

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

**814**

**CA 24-00857**

PRESENT: MONTOUR, J.P., SMITH, GREENWOOD, NOWAK, AND KEANE, JJ.

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M.H., AN INFANT, BY HIS MOTHER AND NATURAL GUARDIAN,  
SHANIQUE B., AND SHANIQUE B., INDIVIDUALLY,  
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

MAGDI E. SAYEGH, M.D., ADEL E. CHOUCANI, M.D.,  
AND CHOUCANI, SAYEGH & BAGNARELLO, M.D., LLP,  
DEFENDANTS-APPELLANTS,  
ET AL., DEFENDANTS.  
(APPEAL NO. 1.)

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THE TARANTINO LAW FIRM, LLP, BUFFALO (TAMSIN J. HAGER OF COUNSEL), FOR  
DEFENDANTS-APPELLANTS.

POLLACK POLLACK ISAAC & DECICCO, LLP, NEW YORK CITY (JOSHUA A. BLOCK  
OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Erie County (John B. Licata, J.), entered May 21, 2024, in a medical malpractice action. The order, insofar as appealed from, denied the motion of defendants-appellants to dismiss the complaint and all cross-claims against them.

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

Memorandum: The infant plaintiff and his mother, Shanique B. (plaintiff), commenced this medical malpractice and negligence action seeking damages for injuries that the infant plaintiff sustained after plaintiff suffered a placental abruption and underwent an emergency Cesarean section. Plaintiffs allege, inter alia, that defendant Adel E. Chouchani, M.D., should not have discharged plaintiff from the hospital five days before the infant plaintiff was delivered, and defendant Magdi E. Sayegh, M.D., should have admitted plaintiff to the hospital three days prior to delivery, in light of plaintiff's large uterine fibroid and diagnosed preeclampsia, which posed a risk of placental abruption. Chouchani, Sayegh, and defendant Chouchani, Sayegh & Bagnarello, M.D., LLP (defendants), moved for summary judgment dismissing the complaint and all cross-claims against them. After numerous delays by plaintiffs in responding to the motion, defendants moved to dismiss the complaint and all cross-claims against them based on plaintiffs' failure to file opposing papers in compliance with a court-ordered deadline. In appeal No. 1, defendants appeal, as limited by their brief, from that part of an order denying

the motion to dismiss and, in appeal No. 2, they appeal, as limited by their brief, from that part of an order denying the motion for summary judgment to the extent that it sought dismissal of the negligence cause of action against them.

With respect to the order in appeal No. 1, we reject defendants' contention that Supreme Court abused its discretion in denying their motion. A court's "power to control its calendar is a vital consideration in the administration of the courts" (*Headley v Noto*, 22 NY2d 1, 4 [1968], *rearg denied* 22 NY2d 973 [1968]; see *Matter of Bow v Bow*, 117 AD3d 1542, 1545 [4th Dept 2014]). Here, plaintiffs' counsel requested, and defendants' counsel consented to, numerous adjournments to respond to defendants' motion for summary judgment. Approximately a year after the initial return date, however, defendants opposed any further adjournments. The court granted an additional adjournment but advised that further adjournments would not be granted. Subsequently, the court granted another adjournment, but it also sanctioned plaintiffs by awarding costs to defendants. Defendants moved to dismiss based on the delay. The court required counsel for the parties to attend an in-person conference and "afforded plaintiffs' counsel an *in camera* opportunity to provide information for the court to consider before rendering [its] decision." The court then issued its order denying the motion to dismiss, which further stated that the motion for summary judgment would be granted in its entirety, with prejudice and without further notice or order of the court, if plaintiffs did not file opposition papers by a date certain. The court's order represented a balancing of the competing interests of the parties, and we cannot conclude that the court abused its discretion in denying the motion (see generally *Castiglione v Pisanczyn*, 217 AD3d 1372, 1372-1373 [4th Dept 2023]). Therefore, we affirm the order in appeal No. 1.

With respect to the order in appeal No. 2, however, we agree with defendants that the court erred in denying the motion insofar as it sought summary judgment dismissing the negligence cause of action against them. "On a motion for summary judgment in a medical malpractice action, a defendant has the initial burden of establishing either that there was no deviation or departure from the applicable standard of care or that any alleged departure did not proximately cause the plaintiff's injuries" (*Zielinski v Blessios*, 227 AD3d 1385, 1386 [4th Dept 2024] [internal quotation marks omitted]; see *Kristie M. v Mercy Hosp. of Buffalo*, 240 AD3d 1228, 1229 [4th Dept 2025]; *McMahon-DeCarlo v Wickline*, 224 AD3d 1388, 1388-1389 [4th Dept 2024]).

Here, we agree with the court that defendants met their initial burden on the motion by establishing that they did not deviate from the accepted standard of care by discharging plaintiff and not readmitting her to the hospital (see *Shakyra M. v Strittmatter*, 240 AD3d 1197, 1198 [4th Dept 2025]; *Nesterenko v Hall*, 239 AD3d 1314, 1315 [4th Dept 2025]; *Boland v Imboden*, 163 AD3d 1408, 1409 [4th Dept 2018], *lv denied* 32 NY3d 912 [2019]). Defendants submitted affidavits by both Chouchani and Sayegh that addressed each negligence claim raised in plaintiffs' complaint and their bills of particulars (see *Kristie M.*, 240 AD3d at 1229). Among other things, they explained

that they recognized plaintiff's risk for placental abruption and that their care and treatment took into consideration that risk. They explained that a maternal-fetal medicine specialist was consulted during plaintiff's hospitalization five days before her delivery, and the specialist advised that plaintiff could be managed as an outpatient if she had twice-weekly prenatal appointments. Chouchani opined that he took appropriate action by discharging plaintiff five days prior to her delivery with appropriate instructions for follow-up care. Sayegh opined that he took appropriate action by close observation and monitoring of plaintiff and confirmed fetal well-being three days prior to delivery.

We further conclude that plaintiffs failed to raise a triable issue of fact whether defendants deviated from good and accepted medical practice (see *Guyett v Kaleida Health*, 229 AD3d 1101, 1102 [4th Dept 2024]). Plaintiffs' expert did not address why it was improper for Chouchani and Sayegh to rely on the specialist's opinion that plaintiff could be managed on an outpatient basis (see *Schwenzfeier v St. Peter's Health Partners*, 213 AD3d 1077, 1080 [3d Dept 2023]; see also *Elstein v Hammer*, 192 AD3d 1075, 1078 [2d Dept 2021]). Indeed, plaintiffs' expert did not acknowledge the specialist's recommendation, and plaintiffs did not oppose the motion in which, inter alia, the specialist sought summary judgment dismissing the complaint against him. Plaintiffs' expert also did not address the testing done by Chouchani and Sayegh that confirmed fetal well-being. In short, plaintiff's expert failed to address the specific assertions made by Chouchani and Sayegh (see *Wicks v Virk*, 198 AD3d 1315, 1315 [4th Dept 2021]; *Boland*, 163 AD3d at 1409).

We therefore reverse the order in appeal No. 2 insofar as appealed from, grant the motion in its entirety, and dismiss the complaint against defendants.