

**Citera v County of Suffolk**

2011 NY Slip Op 31842(U)

June 29, 2011

Supreme Court, Suffolk County

Docket Number: 256-04

Judge: Daniel Martin

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**COPY**

**SUPREME COURT OF THE STATE OF NEW YORK  
I.A.S. PART 9 SUFFOLK COUNTY**

**PRESENT:**

**HON. DANIEL MARTIN**

\_\_\_\_\_ x

**MARK CITERA, as Administrator of the  
Goods, Chattels and Credits which were of  
JENNIE ETTA CITERA, deceased,**

**Plaintiff,**

**-against-**

**COUNTY OF SUFFOLK and  
FEDERATION EMPLOYMENT AND  
GUIDANCE SERVICES, INC.,**

**Defendants.**

\_\_\_\_\_ x

**INDEX NO.: 256-04**

Motion Date: 10/5/10

Submitted: 1/13/11

Motion Sequence No.: 05 - MD

06 - MD

**PLAINTIFF'S ATTY:**

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**The following named papers have been read on this motion:**

<b>Order to Show Cause/Notice of Motion</b>	<b>X</b>
<b>Cross-Motion</b>	
<b>Answering Affidavits</b>	<b>X</b>
<b>Replying Affidavits</b>	<b>X</b>

This is an action wherein the plaintiff, **MARK CITERA**, asserts that due to the negligence of the defendants, the plaintiff's decedent, **JENNIE ETTA CITERA**, was physically attacked and stabbed to death on May 6, 2003 by William Sancimo (Sancimo) who was a patient at a psychiatric out-patient program managed by the County of Suffolk and/or Federation Employment and Guidance Service (FEGS). The decedent, **JENNIE ETTA CITERA**, was the mother of William Sancimo. The complaint sounds in medical malpractice and negligence. It is alleged that FEGS was negligent in its psychiatric care and treatment of William Sancimo resulting in Sancimo

assaulting and stabbing his mother. It is further asserted that the County of Suffolk was negligent and assumed a special duty to the plaintiff and that the County of Suffolk breached that duty.

**FEDERATION EMPLOYMENT AND GUIDANCE SERVICES, INC.** seeks summary judgment dismissing the complaint asserted against it on the basis that it does not owe a duty of care to the plaintiff's decedent, and/or that there are no material issue of fact necessitating a trial.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (*Sillman v Twentieth Century-Fox Film Corporation*, 3 NY2d 395, 165 NYS2d 498 [1957]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v N.Y.U. Medical Center*, 64 NY2d 851, 487 NYS2d 316 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v N.Y.U. Medical Center, supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form and must "show facts sufficient to require a trial of any issue of fact" (CPLR 3212[b]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must present facts sufficient to require a trial of any issue of fact by producing evidentiary proof in admissible form (*Joseph P. Day Realty Corp. v Aeroxon Prods.*, 148 AD2d 499, 538 NYS2d 843 [2<sup>nd</sup> Dept 1979]) and must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (*Castro v Liberty Bus Co.*, 79 AD2d 1014, 435 NYS2d 340 [2<sup>nd</sup> Dept 1981]). Summary judgment shall only be granted when there are no issues of material fact and the evidence requires the court to direct a judgment in favor of the movant as a matter of law (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 416 NYS2d 790 [1979]).

In support of this motion, FECS has submitted, *inter alia*, an attorney's affirmation; copies of the summons and complaint, the defendants' answers, and the plaintiffs bill of particulars; unsigned copies of the transcripts of the examinations before trial of Mark Citera dated October 15, 2004, Pamela Grayden on behalf of FECS dated September 14, 2009, and John Clive Spiegel, M.D. dated April 15, 2010; a copy of the Order dated March 13, 2003 (Molia, J.); an uncertified copy of William Sancimo's medical records; an uncertified copy of a police report dated May 6, 2003; and the affirmation of Robert H. Levy, M.D.

