

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

D32491
O/kmb

_____AD3d_____

Argued - September 22, 2011

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2010-07059

DECISION & ORDER

Richard Bedard, etc., et al., appellants,
v Steven A. Klein, etc., et al., defendants,
Winthrop University Hospital, respondent.

(Index No. 12320/04)

Kramer, Dillof, Livingston & Moore, New York, N.Y. (Matthew Gaier of counsel),
for appellants.

Bower Monte & Green, P.C. (Mauro Lilling Naparty, LLP, Great Neck, N.Y. [Caryn
L. Lilling and Timothy J. O'Shaughnessy], of counsel), for respondent.

In an action, inter alia, to recover damages for medical malpractice, the plaintiffs
appeal from an order of the Supreme Court, Nassau County (Cozzens, Jr., J.), entered June 7, 2010,
which granted the motion of the defendant Winthrop University Hospital for summary judgment
dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

In November 1994, the plaintiffs' mother learned that she was pregnant with triplets.
Her estimated delivery date was May 6, 1995. On January 14, 1995, the mother underwent a cervical
cerclage (a procedure in which the cervix is sutured closed) because of dilation at the internal orifice
of her uterus. Thereafter, the mother experienced several episodes of vaginal bleeding and was
admitted to the defendant Winthrop University Hospital (hereinafter Winthrop) for observation, bed
rest, and the administration of tocolysis, a medication given to stop or prevent labor. The members
and employees of the defendant Ira J. Spector, M.D. and Steven A. Klein, M.D., P.C., were the
mother's private physicians and became the mother's attending physicians at Winthrop. The
attending physicians took care of the mother on a rotational basis and made the decisions regarding

her care. Several Winthrop residents and nurses also were involved in the mother's care.

While at Winthrop, the mother continued to have episodes of vaginal bleeding, including one on February 25, 1995. On February 27, 1995, the mother experienced nausea, vomiting, continued vaginal bleeding, and low blood pressure. Dr. Klein performed an emergency caesarian section, and the three plaintiffs were delivered at 30½ weeks. The operative report noted that the cerclage had eroded through the mid-portion and posterior portion of the cervix. The plaintiffs remained at Winthrop until April 4, 1995. They allegedly sustained brain damage as a result of their premature birth.

The mother commenced this lawsuit on behalf of the plaintiffs against, among others, Winthrop, alleging, inter alia, medical malpractice. Winthrop moved for summary judgment dismissing the complaint insofar as asserted against it, arguing that the obstetrical care rendered to the mother and the plaintiffs during their admission at Winthrop was within the standard of care and dictated by their private attending physicians, and that the Winthrop residents and nurses involved did not exercise any independent medical judgment in their treatment. In opposition to the motion, the plaintiffs argued, inter alia, that triable issues of fact exist as to whether the orders of the attending physicians were so clearly contraindicated by normal obstetrical practice that ordinary prudence required inquiry on the part of the Winthrop staff into the correctness of the orders. The Supreme Court granted the motion, determining that the plaintiffs "failed to establish a question of fact that the staff of Winthrop committed independent acts of negligence or that the attending physicians were contradicted [sic] by normal practice." The plaintiffs appeal from the order. We affirm.

Winthrop met its prima facie burden of establishing the absence of any departure from good and accepted obstetrical practice (*see Arkin v Resnick*, 68 AD3d 692, 694). In opposition, the plaintiffs failed to raise a triable issue of fact (*see Stukas v Streiter*, 83 AD3d 18, 24). The Winthrop staff did not exercise independent judgment over the mother's care (*see Hill v St. Clare's Hosp.*, 67 NY2d 72, 79; *Cham v St. Mary's Hosp. of Brooklyn*, 72 AD3d 1003, 1004; *Cerny v Williams*, 32 AD3d 881, 883), and the orders of the attending physicians were not so clearly contraindicated by normal obstetrical practice that ordinary prudence would require inquiry into the correctness of the orders (*see Toth v Community Hosp. at Glen Cove*, 22 NY2d 255, 265 n 3; *Georgetti v United Hosp. Med. Ctr.*, 204 AD2d 271, 272). Accordingly, the Supreme Court properly granted Winthrop's motion for summary judgment dismissing the complaint insofar as asserted against it.

ANGIOLILLO, J.P., DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court