

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

D32625  
C/kmb

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Submitted - October 5, 2011

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
L. PRISCILLA HALL  
JEFFREY A. COHEN, JJ.

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2010-06592  
2010-08116

DECISION & ORDER

Enid Wright, appellant-respondent, v Mount  
Vernon Hospital, respondent-appellant, et al.,  
defendant.

(Index No. 958/08)

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Lever & Stolzenberg, LLP, White Plains, N.Y. (James M. Marino and Terrence  
James Cortelli of counsel), for appellant-respondent.

Bartlett, McDonough & Monaghan, LLP, White Plains, N.Y. (Edward J. Guardaro,  
Jr., of counsel), for respondent-appellant.

In an action to recover damages for medical malpractice, the plaintiff appeals, as limited by her brief and a letter dated July 6, 2011, from (1) so much of an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered April 27, 2010, as granted the defendant Mount Vernon Hospital's motion pursuant to CPLR 3126 to strike the complaint to the extent of precluding her from testifying at trial, and (2) so much of an order of the same court entered July 27, 2010, as denied her motion for leave to renew her opposition to that motion to strike and to vacate a trial readiness order of the same court entered May 18, 2010, and the defendant Mount Vernon Hospital cross-appeals, as limited by its brief, from so much of the order entered April 27, 2010, as granted its motion pursuant to CPLR 3126 to strike the complaint only to the extent of precluding the plaintiff from testifying at trial.

ORDERED that the order entered April 27, 2010, is affirmed insofar as appealed and cross-appealed from, without costs or disbursements; and it is further,

October 18, 2011

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ORDERED that the order entered July 27, 2010, is affirmed insofar as appealed from, without costs or disbursements.

As a sanction against a party who “refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed,” a court may issue an order, inter alia, “prohibiting the disobedient party . . . from producing in evidence designated things or items of testimony,” or “striking out pleadings” (CPLR 3126[2], [3]). Here, the plaintiff’s willful and contumacious conduct can be inferred from the plaintiff’s repeated failure to comply with orders directing that her deposition be commenced or completed by a date certain, the plaintiff’s adjournments of her deposition, and the inadequate excuses offered to explain her noncompliance (*see Commisso v Orshan*, 85 AD3d 845; *Rawlings v Gillert*, 78 AD3d 806, 807; *Caccioppoli v Long Is. Jewish Med. Ctr.*, 271 AD2d 565, 566). Although the plaintiff’s conduct was willful and contumacious, contrary to the contention of the defendant Mount Vernon Hospital, under the circumstances of this case, the sanction of striking the complaint would have been too harsh. Accordingly, the Supreme Court providently exercised its discretion in granting its motion pursuant to CPLR 3126 to the extent of precluding the plaintiff from testifying at trial.

The Supreme Court properly denied that branch of the plaintiff’s motion which was for leave to renew. The additional facts submitted upon renewal were personally known to the plaintiff when the original motion was made, and she did not proffer a reasonable excuse for her failure to present those facts at that time (*see Saunds v Estate of Johnson*, 29 AD3d 670, 671; *Caramoor Capital Group v Blauner*, 302 AD2d 550; *Caffee v Arnold*, 104 AD2d 352).

The plaintiff’s remaining contention is without merit.

RIVERA, J.P., FLORIO, ENG, HALL and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court