

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
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September 30, 2013

Jacqueline A. Bailey
35807 Bethany Crest Lane
Ocean View, DE 19970

D. Miika Roggio, Esquire
Silverman McDonald & Friedman
1010 North Bancroft Parkway, Suite 22
Wilmington, DE 19805

Re: *Jacqueline A. Bailey v. Commercial Joint Ventures, LLC, t/a Bethany
Crest, C.A. No. S12C-11-018 RFS*

Upon Defendant's Motion for Summary Judgment. Granted.
Submitted: September 11, 2013

Dear Ms. Bailey and Mr. Roggio:

Before the Court is Defendant Commercial Joint Venture, LLC, t/a Bethany Crest's ("Bethany Crest's") Motion for Summary Judgment, filed in this personal injury action brought by Plaintiff Jacqueline A. Bailey ("Bailey"), who represents herself. For the reasons set forth herein, Bethany Crest's Motion is **GRANTED**.

Facts

This Motion stems from Bailey’s personal injury suit for money damages against Bethany Crest. Bailey claims that on November 26, 2010, at roughly 7:00p.m., she fell over a speed bump located in Bethany Crest’s parking lot while walking through it with another individual. According to Bailey, she “couldn’t see because the lights weren’t on in the park[ing lot and] it was pitch black outside.”¹ Bailey knew that the parking lot contained a recently-placed speed bump, but she could not actually see it. Bailey states that the day after her fall, she could not walk. Subsequently, she received an MRI which allegedly established that her fall caused “arthritis on the left side.”² Bailey was also hospitalized because of an addiction to oxycodone, which assumedly related to her fall. Additionally, she was relegated to a wheelchair, and then a walker, and then a cane. She asks for \$2 million in compensatory damages from Bethany Crest.

This Court issued a Pretrial Scheduling Order on March 13, 2013, setting out the timeline for this litigation. In particular, the Court set June 12, 2013 as the date when Bailey “shall identify all expert witnesses and produce any related reports to

¹ Complaint at 1.

² *Id.*

opposing counsel.”³ Bethany Crest served Bailey Interrogatories and a Request for Production of Documents on January 16, 2013. On April 2, 2013, Bethany Crest filed a Motion to Compel Bailey’s responses to these discovery requests. Her answers to Bethany Crest’s Interrogatories were filed on May 15, 2013.

Bethany Crest asked Bailey several interrogatories relating to expert witnesses, most of which Bailey left blank. On one interrogatory, which asked for the names of any medical experts whom Bailey planned to call to testify regarding past medical problems, Bailey wrote “Alice Hoppel.”⁴ On another, which asked for names of any non-medical experts whom Bailey planned to call to testify, she wrote “Delaware (Delmarva [P]ower).”⁵

Bethany Crest now moves for summary judgment.

Standard of Review

Summary judgment will be granted only if the moving party, who bears the initial burden, can establish that no genuine issues of material fact exist and the

³ See *Bailey v. Commercial Joint Ventures, LLC*, C.A. No. S12C-11-018 RFS (Del. Super. Mar. 13, 2013) (ORDER).

⁴ See Def.’s Interrogs. Directed to Pl. at 14. The Record reflects that Alice Hoppel is a Family Nurse Practitioner who has treated Bailey on several occasions.

⁵ See *id.*

moving party is entitled to judgment as a matter of law.⁶ The Court examines all of the evidence, and the reasonable inferences therefrom, in the light most favorable to the non-moving party.⁷ Using this lens, only if the moving party establishes that no factual questions indeed exist, the burden shifts to the non-moving party to establish the existence of such factual questions which must “go beyond the bare allegations of the complaint.”⁸

Discussion

Bethany Crest argues that it is entitled to summary judgment because Bailey “has failed to adequately identify a medical expert and has failed to produce any semblance of an expert report.”⁹ Bailey responds to Bethany Crest’s argument with the names of her current medical providers.¹⁰ She also states that her records are housed at Beebe Hospital, that she was in a wheelchair for a period of time, that a doctor at the Delaware Psychiatric Center who took X-rays informed her that she was

⁶ See, e.g., *Direct Capital Corp. v. Ultrafine Techs., Inc.*, 2012 WL 1409392, at *1 (Del. Super. Jan. 3, 2012) (citations omitted) (iterating the exacting standard of summary judgment).

⁷ *Id.*

⁸ *Id.*

⁹ Def.’s Mot. Summ. J. At 1–2 (citing *Rayfield v. Power*, 840 A.2d 642, 2003 WL 22873037, at *1 (Del. Dec. 2, 2003)).

¹⁰ See Ans. Br. at 1 (giving the names “Dr. Alcorn, Marvel and Boytim”).

experiencing arthritis because of her fall, and that she did not realize a discovery deadline was approaching.

Bethany Crest is correct that Bailey's discovery responses, or lack thereof, entitle it to summary judgment. As the Delaware Supreme Court and this Court have stated before, the causation element in a negligence action requires the plaintiff to put forth some kind of expert testimony.¹¹ If, after a proper discovery request from the defendant under Civil Rule 26(b)(4), the plaintiff does not fulfill her discovery obligations under that Rule, she cannot win at the summary judgment level, even though the facts are viewed in her favor.¹² Furthermore, under Rule 26(b)(4), a party requesting discovery is entitled to receive not only the identity of the other party's expert, but also the subject matter of that expert's testimony, the essence of the facts and opinions which that expert will give, and the basis for that expert's opinion.¹³

¹¹ See, e.g., *Rayfield*, 2003 WL 22873037, at *1 (citations omitted) (explaining that when combating a motion for summary judgment, a personal injury plaintiff must demonstrate that she could succeed on her claim at trial, which requires "direct testimony of a competent medical expert"); *McFarlane v. Atlantic Budget Inn Millsboro*, 2012 WL 6845681, at * 3 (Del. Super. Dec. 5, 2012) (citation omitted) (stating that "[a] personal injury plaintiff cannot survive summary judgment if the plaintiff provides no evidence in the form of expert opinion or otherwise of a defendant's negligence"). See also *Collis v. Topper's Salon & Health Spa*, 2013 WL 4716237, at *2 (Del. Super. Aug. 29, 2013) ("The plaintiff's contention that she does not need expert testimony to prove her claim for bodily injuries is contrary to Delaware law." (citing, *inter alia*, *Rayfield*, 2003 WL 22873037, at *1)).

¹² See *Rayfield*, 2003 WL 22873037, at *1.

¹³ Super. Ct. Civ. R. 26(b)(4)(A).

Thus, a plaintiff does not satisfy her Rule 26(b)(4) discovery obligations simply by writing an expert's name on an interrogatory.

Based on the foregoing, Bethany Crest's Motion for Summary Judgment is **GRANTED.**

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

cc: Prothonotary
Judicial Case Manager