Initially, the Court notes that the unsworn MV-104 police accident report constitutes hearsay and is inadmissible (*see, Lacagnino v Gonzalez*, 306 AD2d 250, 760 NYS2d 533 [2d Dept 2003]; *Hegy v Coller*, 262 AD2d 606, 692 NYS2d 463 [2d Dept 1999]). The unsigned copies of the aforementioned deposition transcripts are not in admissible form as required by CPLR 3212 (*see, Martinez v 123-16 Liberty Ave. Realty Corp.*, 47 AD3d 901, 850 NYS2d 201 [2<sup>nd</sup> Dept 2008]; *McDonald v Maus*, 38 AD3d 727, 832 NYS2d 291 [2<sup>nd</sup> Dept 2007]; *Pina v Flik Intl. Corp.*, 25 AD3d 772, 808 NYS2d 752 [2<sup>nd</sup> Dept 2006]), nor are they accompanied by an affidavit pursuant to CPLR 3116, and, therefore, are not considered on this motion. The copy of the medical records of

William Sancimo are not certified and thus not in admissible for pursuant to CPLR 3212.

The requisite elements of proof in a medical malpractice action are (1) a deviation or departure from accepted practice, and (2) evidence that such departure was a proximate cause of injury or damage (*Holton v Sprain Brook Manor Nursing Home*, 253 AD2d 852, 678 NYS2d 503 [2nd Dept 1998], *app denied* 92 NY2d 818, 685 NYS2d 420[1998]). To prove a prima facie case of medical malpractice, a plaintiff must establish that defendant's negligence was a substantial factor in producing the alleged injury (*see, Derdarian v Felix Contracting Corp.*, 51 NY2d 308, 434 NYS2d 166 [2<sup>nd</sup> Dept 1980]; *Prete v Rafla-Demetrious*, 221 AD2d 674, 638 NYS2d 700 [2<sup>nd</sup> Dept 1996]). Except as to matters within the ordinary experience and knowledge of laymen, expert medical opinion is necessary to prove a deviation or departure from accepted standards of medical care and that such departure was a proximate cause of the plaintiff's injury (*see, Fiore v Galang*, 64 NY2d 999, 489 NYS2d 47 [3<sup>rd</sup> Dept 1985]; *Lyons v McCauley*, 252 AD2d 516, 517, 675 NYS2d 375 [2<sup>nd</sup> Dept 1998], *app denied* 92 NY2d 814, 681 NYS2d 475 [1998]; *Bloom v City of New York*, 202 AD2d 465, 465, 609 NYS2d 45 [2<sup>nd</sup> Dept 1994]).

"Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions. Such credibility issues can only be resolved by a jury" (*Bengston v Wang*, 41 AD3d 625, 839 NYS2d 159 [2<sup>nd</sup> Dept 2007]). In the instant action, summary judgment is precluded in that the plaintiff and the defendant FECS have submitted affirmations which contain conflicting medical opinions.

Robert H. Levy, M.D. has set forth in his expert affirmation that he is a physician licensed to practice medicine in the State of New York and is board certified in psychiatry. He sets forth that he reviewed the relevant pleadings, the plaintiff's bill of particulars, the relevant medical records and deposition testimony (but does not identify those medical records he deems relevant or whose deposition testimony he reviewed and deemed relevant). Dr. Levy further states that his opinions are set forth with a reasonable degree of medical certainty and that it is his opinion that the psychiatric care provided to the non-party William Sancimo by the defendant did not in any way deviate from the accepted standards of medical and psychiatric care at any time and was not the proximate cause of any injuries sustained by the plaintiff's decedent. He further opines that FECS provided appropriate supervision of Sancimo at all times and that the supervision was in no way a proximate cause of the injuries sustained by the plaintiff's decedent.

