NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2015 CA 0009

ROBERT L. ROYER

VERSUS

OUR LADY OF THE LAKE HOSPITAL, INC., OUR LADY OF THE LAKE PHYSICIAN GROUP, LLC, KEITH BRIAN HODGE, M.D., LURA LABORDE WIGHT, M.D., AND LOUISIANA CARDIOVASCULAR SPECIALISTS, L.L.C., D/B/A LOUISIANA CARDIOLOGY ASSOCIATES

Judgment Rendered: DEC 11 2015

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 610287

The Honorable Todd Hernandez, Judge Presiding

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Allen M. Posey, Jr. **Heather M. Royer** **Baton Rouge, Louisiana**	**Counsel for Plaintiff/Appellant** **Robert L. Royer**
Douglas K. Williams **Druit G. Gremillion, Jr.** **Baton Rouge, Louisiana**	**Counsel for Defendant/Appellee** **Our Lady of the Lake Hospital, Inc.**
Ann M. Halphen **Amy C. Lambert** **L. Adam Thames** **Baton Rouge, Louisiana**	**Counsel for Defendants/Appellees** **Dr. Keith Brian Hodge and** **Dr. Lura LaBorde Wight**

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BEFORE: McDONALD, McCLENDON, AND THERIOT, JJ.

McClendon, J. concurs. I agree with the result reached by the majority.

THERIOT, J.

This appeal is taken from two judgments entered by the Nineteenth Judicial District Court, granting motions for summary judgment in favor of the defendants-appellees, denying the plaintiff-appellant's motions for new trial, and dismissing the plaintiff-appellant's fraud claims, with prejudice. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

The instant dispute derives from the plaintiff-appellant, Robert L. Royer's, decision to seek heart care treatment at Our Lady of the Lake Hospital, Inc. ("OLOL"). On March 16, 2011, Royer began experiencing symptoms of an apparent heart attack, including chest pain, shortness of breath, and weakness. Royer first presented with these symptoms to the office of his primary care physician, Dr. Kurt Graves. Upon Dr. Graves' advice and encouragement, Royer drove to OLOL's emergency room ("ER") for further treatment. Royer arrived at OLOL between 1:30 and 1:45pm.

Two EKG tests were performed upon Royer; the first took place at 2:09pm, and the second took place at 2:49pm. The EKG tests showed Royer was suffering from an active atrial fibrillation or arrhythmia, and demonstrated a progressive abnormality in his condition. OLOL personnel took chest x-rays of Royer at approximately 3:30pm. At approximately 4:00pm, Royer was admitted into the treatment area, and, roughly fifteen minutes later, Royer first received medication for his condition. Thereafter, at approximately 4:47pm, Royer was admitted into OLOL's critical care unit, where he underwent surgery and received other treatment for his heart condition. On March 18, 2011, Royer was discharged from the hospital.

On March 16, 2012, Royer filed a "Petition for Fraud, Rescission of Contract, Reimbursement of Medical Expenses, Damages and Attorney Fees for Fraudulent Advertisements and Other Conduct," against OLOL, Our Lady of the Lake Physician Group, LLC ("OLOLPG"), Keith Brian Hodge, M.D. ("Dr. Hodge"), Lura LaBorde Wight, M.D. ("Dr. Wight"), and Louisiana Cardiovascular Specialists, LLC ("LCS"). Through amended petitions filed on January 29, 2013, and November 19, 2013, Royer added Professional Emergency Physician Associates, LLC ("PEPA") and Shammi R. Kataria, M.D. ("Dr. Kataria") as named defendants. Royer voluntarily dismissed LCS from the suit.[1] The defendants-appellees in this case on appeal are OLOL, Dr. Hodge, and Dr. Wight.

Through his original and amended petitions, Royer presented fraud claims against OLOL, OLOLPG, Dr. Hodge, Dr. Wight, LCS, PEPA, and Dr. Kataria (collectively, "defendants"). Royer alleged the defendants falsely advertised and misrepresented the nature of OLOL's medical services. In pertinent part, Royer claimed the defendants worked together as "integral parts of the team that provided services ... [but that] never came close to providing the services that were falsely represented...." Royer averred the defendants' intentional misrepresentation of the type and extent of medical care provided to persons suffering from heart conditions led him to believe his complaints would be treated with urgency and influenced his decision to seek treatment at OLOL. Royer pointed to the following advertisements and representations as evidence of the defendants' fraud:

- Advertisement that OLOL's staff was "completely committed to medical excellence[.]"

[1] Royer represents that he also voluntarily dismissed OLOLPG from the suit. The record does not appear to contain a motion to dismiss OLOLPG, although Royer did not name OLOLPG as a defendant in either his first or second amended petition for damages.

- Advertisement that OLOL had earned the "highest level recognition for performance excellence[.]"

- Advertisement that OLOL's ER was "the largest and most modern in Baton Rouge[.]"

- Advertisement that OLOL had earned "Chest Pain Accreditation, Cycle III, which is the highest cycle awarded."

- Representation that a person should obtain immediate treatment for chest pain because every "minute" is critical for treatment of a heart attack.

Royer claimed the defendants' intentional and fraudulent conduct entitled him to rescind any medical service contracts entered, and entitled him to an award for past and future medical expenses, general damages, permanent heart damage, and/or the lost chance of preventing permanent heart damage he would have enjoyed had he been treated in accordance with the defendants' purportedly false advertisements and representations.

In addition to the fraud claims before us on appeal, Royer also presented medical malpractice claims against the defendants. Royer claimed that, during the events in question, Dr. Hodge was employed as OLOL's triage physician and Dr. Wight was employed as OLOL's ER physician on duty. Royer claimed Dr. Hodge improperly failed to respond to his complaints of chest pain and failed to note these complaints in his medical charts. Royer alleged Dr. Wight was negligent because she was "responsible for the examination, evaluation and treatment, or lack thereof, that was provided by every other person in the [ER]." Furthermore, Royer alleged that OLOL's cardiologist, Dr. Carl Luikart, an individual not named as a defendant in this suit, negligently caused his artery to be dissected, torn, or ripped open during a balloon angioplasty operation intended to open a blockage in his right coronary artery. Royer finally alleged that, in February

of 2012, Dr. Luikart intentionally misdiagnosed his ongoing chest pain in an attempt to justify prior negligence.

On May 1, 2012, Dr. Hodge and Dr. Wight responded to Royer's suit by jointly filing a dilatory exception of prematurity. Dr. Hodge and Dr. Wight averred Royer's medical malpractice claims had to proceed in accordance with the provisions of the Louisiana Medical Malpractice Act ("LMMA"), La. R.S. 40:1299.41, *et seq.*[2] Dr. Hodge and Dr. Wight stated that, at all pertinent times, they were "qualified health care provider[s]," and argued Royer's claims against them were thus premature prior to completion of the medical review panel process.

Dr. Hodge's and Dr. Wight's dilatory exception of prematurity was set for hearing before the trial court on September 24, 2012. Prior to the hearing, Royer, Dr. Hodge, and Dr. Wight collectively reached an agreement regarding judgment on Dr. Hodge's and Dr. Wight's dilatory exception of prematurity. On September 26, 2012, the trial court signed a consent judgment on the exception of prematurity, thereby dismissing Royer's medical malpractice claims against Dr. Hodge and Dr. Wight as premature prior to a review by a medical review panel, but maintaining Royer's fraud claims against Dr. Hodge and Dr. Wight in the trial court for further proceedings.

On April 16, 2013, on substantially the same grounds as stated by Dr. Hodge and Dr. Wight in support of their dilatory exception of prematurity, OLOL and OLOLPG jointly filed their own dilatory exception of

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[2] The LMMA requires a claimant submit a medical malpractice complaint to a medical review panel and prohibits the filing of a civil suit until the panel renders its expert opinion. See La. R.S. 40:1299.47. Any suit for medical malpractice subject to the LMMA filed in district court prior to presentation of the claim to the medical review panel is subject to the dilatory exception of prematurity, because the cause of action is not yet ripe for judicial determination. **Delcambre v. Blood Systems, Inc.**, 04-0561 (La. 1/19/05), 893 So.2d 23, 27.

prematurity. Royer reached an agreement with OLOL and OLOLPG regarding judgment on their exception, and, on June 11, 2013, the trial court signed a consent judgment in accordance with the parties' agreement. The June 11, 2013 consent judgment dismissed Royer's medical malpractice claims against OLOL and OLOLPG, but maintained Royer's fraud claims against OLOL and OLOLPG for further proceedings.

