

McCain v New York City Health & Hosp. Corp.

2026 NY Slip Op 31142(U)

March 20, 2026

Supreme Court, New York County

Docket Number: Index No. 805317/2025

Judge: John J. Kelley

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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JOYCE MICHELLE MCCAIN, also known as MICHELLE SINGLETON, Individually and on Behalf of the Estate of TOBY SINGLETON, pending appointment,

Plaintiff,

- v -

THE NEW YORK CITY HEALTH AND HOSPITAL CORPORATION, HARLEM HOSPITAL CENTER, JOAN CULPEPPER-MORGAN, M.D., DANİYAL ABBAS, M.D., SHARIQUE NAZIR, M.D., TIWANA MUHAMMAD HAZMA, M.D., JARED ATCHISON, M.D. MOHAMED OSMAN, M.D. LUQMAN O. SALAHUDDEN, M.D. RAHMAN OLUSOJI, M.D., SUHAIB A. ANDRABI, M.D., SURVEER SINGH, M.D., TJARK SCHILEP, M.D., ALVARO GENAO, M.D., BRANDON DANG, M.D., IGOR FISHKIN, M.D., RAYMON GONZALEZ, M.D., RHONDA TROUSDALE, M.D., NASRIN SULTANA, M.D., VIRGIL HATCHER, M.D., IBRISAM IMRAHIM, M.D., ANAS DABSHA, M.D., JAWAD RASID, M.D., ESTEBAN VERDUZZO; KHUDHUR SALWAN, DDS, DAVID DUGE, M.D., AMEER ABOUD, M.D., HUSSAIN AFZAL, M.D., FRANKLIN MARSH, M.D., BJORN BLACKWOOD, M.D., ALEXIUS RAMCHARAN, M.D. ALWALI ABDALMAHMOUD, M.D. AMAREESH WONDIMU, RN, KUNCHOK DOLMA, RN, SHONOY MYRIE, RN, and DRISSA COULIBALY, RN,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 29, 30, 31, 32, 37

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20

were read on this motion to/for PRO HAC VICE

The following e-filed documents, listed by NYSCEF document number (Motion 003) 21, 22, 23, 24, 25, 26

were read on this motion to/for PRO HAC VICE

The following e-filed documents, listed by NYSCEF document number (Motion 004) 27, 28, 33, 34, 35, 36, 38

DECISION + ORDER ON MOTION

were read on this motion to/for _____ DISMISS _____.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, gross negligence, negligent hiring, training, supervision, and retention of healthcare personnel, wrongful death, and loss of consortium, the defendants The New York City Health and Hospital Corporation, Harlem Hospital Center, Joan Culpepper-Morgan, M.D., Tiwana Muhammad Hamza, M.D., Jared Atchison, M.D., Tjark Schliep, M.D., Virgil Hatcher, M.D., and Kunchok Dolma, RN (collectively the NYC HHC defendants), move pursuant to CPLR 3211(a)(3) to dismiss the complaint insofar as asserted against them on the ground that the plaintiff lacked capacity to prosecute the action at the time that she commenced it (MOT SEQ 001). The defendant Bjorn Blackwood, M.D., separately moves for the same relief as to him (MOT SEQ 004). The plaintiff opposes these motions. These motions are granted, and the complaint is dismissed insofar as asserted against the NYC HHC defendants and Blackwood, albeit without prejudice to the commencement of a new action against those defendants for the same relief under a new index number by a duly authorized representative of the estate of the plaintiff's decedent, provided that the new action is timely commenced in accordance with CPLR 205(a).

The plaintiff moves for leave to admit Elizabeth A. Bailey, Esq., of the New Jersey and Pennsylvania Bars, and separately moves for leave to admit Steven A. Medina, Esq., of the New Jersey and Pennsylvania Bars pro hac vice to appear on her behalf in this action (MOT SEQ 002, 003). No party opposes those motions. Those motions are granted.

