

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLARENCE HARRISON,	§	
	§	No. 56, 2014
Plaintiff Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
DELAWARE SUPERMARKETS,	§	C.A. No. N13C-02-148
INC. for SHOPRITE OF	§	
CHRISTIANA CROSSING,	§	
	§	
Defendant Below,	§	
Appellee.	§	

Submitted: April 29, 2014

Decided: June 12, 2014

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 12<sup>th</sup> day of June 2014, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm,<sup>1</sup> it appears to the Court that:

(1) On February 20, 2013, the *pro se* appellant, Clarence Harrison, filed a complaint in the Superior Court against the appellee, Delaware Supermarkets, Inc. (hereinafter “DSI”). By order dated January 24, 2014, the Superior Court dismissed Harrison’s complaint under Superior Court Civil Rule 41(b). Harrison

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<sup>1</sup> The Court has not considered the appellant’s motion filed on May 12, 2014 seeking leave to respond to the appellee’s motion to affirm. See DEL. SUPR. CT. R. 25(a) (providing that there shall be no response to a motion to affirm unless requested by the Court.)

appealed from that order. DSI has moved to affirm the Superior Court judgment on the ground that it is manifest on the face of Harrison's opening brief that the appeal is without merit. We agree.

(2) Harrison's complaint sought damages for injuries he suffered from eating crabmeat that he purchased from DSI on January 23, 2013. On May 20, 2013, the Superior Court issued a trial scheduling order that required Harrison to designate a medical expert and file the expert's report by August 2, 2013.<sup>2</sup>

(3) Harrison did not file an expert report from a designated medical expert on August 2, 2013, as directed. He did, however, on July 26, 2013, file medical documents<sup>3</sup> indicating that he sought treatment at the Christiana Hospital Emergency Room on January 23, 2013 for abdominal pain, bloody diarrhea, nausea, and vomiting. Harrison also filed a typewritten summary of his "medical record and care . . . from 1-23-13 and up" that appeared to identify Paul C. Anderson, M.D., Matthew R. Reetz, D.O., and George Benes, M.D. as his experts.

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<sup>2</sup> See *Rayfield v. Power*, 2003 WL 22873037, at \*1 (Del. Dec. 2, 2003) ("With a claim for bodily injuries, the causal connection between the defendant's alleged negligent conduct and the plaintiff's alleged injury must be proven by the direct testimony of a competent medical expert.").

<sup>3</sup> The documents were docketed on July 29, 2013.

(4) On September 19, 2013, the Superior Court held a status conference, during which the Superior Court reviewed the documents submitted by Harrison on July 26, 2013 and advised Harrison as follows:

THE COURT: What I think you are going to need to do, Mr. Harrison, so that counsel can have something to work from, is – you are going to have to go to Christiana Care and ask for a copy of your medical records. What you have here is the documents they give you when they discharge you from the hospital, which, candidly, is not a whole lot of help. It's what you should do when you go home. But a doctor – I'm sure this occurred being at Christiana Hospital – would have written a report, even as an emergency room doctor, as to what his diagnosis was, how he came to that diagnosis, what testing they did. There's actually a narrative, written report that these doctors generate. Any lab reports that were done at that point in time would be part of the medical records. And so you need to gather all those medical records from Christiana Hospital. And since they are your medical records, you should be able to go to the hospital and get them.

Now you need to also do that for the other two doctors because they would have done something similar.

And when you gather all those records together, then counsel, at least, has something to begin with instead of just generally food poisoning.

So, what I think is clear – and we'll make sure, so I'm going to say it on the record. The only doctors that you are relying upon are the doctors who are treating or have treated you in the past; Dr. Anderson at the hospital, Dr. Reetz, who you followed up with, and now Dr. Benes.

MR. HARRISON: Right.<sup>4</sup>

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<sup>4</sup> Office Conf. Tr. at 9-10, Harrison v. Delaware Supermarkets, Inc., C.A. No. N13C-02-148

The court further explained to Harrison:

THE COURT: [T]he law requires that you establish that the symptoms you had and the illness that you suffered is directly connected to eating the bad crab. And the fact that you ate what appeared to be bad crab and then had the symptoms doesn't necessarily make that connection unless the doctor says it makes that connection, because something could have – anything could have happened.<sup>5</sup>

(5) After the status conference, the Superior Court issued a modified scheduling order requiring Harrison to file his medical records and expert opinion by October 4, 2013. After Harrison failed to comply with that order, the Superior Court extended the deadline to October 25, 2013.

(6) On October 17, 2013, Harrison submitted an unsigned letter, dated October 14, 2013, from Dr. Reetz, stating that he (Dr. Reetz) saw Harrison “after a hospital visit for food poisoning” where crabmeat “was deemed to be the culprit,” and that Harrison “continued to have abdominal issues.” Dr. Reetz further stated that it was “unclear if these issues are still related to his food poisoning episode,” adding that Harrison was “in the process of further testing to determine the cause for his current abdominal issues.”

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(Del. Super. Sept. 9, 2013).

<sup>5</sup> *Id.* at 12-13.

(7) On November 25, 2013, DSI moved for summary judgment on the basis that Dr. Reetz' October 14 letter did not, as a matter of law, satisfy the requisite burden of proof to support Harrison's claim. Harrison filed a response opposing that motion on December 2, 2013. On a motion for summary judgment, an opposing party's claim for bodily injury must be proven by expert medical opinion that causally relates the plaintiff's injuries to the alleged negligence.<sup>6</sup>

(8) At a December 20, 2013 hearing on the summary judgment motion, the Superior Court again advised Harrison that he was required to produce a medical expert to prosecute the litigation, stating:

THE COURT: Let me make it very, very clear to you as best I can do it. You cannot go forward and present a case unless you have a doctor, a certified doctor, a licensed doctor who will come in and say that, Mr. Harrison, as a result of eating the crab, has gotten this condition, this condition, this condition. You must have that doctor. You cannot prove it any other way. I cannot be more clear about it.<sup>7</sup>

The Superior Court directed Harrison to schedule a deposition with Dr. Reetz by January 17, 2014, and advised him that if he did not, the complaint would be dismissed.

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<sup>6</sup> See *Rayfield*, 2003 WL 22873037, at \*1.

<sup>7</sup> Hearing Tr. at 12, *Harrison v. Delaware Supermarkets, Inc.*, C.A. No. N13C-02-148 (Del. Super. Dec. 20. 2013).

(9) Harrison did not comply with the Superior Court’s directive to schedule a deposition by January 17, 2014. He did, however, file a “motion for sanctions” on January 9, 2014, alleging that DSI was not cooperating with his efforts to schedule the deposition.

(10) By order dated January 24, 2014, the Superior Court dismissed Harrison’s complaint. The order provided in part:

At this time, the Court can no longer allow [Harrison] to waste both the Court’s and [DSI’s] time and resources. [Harrison’s] failure to adhere to this Court’s order to schedule Dr. Reetz’s deposition, despite being given adequate opportunity to do so beyond the normal discovery deadlines, requires this Court to dismiss the action pursuant to Superior Court Civil Rule 41(b).<sup>8</sup>

In that same order, the Superior Court denied Harrison’s motion for sanctions after finding that “[DSI’s] counsel was more than generous and accommodating with [Harrison],” and that “there is no evidence that [DSI’s] counsel’s conduct warrants sanctions.”<sup>9</sup>

(11) In his opening brief on appeal, Harrison continues to maintain that he was sickened by contaminated crabmeat that he purchased from DSI. Harrison

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<sup>8</sup> *Harrison v. Delaware Supermarkets, Inc.*, C.A. No. N13C-02-148 (Del. Super. Jan. 24, 2014) (Order).

<sup>9</sup> *Id.*

argues that the medical records he submitted to the Superior Court should have provided sufficient evidence to support his claim.

(12) The authority of the Superior Court to dismiss an action for failure to prosecute under Rule 41(b) stems from that court's inherent power to "manage its own affairs and to achieve the orderly and expeditious disposition of its business."<sup>10</sup> We review a dismissal for failure to prosecute for abuse of discretion.<sup>11</sup> Discretionary findings are not overturned if they are supported by the record and are the product of an orderly and logical deductive process.<sup>12</sup> "Only if the findings below are clearly wrong, and justice requires their overturn, are we free to make contradictory findings of fact."<sup>13</sup>

(13) Having reviewed the parties' positions and the record on appeal, we affirm the Superior Court's dismissal of Harrison's complaint and the denial of his motion for sanctions. The record reflects that the Superior Court granted Harrison several extensions of time to comply with the court's scheduling orders and

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<sup>10</sup> *Gebhart v. Ernest DiSabatino & Sons, Inc.*, 264 A.2d 157, 159 (Del. 1970).

<sup>11</sup> *Id.*

<sup>12</sup> *Yancey v. National Trust Co., Ltd.*, 1993 WL 370844, at \*3 (Del. Aug. 30, 1993) (citing *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972)).

<sup>13</sup> *Id.*

controlling Delaware law. Under the circumstances, the Superior Court's dismissal of Harrison's complaint was not an abuse of the court's discretion.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice