

Duffy v Rubin
2025 NY Slip Op 35606(U)
January 27, 2025
Supreme Court, Nassau County
Docket Number: Index No. 606062/2019
Judge: Randy Sue Marber
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER****JUSTICE**

TRIAL/IAS PART 2

X

DIANE DUFFY,

Plaintiff,

Index No.: 606062/19

Motion Sequence...08

-against-

Motion Date...11/21/24

SHERMAN RUBIN, M.D.,
ANNIE FILS-AIME, M.D. and
ASSOCIATES IN OB-GYN CARE, P.C.,

Defendants.

X

Papers Submitted:

Notice of Motion.....X

Upon the foregoing papers, the unopposed motion by counsel for the deceased Plaintiff, DIANE DUFFY, seeking an Order, pursuant to CPLR §§ 1015 and 1021, substituting William John Duffy as Administrator of the Estate of deceased Plaintiff, DIANE DUFFY; amending the caption to reflect such substitution; and lifting the stay of this matter, is **GRANTED**.

In this medical malpractice action, the Plaintiff alleges that the Defendants deviated from good and accepted medical practice by failing to recommend timely testing, failing to properly examine and evaluate her, and failing to timely diagnose the Plaintiff with breast cancer.

This case has been certified and a note of issue was filed prior to the death of the Plaintiff. The Plaintiff, DIANE DUFFY, passed away on November 23, 2023, as a result of which this matter was marked stayed. At the time this matter was marked stayed, the case was on the DCM calendar.

On October 4, 2024, Letters of Administration were issued to the decedent's son, William John Duffy (*See* NYSCEF Doc. No. 191). On October 11, 2024, Plaintiff's counsel sent a proposed stipulation to substitute. However, defense counsel did not sign off on the stipulation and the within motion followed.

No opposition has been submitted in response to the relief requested herein.

The death of a party divests a court of jurisdiction to conduct proceedings in an action until a proper substitution has been made pursuant to CPLR § 1015 (a). In such a situation, proceedings in the action are automatically stayed (*Reed v. Grossi*, 59 A.D.3d 509, 511 [2d Dept. 2009]; *Rumola v. Maimonides Medical Center*, 37 A.D.3d 696 [2d Dept. 2007]; *Lugo v. GE Capital Auto Lease*, 36 A.D.3d 409, 410 [1st Dept. 2007]). Additionally, any order made after the death of a party, and before the substitution of a legal representative for the estate of the deceased, is, therefore, void (*Marte v. Graber*, 58 A.D.3d 1, 3 [1st Dept. 2006]; *Faraone v. National Academy of Television Arts & Sciences*, 296 A.D.2d 349 [1st Dept. 2002]).

Upon a party's death, an attorney's authority to act on behalf of the deceased client is terminated and the action is stayed pending the substitution of a legal

representative (CPLR § 1015; *Meehan v. Washington*, 242 A.D.2d 286, 287 [2d Dept. 1997]). Once a substitution has occurred, upon proper application and proof of all interested parties having been served, the relief sought by the Plaintiffs herein is appropriate.

It appears from a review of the documentation presented that all necessary parties have been served with notice of this application, and further, that the relief requested is appropriate.

Accordingly, it is hereby

ORDERED, that the unopposed motion by counsel for the deceased Plaintiff, DIANE DUFFY, seeking an Order, pursuant to CPLR §§ 1015 and 1021, substituting William John Duffy as Administrator of the Estate of deceased Plaintiff, DIANE DUFFY, is **GRANTED**, and WILLIAM JOHN DUFFY, as Administrator of the Estate of DIANE DUFFY, deceased, is hereby substituted in the place and stead of the deceased Plaintiff; and it is further

ORDERED, that the stay of this matter is hereby **LIFTED**; and it is further

ORDERED, that this matter shall appear on **the DCM Calendar of this Court on April 7, 2025 at 9:30 a.m. (or any other date/time as directed by the DCM Part)**; and it is further

ORDERED, that the Clerk of the Court is hereby directed to amend the caption of this matter to reflect the within substitution accordingly as follows:

WILLIAM JOHN DUFFY, as Administrator of the
Estate of DIANE DUFFY, deceased,

Plaintiff,

Index No.: 606062/19

-against-

SHERMAN RUBIN, M.D.,
ANNIE FILS-AIME, M.D. and
ASSOCIATES IN OB-GYN CARE, P.C.,

Defendants.

X

This constitutes the decision and Order of this Court.

DATED: Mineola, New York
January 27, 2025



Hon. Randy Sue Marber, J.S.C.

ENTERED

Jan 27 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE