

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

885

CA 24-00772

PRESENT: WHALEN, P.J., SMITH, GREENWOOD, DELCONTE, AND HANNAH, JJ.

MELISSA HUTCHINS, FORMERLY KNOWN AS
MELISSA PANARESE, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

RENEE E. MESTAD, M.D., AND CROUSE HEALTH
HOSPITAL, INC., DEFENDANTS-RESPONDENTS.

DEFRANCISCO & FALGIATANO, LLP, SYRACUSE, D.J. & J.A. CIRANDO, PLLC
(JOHN A. CIRANDO OF COUNSEL), FOR PLAINTIFF-APPELLANT.

SUGARMAN LAW FIRM, LLP, SYRACUSE (JENNA W. KLUCSIK OF COUNSEL), FOR
DEFENDANT-RESPONDENT RENEE E. MESTAD, M.D.

GALE GALE & HUNT, LLC, FAYETTEVILLE (MATTHEW C. WALSH OF COUNSEL), FOR
DEFENDANT-RESPONDENT CROUSE HEALTH HOSPITAL, INC.

Appeal from an order of the Supreme Court, Onondaga County
(Joseph E. Lamendola, J.), entered May 13, 2024. The order granted
the motions of defendants for summary judgment and dismissed the
complaint.

It is hereby ORDERED that the order so appealed from is
unanimously reversed on the law without costs, the motion of defendant
Renee E. Mestad, M.D. is denied, the second ordering paragraph is
vacated, the complaint is reinstated, and the matter is remitted to
Supreme Court, Onondaga County, for further proceedings in accordance
with the following memorandum: In this medical malpractice action
seeking damages for injuries plaintiff allegedly sustained during a
cesarean section and bilateral salpingectomy performed by defendant
Renee E. Mestad, M.D. at defendant Crouse Health Hospital, Inc.
(Crouse), plaintiff alleges that her omentum was injured and started
bleeding during the surgery and that Mestad was negligent in failing
to see and address that bleeding before closing the surgical incision.
Plaintiff appeals from an order that granted the motions of Mestad and
Crouse for summary judgment dismissing the complaint. We reverse.

On a summary judgment motion 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" (*Occhino v Fan*, 151 AD3d 1870, 1871 [4th Dept 2017]
[internal quotation marks omitted]). "Once a defendant meets the
initial burden, [t]he burden shifts to the plaintiff to demonstrate

the existence of a triable issue of fact . . . only as to the elements on which the defendant met the prima facie burden" (*Lewis v Sulaiman*, 217 AD3d 1443, 1444 [4th Dept 2023] [internal quotation marks omitted]).

Plaintiff does not dispute that Mestad satisfied her initial burden but contends that plaintiff's expert raised triable issues of fact sufficient to defeat Mestad's motion. We agree with plaintiff and conclude that plaintiff's expert, a board certified obstetrician and gynecologist, adequately raised a question of fact with respect to both deviation and causation. Plaintiff's expert opined that Mestad deviated from the standard of care by inspecting only that portion of the omentum that was in her visual field and by failing to inspect that portion of the omentum not in her visual field prior to closing plaintiff's abdomen. The expert further opined that Mestad deviated from the standard of care by making certain assumptions and by failing to take certain medical actions, such that Mestad caused plaintiff to actively bleed from her omentum, did not adequately obtain hemostasis, and never located the source of bleeding prior to completing the procedure. Where, as here, the opinion of a plaintiff's expert directly opposes the opinion of a defendant's expert, the result is a "classic battle of the experts that is properly left to a jury for resolution" (*Cooke v Corning Hosp.*, 198 AD3d 1382, 1383 [4th Dept 2021] [internal quotation marks omitted]; see *Peevey v Unity Health Sys.*, 196 AD3d 1139, 1140 [4th Dept 2021]; *Ferlito v Dara*, 306 AD2d 874, 874 [4th Dept 2003]). Contrary to defendants' contention, this is not a case where plaintiff's expert affidavit was " 'vague, conclusory, speculative, [or] unsupported by the medical evidence in the record' " (*Occhino*, 151 AD3d at 1871; see generally *Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 [2002]).

Inasmuch as Supreme Court did not address the alternative ground for summary judgment raised in Crouse's motion, we remit the matter to Supreme Court to consider that ground and determine the motion anew (see *Julius v County of Erie*, 196 AD3d 1058, 1059 [4th Dept 2021]; *Lundy Dev. & Prop. Mgt., LLC v Cor Real Prop. Co., LLC*, 181 AD3d 1180, 1181 [4th Dept 2020]).