On November 27, 2012, Dr. Hodge and Dr. Wight jointly submitted a motion for summary judgment, seeking dismissal of Royer's remaining fraud claims against them. Dr. Hodge and Dr. Wight argued they were entitled to judgment as a matter of law because they were not employees, agents, or representatives of OLOL during the events in question. In support of their motion for summary judgment, Dr. Hodge and Dr. Wight filed affidavits to establish they were independent contractors associated with PEPA who had no control, responsibility, or involvement in the composing or transmitting the representations or advertisements made by OLOL regarding its medical services.

During the course of discovery and pendency of pre-trial motions, prior to judgment on Dr. Hodge's and Dr. Wight's motion for summary judgment, Royer, Dr. Hodge, Dr. Wight, PEPA, and OLOL submitted a joint motion for a stipulated protective order to the trial court. The parties stated the protective order was necessary to protect the confidentiality of certain documents and information produced during discovery. On March 11, 2013, the trial court signed the protective order and ordered it to remain in effect beyond the final conclusion of litigation between the parties to the agreement. In pertinent part, the protective order provided:

> **IT IS ORDERED THAT** all written policies, protocols, procedures, charts, contracts, agreements, records, and documents of any kind produced by Dr. Wight, Dr. Hodge,

> [PEPA], and/or [OLOL], as well as all policies of insurance and/or declaration pages providing insurance coverage to [PEPA] and [OLOL] shall be subject to a [p]rotective [o]rder and shall be disclosed only to the following:
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> 1. Parties to this action, counsel of record for such parties, including their associates, clerks, secretarial, and stenographic personnel;
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> * * *
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> 6. The [trial court], in camera, for the consideration, trial, or hearing of any motion, whether in support or opposition thereof, and the [trial court] shall at that time determine whether the documents or records shall continue to be governed by this [protective order].

Following entry of the protective order, Royer filed motions to compel discovery of contracts and documents regarding the relationship between OLOL, Dr. Hodge, Dr. Wight, and PEPA. Specifically, Royer sought to compel discovery of documents and contracts entered into by these parties on August 1, 2005; July 14, 2006; August 1, 2007; and October 12, 2009. Royer argued the requested documents would prove Dr. Hodge and Dr. Wight were not independent contractors, had knowledge about OLOL's advertisements and representations, and were therefore not entitled to summary judgment. Additionally, on April 18, 2013, Royer filed a motion to vacate the protective order in its entirety, reasoning it was improperly being used to circumvent discovery.

On April 29, 2013, the trial court heard arguments on Dr. Hodge's and Dr. Wight's motion for summary judgment, and, on June 17, 2013, the trial court heard arguments on Royer's motions to compel discovery and vacate the protective order. At the hearing on Royer's motions to compel discovery and vacate the protective order, the trial court denied Royer's motion to vacate the protective order in open court. Thereafter, on September 12,

2013, the trial court issued and signed summary judgment in favor of Dr. Hodge and Dr. Wight and dismissed Royer's claims against them, with prejudice. The trial court's September 12, 2013 judgment also denied Royer's outstanding motion to compel discovery as moot. The trial court reasoned the uncontroverted evidence on record demonstrated that Dr. Hodge and Dr. Wight were independent contractors who could not be found liable for OLOL's advertisements and representations. Royer responsively filed motions for new trial on the granting of Dr. Hodge's and Dr. Wight's motion for summary judgment and on the denial of his motions to compel discovery and vacate the protective order.

On January 17, 2014, OLOL individually filed a motion for summary judgment. OLOL argued that there was no genuine issue of material fact as to Royer's fraud claims and that it was entitled to judgment as a matter of law. OLOL asserted Royer could not present evidence sufficient to bear his burden of proving he relied upon its representations and advertisements in deciding to seek treatment at OLOL. Additionally, OLOL averred that, even if Royer could demonstrate he relied upon its representations and advertisements, he could not prove OLOL's representations and advertisements misrepresented, suppressed, or omitted truthful information.

On August 5, 2014, following arguments on OLOL's motion for summary judgment, the trial court issued and signed summary judgment in favor of OLOL. The trial court found there were no genuine issues of material fact with regard to Royer's fraud claims against OLOL and dismissed Royer's remaining claims against OLOL, with prejudice. In written reasons for judgment, the trial court explained incontrovertible evidence on record proved Royer presented to OLOL following the advice and encouragement of his primary care physician, because OLOL was the

closest hospital to his location. Moreover, the trial court explained there was no evidence any of the advertisements at issue were untrue and noted OLOL did not make any "guarantees or offers" to Royer. The trial court's August 5, 2014 judgment also denied Royer's motions for new trial. On October 1, 2014, Royer filed a "Petition for Devolutive Appeal" seeking appeal from the trial court's September 12, 2013 and August 5, 2014 judgments.

ASSIGNMENTS OF ERROR

Royer raises six assignments of error on appeal:

1. On August 27, 2013, the trial court erred in: (a) failing to compel Drs. Hodge and Wight and PEPA to produce requested documents and answer interrogatories that were necessary to assess their status, actions, and responsibility as emergency physicians at OLOL; and (b) prematurely ruling on the motion for summary judgment in favor of Drs. Hodge and Wight.

2. On September 12, 2013, the trial court erred in granting summary judgment in favor of Drs. Hodge and Wight.

3. On June 26, 2014, the trial court erred in denying the motions for new trial on the motion for summary judgment rendered in favor of Drs. Hodge and Wight, on the motion to compel discovery, and on the motion to vacate the protective order.

4. On June 26, 2014, the trial court erred in failing to compel OLOL, PEPA, and Drs. Hodge and Wight to produce documents, requested on December 14, 2012, and answer the interrogatories propounded on May 27, 2013, as requested in the motion for new trial, motion to compel discovery, and supplemental and amended motion to compel discovery, filed on April 23, 2014, before prematurely denying the motion for new trial and prematurely granting summary judgment in favor of OLOL.

5. On July 31, 2014, the trial court erred in rendering summary judgment in favor of OLOL.

6. On June 17, 2013; June 26, 2014; and July 31, 2014, the trial court erred in denying the motion to vacate the protective order.

STANDARD OF REVIEW

Summary judgment is subject to *de novo* review on appeal, using the same standards applicable to the trial court's determination of the issues. The summary judgment procedure is expressly favored in the law and is designed to secure the just, speedy, and inexpensive determination of non-domestic civil actions. La. C.C.P. art. 966(A)(2). Its purpose is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, admissions, and affidavits in the record show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B)(2); **Louisiana Hospital Ass'n v. State**, 13-0579 (La. App. 1 Cir. 12/30/14), 168 So.3d 676, 684-85, writ denied, 15-0215 (La. 5/1/15), 169 So.3d 372 (citations omitted).

DISCUSSION

As an initial matter, we must determine whether this appeal has been properly taken from a final, appealable judgment. In brief, Royer contends that this court has no jurisdiction to address the merits of this case on appeal.[3] Royer contends his medical malpractice claims against Dr. Hodge, Dr. Wight, and OLOL, which are presently pending before a medical review panel in accordance with the provisions of the LMMA, are "inextricably intertwined with the fraud claims(s) pending herein." He argues his medical malpractice claims arise out of the same transaction or occurrence at issue in

[3] Royer requests this court exercise its discretion to convert this appeal to an application for supervisory writs and render a decision necessary to correct the trial court's errors. Under certain circumstances, Louisiana appellate courts have converted appeals of interlocutory judgments into applications for supervisory writs. See **Delahoussaye v. Tulane University Hospital & Clinic**, 12-0906 (La. App. 4 Cir. 2/20/13), 155 So.3d 560, 562. "However, we do so only when the motion for appeal has been filed within the thirty-day time period allowed for the filing of an application for supervisory writs under Rule 4-3 of the Uniform Rules, Courts of Appeal." **Delahoussaye**, 155 So.3d at 563.

his fraud claims and will ultimately proceed in this civil action. He therefore asserts that the trial court's September 12, 2013 and August 5, 2014 judgments constitute non-appealable partial summary judgments controlled by La. C.C.P. art. 1915(B). We disagree.

Louisiana Code of Civil Procedure art. 1915 authorizes appellate courts to entertain appeals from partial final judgments. In pertinent part, La. C.C.P. art. 1915 states:

> A. A final judgment may be rendered and signed by the court, even though it may not grant the successful party or parties all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:
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> (1) Dismisses the suit as to less than all of the parties, defendants, third party plaintiffs, third party defendants, or intervenors.
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> * * *
>
> (3) Grants a motion for summary judgment, as provided by Articles 966 through 969, but not including a summary judgment granted pursuant to Article 966(E).
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> * * *
>
> B. (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories against a party, whether in an original demand, reconventional demand, cross-claim, third-party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.
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> (2) In the absence of such a determination and designation, any such order or decision shall not constitute a final judgment for the purpose of an immediate appeal and may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

