

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

D19555
O/kmg

_____AD3d_____

Argued - May 9, 2008

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
ROBERT A. LIFSON
JOHN M. LEVENTHAL, JJ.

2007-07488

DECISION & ORDER

Henchie Beck, et al., appellants,
v Westchester County Health Care Corporation,
a/k/a Westchester Medical Center, et al.,
respondents, et al., defendants.

(Index No. 9693/04)

Harry I. Katz, P.C., Fresh Meadows, N.Y. (Shayne, Dachs, Corker, Sauer & Dachs, LLP [Jonathan A. Dachs], of counsel), for appellants.

Schiavetti, Corgan, DeEdwards & Nicholson, LLP, White Plains, N.Y. (Jason E. Dizon of counsel), for respondents.

In an action, inter alia, to recover damages for medical malpractice, the plaintiffs appeal from so much of an order of the Supreme Court, Westchester County (Bellantoni, J.), dated June 25, 2007, as denied their motion for summary judgment on the issue of liability.

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

The injured plaintiff claimed that she contracted the hepatitis C virus after undergoing a surgical procedure at the defendant medical center. The plaintiffs commenced this action alleging medical malpractice and negligence by, among others, the defendant medical center and its staff, and moved for summary judgment on the issue of liability.

“The proponent of a summary judgment motion must make a prima facie showing of

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a/k/a WESTCHESTER MEDICAL CENTER

entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

The Supreme Court properly determined that material issues of fact exist which require a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557, 562; *Salvatore v Winthrop Univ. Med. Ctr.*, 36 AD3d 887; *Wallenquest v Brookhaven Mem. Hosp. Med. Ctr.*, 28 AD3d 538; *Kaplow v Katz*, 120 AD2d 569; *De Simone v Lutheran Med. Ctr.*, 34 AD2d 660).

MASTRO, J.P., SKELOS, LIFSON and LEVENTHAL, 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