IN THE SUPREME COURT OF THE STATE OF DELAWARE

FRANKLIN FENNELL,	§	
	§	No. 249, 2010
Plaintiff Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STEPHEN HAMPTON,	§	C.A. No. N09C-12-158
	§	
Defendant Below-Appellee.	§	
	§	

Submitted: September 3, 2010
Decided: October 19, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 19th day of October 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The plaintiff-appellant, Franklin Fennell, filed an appeal from the Superior Court's April 19, 2010 order dismissing his complaint pursuant to Superior Court Civil Rule 12(b)(6). We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, in 2009, Fennell, a prison inmate, filed a complaint in the Superior Court alleging a claim of legal malpractice against the defendant-appellee, Stephen Hampton. In the complaint, Fennell alleged that, in 2005, he developed gangrene as the result of an infection in his groin, necessitating

numerous skin grafts at Milford Memorial Hospital. Fennell further alleged that Hampton failed to file a timely lawsuit to protect his interests. As evidence that Hampton agreed to file a lawsuit, Fennell attached a copy of a letter from Hampton to the Department of Correction requesting copies of medical records and a copy of a letter from Fennell to Hampton regarding a blood pressure check. On March 3, 2010, Hampton filed a motion to dismiss the complaint on the ground that it failed to state a claim of legal malpractice under Rule 12(b)(6).

(3) On March 9, 2010, the Superior Court judge in charge of the case sent a letter to Fennell directing that a response to Hampton's motion to dismiss be filed on or before April 9, 2010. The Superior Court further stated that failure to file a response would be deemed a lack of opposition to the motion. Instead of filing a response to the motion, Fennell filed a motion for the appointment of counsel, which the Superior Court denied on April 7, 2010. On April 19, 2010, having received no response to the motion to dismiss, the Superior Court issued an order dismissing Fennell's complaint on the ground that it failed to state a claim under Rule 12(b)(6).[1]

(4) In this appeal, Fennell claims that the Superior Court abused its discretion when it dismissed his complaint. He contends that he is unschooled in the law and, as a self-represented person, should have been accorded more lenience

[1] Fennell filed a motion for discovery on April 22, 2010, after his complaint had been dismissed.

regarding the rules of the court. Fennell does not address the substantive issue of whether his complaint was deficient under Rule 12(b)(6). He does not dispute that he received the Superior Court's March 9, 2010 letter in sufficient time to respond to the motion to dismiss, as directed.

(5) When examining the Superior Court's grant of a motion to dismiss under Rule 12(b)(6), this Court undertakes a *de novo* review to determine whether the judge erred as a matter of law in formulating or applying legal precepts.[2] We view the plaintiff's complaint in the light most favorable to him, accepting as true all well-pleaded allegations and drawing all reasonable inferences that logically flow from those allegations.[3] Dismissal is appropriate only if it appears, with reasonable certainty, that, under any set of facts that could be proven to support the claims asserted, the plaintiff would not be entitled to relief.[4]

(6) Under Delaware law, a claim of legal malpractice in connection with an underlying medical malpractice case requires that the plaintiff demonstrate negligence on the part of his attorney that was the proximate cause of the loss of his ability to prosecute his medical malpractice case.[5] It also requires that the

[2] *Reid v. Spazio*, 970 A.2d 176, 182 (Del. 2009).
[3] *Feldman v. Cutaia*, 951 A.2d 727, 730-31 (Del. 2008).
[4] *Reid v. Spazio*, 970 A.2d at 182.
[5] *Thompson v. De'Angelo*, 320 A.2d 729, 731 (Del. 1974); *Giordano v. Heiman*, Del. Supr., No. 458, 2000, Walsh, J. (Jan. 18, 2001); *Jackson v. Lobue*, Del. Supr., No. 324, 2001, Walsh, J. (Oct. 15, 2001).

plaintiff demonstrate negligence on the part of a medical provider that was the proximate cause of his injuries.[6]

(7) We have reviewed Fennell's complaint against the standards enunciated above. Fennell's complaint does not properly allege that a) Hampton represented him for the purpose of filing a lawsuit; b) negligence on the part of Hampton that was the proximate cause of the loss of his ability to prosecute his medical malpractice case; or c) negligence on the part of a medical provider that was the proximate cause of his injuries. As such, viewing the complaint in the light most favorable to Fennell and drawing all reasonable inferences that flow from all well-pleaded allegations, under no set of facts that could be proven to support the claims asserted would Fennell be entitled to relief. We conclude, therefore, that there was no error or abuse of discretion on the part of the Superior Court when it dismissed Fennell's complaint for failure to state a claim under Rule 12(b)(6).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[6] *Kardos v. Harrison*, 980 A.2d 1014, 1017 (Del. 2009).