IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD K. JACKSON,	§	
	§	No. 151, 2013
Plaintiff Below,	§	
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware,
	§	in and for Kent County
JEANNETTE MINNER, DEBBIE	§	C.A. No. 07C-11-030
STYLES, MILES EDGE, DAVE	§	
HALL, STANLEY TAYLOR,	§	
PAUL HOWARD, DELAWARE	§	
DEPARTMENT OF	§	
CORRECTION, DELAWARE	§	
BUREAU OF PRISONS, and THE	§	
STATE OF DELAWARE,	§	
	§	
Defendants Below,	§	
Appellees.	§	

Submitted: July 5, 2013
Decided: August 23, 2013

Before **BERGER**, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 23rd day of August 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The plaintiff-appellant, Richard K. Jackson, a prison inmate, appeals from the Superior Court's March 1, 2013 order granting summary judgment to defendants-appellees Jeannette Minner, Debbie Styles, Miles

Edge, Dave Hall, Stanley Taylor and Paul Howard on Jackson's claims.[1] We find no merit to the appeal. Accordingly, we affirm.

(2) In 1989, Jackson was convicted of felony charges and sentenced to 34 years at Level V incarceration. On May 23, 2006, Jackson, along with three other inmates incarcerated at the Sussex Correctional Institution, attended a parole hearing at the facility then known as the Delaware Correctional Center. Before being transported to the parole hearing in the prison van, each of the inmates was placed in handcuffs, leg irons, a waist restraint chain and a "black box" that was placed over the handcuffs to provide additional restraint.

(3) After the hearing, the prisoners again were restrained. The chain connecting Jackson's leg irons together was shorter than it was previously. When the prisoners were being loaded into the van to return to the prison, Jackson lost his balance and fell backward off the prison van, allegedly injuring his lower back. Jackson contends that he asked correctional officers Minner, Styles, and Edge to help him into the van, but they ignored his request.

[1] On April 9, 2010, the Superior Court granted judgment in favor of the Department of Correction, the Bureau of Prisons and the State of Delaware. On March 17, 2011, it granted summary judgment in favor of the remaining defendants on Jackson's 42 U.S.C. § 1983 claims. Jackson does not appeal from those judgments.

(4) On November 26, 2007, Jackson filed a complaint in the Superior Court alleging, among other things, that Minner, Styles and Edge acted negligently and/or recklessly by allowing him to fall from the van, ignoring his request for help, and failing to comply with proper prison procedures. Jackson also alleged that Minner improperly used a shorter chain to connect Jackson's leg irons and positioned the leg irons in a manner that increased Jackson's risk of falling. On March 1, 2013, the Superior Court granted summary judgment to the defendants on Jackson's claims. This appeal followed.[2]

(5) On appeal, Jackson claims that the Superior Court improperly entered summary judgment in favor of Minner, Styles, and Edge on his state law claims. He contends that their conduct renders them liable under the State Tort Claims Act.[3]

(6) Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a

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[2] Jackson does not appeal from that portion of the Superior Court's order granting summary judgment in favor of defendants Hall, Taylor and Howard. He has therefore abandoned any claims against those defendants. *See Turnbull v. Fink*, 644 A.2d 1322, 1324 (Del. 1994).

[3] DEL. CODE ANN. tit. 10, § 4001 *et seq*. It is not necessary for us to address whether the Superior Court properly determined that the correctional officers owed Jackson a duty of care pursuant to Del. Code Ann. tit. 11, § 6504. To the extent that Jackson has failed to raise certain claims on appeal that he made in the Superior Court, those claims are deemed to be waived, and this Court will not address them. *See Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

matter of law.[4] The moving party bears the burden of establishing the non-existence of material issues of fact.[5] The burden then shifts to the non-moving party to establish the existence of material issues of fact.[6] In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.[7]

(7) Title 10, Section 4001 of the Delaware Code provides that State officials are shielded from civil liability if their alleged tortious conduct: a) arose out of and in connection with the performance of official duties involving an exercise of discretion; b) was performed in good faith; and c) was performed without gross or wanton negligence.[8] The plaintiff has the burden of proving the absence of one or more of the elements of immunity.[9]

(8) In its March 1, 2013 order, the Superior Court found that the act of moving the prisoners onto the van was a discretionary act, and that Jackson had failed to demonstrate either that the act was not performed in

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[4] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

[5] *Id*.

[6] *Id*. at 681.

[7] *Merrill v.Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).

[8] DEL. CODE ANN. tit. 10, § 4001.

[9] *Id*.

good faith or gross negligence on the part of Minner, Styles, or Edge. The Superior Court held:

> The plaintiff faults defendant correctional officers for failing to assist him into the prison van, and failing to warn him of the risk and danger of falling. In addition, he faults the defendant Minner with substantially increasing the risk of falling by using a shorter chain to connect his leg irons. Accepting the plaintiff's allegations as true, I find that that conduct would constitute mere negligence at best. . . . Prisoners frequently load and unload from prison vans without the assistance of correctional officers. . . . In fact, the plaintiff successfully entered the prison van without the assistance of a correctional officer earlier that day.

(9) We agree that Jackson has failed to demonstrate that Minner, Styles, or Edge are not immune from civil liability under the State Tort Claims Act. Accordingly, conclude that the Superior Court's judgment must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice