

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

D34599
C/ct

_____AD3d_____

Argued - March 8, 2012

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2010-11551

DECISION & ORDER

Jennifer Taylor, et al., appellant, v Fakhrun Nessa
Haque, etc., respondent.

(Index No. 16815/03)

Jonathan M. Landsman, New York, N.Y., for appellant.

Geisler & Gabriele, LLP (Mauro Lilling Naparty LLP, Great Neck, N.Y. [Caryn L.
Lilling and Katherine Herr Solomon], of counsel), for respondent.

In an action, inter alia, to recover damages for medical malpractice and wrongful death, the plaintiff appeals from an order of the Supreme Court, Kings County (Knipel, J.), dated September 21, 2010, which denied her motion pursuant to CPLR 4404(a) to set aside a jury verdict in favor of the defendant as contrary to the weight of the evidence or in the interest of justice and for a new trial.

ORDERED that the order is affirmed, with costs.

A jury verdict should not be set aside as contrary to the weight of the evidence unless the jury could not have reached the verdict by any fair interpretation of the evidence (*see Grassi v Ulrich*, 87 NY2d 954, 956; *Lolik v Big V Supermarkets*, 86 NY2d 744, 746; *Jean-Louis v City of New York*, 86 AD3d 628, 628). The jury's resolution of conflicting expert testimony is entitled to great weight, as it is the jury that had the opportunity to observe and hear the experts (*see Saccone v Gross*, 84 AD3d 1208, 1208-1209; *Ferreira v Wyckoff Hgts. Med. Ctr.*, 81 AD3d 587, 588). Where, as here, conflicting expert testimony is presented, the jury is entitled to accept one expert's opinion and reject that of another expert (*see Lolly v Brookdale Univ. Hosp. & Med. Ctr.*, 90 AD3d

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862; *Ferreira v Wyckoff Hgts. Med. Ctr.*, 81 AD3d at 588).

Here, the jury was entitled to accept the opinion of the defendant's medical expert that the defendant did not depart from good and accepted medical practice in not referring the plaintiff's decedent to a cardiologist for a stress test prior to elective knee surgery, and there is no basis to disturb its determination. Accordingly, the Supreme Court did not err in denying that branch of the plaintiff's motion which was pursuant to CPLR 4404(a) to set aside the jury verdict in favor of the defendant as contrary to the weight of the evidence.

The plaintiff's remaining contentions are unpreserved for appellate review, are without merit, or do not warrant reversal.

RIVERA, J.P., CHAMBERS, ROMAN and SGROI, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court