

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KAREN VALENTINE, as executrix	§	
of the Estate of William Valentine,	§	No. 493, 2004
deceased, and in her own right and as	§	
parent and natural guardian of her	§	
minor son, TYLER VALENTINE,	§	
	§	
Plaintiff Below,	§	
Appellant,	§	
	§	
v.	§	Court Below:
	§	Superior Court
MICHAEL MARK, M.D.,	§	of the State of Delaware
	§	in and for New Castle County
Defendant Below,	§	C.A. No. 02C-12-244
Appellee.	§	

Submitted: March 30, 2005

Decided: May 10, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 10<sup>th</sup> day of May, on consideration of the briefs of the parties, it appears to the Court that:

1) In this medical malpractice action, Karen Valentine appeals from a decision of the Superior Court granting summary judgment to Michael Mark, M.D. Valentine filed the complaint on December 30, 2002. On November 13, 2003, the trial judge entered a scheduling order that, among other things, set a trial date of November 1, 2004, and required Valentine to provide her expert's report or Rule 26(b) disclosures

by April 14, 2004. In April 2004, the date for identification of experts (but not the trial date) was extended, by stipulation of the parties. Under the amended scheduling order, Valentine was to disclose her experts by June 15, 2004. When that deadline arrived, Valentine filed a motion to extend the time limit once again. On July 19, 2004, the trial court heard the motion and granted an extension, but only until August 1, 2004. The trial court retained the scheduled trial date.

3) Valentine first complains that the trial court abused its discretion in refusing to continue the trial date and in granting only a limited extension of time for the identification of experts. Valentine needed the continuance because: (i) she had recently learned that potential witnesses would not be allowed to participate in the trial; and (ii) various family tragedies prevented Valentine from assisting counsel in preparation for trial. The trial court based its decision on the fact that Valentine had had ample time to find experts and that Mark should have his day in court. In addition, the trial court noted that five trial days had been reserved for this case, and that it would be unfair to other litigants if those days were not used.

4) As Valentine acknowledges, the trial court has discretion to resolve scheduling issues and to control its own docket.<sup>1</sup> We find nothing in the record to suggest that the trial court's decision was arbitrary or capricious. To the contrary, we

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<sup>1</sup>*Weber v. Weber*, 1988 WL 93433 (Del. Supr.).

find that the trial court acted well within its discretion, given the amount of time the case had been pending and the need to maintain scheduled trial dates.

5) Valentine also complains that the trial court erred in granting Mark's motion to dismiss, which the court converted to a motion for summary judgment. We find no merit to this argument, and affirm on the basis of the trial court's decision dated October 20, 2004.

6) Finally, Valentine argues that she should be allowed to pursue a claim based on the "loss of chance" doctrine. We will not consider this argument, as it was not fairly presented to the trial court, and determination of this issue is not required in "the interests of justice."<sup>2</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>2</sup>Del.Sup. Ct. R. 8.