

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

**375**

**CA 24-01183**

PRESENT: WHALEN, P.J., BANNISTER, GREENWOOD, NOWAK, AND HANNAH, JJ.

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RACHEL L. FINNEGAN, INDIVIDUALLY AND AS  
EXECUTOR OF THE ESTATE OF DANIEL J. FINNEGAN,  
JR., DECEASED, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

MARK H. KASOWITZ, M.D., SEKOU R. RAWLINS, M.D.,  
AND SYRACUSE GASTROENTEROLOGICAL ASSOCIATES, P.C.,  
DEFENDANTS-APPELLANTS.

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MARTIN, GANOTIS, BROWN, MOULD & CURRIE, P.C., DEWITT (CHARLES E.  
PATTON OF COUNSEL), FOR DEFENDANTS-APPELLANTS.

PORTER LAW GROUP, SYRACUSE (MARY E. LANGAN OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County  
(Gerard J. Neri, J.), entered June 5, 2024. The order denied  
defendants' motion for partial summary judgment.

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

Memorandum: Plaintiff commenced this medical malpractice, lack  
of informed consent, and wrongful death action seeking damages for  
decedent's injuries and death as a result of the alleged negligent  
treatment provided to decedent at defendant Syracuse  
Gastroenterological Associates, P.C. (SGA) by defendants Mark H.  
Kasowitz, M.D., and Sekou R. Rawlins, M.D. Plaintiff's complaint, as  
amplified by the bill of particulars, alleges that Rawlins failed to  
properly and adequately advise decedent of the importance of  
undergoing surveillance colonoscopies, in light of his medical history  
and his increased risk of colorectal cancer. According to plaintiff,  
had decedent undergone an earlier colonoscopy, the cancer diagnosis  
would have occurred at a time when curative treatments would have been  
available. Defendants moved for, inter alia, summary judgment  
dismissing the complaint against Rawlins and partial summary judgment  
dismissing claims of vicarious liability against SGA for care rendered  
by Rawlins. Defendants now appeal from an order denying their motion.  
We affirm.

Defendants contend that Supreme Court erred in denying their  
motion because plaintiff failed to raise a triable issue of fact  
whether Rawlins' failure to advise decedent regarding the importance

of undergoing colonoscopies proximately caused decedent's death. We reject that contention. Assuming, arguendo, that defendants met their initial burden on their motion (see generally *Thomas v Eckhert*, 229 AD3d 1237, 1239 [4th Dept 2024]), we conclude that plaintiff raised a triable issue of fact regarding proximate causation when she submitted expert affidavits from a gastroenterologist and an oncologist, both of whom opined that if decedent's cancer had been discovered several months earlier, decedent would have had a greater chance of survival (see *Wiater v Lewis*, 197 AD3d 782, 784 [2d Dept 2021]; *Clune v Moore*, 142 AD3d 1330, 1331-1332 [4th Dept 2016]; *Schaub v Cooper*, 34 AD3d 268, 271 [1st Dept 2006]). We also reject defendants' contention that plaintiff's experts' opinions were conclusory and speculative. Instead, the opinions present "a classic battle of the experts," with regard to both deviation and causation, "which should be determined by the trier of fact" (*Grammatico v Lamar*, 224 AD3d 1376, 1378 [4th Dept 2024] [internal quotation marks omitted]; see *Clark v Rachfal*, 207 AD3d 1173, 1176 [4th Dept 2022], amended on rearg 210 AD3d 1456 [4th Dept 2022]; *Fargnoli v Warfel*, 186 AD3d 1004, 1005 [4th Dept 2020]).