

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RUSSELL STEEDLEY,	§
	§
Plaintiff Below-	§ No. 499, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
LINDA SURDO-GALEF and	§ in and for New Castle County
CORRECT CARE SOLUTIONS, INC.,	§ C.A. No. N11C-09-194
	§
Defendants Below-	§
Appellees.	§

Submitted: March 8, 2013
Decided: March 26, 2013

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

ORDER

This 26th day of March 2013, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Russell Steedley, filed this appeal from the Superior Court's dismissal of his medical malpractice complaint for failure to file an affidavit of merit. We find no merit to Steedley's appeal. Accordingly, we affirm the Superior Court's judgment.

(2) Steedley is an inmate at the James T. Vaughn Correctional Center in Smyrna, Delaware. Linda Surdo-Galef is a medical doctor employed by Correct Care Solutions, Inc., the State-contracted medical

provider for the Department of Correction. On September 27, 2011, Steedley filed a medical malpractice complaint against both appellees, alleging that Surdo-Galef failed to effectively treat Steedley's cluster headaches. On December 21, 2011, the Superior Court issued an opinion holding that, pursuant to 18 Del. C. § 6853, Steedley was required to file an affidavit of merit to accompany his malpractice complaint. The Superior Court granted Steedley an additional 60 days to file the affidavit and informed him that, if the affidavit was not filed within 60 days, his complaint would be dismissed. After Steedley attempted but failed to obtain interlocutory review by this Court, the Superior Court granted Steedley an additional 60 days from May 23, 2012 to file an affidavit of merit. Ultimately, Steedley's complaint was dismissed on August 23, 2012 for his failure to file the affidavit of merit. This appeal followed.

(3) After careful consideration, the Court finds no merit to Steedley's appeal.¹ Section 6853 of Title 18 of the Delaware Code unequivocally requires that "[n]o healthcare negligence lawsuit shall be filed in this State unless the complaint is accompanied by...[a]n affidavit of merit as to each defendant signed by an expert witness....stating that there are reasonable grounds to believe that there has been healthcare medical

¹ See *Biggins v. Correctional Med. Servs.*, 2010 WL 3447541 (Del. Sept. 2, 2010); *Smith v. State*, 2012 WL 3252864 (Del. Aug. 9, 2012).

negligence committed by each defendant.”² The only exceptions to this requirement are when the alleged medical negligence involves: (i) a foreign body unintentionally left within the patient following surgery; (ii) a fire or explosion originating in a substance used in treatment and occurring during the course of treatment; or (iii) a surgical procedure on the wrong patient or wrong body part.³

(4) It is undisputed that Steedley failed to file an affidavit of merit as to either defendant. Moreover, his allegations of medical negligence did not fall within one of the exceptions to the affidavit requirement set forth in Section 6853(e). His contention that the affidavit of merit is not necessary when a plaintiff requests review of the complaint, pursuant to Delaware Superior Court Civil 71.2, by a medical malpractice review panel has no basis in law and is contradicted by the clear terms of 18 Del. C. § 6853. Furthermore, we find no merit to Steedley’s contention that the affidavit requirement is unconstitutional as applied to him, an indigent prisoner, because it restricts his access to the court systems. While Steedley’s incarceration may make obtaining the affidavit of merit more challenging, he

² DEL. CODE ANN. tit. 18, § 6853(a)(1) (Supp. 2012).

³ *Id.* § 6853(b), (e).

is not prevented from doing so and is not in a unique position vis-à-vis other indigent plaintiffs simply because of his incarceration.⁴

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁴ See, e.g., *Muhammad v. Correctional Med. Servs.*, 2011 WL 5368849 (Del. Super. Nov. 4, 2011) (ruling on the sufficiency of an inmate-plaintiff's affidavit of merit).