

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TAMIKA MOORE,

Plaintiff,

vs.

ROBERT A. DONATO, D.O., and
WILLIAMSPORT OBSTETRICS &
GYNECOLOGY, PC,

Defendants.

: NO. 18 - 0677

:

:

:

:

:

: CIVIL ACTION

:

:

:

:

:

: *Motion to Extend Deadline*

OPINION AND ORDER

On July 3, 2018, Plaintiff filed her Complaint in this case, which sounded in medical negligence and corporate negligence. On August 8, 2018, Defendants filed a *Notice of Intention to Enter Judgment of Non Pros*, pursuant to Pa.R.C.P. 1042.7. On September 5, 2018, exactly thirty days after Defendants filed their notice, Plaintiff filed the *instant Motion to Extend the Deadline for Filing Certificate of Merit* (hereinafter “Plaintiff’s Motion”). In Plaintiff’s Motion, the stated reason for an extension of time is: “Counsel has been in contact with the expert witness’s office and [has] been advised that the expert will be contacting Plaintiff’s counsel in the very near future concerning the Certificate of Merit.”¹

On October 12, 2018, Defendants filed their *Response to Plaintiff’s Motion* and *Memorandum of Law*. In their Memorandum, Defendants agree that Plaintiff’s motion is timely filed; however, they argue that Plaintiff’s excuse does not satisfy Pa.R.C.P. 1042.3(d)’s requirement of “good cause shown.”² On November 8, 2018, by agreement of counsel, the hearing was rescheduled to November 14, 2018. In the November 8th

¹ Plaintiff’s Motion to Extend Deadline for Filing Certificate of Merit, ¶6.

Order, the Court requested that Plaintiff's counsel provide the Court with an affidavit detailing the diligence he exercised to ensure the timely filing of a certificate of merit.

On November 9, 2018, Plaintiff's counsel submitted his affidavit.³

Based on the affidavit and testimony at the November 14th hearing, the following are the chain of events surrounding counsel's attempt to acquire the certificate of merit.

- 1) In September 2016, Plaintiff's counsel began obtaining medical records in connection with the treatment of Plaintiff for injuries she sustained.
- 2) In November 2016, the initial records were submitted to the expert witness for his review.
- 3) After an initial review by the expert witness, Plaintiff's counsel and the expert witness discussed the necessity of supplemental records.
- 4) Sometime in early 2017, Plaintiff's counsel provided additional records to the expert witness.
- 5) Following the filing of the Writ of Summons on May 9, 2018, Plaintiff's counsel specifically contacted the expert witness and requested a report and statement from him so that a certificate of merit could be prepared. The expert witness indicated that he had been busy and needed more time.
- 6) In August 2018, Plaintiff's counsel requested the report again and the expert witness advised counsel that he could not locate the records, but believed they were at his office in the hospital.

² Defendant's Memorandum of Law in Support of the Response at 3.

³ Plaintiff's counsel submitted the affidavit by email as requested and the Court subsequently submitted the affidavit to the Prothonotary's Office for filing on November 16, 2018.

- 7) By August 29, 2018, Plaintiff's counsel had not received further response from the expert witness so Plaintiff's counsel resent the records.
- 8) On September 5, 2018, Plaintiff's counsel filed the instant motion seeking an extension of time to acquire the certificate of merit.
- 9) On September 10, 2018, Plaintiff's counsel again requested a report from the expert witness.
- 10) On September 29, 2018, Plaintiff's counsel electronically forwarded the expert witness the records, and the expert witness responded that he could not issue a certificate of merit.

During the November 14th hearing, Plaintiff's counsel indicated that he had been emailing back and forth with the expert witness in 2017; however, these emails were not submitted for the Court's review. At the November 14th hearing, Plaintiff's counsel also indicated that he has identified three potential experts that he could request a certificate of merit from; yet, none of these potential experts have reviewed the records.

Pennsylvania Rule of Civil Procedure 1042.3 is clear:

(a) In any action based upon an allegation that a licensed professional deviated from an acceptable professional standard, the attorney for the plaintiff, or the plaintiff if not represented, shall file with the complaint or within sixty days after the filing of the complaint, a certificate of merit signed by the attorney or party that either [. . .]

(d) The court, *upon good cause shown*, shall extend the time for filing a certificate of merit for a period not to exceed sixty days. A motion to extend the time for filing a certificate of merit must be filed by the thirtieth day after the filing of a notice of intention to enter judgment of non pros on a professional liability claim under Rule 1042.6(a) or on or before the expiration of the extended time where a court has granted a motion to extend the time to file a certificate of merit, whichever is greater. The filing of a motion to extend tolls the time period within which a certificate of merit must be filed until the court rules upon the motion.⁴

⁴ Pa.R.C.P. No. 1042(a), (d).

While the exact parameters of “Good cause shown” are not well defined,⁵ the phrase has been described as a “reasonable explanation or a legitimate excuse.”⁶

The Court finds that Plaintiff’s counsel has not presented a reasonable explanation, or a legitimate excuse, for the delay at issue here. The initial records were submitted to the expert witness in November of 2016 for his review. Sometime in early 2017, the expert witness was provided with supplemental records. However, it was not until the filing of the Writ of Summons on May 9, 2018 that counsel began to contact the expert witness more regularly, and the expert witness was still permitted to dawdle. Ultimately, a nearly two year gap exists between the time the expert witness initially received the records and the time he informed Plaintiff’s counsel that he would not issue a certificate of merit. While the Court does not doubt that the expert witness is a busy practitioner, Rule 1042.3 is solely focused on the conduct of Plaintiff’s counsel in attempting to acquire the certificate of merit. Further, Plaintiff’s counsel’s expectations that if given more time another expert witness may be able to generate the certificate of merit are not germane. Plaintiff’s Motion is **DENIED**. The Prothonotary is directed to enter a judgment of *non pros*.⁷

IT IS SO ORDERED this 16th day of November 2018.

BY THE COURT,

Eric R. Linhardt, Judge

⁵ See *Fabian v. United States*, 2013 WL 5525647, at *3 (E.D. Pa. Oct. 7, 2013) (“The case law on what constitutes ‘good cause’ is underdeveloped.”).

⁶ *Almes v. Burket*, 881 A.2d 861, 866 (Pa. Super. Ct. 2005) (attorney failed to file certificate of merit based on a family emergency).

⁷ See Pa.R.C.P. Nos. 1042.6, 1042.7.

cc: Robert A. Hoffa, Esq.
602 Pine Street, Williamsport, PA 17701
Michael O. Pitt, Esq., O'Brien & Ryan, LLP
Christine N. Dantonio, Esq.
2250 Hickory Road, Ste. 300, Plymouth Meeting, PA 19462
Gary Weber, Esq. (Lycoming Reporter)