

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 21, 2009

No. 07-31166

Charles R. Fulbruge III
Clerk

JULIA MARITZA PAZ, Individually and on Behalf of Her Minor Children;
LIONEL PAZ, Individually and on Behalf of His Minor Children,

Plaintiffs-Appellees-
Cross-Appellants,

versus

OUR LADY OF LOURDES REGIONAL MEDICAL CENTER, INC.;
LAWRENCE I. RUSSELL,

Defendants-Appellants-
Cross-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
No. 6:01-CV-2693

Before REAVLEY, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.

Julia Paz sued for medical malpractice and obtained a substantial award from the jury. Both sides appeal.

We have reviewed the briefs, the applicable law, and pertinent portions of the record and have heard the arguments of counsel. There is no reversible error in regard to duty of care or liability. There is sufficient evidence to support the awarded damages.

The only reversible error is in the reduction of damages by the district court that resulted from the erroneous inclusion of Dr. Meza on the jury form. *See* La. R.S. 40:1299.41, -.47. The jury found damages of \$200,000. For the remaining two defendants, 90% of that amount (which is \$180,000) is awarded against the hospital, and 10% (which is \$20,000) is awarded against Dr. Russell. Because of the state damage cap, the hospital must pay only \$100,000 and Russell the full \$20,000, leaving \$80,000 to be sought from the state patient's compensation fund. *See* La. R.S. 40:1299.42B(2).

The judgment is MODIFIED as indicated above. In all other respects, there being no reversible error, the judgment is AFFIRMED.