

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

05-1131

**ROBERT NEIL GUILBEAU, BERNICE GUILBEAU KIMBALL,
CHARLENE GUILBEAU WILKINSON AND EARL JAMES GUILBEAU**

VERSUS

**BAYOU CHATEAU NURSING HOME, INC. & LOUISIANA PATIENTS
COMPENSATION FUND**

Painter, J., dissenting in part.

While I agree with much of the majority's opinion herein, I would affirm the trial court's award for lost chance of survival.

The record on appeal shows a more rapid deterioration of Mrs. Guilbeau's condition after the injury than before. While Mrs. Guilbeau was elderly and suffering from Alzheimer's disease, the record shows that she was able to enjoy many of the normal functions of life, and nothing of record suggests that she was near death prior to her injury. After the injury, her condition declined dramatically, and within three months after the injury she was dead. After hearing the evidence, the trial court stated in reasons for judgment: "Although her death was not caused by the injuries, the evidence does prove more probable than not that the injuries caused her physical condition to be so painful that it diminished her appetite, diminished her mobility, diminished her communication, and as a result necessarily caused a more rapid demise." The trial court's determination that Ms. Guilbeau lost a chance of survival is supported by a reading of the record as a whole, and I would affirm that determination, finding no manifest error. Accordingly, I respectfully dissent from the majority's decision to reverse the judgment of the trial court awarding damages for lost chance of survival.