

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DIANNE E. VREM, as the Personal	§
Representative of the Estate of	§ No. 548, 2011
Joseph Heverin and in her own right,	§
	§
Plaintiff Below,	§ Court Below—Superior Court
Appellant,	§ of the State of Delaware, in and
	§ for Kent County
v.	§ C.A. No. K10C-02-035
	§
ANDREW PITTS, M.D., and	§
SHARDHA SABESAN, M.D.,	§
	§
Defendants Below,	§
Appellees.	§

Submitted: April 13, 2012

Decided: May 7, 2012

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

ORDER

This 7th day of May 2012, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The plaintiff-appellant, Dianne E. Vrem, filed an appeal from the Superior Court's December 22, 2010 order vacating its prior order admitting her out-of-state counsel *pro hac vice* and its September 26, 2011 order dismissing her claims against the defendants-appellees, Andrew Pitts, M.D., and Shardha Sabesan, M.D. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, in February 2010, Vrem filed suit in the Superior Court against Dr. Pitts, Dr. Sabesan, Dover Behavioral Health System and Universal Health Services, Inc. Vrem claimed that her son, who suffered from Huntington's Disease, died due to negligence on the part of the defendants. In March 2010, Vrem's Delaware counsel filed a motion for admission *pro hac vice* of out-of-state counsel, two attorneys from a law firm located in Philadelphia.¹ The Superior Court granted the motion prior to either Dr. Pitts or Dr. Sabesan being properly served with the complaint and without any response from those defendants.

(3) In June 2010, after being properly served with Vrem's complaint, Dr. Sabesan filed a motion to vacate the Superior Court's prior order granting admission *pro hac vice* of Vrem's out-of-state counsel pursuant to Superior Court Civil Rule 60(b). The Superior Court granted the motion on December 22, 2010, on the ground that the extraordinary level of activity of counsel's Philadelphia law firm in Delaware indicated that the firm was essentially circumventing Delaware's bar admission and legal education requirements in violation of Superior Court Civil Rule 90.1.² While Vrem's motion for reconsideration was pending, Dover Behavioral Health System

¹ Both attorneys certified that they had been involved in litigation in Delaware in the past twelve months.

² Attached to Dr. Sabesan's motion was a compilation of past and present Delaware cases in which the out-of-state law firm was involved. The document reflected that the firm was involved in sixteen such cases.

and Universal Health Services, Inc. were dismissed from the case. The Superior Court ultimately denied Vrem's motion for reconsideration.

(4) In May 2011, Vrem's Delaware counsel filed a motion to withdraw on the ground that his firm had agreed to represent Vrem only in the capacity of local counsel and could not take on the role of lead counsel now that the order admitting the Philadelphia law firm *pro hac vice* had been vacated. Following a hearing on June 16, 2011, the Superior Court granted the motion. The Superior Court's order afforded Vrem thirty days to secure new Delaware counsel or inform the Superior Court how she wished to proceed. On June 28, 2011, the Superior Court suspended its prior order so that Vrem would have more time to secure new counsel.

(5) On July 12, 2011, Vrem sent a letter to the Superior Court judge requesting additional time to secure new counsel. She advised him that she had contacted sixteen attorneys, all of whom had declined to take her case. By order dated July 18, 2011, the Superior Court granted Vrem's request, giving her until August 18, 2011 to secure new counsel. In the order, the Superior Court stated that no further requests for extension would be considered. Following the deadline, Vrem advised the Superior Court that she had not succeeded in finding new counsel.

(6) On August 24, 2011, the Superior Court advised the parties that the case schedule would remain in effect and that a jury trial would commence on October 24, 2011. The Superior Court further advised that Vrem was to prepare and circulate a draft pre-trial statement so that the final version could be submitted prior to the pre-trial conference on September 21, 2011.

(7) On September 1, 2011, Vrem again sent a letter to the judge, this time requesting that he reconsider his order vacating the admission of her out-of-state counsel or, in the alternative, stay the proceedings. The judge responded that he would consider a motion for admission *pro hac vice* of another out-of-state counsel, but Vrem never filed such a motion. At the pre-trial conference on September 21, 2011, Vrem advised the judge that she had not retained new counsel and was unprepared to proceed with trial. On that date, the Superior Court dismissed the case from the bench for failure to prosecute pursuant to Superior Court Civil Rule 41(b) and, on September 26, 2011, issued a written order dismissing the case.

(8) In her appeal, Vrem claims that the Superior Court erred and abused its discretion when it: a) vacated its prior order admitting her out-of-state counsel *pro hac vice*; and b) dismissed her case for failure to prosecute.

(9) Rule 60(b) permits the Superior Court to vacate a prior order in its discretion.³ Rule 90.1(a) provides that the decision whether to admit an out-of-state attorney *pro hac vice* lies within the discretion of the Superior Court. The Rule specifically requires the Superior Court, in deciding such a motion, to consider the nature and extent of the out-of-state attorney's practice in Delaware in order to determine whether the attorney is circumventing the requirements for admission to the Delaware bar.⁴ We are aware of nothing that prohibits the Superior Court from considering the level of activity of the attorney's firm in determining whether an attorney should be admitted *pro hac vice*.⁵

(10) In this case, because the Superior Court did not have all the relevant information before it when it issued its prior order admitting Vrem's out-of-state counsel *pro hac vice*, it acted within its discretion to re-visit the order once additional information was presented to it. Moreover, the information provided to the Superior Court with respect to the level of activity of out-of-state counsel's firm in Delaware was more than sufficient for the Superior Court to conclude that its previous order granting *pro hac vice* admission to Vrem's out-of-state attorney should be rescinded. Under

³ *Wife B. v. Husband B.*, 395 A.2d 358, 359 (Del. 1978).

⁴ Super. Ct. Civ. R. 90.1(g).

⁵ Similarly, Rule 1.8(k) of the Delaware Rules of Professional Conduct provides that the prohibitions relating to conflicts of interest apply to all members of an attorney's firm.

the circumstances presented here, we find that the Superior Court properly re-visited its prior order and properly vacated that order. As such, we conclude that Vrem's first claim is without merit.

(11) With respect to Vrem's second claim, the Superior Court has discretion to dismiss an action for failure to prosecute under Rule 41(b).⁶ The record reflects that the Superior Court granted Dr. Sabesan's motion to vacate its order admitting out-of-state counsel *pro hac vice* on December 22, 2010. Local counsel's motion to withdraw was granted in early June 2011. The Superior Court dismissed Vrem's lawsuit on the record at the close of a hearing on September 21, 2011, memorializing the dismissal in a written order on September 26, 2011.

(12) At least as of the time local counsel was permitted to withdraw from the case, Vrem was on notice that she needed to retain counsel to represent her. The record reflects that the Superior Court granted Vrem several extensions of time in which to do so. Vrem also was on notice that, if she was unsuccessful in finding new counsel, she would be responsible for representing herself. Because Vrem failed to locate new counsel and failed to participate in pre-trial proceedings, the Superior Court had no viable

⁶ *Draper v. Medical Center of Delaware*, 767 A.2d 796, 798 (Del. 2001).

choice other than to dismiss her lawsuit. As such, we conclude that Vrem's second claim also is without merit.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice