

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

AURORA A. HAUF,)
)
Plaintiff,)
)
v.) C.A. No. N09C-12-061 MMJ
)
WENDY S. NEWELL, M.D.,)
Individually; WOLF CREEK)
SURGEONS, P.A., a Delaware)
corporation and DOVER)
SURGICENTER, L.L.C., a Delaware)
limited liability company,)
)
Defendants.)

Submitted: February 12, 2010
Decided: February 18, 2010

ORDER

*Upon Defendant Wendy S. Newell, M.D.’s
Application for Certification of an Interlocutory Appeal*

DENIED

1. Following briefing and argument, the Court denied defendant Wendy S. Newell, M.D.’s Motion for Summary Judgment on February 1, 2010. The Court found that plaintiff had properly given notice to defendant as required by 18 *Del. C.* §6856(3). The underlying issue was whether notice had been provided at defendant’s “regular place of business.”

2. On February 8, 2010, defendant Wendy S. Newell, M.D. filed an Application for Certification of an Interlocutory Appeal. Defendant argues that the Court’s interpretation of section 6856(c) presents an original question of law of first instance; is a statutory interpretation at odds with controlling precedent; and presents an unsettled question on the application of an important statutory provision, which is case-dispositive.¹ Plaintiff contends that the requirements of Supreme Court Rule 42, for certification of an interlocutory appeal, have not been met.

3. Supreme Court Rule 42(b) provides the criteria for determining whether an issue should be certified for interlocutory appeal. To consider whether certification is proper, one of the five criteria set forth in Supreme Court Rule 42(b)(i) - (v) must be satisfied. Under Rule 42(b)(i), the Court may look to the criteria established by Rule 41.

4. The Court finds that its interpretation of the phrase “regular place of business” is not an original question of law within the meaning Supreme Court Rule 41(b)(i). As stated on the record at the conclusion of argument on the summary judgment motion, the Court found that its interpretation is consistent with controlling precedent. Although a finding that proper notice had not been

¹See Supr. Ct. R. 41(b).

given by plaintiff would terminate the litigation, the Court finds that the interests of justice do not require interlocutory appeal of its ruling that the statute of limitations does not bar this action.

5. This case will proceed to trial in the ordinary course. There is no reason why the statutory interpretation issue should not be subject to appellate review at the conclusion of the litigation.

THEREFORE, defendant Wendy S. Newell, M.D. has failed to demonstrate that any Delaware Supreme Court Rule 42(b) criteria require that the Court exercise its discretion to certify an interlocutory appeal. The Application for Certification of an Interlocutory Appeal is hereby **DENIED**.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*

The Honorable Mary M. Johnston