

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

D33884
O/prt

_____AD3d_____

Argued - October 3, 2011

PETER B. SKELOS, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-02369

DECISION & ORDER

Hilda Apikoglu, etc., appellant, v Michael Leitman,
etc., respondent, et al., defendant.

(Index No. 10071/03)

Michael F. Newton (Alexander J. Wulwick, New York, N.Y., of counsel), for appellant.

Kopff, Nardelli & Dopf, LLP, New York, N.Y. (Martin B. Adams and Joseph R. Cammarosano of counsel), for respondent.

In an action to recover damages for medical malpractice, etc., the plaintiff appeals, as limited by her brief, from so much of an amended judgment of the Supreme Court, Nassau County (Palmieri, J.), entered January 5, 2010, as, upon a jury verdict, is in favor of the defendant Michael Leitman and against her dismissing the complaint insofar as asserted against that defendant.

ORDERED that the amended judgment is affirmed insofar as appealed from, with costs.

The Supreme Court providently exercised its discretion in precluding the plaintiff's expert from testifying that the failure to perform CT-scans on the plaintiff's decedent between April 9, 2002, and April 11, 2002, as well as the failure to perform a third surgery, were departures from the accepted standard of care. The plaintiff failed to give notice prior to trial of the specific subject matter of the expert's testimony setting forth these different theories of recovery, which were not readily discernable from the plaintiff's bills of particulars and the statements in her CPLR 3101(d) responses (*see Ryan v St. Francis Hosp.*, 62 AD3d 857; *Durant v Shuren*, 33 AD3d 843, 844; *Dalrymple v Koka*, 2 AD3d 769, 771).

February 7, 2012

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The plaintiff's remaining contention is without merit.

SKELOS, J.P., CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive style with a large initial 'A'.

Aprilanne Agostino
Clerk of the Court