

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

D27121
H/hu

_____AD3d_____

Argued - March 18, 2010

WILLIAM F. MASTRO, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2008-07078
2008-08666

DECISION & ORDER

Brindel Gershon, appellant, et al., plaintiffs, v Ashok
Anant, et al., respondents.

(Index No. 10744/03)

Mark M. Basichas & Associates, P.C. (Alexander J. Wulwick, New York, N.Y., of
counsel), for appellant.

Martin Clearwater & Bell LLP, New York, N.Y. (Ellen B. Fishman, Sean F. X.
Dugan, and Charles S. Schechter of counsel), for respondent Ashok Anant.

Aaronson, Rappaport, Feinstein & Deutsch, LLP, New York, N.Y. (Steven C.
Mandell of counsel), for respondent Maimonides Medical Center.

In an action to recover damages for medical malpractice and wrongful death, etc., the
plaintiff Brindel Gershon, as administratrix of the estate of Mendel Gershon and individually, appeals
from (1) a judgment of the Supreme Court, Kings County (Knipel, J.), entered July 2, 2008, and (2)
an amended judgment of the same court entered August 15, 2008, which, upon a jury verdict finding
that the defendant Ashok Anant did not depart from good and accepted medical practice, is in favor
of the defendants and against her dismissing the complaint.

ORDERED that the appeal from the judgment is dismissed, as the judgment was
superseded by the amended judgment; and it is further,

ORDERED that the amended judgment is affirmed; and it is further,

April 27, 2010

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

The plaintiff Brindel Gershon, as administratrix of the estate of Mendel Gershon and individually (hereinafter the plaintiff), contends that she was prejudiced by the language in the jury charge and the questions on the verdict sheet regarding proximate cause. Contrary to the plaintiff's contention, the jury charge and the questions on the verdict sheet conveyed the proper legal standard on proximate cause (*see* PJI 2:70; 1 NY PJI3d 2:150, at 841-843 [2010]; *Mortensen v Memorial Hosp.*, 105 AD2d 151, 158; *see also Fellin v Sahgal*, 35 AD3d 800, 802). Moreover, since the jury determined that there was no departure from the standard of care, it never reached the issue of proximate cause (*see Avezzano v Savoretti*, 14 AD3d 635).

MASTRO, J.P., DICKERSON, BELEN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court