MARY CAMPBELL, : NUMBER: 571,195-B

JERRY CAMPELL, JR.,

JENNY MARIE WARD,

EACH INDIVIDUALLY AND

ON BEHALF OF THE ESTATE OF

THEIR HUSBAND AND FATHER,

JERRY DON CAMPBELL

VERSUS : FIRST JUDICIAL DISTRICT COURT

NEXION HEALTH AT CLAIBORNE,

INC., D/B/A CLAIBORNE

HEALTHCARE CENTER : CADDO PARISH, LOUISIANA

**JUDGMENT ON DEFENDANT’S PEREMPTORY**

**EXCEPTION OF NO RIGHT OF ACTION AND**

**DILATORY EXCEPTION OF PREMATURITY**

 Having considered the peremptory exception of no right of action and the dilatory exception of prematurity filed (October 21, 2013) by defendant Nexion Health at Claiborne, Inc., d/b/a Claiborne Healthcare Center, the attached exhibits and memoranda, the opposition filed (October 28, 2013) by plaintiffs Mary Campbell, Jerry Campbell, Jr., Jenny Marie Ward, each individually and on behalf of the estate of their husband and father, Jerry Don Campbell, the attached exhibits and memoranda, oral arguments of counsel held December 16, 2013, the entire record and applicable law, and for the reasons assigned[[1]](#footnote-1), the Court concludes that the peremptory exception of no right of action should be overruled, and therefore the dilatory exception of prematurity is moot. The defendant’s motion to extend discovery is granted.

 **IT IS ORDERED, ADJUDGED AND DECREED that the peremptory exception of no right of action filed by the defendant Nexion Health at Claiborne, Inc., d/b/a/ Claiborne Healthcare Center is overruled at defendant’s costs.**

 **IT IS ORDERED, ADJUDGED AND DECREED that the motion for extension of time in which to answer plaintiffs’ discovery filed by the defendant is granted.**

 Signed this 19th day of December, 2013 in Shreveport, Caddo Parish, Louisiana.

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 SCOTT CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

Gia Kosmitis, counsel for plaintiffs

Ann Marie Leblanc, counsel for defendant

1. The Court finds the plaintiffs’ claims to fall outside the Medical Malpractice Act, as they are custodial in nature, and therefore not medical malpractice as defined in LSA-R.S. 40:1299.47. The legal basis for this Court’s decision arises from the Louisiana Supreme Court’s definition of “malpractice” as set forth in *Coleman v. Deno*, 813 So.2d 303 (La. 2002). Specifically, this claim is custodial in nature because leaving a sandwich cart out for patients does not involve assessment or treatment of the patient. Likewise, this claim would not require expert medical evidence to determine if there was a breach of the applicable standard of care. In accordance with the Louisiana Supreme Court case law, the peremptory exception is overruled. [↑](#footnote-ref-1)