In this case, the trial court's September 12, 2013 judgment, granting summary judgment in favor of Dr. Hodge and Dr. Wight, and the trial court's August 5, 2014 judgment, granting summary judgment in favor of

OLOL, both constitute immediately appealable partial final judgments controlled by La. C.C.P. art. 1915(A). The trial court's rulings on the motions for summary judgment did not dismiss Royer's claims against all named defendants; namely, Royer's claims against PEPA and Dr. Kataria remain pending before the trial court. Nevertheless, the trial court's rulings on the motions for summary judgment entirely dismissed Royer's pending civil claims against Dr. Hodge, Dr. Wight, and OLOL, the sole defendants before us on appeal. Although Royer's medical malpractice claims against Dr. Hodge, Dr. Wight, and OLOL arise from the same transaction or occurrence at issue in his fraud claims, Royer's medical malpractice claims against these parties are not presently proceeding in the instant civil action. Therefore, the trial court's September 12, 2013 and August 5, 2014 judgment constitute partial final judgments under La. C.C.P. art. 1915(A). It is beyond dispute that Royer timely took devolutive appeal therefrom.[4,5]

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[4] A litigant may take a devolutive appeal from a final judgment within sixty days of the expiration of the delay for applying for a new trial or judgment notwithstanding the verdict, if no application for such has been timely filed. La. C.C.P. art. 2087(A)(1). If a timely application for new trial or judgment notwithstanding the verdict has been filed, a litigant may take a devolutive appeal within sixty days of "[t]he date of the mailing of notice of the court's refusal to grant a timely application for a new trial or judgment notwithstanding the verdict...." La. C.C.P. art. 2087(A)(2). Here, the trial court rendered summary judgment in favor of OLOL and denied Royer's motion for new trial on the granting of the motion for summary judgment in favor of Dr. Hodge and Dr. Wight on August 5, 2014. Notice of this judgment was mailed on August 13, 2014, and Royer filed a motion for appeal on October 1, 2014.

[5] We note that Royer is also entitled to review of the trial court's rulings on his motions to compel discovery and vacate the protective order. It is well-settled under Louisiana law that trial court rulings concerning discovery matters are non-appealable interlocutory judgments under La. C.C.P. art. 1841. See e.g., **Devers v. Southern University**, 97-0259 (La. App. 1 Cir. 4/8/98), 712 So.2d 199, 209; **Dubois v. Diamond M Co.**, 500 So.2d 919, 920 (La. App. 3 Cir. 1987). However, when a litigant takes an unrestricted appeal from a final judgment, he is entitled to seek review of all adverse interlocutory judgments. See **Landry v. Leonard J. Chabert Medical Center**, 02-1559 (La. App. 1 Cir. 5/14/03), 858 So.2d 454, 461 n.4, writs denied, 03-1752, 03-1748 (La. 10/17/03), 855 So.2d 761. Of course, the instant appeal is limited to review of the trial court's rulings on the motions for summary judgment in favor of Dr. Hodge and Dr. Wight and OLOL; nevertheless, because the issues involved in the trial court's ruling on the motion for summary judgment in favor of Dr. Hodge and Dr. Wight are substantially similar to those involved in Royer's motions to compel discovery and vacate the protective order, it is appropriate to review the trial court's interlocutory judgments in this appeal. See **Dean v. Griffin Crane & Steel, Inc.**, 05-1226 (La. App. 1 Cir. 5/5/06), 935 So.2d 186, 189, n.3, writ denied, 06-1334 (La. 9/22/06), 937 So.2d 387.

Louisiana Civil Code art. 1953 defines fraud as "a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other." Fraud may result from silence or inaction. There are three essential elements in an action for fraud against a party to a contract: 1) a misrepresentation, suppression, or omission of true information; 2) the intent to obtain an unjust advantage or to cause damage or inconvenience to another; and 3) the error induced by a fraudulent act must relate to a circumstance substantially influencing the victim's consent to the contract. Fraudulent intent, i.e., the intent to deceive, is a necessary and inherent element of fraud. Fraud cannot be predicated upon mistake or negligence, no matter how gross. **Charming Charlie, Inc. v. Perkins Rowe Associates, LLC**, 11-2254 (La. App. 1 Cir. 7/10/12), 97 So.3d 595, 599.

Louisiana Code of Civil Procedure art. 966(C)(2) provides that in a motion for summary judgment, the burden of proof remains with the movant. However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim. Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact. La. C.C.P. art. 966(C)(2).

Based upon our *de novo* review of the entire record, we first find that the trial court did not err by granting summary judgment in favor of Dr. Hodge and Dr. Wight. In support of their motion for summary judgment, Dr.

Hodge and Dr. Wight filed affidavits establishing that they were, at all pertinent times, independent contractors associated with PEPA and contracted out to OLOL in order to provide emergency medical services to OLOL patients. The affidavits further demonstrated that Dr. Hodge and Dr. Wight had no control, responsibility, or involvement in making any of the representations or advertisements exercised by OLOL or its affiliates. Dr. Hodge and Dr. Wight thereby pointed out that there was an absence of factual support for the first element of any action for fraud; that is, Dr. Hodge and Dr. Wight pointed out that Royer could not establish their involvement in any purported misrepresentation, suppression, or omission of true information.

In rendering summary judgment in favor of Dr. Hodge and Dr. Wight, the trial court emphasized that "the allegations made in the plaintiff's petition do not include actions that could be attributed to [Dr. Hodge and Dr. Wight]." Furthermore, the trial court stated, "[a]s independent contractors, [Dr. Hodge and Dr. Wight] would not be liable to the plaintiff for any claims he made in the petition." A thorough review of the record reveals that Royer's original petition only alleged the false advertisements and misrepresentations at issue had been made by "OLOL" or by "OLOL, through its officers, agents, or employees." In response to the motion for summary judgment, Royer did amend his petition to more broadly allege that the false advertisements and misrepresentations at issue had been made by "OLOL and PEPA" or by "OLOL, through its officers, agents, employees, affiliates, associates, staff and/or members." However, it remains that Royer presented no evidence sufficient to establish that he could meet his burden of proving at trial that Dr. Hodge and Dr. Wight had any control, responsibility, or involvement in composing or transmitting the

allegedly false advertisements or representations. Thus, we find no legal error in the trial court's granting of summary judgment in favor of Dr. Hodge and Dr. Wight. Relatedly, we conclude that the trial court did not err by finding that the granting of the summary judgment in favor of Dr. Hodge and Dr. Wight rendered Royer's motions to compel discovery and vacate the protective order moot. Therefore, Royer's first, second, third, fourth, and sixth assignments of error do not merit relief.

Next, we hold the trial court did not err by granting summary judgment in favor of the principal entity, OLOL. First, the evidence on record supports the trial court's conclusion that OLOL's advertisements and representations did not substantially influence Royer's decision to seek treatment at OLOL, nor did they substantially influence Royer's consent to medical service contracts. While Royer testified in his deposition that he was generally aware of OLOL's advertisements regarding its heart care services, Royer admitted that he only sought treatment at OLOL after first visiting Dr. Graves, his primary care physician, and upon Dr. Graves' advice and encouragement, because OLOL was the closest hospital to his location. Additionally, the evidence on record supports the trial court's conclusion that OLOL's advertisements did not constitute a misrepresentation, suppression, or omission of the truth.

On appeal, Royer argues: "A comparison of the advertisements with the medical records and affidavit testimony ... show[s] that the representations in the advertisements were not consistent with the treatment [Royer] received at the OLOL ER[.]" He contends this proves OLOL's fraudulent intent to obtain an unjust advantage. However, the cited advertisements largely describe either uncontested objective facts or subjective impressions about the hospital and its staff. We specifically note

that none of the cited advertisements are demonstrably false. For example, there is nothing in the record to counter OLOL's representation that it earned recognition for performance excellence, that it earned accreditation for chest pain response, that it had the largest and most modern ER in Baton Rouge, or that its staff was dedicated to medical excellence. While Royer is free to argue that the medical treatment he received fell below the applicable standard of care, and/or to argue that OLOL failed to comply with its own guidelines for heart attack treatment, such claims properly sound in medical malpractice, not fraud, as fraudulent intent "cannot be predicated upon mistake or negligence[.]" **Charming Charlie, Inc.**, 97 So.3d at 599. Consequently, Royer's fifth assignment of error lacks merit.

DECREE

For the foregoing reasons, the trial court's September 12, 2013 and August 5, 2014 judgments are affirmed. All costs of this appeal are assessed against the plaintiff-appellant, Robert L. Royer.

AFFIRMED.