

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13872
O/mv

_____AD3d_____

Argued - January 16, 2007

WILLIAM F. MASTRO, J.P.
GLORIA GOLDSTEIN
ROBERT A. LIFSON
EDWARD D. CARNI, JJ.

2006-03487

DECISION & ORDER

Albert A. Cerilli, Jr., et al., appellants,
v Jeffrey S. Kezis, et al., respondents.

(Index No. 3520/98)

Albert A. Cerilli, Jr., and Kathryn M. Cerilli, Wappingers Falls, N.Y., appellants pro se.

Meiselman, Denlea, Packman, Carton & Eberz, P.C., White Plains, N.Y. (Wayne M. Rubin and Myra I. Packman of counsel), for respondents.

In an action to recover damages for battery, etc., the plaintiffs appeal from a judgment of the Supreme Court, Dutchess County (Brands, J.), entered April 5, 2006, which, upon a jury verdict, is in favor of the defendants and against them dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

This is an action to recover damages for battery allegedly sustained when the defendant Jeffrey S. Kezis performed a biopsy of the plaintiff Albert A. Cerilli's scrotum. The sole question posed to the jury after a trial was "did Dr. Kezis perform a scalpel biopsy of Mr. Cerilli's scrotum over Mr. Cerilli's express objection?" The jury was instructed "If you find Dr. Kezis performed the biopsy on Mr. Cerilli over his express objections, then you will find that he committed a battery." The plaintiffs' counsel raised no objection to these instructions or to the verdict sheet. The jury unanimously answered "No" to the question.

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Contrary to the plaintiffs' contention, a bifurcated trial with respect to liability was proper under the circumstances since the nature of Mr. Cerilli's injuries allegedly resulting from the biopsy was not relevant to whether he expressly objected to the biopsy procedure (*see* CPLR 603; *DeGregorio v Lutheran Med. Ctr.*, 142 AD2d 543). We further find that the jury's verdict was based upon a fair interpretation of the evidence (*see Romero v Metropolitan Suburban Bus Auth.*, 25 AD3d 683, 684; *Nicastro v Park*, 113 AD2d 129, 133).

The plaintiffs' remaining contentions are unpreserved for appellate review or without merit.

MASTRO, J.P., GOLDSTEIN, LIFSON and CARNI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court