

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

04-1069

CHARLES RAY TAYLOR, JR., ET AL.

VERSUS

RICHARD J. CLEMENT, M.D., LPCF

**APPEAL FROM THE
FOURTEENTH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU, NO. 99-191
HONORABLE J. DAVID PAINTER, DISTRICT JUDGE**

**ELIZABETH A. PICKETT
JUDGE**

Court composed of Sylvia R. Cooks, Oswald A. Decuir, Elizabeth A. Pickett, Billy Howard Ezell, and James T. Genovese, Judges.

REVERSED AND REMANDED.

Cooks, Judge, dissents with written reasons.

Decuir, Judge, dissents for reasons assigned by Cooks, Judge.

Ezell, Judge, concurs with written reasons.

Genovese, Judge, concurs in the result.

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PICKETT, Judge.

HISTORY

This case was previously before the court. *Taylor v. Clement*, 04-1069 (La.App. 3 Cir. 3/9/05), 897 So.2d 909. At that time we applied to the Supreme Court of Louisiana for instructions on the following question of law arising in the proceeding:

Considering the devaluation of the dollar in the thirty years since the passage of the medical malpractice act is such that the \$500,000.00 limit imposed in 1975 is now, according to competent evidence, worth only \$160,000.00, and considering that Section 22 of Article I of the Louisiana Constitution of 1974 provides Louisiana citizens with an “adequate remedy” under our law, is the limitation on recovery for general damages of \$500,000.00 imposed by the Louisiana Medical Malpractice Act, La.R.S. 40:1299.41, et seq., still considered constitutional?

Id. at 911.

The Louisiana Supreme Court denied our request for certification. *Taylor v. Clement*, 05-1057 (La. 6/17/05), 904 So.2d 708, and remanded the case so that we could consider the plaintiffs’ appeal.

APPEAL

The plaintiffs, Charles and Sharon Taylor, appeal a judgment of the trial court denying their motion for summary judgment seeking to have the limitations on recovery for damages imposed by the Louisiana Medical Malpractice Act, La.R.S. 40:1299.41, et seq., declared unconstitutional and granting the motion for summary judgment filed by the defendant, the Louisiana Patient’s Compensation Fund, upholding the constitutionality of the limitation on recovery or “cap” provisions of the act.

FACTS

The procedural history of the case was set out by the trial judge in his written reasons for judgment as follows:

On June 22, 2001 following a trial on the merits there was a Judgment in favor of MR. and MRS. TAYLOR awarding damages in excess of the statutory limits on liability found in L.R.S. 40:1299.42. On April 23, 2003 the TAYLORS and the LOUISIANA PATIENT COMPENSATION FUND (THE FUND) entered into a partial discharge in satisfaction of said Judgment with the TAYLORS reserving their rights to challenge the constitutionality of The Act. Throughout these proceedings, the TAYLORS have reserved their right to contest the constitutionality of the limits of liability set forth in The Act or applicability to these facts.

Those issues were fixed for trial in this Court on November 24, 2003. THE FUND intervened in this action September 23, 2003. On August 21, 2003 the TAYLORS filed a Second Supplemental and Amending Petition amending the previously filed petition to more specifically set out the constitutional grounds on which “the cap” on recovery was challenged. Subsequently, a Third Supplemental and Amending Petition was filed on October 6, 2003 to spell out with more specificity the constitutional grounds on which “the cap” on recovery was challenged.

The limitation of liability or “cap” is found in La.R.S. 40:1299.42(B), which states:

(1) The total amount recoverable for all malpractice claims for injuries to or death of a patient, exclusive of future medical care and related benefits as provided in R.S. 40:1299.43, shall not exceed five hundred thousand dollars plus interest and cost.

(2) A health care provider qualified under this Part is not liable for an amount in excess of one hundred thousand dollars plus interest thereon accruing after April 1, 1991, for all malpractice claims because of injuries to or death of any one patient.

(3)(a) Any amount due from a judgment or settlement or from a final award in an arbitration proceeding which is in excess of the total liability of all liable health care providers, as provided in Paragraph (2) of this Subsection, shall be paid from the patient’s compensation fund pursuant to the provisions of R.S. 40:1299.44(C).

(b) The total amounts paid in accordance with Paragraphs (2) and (3) of this Subsection shall not exceed the limitation as provided in Paragraph (1) of this Subsection.

After considering the issues raised by the plaintiffs, the counter-arguments of the defendants, and the law and jurisprudence, the trial judge upheld the constitutionality of “the cap” and issued judgment accordingly. This appeal followed.

LAW AND DISCUSSION

Although couched as several different assignments of error, the sole issue raised in this appeal is the same issue raised in *Arrington v. ER Physicians Group, APMC, 04-1235* (La.App. 3 Cir. __/__/06), ___ So.2d ___, the constitutionality of the Louisiana Medical Malpractice Act, La.R.S. 40:1299.41, et seq.

Accordingly, for the reasons set forth in *Arrington v. ER Physicians Group, APMC, 04-1235* (La.App. 3 Cir. __/__/06), ___ So.2d ___, the judgment of the trial court is reversed and set aside; judgment is entered in favor of the plaintiffs, Charles and Sharon Taylor, granting their motion for summary judgment and finding the \$500,000.00 cap on medical malpractice damages unconstitutional as failing to provide the plaintiffs an “adequate remedy” as guaranteed under the provisions of La.Const. art. 1, § 22. The case is remanded to the trial court for the consideration of what constitutes adequate damages in this case. All costs of this appeal are assessed against the defendant, the Louisiana Patient’s Compensation Fund.

REVERSED AND REMANDED.