

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 16-02044

PRESENT: CARNI, J.P., LINDLEY, DEJOSEPH, CURRAN, AND TROUTMAN, JJ.

JOANN REFF, INDIVIDUALLY AND AS ADMINISTRATOR OF
THE ESTATE OF OTIS N. REFF, JR., DECEASED,
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ANNA MELYNNE YOUNGBLOOD, M.D., ET AL., DEFENDANTS,
AND MAHMOUD HAMZA, M.D., DEFENDANT-APPELLANT.

MARTIN, GANOTIS, BROWN, MOULD & CURRIE, P.C., DEWITT (DANIEL P. LARABY
OF COUNSEL), FOR DEFENDANT-APPELLANT.

DEFRANCISCO & FALGIATANO LLP, EAST SYRACUSE (JEFF D. DEFRANCISCO OF
COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Jefferson County
(James P. McClusky, J.), entered July 19, 2016. The order, insofar as
appealed from, denied in part the motion of defendant Mahmoud Hamza,
M.D., for summary judgment.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Mahmoud Hamza, M.D. (defendant), appeals from an
order that, inter alia, denied his motion for summary judgment
dismissing the cause of action asserted against him for medical
malpractice arising from his treatment and care of plaintiff's
decedent. We affirm. Supreme Court properly concluded that plaintiff
raised triable issues of fact by submitting the affirmation of a
physician who averred that there was a departure from the accepted
standard of care and that such departure was a proximate cause of
decedent's injuries (*see generally Bagley v Rochester Gen. Hosp.*, 124
AD3d 1272, 1273; *O'Shea v Buffalo Med. Group, P.C.*, 64 AD3d 1140,
1140-1141, *appeal dismissed* 13 NY3d 834). Furthermore, the court
properly concluded that there is an issue of fact whether defendant's
alleged refusal to administer anesthesia before performing surgery on
decedent constitutes malicious conduct sufficient to support an award
of punitive damages (*see Graham v Columbia Presbyt. Med. Ctr.*, 185
AD2d 753, 754-756; *see generally Dupree v Giugliano*, 20 NY3d 921, 924,
rearg denied 20 NY3d 1045).

Entered: June 9, 2017

Frances E. Cafarell
Clerk of the Court