

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

D19323
G/kmg

_____AD3d_____

Argued - April 8, 2008

STEVEN W. FISHER, J.P.
DAVID S. RITTER
ANITA R. FLORIO
EDWARD D. CARNI, JJ.

2006-11176

DECISION & ORDER

Kathleen Hoey, appellant, v
Bernard Rawlings, etc., respondent.

(Index No. 959/02)

Reingold & Tucker, Brooklyn, N.Y. (Abraham Reingold of counsel), for appellant.

Peltz & Walker, New York, N.Y. (Bhalinder L. Rikhye of counsel), for respondent.

In an action to recover damages for medical malpractice and lack of informed consent, the plaintiff appeals from a judgment of the Supreme Court, Rockland County (Smith, J.), entered October 16, 2006, which, upon a jury verdict and upon the denial of her motion pursuant to CPLR 4404(a) to set aside the verdict and for a new trial, is in favor of the defendant and against her, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

The plaintiff contends that she was deprived of her right to a fair trial as a result of judicial bias, as purportedly evidenced by, inter alia, repeated threats from the trial court to hold her attorney in contempt. The record demonstrates that the plaintiff's attorney interrupted certain remarks of the trial court and, ignoring the court's admonition to desist, persisted in this type of rude and offensive conduct. Since such conduct would otherwise constitute contempt (*see* Judiciary Law § 750[A]; *Matter of Waldman v Churchill*, 262 NY 247), the trial court's conduct in reprimanding the plaintiff's attorney and threatening him with contempt for his behavior during trial, did not demonstrate bias against counsel that would warrant reversal in this action (*see e.g. Lorenzo v Mass, Inc.*, 31 AD3d 616).

May 20, 2008

HOEY v RAWLINGS

Page 1.

The plaintiff's remaining contentions are either without merit or not properly before us.

FISHER, J.P., RITTER, FLORIO and CARNI, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court