

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

D24267  
G/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 12, 2009

WILLIAM F. MASTRO, J.P.  
THOMAS A. DICKERSON  
RANDALL T. ENG  
L. PRISCILLA HALL, JJ.

---

2008-09558

DECISION & ORDER

Shirley Small, et al., appellants,  
v Robert A. Stern, etc., et al.,  
respondents.

(Index No. 1161/08)

---

Powers & Santola, LLP, Albany, N.Y. (Michael J. Hutter of counsel), for appellants.

Feldman, Kleidman & Coffey LLP, Fishkill, N.Y. (Marsha S. Weiss of counsel), for  
respondents Robert A. Stern and Fishkill Obstetrics and Gynecology, P.C.

Phelan, Phelan & Danek, LLP, Albany, N.Y. (Syma S. Azam of counsel), for  
respondent Vassar Brothers Medical Center.

In an action, inter alia, to recover damages for medical malpractice, etc., the plaintiffs appeal from an order of the Supreme Court, Dutchess County (Brands, J.), dated September 10, 2008, which granted the motion of the defendant Vassar Brothers Medical Center, and the separate motion of the defendants Robert A. Stern and Fishkill Obstetrics and Gynecology, P.C., pursuant to CPLR 8501, 8502, and 8503 to direct them to post security for costs in the total sum of \$10,000.

ORDERED that the order is affirmed, with one bill of costs to the respondents appearing separately and filing separate briefs.

Pursuant to CPLR 8501(a), out-of-state residents must furnish security for costs (*see Verdino v Alexandrou*, 253 AD2d 553; *Gonzalez v Flushing Hosp. Med. Ctr.*, 245 AD2d 543; *Scharaga v Schwartzberg*, 149 AD2d 578). The defendants established that the plaintiffs no longer reside in New York, but are residents of Tennessee, and that an undertaking in the total sum of

September 29, 2009

Page 1.

SMALL v STERN

\$10,000 was required in this complex medical malpractice action in which the defendants would incur a significant expense (*see* CPLR 8503). Accordingly, the plaintiffs' claim that the Supreme Court should not have directed them to post security for costs is without merit.

MASTRO, J.P., DICKERSON, ENG and HALL, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court