

The Appellate Advocate:

A Recap of Recent Decisions by NJ's Appellate Courts



Hancock v. Mountainside Medical Center No. A-1600-24

"All you lawyers do is complicate situations that aren't complicated". Erin Brokovich said that. Or at least, Julia Roberts said that while portraying Erin Brokovich in what is—if you ask me—one of the more accurate cinematic depictions of the legal profession. While other films focus on cartoonish courtroom scenes, the Big Dramatic Question in Erin Brokovich is whether the putative claimants will sign an arbitration agreement.

Today's article is not about arbitration agreements. Today's article is about one of those issues that lawyers incessantly complicate: the Affidavit of Merit statute. Only lawyers (on both sides of the bar) could complicate a straightforward legislative command to substantiate claims with a short-and-sweet expert affidavit, by forcing judges to evaluate potential exceptions, deadline extensions, and exceptions to deadline extensions.

This case, however, is a reminder that sometimes the Affidavit of Merit issues can be straightforward.

In Hancock v. Mountainside Medical Center, the Appellate Division affirmed a lower court's decision to throw out Karen Hancock's lawsuit with prejudice. Hancock, who initially represented herself, sued Mountainside Medical Center and certain individual providers, alleging professional negligence.

The court found that Hancock never filed an Affidavit of Merit—a sworn statement from a medical expert certifying that her claims had a reasonable basis—within the statutory 60-day window required under New Jersey's Affidavit of Merit law. The statute, designed to weed out frivolous malpractice suits, allows for only one 60-day extension upon a showing of "good cause."

Here is where the trial proceedings got a little bit interesting. The trial judge held multiple Ferreira conferences—case management meetings meant to ensure compliance with the affidavit requirement—but Hancock failed to attend any of them in-person, sending her son in her place. The judge repeatedly advised her, through her son, that the affidavit was mandatory. She never filed one.

On appeal, Hancock, this time represented by counsel, argued that her self-represented status at the time amounted to an “extraordinary circumstance” that should have allowed for more leniency. The appellate panel disagreed.

“Parties are presumed to know the law and are obliged to follow it,” the judges wrote, citing precedent that being unrepresented does not excuse noncompliance with procedural rules. The panel concluded that Hancock’s failure to file the required affidavit justified dismissal. They noted that even on appeal, Hancock did not present an affidavit that would meet the statute’s requirements.

While sympathetic to the challenges faced by pro se litigants, the court emphasized that procedural safeguards such as the Affidavit of Merit are essential to balance access to justice with the need to prevent baseless litigation.

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



973-540-7333

tjc@spsk.com

About Schenck Price

Founded in 1912 as a two-person law firm in Morristown, New Jersey, Schenck Price has entered its second century as a full-service firm with 80+ attorneys in its New Jersey and New York offices. Our Firm’s long history of legal excellence in the areas of litigation, corporate transactions and governance, construction, health care, trust and estate planning, real estate, family law, banking, and environmental law has expanded as the Firm has grown.