

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

D14461
O/gts

_____AD3d_____

Argued - February 22, 2007

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2006-08385

DECISION & ORDER

Montefiore Medical Center, a/a/o Sherice Haye, et al.,
appellants, v Nationwide Mutual Insurance Company,
respondent.

(Index No. 17102/05)

Joseph Henig, P.C., Bellmore, N.Y., for appellants.

Epstein, Rayhill & Frankini, Woodbury, N.Y. (James Frankini and Frank Marotta of
counsel), for respondent.

In an action to recover no-fault medical payments under contracts of insurance, the plaintiffs appeal from an order of the Supreme Court, Nassau County (McCarty, J.), dated August 2, 2006, which denied the motion of the plaintiff Montefiore Medical Center, a/a/o Sherice Haye, for summary judgment in its favor on the first cause of action.

ORDERED that the appeal by the plaintiff New York and Presbyterian Hospital, a/a/o Haydee Marca, is dismissed, as that plaintiff is not aggrieved by the order appealed from (*see* CPLR 5511), and it is further,

ORDERED that the order is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the defendant.

March 27, 2007

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MONTEFIORE MEDICAL CENTER, a/a/o HAYE v
NATIONWIDE MUTUAL INSURANCE COMPANY

Contrary to the contention of the plaintiff Montefiore Medical Center, a/a/o Sherice Haye (hereinafter Montefiore), the Supreme Court properly denied its motion for summary judgment in its favor on the first cause of action. In response to Montefiore's prima facie showing of entitlement to judgment as a matter of law (*see generally Presbyterian Hosp. in City of N.Y. v Maryland Cas. Co.*, 90 NY2d 274; *New York Univ. Hosp. Rusk Inst. v Hartford Acc. & Indem. Co.*, 32 AD3d 458; *Hospital for Joint Diseases v Allstate Ins. Co.*, 21 AD3d 348), the defendant submitted the hospital records of the patient and other material which raised a triable issue of fact as to whether the condition for which the patient was treated was unrelated to her motor vehicle accident (*see generally St. Luke's Roosevelt Hosp. v Allstate Ins. Co.*, 303 AD2d 743). Accordingly, a triable issue of fact exists regarding whether the defendant's denial of no-fault benefits in this case was proper.

Montefiore's remaining contentions are without merit.

MASTRO, J.P., FLORIO, CARNI and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court