

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ARTHUR BIGGINS,	§
	§ No. 731, 2010
Plaintiff Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
AARON GOLDSTEIN <i>et al.</i> ,	§ C.A. No. 10C-09-212
	§
Defendants Below-	§
Appellees.	§

Submitted: December 1, 2010  
Decided: January 12, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 12<sup>th</sup> day of January 2011, upon consideration of the appellant’s opening brief and the appellees’ motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiff-appellant, James Arthur Biggins, filed an appeal from the Superior Court’s September 29, 2010 order denying his motion to proceed *in forma pauperis* and its October 4, 2010 order dismissing his civil complaint as legally and factually frivolous. The defendants-appellees, Aaron Goldstein, *et al.*, have moved to affirm the Superior Court’s judgment

on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record before us reflects that Biggins is a prisoner incarcerated at the James T. Vaughn Correctional Center in Smyrna, Delaware. On September 24, 2010, Biggins filed a civil complaint in the Superior Court naming over sixty defendants and making a number of claims under the United States Constitution, among them deliberate indifference with respect to his medical treatment, the use of excessive force, denial of access to the courts, and violation of his due process and equal protection rights. Biggins also filed a motion to proceed *in forma pauperis* (“IFP”) on his claims.

(3) On September 29, 2010, the Superior Court denied Biggins’ IFP motion and, on October 4, 2010, dismissed his complaint as factually and legally frivolous. In this appeal, Biggins claims that the Superior Court erred and abused its discretion in so doing.

(4) Under Del. Code Ann. tit. 10, §8803(b), the Superior Court may dismiss a complaint where such complaint is found to be legally or factually frivolous. Under Del. Code Ann. tit. 10, §8804(f), a prisoner may not file a complaint IFP if, while incarcerated, the prisoner previously brought an

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<sup>1</sup> Supr. Ct. R. 25(a).

action in state or federal court that was dismissed on the ground of frivolousness on 3 or more occasions unless the prisoner is under imminent danger of serious physical injury at the time the complaint is filed. Based upon the record before us, we conclude that the Superior Court neither erred nor abused its discretion when it denied Biggins' motion to proceed IFP under §8804(f) and dismissed his latest complaint as frivolous within the meaning of §8803(b). As such, the judgment of the Superior Court must be affirmed.

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice