

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANA I. WILLIAMS,	§
	§ No. 524, 2012
Plaintiff Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
JAMILLA MACKENZIE, R.N.,	§ in and for Kent County
	§ C.A. No. K10C-12-030
Defendant Below-	§
Appellee.	§

Submitted: April 12, 2013

Decided: May 7, 2013

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices

ORDER

This 7th day of May 2013, after careful consideration of the opening brief¹ and the record on appeal, it appears to the Court that:

(1) The appellant, Dana Williams, filed this appeal from the Superior Court's dismissal of his complaint for nonpayment of the filing fee. We find no abuse of discretion in the Superior Court's judgment. Accordingly, we affirm.

(2) Williams is a convicted felon who is incarcerated at the Vaughn Correctional Center. In December 2010, Williams filed a complaint alleging medical negligence against a prison nurse who failed to diagnose and treat his broken leg in March 2009, which allegedly resulted in permanent injury to

¹ After the appellee failed to file an answering brief, the parties were informed that the matter would be considered on the basis of the opening brief and the record below.

Williams. On January 5, 2011, the Superior Court granted Williams' application to proceed *in forma pauperis* and ordered him to pay 20% of the average daily balance of his prison inmate account for the preceding six months. On January 21, 2011, Williams wrote to the Prothonotary and stated that he had no money in his prison inmate account. The Prothonotary wrote back to Williams and informed him that he was required to prove his average daily balance by providing statements for the six months preceding the filing of his complaint. The Prothonotary informed Williams that, if the statements established that his average daily balance for the preceding six months was \$0, then he would not be required to make any payment. Williams' deadline for providing his account statements was June 15, 2011.

(3) Almost a year later, in May 2012, Williams wrote to the Superior Court providing his account statements and again asserting that he presently had no money in his account to pay any fee. The Superior Court wrote to Williams on May 30, 2012 and informed him that his account statements for the six months preceding the filing of his December 2010 complaint reflected, in fact, that Williams had maintained a balance in his prison account and that he was required to pay 20% of that average daily balance. Williams made no payment. On September 6, 2012, the Superior Court dismissed Williams' complaint for nonpayment of the filing fee. This appeal followed.

(4) In his opening brief on appeal, Williams essentially contends that the Superior Court abused its discretion in dismissing his complaint at this stage of the proceedings because the allegations of his complaint were sufficient to withstand summary dismissal and because he complied with the Superior Court's order that he prove his indigency by providing a copy of his inmate account statement, which reflected that he had no money in his account.

(5) We disagree. While Williams' account statement may have reflected a present balance of \$0, the statement also reflected that Williams *had* maintained a balance in the account during the six months preceding the filing his December 2010 complaint. We find no abuse of the Superior Court's discretion in ordering Williams to pay 20% of that average daily balance in order to proceed with his civil complaint. The Superior Court afforded Williams more than a year to make the required payment. We find no abuse of the Superior Court's discretion in dismissing Williams' complaint for nonpayment.²

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

² See *Biggins v. Phelps*, 2009 WL 2055128 (Del. July 16, 2009).