

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

D16638
C/cb

_____AD3d_____

Argued - October 2, 2007

ROBERT W. SCHMIDT, J.P.
STEVEN W. FISHER
ROBERT A. LIFSON
EDWARD D. CARNI, JJ.

2006-05871

DECISION & ORDER

Teri Popkave, appellant, v Ramapo Radiology Associates,
P.C., et al., respondents.

(Index No. 3606/04)

Jonathan C. Reiter, New York, N.Y. (Robert A. Levey and Glenn A. Herman of counsel), for appellant.

Rende, Ryan & Downes, LLP, White Plains, N.Y. (Roland T. Koke of counsel), for respondents.

In an action to recover damages for medical malpractice, the plaintiff appeals from a judgment of the Supreme Court, Rockland County (Berliner, J.), entered April 20, 2006, which, upon a jury verdict, is in favor of the defendants and against her, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

Contrary to the plaintiff's contention, the trial court did not improvidently exercise its discretion in refusing to preclude one of the defendants' medical experts from testifying on the ground that his testimony varied from the expert witness statement served before trial (*see* CPLR 3101[d][1][i]; *McGlaufflin v Wadhwa*, 265 AD2d 534). The principal issues in the case involved whether the plaintiff's breast cancer was present and detectable in a mammogram taken in 2002, and whether, given the absence of clinical symptoms at that time, and a comparison with prior mammograms, the defendant Dr. Victor Todisco's finding of no abnormality in the 2002 mammogram was a departure from good and accepted medical practice. Upon review of the trial record, we find that the expert's testimony with respect to those issues was fully consistent with the pretrial

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disclosure statement. Moreover, any additional testimony the witness gave regarding the plaintiff's social history and the causes of breast cancer in general either was of collateral significance or constituted general background information, which did not render the pretrial disclosure statement inadequate or misleading, and did not result in prejudice or surprise to the plaintiff (*see Casimir v Bar-Zvi*, 36 AD3d 578; *Suhr v Long Beach Med. Ctr.*, 35 AD3d 440; *Gagliardotto v Huntington Hosp.*, 25 AD3d 758; *Andaloro v Town of Ramapo*, 242 AD2d 354).

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

SCHMIDT, J.P., FISHER, LIFSON and CARNI, JJ., concur.

ENTER:

A handwritten signature in cursive script, reading "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court