Dr. Levy continues that in early 2003, Sancimo was a patient at Pilgrim Psychiatric Center (Pilgrim Psychiatric) for treatment for a schizophrenic disorder. In March 2003, Pilgrim Psychiatric petitioned the court for an order authorizing assisted out-patient treatment (AOT) for Sancimo pursuant to Mental Hygiene Law Section 9.60. Sancimo's history revealed that he had multiple hospitalizations for psychiatric care since the age of 15; assaulted hospital staff in a prior admission; and allegedly made a threat to kill the President. However, there was no reported history of threats or violence towards the decedent. Sancimo was released pursuant to the court order dated March 12, 2003 (Molia, J.) to live with his brother Mark Citera, initially. Dr. Levy states that FECS was assigned as a client and was responsible for providing outpatient services via its Assertive Community Treatment (ACT) team. At the time of this discharge, Sancimo was prescribed Seroquel (anti-psychotic) 350 mg/day and Trileptal (mood stabilizer) 1050 mg/day. On March 17, 2003, while Sancimo was living with Mark Citera's family, FECS conducted a psychological assessment of Sancimo who reported to FECS that he had a bipolar disorder and that when he becomes manic,

he becomes paranoid with auditory hallucinations. FEGS reported that he was compliant with taking his medications used to control psychotic symptoms of delusions/hallucinations and to stabilize his mood, and further found that Sancimo posed no suicidal or homicidal risk.

Dr. Levy states that Dr. John Clive Spiegel, the psychiatrist on the FEGS ACT team, performed an initial psychiatric evaluation on March 24, 2003, noting that Sancimo, when manic and psychotic, had a history of becoming belligerent, but he noted no unusual behavior and no delusions or hallucinations. Spiegel, states Levy, found Sancimo to be cooperative and that he posed no danger to himself or others. He lowered Sancimo's dose of Seroquel from 350 mg/day to 300 mg/day each night to offset the morning sedation Sancimo complained of. On March 28, 2003, the FEGS team saw Sancimo and gave him his weekly medication, noting no problems and no evidence of homicidal or suicidal ideation. On March 31, 2003, Jeffrey Gil, R.N., a FEGS ACT team member, made a home visit to assist Sancimo in stabilizing his mental health and Sancimo denied any feelings of depression or paranoia at the time. On April 2, 2003, Dr. Spiegel met with Sancimo, and the defendant's expert noted no "significant psychiatric events were reported," that Spiegel deemed Sancimo stable, determined that he posed no suicidal or homicidal risk, and continued his same dose of Seroquel and lowered the Trileptal to 450 mg twice a day due to excessive sedation. On April 15, 2003, when Pamela Grayden of the FEGS team and Nurse Gill made a home visit, Dr. Levy states Sancimo denied any paranoia and stated he was satisfied with his current medication. On April 18, 2003, when Dr. Spiegel saw Sancimo, he reported excellent stability on his current medication but Sancimo requested an "as needed" dose of Seroquel 25 mg should he feel anxious or overwhelmed on any given day. This medication was then provided to Sancimo on April 22, 2003. Sancimo call the hotline on April 22, 2003 in some distress and met with Nurse Gil complaining he felt overwhelmed by his financial and housing situation and that he was experiencing increased feelings of paranoia. Sancimo was noticed by Gil to be very anxious, stressed and slightly delusional so he was provided with extra doses of Seroquel to take as needed and was scheduled to see Dr. Spiegel the next day. When Dr. Spiegel examined Sancimo on April 23, 2003, he found Sancimo to be stable, but Sancimo reported that he failed to take his Trileptal which led to his anxiety the day before. Dr. Spiegel increased the Seroquel to 350 mg/day and found Sancimo had no signs or symptoms of overt psychosis or suicidal or homicidal ideation. However, on April 29, 2003, Sancimo contacted FEGS stating that his medications were not working, he was anxious and experiencing mood swings. On April 30, 2003, he met with Dr. Spiegel who added the drug Depakote to his medication regime with the expectation that it would eventually replace the Trileptal, but advised Sancimo he would have to continue on the Trileptal until the Depakote reached a therapeutic range. On May 2, 2003, Nurse Gil met with Sancimo and found him calm and cooperative. On May 5, 2003, the Suffolk County AOT program contacted Pamela Grayden of FEGS informing her that over the weekend Sancimo had been depressed, hostile and had been driving his car recklessly while his brother Mark was a passenger, and that Sancimo had been involved in a fistfight with another brother. Dr. Levy continued that the Suffolk County Police Department was contacted, but Sancimo was not taken into custody. Dr. Levy stated that Dr. Spiegel then made a house visit with Sancimo on May 5, 2003 and found Sancimo unshaven and irritable and warned Sancimo that this aggressive behavior could be construed as a psychiatric decompensation and could "trigger an ER visit." However, states Dr. Levy, Dr. Spiegel found no overt evidence of psychotic symptoms and found no risk of homicide or suicide, found him to be stable, and further found that Sancimo did not need ER evaluation or psychiatric admission. There were no further contacts between FEGS and Sancimo prior to Sancimo stabbing his mother to death on May 6, 2003.

Dr. Levy states that FEGS exercised an appropriate level of supervision at all times, found Sancimo posed no suicidal or homicidal risks, provided a medication regime and pill organizer, and verified Sancimo was taking his medications and demonstrated an understanding of his medication and the need for them. Dr. Levy further states that the psychiatric care was at all times appropriate and not a departure from the standard of care, that Sancimo did not show signs of decompensation in his mood or psychotic symptoms, that Sancimo only made a “vague threat” that the Accardis (Sancimo’s family and mother) are going down and that the threat was not necessarily one of violence or murder of the decedent, and that after Sancimo had this verbal confrontation on May 4, 2003 with various family members, he left the scene voluntarily and did not return to the scene to follow up on the alleged threat. Dr. Levy further opines that because there is “little evidence of any real threat of violence having been made by Sancimo” FEGS did not have reason to have him brought in for a hospital evaluation on May 4, 2003. He states that Dr. Spiegel’s decision not to have Sancimo seen at the ER for an evaluation was based on an appropriate exercise of professional judgment. Dr. Levy further opines that whether Sancimo was truly in a psychotic state when he attacked the decedent on May 6, 2003 is unclear, and that on May 5, 2003 when Dr. Spiegel examined Sancimo, he was not in such a state, and that even if Dr. Spiegel sent Sancimo to the ER for evaluation, that there is no basis to conclude he would have been admitted.

To rebut a prima facie showing of entitlement to an order granting summary judgment by the defendant, the plaintiff must demonstrate the existence of a triable issue of fact by submitting an expert’s affidavit of merit attesting to a deviation or departure from accepted practice, and containing an opinion that the defendant’s acts or omissions were a competent-producing cause of the injuries of the plaintiff (*see, Lifshitz v Beth Israel Med. Ctr-Kings Highway Div.*, 7 AD3d 759, 776 NYS2d 907 [2<sup>nd</sup> Dept 2004]; *Domaradzki v Glen Cove OB/GYN Assocs.*, 242 AD2d 282, 660 NYS2d 739 [2<sup>nd</sup> Dept 1997]).

In opposing this motion, Mike Citera has submitted a copy of his deposition transcript wherein he testified that William Sancimo, who is about 51 or 52 years of age, is his half brother. His mother, Jennie Citera, was living at 4 Stafford Street, Mastic, with his brother Paul when the incident occurred on May 6, 2003. He stated William Sancimo had a history of mental illness and had been previously arrested about four or five times due to violence involving his wife and others. He received Social Security for mental disability since about age fifteen and has been diagnosed as bipolar with schizophrenia. His family had to call the police about six or seven times in the past due to William’s violence. William was institutionalized several times as an adult. Just prior to the incident, had been hospitalized at Pilgrim State Psychiatric after threatening the President and getting involved with the Secret Service.

Citera stated Sancimo seemed to be becoming more violent and while hospitalized tried to choke another patient and had fist fights with a few people. He previously tried to choke his brother Joseph’s wife. At Pilgrim State, Sancimo was under the care of Dr. Thomas who discharged Sancimo on medication with instructions for the family to call the mobile crisis team or FEGS/ACT community treatment if needed. Sancimo was then under the care of Dr. Spiegel who lowered the dosage of Sancimo’s medication. It was noted that Sancimo was becoming more fidgety. On May 4, 2003, Sancimo came to Citera’s house looking for a phone book and seemed agitated and aggressive. Citera was having a family birthday party for one of his children, and his family, including siblings, their children, and his mother, were present. Sancimo had been invited. Because of Sancimo’s agitated condition, Citera tried to get him to go to Stony Brook Hospital for treatment,

but Sancimo refused and left. Citera called the mobile crisis team and was advised they would try to get there, but not that day. Sancimo returned later, not making sense and threatening to harm Citera and his mother, Jennie Citera, and her family, by saying the “Acardis are going down. Trust Me.” Acardis was Jennie Citera’s maiden name. The decedent was at Mark Citera’s home at the time this threat was made. The police were called and Sancimo left. The police advised Citera to call 911 if Sancimo returned and advised they would take him to Stony Brook Hospital.

Thereafter, Sancimo went to his brother Joseph’s house where the decedent was visiting and became involved in an altercation with Joseph. The police were called but Sancimo left. Citera tried calling FECS and ACT but they were not able to do anything for him, so he called Pilgrim State, but there was no doctor there and he was advised they could not help. Sancimo called him about 7:30 that evening from his own home, so Citera called the police to pick him up. However, the police did not arrive at Citera’s home until 1:00 a.m. When they arrived, they advised Citera that they would go see Sancimo but would not take him in. Citera stated he told the police not to go to Sancimo’s house if they were not going to take him to Stony Brook because there would be a blood bath as Sancimo will go house to house hurting people as a consequence. He told the police that Sancimo was a threat to the family and would hurt them and that he was capable of hurting them. He then gave the police the addresses of his brothers and sisters, including his mother’s address. The police advised they would go to Sancimo’s house in the morning. The next day the mobile crisis team called Citera and advised that FECS or ACT would be contacting him. Citera also called Dr. Thomas who said there was nothing she could do since Sancimo was not her patient as he was not in Pilgrim State. Pamela Grayden from FECS saw Sancimo and said she was not taking him in as he appeared heavily medicated. Thereafter, Sancimo called Citera and wanted to know “who called the cops.” The following day, his brother Joseph called him and told him something happened to their mother at their brother Paul’s house. Paul’s children found her and said “Grandma’s painting.” Jennie Citera, who was alone in the house with a ten month old baby, was found stabbed to death, but the baby was unharmed.

Mark Citera has also submitted an affidavit wherein he set forth some of William Sancimo’s background. Sancimo was his half-brother. Sancimo had been hospitalized at Pilgrim State from October 24, 2002 through March 12, 2003. About a week or so prior to May 6, 2003, he observed a change in Sancimo’s personality, including a return to his more agitated and violent ways. Sancimo was observed to be delusional and engaged in tirades where he would rant in an incomprehensible manner. Sancimo, he stated, believed that his mother was the president of a record company which was trying to rob him, and that his brother had engaged in improper relations with Sancimo’s daughter Leila.

The plaintiff has also submitted the expert affirmation of his expert, a physician licensed to practice medicine in the State of New York who is board certified in psychiatry and neurology with added qualifications in Forensic Psychiatry. In 2005, the plaintiff’s expert performed a psychiatric evaluation of William Sancimo, and as a result of the examination and review of medical records, it is the plaintiff’s expert’s opinion that on May 6, 2003, William Sancimo was suffering from a mental disease and that as a result of the acute symptoms of his mental illness, he lacked the capacity to appreciate the wrongfulness of his actions. On September 22, 2010, he conducted a forensic psychiatric review of the care and treatment provided by FECS to William Sancimo. The plaintiff’s expert has set forth the records he reviewed as well as the transcripts of the examinations before trial of Pamela Graydon, John Clive Spiegel, and also reviewed the Suffolk County Police Department

Arrest and Homicide reports. It is the plaintiff's expert's opinion with a reasonable degree of medical certainty that the psychiatric care provided by FECS and Dr. Spiegel deviated significantly from the accepted standards of medical and psychiatric care during the days immediately prior to Mr. Sancimo's offense. The plaintiff's expert opines that FECS departed from accepted standards of medical and psychiatric care by failing to provide adequate supervision to Sancimo as outlined by his Assisted Outpatient Treatment Order, and that these departures were the proximate causes of the injuries suffered by the plaintiff's decedent.

The plaintiff's expert sets forth that according to the AOT records, Mr. Sancimo had a history of noncompliance with psychiatric treatment resulting in his developing acute symptoms of his mental illness, including psychotic symptoms, paranoid delusions, threatening and dangerous behavior, and as a result of these repeated psychotic decompensations, Sancimo was hospitalized twice in the 36 months prior to the AOT order. He also engaged in violent behavior in the 48 months prior to the AOT order. He was deemed in need of AOT supervision in order to remain in the community. Pursuant to the AOT order, FECS had the obligation to consider requesting a removal order from the AOT team if Sancimo manifested evidence of non-compliance with treatment wherein he would have been forcibly removed by the Sheriff's Department to the CPEP program at Stony Brook Hospital for an evaluation of his need for inpatient psychiatric hospitalization.

The plaintiff's expert set forth that the April 22, 2003, the 11:00 p.m. ACT progress note states that Sancimo was not feeling well and wanted to talk to someone at the clinic and arrived the following morning at 11:00 a.m. appearing very anxious and distressed, stating he moved into his own apartment as he has no privacy at his brother's home and could not deal with it anymore. He was worried about his bills and felt his paranoia was increasing as he felt people are talking about him. The note continues that "Will was very anxious and stressed. he appeared slightly paranoid and delusional." The plaintiff's expert continues that a progress note dated April 29, 2003 contains additional hand-written note that read, "William called back to state that the medication is not working and that he is very anxious and is experiencing mood swings." The expert continues that a progress noted dated May 5, 2003 reads, "Christine from AOT telephoned to state that a family member had contacted Pilgrim hotline to state that William has been depressed, hostile and driving at excessive fast speed over the weekend while Mark was in the car. When Mark suggested that he go to the hospital William's anger escalated and he drove faster. Also William was involved in a fist fight with his brother Joseph and Police were called. The brothers refused to press charges therefore the Police left the residence." An addendum, he states, indicates, "Mark Citera, clt's brother telephoned to report the incident over the weekend. He stated that William is depressed, manic and hostile." In a progress noted dated May 5, 2003, Dr. Spiegel documents that Mr. Sancimo had been involved in "verbal and physical altercation with brother Joseph yesterday." He described Mr. Sancimo as "unshaven and a bit disheveled and irritable."

The plaintiff's expert notes that Dr. Spiegel warned Will "that because of his aggressive history and AOT order, he needs to be mindful that any kind of aggressive behavior on his part could be misconstrued as psychiatric decompensation and could trigger an ER visit" and that Spiegel added that "there was no overt evidence of psychotic symptoms noted. Will seemed in reasonable good behavioral control" and concluded that "Will is currently stable and does not presently need further ER evaluation or psychiatric admission at the present time." The plaintiff's expert opines that Dr. Spiegel failed to assess and diagnose Mr. Sancimo as being psychotic and in need of

psychiatric hospitalization; failed to consider the recent changes in his behavior reported to the ACT team; and that Mr. Sancimo's erratic and assaultive behavior were clear signals of his psychosis and of his need for a higher level of psychiatric care. The expert states that warning Mr. Sancimo that engaging in any aggressive behavior could lead to an ER visit instead of actually implementing such a visit was a departure from the acceptable standard of care for a patient with Mr. Sancimo's history, AOT status, and current psychotic symptoms; that Dr. Spiegel ignored evidence of Mr. Sancimo's acutely disturbed mental state and based his assessment solely on Mr. Sancimo's artificially controlled mental state at the time of his meeting with Sancimo; that Dr. Spiegel did not accurately diagnose Sancimo as being psychotic and failed to implement changes in his treatment plan that would have resulted in Sancimo being evaluated in an emergency room and likely admitted, and that such intervention would have directly prevented the injuries sustained by the plaintiff's decedent. Dr. Spiegel and FECS, states the plaintiff's expert, failed to invoke the removal clause of the AOT order and in so doing, deviated from the standard of care allowing Sancimo to remain in the community, and, as a result of his paranoid and psychotic mental state, caused the fatal injuries to the plaintiff's decedent.

