

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

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O/kmb

_____AD3d_____

Argued - April 4, 2011

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
L. PRISCILLA HALL, JJ.

2010-00320

DECISION & ORDER

Adelina Alvarez, et al., respondents, v Bruce E.
Gerberg, etc., et al., defendants, Bernard Beckerman,
et al., appellants.

(Index No. 992/07)

Aaronson Rappaport Feinstein & Deutsch, LLP, New York, N.Y. (Elliott J. Zucker of counsel), for appellants Bernard Beckerman and Huntington Hospital.

Shaub, Ahmuty, Citrin & Spratt, LLP, Lake Success, N.Y. (Christopher Simone and Lena Holubnyczyj of counsel), for appellant William Michael Martin.

Leav & Steinberg, LLP, New York, N.Y. (Philip R. Papa of counsel), for respondents.

In an action, inter alia, to recover damages for medical malpractice, etc., the defendants Bernard Beckerman and Huntington Hospital appeal from so much of an order of the Supreme Court, Nassau County (Murphy, J.), entered September 14, 2009, as denied that branch of their motion which was for summary judgment dismissing the complaint insofar as asserted against them, and the defendant William Michael Martin separately appeals, as limited by his brief, from so much of the same order as denied that branch of his motion which was for summary judgment dismissing the complaint insofar as asserted against him.

ORDERED that the order is reversed insofar as appealed from by the defendant William Michael Martin, on the law, and that branch of the motion of the defendant William Michael Martin which was for summary judgment dismissing the complaint insofar as asserted against him is granted; and it is further,

ORDERED that the order is affirmed insofar as appealed from by the defendants Bernard Beckerman and Huntington Hospital; and it is further,

April 26, 2011

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ORDERED that one bill of costs is awarded to the defendant William Michael Martin, payable by the plaintiffs, and one bill of costs is awarded to the plaintiffs payable by the defendants Bernard Beckerman and Huntington Hospital.

“In order to establish the liability of a physician for medical malpractice, a plaintiff must prove that the physician deviated or departed from accepted community standards of practice, and that such departure was a proximate cause of the plaintiff’s injuries” (*Stukas v Streiter*, _____ AD3d _____, 2011 NY Slip Op 01832, *3 [2d Dept 2011]; see *Olgun v Cipolla*, 82 AD3d 1186; *Hamilton v Good Samaritan Hosp. of Suffern, N.Y.*, 73 AD3d 697, 698). A defendant physician seeking summary judgment in a medical malpractice action “must make a prima facie showing that there was no departure from good and accepted medical practice or that the plaintiff was not injured thereby” (*Stukas v Streiter*, _____ AD3d _____, 2011 NY Slip Op 01832, *4 [2d Dept 2011]; see *Brady v Westchester County Healthcare Corp.*, 78 AD3d 1097, 1098; *Castro v New York City Health & Hosps. Corp.*, 74 AD3d 1005, 1006; *Ellis v Eng*, 70 AD3d 887, 890). If the defendant physician satisfies this prima facie burden, “a plaintiff must submit evidentiary facts or materials to rebut the defendant’s prima facie showing, so as to demonstrate the existence of a triable issue of fact” (*Stukas v Streiter*, _____ AD3d _____, 2011 NY Slip Op 01832, *4 [2d Dept 2011], quoting *Deutsch v Chaglassian*, 71 AD3d 718, 719; see *Brady v Westchester County Healthcare Corp.*, 78 AD3d at 1098; *Castro v New York City Health & Hosps. Corp.*, 74 AD3d at 1006).

Here, in support of their motion, the defendants Bernard Beckerman and Huntington Hospital (hereinafter together the Hospital defendants) established their prima facie entitlement to judgment as a matter of law through their submissions, including their expert’s affidavit, which showed, prima facie, that their actions were not a departure from good and accepted medical practice. In opposition, however, the plaintiffs submitted their expert’s affirmation which raised a triable issue of fact as to whether the Hospital defendants departed from good and accepted medical practice. Accordingly, the Supreme Court properly denied that branch of the Hospital defendants’ motion which was for summary judgment dismissing the complaint insofar as asserted against them.

The defendant William Michael Martin established his prima facie entitlement to judgment as a matter of law through his submissions, including his expert affirmation which showed, prima facie, that Martin did not depart from good and acceptable medical practice. In opposition, the plaintiffs failed to raise a triable issue of fact, particularly in light of Martin’s limited role in the evaluation and treatment of the decedent Matthew Alvarez. Accordingly, the Supreme Court should have granted that branch of Martin’s motion which was for summary judgment dismissing the complaint insofar as asserted against him.

COVELLO, J.P., ANGIOLILLO, DICKERSON and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court