

IN RE: : NUMBER 572,276, "B"  
MEDICAL MALPRACTICE CLAIM : FIRST JUDICIAL DISTRICT COURT  
OF DAMIAN O'QUINN : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT ON PEREMPTORY  
EXCEPTION OF PRESCRIPTION**

The Court has thoroughly considered the Peremptory Exception of Prescription, filed by Dr. Karl K. Bilderback on October 18, 2013, its attached exhibit and memoranda, the opposition filed by Plaintiffs Damian and Jessica O'Quinn on November 25, 2013, arguments of counsel held on December 2, 2013, and applicable law. For reasons that follow, the Court concludes that the plaintiffs have failed to meet their burden showing that the claim has not prescribed, as prescription is evident on the face of the complaint, and therefore the exception is sustained.

In a medical malpractice action, the plaintiff must file the complaint within one year of the date of the incident, or one year from the date that the plaintiff knew or, in the exercise of reasonable care, should have known of the existence of the right to an action, but no later than three years from the incident. Here, Mr. O'Quinn filed suit on September 12, 2012, his last visit to Dr. Bilderback being November 23, 2009. Thus, Mr. O'Quinn's claim facially prescribed on November 23, 2010, and it is therefore his burden to produce evidence which would overcome this legal presumption. The Court finds that Mr. O'Quinn's memorandum in opposition to Dr. Bilderback's peremptory exception of prescription, by itself, does not satisfy this burden. Moreover, the Court does not find the "continuing treatment" doctrine to be applicable - Mr. O'Quinn only saw Dr. Bilderback three times within a one month span, the visits being nearly three years prior to the filing of the complaint.

For reasons assigned, the Peremptory Exception of Prescription filed with regard to the claims of Damian O'Quinn and Jessica O'Quinn is sustained and their claims are dismissed with prejudice.

Counsel shall submit a formal Judgment in conformity with this ruling and in accordance with La. Dist. Ct. R. 9.5.

Signed this 3rd day of December, 2013 in Shreveport, Caddo Parish, Louisiana.

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DISTRIBUTION

Richard L. Fewell, Jr./Duncan Jones, Counsel for plaintiffs  
Jennifer Durham, Counsel for defendant

  
SCOTT J. CRICHTON  
DISTRICT JUDGE

