

Terry v McManus
2025 NY Slip Op 35602(U)
January 15, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 601917/2020
Judge: Frank A. Tinari
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SHORT FORM ORDER

INDEX No. 601917/2020

CAL. No. 202401042MM

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - SUFFOLK COUNTY**PRESENT:**Hon. FRANK A. TINARI
Justice of the Supreme CourtMOTION DATE 12/3/24
ADJ. DATE _____
Mot. Seq. # 005 MG-----X
JEFFREY TERRY and KRISTOFFERLENE
TERRY, Individually and as Administrators of
the Estate of JEZREEL KRISTLEA TERRY,

Plaintiffs,

- against -

MARIA MCMANUS, P.A., GRACE
GATHUNGU, M.D., ALEXANDER
SCHOSHEIM, M.D., MICHELLE TOBIN, M.D.,
ILANA HARWAYNE-GIDANSKY, M.D.,
BELLINY PHAETON, M.D., MARGARET
CONNOLLY, M.D., DANIEL SLONIEWSKY,
M.D., STONY BROOK CHILDREN'S
SERVICE UNIVERSITY FACULTY
PRACTICE CORPORATION and DAMIAN
FORLETTI, M.D.,Defendants.
-----XDUFFY & DUFFY, PLLC
Attorney for Plaintiffs
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Uniondale, NY 11556LAW OFFICES OF BENVENUTO & GAUJEAN
Attorney for Defendant Forletti, M.D.
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Roslyn, NY 11576BARKER PATTERSON NICHOLS, LLP
Attorney for Defendants McManus, P.A.,
Connolly, M.D. and Stony Brook
300 Garden City Plaza, Suite 100
Garden City, NY 11530BARTLETT, LLP
Attorney for Defendants Harwayne-Gidansky,
M.D. and Sloniewsky, M.D.
3 Huntington Quadrangle, Suite 304S
Melville, NY 11747

Upon the following papers read on this motion to discontinue the action : Notice of Motion/ Order to Show Cause and supporting papers by defendant Damian Forletti, M.D., filed November 7, 2024 ; Notice of Motion/Order to Show Cause and supporting papers ____; Answering Affidavits and supporting papers ____; Replying Affidavits and supporting papers ____; Other ____; it is

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ORDERED that the motion by defendant Damian Forletti, M.D., pursuant to CPLR 3217 (b) for an order discontinuing the action as asserted against him and amending the caption by striking his name is granted.

This is a medical malpractice action to recover damages for injuries allegedly arising from the treatment of plaintiffs' daughter, Jezreel Kristlea Terry, by defendant Damian Forletti, M.D., from August 3, 2018 to September 24, 2018. The Court's computerized records show that a note of issue and certificate of readiness were filed in this action on July 3, 2024. Subsequently, a stipulation discontinuing the claims against Dr. Forletti, dated August 6, 2024, was executed by counsel for plaintiff and Dr. Forletti. The other defendants refused to execute the stipulation of discontinuance. It is noted that the other defendants did not assert cross claims against Dr. Forletti in their respective answers.

Dr. Forletti now moves for an order "so-ordering" the August 6, 2024 stipulation of discontinuance. He submits, among other things, copies of the pleadings, a letter to co-defendants' counsel, and the stipulation of discontinuance. No papers were submitted in opposition.

Pursuant to CPLR 3217 (a), a plaintiff may voluntarily discontinue an action against a party by filing with the Clerk of the Court a written stipulation signed by the attorneys of record for all of the parties. The Court, as a matter of discretion, also has the authority under CPLR 3217 (b) to grant or deny a motion by "a party asserting a claim" to voluntarily discontinue an action. "[O]rdinarily[,] a party cannot be compelled to litigate and, absent special circumstances, discontinuance [under CPLR 3217] should be granted" (*Tucker v Tucker*, 55 NY2d 378, 383, 449 NYS2d 683 [1982]; see *Federal Natl. Mtge. Assn. v Biggs*, 172 AD3d 1322, 99 NYS3d 667 [2d Dept 2019]; *Turco v Turco*, 117 AD3d 719, 985 NYS2d 261 [2d Dept 2014]; *Muy v Robert Bosch Power Tool Corp.*, 80 AD3d 681, 914 NYS2d 670 [2d Dept 2011]; *Expedite Video Conferencing Servs., Inc. v Botello*, 67 AD3d 961, 890 NYS2d 82 [2d Dept 2009]).

In this case, as plaintiffs' counsel executed the stipulation of discontinuance and there is no opposition to the motion, the Court concludes that all parties consent to the discontinuance. Absent evidence that a voluntary discontinuance will cause prejudice or other improper consequences, the motion for an order discontinuing, with prejudice, plaintiffs' action against Dr. Forletti is granted.

The caption shall be amended by deleting Dr. Forletti, and the instant action is severed and shall continue as against the remaining defendants. The caption of this action is hereby amended to read as follows:

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
JEFFREY TERRY and KRISTOFFERLENE TERRY,
Individually and as Administrators of the Estate of
JEZREEL KRISTLEA TERRY,

Index No. 601917/2020

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-against-

MARIA MCMANUS, P.A., GRACE GATHUNGU, M.D.,
ALEXANDER SCHOSHEIM, M.D., MICHELLE
TOBIN, M.D., ILANA HARWAYNE-GIDANSKY, M.D.,
BELLINY PHAETON, M.D., MARGARET
CONNOLLY, M.D., DANIEL SLONIEWSKY, M.D.,
STONY BROOK CHILDREN'S SERVICE UNIVERSITY
FACULTY PRACTICE CORPORATION,

Defendants.
-----X

Dr. Forletti shall promptly serve a copy of this order with notice of its entry upon the parties and upon the clerk of the court, who shall mark the court's records to reflect the amended caption. Dr. Forletti also shall promptly serve upon the county clerk the notice required under CPLR 8019 (c) to amend the caption of this action as specified in this order.

Dated: January 15, 2025


J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION

TO: RUBIN PATERNITI GONZALEZ RIZZO KAUFMAN, LLP
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