

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

D23160
C/hu

_____AD3d_____

Argued - April 2, 2009

PETER B. SKELOS, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2008-02917

DECISION & ORDER

Kerica Stewart, etc., respondent, v Brookdale
University Hospital and Medical Center, appellant.

(Index No. 24276/05)

Wilson, Elser, Moskowitz, Edelman & Dicker LLP, New York, N.Y. (Richard E. Lerner and Patrick J. Lawless of counsel), for appellant.

Warner Bernstein & Blumenstock, LLP (Ledy-Gurren Bass & Siff, LLP, New York, N.Y. [Nancy Ledy-Gurren, Alan Bernstein, and Edward J. Gorman], of counsel), for respondent.

In an action, inter alia, to recover damages for wrongful death, the defendant appeals from so much of an order of the Supreme Court, Kings County (Levine, J.), dated February 8, 2008, as denied that branch of its motion which was for summary judgment dismissing the complaint.

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

In response to the defendant's showing of its entitlement to judgment as a matter of law on the issue of whether it committed medical malpractice in discharging Kevon Stewart, the decedent's son, from its psychiatric facility on May 6, 2004, the plaintiff established the existence of a triable issue of fact (*see Schrempf v State of New York*, 66 NY2d 289, 295-296; *Seibert v Fink*, 280 AD2d 661; *Clark v State of New York*, 99 AD2d 616, 616-617; *see generally, Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

May 19, 2009

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The defendant's remaining contention is without merit (*see Schrempf v State of New York*, 66 NY2d 289, 294-295; *Engelhart v County of Orange*, 16 AD3d 369, 371; *Clark v State of New York*, 99 AD2d 616).

SKELOS, J.P., FLORIO, LEVENTHAL and HALL, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court