

FILED

November 11, 2003

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 03-50037

ANDRE J. BREAUX; VIRGINIA BREAUX

Plaintiffs - Appellants

VERSUS

UNITED STATES OF AMERICA; HEALTHSOUTH TEXAS LIMITED PARTNERSHIP,
doing business as Healthsouth Sports Medicine & Rehabilitation
Center; CHAD R. MALESICH, Physical Therapist

Defendants - Appellees

Appeal from the United States District Court
For the Western District of Texas, San Antonio
SA-00-CV-1483-EP

Before DAVIS and EMILIO M. GARZA, Circuit Judges and LITTLE*,
District Judge.

PER CURIAM:**

The only question presented in this case is whether the
district court abused its discretion in refusing to accept a

*District Judge of the Western District of Louisiana, sitting by
designation.

**Pursuant to 5TH CIR. R. 47.5, the Court has determined that this
opinion should not be published and is not precedent except under
the limited circumstances set forth in 5TH CIR. R. 47.5.4.

supplemental affidavit of an expert filed in support of a motion for reconsideration of the court's order granting summary judgment in favor of the defendant. At the time the district court ruled on the motion for summary judgment, the plaintiff had not submitted summary judgment evidence establishing the requisite standard of care in this action alleging failure to properly treat and care for the plaintiff. After the court ruled on the motion, the plaintiff then moved for reconsideration and for the first time attached an affidavit purporting to establish the requisite standard of care. At the time the affidavit was filed, the time allotted for discovery had passed and the trial was imminent. Under these circumstances we conclude that the district court did not abuse its discretion in refusing to accept the plaintiff's new evidence filed in support of the motion for reconsideration.

AFFIRMED.