The decedent, Toby Singleton, died on January 16, 2025. The plaintiff commenced this action on October 31, 2025, and denominated herself as "Joyce Michelle McCain, also known as Michelle Singleton, Individually and on Behalf of the Estate of Toby Singleton, pending appointment." The plaintiff alleged in her complaint that, as of October 31, 2025, her appointment as administrator of the decedent's estate, was "pending before the Surrogate's Court of New York County." The plaintiff submitted docket entry sheets from the Surrogate's

Court, indicating that her application to the Surrogate's Court only sought her appointment as a "voluntary administrator," but not for full or limited letters of administration.

"A personal representative who has received letters of administration of a decedent's estate [or letters testamentary] is the only party who is authorized to commence a survival action to recover damages for personal injuries sustained by the decedent or a wrongful death action to recover damages sustained by the decedent's distributees on account of his or her death"

(*Shelley v South Shore Healthcare*, 123 AD3d 797, 797 [2d Dept 2014]; see *Gulledge v Jefferson County*, 172 AD3d 1666, 1667 [3d Dept 2019]; *Jordan v Metropolitan Jewish Hospice*, 122 AD3d 682, 683 [2d Dept 2014]; *Mingone v State of New York*, 100 AD2d 897, 899 [2d Dept 1984]; EPTL 1-2.13, 5-4.1 [1]; 11-3.2 [b]).

A "proposed administrator," which is the plaintiff's current status, lacks capacity to prosecute either a personal injury "survival" action or a wrongful death action on behalf of the estate of a decedent (see *Rodriguez v River Val. Care Ctr., Inc.*, 175 AD3d 432, 433 [1st Dept 2019]; *Richards v Lourdes Hosp.*, 58 AD3d 927, 927-928 [3d Dept 2009]; *Mendez v Kyung Yoo*, 23 AD3d 354, 355 [2d Dept 2005]; *Duran v Isabella Geriatric Ctr., Inc.*, 2023 NY Slip Op 30500[U], *9, 2023 NY Misc LEXIS 669, *12-13 [Sup Ct, N.Y. County, Feb. 15, 2023] [Kelley, J.]; *Castro v Fraser*, 2022 NY Slip Op 30903[U], *5, 2022 NY Misc LEXIS 1368, *7 [Sup Ct, N.Y. County, Mar. 15, 2022] [Kelley, J.]; *Stroble v Townhouse Operating Co.*, 2019 NY Misc LEXIS 18865 [Sup Ct, Nassau County, Dec. 16, 2019]; *Fleisher v Ballon Stoll Bader & Nadler, P.C.*, 2015 NY Slip Op 31855[U], *5, 2015 NY Misc LEXIS 3625, *6 [Sup Ct, N.Y. County, Oct. 5, 2015]). Even if the plaintiff obtains letters of voluntary administration during the pendency of this action, a "voluntary administrator" lacks capacity to prosecute either a personal injury "survival" action or a wrongful death action on behalf of the estate of a decedent. The SCPA allows for the appointment of a voluntary administrator of a small estate, defined as an estate "having a gross value of \$50,000 or less exclusive of property required to be set off under EPTL 5-3.1(a)" (SCPA 1301[1]), and defines a "voluntary administrator" as "a person who qualifies and undertakes to settle the estate of the decedent without the formality of court administration

as hereinafter provided” (SCPA 1301[2]). Crucially, however, “[t]he voluntary administrator shall have no power to enforce a claim for the wrongful death of or a claim for personal injuries to the decedent” (SCPA 1306[3] [emphasis added]). Consequently a “voluntary administrator” has no capacity to prosecute a personal injury “survival” action or a wrongful death action on behalf of the estate of a decedent (see *Carrick v Central Gen. Hosp.*, 51 NY2d 242, 246 [1980]; *Rodriguez v River Val. Care Ctr., Inc.*, 175 AD3d at 433; *Richards v Lourdes Hosp.*, 58 AD3d at 927-928; *Ramos v Kalsow*, 2023 NY Slip Op 32954[U], *3, 2023 NY Misc LEXIS 4648, *4 [Sup Ct, N.Y. County, Aug. 24, 2023] [Kelley, J.]; *Castro v Fraser*, 2022 NY Slip Op 30903[U], *5, 2022 NY Misc LEXIS 1368, *7 [Sup Ct, N.Y. County, Mar. 15, 2022] [Kelley, J.]). In other words, only a person granted letters testamentary, full letters of administration, or limited letters of administration may commence and prosecute an action on behalf of a decedent’s estate.

