

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

JAN R. JURDEN  
*JUDGE*

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RE: Civil Action No. 02C-11-153-JRJ  
Jerry A. Bilton, et al vs.  
Bayer Corporation, et al

May 3, 2005  
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C.A. No. 02C-11-153-JRJ  
Bilton vs. Bayer

Dear Counsel:

This is the opinion and order on defendant Bayhealth Medical Center's (hereinafter the "Defendant") motion for summary judgment. On December 7, 2004, the Defendant filed a motion for summary judgment and on February 22, 2005, Jerry A. Bilton et al., (hereinafter the "Plaintiff") filed their response. On March 11, 2005, the Court held oral argument. For the following reasons, Defendant's motion for summary judgment is **DENIED**.

Superior Court Rule 56(c) provides that judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."<sup>1</sup> The burden is on the moving party to show, with reasonable certainty, that no genuine issue of material fact exists and judgment as a matter of law is permitted.<sup>2</sup> When considering a motion for summary judgment, the Court must consider the facts in the light most favorable to the non-moving party.<sup>3</sup> Further, if the record indicates that a material fact is disputed, or if further inquiry into the facts is necessary, summary judgment is not appropriate.<sup>4</sup>

Based on my review of the papers and arguments of counsel, I conclude that a more thorough inquiry into the facts surrounding the *decedent's* understanding and beliefs with regard to the relationship between the Defendant and the treating physicians is necessary in this case. Consequently, and because Delaware law is clear that the determination of the existence of an agency relationship is an issue of fact, the Defendant's motion for summary judgment is at this point, denied, without prejudice.<sup>5</sup>

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<sup>1</sup> Del. Super. Ct. Civ. R. 56.

<sup>2</sup> See *Celotex Corp. v. Cattret*, 477 U.S. 317 (1986); *Martin v. Nealis Motors, Inc.*, 247 A.2d 831 (Del. 1968).

<sup>3</sup> See *McCall v. Villa Pizza Inc.*, 636 A.2d 912 (del. 1994).

<sup>4</sup> See *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962) (holding that it is improper to grant summary judgment when "upon examination of all the facts, it seems desirable to inquire thoroughly into them in order to clarify application of the law to the circumstances.").

<sup>5</sup> See *Fisher v. Townsends, Inc.*, 695 A.2d 53, 59 (Del. 1997).

Very truly yours,

Jan R. Jurden  
Judge

JRJ/awg

Original to Prothonotary