

written order granted the DOC's motion.² The court concluded that it lacked authority to order the DOC to place plaintiff on medical furlough and that plaintiff had not established that the DOC was denying him appropriate care in accordance with prevailing medical standards. Plaintiff filed this appeal.

In a bench trial, Rule 52(c) authorizes the trial court after weighing the evidence to enter judgment if the plaintiff has not established a claim for relief. Gladstone v. Stuart Cinemas, Inc., 2005 VT 44, ¶ 10, 178 Vt. 104. On appeal from a decision under Rule 52(c), we review the trial court's findings for clear error and its legal conclusions de novo. Id.

Plaintiff argues that the DOC is not providing him with adequate medical care, and he should be released to home confinement. There is no merit to plaintiff's contention that the trial court erred in declining to order his release to obtain medical care. Pursuant to 28 V.S.A. § 808, the DOC "in its sole discretion" may authorize an inmate's release under a temporary furlough for a defined period for reasons including obtaining medical services. 28 V.S.A. § 808(a)(3). This statutory authority is, however, wholly under the DOC Commissioner's sole discretion and is therefore not reviewable under Rule 75. See Rheume v. Pallito, 2011 VT 72, ¶ 11, 190 Vt. 245 (concluding that programming requirements for inmates is matter of DOC discretion and not reviewable under Rule 75); Conway v. Cumming, 161 Vt. 113, 118 (1993) (explaining that § 808 regarding furlough status contains "no limitations on the discretionary authority granted to the Commissioner").

Plaintiff also contends that the trial court erred in finding that plaintiff failed to establish that the DOC's medical care fell below the prevailing medical standard because plaintiff did not provide "expert testimony supporting a finding that he is not currently receiving appropriate medical care in the correctional facility." Plaintiff asserts that he did not need an expert witness to support his claim that he received inadequate medical care. Pursuant to statute the DOC must provide plaintiff with health care "in accordance with the prevailing medical standards." 28 V.S.A. § 801(a). To sustain a claim of medical malpractice, a plaintiff is ordinarily required to provide expert testimony "to establish: (1) the proper standard of medical skill and care; (2) that the defendant's conduct departed from that standard; and (3) that this conduct was the proximate cause of the harm complained of." Bittner v. Centurion of Vt., LLC, 2021 VT 73, ¶ 24 (quotation omitted). An exception is made for cases where the violation "is so apparent to be comprehensible to the lay trier of fact." Id. (quotation omitted). Plaintiff did not order a transcript of the merits hearing before the trial court. Without the transcript, this Court cannot evaluate whether plaintiff's claims of inadequate medical care required expert testimony. See V.R.A.P. 10(b)(1) ("By failing to order a transcript, the appellant waives the right to raise any issue for which a transcript is necessary for informed appellate review."); Evans v. Cote, 2014 VT 104, ¶ 12, 197 Vt. 523 (explaining that without transcript, Supreme Court "must assume the findings were supported").

In his brief, plaintiff contends that since the final order in this case, he has attempted to petition the DOC for medical attention, but the DOC has not effectively treated him. We do not consider plaintiff's allegations regarding the DOC's actions since the court's final order because

² The court's order is confusing in that it indicates that it is entering judgment for defendant, but the order is entitled "Dismissal Order" and also indicates that plaintiff's amended complaint is dismissed. Because relief under Rule 52(c) results in a judgment for defendant and not a dismissal, the entry of judgment for defendant is affirmed in this case.

the record on appeal is limited to the evidence and testimony presented to the trial court. See V.R.A.P. 10(a) (defining composition of record on appeal).

Entry of judgment for defendant is affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice