

**Devine v Pinapati**

2009 NY Slip Op 33419(U)

May 26, 2009

Supreme Court, Albany County

Docket Number: 2493-06

Judge: John C. Egan, Jr.

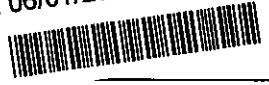
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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**JASON DEVINE and SHARON DEVINE, as parents  
and Natural Guardians of JOSEPH MAXIMUS DEVINE,  
an Infant, and JASON DEVINE and SHARON DEVINE,  
Individually,**

Plaintiffs,

-against-

**DECISION and ORDER**  
Index No: 2493-06  
RJI No:01-06-087496

**SUHASINI PINAPATI, M.D., MICHAEL P. LOONEY,  
M.D., VISITING NURSE ASSOCIATION OF ALBANY,  
INC., MARY HANNELL, R.N. C.P.C.N., IAN THOMAS  
COHEN, M.D., BRANKO FURST, M.D., KATHLEEN  
DONELLY, M.D., MARILYN A. FISHER, M.D., ALBANY  
MEDICAL COLLEGE and THE ALBANY MEDICAL  
CENTER HOSPITAL, DAYO LANIER, M.D., Individually,  
and as agent, servant and/or employee of SUHASINI PINAPATI,  
M.D., and/or SUHASINI PINAPATI, M.D., P.C.,  
SUHASINI PINAPATI, M.D., P.C.,**

Defendants.

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APPEARANCES:

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**O'CONNOR, O'CONNOR, BRESEE & FIRST, PC**

Attorneys for Defendant Michael Looney, M.D.

(Michele M. Monserrate, Esq.)

20 Corporate Woods Boulevard

Albany, New York 12211

**JOHN C. EGAN, JR., J.:**

This is a medical malpractice action commenced in April, 2006, in which it is alleged that the defendants negligently diagnosed and treated the infant plaintiff, which resulted the

infant plaintiff sustaining brain injuries and other damages<sup>1</sup>.

The defendant, Michael P Looney, M.D. (defendant Looney), moves, pursuant to CPLR §3212, for summary judgment dismissing the plaintiffs' complaint, arguing that the defendant Looney has no liability in this action, as his limited involvement in the care of the infant plaintiff was in accordance with standards of good and accepted medical practice. While plaintiffs assert that they can make a *prima facie* case against the defendant Looney based on his alleged deficient plan of care, they do not oppose the defendant Looney's motion. Specifically, plaintiffs assert that "...it is clear to the plaintiff that there were physicians at the Albany medical Center Hospital, which is a party to the action, who were on site and who made the decision to admit the infant plaintiff to the pediatric floor rather than the PICU and, further, that defendant Dayo Lanier, M.D., was present in the Hospital the morning of November 16, 2003, evaluated the infant at that time, and kept him on the regular pediatric floor. As a result, any malpractice by Dr. Looney would be subsumed by the physicians employed by Albany Medical Center Hospital (which has adequate insurance coverage for this claim), and the continued presence of Dr. Looney in the action will unnecessarily complicate trial of this action with no corresponding benefit to the infant plaintiff..."<sup>2</sup>

Accordingly, it is hereby

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<sup>1</sup>Plaintiffs also claim that the defendants failed to obtain the parents' informed consent prior to undertaking certain medical procedures and assert damages based on the loss of services, society and benefits.

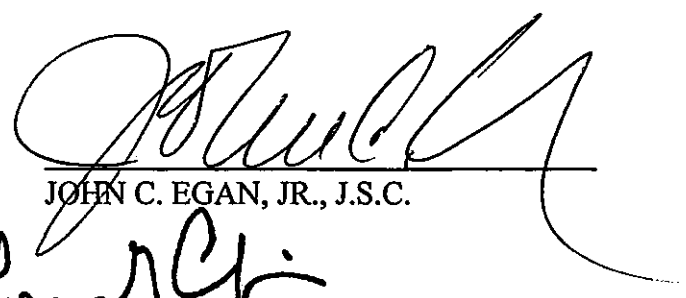
<sup>2</sup>Plaintiffs' counsel asserts the defendant Looney made this motion based on the co-defendant's refusal to stipulate to discontinue the action against the defendant Looney provided that there would be no apportionment of liability to Dr. Looney under General Obligations Law §15-108.

**ORDERED**, that the motion of the defendant Michael P. Looney, seeking an Order, pursuant to CPLR §3212, dismissing the complaint, is hereby granted. The parties are reminded of the Court's Scheduling Order dated March 26, 2009.

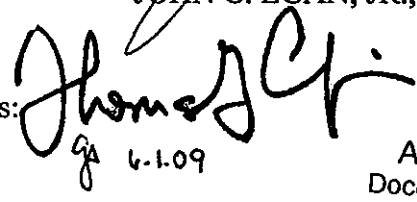
This memorandum shall constitute both the decision and the order of the Court. All papers, including this decision and order, are being returned to O'Connor, O'Connor, Bresee & First, PC. The signing of this decision and order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that section relating to filing, entry and notice of entry.

IT IS SO ORDERED.

Dated: May 26 2009  
Albany, New York

  
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JOHN C. EGAN, JR., J.S.C.

The Court considered the following papers:

  
ga 6-1-09

**By Plaintiffs:**  
Affidavit of Bruce A. Sutphin, Esq., sworn to on March 31, 2009.

**By Defendant Michael P. Looney, M.D.:**  
Notice of Motion, dated February 24, 2009;  
Affirmation of Michelle M. Monserrate, Esq., dated February 24, 2009, with Exhibits A-K;  
Affidavit of Roy Horowitz, M.D., sworn to on February 18, 2009, with Exhibit A.

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