

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

D16736
G/nl

_____AD3d_____

Argued - October 5, 2007

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
THOMAS A. DICKERSON, JJ.

2006-06250

DECISION & ORDER

Edward Barakov, etc., et al., appellants, v Beth Israel
Medical Center, et al., respondents, et al., defendant.

(Index No. 3287/04)

Fitzgerald & Fitzgerald, P.C., Yonkers, N.Y. (John E. Fitzgerald, John M. Daly,
Mitchell Gittin, and Eugene S. R. Pagano of counsel), for appellants.

Aaronson, Rappaport, Feinstein & Deutsch, LLP, New York, N.Y. (Steven C.
Mandell of counsel), for respondents.

In an action, inter alia, to recover damages for medical malpractice, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Satterfield, J.), entered April 26, 2006, as granted that branch of the motion of the defendants Beth Israel Medical Center, Nurse Midwife Group of Union Square, Susan D. Altman, Jennifer Griffin, Jacqueline Kuschner, and E. Hauser, which was for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly granted that branch of the respondents' motion which was for summary judgment dismissing the complaint insofar as asserted against them. The malpractice claims asserted by the plaintiffs to recover damages for injuries allegedly sustained as a

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result of the failure to administer RhoGAM to the plaintiff Alla Barakov following the birth of her first child, i.e., a preconception tort, is not recognized in New York (*see Enright v Eli Lilly & Co.*, 77 NY2d 377, *cert denied* 502 US 868; *Albala v City of New York*, 54 NY2d 269; *Carucci v Maimonides Med. Ctr.*, 226 AD2d 663).

SPOLZINO, J.P., SANTUCCI, BALKIN and DICKERSON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court