

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PENNY JEAN MALAFRONTI,	§	
JOSEPH DANIELS and WANDA	§	
MALAFRONTI, each individually	§	
and as Personal Representatives of	§	
the Estate of TIMOTHY RYAN	§	
MALAFRONTI,	§	
	§	
Plaintiffs Below-	§	No. 41, 2002
Appellants,	§	
	§	
v.	§	
	§	
BAYHEALTH MEDICAL	§	Court Below—Superior Court
CENTER, INC. f/k/a KENT	§	of the State of Delaware,
GENERAL (INCORPORATED)	§	in and for Kent County
a/k/a KENT GENERAL	§	C.A. No. 97C-12-020
HOSPITAL, OB-GYN	§	
ASSOCIATES OF DOVER, P.A.,	§	
ROBERT H. RADNICH, M.D.,	§	
NANCY HARDY, C.N.M.,	§	
	§	
Defendants Below-	§	
Appellees.	§	

Submitted: January 7, 2003

Decided: January 10, 2003

Before VEASEY, Chief Justice, WALSH, and BERGER, Justices.

ORDER

This 10th day of January 2003, upon consideration of the briefs of the parties and a full review of the record, the Court concludes that the judgment of the Superior Court should be affirmed on the basis of the rulings contained

in the Superior Court decision denying appellants' motion for a new trial. We agree with the Superior Court that defense counsel did not mislead the jury in his summation. To the extent that defense counsel exceeded the bounds of appropriate comments, and objection was made, the trial court appropriately instructed the jury and we find no prejudice resulting therefrom.

With respect to appellants' claim directed to the admissibility of expert testimony, we note that appellant never requested a *Daubert** hearing at trial. Nor did the appellant seek relief in the Superior Court for any presently asserted claim of tampering with court exhibits. Accordingly, we decline to review those claims since they were not fairly presented to the trial court and there is no basis for considering such claims as plain error. Supr. Ct. R. 8.

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

AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice

**Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) adopted by this Court in *M.G. Bancorporation, Inc. v. LeBeau*, 737 A.2d 513 (Del. 1999).