revenue Service against Jennifer Zuch for a 2010 tax liability. Zuch requested a Collections Due Process hearing, arguing that her estimated-tax payments were misapplied

to her then-spouse. The IRS Appeals Officer sustained the levy, prompting Zuch to appeal to the Tax Court. However, while litigation was pending, the IRS offset Zuch's subsequent-year overpayments against the 2010 liability, reducing her balance to zero. The IRS then moved to dismiss the case as moot, and the Tax Court agreed, finding it lacked jurisdiction in the absence of a pending levy.

The Third Circuit reversed, reasoning that the Tax Court retained jurisdiction despite the levy being extinguished. However, the Supreme Court reversed the 3rd Circuit and reinstated the Tax Court's dismissal, resolving a split the 3rd Circuit's decision created with the 4th and the D.C. Circuits in the process. Writing for the majority, Justice Barrett concluded that a "determination" under IRC § 6330(d)(1) refers strictly to "the binary decision whether a levy may proceed." Once the IRS has fully satisfied the liability, the court explained, there is no longer a live levy for the Tax Court to review. The majority opinion suggests that taxpayers should instead pay the liabilities at issue and then file a timely administrative claim with the IRS, followed by a timely suit for refund in federal district court.

Importantly, the Court emphasized that the Tax Court is "a court of limited jurisdiction" and is restricted to reviewing the IRS's decision to sustain or reject a levy; its jurisdiction does not extend to issuing refunds or resolving liability disputes once a levy is withdrawn. As a result, as Justice Gorsuch noted in his dissent, the IRS can effectively strip taxpayers of their Tax Court remedy by ending the levy during litigation, which "hands the IRS a powerful new tool to avoid accountability for its mistakes." Id. at 1715 (Gorusch, J., dissenting).

Fifth Circuit Requires Written Supervisory Approval of Penalties

In another recent development, in Swift v. Commissioner, 144 F.4th 756 (5 Cir. 2025), the 5th Circuit held that written supervisory approval of penalties under IRC § 6751(b) must be obtained before the date of assessment of the penalties or before the supervisor loses discretion over approval of the penalties, if before assessment. The court noted its interpretation aligned with the 9th and 10th Circuit but differed from the 2nd and 11th Circuits. In the facts of the case, the 5th Circuit concluded that the IRC § 6751(b) requirement was met since approval was obtained before a Notice of Deficiency was issued, even if that occurred after a letter proposing penalties was issued to the taxpayer.

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