

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

TAYLOR S, a minor, by her)	
guardian <i>ad litem</i> , MARGARET F. S, and)	C. A. No. K11C-01-014 JTV
and MARGARET F. S, Individually,)	
)	
Plaintiffs,)	
)	
v.)	
)	
JASON B. HANN-DESCHAIINE, M.D.)	
and DELAWARE PEDIATRICS, P.A., a)	
Delaware corporation, d/b/a/)	
APPOQUINIMINK PEDIATRICS,)	
)	
Defendants.)	

ORDER

This 28th day of November 2012, upon consideration of the defendants’ application for certification of interlocutory appeal, it appears that:

1. In this case the plaintiffs allege that Dr. Hann-Deschaine committed sexual abuse against plaintiff Taylor S, then twelve, during a vaginal examination. Plaintiff Taylor S has sued the defendants, Dr. Hann-Deschaine and Delaware Pediatrics, P.A., claiming that Dr. Hann-Deschaine committed an unlawful sexual contact against her. Plaintiff Margaret S, Taylor’s mother, was personally present during the examination at which this allegedly occurred and has sued for intentional infliction of emotional distress. The plaintiffs have retained an expert, Dr. Hoshauer, who gives an opinion that the manner in which Dr. Hann-Deschaine conducted the vaginal examination deviated from the applicable standard of care for such an examination. Dr. Hoshauer, however, is not offering an expert opinion as to a causal

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connection between the alleged wrongful conduct and any injuries to the minor plaintiff. In fact, the plaintiffs claim no actual physical, mental or emotional injury to the minor plaintiff apart from the alleged unlawful sexual contact itself.

2. The defendants moved for summary judgment on the grounds that the action falls within the medical negligence statute and the plaintiffs' medical expert cannot establish causation as to Taylor S's medical negligence claim as required by 18 *Del. C.* § 6853. The defendants also moved for summary judgment on plaintiff Margaret S's intentional infliction of emotional distress claim on the grounds that she must have an expert witness to support her claimed distress. On June 14, 2012, the Court denied the defendant's motion as to both plaintiffs' causes of action. On June 21, 2012, the defendants filed a Motion for Reargument with regard to the Court's denial of the defendants' Motion for Summary Judgment. The following day, the defendants filed an Application for Certification of Interlocutory Appeal. On July 17, 2012, the Court denied the defendants' Application for Certification of Interlocutory Appeal without prejudice, because the certification for appeal was not ripe for consideration until after the Court decided the Motion for Reargument.

3. On November 1, 2012, the Court denied the defendants' Motion for Reargument. In doing so the Court agreed that a child sexual abuse claim against a health care provider does fall within the scope of the medical negligence statute, but concluded that the requirement that there be a causation expert does not apply when the action is for the sexual abuse of a child patient, and the sole injury alleged is unlawful contact with the child plaintiff's person, because proof of the unlawful sexual contact itself was proof of the injury. The Court further concluded that expert testimony is not *per se* required, as a matter of law, in all cases alleging intentional

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infliction of emotional distress. The Court further concluded that, despite the defendants' contentions to the contrary, the record was not clear as to exactly what alleged emotional distress plaintiff Margaret S would claim occurred to her because of the incident involved in this case.

4. On November 9, 2012, the defendants filed an Application for Certification of Interlocutory Appeal regarding the Court's November 1, 2012 Order. They contend that the Court's holding that a causation expert is not required under the medical negligence statute under these circumstances determines a substantial issue, because it "appears to create an exception to 18 *Del. C.* § 6853," which "frustrates and defeats the entire purpose of the medical negligence statute;" that the Court's holding that a causation expert is not required in this case to show that plaintiff Margaret S suffered emotional distress also determines a substantial issue, because determining the proximate cause of emotional distress is not within the common knowledge of an average layperson; that the resolution of these issues in the defendants' favor may terminate the litigation, and serve considerations of justice, because Dr. Hann-Deschaine's reputation will be tarnished if the case proceeds to trial; and that these issues raise original and/or unsettled questions of law. The plaintiffs oppose certification.

5. Applications for certification of an interlocutory appeal should be granted only in exceptional circumstances.¹ In determining whether to grant or refuse certification, the public interest in advancing appellate review of potentially case dispositive issues should be balanced against the danger of fragmenting litigation and

¹ *State ex rel. Brady v. Wellington Homes, Inc.*, 2003 WL 22222128, at *2 (Del. Super. Sept. 16, 2003).

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causing unnecessary delay.² In addition, the trial court's ruling must determine a substantial issue and establish a legal right.

6. After carefully considering the defendants' application, I am not persuaded that my rulings in this case establish a legal right that would justify certifying the interlocutory appeal.³

7. Therefore, the application for certification of interlocutory appeal is *refused*.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

cc: Prothonotary
Scott E. Chambers, Esq.
Dennis D. Ferri, Esq.

² *Id.* (citing *In re Pure Res., Inc.*, 2002 WL 31357847, at *1 (Del. Ch. Oct. 9, 2002)).

³ Supr. Ct. R. 42(b).