

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

06- 434

SCOTT HARRISON

VERSUS

LAKE CHARLES MENTAL HEALTH, ET AL.

COOKS, J., dissents.

I respectfully dissent from the majority opinion finding Mr. Harrison's claim has prescribed because he did not file a request for a medical review panel before September 10, 2002, which the majority acknowledges is the applicable prescriptive date. The State admitted the Division of Administration received Mr. Harrison's petition timely and the petition would be treated as a request for a medical review panel. A brief review of the procedural history of this case is in order.

Scott Harrison was a patient at the Lake Charles Mental Health Center beginning in 1986. In June 2001, he received notice that the Center was going to conduct an independent assessment as to whether his continued treatment was warranted. On September 10, 2001, he received the official notice that he was being discharged from the Center and would no longer received treatment. On August 20, 2002, he filed a petition in district court against the Center, several physician employees and the State alleging he was improperly discharged and refused psychiatric medication. The State filed an Exception of Prematurity alleging the claim must first be submitted to a medical review panel. At the hearing, Mr. Harrison asserted he did file a request for a medical review panel by sending a copy of his petition to the Clerk of Court to be served on the Division of Administration. In fact, at the hearing the State admitted: (1) Mr. Harrison's petition was served on the Division of Administration through its Commissioner, Mark Drennan; and, (2) the

petition could be treated as a request for a medical review panel. The following exchange occurred in open court between the trial court, Mr. Harrison and counsel for the State:

MR. HARRISON: At this time I have not tried to actually enforce the lawsuit without having a copy of the lawsuit served on Mark Drennan, the Medical Review Panel, in Baton Rouge. I filed a document right here which is in the court record to have the Clerk's Office serve a copy of the lawsuit upon these people in Baton Rouge, and I'm waiting for them to get back with me.

THE COURT: All right. This is what we'll do. The defense's objection as to the Exception as to Prematurity is valid, and the Court will stay these proceedings and transfer this case to the Medical Review Panel. Is there a procedure or can the Clerk's office do that, Mrs. Hollins?

MRS. HOLLINS: *He served Mark Drennan, therefore it can become that,* and I would continue to be the attorney to handle this as a malpractice.

THE COURT: All right. So, we will keep your lawsuit viable. We will then allow the Medical Review Panel to do whatever it has to do with this matter. And whenever they finish, whatever they say, then we will return back to your lawsuit.

A judgment was signed on January 14, 2003, in accordance with the facts presented at the hearing. The judgment granted the State's Exception of Prematurity and stayed the proceedings in district court pending review by the panel. The judgment further ordered that "Mr. Harrison shall receive representation from the Mental Health Advocacy Center on the issue of whether or not Mr. Harrison can receive medication and/or treatment at the Lake Charles Mental Health Clinic pending a final ruling in this case. The court will contact the Mental Health Advocacy Clinic to arrange the representation prior to a trial on this issue." The State did not appeal the judgment of January 14, 2003, finding a valid panel request was filed by Mr. Harrison, or make any objection to the order which stayed proceedings in district court pending the outcome of the medical review panel. Further, the State did not raise the exception of prescription at the trial level or on appeal in response to the trial judge's decision to keep the "lawsuit" alive by staying the proceedings in

district court to await review by a medical review panel.

It appears no representation was provided to Mr. Harrison from the Mental Health Advocacy Center, as ordered by the trial court, nor was a medical review panel ever convened to review his complaint. When Mr. Harrison received nothing from the Division of Administration, he returned to district court by filing another pleading entitled “Request for Expert Medical Review Panel.” This pleading was filed under the same docket number as the first petition. The trial court treated this pleading as a *second* petition. The State again filed an Exception of Prematurity asserting Mr. Harrison never filed a request for a medical review panel. The trial court granted the exception of prematurity. Mr. Harrison appealed. The State answered the appeal and asserted, for the first time on appeal, an Exception of Prescription. The State argued that August 21, 2001 was the applicable prescriptive date. Alternatively, the State argued Mr. Harrison failed to submit \$100 to the Division of Administration, which fee is required to convene a medical review panel.

The majority opinion finds September 10, 2001 and not August 21, 2001 is the applicable prescriptive date. However, the majority treats Mr. Harrison’s pleading entitled “Request for Expert Medical Review Panel” as a second petition and grants the State’s Exception of Prescription finding he did not file a request for a medical review panel prior to September 10, 2002. In so doing, the majority fails to address the primary issues in this case, namely, (1) the effect of the judgment of January 14, 2003, which stayed the proceedings in district court and ordered that Mr. Harrison receive representation; and, (2) the State’s admission in open court that Mr. Harrison’s original petition was received by the Division of Administration and could be treated as a request for a medical review panel. The majority opinion acknowledges there was a “brief reference at a 2002 hearing that the initial petition was served on ‘Mark Drennan.’” However, the majority concludes “this information

fails to indicate that the specific requirements of La.R.S. 40:1299.39.1(A)(2) were either satisfied or satisfied in a timely fashion.” Contrary to the majority’s conclusion, I am satisfied the record sufficiently rebuts the State’s position that prescription has run in this case. The record clearly shows the pleading he filed with the trial court on August 20, 2002 was received by the Division of Administration. For the first time, on appeal, the State “argued” without any offer of proof that Mr. Harrison did not submit the \$100 fee with the original filing and, therefore, the panel was not convened. Louisiana Revised Statutes 40:1299.39.1(A)(3)(b) requires the Commissioner to “notify the claimant of the amount of the filing fee due and the time frame within which such fee is due to the commissioner.” The notice must inform the plaintiff that the failure to comply will render the request for a medical review panel “invalid and without effect.” The State has provided no proof that such notice was sent to Mr. Harrison. The filing of the petition with Mr. Drennan was sufficient to invoke the medical review panel process and Mr. Harrison’s “Request for Expert Medical Review Panel” should have been treated as a writ of mandamus directing the Division of Administration to convene a medical review panel in accordance with the judgment of January 14, 2003. *See Munden v. State, Div. of Admin.*, 01-2326 (La.App. 1 Cir. 5/9/03), 849 So.2d 639, *writ denied*, 03-1532 (La. 10/3/03), 855 So.2d 310. I respectfully dissent from the majority opinion dismissing Mr. Harrison’s claim on an exception of prescription.