

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

CARNETHIA O. STEWARD,

Plaintiff,

v.

ISAIAS IRGAU, M.D.,

Defendant.

C.A. No. N18C-12-197 RRC

Submitted: May 3, 2019

Decided: June 21, 2019

On Defendant's Motion to Dismiss. **GRANTED**

**ORDER**

Carnethia O. Steward, Wilmington, Delaware, Plaintiff, *pro se*.

Lauren C. McConnell, Esquire, Wharton Levin Ehrmantraut & Klein, P.A.  
Wilmington, Delaware, Attorney for Defendant.

COOCH, R.J.

This 21st day of June, 2019, upon consideration of Defendant's Motion to Dismiss, it appears to the Court that:

1. On December 20, 2018, *pro se* Plaintiff Carnethia O. Steward filed the instant medical negligence action alleging that Defendant had failed to diagnose a hernia during Plaintiff's surgery, which allegedly caused Plaintiff to undergo two additional procedures. The alleged medical negligence is also the purported source of Plaintiff's claimed chronic abdomen pain. On February 13, 2019, Defendant moved to dismiss Plaintiff's claim under 18 *Del. C.* § 6853(a)(1).<sup>1</sup> Defendant argues that

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<sup>1</sup> See Def.'s Reply Br., *Steward v. Irgau*, N18C-12-197 RRC, D.I. 22, at 1 (May 3, 2019).

Plaintiff did not file an affidavit of merit in conjunction with her complaint, and has yet to file an affidavit of merit despite the Court having granted Plaintiff a 60-day extension to file on January 8, 2019. Defendant argues that such a deficiency warrants dismissal. In response to Defendant's motion, Plaintiff asked for an additional 90-day extension to produce an affidavit of merit.

2. Under 18 *Del. C.* § 6853(a), “[n]o health-care negligence lawsuit shall be filed in this State unless the complaint is accompanied by ... [a]n affidavit of merit as to each defendant signed by an expert witness ... stating that there are reasonable grounds to believe that there has been health-care medical negligence committed by each defendant.”<sup>2</sup> The Court may, “upon timely motion of the plaintiff and for good cause shown, grant a single 60-day extension for the time of filing the affidavit of merit.”<sup>3</sup>
3. In the instant case, Plaintiff did not file an affidavit of merit with her complaint contrary to the requirements of § 6853(a). On January 8, 2019, this Court granted Plaintiff a 60-day extension to file an affidavit of merit.<sup>4</sup> Despite the extension, Plaintiff did not file an affidavit of merit in connection with her claims of medical negligence within those 60 days. Although Plaintiff now asks for an additional 90-day extension, Delaware law prevents this Court from extending for a second time Plaintiff's time to file an affidavit. As the strict guidelines of 18 *Del. C.* § 6853 were not followed, Plaintiff's case must be dismissed. Defendant's Motion to Dismiss is **GRANTED**.

**IT IS SO ORDERED.**

  
Richard R. Cooch, R.J.

cc: Prothonotary

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<sup>2</sup> 18 *Del. C.* § 6853(a)(1).

<sup>3</sup> 18 *Del. C.* § 6853(a)(2).

<sup>4</sup> See Order Granting Single 60-Day Extension, D.I. 7 (Jan. 8, 2019).