

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

SANDY L. FERGUSON and )  
RAYMOND FERGUSON, JR., )

Plaintiffs, )

v. ) C.A. No. 03C-07-090-MMJ

GHASSEM VAKILI, M.D., )  
KARROLL L. PAYNE, M.D. and )  
CHRISTIANA CARE HEALTH )  
SERVICES, INC., f/k/a THE )  
MEDICAL CENTER OF )  
DELAWARE, INC., )

Defendants. )

Submitted: February 25, 2005  
Decided: March 16, 2005

**ORDER**

*Upon Plaintiffs' Motion for Reargument Pursuant to Rule 59*

**DENIED**

1. By opinion dated February 10, 2005, the Court granted the Motion for Summary Judgment on Behalf of Karroll L. Payne, M.D. and Christiana Care Health Services, Inc., f/k/a The Medical Center of Delaware, Inc. Plaintiffs' claims against Defendants Karroll L. Payne, M.D. and Christiana Care Health

Services, Inc., f/k/a The Medical Center of Delaware, Inc. were dismissed with prejudice. The basis for the Court's ruling was that the Delaware Medical Malpractice Act mandates that Plaintiffs' claim for medical malpractice must be supported by expert medical testimony as to both the alleged deviation from the applicable standard of care and the causal connection between the wrongful conduct and the alleged injury. Within the ample time for expert discovery on the issue of liability permitted by the Court, Plaintiffs failed to produce the required medical expert testimony, an essential element of their case against Defendants Dr. Payne and the Medical Center. Plaintiffs have moved for reargument.

2. The purpose reargument is to permit reconsideration of findings of fact, conclusions of law, or judgment of law.<sup>1</sup> 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 for reargument should not be used merely to rehash the arguments already decided by the court."<sup>2</sup>

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<sup>1</sup>*Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (1969).

<sup>2</sup>*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).

3. Plaintiffs argue that the Court misapprehended the factual circumstances and understanding of the parties at the time the discovery period was extended. Additionally, Plaintiffs contend that the Court overlooked the application of the doctrine of *respondeat superior* by basing its opinion on the conclusion of a medical expert witness that the resident physician was not negligent because the resident was instructed and supervised by the attending physician.

4. As stated in the opinion, the Court determined that the discovery cutoff was extended to enable determination of Mrs. Ferguson's maximum medical improvement, complete damages, and permanency issues. The Court did not misapprehend the circumstances or the parties' understanding at the time discovery was extended.

5. The opinion of Plaintiffs' medical expert was that the resident physician did not breach the standard of care because the resident was under the supervision of the attending physician. At the conclusion of argument on the summary judgment motion, the parties were offered the opportunity to provide additional submissions on the issue of whether a medical expert could render such an opinion. The parties provided supplemental argument, which the Court considered in reaching its decision. The Court determined that this was a medical

opinion and not a legal conclusion.

6. Plaintiffs have 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.

**THEREFORE**, Plaintiffs' Motion for Reargument Pursuant to Rule 59 is hereby **DENIED**.

**IT IS SO ORDERED.**

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The Honorable Mary M. Johnston