The burden is on the defendants to establish that the plaintiff lacked capacity to commence this action (see *Bartel v Farrell Lines*, 215 AD3d 517, 526 [1st Dept 2023]). The NYC HHC defendants and Blackwood have established that the plaintiff lacked capacity to commence the action on the date that she filed the summons and complaint, by noting that she had not been appointed as administrator or executor of the decedent’s estate as of that date. Where a plaintiff lacks capacity to prosecute an action, and a defendant timely moves to dismiss the complaint on that ground, the complaint must be dismissed, and is not subject to an amendment to substitute either a proper plaintiff or an existing plaintiff who secured appointment as a proper administrator or executor of a decedent’s estate during the pendency of the action. This is so because it is a “fatal defect” for a person who lacks capacity to commence an action, and that defect constitutes a “failure to comply with a condition precedent” (*Morris Investors, Inc. v Commissioner of Finance*, 121 AD2d 221, 224 [1st Dept 1986]). Even if the plaintiff had secured full letters of administration during the pendency of this motion, the amended complaint must still be dismissed insofar as asserted against the movants, since she may not make a belated motion further to amend the complaint herein to allege that he now has

capacity to prosecute the subject claims (see *Mingone v State of New York*, 100 AD2d at 899; *Cianciotto v Hospice Care Network*, 32 Misc 3d 916, 919 [Dist Ct, Nassau County 2011]; cf. *Favourite, Ltd. v Cico*, 42 NY3d 250, 260 [2024] [where dismissal of complaint due to dissolution of corporate plaintiff was without prejudice, Supreme Court did not lack discretion to consider motion to amend the complaint under CPLR 3025[b] where corporation thereafter was revived and motion was made within six months of dismissal]).

Nonetheless, although the plaintiff lacked capacity to prosecute this action at the time that she commenced it, her lack of capacity did not technically render the action a “nullity,” and, hence, while the action remains “subject to grounds for dismissal,” it nonetheless is “within the ambit of CPLR 205(a)” (*Sokoloff v Schor*, 176 AD3d 120, 124, 135-136 [2d Dept 2019]; see *Zak v Bronx Park Phase I Preserv., LLC*, 237 AD3d 654, 655 [1st Dept 2025] [action dismissed for lack of capacity is not a nullity]). As relevant here, CPLR 205(a) provides that:

“[i]f an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff . . . may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period.”

A “disposition based solely upon the absence of a duly appointed administrator does not preclude reprosecution of the underlying claim through the mechanism of CPLR 205 (subd [a]) once a qualified administrator has been appointed” (*Carrick v Central Gen. Hosp.*, 51 NY2d 242, 246, 252 [1980]; see *Rodriguez v River Val. Care Ctr., Inc.*, 175 AD3d at 433; *Snodgrass v Professional Radiology*, 50 AD3d 883, 884-885 [2d Dept 2008]; *Mendez v Kyung Yoo*, 23 AD3d at 355; *Bernardez v City of New York*, 100 AD2d 798, 799-800 [1st Dept 1984]). The dismissals here thus are without prejudice to the commencement of a new action against the NYC HHC defendants and Blackwood for the same relief by a duly appointed representative of the

decedent's estate, under a new index number, in accordance with CPLR 205(a), provided that the new action is commenced within six months of the termination of this action.

