

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JAMES BOWERS,)
)
 Plaintiff,)
)
 v.) C.A. No: S25C-05-020 MHC
)
 BEEBE HOSPITAL AND)
 KEITH KUHF AHL,)
)
 Defendants.)
)

ORDER

Submitted: June 3, 2026
Decided: June 10, 2026

**ORDER REFUSING TO CERTIFY DEFENDANT’S
CERTIFICATION OF INTERLOCUTORY APPEAL**

Ronald G Poliquin, Esquire, The Poliquin Firm LLC, *Attorney for Plaintiff*

Bradley T. Goewert, Esquire and Lorenza A Wolhar, Esquire, Balaguer Milewski & Imbrogno, *Attorneys for Defendant*

CONNER, J

Upon Consideration of Defendant's, Beebe Hospital, Application for Certification of Interlocutory Appeal, it appears to this Court that:

1. On May 16, 2025, Plaintiff filed a Complaint alleging medical negligence against Beebe Hospital (Defendant) and Dr. Keith Kuhfahl.¹ Plaintiff alleges that February 25, 2023, was the last day of Defendant's wrongful and negligent care of Plaintiff, as it was the last day he was seen and treated at Beebe Hospital.² Plaintiff sent the Notice of Intent to Investigate ("NOI") on February 13, 2025.³ If Plaintiff failed to meet the statutory requirements under 18 *Del. C.* § 6856, then the statute of limitations ran on February 25, 2025, two years after Plaintiff's last day of care under Defendant. If the statute of limitations is tolled under 18 *Del. C.* § 6856, then the statute of limitations ran on May 26, 2025, ninety days after February 25, 2025.

2. On August 15, 2025, the Court granted Defendant Kuhfahl's Motion to Dismiss for non-compliance with 18 *Del. C.* 6856(4).⁴

3. Defendant initially filed a Motion for Judgment on the Pleadings on September 15, 2025. Plaintiff filed his response on September 26, 2025. On October 17, 2025, the Court gave Plaintiff thirty days to obtain confirmation from the post

¹ Complaint ("Compl."), D.I. 1.

² Am. Compl., D.I. 24, ¶ 23.

³ *Id.* ¶ 22.

⁴ D.I. 19.

office regarding the certified mailing. On November 6, 2025, Plaintiff's counsel requested a forty-five-day extension, which the Court granted. On December 22, 2025, Plaintiff's counsel wrote a letter to the Court requesting additional time. The Court granted the request to extend time until January 30, 2026. On January 29, 2026, Plaintiff's counsel wrote to the Court once again, requesting an additional thirty days, which the Court granted. On February 27, 2026, Plaintiff's counsel requested another thirty-day extension, which was granted by the Court. Defendant filed its Renewed Motion for Judgment on the Pleadings on April 7, 2026. Plaintiff filed his Response and Opposition to the Renewed Motion on May 8, 2026.

4. Defendant argued that Plaintiff violated the statute of limitations pursuant to 18 *Del. C.* § 6856. First, Defendant alleged that Plaintiff failed to attach a copy of the NOI to the Complaint as required by the statute.⁵ Second, Defendant alleged that Plaintiff did not send the NOI by “certified mail, return receipt requested.”⁶ Because of this, Defendant claimed that the statute of limitations was not tolled. Therefore, Plaintiff should have filed the Complaint by February 25, 2025.⁷

⁵ Def.'s Mot. for J. on the Pleadings, D.I. 18, ¶ 4.

⁶ *Id.* ¶ 6.

⁷ *Id.* ¶ 2.

