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NO. 2026-CA-0271

VERSUS

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COURT OF APPEAL

RALPH R. CHESSON, M.D.

✿

FOURTH CIRCUIT

STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2015-09740, DIVISION “I-5”

Honorable Lori Jupiter

* * * * *

Judge Nakisha Ervin-Knott

* * * * *

(Court composed of Judge Daniel L. Dysart, Judge Paula A. Brown, Judge Nakisha Ervin-Knott)

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VACATED AND REMANDED

October 15, 2026

Plaintiff-Appellant, Donna Brown, appeals the district court's September 11, 2025 judgment granting Defendant-Appellee's "Motion for Dismissal with Prejudice for Failure to Serve" and dismissing this case. For the following reasons, we vacate the district court's judgment and remand for further proceedings.

PROCEDURAL AND FACTUAL HISTORY

This case involves a medical malpractice suit that has been pending since 2015. The underlying facts of the case were previously summarized by the Louisiana Supreme Court in *Brown v. Chesson* as follows:

In October 2012, plaintiff Donna Brown ["Ms. Brown"] filed a complaint with the Division of Administration against Dr. Ralph Chesson ["Dr. Chesson"]. Subsequently, she was notified of Dr. Chesson's status as a qualified state health care provider and a medical review panel was convened. After the medical review panel rendered its opinion in favor of Dr. Chesson, Ms. Brown filed a petition for damages solely against Dr. Chesson on October 9, 2015. In the petition she alleged medical malpractice during a 2011 surgical procedure and requested service on Dr. Chesson at his office.

Dr. Chesson filed declinatory exceptions of insufficiency of citation and service of process arguing that in a claim against a qualified state health care provider, service is proper pursuant to La. R.S. 13:5107 and La. R.S. 39:1538. The statutes require service on three entities: 1) the head of the department for the Board of Supervisors of the Louisiana State University Agricultural and Mechanical College ["LSU"]; 2) the Office of Risk Management ["ORM"]; and 3) the Attorney General.

2020-00730, pp. 1-2 (La. 3/24/21), 315 So. 3d 834, 835. Ultimately, the Louisiana Supreme Court ruled that Ms. Brown had properly requested service on Dr. Chesson. It further held that the issue of whether the other entities should have been served was not relevant to the exception because Ms. Brown had not joined those entities in the suit.

In October 2024, Ms. Brown filed an Amended and Supplemental Petition for Damages and a Second Amended and Supplemental Petition for Damages, formally adding LSU, the ORM, and the Louisiana Division of Administration (“DOA”) (collectively, the “State entities”). In the petition, she requested service on the newly added parties. However, none of the parties were served. The record reflects that the Clerk of Court for Orleans Civil District Court mailed notice to Ms. Brown’s counsel to inform him that there were outstanding fees. Eventually, the service copies of the petition were returned to the Clerk for non-payment.

On March 8, 2025, Dr. Chesson filed a “Declinatory Exception of Failure to Serve Indispensible [sic] Parties.” Ms. Brown’s counsel admitted he received service of the exception but forgot to calendar it. As a result, he did not file an opposition or appear for the hearing on the exception. At the conclusion of the hearing, the district court granted the exception, dismissed the State entities, and ordered that Ms. Brown serve the State entities within thirty days from the date of the judgment. The district court formally signed the judgment on May 12, 2025.¹ In accordance with La. C.C.P. art. 1913²,

¹ Although Dr. Chesson’s counsel had prepared a judgment to be signed in open court, the district court ordered Dr. Chesson’s counsel to make minor changes and resubmit the judgment for signature.

the district court sent notice of the signing of judgment to Ms. Brown’s counsel.³

After thirty days had passed without service on the State entities, Dr. Chesson filed a “Motion for Dismissal with Prejudice for Failure to Serve” (“Motion to Dismiss”) on June 17, 2025. The district court set the hearing on the motion for August 21, 2025, and Dr. Chesson served Ms. Brown’s counsel with the motion on June 26, 2025. On August 13, 2025—a week prior to the hearing and the same day she filed her opposition to the Motion to Dismiss—Ms. Brown requested the Orleans Parish Sheriff’s Office issue service on the State entities. However, by the date of the hearing, the State entities still had not been served, and the district court granted the Motion to Dismiss. The district court dismissed Ms. Brown’s suit against Dr. Chesson with prejudice via a written judgment signed September 11, 2025. After unsuccessfully moving for a new trial, Ms. Brown timely filed this appeal.

ASSIGNMENTS OF ERROR

Ms. Brown raises two assignments of error on appeal:

- (1) The district court abused its discretion in dismissing her suit when she had not received notice of the court’s judgment until after the Motion to Dismiss was filed; and

² La. C.C.P. art. 1913(A) provides:

Except as otherwise provided by law, notice of the signing of a final judgment is required in all contested cases and shall be mailed or delivered in open court by the clerk of court to the counsel of record for each party, and to each party not represented by counsel. Delivery of the signed judgment in open court shall constitute notice of judgment and shall be documented in the record of the proceeding.

³ The district court mailed notice to 501 Clearview Parkway, Metairie, LA 70001. However, Ms. Brown’s counsel alleges that this is not his current address and that he never received the notice of signing.

(2) The district court abused its discretion in dismissing her suit after Dr. Chesson admitted that she had properly requested service.

STANDARD OF REVIEW

As an initial matter, we review the district court's ruling on the Motion to Dismiss under an abuse of discretion and manifest error standard of review. *Jones v. Cisneros*, 2020-0582, p. 3 (La. App. 4 Cir. 4/7/21), 315 So. 3d 959, 962 (citation omitted). The abuse of discretion standard is highly deferential to the lower court's finding, and the appellate court cannot intervene unless the lower court's finding was based on an erroneous view of the law or facts. *Choice Found. v. Law Indus., LLC*, 2024-0380, p. 2 (La. App. 4 Cir. 7/17/24), 399 So. 3d 109, 111 (citation omitted).

However, when a legal error occurs, the manifest error standard is no longer applicable, and the appellate court must review the matter under a *de novo* standard. *E.g. NGA 911, LLC v. Orleans Par. Commc'n Dist.*, 2022-0049, p. 3 (La. App. 4 Cir. 9/15/22), 348 So. 3d 839, 842. Under this standard, the appellate court affords no deference to the lower court's decision, and it "must redetermine the facts *de novo* from the entire record and render a judgment on the merits." *Richard v. Richard*, 2014-1365, p. 4 (La. App. 4 Cir. 6/3/15), 171 So. 3d 1097, 1100 (citation omitted).

DISCUSSION

First, we must address whether the district court erred in granting Dr. Chesson's exception of insufficiency of service of process, as raised in Ms. Brown's second assigned error. While the district court's judgment on the

exception of insufficiency of service of process has not been directly appealed, the outcome of that judgment directly affects the propriety of the Motion to Dismiss.

Dr. Chesson filed a “Declinatory Exception of Failure to Serve Indispensable [sic] Parties.” However, no such exception exists. Rather, there is the declinatory exception of insufficiency of service of process, *see* La. C.C.P. art. 925(A)(2), and the peremptory exception of nonjoinder of a party. *See* La. C.C.P. art. 927(A)(4). “[I]t is well-settled that a pleading’s nature is determined by its substance, not its caption.” *Jones v. Boot Bar & Grill*, 2022-0154, p. 16 (La. App. 4 Cir. 10/5/22), 350 So. 3d 968, 980 (citation omitted); *see also* La. C.C.P. art. 865 (“Every pleading shall be so construed to do substantial justice.”). Despite the mislabeled title, the substance of the pleading reflects that Dr. Chesson raised the exception of insufficiency of service of process.

Louisiana law requires that “[w]hen a supplemental or amended petition is filed naming any additional defendant, service of citation shall be requested within ninety days of its filing, and the additional defendant shall be served with the original petition and the supplemental or amended petition.” La. C.C.P. art. 1201(C). At the time the district court considered Dr. Chesson’s exception, the law only required that Ms. Brown request service on the named defendants. *DaRouse v. P.J.’s Coffee of New Orleans, LLC*, 2025-00078, p. 3 (La. 10/24/25), 421 So. 3d 885, 887.⁴ Dr. Chesson admitted in his memorandum in support of the exception that Ms. Brown had requested service, and the record confirms that Ms. Brown requested service. As such, the exception should not have been granted. Even so, when a court sustains an exception of insufficiency of service of process, the court

⁴ The Louisiana Legislature amended La. C.C.P. art. 1201 in 2026, and the law now requires both that service be requested and all associated fees designated by the clerk of court be paid within ninety days. *See* La. C.C.P. art. 1201(D)-(E).

may either (1) dismiss the action as to the unserved defendants without prejudice or (2) order that service be effected within a specified time. *See* La. C.C.P. art. 932(A). In this case, the district court’s judgment incorrectly ordered both that the action as to the unserved defendants be dismissed and that Ms. Brown serve the dismissed defendants within thirty days in contravention of Article 932(A).

As the exception of insufficiency of service of process should not have been granted, the district court did not have a basis to act on the Motion to Dismiss. However, assuming for the sake of argument that the exception was properly granted, the district court clearly erred in granting Dr. Chesson’s Motion to Dismiss. Upon Ms. Brown’s failure to serve the State entities, Dr. Chesson moved to dismiss the action against himself. Dr. Chesson noted in his motion that dismissal was proper based on Ms. Brown’s failure to comply with the court’s earlier judgment. Nevertheless, Dr. Chesson did not have the right to seek dismissal of the case against himself through that same judgment. “[A]n objection to insufficiency of citation or service of process under La. C.C.P. art. 925 is properly leveled at the form of the citation and also focuses on the person to whom citation is delivered or on the manner in which delivery is made.” *Filson v. Windsor Court Hotel*, 2004-2893, p. 3 (La. 6/29/05), 907 So. 2d 723, 726 (quoting Maraist, Frank L. and Lemmon, Harry T., *Louisiana Civil Law Treatise*, Vol. 1, § 6.5, p. 108) (internal quotations omitted). Accordingly, the remedy for a declinatory exception of service of process pertains only to the unserved parties. *See also* La. C.C.P. art. 932(B) (holding that if a plaintiff fails to comply with a court order on a declinatory exception, then “the action, claim, demand, issue, or theory subject to the exception shall be dismissed. . . .”). Any noncompliance with the judgment was thus already rendered moot by the premature dismissal of the

State entities. Dr. Chesson never raised the exception of insufficiency of service as to himself, and he does not deny proper service. Therefore, the district court did not have the authority to dismiss the case against Dr. Chesson due to Ms. Brown's failure to comply with the Court's judgment on the exception of insufficiency of service of process in relation to the dismissed State entities.

DECREE

For the foregoing reasons, we vacate the district court's September 11, 2025 judgment granting Dr. Chesson's Motion to Dismiss, and we remand this case for further proceedings.

VACATED AND REMANDED