

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Matthew Jones -PETITIONER

Vs.

Dr. Jose Capiro -RESPONDENT

ON A PETITION FOR A WRIT OF CERTIORARI TO

Delaware Supreme Court

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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IN THE SUPREME COURT OF THE STATE OF DELAWARE

MATTHEW JONES,

Plaintiff Below, Appellant,

v.

DR. JOSE CAPIRO,

Defendant Below, Appellee.

§

§ No. 73, 2020

§

§ Court Below—Superior Court
§ of the State of Delaware

§

§ C.A. No. K19C-11-048

§

§

Submitted: August 14, 2020

Decided: September 1, 2020

Before SEITZ, Chief Justice; VALIHURA and MONTGOMERY-REEVES,
Justices.

ORDER

After consideration of the parties' briefs and the record on appeal, we conclude that the judgment below should be affirmed on the basis of the Superior Court's decision dated February 7, 2020. The appellant, Matthew Jones, has filed numerous lawsuits that have been dismissed as frivolous and abusive of the judicial process by both state and federal courts.¹ We warn Jones that if he continues to file

¹ E.g., *Jones v. Hay*, K19-C-11-029 NEP (Del. Super. Ct. Nov. 25, 2019), *aff'd* 2020 WL 4530293 (Del. Aug. 4, 2020); *Jones v. Hay*, K19-C-10-044 NEP (Del. Super. Ct. Nov. 25, 2019); *Jones v. Kalkstein*, 2019 WL 6310055 (Del. Super. Ct. Nov. 21, 2019), *aff'd*, 2020 WL 3096749 (Del. June 10, 2020); *Jones v. Del. State Police*, 2019 WL 6170847 (Del. Super. Ct. Nov. 19, 2019); *Jones v. Howard*, 2018 WL 6039974 (D. Del. Nov. 19, 2018), *aff'd*, 779 Fed. Appx. 151 (3d Cir. Oct. 8, 2019); *Jones v. Christiana Hosp.*, C.A. No. 17C-08-273 JAP (Del. Super. Ct. Aug. 28, 2017), *aff'd*, 2018 WL 1376934 (Del. Mar. 16, 2018); *Jones v. Dover Behavioral Health Sys.*, 2017 WL 3493118 (Del. Super. Ct. Aug. 9, 2017), *aff'd*, 2018 WL 1376933 (Del. Mar. 16, 2018). See also

frivolous and vexatious lawsuits and appeals, he will be enjoined from filing appeals in this Court without leave of the Court.²

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

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

Corrected Answering Br., No. 73, 2020, Docket Entry No. 16, at 13-14 n.57 (Del.) (filed July 16, 2020) (citing additional cases).

² See 10 Del. C. § 8803(e). Briefing in this appeal was already completed when this Court issued a similar warning in *Jones v. Hay*, 2020 WL 4530293 (Del. Aug. 4, 2020).



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MATTHEW JONES,

Plaintiff,

v.

DR. JOSE CAPIRO,

Defendant.

C.A. No. K19C-11-048 NEP
In and for Kent County

**ORDER ON APPLICATION TO PROCEED
IN FORMA PAUPERIS AND ON PLAINTIFF'S COMPLAINT**

The Court having considered the application to proceed *in forma pauperis* and the affidavit in connection therewith,

IT IS SO ORDERED this 7th day of February, 2020 that:

 X The application is **GRANTED**. The applicant shall:

 Pay twenty percent (20%) of the applicant's average daily balance in the applicant's inmate account for the previous six months or time of incarceration, whichever period is less.

 x Pay \$ 100.00.

 No fee or court costs to be paid.

 The application is **DENIED** without prejudice. This Court must deny your *in forma pauperis* for failure to fully complete all questions asked.

Upon consideration of the complaint of Plaintiff Matthew Jones (hereinafter "Mr. Jones"), the Court finds as follows.

Mr. Jones is suing Dr. Jose Capiro (hereinafter "Defendant") alleging, *inter alia*, that Defendant, pursuant to an order of Superior Court Commissioner Alicia Howard, "involuntarily" treated Mr. Jones's medical needs and forced him to take

harmful medications.¹ Mr. Jones claims “\$20,000,000, for compensatory damages, including pain and suffering, and special damages, together with the costs of this action.”²

Pursuant to 10 *Del. C.* § 8803, if the complaint is deemed to be legally frivolous, factually frivolous, or malicious, the Court must dismiss it.³ A claim is factually frivolous where the factual allegations are “baseless, of little or no weight, value or importance, [or] not worthy of serious attention or trivial.”⁴ A claim is legally frivolous where it is “based on an indisputably meritless legal theory.”⁵ A claim is malicious when “designed to vex, injure or harass, or one which is otherwise abusive of the judicial process or which realleges pending or previously litigated claims.”⁶

Mr. Jones claims, *inter alia*, that Defendant began providing him with psychiatric care in March 2017.⁷ Mr. Jones claims that as part of this treatment, Defendant forced him to take several medications, including “Invega,”⁸ “Abilify,”⁹ and “Fluphenazine.”¹⁰ Mr. Jones alleges that as a result of taking these medications, his pulse rate at one point was “over 120 beats per minute”¹¹ and at another was “over 140 beats per minute,”¹² and that his “aortic root” became “dilat[ed]” to “4mm.”¹³ According to Mr. Jones, these medications “put [him] at risk for heart failure, heart attack, and aneurysm.”¹⁴ Mr. Jones also alleges that he “was told by

¹ Pl.’s Compl. at ¶ 3, pp. 1-3.

² *Id.* at 5.

³ 10 *Del. C.* § 8803(b).

⁴ *Id.* at § 8801(4).

⁵ *Id.* at § 8801(7).

⁶ *Id.* at § 8801(8).

⁷ Compl. at ¶ 4, p. 2.

⁸ *Id.* at ¶ 3, p. 1.

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.* at 1.

¹² *Id.* at 2.

¹³ *Id.* at 3.

¹⁴ *Id.*

[Defendant] . . . that if [Mr. Jones] would not take the [Fluphenazine] in pill form, then it would be injected into [him].”¹⁵ In summary, Mr. Jones appears to claim that Defendant forced him to take various medications that caused him to suffer harm to his health, specifically to his heart. Mr. Jones claims that by these actions, including those above, Defendant violated Mr. Jones’s rights under the Eighth and Fourteenth Amendments to the United States Constitution,¹⁶ and violated federal common law and 42 U.S.C § 1983.¹⁷ Mr. Jones also claims that Defendant’s actions breached a “duty of care” and constituted negligence.¹⁸

In *Jones v. Howard*, Mr. Jones sued Commissioner Howard in the United States District Court for the District Court of Delaware, bringing allegations substantially similar to those of the present case.¹⁹ In *Howard*, Mr. Jones alleged that due to the actions of Commissioner Howard, he was misdiagnosed with schizophrenia and subsequently “forced to take medications that [were] unhealthy for his body.”²⁰ Mr. Jones alleged that being misdiagnosed and forced to take “unhealthy” medications was a violation of his rights under the First, Second, Eighth, and Thirteenth Amendments to the United States Constitution, as well as various federal statutes.²¹ The court in *Howard* dismissed the complaint for being frivolous, among other reasons, and concluded that “the [c]omplaint does not state a facially plausible claim for relief.”²²

In *Jones v. Hay et al.*, Mr. Jones sued Dr. Mackenzie Hay and Nanticoke Hospital in this Court, bringing allegations substantially similar to those of the present case.²³ In *Hay*, Mr. Jones alleged that due to the actions of Dr. Hay and

¹⁵ *Id.*

¹⁶ *Id.* at ¶¶ 3-4, p. 4.

¹⁷ *Id.* at ¶ 3, pp. 3-4.

¹⁸ *Id.* at ¶ 4, p. 4.

¹⁹ 2018 WL 6039974 (D. Del. 2018).

²⁰ *Id.* at *1.

²¹ *Id.*

²² *Id.* at *4.

²³ K19C-10-044 NEP (Del. Super. Nov. 25, 2019).

Nanticoke Hospital, he was exposed to harmful medications that “raised [his] pulse to 140 beats per minute” and that he was “involuntarily medicated.”²⁴ Mr. Jones alleged that being misdiagnosed and forced to take unhealthy medications was a violation of his rights under the First, Second, Fourth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as common law rules and both federal and state statutes.²⁵ This Court in *Hay* dismissed the case for being legally frivolous, factually frivolous, and malicious.²⁶

Here, as in *Hay* and *Howard*, Mr. Jones has brought a complaint alleging that Defendant forced him to take medications that were unhealthy for his body. Further, Mr. Jones alleges violations of similar rights, namely his rights under various amendments to the United States Constitution as well as violations of federal law.

Mr. Jones’s complaint is legally frivolous because he failed to include an affidavit of merit supporting his claims of health-care negligence. In Delaware, a health-care negligence lawsuit must be accompanied by an “affidavit of merit as to each defendant signed by an expert witness, as defined by § 6854 of this title”²⁷ If the health-care negligence complaint fails to include an affidavit of merit, then “it shall not be docketed with the court.”²⁸ Here, Mr. Jones failed to include an affidavit of merit with his complaint. Therefore, Mr. Jones’s complaint against Defendant, at least to the extent of his claims of health-care negligence, is legally frivolous.

Next, Mr. Jones’s complaint is factually frivolous. As discussed *supra*, Mr. Jones’s complaint contains claims that are essentially the same as those that were brought, and dismissed, in both *Hay*²⁹ and *Howard*.³⁰ This Court in *Hay* found Mr.

²⁴ *Id.* at 2-3.

²⁵ *Id.* at 3.

²⁶ *Id.* at 6.

²⁷ 18 *Del. C.* § 6853(a)(1).

²⁸ *Id.*

²⁹ K19C-10-044 NEP, at 6.

³⁰ 2018 WL 6039974, at *4.

Jones's claims to be "delusional and factually frivolous."³¹ Likewise, as in *Hay*, the Court finds Mr. Jones's factual allegations to be "delusional and factually frivolous."

In addition, the Court finds that Mr. Jones has failed to comply with 10 *Del. C.* § 8803(e), as applied to him by a previous order of this Court.³² Under this statute and court order, Mr. Jones must accompany any future claims with an affidavit certifying that:

- (1) The claims sought to be litigated have never been raised or disposed of before in any court;
- (2) The facts alleged are true and correct;
- (3) The affiant has made a diligent and good faith effort to determine what relevant case law controls the legal issues raised;
- (4) The affiant has no reason to believe the claims are foreclosed by controlling law; and
- (5) The affiant understands that the affidavit is made under penalty of perjury.³³

Here, Mr. Jones submitted an affidavit alleging that he complied with 10 *Del. C.* § 8803(e)(1-5) and this Court's order in *Jones v. Dover Behavioral Health Systems*.³⁴ However, the Court finds to the contrary. Mr. Jones failed to comply with 10 *Del. C.* § 8803(e)(1) because his complaint contains claims that are substantially similar to those that were earlier brought, and dismissed, in both *Hay* and *Howard*. In both of those cases, Mr. Jones alleged that he was misdiagnosed and forced to take medications that were dangerous to his health. Similarly, in the present case, Mr. Jones claims that but for Defendant's actions, Mr. Jones would not have been forced to take medications that are dangerous to his health.

³¹ K19C-10-044 NEP, at 5 (citing *Howard*, 2018 WL 6039974, at *4) (internal quotations omitted).

³² *Jones v. Dover Behavioral Health Sys.*, 2017 WL 3493118, at *2 (Del. Super. Aug. 9, 2017).

³³ 10 *Del. C.* § 8803(e).

³⁴ 2017 WL 3493118, at *2.

Finally, Mr. Jones's complaint is malicious because it: is "designed to vex, injure or harass"; it is "abusive of the judicial process"; and "realleges pending or previously litigated claims."³⁵ Mr. Jones's complaint vexes, injures, and harasses the Court and Defendant, and is abusive of the judicial process, because it is yet another frivolous suit that consumes the Court's time and diminishes its resources, and would threaten to harass Defendant were it permitted to continue. Moreover, Mr. Jones's complaint realleges previously litigated claims because it contains essentially the same allegations as those in *Jones v. Hay* and *Jones v. Howard*.

Accordingly, Mr. Jones's complaint is **DISMISSED** with prejudice, and service of process shall not issue. Furthermore, Mr. Jones is barred from filing any other complaints until all outstanding costs and fees are paid.

IT IS SO ORDERED.

/s/ Noel Eason Primos

Judge

NEP/wjs

Sent via File & ServeXpress

cc: Prothonotary

Counsel of Record

³⁵ 10 Del. C. § 8801(8).