Damages for a survivor's emotional distress are not recoverable in a wrongful death action because such damages are not pecuniary injuries as defined by EPTL 5-4.3 (see *Levin v New York City Health & Hosps. Corp. (Harlem Hosp. Ctr.)*, 119 AD3d 480, 484 [1st Dept 2014]; see generally *Liff v Schildkrout*, 49 NY2d 622 [1980]). A surviving spouse may, however, prosecute a derivative cause of action for loss of consortium, albeit one that is limited to the period of time during which the decedent was alive, and suffering from injuries caused by a defendant (see *Liff v Schildkrout*, 49 NY2d at 632; EPTL 11-3.2[b]). Nonetheless, dismissal of the primary causes of action against the NYC HHC defendants and Blackwood mandates dismissal of the derivative cause of action against them as well (see *Millington v Southeastern El. Co.*, 22 NY2d 498, 503 [1968]; *Abbas v Richmond Univ. Med. Ctr.*, 229 AD3d 743, 744 [2d Dept 2024]; *Kelly v Ahn*, 224 AD3d 673, 675 [2d Dept 2024]; *Wijesinghe v Buena Vida Corp.*, 210 AD3d 824, 826 [2d Dept 2022]; *Lillian C. v Administration for Children's Servs.*, 48 AD3d 316, 317 [1st Dept 2008]; *Camadeo v Leeds*, 290 AD2d 355, 356 [1st Dept 2002]; *Bogin v Nicolo*, 2018 NY Slip Op 33141[U], *30-31, 2018 NY Misc LEXIS 5965, *38, 2018 NYLJ LEXIS 4239, *39 [Dec. 5, 2018] [Shulman, J.] [dismissal of medical malpractice and wrongful death causes of action mandates dismissal of loss of consortium cause of action]). Thus, the plaintiff's claims to recover against the NYC HHC defendants and Blackwood in her individual capacity must be dismissed as well, but are also subject to reprosecution pursuant to CPLR 205(a).

As noted above, the plaintiff's motions for leave to admit Elizabeth A. Bailey, Esq., and Steven A. Medina, Esq., pro hac vice to represent her in this action are granted.

In light of the foregoing, it is,

ORDERED that the motion of the defendants The New York City Health and Hospital Corporation, Harlem Hospital Center, Joan Culpepper-Morgan, M.D., Tiwana Muhammad Hamza, M.D., Jared Atchison, M.D., Tjark Schliep, M.D., Virgil Hatcher, M.D., and Kunchok

Dolma, RN, to dismiss the complaint insofar as asserted against them (MOT SEQ 001) is granted, and the complaint is dismissed insofar as asserted against The New York City Health and Hospital Corporation, Harlem Hospital Center, Joan Culpepper-Morgan, M.D., Tiwana Muhammad Hamza, M.D., Jared Atchison, M.D., Tjark Schliep, M.D., Virgil Hatcher, M.D., and Kunchok Dolma, RN, without prejudice to the commencement, in accordance with CPLR 205(a), of a new action against them under a different index number by the duly appointed administrator or executor of the decedent's estate for the same relief; and it is further,

ORDERED that, on the court's own motion, the action is severed against the defendants The New York City Health and Hospital Corporation, Harlem Hospital Center, Joan Culpepper-Morgan, M.D., Tiwana Muhammad Hamza, M.D., Jared Atchison, M.D., Tjark Schliep, M.D., Virgil Hatcher, M.D., and Kunchok Dolma, RN; and it is further,

ORDERED that the Clerk of the court shall enter judgment dismissing the complaint insofar as asserted against the defendants The New York City Health and Hospital Corporation, Harlem Hospital Center, Joan Culpepper-Morgan, M.D., Tiwana Muhammad Hamza, M.D., Jared Atchison, M.D., Tjark Schliep, M.D., Virgil Hatcher, M.D., and Kunchok Dolma, RN; and it is further;

ORDERED that the motion of the defendant Bjorn Blackwood, M.D., to dismiss the complaint insofar as asserted against him (MOT SEQ 004) is granted, and the complaint is dismissed insofar as asserted against the defendant Bjorn Blackwood, M.D., without prejudice to the commencement, in accordance with CPLR 205(a), of a new action against him under a different index number by the duly appointed administrator or executor of the decedent's estate for the same relief; and it is further,

ORDERED that, on the court's own motion, the action is severed against the defendant Bjorn Blackwood, M.D.; and it is further,

ORDERED that the Clerk of the court shall enter judgment dismissing the complaint insofar as asserted against the defendant Bjorn Blackwood, M.D.; and it is further,

