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

D21057
O/kmg

_____AD3d_____ Argued - October 10, 2008

ANITA R. FLORIO, J.P.
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-04105 DECISION & ORDER

Tina V. Haydamach, etc., appellant-respondent,
v State of New York, respondent-appellant.

(Claim No. 111249)

Cartier, Bernstein, Auerbach & Dazzo, P.C., Patchogue, N.Y. (Robert G. Steinberg of counsel), for appellant-respondent.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Peter H. Schiff and Marlene O. Tuczinski of counsel), for respondent-appellant.

In a claim to recover damages for conscious pain and suffering and wrongful death allegedly resulting from medical malpractice, the claimant appeals, as limited by her brief, from so much of an order of the Court of Claims (Lack, J.), dated December 29, 2006, as granted the defendant's motion for summary judgment dismissing the claim on the ground that the claimant lacked the capacity to sue, and the defendant cross-appeals from stated portions of the same order.

ORDERED that the cross appeal is dismissed as abandoned; and it is further,

ORDERED that the order is reversed insofar as appealed from, on the law, and the defendant's motion for summary judgment dismissing the claim is denied; and it is further,

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

The claimant brought the instant claim in her capacity as administratrix of the estate of the decedent pursuant to letters of administration issued on April 15, 2004. The letters of administration granted the claimant "the powers and duties thereunto appertaining by law," subject

to restrictions dealing with the claimant's authority to receive money from causes of action specified in the petition for letters of administration. The claimant's authority to assert additional causes of action not mentioned in the petition or to exercise the general powers and duties of an administratrix, which includes the power to commence actions, was not limited (*see* EPTL 11-1.1[b]).

The defendant failed to establish its prima facie entitlement to judgment as a matter of law. Since the claimant brought this claim in her capacity as the duly-appointed administratrix of the estate of the decedent, the Court of Claims erred in concluding that the claimant lacked the capacity to sue (*see Lichtenstein v State of New York*, 93 NY2d 911). Accordingly, the defendant's motion for summary judgment dismissing the claim should have been denied.

FLORIO, J.P., ANGIOLILLO, McCARTHY and CHAMBERS, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court