

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

KENNETH T. DEPUTY,)
)
Plaintiff,)
) C.A. No. 07C-01-202 MMJ
v.)
)
DR. CONLAN, JAMES WELCH,)
and THOMAS CARROLL,)
)
Defendants.)

Submitted: June 10, 2009
Decided: August 12, 2009

On Plaintiff Kenneth T. Deputy's Motion for Reargument
DENIED

ORDER

Kenneth T. Deputy, Plaintiff, *Pro Se*

Catherine Damavandi, Esquire, Department of Justice, Wilmington, DE, Attorney
for State Defendants

JOHNSTON, J.

1. By Order dated May 29, 2009, the Court denied defendants' motion to dismiss plaintiff's 8th and 14th Amendment claims. Plaintiff's medical negligence claims, and any 8th and 14th Amendment claims dependent upon a finding of medical negligence, previously were dismissed. Plaintiff's medical negligence claims are barred by his failure to comply with 18 *Del. C.* § 6853 (Affidavit of Merit, expert medical testimony).

2. Plaintiff filed a Motion for Reargument Pursuant to Superior Court Civil Rule 59(e). Plaintiff argues that the Court "based its decision erroneously on the factual matters." Plaintiff appears to reargue the merits of the previously dismissed medical malpractice claims. As to those claims, plaintiff's motion clearly is untimely and cannot be considered. As to the remaining claims, the denial of dismissal was favorable to plaintiff.

3. The purpose of reargument is to permit reconsideration of findings of fact, conclusions of law, or judgment of law.¹ Reargument usually will be denied unless the moving party demonstrates that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it has misapprehended the law or the facts in a manner affecting the outcome of the decision. "A motion

¹*Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del.1969).

for reargument should not be used merely to rehash the arguments already decided by the court.”²

4. Plaintiff has failed to demonstrate that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it misapprehended the law or the facts in a manner affecting the outcome of the decision. Further, there is no relief that can be granted to plaintiff at this time that would be more favorable to him than the Court’s denial of defendants’ motion to dismiss.

THEREFORE, plaintiff’s Motion for Reargument is hereby **DENIED..**

IT IS SO ORDERED.

The Honorable Mary M. Johnston

²*Wilmington Trust Co. v. Nix*, 2002 WL 356371 (Del Super.); *Whitsett v. Capital School District*, Del. Super., C.A. No. 97C-04-032, Vaughn, J. (Jan. 28, 1999); *Monsanto Co. v. Aetna Casualty & Surety Co.*, Del. Super., C.A. No. 88-JA-118, Ridgeley, P.J. (Jan. 14, 1994).