Circuit Court for Baltimore County
Case No.: 03-C-14-008216 MM

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 02605

September Term, 2014

AMENEH MOZAFFARI ARASTEH, et al.

v.

MEDSTAR GOOD SAMARITAN HOSPITAL, et al.

Meredith,
Leahy,
Friedman,

JJ.

Opinion by Meredith, J.

Filed: August 6, 2018

This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Ameneh Mozaffari Arasteh, in her capacity as personal representative of the Estate of Matt Ariana Mozaffari (the "decedent" or "Mr. Ariana"), along with Ebrahim Mozaffari and Batol Hajilikhan (the parents of Mr. Ariana), all appellants, filed suit against MedStar Good Samaritan Hospital, Inc. ("Good Samaritan") and several physicians, all appellees, after Mr. Ariana died while in the care of Good Samaritan.[1]

After Mr. Ariana's death, appellants filed a statement of claim with the Health Care Alternative Dispute Resolution Office ("HCADRO"), seeking damages as a result of Mr. Ariana's death. *See* Maryland Health Care Malpractice Claims Act ("Health Claims Act"), Maryland Code (2006, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP"), §§ 3-2A-01 *et seq*. In their complaint, appellants alleged that Good Samaritan and its physicians acted negligently when they failed to diagnose the fact that Mr. Ariana had contracted the influenza A subtype H1N1 virus ("H1N1 virus"), which negligence, according to appellants, caused Mr. Ariana's death.

After appellees elected to waive arbitration in the HCADRO, the action was transferred to the Circuit Court for Baltimore County. Appellees filed a motion to dismiss appellants' complaint, asserting that appellants had failed to submit any certificate of

[1] In a transcript from the circuit court, counsel for the appellants refers to the decedent, Matt Ariana Mozaffari, as "Mr. Ariana." Accordingly, we will also refer to the decedent as Mr. Ariana.

In addition to Good Samaritan, appellants eventually named as defendants in the circuit court complaint: Naw Naing Do, MD; D. Kennedy Walshe, MD; Jeffry Pilling, MD; and "John Does 1-5," who were apparently health care providers whose names were unknown.

qualified expert ("CQE") and expert's report to the HCADRO pursuant to CJP § 3-2A-04(b)(1) within 90-days after filing the statement of claim, and, even after HCADRO granted an extension, failed to file an adequate CQE and report before the extended deadline expired. The circuit court granted appellees' motion, and dismissed appellants' complaint without prejudice.

This appeal followed.

QUESTIONS PRESENTED

We have condensed and consolidated appellants' questions presented into two questions for our review:[2]

[2] Appellants' questions presented in their brief appear as follows:

> I. Did the Circuit Court err or abuse its discretion on January 22, 2015, when it dismissed Appellants' entire Complaint against all Defendants when:
>
> > (1) The Decedent's death certificate, autopsy and CDC reports; all attested by well-qualified physicians and experts clearly established Defendants' failure to correctly diagnose and treat his H1N1 virus despite the medical community having been fully aware of this virus for more than two years;
> >
> > (2) Appellants' First Expert Report, filed timely on April 28, 2014, was sufficient under Md. *Courts and Judicial Proceedings* Code Ann., §3-2A-04(b) and meets the standards enunciated in *D'Angelo v. St. Agnes Healthcare, Inc.*, 157 Md. App. 631, 853 A.2d 813 (2004), *cert. den.*, 384 Md. 158, 862 A.2d 993;
> >
> > (3) A short delay of several days in filing the Appellants' amended certificate and supplemental expert report on May 30, 2014, caused by the unforeseen and excusable event of Appellants' expert, Dr. Duncan's relocation from the University of Pittsburg[h] to the

continued…

I. Did the circuit court commit reversible error when it dismissed appellants' complaint for failure to timely file a CQE and medical report as required by CJP § 3-2A-04(b)?

II. Did the circuit court err in dismissing all of the counts alleged in appellants' complaint?

Perceiving no error, we will affirm the judgment of the Circuit Court for Baltimore County.

FACTUAL & PROCEDURAL BACKGROUND

On February 24, 2011, Matt Ariana, an otherwise healthy 41-year-old, arrived at Good Samaritan Hospital with symptoms including cough, fever, diarrhea, and shortness of breath. Mr. Ariana was admitted to the hospital, where he received treatment over the next four days. His condition progressively worsened, and Mr. Ariana died at Good

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continued…

> University of Alabama is disproportionate to the harsh result of the dismissal of Appellants' entire Complaint without recourse;
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> (4) Any defects in the Plaintiffs' First Expert report was cured by the filing of the amended certificate and a very detailed supplemental expert report on May 30 while the claim was still pending before the Maryland Health Care Alternative Dispute Resolution Office ("HCADRO"); and
>
> (5) Appellants' amended CQE of May 30, 2014 should have related back to the original CQE filing on April 28, 2014.
>
> II. Did the Circuit Court err or abuse its discretion on January 22, 2015, when it dismissed Appellants' causes of actions not governed by Section 3-2A-04(b)(1)(i).

Samaritan on February 28, 2011. An autopsy indicated the cause of death was the H1N1 virus, which had not been detected by health care providers at the hospital until the autopsy was performed.

On September 9, 2013, appellants filed a statement of claim with the HCADRO, naming Good Samaritan and "John Does 1-5" as defendants. In their statement of claim, appellants alleged that Good Samaritan and five of its employees whose names were unknown acted negligently by failing to timely diagnose Mr. Ariana as being infected with the H1N1 virus, which negligence, according to appellants, was the proximate cause of Mr. Ariana's death. Pursuant to the 90-day deadline set forth in CJP § 3-2A-04(b)(1), a certificate of qualified expert and medical report were required to be filed with the HCADRO by appellants no later than December 9, 2013. Appellants did not file a CQE or expert report within the 90-day deadline.

On March 6, 2014, appellees moved to dismiss appellants' claim, contending that appellants had failed to file a timely certificate of qualified expert and medical report with the HCADRO pursuant to CJP § 3-2A-04(b).

On March 11, 2014, appellants opposed the motion to dismiss, and filed a motion to extend the time for filing their certificate of qualified expert and medical report. In a memorandum filed on March 14, 2014, opposing appellees' motion to dismiss, appellants conceded that they had "failed to file a report because they were under the false impression that additional expert reports were not needed due to the fact that their claims are based on Medstar's failure to diagnose decedent's H1N1 virus which was

unambiguously confirmed in the autopsy and CDC reports . . . ." Appellants asserted that, "[a]s soon as they realized that additional expert reports and a certificate of merit are required, they contacted experts and are in the process of obtaining the required reports." In their memorandum, appellants identified Dr. Mark W. Frampton, M.D., a Professor of Medicine and Environmental Medicine in the Critical Care Division of the University of Rochester Medical Center, as an expert witness who "has already been identified and is presently reviewing the records." Appellants stated that Dr. Frampton "is familiar with the standard of care and believes that earlier diagnosis is the key in providing proper antiviral treatment, and isolating the patient." (As it turned out, no certificate or report from Dr. Frampton was ever filed.)

On March 31, 2014, the director of HCADRO granted appellants' motion to extend the time to file their expert's report, and ordered that: "Claimants have until May 10, 2014, to file certificate of merit and expert report."

On April 28, 2014, appellants filed a certificate and *curriculum vitae* of Dr. Steven Duncan, M.D. (the "April 28 CQE"). In his certificate, Dr. Duncan opined:

> [I]t is my opinion with a reasonable degree of medical probability that the care rendered to Matt Ariana by Good Samaritan Hospital, directly and through their actual and/or apparent agents, servants and/or employees, departed from the applicable standard of care by negligently not performing appropriate tests, misinterpreting tests, and not treating his influenza pneumonia.

But Dr. Duncan's CQE did not name any specific individuals or physicians who allegedly departed from an applicable standard of care, and included no opinion that any specific individuals or physicians breached a standard of care and thereby proximately

caused Mr. Ariana's death. The certificate opined that Mr. Ariana's "undiagnosed and untreated infection . . . may have been amenable to one or more specific therapeutic agents." The April 28 CQE was not accompanied by a separate medical report of Dr. Duncan.

On May 22, 2014, the Good Samaritan defendants filed their own certificate of qualified expert and an expert report authored by Dr. Carl Schoenberger, M.D., who expressed the opinion "that no breach in the standard of care by the health care providers at [Good Samaritan] was a proximate cause of any injuries claimed by Plaintiffs." The appellees also gave notice to the HCADRO, pursuant to CJP § 3-2A-06B, of their election to waive arbitration unilaterally.

