

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

GEORGE E. WILHELM, and)
PAMELA A. WILHELM,)

Plaintiffs,)

v.)

C.A. No. N12C-06-015 DCS

DONALD E. MARSTON, ESQ.)

and)

DOROSHOW PASQUALE)
KRAWITZ & BHAYA,)

Defendants.)

ORDER

On this 31st day of January, 2013, upon consideration of Plaintiffs’ motion to reassign this case to Judge M. Jane Brady and Defendants’ response, the Court finds as follows:

1. Plaintiffs George and Pamela Wilhelm, (“Plaintiffs”), bring a cause of action for legal malpractice regarding an alleged failure by Defendant Donald Marston, (“Marston”), to inform Plaintiffs of a potential uninsured motorist, (“UM”), claim against Plaintiffs’ insurance company.

2. The underlying facts are that on November 8, 2000, Plaintiff Wilhelm engaged Defendant to represent him in a worker's compensation matter concerning a July 16, 1998, work-related injury. Plaintiff Wilhelm, an employee of Delmarva Power & Light, was working on a downed wire when a vehicle allegedly hit the wire resulting in injury to Plaintiff Wilhelm. Plaintiffs allege that Marston did not file a UM claim on their behalf or advise them about the possibility of filing such a claim.

3. In 2009, eleven years after the injury, a second lawyer filed a UM action against Plaintiffs' insurance company. That case was decided on summary judgment in favor of the insurance company.¹ In that matter, Judge Brady found that the eleven-year delay between the 1998 accident and the 2009 claim was as a matter of law not "as soon as practicable" as required by Delaware statute for giving notice of a claim, and, as a result, the insurance company was prejudiced in its ability to defend the claim.²

4. At this time, Plaintiffs move to reassign the instant legal malpractice action to Judge Brady on the grounds that the issues involved in this matter are "essentially the same" as the issue determined in the UM action and Judge Brady is familiar with the facts. Plaintiffs assert that the issue to be determined in the present matter—whether notice of a UM claim provided to the insurance company

¹ *Wilhelm v. Nationwide Gen. Ins. Co.*, 2011 WL 4448061, *6 (Del. Super. May 11, 2011), *aff'd*, 29 A.3d 246 (Del. 2011).

² *Id.* (citing 18 *Del.C.* § 3902(a)(3)(c)).

in November 2000 would have been deemed “as soon as practicable”—is the same issue Judge Brady decided regarding the eleven-year delay except that the time period in this matter is shorter (only two years and four months). Plaintiffs provide no legal authority for their motion.

5. Marston opposes the motion to reassign asserting that the issues are not essentially the same as the issue determined in the UM action. Marston asserts that the present action involves (1) whether Plaintiffs are collaterally estopped from denying that they did not provide notice of a UM claim “as soon as practicable” and (2) whether the engagement letter between Plaintiffs and Marston limited the scope of legal representation to the workers’ compensation matter.

6. “A judge should hear and decide matters assigned, unless disqualified.”³ Since a judge’s impartiality is fundamental to the administration of justice, rules of disqualification exist to guarantee that a judge preside over a case only where she is impartial and disinterested.⁴ Yet, even where disqualification is not at issue, in the best interest of justice, “some unusual cases may warrant the assignment of a new judge to preside over remand proceedings.”⁵

7. In this matter, Plaintiffs have not alleged that the judge assigned to this case should be disqualified or is unable to be impartial. Furthermore, this case is not a remanded matter where the current judge previously made determinations

³ DE R CJC Rule 2.7(A).

⁴ *Los v. Los*, 595 A.2d 381, 383 (Del. 1991).

⁵ *Beck v. Beck*, 766 A.2d 482, 485 (Del. 2001).

as to the issues involved. Although the case potentially involves a collateral estoppel or *res judicata* issue which might require the Court to review the related decision on the UM matter, such a scenario is not atypical and does not require the case to be reassigned.

ACCORDINGLY, Plaintiff's motion to reassign is ***DENIED***.

IT IS SO ORDERED.

Judge Streett

Prothonotary

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