The plaintiff's expert continues that according to the AOT records, FECS was aware that Sancimo had become non-compliant with his medications in the days prior to the incident as pill counts done by FECS revealed Sancimo had not been taking his medications as prescribed. The expert continues that FECS had reliable information that Sancimo, as a result of noncompliance, was beginning to manifest the acute symptoms of his chronic psychotic illness, which in the past had caused him to become violent, psychotic and delusional. He states that in the days prior to the act of violence, Sancimo's behavior became erratic and dangerous and he became paranoid and psychotic. The note of May 6, 2003 reads, "Dr. Siegel went to see William who denied any problems with his brother." Another note of May 2003 indicates there are too many pills in Sancimo's medication box, and after his medication had been reduced, they started seeing a difference and increased the dosages back to where they were. The ACT team considered requesting an AOT pick-up to have him evaluated, but Dr. Spiegel's and the FECS Act teams' failure to consider this evaluation was a departure from the standard of care for an AOT patient under their care, proximately causing the lethal injuries suffered by the plaintiff's decedent.

Here, the medical opinions set forth by the plaintiff's and FECS' expert are conflicting concerning the care and treatment rendered by FECS to William Sancimo and raise issues concerning whether the stated departures proximately caused the injuries and death of the plaintiff's decedent to be determined by the jury.

Accordingly, the motion by **defendant, FEDERATION EMPLOYMENT AND GUIDANCE SERVICES, INC.**, is denied.

Defendant, **COUNTY OF SUFFOLK**, seeks reargument of its prior motion (004) for summary judgment on the basis that there was no contact between the police officers and the plaintiff's decedent and on the basis that there was no proof that the plaintiff's decedent justifiably relied upon any action of the Suffolk County Police Department.

Pursuant to CPLR 2221(d)(2) a motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion. It is a basic principle that


a movant on reargument must show that the court overlooked or misapprehended the facts or law or for some reason mistakenly arrived at its earlier decision (*Bolos v Staten Island Hosp.*, 217 AD2d 643, 629 NYS2d 809 [2<sup>nd</sup> Dept 1995]). A motion to reargue is not to be used as a means in which an unsuccessful party is permitted to argue again the same issues previously decided (*Pahl Equipment Corp. v Kassis*, 182 AD2d 22, 588 NYS2d 8 [1<sup>st</sup> Dept 1984]). Nor does it provide an unsuccessful party with a second opportunity to present new or different arguments from those originally asserted (*Giovanniello v Carolona Wholesale Office Machine Co., Inc.*, 29 AD3d 737, 815 NYS2d 248 [2<sup>nd</sup> Dept 2006]). CPLR 2221(d)(3) additionally provides that a motion for leave to reargue shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. The County of Suffolk has timely moved for reargument.

In its prior application, the County of Suffolk sought summary judgment dismissing the complaint as asserted against it on the basis that the County of Suffolk was not involved in the discharge of William Sancimo from Pilgrim State Psychiatric Hospital, was not involved in the placement of Sancimo with FECS, did not provide medical/psychological/ psychiatric care to him, and owed no duty to the either Sancimo or the decedent. The County of Suffolk further asserts that it contracted with FECS, a State-funded program, to make community health services available to all families with mentally ill children in the County of Suffolk and that the County of Suffolk did not assume a special duty in this matter. In the instant action, the County of Suffolk has failed to demonstrate a basis for granting reargument and is attempting to argue again the same issues previously decided in its prior motion (004).

Accordingly, the motion by defendant, **COUNTY OF SUFFOLK**, is denied.

So Ordered.

Dated: June 29, 2011  
Riverhead, NY

  
HON. DANIEL MARTIN, A.J.S.C.