

<b>Ginsberg v Teshler</b>
2015 NY Slip Op 31500(U)
July 31, 2015
Supreme Court, New York County
Docket Number: 805123/2012
Judge: Joan B. Lobis
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: IAS PART 6**

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ARNOLD GINSBERG and GAIL GINSBERG,

Plaintiffs,

Index No. 805123/2012

-against-

**Decision, Order, and  
Judgment**

MARTIN S. TESHHER and MARTIN S. TESHHER M.D.,  
P.C.,

Defendants.

-----X  
**JOAN B. LOBIS, J.S.C.:**

In this action, plaintiff Arnold Ginsberg (“decedent”) asserts claims of medical malpractice against defendants Martin S. Teshher and Martin S. Teshher, M.D., P.C. (“defendants”). Currently, co-plaintiff Gail Ginsberg (“plaintiff”) seeks an Order: 1) substituting plaintiff as the Administratrix of decedent’s estate, 2) amending the caption accordingly, and 3) amending the pleadings to add a cause of action for wrongful death. For the reasons stated below, the motion is granted in part.

Decedent and plaintiff commenced this lawsuit on June 4, 2012 against defendants based on their alleged failure to properly manage decedent’s hypertension, which they claim resulted in serious injuries including a stroke and the development of toxic gastroenteritis and colitis. Decedent passed away on May 29, 2013 and plaintiff alleges his death was a result of defendants’ malpractice. Plaintiff received Letters of Administration on January 6, 2014 and brought this motion on December 22, 2014.

In support of the application to substitute plaintiff as Administratrix of decedent's estate, plaintiff submits a copy of decedent's death certificate and a copy of the Limited Letters of Administration which were issued to plaintiff. In support of the request to amend the pleadings, plaintiff cites to CPLR 3025(b) for the assertion that leave to amend pleadings may be given freely upon such terms as may be just. She also submits the affidavit of Americo Simonini, M.D. ("Dr. Simonini"), who is Board certified in internal medicine and cardiovascular disease, Board eligible in critical care medicine, and a fellow of the American College of Cardiology. Dr. Simonini opines that defendants' treatment of decedent departed from the standard of care, which resulted in decedent's death.

In opposition to the request to amend the pleadings, however, defendants state that branch of the motion is deficient under CPLR 3025(b) because plaintiff failed to furnish a copy of the proposed amended complaint. Defendants additionally argue that leave to amend should be denied because the proposed amendment lacks merit, and that leave to amend should be denied because plaintiffs unduly delayed the production of decedent for deposition, resulting in the deprivation of defendants' opportunity to ever depose him.

In reply, plaintiff raises challenges to most of defendants' arguments. Plaintiff does not deny that she failed to attach a copy of the proposed amended pleading to her motion, however. CPLR 3025(b) provides that "[a]ny motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading." Without a copy of the proposed amended pleading, the Court

is unable to determine its merit. Defendants have not opposed the branch of plaintiff's motion seeking to substitute plaintiff as Administratrix of decedent's estate.

Accordingly, it is

ORDERED that the motion is granted to the extent it seeks to substitute plaintiff as the Administratrix of decedent's estate and amend the caption accordingly; and it is further

ORDERED that the caption in this action is hereby amended to substitute GAIL GINSBERG, as ADMINISTRATRIX of the ESTATE of ARNOLD GINSBERG; and it is further

ORDERED all papers filed in this action from the date of entry of this Order through the end of the action shall bear the following caption:

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: IAS PART 6**

-----X  
GAIL GINSBERG, as ADMINISTRATRIX of the ESTATE  
of ARNOLD GINSBERG, deceased, and GAIL GINSBERG,  
individually,

Plaintiffs,

Index No. 805123/2012

-against-

MARTIN S. TESHAR and MARTIN S. TESHAR M.D.,  
P.C.,

Defendants.

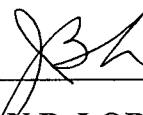
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ORDERED this Order shall be filed with Trial Support and the County Clerk for amendment of court records; and it is further

ORDERED that the motion is denied without prejudice to the extent it seeks to amend the pleadings to add a cause of action for wrongful death. Because the Court denies this prong of the motion, it does not reach the parties' additional arguments on this issue.

Dated: *July 31*, 2015

ENTER:



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**JOAN B. LOBIS, J.S.C.**