Circuit Court for Baltimore City
Case No. 24-C-22-002248

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1922

September Term, 2022

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A.C.

v.

KENNEDY KRIEGER CHILDREN'S HOSPITAL, INC., et al.

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Reed,
Beachley,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Reed, J.

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Filed: September 5, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In 2018, A.C., appellant, was treated in the Neurobehavioral Unit ("NBU") at the Kennedy Krieger Institute. He and his mother alleged that appellees (Kennedy Krieger Children's Hospital, Inc., and several health care providers affiliated with the NBU)[1] committed medical malpractice while providing treatment to him. Mother, acting on behalf of appellant, filed a claim in the Health Care Alternative Dispute Resolution Office ("HCADRO"). Subsequently, appellees waived arbitration, and the case was transferred to the Circuit Court for Baltimore City. Ultimately, the circuit court denied appellant's motions for summary judgment and, thereafter, dismissed his complaint for failure to file a compliant certificate of qualified expert ("CQE"). That prompted this appeal, which raises four issues for our consideration:

> I. Whether the circuit court erred in denying appellant's motions for summary judgment;
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> II. Whether the circuit court erred in failing to hear or consider appellant's requests for extension of time to obtain a supplemental or replacement CQE;
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> III. Whether appellees obstructed appellant's efforts to obtain "pertinent and needed documents"; and
>
> IV. Whether the circuit court failed to consider "extenuating circumstances" amounting to good cause for appellant's failure to file a compliant CQE.

Finding no error, we affirm.

## BACKGROUND

[1] Appellees are Kennedy Krieger Children's Hospital, Inc., Ashley Jensen, RaSheeda Sanders, and Aila Dommestrup.

In 2018, appellant, who has autism spectrum disorder, was treated in the NBU at the Kennedy Krieger Institute. According to appellant, he was administered noise exposure therapy, which consisted of being locked in a room and forced to listen to "ear piercing" sounds of screaming babies. Appellant contended that he was so traumatized by that therapy that "he hit himself in the head after asking repeatedly to be let out and then smacked his head running full steam into a non[-]breakable observation window." As a result, according to appellant, he suffered "brain injury and subsequent increase in hyper acoustics, self[-]injurious behavior and aggressive behavior."

On March 1, 2021, appellant, through his mother, filed a claim in the HCADRO. He did not file a CQE at that time, nor did he do so by the statutory deadline of June 1, 2021. *See* Md. Code (1974, 2020 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 3-2A-04(b)(1)(i)1 (providing that a medical malpractice claim "shall be dismissed, without prejudice, if the claimant or plaintiff fails to file a certificate of a qualified expert with the Director attesting to departure from standards of care, and that the departure from standards of care is the proximate cause of the alleged injury, within 90 days from the date of the complaint"). Instead, appellant sought, and was granted, an extension of time until October 1, 2021, to file a CQE. On August 20, 2021, appellant filed, as a CQE, a two-page letter from Richard Layton, M.D. On the same date, appellant filed a motion to identify his qualified experts and requested three additional months to file a CQE.

On December 15, 2021, five days prior to the 120-day deadline for filing their CQE, CJP § 3-2A-04(b)(2)(i), appellees filed a motion seeking an extension of time, which

appellant opposed. On January 6, 2022, the Director granted appellees' motion for an extension of time. The cover letter was dated January 6, 2022, but the order was dated January 6, 2021, apparently a typographical error, and it purported to set a new deadline of March 15, 2021. On March 14, 2022, appellees filed their CQE.

Two days later, on March 16, 2022, appellees filed a waiver of arbitration. On March 17, 2022, appellant filed a motion for summary judgment in the HCADRO. The Director issued an order of transfer several days later, on March 22, 2022, without ruling on appellant's motion for summary judgment.

On May 10, 2022, appellant filed a four-count complaint in the circuit court, alleging medical malpractice, respondeat superior, lack of informed consent, and criminal negligence. He attached to his complaint a letter from Dr. Layton, which purported to serve as a CQE. On June 10, 2022, appellees filed a motion to strike appellant's CQE and to dismiss.[2]

On June 29, 2022, appellant filed a motion for summary judgment or for default judgment. In that motion, he contended that appellees' failure to file an answer within 30 days of being served with the complaint meant that appellees "agree with [his] claim" and that the only issue remaining is the amount of damages. He further asserted that appellees "used their own inhouse Psychologist to write the CQE which is completely prejudicial

[2] Appellant served appellees by U.S. postage, certified mail. The return receipt from the Postal Service is stamped May 20, 2022, and the certificate of service was docketed on June 7, 2022. Appellees filed their motion to strike appellant's CQE and to dismiss on June 22, 2022, which is timely under Maryland Rule 2-321.

and far after the deadline by HCADRO." One month later, on July 29, 2022, appellant filed another motion for summary judgment, contending that appellees' failure to file a timely answer "is an admission of guilt" and that summary judgment must be granted in his favor.

On August 16, 2022, appellees filed an opposition to appellant's motions for summary judgment. On August 30, 2022, the circuit court denied appellant's motions for summary judgment or for default judgment without a hearing, finding that there was "no basis whatsoever for the relief sought[.]"

Meanwhile, appellant filed additional motions requesting a further extension of time to submit a replacement or supplemental CQE and to designate a new qualified expert. Appellees filed an opposition to any further extensions of time. On August 29, 2022, the circuit court scheduled a hearing on the outstanding motions.

On October 28, 2022, the circuit court held a hearing on outstanding motions, including appellees' motion to strike appellant's CQE and to dismiss. Following that hearing, the circuit court issued a Memorandum Opinion and Order, granting appellees' motion to dismiss appellant's complaint without prejudice. This timely appeal followed.[3]

## DISCUSSION

### Standard of Review

[3] Although the circuit court's order is dated November 4, 2022, it was not docketed until November 15, 2022. At the same time he filed his notice of appeal, appellant also filed a motion for reconsideration, which the circuit court denied.

This case turns on whether the circuit court correctly applied a statute, which is a legal question that we review without deference. *See*, *e.g.*, *Breslin v. Powell*, 421 Md. 266, 277 (2011). Our task, therefore, is to determine whether that court's decision was legally correct. *Id.*

"When undertaking an exercise in statutory interpretation, as in the present case, the goal is to 'ascertain and effectuate the intent of the Legislature.'" *Id.* at 286 (quoting *Mayor & Town Council of Oakland v. Mayor & Town Council of Mountain Lake Park*, 392 Md. 301, 316 (2006)). We begin by looking "'to the plain language of the statute, giving it its natural and ordinary meaning.'" *Id.* (quoting *State Dep't of Assessments & Taxation v. Maryland-Nat'l Capital Park & Planning Comm'n*, 348 Md. 2, 13 (1997)). "If the language of the statute is clear and unambiguous, courts will give effect to the plain meaning of the statute and no further sleuthing of statutory interpretation is needed." *Id.* at 286-87. "If the sense of the statute is either unclear or ambiguous under the plain meaning magnifying glass, courts will look for other clues—e.g., the construction of the statute, the relation of the statute to other laws in a legislative scheme, the legislative history, and the general purpose and intent of the statute." *Id.* at 287.

## I.

## Parties' Contentions

Appellant contends that appellees were required to file a CQE no later than March 15, 2021, and that they did not file their CQE until nearly one year later, on March 11,

2022.[4] Therefore, he maintains, the HCADRO and the circuit court should have granted summary judgment or judgment by default in his favor. Appellant further contends that appellees "used their own former employee and current consultant as their Qualified Medical Expert which is contrary to Maryland law." Because, he claims, their CQE was therefore non-compliant, he should have been granted summary judgment on that ground as well.

