

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

D34073
C/mv

_____AD3d_____

Argued - January 26, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2010-09510

DECISION & ORDER

Cheri Rotondi, et al., respondents, v Mark DeFazio,
etc., et al., appellants, et al., defendants.

(Index No. 2314/09)

Bartlett, McDonough & Monaghan, LLP, White Plains, N.Y. (Edward J. Guardaro,
Jr., Megan C. Wagner, and Adonaid C. Medina of counsel), for appellants.

Sullivan Papain Block McGrath & Cannavo, P.C., New York, N.Y. (Stephen C.
Glasser and Susan M. Jaffe of counsel), for respondents.

In an action to recover damages for medical malpractice, etc., the defendants Mark DeFazio, Gregory DeFazio, and Laurence DeFazio, M.D., P.C., appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Dabiri, J.), dated August 10, 2010, as granted that branch of the plaintiffs' motion which was pursuant to CPLR 3025(b) for leave to amend the complaint to add Gregory DeFazio and Laurence DeFazio, M.D., P.C., as defendants.

ORDERED that the appeal by the defendant Mark DeFazio is dismissed, as he is not aggrieved by the portion of the order appealed from (*see* CPLR 5511); and it is further,

ORDERED that the order is affirmed insofar as appealed from by the defendants Gregory DeFazio and Laurence DeFazio, M.D., P.C.; and it is further,

ORDERED that one bill of costs is awarded to the plaintiffs.

February 21, 2012

ROTONDI v DeFAZIO

Page 1.

The Supreme Court providently exercised its discretion in granting that branch of the plaintiffs' motion which was pursuant to CPLR 3025(b) for leave to amend the complaint to add Gregory DeFazio and Laurence DeFazio, M.D., P.C., as defendants. Although the statute of limitations on the plaintiffs' proposed claims against these parties expired before the plaintiffs sought leave to amend their complaint, the plaintiffs successfully demonstrated a basis for application of the relation-back doctrine (*see* CPLR 203[b]; *Buran v Coupal*, 87 NY2d 173; *Rivera v Fishkin*, 48 AD3d 663, 664; *Monir v Khandakar*, 30 AD3d 487, 489-490; *Yaniv v Taub*, 256 AD2d 273, 275; *Connell v Hayden*, 83 AD2d 30, 46-48).

RIVERA, J.P., ENG, HALL and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court