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COURT OF APPEALS

STATE OF NEW YORK

MAZELLA,

Respondent,

-against-

No. 119

BEALS,

Appellant.

20 Eagle Street
Albany, New York 12207
June 02, 2016

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE MICHAEL J. GARCIA

Appearances:

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Sara Winkeljohn
Official Court Transcriber

1 CHIEF JUDGE DIFIORE: Next on the calendar
2 is number 119, Mazella v. Beals.

3 MR. HUNT: Good afternoon; I'm Kevin Hunt.
4 I'm the lawyer for the Appellant-Defendant Dr. Beals.
5 I'm from Syracuse. May I please reserve three
6 minutes of rebuttal time?

7 CHIEF JUDGE DIFIORE: Yes, sir.

8 MR. HUNT: May it please the court, in
9 preparing for today's appearance, my first in this -
10 - - this incredible court, I looked at your Web site,
11 the Court's Web site. There's a - - - a bunch of
12 information, certainly. Included among that are some
13 statistics kept by the - - - the clerk of the court,
14 and I observed that in the year 2015, this court
15 granted leave to less than six percent of the
16 applicants who filed motions seeking to have their
17 case heard. This case is one of them.

18 I hope I'm prepared to talk, if time
19 permits, about the four issues that we have raised in
20 our brief. However, until and unless you direct me
21 elsewhere, I want to talk about the evidentiary
22 issues, the rulings that - - - that we assert prev -
23 - - prevented my client from receiving a fair trial
24 some three-and-a-half years ago in - - - in Syracuse.
25 Those two issues, you will recall, involved the - - -

1 the rulings by the court in allowing into evidence
2 the consent settlement agreement and order signed by
3 my client with the Office of Professional Medical
4 Conduct, part of the Department of Health here in the
5 State of New York. And then the second piece of
6 evidence was a gruesome photograph of the decedent
7 that was admitted right in the very beginning of the
8 case.

9 JUDGE RIVERA: Well, didn't the expert
10 testify that there was a need for - - - or the - - -
11 at least the photo helped the jurors appreciate the -
12 - - that the condition of the decedent would have
13 driven him to that kind of a violent suicide.

14 MR. HUNT: He stated that conclusion, yes,
15 Your Honor. That was his conclusion, unsupported by
16 any other evidence or science. The words did come
17 out of his mouth. I - - - I concede that,
18 absolutely.

19 JUDGE ABDUS-SALAAM: Why was - - - why was
20 admission of the photograph an abuse of discretion?
21 Isn't the - - - isn't it the judge's - - - within the
22 judge's discretion to admit evidence that's relevant
23 or as long as it's not - - - its probative value
24 outweighs its prejudicial value? So what was - - -
25 what is it you - - - what is it that you say was the

1 problem with admitting this photograph?

2 MR. HUNT: There was no probity, Your
3 Honor, of the photograph. It did not go to any issue
4 in the case. Yes, certainly, the - - - the
5 gentleman, the decedent, killed himself under
6 horrible and tragic conditions.

7 JUDGE STEIN: Well, I thought the issue was
8 that - - - I thought the issue was that - - - that
9 the doctor testified that the reason for the suicide
10 was that - - - that being overdressed and changing
11 drugs and all that rather than the fact of his
12 depression and other diagnoses.

13 MR. HUNT: That was the testimony, as well,
14 which is - - - goes altogether to a different issue.
15 I don't believe, Your Honor, that that addresses - -
16 -

17 JUDGE STEIN: We're talking about the
18 relevance of the - - - of the photograph and - - -
19 and - - -

20 MR. HUNT: Yes.

21 JUDGE STEIN: And so the nature of the
22 suicide, the violence of the act, he tied into the
23 reason for the suicide.

24 MR. HUNT: Those were - - - that was his
25 conclusion. But again, I submit that that was - - -

1 that was not supported by any other testimony or any
2 other fact or - - - or science. It was - - - those
3 words came out of his mouth. I - - - I can't - - -

4 JUDGE STEIN: Was it chall - - - was that
5 challenged?

6 MR. HUNT: I beg your pardon?

7 JUDGE STEIN: Did - - - did you object to
8 the testimony?

9 MR. HUNT: The photograph had been admitted
10 long before. The photograph was admitted on the
11 first day of trial prior to the expert offering that
12 testimony. The photograph was never admitted subject
13 to connection or anything along those lines, Judge.
14 What - - - what I'm trying to, I guess, express is
15 that the - - - the photograph, absent that one
16 statement, which - - - which I say was conclusory by
17 the expert, the photograph did not go to any issue,
18 primarily pain and suffering.

19 JUDGE PIGOTT: I got - - - I got - - -
20 well, I got the impression, you know, from the judge
21 that when - - - when you think about somebody
22 committing suicide, you think of, perhaps, shooting
23 himself, perhaps overdosing on something, perhaps,
24 you know, getting in the car and closing the garage
25 door. Stabbing yourself to death is really an

1 amazing way to commit suicide; wouldn't you agree?

2 MR. HUNT: I would think they all are, all
3 of them. You know, the - - - the madness that it
4 would take an individual to do any of those things is
5 beyond the pale, and I can't express words about
6 that. What - - - I just need to - - - I just need to
7 get out what - - - when the offer was made for this
8 evidence, my - - - my impression was that counsel
9 sought to admit this to go along the lines of pain
10 and suffering to reflect the degree of pain and
11 suffering that the - - - that the gentleman endured
12 during the last thirty days of his life. However,
13 that was not the reason for the admission. In fact,
14 the jury was never asked to make an award for pain
15 and suffering. This was just a straight pecuniary
16 economic loss case.

17 JUDGE ABDUS-SALAAM: Assuming - - -
18 assuming we agree with you and the photograph
19 shouldn't have gone in, what would - - - what would
20 that do for your case?

21 MR. HUNT: The - - - the photograph, in my
22 opinion, had a devastating effect on the jury. It -
23 - - it certainly appeals to one's emotion seeing this
24 picture and - - - and what is depicted.

25 JUDGE RIVERA: But wasn't the - - - wasn't

1 the expert's testimony pretty detailed and gruesome,
2 as well, about the - - - the acts - - - the suicidal
3 acts? So if - - - if that testimony was in, even if
4 it came in later, what was the harm, what was the
5 prejudice of this - - -

6 MR. HUNT: Well, the - - -

7 JUDGE STEIN: - - - this photograph?

8 MR. HUNT: I guess I would rely on the
9 cliché, Judge, that a picture is worth 1,000 words.
10 Yes, those words were uttered by the expert. The - -
11 - the picture had a far more damaging effect.

12 JUDGE PIGOTT: I - - - I don't want you to
13 take too much time on that but it - - - I mean you -
14 - - you get people who come in who are still alive
15 who have serious burns, for example, who've lost
16 their ears, who've lost their nose, who've lost - - -
17 you know, I can remember a case where a lady lost
18 half of her scalp in - - - in a drill bit. I mean
19 there's a lot of nasty stuff, but juries are expected
20 to - - - to put that aside and they're expected to -
21 - - they're usually instructed to, I don't know if
22 there's an instruction in this case, not to let
23 sympathy enter into their determination of liability.
24 Was that overcome here, in your view, with this
25 picture?

1 MR. HUNT: I just show you the picture,
2 Judge.

3 JUDGE PIGOTT: Okay. That - - - that was
4 my contention at trial. It's my contention here.

5 JUDGE PIGOTT: Mr. Hunt, you said you had
6 four issues you wanted to raise - - -

7 MR. HUNT: Thank you, Judge.

8 CHIEF JUDGE DIFIORE: - - - with us.

9 MR. HUNT: Really, the evi - - - the - - -
10 the primary evidentiary issue that I - - - that I
11 wanted to focus most of my time on was on the
12 admission of the OPMC consent agreement. It's an
13 eighteen-page document that was admitted following a
14 - - - a motion in limine that we had made seeking its
15 preclusion. The trial court had ruled its
16 admissibility for any purpose, that was his ruling,
17 including case-in-chief and for impeachment purposes.
18 As a result of that ruling, my client elected to
19 concede a deviation from standard of care. Just to
20 refresh you, if - - - if you all need it, the - - -
21 the consent agreement had to do with charges of - - -
22 of negligence, gross negligence, gross incompetence,
23 and misconduct in the treatment of thirteen patients,
24 the first of whom was Mr. Mazella, the decedent in
25 this case.