On May 30, 2014 — twenty days after the *extended* deadline of May 10, 2014, had passed — appellants filed an amended certificate of qualified expert and a supplemental report of Dr. Duncan. This certificate, for the first time since the initial statement of claim had been filed in September 2013, named Drs. Naw Naing Do, D. Kennedy Walshe, and Jeffrey Pilling, as the physicians whose departures from the applicable standard of care "proximately caused and/or contributed to" Mr. Ariana's death.[3] In Dr. Duncan's supplemental report, he opined that appellees should have further investigated the possibility of influenza. Although Dr. Duncan credited the named physicians for

[3] The amended certificate and supplemental report names as a defendant "Maw Naing Oo, M.D.," but appellees' memorandum in support of their motion to dismiss identifies that individual as "Naw Naing Do, M.D.," and we have assumed that appellees know better the spelling of their client's name.

performing at least one (and possibly two) rapid influenza tests, he opined that those physicians "should have known too, as it is generally recognized and well described in the medical literature . . . that these rapid screening influenza tests have far from perfect sensitivity (in some reports <50%)." Dr. Duncan concluded:

> A more conventional, prudent, standard-of-care clinical practice would have been to begin an antiviral agent with known activity and efficacy against influenza virus, *e.g.*, oseltamivir phosphate ("Tamiflu"™), immediately at presentation of a patient who has a high probability of this infection, such as [Mr.] Ariana, and continue this treatment until obtaining negative results of a more accurate diagnostic test for influenza (e.g., RT-PCR) performed in appropriate clinical specimens, and/or until another plausible etiology was diagnosed. It is also common knowledge among expert physicians, and supported by numerous reports in the medical literature, that treatment efficacy for influenza infections (and serious infections in general) is greatest with early institution of appropriate therapy, and promptly starting these treatments is the standard of care.
>
> Authoritative experts recommend starting Tamiflu in serious cases even if the duration of symptoms have been longer than 48 hours. I believe Dr. [D]o was particularly remiss in not empirically starting Tamiflu after Mr. Ariana's presentation, and misinterpreting the significance of the negative Rapid Flu Tests. The care of Mr. Ariana might have been better too if Dr. [D]o had obtained expert consultations by Drs. Walshe and Pilling earlier in the hospital course, when it should have been obvious the patient was experiencing respiratory deterioration despite the therapies that had been started. Nonetheless, neither of these subspecialists subsequently entertained serious consideration for influenza infection based on the evidence of their medical notes[.]
>
> It cannot ever be guaranteed that the results of a therapy will have complete efficacy in any individual patient, but [Mr.] Ariana died due to an undiagnosed and untreated infection that could have been identified, and may have been amenable to one or more specific therapeutic agents.

Dr. Duncan concluded his report by stating that his opinions were "expressed with a reasonable degree of medical probability," and that less than 5% of his annual

professional activities were devoted to activities involving testimony in personal injury claims.

On June 2, 2014, the HCADRO issued an order of transfer to carry out appellees' May 22, 2014, waiver of arbitration. Following the transfer of the case to the Circuit Court for Baltimore County, appellants filed a complaint against Good Samaritan, Drs. Do, Walshe, and Piling, and "John Does 1-5." In their complaint, appellants asserted claims for Wrongful Death-Medical Malpractice (Count I); Survival Action (Count II); Negligence (Count III); Respondeat Superior (Count IV); Negligent Entrustment (Count V); Negligent Infliction of Emotional Distress (Count VI); and Loss of Consortium (Count VII).

On October 6, 2014, appellees filed a motion asking the circuit court to dismiss the complaint, contending that appellants had failed to comply with the pre-suit conditions precedent as set forth in CJP § 3-2A-04(b). Appellees contended that appellants' amended CQE and supplemental expert report — filed on May 30, 2014 — were not timely filed, and that the HCADRO was divested of jurisdiction over the entire action on May 22, 2014, when appellees filed their election to waive arbitration in the HCADRO. Appellants filed their opposition to the motion to dismiss on November 11, 2014, and asserted that the May 30, 2014, amended certificate and supplemental expert report cured any defects in their initial April 28, 2014, certificate. But appellees pointed out that the May 30 filing occurred well beyond the deadline that had already been extended by HCADRO.

