

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

D30314  
H/ct

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

Argued - February 10, 2011

A. GAIL PRUDENTI, P.J.  
RANDALL T. ENG  
ARIEL E. BELEN  
SANDRA L. SGROI, JJ.

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2010-02287

DECISION & ORDER

Denise M. Covert, et al., respondents, v Richard F. Walker, etc., et al., defendants, Orange Regional Medical Center, et al., appellants.

(Index No. 6640/08)

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Tarshis, Catania, Liberth, Mahon & Milligram, PLLC, Newburgh, N.Y. (Steven I. Milligram and Holly L. Reinhardt of counsel), for appellants.

Gary Greenwald, Chester, N.Y. (Marc Leffler and David A. Brodsky of counsel), for respondents.

In an action to recover damages for medical malpractice and wrongful death, the defendants Orange Regional Medical Center, Michael White, and Orange Radiology Associates, P.C., appeal from an order of the Supreme Court, Orange County (Cohen, J.), dated February 8, 2010, which denied the motion of the defendant Michael White for summary judgment dismissing the complaint insofar as asserted against him.

ORDERED that the appeal by the defendants Orange Regional Medical Center and Orange Radiology Associates, P.C., is dismissed, as they are not aggrieved by the order appealed from (*see* CPLR 5511); and it is further,

ORDERED that the order is reversed on the appeal by the defendant Michael White, on the law, and the motion of the defendant Michael White for summary judgment dismissing the complaint insofar as asserted against him is granted; and it is further,

March 8, 2011

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ORDERED that one bill of costs is awarded to the defendant Michael White.

The defendant radiologist Michael White interpreted a CT scan of the thorax of the plaintiffs' decedent on July 20, 2005, and noted, among other things, the existence of probable hilar adenopathy (enlarged lymph nodes), which was "equivocal between reactive and neoplastic [cancerous] adenopathy by size criteria." No further tests or studies investigating the possibility that the abnormalities in the decedent's CT scan were due to cancer were performed until the decedent presented to her pulmonologist with a paralyzed vocal cord on November 14, 2005, which prompted subsequent testing. The decedent was then diagnosed with non-small-cell carcinoma of the lung, and she died from that condition on April 5, 2006. The administrators of the decedent's estate commenced this action against, among others, White, to recover damages for medical malpractice and wrongful death.

"Although physicians owe a general duty of care to their patients, that duty may be limited to those medical functions undertaken by the physician and relied on by the patient" (*Chulla v DiStefano*, 242 AD2d 657, 658; *see Markley v Albany Med. Ctr. Hosp.*, 163 AD2d 639, 640). In support of his motion for summary judgment dismissing the complaint insofar as asserted against him, White established his prima facie entitlement to judgment as a matter of law by demonstrating that he fulfilled his duty of care by duly noting in his radiologic report the existence of probable hilar adenopathy, which was equivocal between reactive and neoplastic by size criteria. In opposition, the plaintiffs failed to raise a triable issue of fact, as White had no further responsibility to independently diagnose the decedent's condition (*see Dockery v Sprecher*, 68 AD3d 1043, 1045-1046; *Mosezhnik v Berenstein*, 33 AD3d 895, 897; *Wasserman v Staten Is. Radiological Assoc.*, 2 AD3d 713, 714; *Giberson v Panter*, 286 AD2d 217).

The parties' remaining contentions are without merit.

Accordingly, the Supreme Court should have granted White's motion for summary judgment dismissing the complaint insofar as asserted against him.

PRUDENTI, P.J., ENG, BELEN and SGROI, JJ., concur.

ENTER:



Matthew G. Kiernan  
Clerk of the Court