1 JUDGE PIGOTT: You're not - - - are you
2 saying that - - - that once that was in you, then
3 made the concession, that you weren't prepared to
4 make that concession before that evidence was coming
5 in?

6 MR. HUNT: The court took that away from
7 me, Judge. We made that concession after the ruling.
8 The ruling was that this is admissible, so then we -
9 - - we conceded a deviation in the failure of my
10 client to see the - - - the patient more frequently
11 during the ten years that he was renewing his
12 medication.

13 JUDGE PIGOTT: Well, is there any - - - is
14 there any question in your mind, and maybe there is,
15 that admitting at least patient A into evidence would
16 - - - that that would have come in no matter what?

17 MR. HUNT: Judge, that - - - that's the
18 problem. Patient A is not part of this agreement.
19 Patient A was written out of the agreement with the
20 OPMC. And so - - - so my client signed off on - - -
21 on this agreement agreeing not to contest that he was
22 negligent in taking care of patients B through M.
23 And as a result, all of the charges were satisfied.
24 And so my point exactly is, Judge, this agreement - -
25 - there are no findings with respect to Mr. Mazella,

1 patient A. Mr. Mazella, in fact, is written out of
2 the agreement.

3 JUDGE ABDUS-SALAAM: And so your - - - your
4 position, counsel, then is that this document was
5 only let in to show propensity, is that it? That - -
6 - that the doctor was - - - you know, was a bad
7 doctor because he malpracticed twelve other patients?

8 MR. HUNT: It was, and - - - and the
9 prejudicial effect along with the provocative
10 language contained - - - contained in the document,
11 I'm - - - I'm probably going to run out of time in
12 this first go-around but - - -

13 JUDGE STEIN: Well, did you ask to redact
14 any - - - any of that language?

15 MR. HUNT: I did. That was an objection
16 that we raised. And - - - and the court let - - -

17 JUDGE STEIN: References to gross
18 negligence and things like that?

19 MR. HUNT: Yes, yes, the charges,
20 absolutely, and the court let the whole thing in.
21 And - - - and I hope to address another thing on that
22 issue.

23 CHIEF JUDGE DIFIORE: Thank you. You'll
24 have your opportunity.

25 Ms. DeBlasio.

1 MS. DEBLASIO: Thank you; good afternoon.
2 May it please the court, my name is Alessandra
3 DeBlasio. I'm here on behalf of the plaintiff-
4 respondent Janice Mazella, who's the administratrix
5 of the estate of Joseph Mazella. To go to Your
6 Honors questions on the photo - - - well, on the
7 OPMC, on the Office of Professional Medical Conduct -
8 - -

9 JUDGE STEIN: What was the relevance of - -
10 - of these admissions as to other patients?

11 MS. DEBLASIO: B through M was - - - it was
12 additional evidence, not cumulative evidence but
13 evidence to show that he was negligent. And he had
14 act - - -

15 JUDGE STEIN: How does that show his
16 negligence in this case?

17 MS. DEBLASIO: B through M, because it was
18 the exact - - - it was all part of one OPMC hearing,
19 so the OPMC felt that this was all part of one - - -
20 one case. And the OPMC itself felt that these were
21 all tied together and relevant. They didn't bring
22 thirteen different proceedings.

23 JUDGE STEIN: But that's for a different
24 purpose. That's not for the purposes of finding, you
25 know, whether he - - - he was liable to this

1 particular patient.

2 MS. DEBLASIO: Here I think when you show
3 that he - - -

4 JUDGE RIVERA: Well, in any event, is the
5 trial judge bound by that?

6 MS. DEBLASIO: No.

7 JUDGE RIVERA: No.

8 MS. DEBLASIO: No. And I think here the
9 point of showing B through M, and there was no - - -
10 it didn't come up that that should be redacted. So
11 whatever happened before the trial, there was no - -
12 - it wasn't preserved, it wasn't raised when that was
13 admitted. But B through M comes in because it shows
14 that he admitted negligence for the exact same things
15 that happened with Mr. Mazella.

