

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT

B.D. v. Good Samaritan Hosp. Med. Ctr.

2026 NY Slip Op 02247 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2026) · No. 2022-01355 · Decided April 15, 2026

SUMMARY

The New York Appellate Division, Second Department, affirmed an order denying the plaintiffs' requests for a protective order concerning the infant plaintiff's deposition and disclosure of medical and pharmacy records. The court held that the plaintiffs did not show that the requested records were irrelevant, overbroad, or vague, and that the infant plaintiff was competent to testify without a preliminary examination.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; William G. Ford, J.; Lillian Wan, J.; Laurence L. Love, J.
JURISDICTION	New York Appellate Division, Second Department
DECIDED	April 15, 2026
DOCKET	2022-01355
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from an order of the Supreme Court, Kings County, denying portions of their CPLR 3103 motion seeking a protective order against deposition of the infant plaintiff and disclosure of specified medical and pharmacy records.
STANDARD OF REVIEW	The supervision of disclosure and imposition of reasonable disclosure terms and conditions are reviewed for an improvident exercise of the trial court's discretion.
PRECEDENTIAL VALUE	published
PARTIES	B.D., etc., et al. v. Good Samaritan Hospital Medical Center, et al.

TOPICS

discovery dispute

medical malpractice

medical records privacy

civil procedure

standard of review

PRACTICE AREAS

civil procedure

medical malpractice

health law

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appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court improvidently exercised its discretion by denying a CPLR 3103 protective order concerning disclosure of the infant plaintiff's medical and pharmacy records.
2. Whether the Supreme Court improvidently exercised its discretion by denying a protective order precluding the deposition of the infant plaintiff.
3. Whether the infant plaintiff was competent to testify without a preliminary examination.

HOLDINGS

1. The denial of the CPLR 3103 protective order was proper because plaintiffs failed to show that the hematologist and geneticist records were unrelated to the claimed injuries or that the pharmacy-record demand was overbroad or vague.
2. The denial of the protective order precluding the infant plaintiff's deposition was proper, and the court did not err in determining that the infant plaintiff was competent to testify without conducting a preliminary examination.

KEY QUOTATIONS

"It is a fundamental principle in civil litigation that '[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action'" (at 2)

"The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court and, absent an improvident exercise of that discretion, its determination will not be disturbed" (at 2)

"The party seeking a protective order bears the burden of showing that such relief is warranted" (at 2)

FACTUAL BACKGROUND

The action alleges that defendants failed to properly treat a Salter II fracture of the right leg of the then-four-year-old infant plaintiff, causing a limb-length discrepancy. Plaintiffs sought to prevent disclosure of medical and pharmacy records and to prevent the infant plaintiff from being deposed. The requested records included records from the infant plaintiff's hematologist and geneticist and certain pharmacy records.

PROCEDURAL HISTORY

Plaintiffs commenced a medical-malpractice action in 2016. After years of contentious discovery, they moved in December 2021 for a protective order. The Supreme Court, Kings County, denied the relevant branches of the motion by order dated January 18, 2022, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Slapo v. Winthrop Univ. Hosp., 186 AD3d 1281, 1282
- Kopelevich & Feldsherova, P.C. v. Geller Law Group, P.C., 222 AD3d 956, 957-958
- Venables v. Rovegno, 195 AD3d 876, 879
- Board of Mgrs. of Fishkill Woods Condominium v. Gottlieb, 184 AD3d 792, 794
- Moran v. Grand Slam Ventures, LLC, 221 AD3d 994, 996
- U.S. Bank Trust, N.A. v. Carter, 204 AD3d 727, 728
- Nimkoff v. Central Park Plaza Assoc., LLC, 123 AD3d 679, 680-681
- Cynthia B. v. New Rochelle Hosp. Med. Ctr., 60 NY2d 452, 462
- C.B. v. Park Ave. Pub. Sch., 172 AD3d 980, 982
- Serrano v. Lutheran Social Servs. of Metro. N.Y., Inc., 122 AD3d 608, 609
- Willis v. Cassia, 255 AD2d 800, 801-802
- Matter of Brian VV. v. Chenango Forks Cent. School Dist., 299 AD2d 803, 804
- Tuohy v. Gaudio, 87 AD2d 610, 611

OPINION

PER CURIAM.

