

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MONICA KING ANDERSON,)
Individually and as Personal)
Representative of the ESTATE OF)
WILLIAM KING, STEPHANIE)
KING, HEATHER GUERKE, and)
AMBER WITHROW,)
Plaintiffs,)

v.)

C.A. No. N18C-04-158 ALR

GI ASSOCIATES OF DELAWARE,)
P.A., ADVANCE ENDOSCOPY)
CENTER, LLC, and NATWARLAL)
RAMANI, M.D.,)
Defendants.)

Submitted: May 14, 2020

Decided: May 18, 2020

Upon Defendants' Application for Certification of Interlocutory Appeal
APPROVED

ORDER

Defendants request certification of an interlocutory appeal to the Supreme Court of the State of Delaware of this Court's April 28, 2020 Memorandum Opinion which denied Defendants' motion for summary judgment. Plaintiffs agree that the criteria for interlocutory review are met. For the reasons set forth below, this Court finds that its decision determines a substantial issue; establishes a legal right; satisfies the criteria set forth in Rule 42(b) of the Rules of the Supreme Court of the State of Delaware; that interlocutory review offers the most efficient and just

schedule for resolution; and that, on balance, the benefits of interlocutory review outweigh the costs.

1. In its Memorandum Opinion and Order dated April 28, 2020, this Court found that the lawsuit filed by Plaintiffs was filed within the applicable statute of limitations, ruling that this medical negligence case does not involve a single act of negligence but, rather, a continuum of negligent medical treatment. Specifically, the Court found that the two acts comprising the continuum of negligent medical treatment—the April 4, 2011 recommendation for a repeat colonoscopy in 3-5 years and the March 23, 2016 failed colonoscopy—are so inexorably intertwined as to constitute one continuous wrong.¹ This Court further ruled that the date on which the statute of limitations period began was the date of the last act in the continuum of negligent treatment, i.e., March 23, 2016, even though that last act was not itself negligent.² Finally, the Court found, pursuant to 18 *Del. C.* § 6856(4), the statute of limitations period was tolled by notice of investigation. Therefore, according to this Court’s analysis, this lawsuit, initiated on April 16, 2018, was filed within the applicable statute of limitations.

¹ *Anderson v. GI Assocs. of Del., P.A.*, 2020 WL 2070342, at *6 (Del. Super. Apr. 28, 2020).

² *Id.*

2. The standard for certification of an interlocutory appeal is high:

[i]nterlocutory appeals should be exceptional, not routine, because they disrupt the normal procession of litigation, cause delay, and can threaten to exhaust scarce party and judicial resources. Therefore, parties should only ask for the right to seek interlocutory review if they believe in good faith that there are substantial benefits that will outweigh the certain costs that accompany an interlocutory appeal.³

3. An interlocutory appeal may be certified by this Court pursuant to Rule 42 only when the appealed decision (1) “decides a substantial issue of material importance that merits appellate review before final judgment”⁴ and (2) meets one or more criteria enumerated in Rule 42(b)(iii).⁵ Moreover, before certifying interlocutory appeal, this Court “should identify whether and why the likely benefits of interlocutory review outweigh the probable costs, such that interlocutory review is in the interests of justice.”⁶

4. While this Court disagrees that it ruled on an issue of first impression, nevertheless, the requirements set forth in Rule 42 for certification are satisfied. By ruling that Dr. Ramani engaged in continuum of negligent medical treatment rather than a single act of negligence, this Court’s determination of Section 6856’s

³ Supr. Ct. R. 42(b)(ii).

⁴ Supr. Ct. R. 42(b)(i).

⁵ See Supr. Ct. R. 42 (b)(iii).

⁶ Supr. Ct. R. 42(b).

application to Plaintiffs' claims constitutes a substantial issue and establishes a legal right.

5. Furthermore, the April 28, 2020 decision meets the following Rule 42(b)(iii) criteria:

- Rule 42(b)(iii)(C): The question of law relates to the application of a Delaware statute, which has not been, but should be, settled by the Supreme Court in advance of an appeal from a final order. This Court's determination of the "last act" involves application of the statute of limitations set forth in 18 *Del. C.* § 6856. Although the Delaware Supreme Court has recognized the continuum of negligent medical care related to a single condition occasioned by negligence,⁷ the facts of this case raise important questions about how Section 6856 applies to allegations of continuous negligent medical treatment involving acts that alone do not amount to negligence but nonetheless comprise the underlying "wrongful act."
- Rule 42(b)(iii)(G): Review of the interlocutory order may terminate the litigation. Reversal of this Court's decision may entitle Defendants to summary judgment and therefore terminate this litigation.
- Rule 42(b)(iii)(H): Review of the interlocutory order otherwise serves considerations of justice. Given the relative scarcity of decisional law addressing the statute of limitations question resolved by this Court, appellate review of this Court's decision serves considerations of justice.

⁷ See *Ewing v. Beck*, 520 A.2d 653, 662 (Del. 1987).

6. The likely benefits of interlocutory review outweigh the probable costs in this particular litigation. This case is otherwise ready for trial,⁸ which will be expensive as well as especially stressful for the individuals who are parties. Interlocutory review at this stage of the litigation provides the most efficient and just schedule for resolution of a significant legal question. Review by the Delaware Supreme Court of this issue in advance of a final order after trial will spare the parties, the Court, and the public from unnecessarily expending valuable resources. Accordingly, the benefits of interlocutory appellate review outweigh the costs.

NOW, THEREFORE, Defendants' Application for Certification of Interlocutory Appeal is APPROVED and leave is granted. This Court's Memorandum Opinion and Order dated April 28, 2020 is hereby certified to the Supreme Court of the State of Delaware for interlocutory appeal in accordance with Rule 42 of that Court.

IT IS SO ORDERED this 18th day of May 2020.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

⁸ The scheduled trial date of June 22, 2020 was vacated by Court Order on March 31, 2020. Even if interlocutory appeal is refused in the discretion of the Delaware Supreme Court, a prompt jury trial is unavailable given the current circumstances involving COVID-19.