

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

1535

CA 17-01018

PRESENT: SMITH, J.P., CARNI, DEJOSEPH, NEMOYER, AND CURRAN, JJ.

JAN MARIE FAY, AS ADMINISTRATOR OF THE ESTATE OF
PETER JAMES HUNTER, SR., ALSO KNOWN AS PETER J.
HUNTER, SR., DECEASED, AND AS GUARDIAN OF THE
PROPERTY OF PETER J. HUNTER, JR.,
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CLYDE H. SATTERLY, M.D., FAMILY MEDICINE MEDICAL
SERVICE GROUP, RLLP, DEFENDANTS-RESPONDENTS,
ET AL., DEFENDANTS.

ROBERT E. LAHM, PLLC, SYRACUSE (ROBERT E. LAHM OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

SUGARMAN LAW FIRM, LLP, SYRACUSE (JENNA W. KLUCSIK OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Onondaga County
(Anthony J. Paris, J.), entered January 6, 2017. The order granted
the motion of defendants Clyde H. Satterly, M.D., and Family Medicine
Medical Service Group, RLLP for summary judgment dismissing the
complaint against them.

It is hereby ORDERED that the order so appealed from is
unanimously reversed on the law without costs, the motion is denied,
and the complaint is reinstated against defendants Clyde H. Satterly,
M.D. and Family Medicine Medical Service Group, RLLP.

Memorandum: Plaintiff, as administrator of the decedent's estate
and guardian of the property of decedent's son, commenced this medical
malpractice and wrongful death action seeking damages for the death of
decedent following elective spinal surgery. According to plaintiff,
defendant Clyde H. Satterly, M.D., while employed by defendant Family
Medicine Medical Service Group, RLLP (collectively, defendants), was
negligent in, inter alia, clearing decedent for elective surgery
despite the presence of an occult infection during Dr. Satterly's
examination of decedent on June 10, 2013. The surgery was performed
on June 19, 2013, and decedent died five days later due to cardiac
arrest as a consequence of sepsis, a systemic inflammatory response to
infection. Supreme Court granted defendants' motion for summary
judgment dismissing the complaint against them. We reverse.

Even assuming, arguendo, that defendants met their initial burden

on their motion, we agree with plaintiff that the affidavit of her medical expert raised triable issues of fact (see *Selmensberger v Kaleida Health*, 45 AD3d 1435, 1436 [4th Dept 2007]; see generally *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Contrary to defendants' contention, we conclude that plaintiff's expert, a board certified anesthesiologist, was qualified to offer an opinion about the performance of a presurgical clearance examination by a primary care physician (see generally *Diel v Bryan*, 71 AD3d 1439, 1440 [4th Dept 2010]), inasmuch as the expert possessed the requisite skill, training, knowledge and experience to render a reliable opinion with respect to the standard of care applicable in this case (see *id.*). We further conclude that "[t]he conflicting opinions of the experts for plaintiff and defendant[s] with respect to . . . defendant[s'] alleged deviation[s] from the accepted standard of medical care present credibility issues that cannot be resolved on a motion for summary judgment" (*Ferlito v Dara*, 306 AD2d 874, 874 [4th Dept 2003]).

Entered: February 2, 2018

Mark W. Bennett
Clerk of the Court