On January 7, 2015, the circuit court held a hearing on appellees' motion to dismiss, and dismissed appellants' complaint without prejudice. The ruling was documented in an order docketed on January 22, 2015. In a memorandum opinion accompanying its order, the circuit court explained:

> In this case, the Plaintiffs' April 28 CQE refers to Good Samaritan Hospital and its "servants, agents, and/or employees" as the individuals who breached the standard of care. . . . Although Good Samaritan Hospital is a defendant named in the complaint, and all of the co-defendants were attending physicians or employees who allegedly rendered care to [Mr. Ariana], **Plaintiffs' April 28 CQE does not name which individual providers were responsible for breaching the standard of care, and how the specific providers proximately caused [Mr. Ariana]'s injuries.** Merely referring to the "servants, agents, and/or employees" of Good Samaritan makes it "impossible for the opposing party, the HCADRO, and the courts to evaluate whether a physician, or a particular physician out of several, breached the standard of care." *Carroll* [*v. Konits*], 400 Md. 167, 196 (2007); *see also D'Angelo*, 157 Md. App. at 645.
>
> Furthermore, the Complaint and Statement of Claim lists 5 Dr. John Does, whom the Plaintiff[s'] CQE and Medical Report do not identify. A review of the file reveals that Plaintiffs have never filed an amended complaint or certificate that provides the identity of these nameless defendants.
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> * * *
>
> . . .The filing of a CQE that states that the defendant medical professional identified in the complaint breached the applicable standard of care, and that such deviation was cause of the claimant's injury, is a condition precedent that must be met before a claimant can proceed in circuit court with a suit against a named defendant. *Id*. at 648-49.
>
> "[T]he sanction for the failure to submit a fully compliant certificate—whether the failure is in form, content or qualifications of the attesting expert—is dismissal without prejudice." *Powell v. Breslin*, 195 Md. App. 340, 355 (2010). Accordingly, because Plaintiffs' April 28 CQE fails to satisfy Courts and Judicial Proceedings Article § 3-2A-04[(b)], dismissal without prejudice is warranted.

(Emphasis added.)

This appeal followed.

STANDARD OF REVIEW

We described the applicable standard of appellate review in *Dunham v. University of Maryland Medical Center*, ___ Md. App. ___, 2018 WL3199020, at *8, Nos. 260 and 1443, September Term, 2017, slip op. at 14 (filed June 28, 2018), stating: "Our review of the court's decision in this case involves the court's grant of motions to dismiss, as well as questions of statutory interpretation, and therefore, our review is *de novo*." (Citing *Breslin v. Powell*, 421 Md. 266, 277 (2011); and *Advance Telecom Process LLC v. DSFederal, Inc.* 224 Md. App. 164, 173 (2015).)

DISCUSSION

I.

In *Retina Group of Washington, P.C. v. Crosetto*, 237 Md. App. 150 (hereafter "*Crosetto*"), *cert. denied*, ___ Md. ___ (2018), Judge Deborah Eyler explained for this Court that the requirement that a plaintiff in a medical malpractice action file a certificate of a qualified expert and an attesting expert's report is a condition precedent to prosecuting a claim against a health care provider in Maryland:

> [A] plaintiff alleging medical malpractice must file a claim with the HCADRO. CJP § 3–2A–04(a)(1)(i). **Within 90 days after filing such a claim, the plaintiff must "file a certificate of a qualified expert . . . attesting to departure from standards of care, and that the departure from standards of care is the proximate cause of the alleged injury[.]" CJP § 3–2A–04(b)(1)(i). "[A] report of the attesting expert" must be attached to the certificate. CJP § 3–2A–04(b)(3)(i).** After filing the certificate, the plaintiff may waive arbitration and pursue his claim in the

> circuit court. CJP § 3–2A–06B(b)(1). If a plaintiff fails to file the certificate before filing suit in the circuit court, the action must be dismissed without prejudice. *Carroll*[*v. Konits*], 400 Md. [167] at 181, 929 A.2d 19 [(2007)] ("[W]e conclude that **the filing of a proper [c]ertificate operates as a condition precedent to filing a claim in a [c]ircuit [c]ourt** . . . ."). . . .

