

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GABRIEL G. ATAMIAN,	§
	§
Plaintiff Below-	§ No. 445, 2002
Appellant,	§
	§
v.	§
	§ Court Below—Superior Court
CAROL H. ELLIS, Director of the	§ of the State of Delaware,
Division of Professional Regulation,	§ in and for Kent County
KENNETH H. BETHARD,	§ C.A. No. 02C-05-031
investigator for the Division of	§
Professional Regulation, M. JANE	§
BRADY, Attorney General of the State	§
of Delaware, and MICHAEL J. RICH,	§
Solicitor of the State of Delaware,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: November 2, 2002
Decided: December 13, 2002
Revised: December 16, 2002

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

ORDER

This 16th day of December 2002, upon consideration of the appellant’s opening brief and the appellees’ motion to dismiss or, in the alternative, to affirm, it appears to the Court that:

(1) The plaintiff-appellant, Gabriel G. Atamian, filed this appeal from the Superior Court’s dismissal of his complaint. The defendants below are all State officials. Atamian filed a complaint against the defendants

seeking damages for their alleged mishandling of a complaint that Atamian had filed with the Division of Professional Regulation against a Delaware dentist. After a hearing, the Superior Court concluded that Atamian's complaint was barred by the doctrine of sovereign immunity and dismissed his complaint with prejudice.

(2) In his opening brief on appeal, Atamian does not address the Superior Court's dismissal of his complaint on the basis of the defendants' sovereign immunity. Instead, Atamian's brief is limited solely to arguing the underlying substantive merits of his complaint, which the Superior Court never addressed in light of its ruling on the issue of sovereign immunity. Given this glaring deficiency in Atamian's brief, the defendants have filed a motion to dismiss Atamian's appeal or, in the alternative, to affirm the Superior Court's judgment.

(3) The appellant's failure to raise a legal issue in the text of the opening brief generally constitutes a waiver of the claim on appeal.¹ Even if Atamian had properly briefed the issue of the Superior Court's ruling on sovereign immunity, his appeal would fail on the merits. The Superior Court's dismissal of Atamian's complaint on the ground of sovereign immunity is a matter that is clearly controlled by settled Delaware law. The

¹ *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

State Tort Claims Act shields the defendants from liability for acts done in good faith, without gross or wanton negligence, and arising out of and in connection with the performance of official discretionary duties.² It is clear that Atamian's complaint against the defendants asserted, in essence, that the defendants had improperly exercised their discretion in investigating and disposing of his complaint. Atamian did not plead any facts that would constitute an exception to the State Tort Claims Act. Furthermore, as the Superior Court found, the State Tort Claims Act affords absolute immunity to prosecutors acting in their official capacity.³

(4) Having carefully considered the parties' respective positions, we find it manifest on the face of Atamian's opening brief that his appeal is without merit. The issue on appeal is controlled by settled Delaware law. Accordingly, the Superior Court's judgment will be affirmed.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

² DEL. CODE ANN. tit. 10, § 4001(3) (1999).

³ *Id.*