5. On September 26, 2025, Plaintiff filed his Response and Opposition to Defendant’s Motion for Judgment on the Pleadings.⁸ In the Amended Complaint and the Response and Opposition to Motion for Judgment on the Pleadings (“Response”), Plaintiff claims that the NOI was sent through “certified mail, return receipt requested.”⁹ In the Response, Plaintiff attached an affidavit from the paralegal, Morgan Kramer, who sent the NOI to Defendant.¹⁰ Mr. Kramer asserted that he requested the mail to be delivered by certified mail, return receipt requested through the U.S. Post Office.¹¹ Mr. Kramer further claimed that he provided the P.S. Form 3811, the form for return receipts, to the mail delivery person prior to sending the NOI.¹² Mr. Kramer kept the “Certified Mail Receipt” as proof of the mailing.¹³ Mr. Kramer stated that part of his duties and responsibilities as a paralegal include sending certified mail, return receipt requested.¹⁴ Plaintiff alleged that the NOI was sent in strict compliance with 18 *Del. C.* § 6856, but the signed postcard was not returned due to an error by the U.S. Post Office.¹⁵ Mr. Kramer attached an example

⁸ Pl.’s Resp. and Opp’n to Def.’s Mot. for J. on the Pleadings, D.I. 25.

⁹ Am. Compl., D.I. 24, ¶ 22. *See also* Pl.’s Resp. and Opp’n to Mot. for J. on Pleadings, D.I. 25, ¶ 3.

¹⁰ Aff. of Morgan Kramer, D.I. 25, Ex. 1.

¹¹ *Id.* ¶ 3.

¹² *Id.* ¶ 4. *see* U.S.P.S., 500 Additional Mailing Services <https://pe.usps.com/text/dmm300/503.htm#ep1063609> (A mailer purchasing a return receipt may choose to receive the return receipt by mail, which is the Form 3811, or electronically).

¹³ *Id.* ¶ 5.

¹⁴ *Id.* ¶ 2.

¹⁵ *Id.* ¶ 7.

of another case, where he followed the exact steps as the present case, and received a signed postcard.¹⁶

6. Defendant filed its Renewed Motion for Judgment on the Pleadings on April 7, 2026.¹⁷ In the Renewed Motion, Defendant argued that the documents from the Post Office did not demonstrate that Plaintiff sent the NOI through certified mail, return receipt requested.

7. Plaintiff filed his Response and Opposition to Defendant's Renewed Motion on May 8, 2026.¹⁸ Plaintiff argued that the evidence demonstrated that the mail was sent by certified mail, return receipt requested, and was addressed to Defendant's regular place of business. Furthermore, the evidence showed that the mail was picked up and signed for at the post office by an individual on behalf of Beebe. The absence of the USPS green card for return receipts does not demonstrate non-compliance. Again, Mr. Kramer submitted the affidavit stating that he used the PS Form 3811 for return receipts. At a minimum, Plaintiff argued that the evidence created a genuine factual dispute that precluded the Court from granting Defendant's renewed Motion.

¹⁶ *Id.* ¶ 6 *see* U.S.P.S., 500 Additional Mailing Services <https://pe.usps.com/text/dmm300/503.htm#ep1063609> (When a mailer requests a return receipt, the mailer receives a signed postcard to prove that the mail was delivered).

¹⁷ Def.'s Renewed Mot. for J. on the Pleadings, D.I. 39.

¹⁸ Pl.'s Resp. and Opp'n to Def.'s Renewed Mot. for J. on the Pleadings, D.I. 40.

8. On May 15, 2026, this Court held Oral Argument and denied Defendant's Motion since there is a material factual issue whether Plaintiff complied with 18 *Del. C.* 6856(4).

9. Defendant filed its Application for Certification of Interlocutory Appeal on May 26, 2026. Plaintiff filed his response on June 3, 2026.

10. In deciding whether to certify Defendants' appeal this Court must consider the following: Supreme Court Rule 42(b)(i) "[n]o interlocutory appeal will be certified by the trial court or accepted by [the Delaware Supreme] Court unless the order of the trial court decides a substantial issue of material importance that merits appellate review before a final judgment."¹⁹ (b)(ii) "[i]nterlocutory appeals should be exceptional, not routine, because they disrupt the normal procession of litigation, cause delay, and can threaten to exhaust scarce party and judicial resources."²⁰ and the eight factors listed in (b)(iii).²¹

¹⁹ Supr. Ct. R. 42 (b)(i).

²⁰ Supr. Ct. R. 42 (b)(ii).