Appellees counter that appellant filed his claim in the HCADRO on March 1, 2021, and subsequently filed a (non-compliant) CQE on August 20, 2021, within the extended deadline of October 1, 2021. Thus, according to appellees, they "then had 120 days to file their own CQE," that is, by December 20, 2021. On December 15, 2021, appellees requested a 90-day extension of time for filing their CQE, which the HCADRO thereafter granted, establishing a new deadline of March 15, 2022. The proposed order, which appellees attached to their motion for an extension of time, contained, in appellees' words, "an obvious typographical error when it set the extended deadline for 'March 15, 2021.'" Because appellees filed their CQE on March 14, 2022, it was, they maintain, timely.

Moreover, appellees waived arbitration two days after filing their CQE. Because appellant's motion for summary judgment was filed in the HCADRO the following day, the Director of the HCADRO, according to appellees, correctly declined to rule on that motion and instead transferred the matter to the circuit court.

[4] Although it is immaterial to the issue, appellees filed their CQE on March 14, 2022. Its certificate of service is dated March 11, 2022, and appellant apparently has mistaken that for its filing date.

As for the circuit court's denials of appellant's subsequent motions for summary judgment, appellees point out that, after waiver of arbitration and the filing in the circuit court of appellant's complaint, they filed a motion to strike appellant's CQE and to dismiss. According to appellees, under Maryland Rule 2-321(c), they therefore were not required to file an answer until 15 days after the motion to dismiss was decided but that the motion to dismiss was still pending at that time. Thus, according to appellees, the circuit court correctly denied appellant's motions for summary judgment.

Finally, appellees assert that their CQE was not deficient because it had been written by a former employee. According to appellees, under the applicable statute, only current employees (and others, not relevant here) are barred from authoring a CQE. And in any event, according to appellees, the Director of the HCADRO is not authorized to grant a dispositive motion, and moreover, "in the absence of a legally sufficient CQE by [appellant], the adequacy of a defense CQE is irrelevant."

**Analysis**

Section 3-2A-04(b) of the Courts and Judicial Proceedings Article ("CJP") governs the filing of CQEs and provides:

> (b) Unless the sole issue in the claim is lack of informed consent:
>
> > (1)(i) 1. Except as provided in item (ii) of this paragraph, a claim or action filed after July 1, 1986, shall be dismissed, without prejudice, if the claimant or plaintiff fails to file a certificate of a qualified expert with the Director attesting to departure from standards of care, and that the departure from standards of care is the proximate cause of the alleged injury, within 90 days from the date of the complaint; and

2. The claimant or plaintiff shall serve a copy of the certificate on all other parties to the claim or action or their attorneys of record in accordance with the Maryland Rules; and

(ii) In lieu of dismissing the claim or action, the panel chairman or the court shall grant an extension of no more than 90 days for filing the certificate required by this paragraph, if:

1. The limitations period applicable to the claim or action has expired; and

2. The failure to file the certificate was neither willful nor the result of gross negligence.

(2)(i) A claim or action filed after July 1, 1986, may be adjudicated in favor of the claimant or plaintiff on the issue of liability, if the defendant disputes liability and fails to file a certificate of a qualified expert attesting to compliance with standards of care, or that the departure from standards of care is not the proximate cause of the alleged injury, within 120 days from the date the claimant or plaintiff served the certificate of a qualified expert set forth in paragraph (1) of this subsection on the defendant.

(ii) If the defendant does not dispute liability, a certificate of a qualified expert is not required under this subsection.

(iii) The defendant shall serve a copy of the certificate on all other parties to the claim or action or their attorneys of record in accordance with the Maryland Rules.

(3)(i) The attorney representing each party, or the party proceeding pro se, shall file the appropriate certificate with a report of the attesting expert attached.

(ii) Discovery is available as to the basis of the certificate.

(4)(i) In this paragraph, "professional activities" means all activities arising from or related to the health care profession.

(ii) A health care provider who attests in a certificate of a qualified expert or who testifies in relation to a proceeding before an arbitration panel or a court concerning compliance with or departure from standards of care may not have devoted more than 25% of the expert's

professional activities to activities that directly involve testimony in personal injury claims during the 12 months immediately before the date when the claim was first filed.