16 JUDGE ABDUS-SALAAM: Isn't that propensity
17 evidence, counsel? That's - - - how is that relevant
18 to this?

19 MS. DEBLASIO: I don't think it's habit or
20 propensity - - -

21 JUDGE ABDUS-SALAAM: Isn't that
22 prejudicial?

23 MS. DEBLASIO: I don't think it's
24 propensity. And any prejudice, I think that this was
25 harmless error, so that's the overarching argument

1 here is that even if it did come in, we agree with
2 the Appellate Division it was harmless error.

3 JUDGE RIVERA: But how can it - - -

4 MS. DEBLASIO: But no - - -

5 JUDGE GARCIA: How can it be harmless?

6 Doesn't it poison the jury? They're faced with what
7 appears to be, on your argument or - - - or counsel's
8 argument, a doctor or someone who has authority to
9 basically be a pill pusher and drove the decedent
10 into this manic state.

11 MS. DEBLASIO: I - - - I think it - - -

12 JUDGE RIVERA: As he did with over a dozen
13 other people.

14 MS. DEBLASIO: Right. I - - - I think the
15 poison in - - - in the trial was actually what
16 Defendant Beals did. So I don't believe the
17 laypeople, the jurors, needed the OPMC to say - - -

18 JUDGE ABDUS-SALAAM: Speaking of that,
19 counsel - - -

20 MS. DEBLASIO: - - - negligence.

21 JUDGE ABDUS-SALAAM: - - - what about what
22 - - -

23 MS. DEBLASIO: I think ten years - - -

24 JUDGE ABDUS-SALAAM: - - - the other
25 doctors did?

1 MS. DEBLASIO: I'm sorry?

2 JUDGE ABDUS-SALAAM: Speaking - - -
3 speaking of what the defendant did, what about what
4 the other doctors did after August 17th when
5 defendant didn't see this person, the decedent?

6 MS. DEBLASIO: On August 17th, when Mr.
7 Mazella left Defendant Beals, he had a complete
8 breakdown and Defendant Beals - - - what happened for
9 the ten years and on August 17th led him directly
10 into the arms of the others. Mr. Mazella actually
11 said - - - and it's not just what his wife said he
12 said but there's contemporaneous quotes by the other
13 doctors in the record, but he said I need somebody to
14 watch over me, I don't trust myself. And he went in
15 to see - - -

16 JUDGE STEIN: Even assuming that's true,
17 didn't many, many events take place between that
18 meeting and the time of his suicide that could have
19 made a difference? His refusal to obtain treatment
20 in certain circumstances, changes in medications,
21 releasing him without proper supervision. I mean all
22 - - - all kinds of things - - -

23 MS. DEBLASIO: Many, many things happened.

24 JUDGE STEIN: - - - were done here.

25 MS. DEBLASIO: He - - - he didn't refuse

1 treatment, so I think that was incorrect in the
2 record. They actually did try and - - - he went in
3 the 17th to CPEP and on the 18th, the doctors there
4 tried to get him admitted, but there were no beds
5 available and no hospitals for admission. So then it
6 became a discussion with that doctor and the Mazellas
7 and she explained everything and they said well, we
8 think it would be better for him to be at home. He
9 didn't refuse treatment. And as - - -

10 JUDGE STEIN: But even then, he did
11 eventually get treatment. He did get treatment.

12 MS. DEBLASIO: He did.

13 JUDGE STEIN: He was found to be not a risk
14 of suicide at times and - - - and released. I mean,
15 you know, there are just so many events that took
16 place in between. How can - - -

17 MS. DEBLASIO: There were - - -

18 JUDGE STEIN: - - - there not be - - -

19 MS. DEBLASIO: There were many events. You
20 know, there are many events that we all have in our
21 lives every day. But they didn't - - - these events
22 were all put into place because of Defendant Beals.
23 So he never would have ended up in that hospital but
24 for - - -

25 JUDGE STEIN: Well, that's like saying if

1 he wasn't born - - -

2 MS. DEBLASIO: Well, I don't - - -

3 JUDGE STEIN: - - - with depression, he
4 never would have met Dr. Beals and so on and so
5 forth, isn't it?

6 MS. DEBLASIO: I - - - I don't think so. I
7 think if you look back, the - - - the real problem
8 here, I think, with Defendant Beals is that the - - -
9 one of the major things about the negligence was he
10 did not look back at his records, for example, when
11 he doubled the prescription. Had he said to Mr.
12 Mazella at that time I'm far away, go to another
13 psychiatrist, have them review my records, it never
14 would have happened. And he didn't do that because,
15 I believe, he knew if he referred him to another
16 doctor, they would find out he hadn't been treating
17 Mr. Mazella all those years.