²¹ (A) The interlocutory order involves a question of law resolved for the first time in this State; (B) The decisions of the trial courts are conflicting upon the question of law; (C) The question of law relates to the constitutionality, construction, or application of a statute of this State, which has not been, but should be, settled by this Court in advance of an appeal from a final order; (D) The interlocutory order has sustained the controverted jurisdiction of the trial court; (E) The interlocutory order has reversed or set aside a prior decision of the trial court, a jury, or an administrative agency from which an appeal was taken to the trial court which had decided a significant issue and a review of the interlocutory order may terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice; (F) The interlocutory order has vacated or opened a judgment of the trial court; (G) Review of the interlocutory order may terminate the litigation; or (H) Review of the interlocutory order may serve considerations of justice.

11. Defendant contends they meet the criteria required for an interlocutory appeal required under Supreme Court Rule 42(b)(iii)(A), 42(b)(iii)(C), 42(b)(iii)(G), and 42(b)(iii)(H). Plaintiff opposes this application.

12. After considering Defendant's joint application, the Court finds that denial of the Motion to Dismiss does determine an issue of material importance, it does not determine an issue of material importance sufficient to warrant appellate review before the determination of judgment is reached in this Court. Additionally, the Court has considered each of the criteria of Delaware Supreme Court Rule 42(b)(iii) and concludes as follows to the criterion specifically raised by Defendant:

a. Rule 42(b)(iii)(A). The issue in this matter is not of first impression in Delaware. Defendant cited to the case, *Leatherbury v. Greenspun*, where the Supreme Court of Delaware found that strict compliance is required to toll the statute of limitations under 18 *Del. C.* § 6856.²² The Court found that the language of 18 *Del. C.* § 6856 is unambiguous; the notice of intent to investigate must be sent by "certified mail, return receipt requested."²³ The Court has "no authority to vary the terms of a statute with clear meaning or ignore mandatory provisions."²⁴ Furthermore, the Court found that the plain terms of the statute must be enforced, even if enforcement produces a

²² 939 A.2d 1284, 1293 (Del. 2007).

²³ *Id.*

²⁴ *Id.* at 1292.

“somewhat unfortunate result.”²⁵ In *Leatherbury*, the plaintiff sent the notice to investigate through a private carrier, not certified mail.²⁶ The trial court dismissed the complaint on the basis that it was barred by the two-year statute of limitations because the plaintiff failed to comply with the unambiguous statutory language regarding the delivery of the notice of intent.²⁷ The Supreme Court affirmed the decision.²⁸

Here, the Court ruled the present case is distinguishable from *Leatherbury*. In *Leatherbury*, the plaintiff admitted to failing to comply with the statutory requirements.²⁹ There was no factual dispute. In the present case, Plaintiff alleged that the NOI was sent by certified mail, return receipt requested.³⁰ Plaintiff does not dispute the ambiguity or the meaning of the statute.

Both parties produced a copy of the Proof of Delivery Form from the USPS.³¹ The Proof of Delivery Form shows that Plaintiff sent the NOI via certified mail to 424 Savannah Road, Lewes, Delaware 19958-1490.

However, the mail was picked up at the Post Office by an employee from

²⁵ *Id.*

²⁶ *Id.* at 1287.

²⁷ *Id.* at 1293.

²⁸ *Id.*

²⁹ *Id.* at 1290.

³⁰ Am. Compl., D.I. 24, ¶ 22.

³¹ Def.’s Renewed Mot. for J. on the Pleadings, D.I. 39, Ex. B. *See also* Pl.’s Resp. to Def.’s Mot. for J. on the Pleadings, D.I. 40, Ex. A).

Beebe. It is unclear why the mail was delivered to the Post Office instead of Beebe Hospital.

In the initial Response to Defendant’s Motion for Judgment on the Pleadings, Plaintiff argued that the U.S. Postal Service fails to distinguish between “certified mail” and “certified mail, return receipt requested” in its product information.³² Plaintiff attached an example of the U.S. Postal Service tracking information from another case, which shows that the mail was classified as “certified mail” even though a return receipt was requested and provided.³³ Plaintiff argued that the absence of specific labeling within the U.S. Postal Service system should not be used to suggest non-compliance with the statutory requirements.³⁴ Plaintiff’s office has conducted prior mailings in an identical manner and have received signed receipts.³⁵ Plaintiff attached exhibits that support these allegations.³⁶

Additionally, in the initial Response, Plaintiff attached an affidavit from Mr. Kramer. In the affidavit, Mr. Kramer alleged that he sent the NOI on February 13, 2025, to Beebe Hospital at 424 Savannah Road, Lewes, Delaware 19958, requesting it to be delivered “certified mail, return receipt

³² Am. Compl., D.I. 24, ¶ 17.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Pl.’s Resp. and Opp’n to Def.’s Mot. for J. on the Pleadings, D.I. 25, Ex. II.

requested.”³⁷ Unlike *Leatherbury*, where the plaintiff admitted to failing to comply with the statute, Plaintiff has pled that the NOI was sent in compliance with 18 *Del. C.* § 6856.³⁸ Plaintiff is without knowledge as to why the NOI was delivered to the Lewes Post Office, instead of Beebe Hospital, because it was addressed to Defendant’s regular place of business.³⁹ There is a genuine factual dispute as to whether the NOI was sent in compliance with 18 *Del. C.* § 6856.

While the Court acknowledges that Delaware precedent requires strict compliance with the statute, and actual notice is not sufficient to toll the statute of limitations, there is a genuine issue of material fact as to whether the certified mailing was sent with a return receipt requested. This Court granted the Motion to Dismiss for Dr. Keith Kuhfahl because it was clear Plaintiff did not comply with 18 *Del. C.* § 6856(4). The Court is not ignoring the clear mandatory guidelines of 18 *Del. C.* § 6856. However, the unique facts of the case preclude the Court from dismissing the case due to non-compliance with the statute. This Court’s ruling does not create an issue of first impression in Delaware. Factor (A) does not favor certification.

³⁷ Aff. of Morgan Kramer, D.I. 25, Ex. 1, ¶ 3.

³⁸ Pl.’s Resp. and Opp’n to Mot. for J. on Pleadings, D.I. 25, ¶ 21.

³⁹ *Id.* ¶ 16.

b. Rule 42(b)(iii)(C). Rule 42(b)(iii)(C) state the Court should review whether “[t]he question of law relates to the constitutionality construction or application of a statute of this State, which has not been, but should be, settled by this Court in advance of an appeal from a final order...” As stated in the analysis regarding Supreme Court Rule 42(b)(iii)(A), the Court’s decision to deny the Motion to Dismiss was based on an unresolved factual issue whether Plaintiff sent the NOI certified mail, receipt requested. The statute is clear, the facts are not. Factor (C) does not favor certification.

c. Rule 42(b)(iii)(G). Defendant is correct that interlocutory review could terminate the litigation. Therefore, technically the criteria of Supreme Court Rule 42(b)(iii)(G) is met if the Supreme Court chooses to engage in a fact finding mission and decide with the Defendant.

d. Rule 42(b)(iii)(H). Finally, the Defendant generically contends it meets the criteria of Supreme Court Rule 42(b)(iii)(H) alleging the consideration of justice would be served. Without anymore specific the Court can only decipher Defendant’s motion that Supreme Court review would help the medical malpractice area of the law. The Court is at a loss how justice would be served in this case. As a matter of fact and law, depriving the Plaintiff of his day in court when there is a factual dispute with compliance with the statute at issue dictates this criteria has not been met.

13. This Court must conclude that any potential benefits of interlocutory appeal at this stage is substantially outweighed by the inefficiency, disruption, and cost of an interlocutory appeal. The application to certify the Court's May 15, 2026, decision to deny the Motion to Dismiss to the Delaware Supreme Court is **DENIED**.

IT IS SO ORDERED.

/s/ Mark H. Conner

Mark H. Conner, Judge

cc: Prothonotary