

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|----------------------------|------------------------------|
| ADAM WENZKE, | § |
| | § |
| Plaintiff Below, | § No. 333, 2018 |
| Appellant, | § |
| | § Court Below—Superior Court |
| v. | § of the State of Delaware |
| | § |
| WARDEN DANA METZGER, | § C.A. No. N18C-05-038 |
| DIRECTOR PAOLA MUNOZ, | § |
| DOCTOR SUSAN MUMFORD, | § |
| DOCTOR AUGUST, DOCTOR | § |
| PADRELL, DOCTOR TANYA | § |
| WILSON, JUDITH CAPRIO, and | § |
| CONNECTIONS, | § |
| | § |
| Defendants Below, | § |
| Appellees. | § |

Submitted: November 2, 2018

Decided: January 14, 2019

Before **VALIHURA, SEITZ,** and **TRAYNOR,** Justices.

ORDER

After consideration of the opening brief and the record below,¹ it appears to the Court that:

¹ The appellees informed the Court that they did not plan to participate in the appeal unless directed to do so because they were not served with the complaint and the appeal did not appear to raise a substantial issue.

(1) The appellant, Adam Wenzke, filed this appeal from a Superior Court order dismissing his complaint for failure to pay the \$3.11 filing fee set by the Superior Court. The Court concludes that the judgment on appeal must be reversed.

(2) On May 9, 2018, Wenzke filed a complaint under the Delaware Medical Malpractice Act, 18 *Del. C.* § 6801 *et seq.* He alleged that, approximately thirteen years ago, he was diagnosed with bi-polar disorder, depression, and anxiety. Wenzke alleged that, since his transfer from Howard R. Young Correctional Institution to James T. Vaughn Correctional Center in March 2016, the individual defendants refused to prescribe him the medications he requested for his mental health conditions and instead prescribed him medications that caused adverse side effects. Wenzke filed a motion to proceed *in forma pauperis* with his complaint.

(3) After an initial review of the complaint, the Superior Court held that the complaint should not be dismissed and that service of process should issue. The Superior Court also granted Wenzke's motion to proceed *in forma pauperis* and directed him to pay 20% of the average daily balance in his inmate account for the previous six months or time of incarceration, whichever time period was less. In a letter dated May 10, 2018, the Deputy Prothonotary informed Wenzke that he had to pay \$3.11 before June 8, 2018 in order for the case to proceed. Wenzke was also informed that service of process would not issue until the \$3.11 was paid.

(4) In a letter filed with the Prothonotary on June 8, 2018 and docketed on June 11, 2018, Wenzke expressed confusion regarding the granting of his motion to proceed *in forma pauperis* and the requirement that he pay \$3.11. He enclosed a copy of his inmate account statement for May 2018 showing an available balance of \$0.00. Wenzke also stated that he owed money to multiple entities, including \$350.00 to the District Court and \$42.85 to the Department of Correction.

(5) In an order dated June 12, 2018 and docketed on July 18, 2018, the Superior Court dismissed Wenzke's complaint. The order stated that the complaint was dismissed because: (i) Wenzke was informed on May 10, 2018 that he had to pay the \$3.11 filing fee by June 8, 2018 or the case would be dismissed; and (ii) as of June 12, 2018, the Superior Court had not received any correspondence or filing fee from Wenzke. An identical order, dated June 29, 2018, was docketed on July 2, 2018. This appeal followed.

(6) On appeal, Wenzke argues that the Superior Court should not have dismissed his appeal because he did not have any money in his inmate account to pay the filing fee and, contrary to the Superior Court's findings, he did write to the Superior Court regarding his lack of funds before the Superior Court dismissed his complaint. Even assuming that the May 10, 2018 letter provided Wenzke with sufficient notice that the complaint would be dismissed if he did not pay the \$3.11

filing fee,² the dismissal order incorrectly stated that the Superior Court had not received any correspondence from Wenzke.

(7) The Prothonotary received a letter from Wenzke on June 8, 2018 and docketed the letter on June 11, 2018. In the letter, Wenzke stated that he did not have any funds in his inmate account to pay the \$3.11 filing fee and attached a copy of his May 2018 inmate account balance. It appears that the Superior Court's mistaken belief that it had not received any correspondence from Wenzke was a factor in the Superior Court's decision to dismiss the complaint. The dismissal is therefore reversed and this matter is remanded to the Superior Court so that it may consider Wenzke's letter stating that he did not have the funds to pay the \$3.11 filing fee.

² The letter did not expressly state that the case would be dismissed if Wenzke failed to pay the \$3.11 filing fee, but did state that for the case to proceed Wenzke had to pay the \$3.11 filing fee before June 8, 2018.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED and this matter is remanded for further proceedings consistent with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Gary F. Traynor
Justice