18 JUDGE STEIN: That's not the - - - that's
19 not the issue here. I mean everything you say is
20 true, assuming - - -

21 MS. DEBLASIO: Yes.

22 JUDGE STEIN: - - - everything Dr. Beals
23 did during the period of time that he was responsible
24 for treating this patient, he - - - he was negligent,
25 he committed malpractice. What we're really talking

1 about here is the causation, and if nothing else had
2 happened after it, I think - - - I don't think we
3 would be here. There - - - so the - - - the real
4 question is is were those superseding intervening
5 acts that - - - that took away from the causation?

6 MS. DEBLASIO: Yeah - - - they - - - they
7 weren't, and if I can just - - - there was - - - the
8 general rule is that - - - and this is Lynch v. Bay
9 Ridge vs. (sic) Obstetrical, "General rule is that an
10 intervening act, which is a normal consequence of the
11 situation created by a defendant, cannot constitute a
12 superseding cause absolving the defendant." And it
13 was the normal consequence of the situation he
14 created which was to leave Mazella with - - - in a
15 state of not being able to trust doctors, of being
16 extremely overmedicated, of fearing for his own life.
17 He put himself in the hospital and he put himself - -
18 -

19 JUDGE ABDUS-SALAAM: When do you say that
20 happened, counsel? Was - - - are you saying over the
21 ten-year period or however long Dr. Beals treated Mr.
22 Mazella that that's what was the result of - - - of
23 this amount of treatment?

24 MS. DEBLASIO: Yes, I think over the ten
25 years, I think he - - - that Mr. Mazella wasn't able

1 - - - never able to have a relationship with - - -
2 with doctors and the prescription - - - the doctors
3 who were prescribing, and all of the experts and the
4 doctors said this was one of the most important
5 things to prevent suicide is to have a relationship,
6 and so he never had the - - -

7 JUDGE RIVERA: So - - - so then is this - -
8 - is this event on August 17th, the last face-to-
9 face, then, what you say - - -

10 MS. DEBLASIO: Yep.

11 JUDGE RIVERA: - - - sort of seals it so
12 that there can't be an intervening action because no
13 one could cure this damage? Is that - - - is that
14 your argument?

15 MS. DEBLASIO: No, I - - -

16 JUDGE RIVERA: Right, when he says - - - or
17 when the wife says that - - -

18 MS. DEBLASIO: Yeah.

19 JUDGE RIVERA: - - - that the doctor says
20 get out of here, go to CPEP, whatever it is.

21 MS. DEBLASIO: Yes, no one - - - no one - -
22 -

23 JUDGE RIVERA: You can't be helped,
24 whatever it is.

25 MS. DEBLASIO: No one could cure it once he

1 had gotten to that point. Dr. Breggins - - -
2 Breggin, our expert, said he'd never seen words in a
3 record as extreme as the words the day that Mr.
4 Mazella left Dr. Beals. Again, contemporaneous, it's
5 what's the family told Dr. Leso about he was so
6 invalidated, decompensated, he has his shirt over his
7 head. He was a total, total mess, and he said I must
8 be prevented from killing myself and they put him on
9 - - -

10 JUDGE RIVERA: So - - -

11 MS. DEBLASIO: - - - fifteen-minute
12 watches.

13 JUDGE RIVERA: So these other doctors who
14 he then went to - - -

15 MS. DEBLASIO: Yes.

16 JUDGE RIVERA: - - - and these other
17 attempts at intervention, let me call it that - - -

18 MS. DEBLASIO: Yes.

19 JUDGE RIVERA: - - - when his dosages
20 changed or fluctuated back and forth. The - - - are
21 you saying that has no impact, that - - - that - - -

22 MS. DEBLASIO: It does have a - - -

23 JUDGE RIVERA: - - - there's no way that
24 makes a difference?

25 MS. DEBLASIO: It doesn't make a difference

1 for his causation. There can be more than one
2 proximate cause, and we believe - - -

3 JUDGE RIVERA: If he doesn't trust doctors,
4 why - - - why is he still looking for a doctor?

5 MS. DEBLASIO: Well, he recognized and his
6 family recognized he - - - he needed help. He was
7 going to - - - he was going to hurt himself. He - -
8 - he needed help, and he needed a hospital.

9 JUDGE PIGOTT: I - - - I understood - - - I
10 - - - I want to go back to the OPMC thing.

11 MS. DEBLASIO: Yes.

12 JUDGE PIGOTT: I - - - Mr. Hunt says that
13 the only thing not at issue in there was - - - was
14 the - - - was not this - - - this patient. In other
15 words, he was not part of that - - - of that
16 document; is that true?

17 MS. DEBLASIO: No. Mr. - - - Defendant
18 Beals wanted to keep Mr. Mazella out, and he said I
19 agree not to contest B through M. But that doesn't
20 eliminate A. So - - -

21 JUDGE PIGOTT: Wait, when you say I - - - I
22 choose not to contest, is that what he's saying in
23 front of the OPMC, or - - -

24 MS. DEBLASIO: Yes.

25 JUDGE PIGOTT: - - - is that what he's

1 saying in front of the judge?

2 MS. DEBLASIO: In front of the OPMC.

3 JUDGE PIGOTT: Okay. So - - - so in - - -
4 so the document itself has - - - has admissions with
5 respect to B through whatever the last one was. It
6 has no admissions with respect to A?

7 MS. DEBLASIO: No, it - - -

8 JUDGE PIGOTT: Your client?

9 MS. DEBLASIO: No, he's - - - I think it
10 does. He said I am - - - I am reserv - - -
11 basically, I'm reserving my right to contest as to A,
12 but he never did contest as to A. And when he took
13 the penalty, the penalty was to take care of the
14 entire case.

15 JUDGE PIGOTT: Did it say A as well?

16 MS. DEBLASIO: It didn't say A through M,
17 it didn't say it at all.

18 JUDGE PIGOTT: Oh.

19 MS. DEBLASIO: It said for the entire case.

20 JUDGE PIGOTT: Okay.

21 MS. DEBLASIO: And there was no codicil,
22 there was no stipulation. The OPMC didn't say okay,
23 you don't want A, then that's fine with us, there's
24 no A. The whole thing came in, and the facts and the
25 - - -

1 JUDGE PIGOTT: And when you say it came in,
2 what - - - I'm still getting confused here.

3 MS. DEBLASIO: That's - - -

4 JUDGE PIGOTT: The OPMC made a dec - - -
5 determination that even your client was - - - was
6 part of the determination that he was guilty of - - -
7 of - - - I don't want to say malpractice but whatever
8 they determined.

9 MS. DEBLASIO: Yes, negligence.

10 JUDGE PIGOTT: Okay.

11 MS. DEBLASIO: Yes.

12 JUDGE PIGOTT: But then when it came in in
13 your trial, it was - - - the thought was A is
14 excluded or not?

15 MS. DEBLASIO: No.

16 JUDGE PIGOTT: Okay.

17 MS. DEBLASIO: The thought was that it came
18 in as an admission in a prior inconsistent statement
19 because it was included.

20 JUDGE RIVERA: What - - - what was the
21 inconsistent statement?

22 MS. DEBLASIO: Because he refused to say
23 that he - - - that monitoring was a negligent act,
24 and that was exactly what - - -

25 JUDGE RIVERA: Well, he was asked about

1 medical malpractice not - - - not negligence.

2 MS. DEBLASIO: But if - - - if you look
3 throughout - - -

4 JUDGE RIVERA: It's not the same element so
5 how is he conceding? How is that - - -

6 MS. DEBLASIO: No, it is. The way
7 malpractice was used there - - - respectfully, the
8 way malpractice was used there and by the trial
9 attorney was negligence. And all of - - - the judge
10 used it that way. It's actually in the jury
11 instruction. It says malpractice. It doesn't say
12 negligence. And they differentiated between - - -

13 JUDGE RIVERA: And then - - - and did the
14 judge then charge the jury that every time we said
15 medical malpractice, we meant negligence?

16 MS. DEBLASIO: No.

17 JUDGE RIVERA: And it's only this
18 particular element?

19 MS. DEBLASIO: No.

20 JUDGE ABDUS-SALAAM: Well, that's - - -
21 that's not the definition of malpractice, though,
22 isn't just negligence. It's negligence plus
23 causation, right?

24 MS. DEBLASIO: Yes. Yes.

25 JUDGE ABDUS-SALAAM: So even though you're

1 saying everybody was using the term loosely, and
2 even, I - - - I guess the - - - your counsel, whoever
3 was representing the plaintiff when they asked Dr.
4 Beals whether he had committed malpractice based on
5 that, they were asking him had he committed
6 negligence but they framed it as malpractice meaning
7 he - - -

8 MS. DEBLASIO: Yes. And - - -

9 JUDGE ABDUS-SALAAM: - - - admitted
10 causation as well?

11 MS. DEBLASIO: And he's no lawyer. He knew
12 what he was talking about. He had prepped in
13 advance. He knew he was supposed to make the
14 concession. In opening, his attorney said he's going
15 to make the concession, and then when it came time to
16 make the concession, he said no.

17 JUDGE RIVERA: No, I under - - - I
18 understand was but my point was did the judge then
19 tell the jury, oh, yes, when he's saying malpractice,
20 we're - - - we're not talking about this other
21 element of malpractice; we're only talking about
22 negligence?

23 MS. DEBLASIO: No.

24 JUDGE RIVERA: The jury's the one that's
25 got to decide whether or not the elements have been

1 established.

2 MS. DEBLASIO: No, the judge didn't do
3 that. He read the regular pattern jury instructions.
4 However, he never admitted - - - or didn't admit as
5 to malpractice. So his admissions came in - - - his
6 concessions came in later. Thank you very much.

7 CHIEF JUDGE DIFIORE: Thank you, counsel.

8 Mr. Hunt.

9 MR. HUNT: Thank - - - thank you, Judge. I
10 wanted to address the redaction issue. I absolutely
11 requested it at page 31 of the record on the first
12 day of trial right before we gave opening statements.
13 In a - - - on this page, I - - - I asked that the
14 court, "The other allegations should be darkened out
15 of the document, only parts of which Dr. Beals
16 consented to be shown to the jury. So I'd ask that
17 the document - - - if it's going to be admitted, and
18 my position is I don't think it should, that whatever
19 does come to the jury that it be redacted."
20 Specifically used the word redacted.

21 JUDGE PIGOTT: So you didn't - - -

22 JUDGE RIVERA: What - - - what - - - I'm
23 sorry.

24 JUDGE PIGOTT: I was going to say you - - -
25 so you didn't mind if it came in? I mean you did,

1 but - - - but conceding that something's coming in,
2 if it came in with respect to Mr. - - - to the
3 plaintiff - - -

4 MR. HUNT: Oh, I definitely minded, Judge.
5 The court - - -

6 JUDGE PIGOTT: That's fine.

7 MR. HUNT: The court had already ruled it's
8 coming in.

9 JUDGE PIGOTT: Right.

10 MR. HUNT: So then - - -

11 JUDGE PIGOTT: Then you said I'll take
12 half, or I'll take one-thirteenth.

13 MR. HUNT: Well, I'd take - - - I could
14 take whatever I could, yes, Judge. And so then to
15 transist to what you were driving at about - - -

16 JUDGE ABDUS-SALAAM: Well, did you - - -
17 did you except to that ruling, counsel? Did you
18 except to the judge's ruling that it was coming in?

19 MR. HUNT: I didn't say exception. The
20 court said okay, well, we're going to take that as it
21 comes up, eventually. So then, eventually, my
22 colleague, trial counsel, sought to admit the
23 document. I stated objection and the court overruled
24 it.

25 JUDGE ABDUS-SALAAM: Okay.

1 JUDGE RIVERA: What did you exactly ask to
2 be the redaction?

3 MR. HUNT: I asked that the - - - "The
4 other allegations be darkened out of the document and
5 only the parts to which Dr. Beals consented be - - -
6 be shown to the jury."

7 JUDGE RIVERA: And what would that have
8 consisted of?

9 MR. HUNT: He consents, and I have it right
10 here, Judge. I'm sorry. I don't have the page in
11 the record on appeal. I - - - I have my copy of the
12 consent agreement in order.

