

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

KAY A. MARTIN, and )  
CHARLES A. MARTIN IV, )  
Plaintiffs, )  
v. ) C.A. No. N12C-06-187  
DOCTORS FOR EMERGENCY )  
SERVICES, P.A., and )  
CHRISTIANA CARE HEALTH )  
SERVICES, INC., )  
Defendant. )

Submitted: September 10, 2012  
Decided: September 21, 2012

UPON PLAINTIFF'S MOTION FOR REARGUMENT  
**DENIED**

On this 21<sup>st</sup> day of September, 2012, it appears to the Court that:

1. Plaintiffs filed a Motion for Reargument from a decision of this Court that required Plaintiffs to provide a supplemental affidavit of merit reflecting a qualified expert's opinion that Defendant Doctors for Emergency Services, P.A. committed negligence and that such negligence caused Plaintiff Kay Martin's injury. The Motion for Reargument was not timely filed and is therefore DENIED.

2. The Court received Defendants' Motion to Determine if the Affidavit of Merit Complies with 18 *Del. C.* § 6853 on August 20, 2012.

The Court reviewed the affidavit of merit and issued its decision, by letter dated August 27, 2012, which indicated that the affidavit of merit concerning Defendant Christiana Care Health Services complied with the statutory requirements. The Court additionally ordered Plaintiffs to submit a supplemental affidavit of merit reflecting a qualified expert's opinion that there are reasonable grounds to believe that Defendant Doctors for Emergency Services, P.A. committed negligence and that such negligence caused Plaintiff Kay Martin's injury. Instead of filing the affidavit of merit by September 11, 2012, as required by this Court's prior ruling, Plaintiffs submitted a letter to the Court on September 5, 2012. The Court contacted Plaintiffs' counsel and advised him the letter would not be considered and that a Motion for Reargument should have been filed instead. Then, on September 11, 2012, Plaintiffs filed their Motion for Reargument of the Court's August 27, 2012 decision. Defendants did not respond.

3. Superior Court Civil Rule 59(e) requires a Motion for Reargument to be served and filed within 5 days after the filing of the Court's opinion or decision. The computation of time for a motion for reargument does not include Saturdays, Sundays, or other legal holidays.<sup>1</sup> The time limitation on a motion for reargument is jurisdictional and, if not

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<sup>1</sup> Super. Ct. Civ. R. 6(a).

timely filed, the Court may not consider the merits of the motion.<sup>2</sup>

4. Even if this Court considers the date Plaintiffs filed the letter requesting reargument, the Motion was not timely filed. Plaintiffs' letter was filed on the sixth day after this Court's decision, excluding the date the decision was entered, weekends, and holidays. This Court is not permitted to consider the merits of Plaintiffs' Motion because it was not filed timely. Plaintiffs' Motion for Reargument is therefore DENIED.

5. Plaintiffs were required to submit a supplemental affidavit, satisfying the minimal statutory requirements, as to Defendant Doctors for Emergency Services, by September 11, 2012. That date has now passed as Plaintiffs chose instead to file their Motion for Reargument. The Court will allow Plaintiffs additional time to file the required supplemental affidavit. It shall be filed on or before October 12, 2012.

**IT IS SO ORDERED.**

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**PEGGY L. ABLEMAN, JUDGE**

Original to Prothonotary  
cc: Counsel via File & Serve

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<sup>2</sup> See *State v. Brokenbrough*, 2008 WL 1891705 (Del. Super. Apr. 30, 2008).