Id. at 165-66 (emphasis added; footnotes omitted).

CJP § 3-2A-04(b) provides in pertinent part:

> (b) *Filing and service of certificate of qualified expert.* — Unless the sole issue in the claim is lack of informed consent:
>
> > (1)(i) Except as provided in subparagraph (ii) of this paragraph, **a claim** filed after July 1, 1986, **shall be dismissed, without prejudice, if the claimant fails to file a certificate of a qualified expert with the Director attesting to departure from standards of care, and that the departure from standards of care is the proximate cause of the alleged injury, within 90 days from the date of the complaint.** The claimant shall serve a copy of the certificate on all other parties to the claim or their attorneys of record in accordance with the Maryland Rules.

(Emphasis added.)

The Court of Appeals has held: "[T]he certificate of qualified expert is an 'indispensable step' in the arbitration process." *Walzer v. Osborne*, 395 Md. 563, 582 (2006) (quoting *McCready Mem'l Hosp. v. Hasuer*, 330 Md. 497, 512 (1993)). And we have explained that the CQE requirement "is so important that, if the certificate requirement is not followed, a circuit court action will be dismissed, *sua sponte*." *D'Angelo v. St. Agnes Healthcare, Inc.*, 157 Md. App. 631, 646, *cert. denied*, 384 Md. 158 (2004).

In the *Crosetto* case, Judge Eyler further explained the minimum contents which must be included in a CQE:

> **[T]he plaintiff's certificate of qualified expert must "identify with specificity, the defendant(s) (licensed professional(s)) against whom the claims are brought, include a statement that the defendant(s) breached the applicable standard of care, and that such a departure from the standard of care was the proximate cause of the plaintiff's injuries."** *Carroll*, 400 Md. at 172, 929 A.2d 19. **The certifying expert's attached report must "explain how or why the physician failed . . . to meet the standard of care and include some details supporting the certificate of qualified expert."** *Walzer* [*v. Osborne*], 395 Md. [563] at 583, 911 A.2d 427 [(2006)].

Id. at 167 (emphasis added).

Similarly, in *Carroll v. Konits*, 400 Md. 167, 196 (2007), the Court of Appeals held that "Maryland law requires that the Certificate mention explicitly the name of the licensed professional who allegedly breached the standard of care." S*ee Dunham, supra*, slip op. at 23 (filing "a complete and valid certificate and report" is an "indispensable step" for maintaining a medical malpractice action, and "to satisfy this step," a plaintiff must identify the persons who allegedly committed malpractice); *D'Angelo*, *supra*, 157 Md. App. at 631 (concluding that, without the name of the licensed professional against whom claims were brought, "the certificate requirement would amount to a useless formality that would in no way help weed out non[-]meritorious claims").

The Court of Appeals explained in *Carroll* that the CQE filed in that case was inadequate because it did not identify the licensed professional who was alleged to have proximately caused the plaintiff's injuries:

> In the case *sub judice*, **the certificate was incomplete because it failed to specifically identify the licensed professional who allegedly breached the standard of care and failed to state that the alleged departure from the standard of care, by whichever doctor the expert failed to identify, was the proximate cause of Carroll's injuries.**

400 Md. at 172 (emphasis added). *Cf. Crosetto, supra*, 237 Md. App. at 170 ("barring extraordinary circumstances, the plaintiff's certificate of qualified expert and report must timely disclose the requisite standard of care, how the standard was breached, who breached it, and how the breach proximately caused the plaintiff's injury").

Appellants nevertheless contend that the circuit court erred in dismissing their complaint for an alleged failure to file a certificate of qualified expert and expert's report in compliance with CJP § 3-2A-04(b). Appellants assert that the exhibits accompanying their initial statement of claim, filed with the HCADRO on September 9, 2013, satisfied the statutory requirement for a CQE. They argue:

> With the HCADRO complaint, Appellants filed Decedent's death certificate, autopsy report and CDC pathology report as their CQE, which were signed by qualified physicians and expert [sic], clearly stated that Matt Ariana died of undiagnosed H1N1 virus while under the direct care and supervision of the Defendant Hospital. This by itself should have been sufficient to show that the Hospital deviated from the standard of care, considering the H1N1 virus was known to the medical community for more than two years.

(Record references omitted.)

There are many appellate opinions discussing the minimum contents of a CQE and medical report, and those cases establish the total lack of merit in this argument. *See, e.g.*, *Carroll, supra*, 400 Md. at 172; *Walzer, supra*, 395 Md. at 583. As appellees point out in their brief, "the documents claimed by Appellants to satisfy the CQE requirement do not certify any breach of the standard of care or that the breach proximately caused the death

of Appellants' decedent." We agree with appellees that those documents did not satisfy the requirements set forth in the statute and case law.

Appellants contend, in the alternative, that the CQE filed April 28, 2014, satisfied their obligation under CJP § 3-2A-04(b). The total argument on this point in their brief is as follows:

> Appellants filed their first CQE attested by a highly qualified expert, Dr. Steven Duncan, on April 28, 2014. This report was timely. While not naming a specific health care provider, Dr. Duncan stated that the care rendered to the Decedent, Matt Ariana, by Good Samaritan Hospital, directly and through its ["]actual and/or apparent agents, servants and/or employees, departed from the applicable standard of care by negligently not performing appropriate tests, misinterpreting tests, and not treating his influenza pneumonia....."
>
> Unlike in *D'Angelo*, Appellants' certificate of April 28, 2014, was specific and met the statute and case law requirements.

(Record references omitted; ellipsis in appellants' brief.)

Appellees, however, point out that the documents filed by appellants on April 28, 2014, "contained no separate Report. No ambiguity exists in the law regarding whether a separate medical report must be attached to a proper CQE." Citing *Kearney v. Berger*, 416 Md. 628, 646 (2010), and *Walzer, supra*, 395 Md. at 579, appellees contend that the CQE filed on April 28, 2014, "fails on this point alone, but additional deficiencies also plagued this CQE." *See Carroll, supra*, 400 Md. at 179 (recognizing that "[t]he Statute also requires that the certificate be filed with a 'report of the attesting expert attached.' § 3-2A-04(b)(3)(i)"); *Walzer, supra*, 395 Md. at 580 (stating: "we are confident that . . . the

Legislature intended to mandate the attachment of an expert report to render complete the certificate of qualified expert").

We agree with appellees that, in addition to lacking a separate report, the April 28 CQE had other fatal deficiencies. As the circuit court pointed out, the April 28 certificate of Dr. Duncan failed to comply with CJP § 3-2A-04(b) because it did not identify the specific individuals the expert considered responsible for Mr. Ariana's death, nor did that report assert that any specific person breached any applicable standard of care or express an opinion as to how that standard of care had been breached by each health care provider, let alone opine that any such breach proximately caused Mr. Ariana's injury. *See Crosetto, supra*, 237 Md. App. at 167-68.

As yet another alternative argument, appellants also contend that the certificate and supplemental report they filed on May 30, 2014, cured the defects in their April 28 filing. But, as appellees correctly point out, the *extended* filing deadline was May 10, 2014, and appellants clearly did not file a sufficient certificate and report by May 10, 2014. Nor was that deadline ever extended further by HCADRO. Our recent decision in *Dunham, supra*, points out that, in *McCready, supra,* 330 Md. at 512, the Court of Appeals "held that the 90–day extension available under CJP § 3–2A–04(b)(1)(ii) permits an extension for filing a proper certificate only up to 180 days from the date the claimant filed the claim with the HCADRO." Slip op. at 31. Here, the extension HCADRO granted through May 10, 2014, already exceeded 180 days beyond the date appellants

initially filed their claim with HCADRO; indeed, over 180 days had expired (on March 9) before the director granted the extension on March 31, 2014.

Appellants additionally contend that the trial court should have permitted the documents they filed on May 30, 2014, to "relate back" to the date of the legally insufficient, April 28, 2014, certificate. But appellants cited no case in which the filing of an untimely CQE has been permitted to satisfy the requirement of filing a timely CQE and report. Therefore, we conclude the argument is without merit.

II.

Finally, appellants contend that the circuit court erred in dismissing the remainder of the claims asserted in their complaint because these additional claims were not subject to the unsatisfied condition precedent established by the Health Claims Act. This argument has not been preserved for our review because it was not presented in appellants' written opposition to the motion to dismiss, nor was this argument presented at the hearing on the motion to dismiss held by the circuit court. *See* Md. Rule 8-131(a).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.