

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

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CA 25-00175

PRESENT: MONTOUR, J.P., SMITH, GREENWOOD, AND HANNAH, JJ.

LEONARD MAZURKIEWICZ AND JENNYLU MAZURKIEWICZ,
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

MERCY HOSPITAL OF BUFFALO,
WILLIAM M. COPLIN, M.D., DEFENDANTS,
NATHANIEL P. BILLINGS, M.D., AND
NICOLE WEDZINA, N.P., DEFENDANTS-RESPONDENTS.

STAMM LAW FIRM, WILLIAMSVILLE (BRADLEY J. STAMM OF COUNSEL), FOR
PLAINTIFFS-APPELLANTS.

RICOTTA, MATTREY, CALLOCCHIA, MARKEL & CASSERT, BUFFALO (KATHERINE V.
MARKEL OF COUNSEL), FOR DEFENDANT-RESPONDENT NATHANIEL P. BILLINGS,
M.D.

BARGNESI BRITT PLLC, BUFFALO (JASON T. BRITT OF COUNSEL), FOR
DEFENDANT-RESPONDENT NICOLE WEDZINA, N.P.

Appeal from an order of the Supreme Court, Erie County (Emilio Colaiacovo, J.), entered September 23, 2024, in a medical malpractice action. The order, among other things, granted the motion of defendant Nathaniel P. Billings, M.D. for summary judgment dismissing the complaint against him.

It is hereby ORDERED that the appeal from that part of the order granting in part the motion of defendants Mercy Hospital of Buffalo, William M. Coplin, M.D., and Nicole Wedzina, N.P., is unanimously dismissed and the order is modified on the law by denying the motion of defendant Nathaniel P. Billings, M.D. and reinstating the complaint against him, and as modified the order is affirmed without costs.

Memorandum: Plaintiffs commenced this medical malpractice action seeking damages for injuries Leonard Mazurkiewicz (plaintiff) allegedly sustained as a result of defendants' delay in detecting and properly treating plaintiff's stroke following his admission to defendant Mercy Hospital of Buffalo (Mercy Hospital). Defendant Nathaniel P. Billings, M.D. moved for summary judgment dismissing the complaint against him. Mercy Hospital and defendants William M. Coplin, M.D., and Nicole Wedzina, N.P. (Mercy defendants), also moved for summary judgment dismissing the complaint against them. Supreme Court granted Billings's motion in its entirety and granted the Mercy defendants' motion in part by, inter alia, dismissing the complaint

against Wedzina. Plaintiffs appeal.

Initially, we dismiss the appeal from that part of the order granting in part the Mercy defendants' motion inasmuch as plaintiffs failed to provide an adequate record to permit meaningful appellate review thereof (see *Walker v County of Monroe*, 216 AD3d 1429, 1429 [4th Dept 2023]; *O'Neill v O'Neill*, 174 AD3d 1526, 1527 [4th Dept 2019]; *Mergl v Mergl*, 19 AD3d 1146, 1147 [4th Dept 2005]). "It is the obligation of the appellant to assemble a proper record on appeal. The record must contain all of the relevant papers that were before the [c]ourt" (*Woodman v Woodman*, 162 AD3d 1650, 1650-1651 [4th Dept 2018] [internal quotation marks omitted]; see CPLR 5526). Here, the record does not contain the Mercy defendants' answer or their motion papers and exhibits. Also notably absent from the record is plaintiffs' bill of particulars detailing their allegations of negligence against Wedzina.

We agree with plaintiffs that the court erred in granting Billings's motion, and we therefore modify the order accordingly. "[A] defendant moving for summary judgment in a medical malpractice action has the burden of establishing the absence of any departure from good and accepted medical practice or that the plaintiff was not injured thereby" (*Bubar v Brodman*, 177 AD3d 1358, 1359 [4th Dept 2019] [internal quotation marks omitted]; see *Fagnoli v Warfel*, 186 AD3d 1004, 1005 [4th Dept 2020]). Once the defendant meets the initial burden, the burden shifts to the plaintiff to raise a triable issue of fact, but "only as to the elements on which the defendant met the prima facie burden" (*Bubar*, 177 AD3d at 1359 [internal quotation marks omitted]; see *Bristol v Bunn*, 189 AD3d 2114, 2116 [4th Dept 2020]). Here, although the court properly determined that Billings met his initial burden on his motion with respect to the issues of deviation from the accepted standard of medical care and causation, we conclude that plaintiffs raised triable issues of fact in opposition as to both issues through the submission of the affidavit of an expert neurologist and the affirmation of an expert in emergency medicine (see *Cooke v Corning Hosp.*, 198 AD3d 1382, 1383 [4th Dept 2021]; *Thompson v Hall*, 191 AD3d 1265, 1267 [4th Dept 2021]). Indeed, plaintiffs' experts raised issues of fact with respect to whether plaintiff was still within the period of efficacy for certain treatments, including tissue plasminogen activator and treatment with the neurological care team, such that Billings should have promptly ordered those treatments. Inasmuch as plaintiffs' expert submissions "squarely oppose[d]" the moving party's expert submissions, the result is "a classic battle of the experts that is properly left to a jury for resolution" (*Cully v Ricottone*, 228 AD3d 1240, 1240 [4th Dept 2024] [internal quotation marks omitted]; see *Blendowski v Wiese* [appeal No. 2], 158 AD3d 1284, 1286 [4th Dept 2018]). This is not a case in which plaintiffs' expert submissions are "vague, conclusory, speculative, and unsupported by the medical evidence in the record before us" (*Occhino v Fan*, 151 AD3d 1870, 1871 [4th Dept 2017]; see also *Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544-545 [2002]).

Entered: March 27, 2026

Ann Dillon Flynn
Clerk of the Court