(iii) Once a health care provider meets the requirements of subparagraph (ii) of this paragraph, the health care provider shall be deemed to be a qualified expert as to subparagraph (ii) of this paragraph during the pendency of the claim.

(iv) If a court dismisses a claim or action because a qualified expert failed to comply with the requirements of this subsection, unless there is a showing of bad faith, a party may refile the same claim or action before the later of:

1. The expiration of the applicable period of limitation; or

2. 120 days after the date of the dismissal.

(v) A claim or an action may be refiled under subparagraph (iv) of this paragraph only once.

(5) An extension of the time allowed for filing a certificate of a qualified expert under this subsection shall be granted for good cause shown.

(6) In the case of a claim or action against a physician, the Director shall forward copies of the certificates filed under paragraphs (1) and (2) of this subsection to the State Board of Physicians.

(7) For purposes of the certification requirements of this subsection for any claim or action filed on or after July 1, 1989:

(i) A party may not serve as a party's expert; and

(ii) The certificate may not be signed by:

1. A party;

2. An employee or partner of a party; or

3. An employee or stockholder of any professional corporation of which the party is a stockholder.

Appellant filed his claim in the HCADRO on March 1, 2021, which, under CJP § 3-2A-04(b)(1)(i)1, required him to file a CQE no later than June 1, 2021. (Day 90 was Sunday, May 30, 2021, and the following day was a holiday.) He subsequently was granted an extension of time until October 1, 2021. On August 20, 2021, appellant filed a purported CQE, a two-page letter from Dr. Layton.

Under CJP § 3-2A-04(b)(2)(i), appellees therefore were required to file their CQE within 120 days of August 20, 2021, which was Monday, December 20, 2021.[5] (Day 120 was Saturday, December 18, 2021.) On December 15, 2021, they filed a motion seeking an extension of time, which appellant opposed. On January 6, 2022, the Director granted appellees' motion for an extension of time. The cover letter was dated January 6, 2022, but the order was dated January 6, 2021, and it purported to set a new deadline of March 15, 2021. On March 14, 2022, appellees filed their CQE. These were clearly typographical errors; indeed, the purported date of the Director's order was prior to the date when appellant filed his claim in the HCADRO, an obvious impossibility. Appellant's contention that appellees untimely filed their CQE is completely meritless.

Two days later, on March 16, 2022, appellees filed a waiver of arbitration, which was "binding on all parties." CJP § 3-2A-06B(e). The following day, appellant filed a motion for summary judgment in the HCADRO. Because of the waiver of arbitration, the

[5] There was some dispute as to when appellant served appellees with his CQE, which would have resulted in a later filing deadline for appellees. We are relying upon the date stamp on appellant's purported CQE, which gives him the benefit of the doubt. Under either assumption, as we explain, appellees filed a timely CQE.

Director issued an order of transfer several days later, on March 22, 2022. The Director did not rule on appellant's motion for summary judgment, nor was he authorized to do so. *See* CJP § 3-2A-05(a)(1)(2) (providing that "the Director may rule on all issues of law arising prior to hearing that are not dispositive of the case").

On May 10, 2022, appellant filed a complaint in the circuit court, and appellees were served on June 7, 2022. On June 22, 2022, appellees filed a motion to strike appellant's CQE and to dismiss. On June 29, 2022, and July 29, 2022, appellant filed motions for summary judgment or for default judgment, contending in one motion that appellees' failure to file an answer within 30 days of being served with the complaint meant that appellees "agree with [his] claim" and, in the other, that it "is an admission of guilt" and that summary judgment be granted in his favor. In the June 29th motion, appellant further contended that appellees "used their own inhouse Psychologist to write the CQE which is completely prejudicial and far after the deadline by HCADRO." Appellees thereafter filed an opposition to appellant's motions for summary judgment, and the circuit court subsequently denied appellant's motions for summary judgment or for default judgment without a hearing, finding that there was "no basis whatsoever for the relief sought[.]"

Maryland Rule 2-321(c) provides:

> **(c) Automatic Extension.** When a motion is filed pursuant to Rule 2-322 or when a matter is remanded from an appellate court or a federal court, the time for filing an answer is extended without special order to 15 days after entry of the court's order on the motion or remand or, if the court grants a motion for a more definite statement, to 15 days after the service of the more definite statement.

Appellees' motion to strike appellant's CQE and to dismiss was still pending when the circuit court denied the motions for summary judgment. (Summary judgment was denied on August 30, 2022, and the motions to dismiss and to strike were decided on November 15, 2022.) According to Rule 2-321(c), appellees' answer was not due until "15 days after entry of the court's order on the motion" to dismiss. Therefore, the circuit court did not err in denying appellant's motions for summary judgment or for default judgment because, at the time the circuit court ruled on those motions, appellees were not yet required to file an answer. The circuit court correctly determined that there was "no basis whatsoever for the relief sought" by appellant in his motions for summary judgment or for default judgment.

In passing, we note that CJP § 3-2A-04(b)(7)(ii)2 bars "[a]n employee or partner of a party" from signing a CQE but does not prohibit a former employee, such as Heather Jennett, Ph.D., from doing so. Thus, appellant's contention that appellees' CQE was non-compliant on this ground is also without merit.

## II.

## Parties' Contentions

Appellant contends that the circuit court erred in failing to hear or consider his requests for extension of time to obtain a supplemental or replacement CQE. He further contends that the "only" motions considered by the circuit court were appellees' motions to strike his CQE and to dismiss and that, under the circumstances, he suffered prejudice because he was prevented from showing good cause for an extension.

Appellees counter that appellant is incorrect in asserting that the circuit court failed to consider his motions. And on the merits, the circuit court, according to appellees, "was legally correct" in its rulings. In support, appellees cite many purported shortcomings in appellant's CQE, which, they maintain, caused it to be non-compliant. Moreover, according to appellees, appellant received extensions totaling more time than he was entitled under the relevant statute.

**Analysis**

As an initial matter, appellant is incorrect in his contention that the circuit court failed to address his motions. The circuit court's Memorandum Opinion demonstrates that the court considered and rejected appellant's arguments and directly refutes appellant's contentions on appeal.

Appellant does not contend that his purported CQE was compliant with the statutory requirements, nor could he in light of its obvious deficiencies.[6] Indeed, as the circuit court recognized, appellant's motions requesting a further extension of time to submit a replacement or supplemental CQE and to designate a new qualified expert, filed during the period from June 29, 2022 through August 9, 2022, were a tacit admission that his CQE

[6] For example, as the circuit court pointed out in its Memorandum Opinion, appellant's original CQE "does not set forth the qualifications of Dr. Layton for establishing liability against [appellees] as required by Cts. & Jud. Proc. § 3-2A-02(c)." Furthermore, appellant's CQE does not "set forth the applicable standard of care and specifically identify how each Defendant failed to comply with the standard of care." And finally, appellant's CQE fails to satisfy the requirement that Dr. Layton "attest that he does not devote more than 25% of his professional activities to activities directly involving testimony in personal injury claims in accordance with Cts. & Jud. Proc. § 3-2A-04(b)(4)."

was noncompliant. Under CJP 3-2A-04(b)(1)(i)1-(ii), appellant asked for and was granted a 90-day extension of time by the Director of the HCADRO to file his CQE. He nonetheless failed to file a compliant CQE within the 180-day period. *See McCready Mem'l Hosp. v. Hauser*, 330 Md. 497, 513 (1993) (declaring that "[w]here a claimant seeks a § 3-2A-04(b)(1)(ii) extension, it must file the expert's certificate within the second 90-day period, i.e., within 180 days from the initial filing of the claim"). The circuit court correctly determined that appellant had received all the time to which he was entitled and that his CQE was, nonetheless, noncompliant.

## III. & IV.

## Parties' Contentions

Appellant contends that appellees obstructed his efforts to obtain "pertinent and needed documents" and, by implication, that the circuit court erred in providing him the opportunity to obtain discovery. That purported error, in turn, denied him the opportunity to file a supplemental CQE.

Appellant further contends that the medical records he received were inaccurate and incomplete. Therefore, he maintains, there was good cause for an extension of time to file a CQE, and the circuit court erred in dismissing his complaint.

Appellees counter that the circuit court did not err. According to appellees, a supplemental CQE was not available to appellant, and furthermore, he "did not require discovery to [file] a CQE." Nor, according to appellees, was appellant entitled to tolling the deadline for filing a CQE until after receiving discovery. Thus, appellees assert, the circuit court "properly declined to allow [appellant] to file a supplemental CQE."

Appellees further assert that appellant's "failure to file a proper CQE was not the product of [appellees'] allegedly inaccurate or incomplete records." Appellees maintain that not only did appellant have "many avenues" for obtaining his medical records and more than enough time to do so, but furthermore, the circuit court, in any event, was not authorized "to further extend the time for filing a valid CQE" for good cause shown. Nor, according to appellees, did appellant establish good cause for any further delay. Thus, according to appellees, the circuit court exercised the "only option" that it could—to dismiss appellant's complaint without prejudice.

**Analysis**

Supplemental CQEs are governed by CJP § 3-2A-06D, which provides in relevant part:

> (b)(1) Within 15 days after the date that discovery is required to be completed, a party shall file with the court a supplemental certificate of a qualified expert, for each defendant, that attests to:
>
> (i) The certifying expert's basis for alleging what is the specific standard of care;
>
> (ii) The certifying expert's qualifications to testify to the specific standard of care;
>
> (iii) The specific standard of care;
>
> (iv) For the plaintiff:
>
> 1. The specific injury complained of;
>
> 2. How the specific standard of care was breached;
>
> 3. What specifically the defendant should have done to meet the specific standard of care; and

> 4. The inference that the breach of the standard of care proximately caused the plaintiff's injury; and
>
> (v) For the defendant:
>
> 1. How the defendant complied with the specific standard of care;
>
> 2. What the defendant did to meet the specific standard of care; and
>
> 3. If applicable, that the breach of the standard of care did not proximately cause the plaintiff's injury.
>
> (2) An extension of the time allowed for filing a supplemental certificate under this section shall be granted for good cause shown.
>
> (3) The facts required to be included in the supplemental certificate of a qualified expert shall be considered necessary to show entitlement to relief sought by a plaintiff or to raise a defense by a defendant.

Appellant was not entitled to file a supplemental CQE under CJP § 3-2A-06D. As the circuit court observed, a supplemental CQE is intended to permit a party to correct a CQE in the event that they were unable to obtain certain information, such as the names of specific health care providers, until the completion of discovery. But that circumstance did not apply here, because the deficiencies in appellant's CQE were entirely within his own knowledge and involved the identity and qualifications of his own expert. By the time the circuit court convened the hearing, on October 28, 2022, more than a year had elapsed from when appellant filed his non-compliant CQE. The circuit court properly concluded that appellant failed to show good cause for a further extension of time.

The "'failure to file a proper certificate is tantamount to not having filed a certificate at all.'" *Puppolo v. Adventist Healthcare, Inc.*, 215 Md. App. 517, 532 (2013) (quoting

*D'Angelo v. St. Agnes Healthcare, Inc.*, 157 Md. App. 631, 645 (2004)). "[I]f a proper Certificate has not been filed, the case should not have been in a court in the first place and should be dismissed without prejudice in accordance with the HCMCA." *Breslin*, *supra*, 421 Md. at 290 n.20. The circuit court correctly determined that appellant had already exhausted all the extensions of time to which he was entitled and that his CQE was noncompliant. It therefore properly dismissed appellant's complaint without prejudice, as required by CJP § 3-2A-04(b)(1)(i)1.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**