

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BELINDA H. WALTON and	§
FRANCIS LEE WALTON,	§
her husband,	§ No. 216, 2000
	§
Plaintiffs Below-	§
Appellants,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ C.A. No. 97C-10-114
BRIAN J. GALINAT, M.D.,	§
	§
Defendant Below-	§
Appellee.	§

Submitted: June 29, 2000

Decided: August 28, 2000

Before **WALSH, HOLLAND** and **BERGER**, Justices

**ORDER**

This 28<sup>th</sup> day of August 2000, upon consideration of the appellants' opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiffs-appellants, Belinda H. Walton and Francis Lee Walton, appeal from the Superior Court's April 10, 2000 order dismissing their medical negligence case. The defendant-appellee, Brian J. Galinat, M.D., has moved to affirm the judgment of the Superior Court on the ground that it is

manifest on the face of the Waltons' opening brief that the appeal is without merit.<sup>1</sup> We agree and AFFIRM.

(2) The Waltons' claim is based upon allegedly negligent orthopedic care provided to Mrs. Walton in 1995 following a motorcycle accident in which her left knee was dislocated. Having been notified prior to trial that the Waltons intended to present the expert opinion testimony of their medical expert, Richard Traiman, M.D., by way of his deposition transcript and his written report dated October 9, 1997, the defense moved to dismiss the case. In its April 10, 2000 order, the Superior Court dismissed the case on the ground that the expert opinions supporting the Waltons' case did not satisfy the requirements of Delaware's former Health Care Malpractice Act.<sup>2</sup> The Waltons contend that the opinions contained in Dr. Traiman's deposition and report present a prima facie case of medical malpractice and, therefore, the Superior Court committed error in dismissing the case.

(3) Under Delaware's former Health Care Malpractice Act, the standard of care required of a health care provider was "that degree of skill and care ordinarily employed, under similar circumstances, by members of the profession in good standing in the same community or locality, and the use of

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

<sup>2</sup>18 Del. C. Ch. 68, now known as the Health Care Medical Negligence Act.

reasonable care and diligence.”<sup>3</sup> As such, the Waltons were required to present expert testimony that Dr. Galinat’s care of Mrs. Walton fell below the standard of care applicable to an orthopedic surgeon practicing in Wilmington, Delaware in 1995. The transcript of Dr. Traiman’s deposition reflects that he was not familiar with the applicable standard of care and was not prepared to offer an expert opinion that the care offered by Dr. Galinat to Mrs. Walton fell below that standard. Likewise, Dr. Traiman’s October 9, 1997 report does not reflect any familiarity with the applicable standard of care. In the absence of an expert opinion that Dr. Galinat’s treatment of Mrs. Walton fell below the standard of care applicable to an orthopedic surgeon practicing in Wilmington, Delaware in 1995, the Superior Court was correct in dismissing the Waltons’ medical negligence claim.

(4) It is manifest on the face of the Waltons’ 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, clearly there was no abuse of discretion.

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<sup>3</sup>18 Del. C. § 6801(7). The statute was amended as of July 7, 1998 to eliminate the locality aspect of the definition. The parties agree that the amended statutory language can not be applied retroactively to this case. See *Tyler v. Dworkin*, Del. Super., C.A. No. 94C-01-054, Herlihy, J. (Mar.15, 1999), *aff’d*, Del. Supr., No. 156, 1999, Veasey, C.J., 1999 WL 1192820 (Dec. 2, 1999) (ORDER).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the motion to affirm is GRANTED. The judgment of the Superior Court is hereby AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh  
Justice