13 JUDGE RIVERA: Um-hum.

14 MS. DEBLASIO: "William Beals, M.D.,
15 represents that all the following statements are
16 true", and then it - - - it recites and it goes on
17 for several pages, and then he signs it at the end
18 and then so did the Department of Health, of course.
19 And so on page 1, he - - - it says, "I agree not to
20 contest the allegations in the third specification as
21 it applies to paragraphs B, C, D, E, F, G, H, I, J,
22 K, L, and M in full satisfaction of the charges
23 against me."

24 JUDGE PIGOTT: And that - - - that
25 allegation was what, dispensing medicines without

1 that my client had a scheme or a plan or that he was
2 defrauding the insurance company.

3 JUDGE PIGOTT: No, a pattern of practice is
4 what I was talking. I wasn't thinking nefariously.
5 I was thinking the - - - the big deal here is that -
6 - - that he didn't see the patient for ten years, and
7 all the time he's giving him pills and the guy's got,
8 you know, certain - - - certain problems.

9 MR. HUNT: That - - - that is a big deal.

10 JUDGE PIGOTT: You think that's enough that
11 they - - - they don't have to over - - - overplay it
12 by saying and you did it thirteen other times?

13 MR. HUNT: It's - - - it's not necessary.
14 And finally, my client conceded that it was a
15 deviation, that - - - that he should have seen this
16 patient more frequently.

17 JUDGE RIVERA: But I'm sorry. Didn't you
18 say that was a concession only because this evidence
19 came in? It might not necessarily be a concession,
20 right, otherwise?

21 MR. HUNT: He conceded it after the court's
22 ruling. The court made its ruling.

23 JUDGE RIVERA: But you didn't - - - you
24 didn't - - - or your client didn't dispute that,
25 indeed, for ten years the decedent had been under his

1 treatment and for ten years he didn't meet with him
2 regularly, and for ten years he'd call in the dosage
3 and so forth.

4 MR. HUNT: Right.

5 JUDGE RIVERA: He didn't dispute those
6 facts.

7 MR. HUNT: Undisputed.

8 JUDGE RIVERA: Let me say that.

9 MR. HUNT: Yes, Your Honor, undisputed.

10 JUDGE RIVERA: He disputed what the facts
11 meant, but he didn't dispute those facts.

12 MR. HUNT: You're absolutely right.

13 JUDGE PIGOTT: And the simple - - - the
14 point is that, I mean, had he gotten on the stand
15 he's obviously going to get called, he got called by
16 the plaintiff, that had he denied that he - - - that
17 this was a deviation from the standard of care, he'd
18 have confronted the document for OPMC anyway, right?
19 He would be impeached with it.

20 MR. HUNT: I think that would have been
21 impr - - - I do think that's - - - that was improper.
22 I think it is an improper impeachment because, again,
23 you have to read the document and - - - and - - -

24 JUDGE PIGOTT: I see.

25 MR. HUNT: - - - see what it says. It

1 simply says that he agrees not to contest that he was
2 negligent in taking care of these twelve other
3 people. That's what it says. And as a result of him
4 saying that, it satisfied all the charges, which
5 included this - - - this decedent, Mr. Mazella. So,
6 Judge, he could have said anything at trial,
7 practically, and this document would not be
8 inconsistent. It just doesn't - - - there's no
9 foundation for it to be used - - -

10 JUDGE PIGOTT: Yeah, if he said I never - -
11 - I never committed malpractice. I - - - I've
12 absolutely denied that I - - - that I committed any
13 medical negligence whatsoever.

14 MR. HUNT: This doesn't contradict that.
15 The only thing that would have contradicted this is
16 if he said I didn't sign this OPMC agreement. That's
17 the only - - - the only way that this could have been
18 admitted for impeachment purposes, Judge.

19 CHIEF JUDGE DIFIORE: Thank you, Mr. Hunt.

20 MR. HUNT: Thank you.

21 (Court is adjourned)

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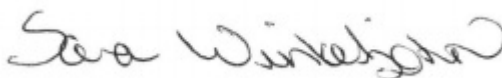
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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of Mazella v. Beals, No. 119 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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