

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH T. DEPUTY,	§
	§ No. 168, 2007
Plaintiff Below-	§
Appellant,	§
	§
v.	§
	§ Court Below—Superior Court
DR. CONLAN, MEDICAL	§ of the State of Delaware,
DIRECTOR, JAMES WELCH,	§ in and for New Castle County
HEALTH ADMINISTRATOR,	§ C.A. No. 07C-01-202
THOMAS CARROLL, WARDEN,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: July 20, 2007
Decided: October 22, 2007

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

ORDER

This 22nd day of October 2007, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The plaintiff-appellant, Kenneth Deputy, filed this appeal from the Superior Court's order dismissing his complaint for medical negligence for his failure to identify an expert witness to support his claim, as required by 18 *Del. C.* § 6853. The Superior Court also dismissed Deputy's constitutional claims, which were founded upon the same alleged medical negligence, as being factually and legally frivolous. On this record, we find that Deputy's

complaint, both factually and legally, stated a claim of a violation of his constitutional rights sufficient to withstand summary dismissal under 10 *Del. C.* § 8803(b). Accordingly, we vacate the Superior Court's judgment and remand this matter for further proceedings consistent with this Order.

(2) Deputy is incarcerated at the Delaware Correctional Center ("DCC") in Smyrna. He filed a complaint in January 2007 against the warden, medical director, and health administrator of DCC, alleging that the defendants were acting with deliberate indifference to his medical needs by refusing him proper medical treatment. Deputy alleged that his left shoulder had been injured while incarcerated and that he had filed numerous medical grievances requesting treatment. In March 2005, Deputy was transported outside DCC for an MRI. A consult with Dr. DuShuttle in June 2005 revealed that Deputy had a torn rotator cuff. Deputy alleged that Dr. DuShuttle stated that Deputy either needed surgery or else he would have to live with the pain. Deputy further alleged that Dr. DuShuttle recommended the surgery and advised that failure to have the surgery could result in a complete rupture of the rotator for which pain medication would provide no relief. Based on DuShuttle's recommendation, Deputy opted for surgery.

(3) Deputy's complaint further alleged that he went through the prison's medical grievance process in order to have the surgery approved, but his request was denied. Instead, prison officials opted to administer cortisone injections to reduce the inflammation and pain in his shoulder. The complaint asserted that he lives with on-going pain that affects his ability to get dressed, bathe, sleep, exercise, and work. Deputy alleged that the defendants' refusal to provide him with adequate medical treatment constitutes medical negligence and reflects the defendants' deliberate indifference to his serious medical needs in violation of his 8th and 14th Amendment rights. Pursuant to 10 *Del. C.* § 8803(b), the Superior Court summarily dismissed Deputy's complaint as both factually and legally frivolous without requiring service of the complaint on the defendants.¹

(4) After careful consideration of the parties' respective briefs on appeal, we conclude that dismissal of Deputy's complaint as factually and legally frivolous was an abuse of the Superior Court's discretion at this stage of

¹ The Superior Court's order dismissing Deputy's constitutional claims failed to supply any rationale for its conclusions that the claims were factually and legally frivolous. The form order merely contained a list of reasons for summary dismissal from which the trial court could choose the applicable reason by checking off a box. Even in cases such as this, in which the trial court summarily dismisses a complaint on the ground of frivolousness, it is still necessary for the trial court to provide a rationale, however brief, explaining its dismissal of the case. *See, e.g., Redden v. McGill*, 549 A.2d 695, 698 (Del. 1988); *Denton v. Hernandez*, 504 U.S. 25, 34 (1992).

the proceedings. Dismissal of an indigent plaintiff's complaint as factually frivolous under the *in forma pauperis* statute is appropriate "when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them."² The trial court's discretion to dismiss an indigent plaintiff's complaint as legally frivolous is "limited to screening out only those claims that are based on an indisputably meritless legal theory."³

(5) Deliberate indifference to a prisoner's serious medical needs violates the Eighth Amendment's prohibition against cruel and unusual punishment.⁴ To state a claim for deliberate indifference, the prisoner must establish that prison officials were subjectively aware of a substantial risk of serious harm to the prisoner and failed to take reasonable measures to abate that risk.⁵ Deliberate indifference can occur when prison officials deny, delay or intentionally interfere with medical treatment or it may be shown in the way in

² *Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (construing the federal *in forma pauperis* statute, 28 U.S.C. § 1915(d)).

³ *Roman v. Jeffes*, 904 F.2d 192, 195 (3d Cir. 1990).

⁴ *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

⁵ *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

which prison officials provide medical care.⁶ Prison authorities have “wide discretion” in the medical treatment afforded to prisoners⁷ and medical negligence alone is insufficient to state a claim for a constitutional violation.⁸ Nonetheless, courts have held that prison officials’ delay in providing surgery, if it proves harmful to the prisoner, can amount to deliberate indifference.⁹

(6) Applying these legal standards to the present case, we conclude that the allegations of Deputy’s complaint were sufficient at this stage of the proceedings to withstand summary dismissal. The facts Deputy alleged were not wholly incredible and, if proven, could present a meritorious legal claim. Even if the Superior Court ultimately concludes that Deputy’s complaint fails to state a claim upon which relief can be granted, we conclude that summary dismissal of the complaint without requiring defendants to answer or giving Deputy an opportunity to amend was an abuse of discretion.

⁶ *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992).

⁷ *Stiltner v. Rhay*, 371 F.3d 420, 421(9th Cir. 1967).

⁸ *Monmouth County Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 346 (3d Cir. 1987).

⁹ *Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 408 (9th Cir. 1985).

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

BY THE COURT:

/s/ Randy J. Holland
Justice