

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

D25073  
H/kmg

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Argued - October 8, 2009

PETER B. SKELOS, J.P.  
ANITA R. FLORIO  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

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2008-10822

DECISION & ORDER

Khondaker Amin, et al., respondents, v Molham Soliman, etc., et al., defendants, Stella Slade, etc., et al., appellants.

(Index No. 25089/05)

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Martin Clearwater & Bell LLP, New York, N.Y. (Ellen B. Fishman and Thomas A. Mobilia of counsel), for appellants.

The Jacob D. Fuchsberg Law Firm, LLP, New York, N.Y. (Alan L. Fuchsberg and Carly M. Jannetty of counsel; Alexander Sirkman on the brief), for respondents.

In an action, inter alia, to recover damages for medical malpractice, etc., the defendants Stella Slade and Jamaica Hospital Medical Center appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (O'Donoghue, J.), dated October 27, 2008, as denied those branches of their motion which were for summary judgment dismissing the first, second, third, and fourth causes of action insofar as asserted against them.

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

The appellants established their prima facie entitlement to judgment as a matter of law dismissing the first, second, third, and fourth causes of action insofar as asserted against them (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324), by tendering evidence that the fetus delivered by the plaintiff Ramina Akhter by a Caesarian section was born alive, as a heartbeat was generated 15 minutes after the fetus was removed from the womb, and the heartbeat was maintained at more than 100 beats per minute within 22 minutes after the fetus was removed from the womb. In opposition, the plaintiffs raised a triable issue of fact as to whether the fetus was stillborn, as there was no

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respiratory response and the fetus's Apgar score was zero at 1 minute, 5 minutes, and 10 minutes after the fetus was removed from the womb, the fetus was dependent on a ventilator for the following three weeks, and the fetus was declared deceased within 10 minutes of being removed from the ventilator. Thus, the Supreme Court correctly denied those branches of the motion which were for summary judgment dismissing the first, second, third, and fourth causes of action insofar as asserted against the appellants to recover damages for, inter alia, emotional distress arising from alleged medical malpractice resulting in a stillborn fetus (*see Sheppard-Mobley v King*, 4 NY3d 627, 636-637; *Broadnax v Gonzalez*, 2 NY3d 148, 155; *Alvarez v Prospect Hosp.*, 68 NY2d at 324).

The appellants' remaining contentions are not properly before this Court or are without merit.

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

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court