ORDERED that the plaintiff's motion for the admission pro hac vice of Elizabeth A. Bailey, Esq., of the law firm of Grant & Eisenhofer, P.A., with offices located in New York, New York, Chadds Ford, Pennsylvania, Wilmington, Delaware, and San Francisco, California, who, being an attorney and a member in good standing of the bars of the States of New Jersey and Pennsylvania (MOT SEQ 002), is granted, without opposition, upon the proof of qualifications as required by the laws and rules of the State of New York; and it is further,

ORDERED that Elizabeth A. Bailey, Esq., is permitted to appear and to participate in this proceeding on behalf of the plaintiff; and it is further,

ORDERED that, inasmuch as Adam L. Stoltz, Esq., of the law firm of Grant & Eisenhofer, P.A., is a member in good standing of the Bar of the State of New York, and maintains an office for the practice of law at 485 Lexington Avenue, 29th Floor, New York, New York 10017, Elizabeth A. Bailey, Esq., shall at all times during this action be associated with Adam L. Stoltz, Esq., who shall be the attorney of record for the aforesaid plaintiff; and it is further,

ORDERED that all pleadings, briefs, and other papers filed with the court shall be signed by the attorney of record or by any other attorney affiliated with the law firm of Grant & Eisenhofer, P.A., who is a member of the New York bar, who shall be responsible for such papers and for the conduct of this action; and it is further,

ORDERED that pursuant to § 520.11(a)(1) of the Rules of the Court of Appeals, and § 602.2(a) of the Rules of the Appellate Division, First Department, Elizabeth A. Bailey, Esq., is admitted pro hac vice and shall abide by the standards of professional conduct imposed upon members of the New York Bar, including the rules of the courts governing the conduct of attorneys and the Rules of Professional Conduct; and it is further,

ORDERED that Elizabeth A. Bailey, Esq., shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of her participation in this matter; and it is further,

ORDERED that Elizabeth A. Bailey, Esq., shall notify the court immediately of any matter or event in this or any other jurisdiction that affects her standing as a member of the bar; and it is further,

ORDERED that the plaintiff's motion for the admission pro hac vice of Steven A. Medina, Esq., of the law firm of Medina Morgan, with offices located in Philadelphia, Pennsylvania, who, being an attorney and a member in good standing of the bars of the States of New Jersey and Pennsylvania (MOT SEQ 003), is granted, without opposition, upon the proof of qualifications as required by the laws and rules of the State of New York; and it is further,

ORDERED that Steven A. Medina, Esq., is permitted to appear and to participate in this proceeding on behalf of the plaintiff; and it is further,

ORDERED that, inasmuch as Adam L. Stoltz, Esq., of the law firm of Grant & Eisenhofer, P.A., is a member in good standing of the Bar of the State of New York, and maintains an office for the practice of law at 485 Lexington Avenue, 29th Floor, New York, New York 10017, Steven A. Medina, Esq., shall at all times during this action be associated with Adam L. Stoltz, Esq., who shall be the attorney of record for the aforesaid plaintiff; and it is further,

ORDERED that all pleadings, briefs, and other papers filed with the court shall be signed by the attorney of record or by any other attorney affiliated with the law firm of Grant & Eisenhofer, P.A., who is a member of the New York bar, who shall be responsible for such papers and for the conduct of this action; and it is further,

ORDERED that pursuant to § 520.11(a)(1) of the Rules of the Court of Appeals, and § 602.2(a) of the Rules of the Appellate Division, First Department, Steven A. Medina, Esq., is admitted pro hac vice and shall abide by the standards of professional conduct imposed upon members of the New York Bar, including the rules of the courts governing the conduct of attorneys and the Rules of Professional Conduct; and it is further,

ORDERED that Steven A. Medina, Esq., shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of his participation in this matter; and it is further,

ORDERED that Steven A. Medina, Esq., shall notify the court immediately of any matter or event in this or any other jurisdiction that affects his standing as a member of the bar.

This constitutes the Decision and Order of the court.

JOHN J. KELLEY, J.S.C.

3/20/2026
DATE

MOTION 001:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE
MOTION 002:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE
MOTION 003:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE
MOTION 004:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE