

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

D30320
H/ct

_____AD3d_____

Argued - February 10, 2011

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

2010-04808

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)

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, Elizabeth Ramirez, 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 Elizabeth Ramirez for summary judgment dismissing the complaint insofar as asserted against her.

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 Elizabeth Ramirez, on the law, and the motion of the defendant Elizabeth Ramirez for summary judgment dismissing the complaint insofar as asserted against her is granted; and it is further,

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ORDERED that one bill of costs is awarded to the defendant Elizabeth Ramirez.

The defendant radiologist Elizabeth Ramirez interpreted a CT scan of the thorax of the plaintiffs' decedent on April 26, 2005, and noted, inter alia, the existence of adenopathy (enlarged lymph nodes), which was of uncertain etiology, and recommended correlation with the decedent's clinical history. A biopsy of the decedent's lung tissue was not taken until December 27, 2005, after the decedent presented to her pulmonologist with a paralyzed vocal cord. The biopsy led to a diagnosis of non-small-cell carcinoma of the lung, and the decedent died from that condition on April 5, 2006. The administrators of the decedent's estate commenced this action against, inter alia, Ramirez, seeking 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 her motion for summary judgment dismissing the complaint insofar as asserted against her, Ramirez established her prima facie entitlement to judgment as a matter of law by demonstrating that she fulfilled her duty of care by duly noting in her radiologic report, inter alia, the existence of adenopathy of uncertain etiology. In opposition, the plaintiffs failed to raise a triable issue of fact, as Ramirez 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 Assocs.*, 2 AD3d 713, 714; *Giberson v Panter*, 286 AD2d 217).

The parties' remaining contentions are without merit.

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

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

ENTER:


Matthew G. Kiernan
Clerk of the Court