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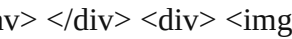
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April 15, 2026

Appellate Division, Second Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

B.

D., etc., et al., appellants,

v

Good Samaritan Hospital Medical Center, et al., respondents, et al., defendants.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on April 15, 2026

2022-01355, (Index No. 522559/16) Valerie Brathwaite Nelson, J.P. William G. Ford Lillian Wan Laurence L. Love, JJ. <div> <p>G.

Wesley Simpson, P.C., Brooklyn, NY, for appellants. Rubin Patenerti Gonzalez Rizzo Kaufman LLP, Garden City, NY (Jonathan Waldauer of counsel), for respondents Good Samaritan Hospital Medical Center, Vindhya Kamath, Jonathan D. Owens, Brian Ault, Allison Mangini, Jian Qiang An, Keith F. Chucheong, Howard Balbi, and Frank L. Sun. Furman Kornfeld & Brennan LLP, Garden City, NY (Andrew C. Tobman of counsel), for respondents Suffolk Medical, P.C., Halina Borowski, Richard Piccione, and Marie Conde. </div> [*1] <p>DECISION & ORDER</p> <p>In an action, inter alia, to recover damages for medical malpractice, the plaintiffs appeal from an order of the Supreme Court, Kings County (Lawrence Knipel, J.), dated January 18, 2022.

The order, insofar as appealed from, denied those branches of the plaintiffs' motion which were pursuant to CPLR 3103 for a protective order precluding the infant plaintiff from being deposed and precluding the disclosure of certain records. ORDERED that the order is affirmed insofar as appealed from, with one bill of costs to the respondents appearing separately and filing separate briefs. In 2016, the plaintiffs commenced this action, inter alia, to recover damages for medical malpractice, alleging, among other things, that the defendants failed to properly treat a Salter II fracture of the right leg of the then four-year-old infant plaintiff, thereby causing a limb length discrepancy. In December 2021, following years of contentious discovery, the plaintiffs moved, inter alia, pursuant to CPLR 3103 for a protective order precluding the infant plaintiff from being deposed and precluding the disclosure of certain records.

By order dated January 18, 2022, the Supreme Court, among other things, denied those branches of the plaintiffs' motion. The plaintiffs appeal. "It is a fundamental principle in civil litigation that '[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action'" (*Slapo v Winthrop Univ. Hosp.*, 186 AD3d 1281, 1282, quoting CPLR 3101[a]; *see* *Kopelevich & Feldsherova, P.C. v Geller Law Group, P.C.*, 222 AD3d 956, 957-958).

"The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court and, absent an improvident exercise of that discretion, its determination will not be disturbed" (*Venables v Rovegno*, 195 AD3d 876, 879 [internal quotation marks omitted]; *see* *Board of Mgrs. of Fishkill Woods Condominium v Gottlieb*, 184 AD3d 792, 794). "Pursuant to CPLR 3103(a), the Supreme Court may issue a protective order striking a notice for discovery and inspection that is palpably improper.

Discovery demands are palpably improper where they seek irrelevant information, are overbroad and burdensome... or fail to specify with reasonable particularity many of the documents

requested" (*Moran v Grand Slam Ventures, LLC*, 221 AD3d 994, 996, quoting *U.S. Bank Trust, N.A. v Carter*, 204 AD3d 727, 728). "The party seeking a protective order bears the burden of showing that such relief is warranted" (*Board of Mgrs. of Fishkill Woods Condominium v Gottlieb*, 184 AD3d at 794; *see* *Nimkoff v Central Park Plaza Assoc., LLC*, 123 AD3d 679, 680-681).

Here, the Supreme Court did not improvidently exercise its discretion in denying that branch of the plaintiffs' motion which was pursuant to CPLR 3103 for a protective order precluding the disclosure of certain medical and pharmacy records of the infant plaintiff.

Med. Ctr.

, 60 NY2d 452, 462; *C.B. v Park Ave. Pub. Sch.*, 172 AD3d 980, 982; *Serrano v Lutheran Social Servs. of Metro. N.Y., Inc.*, 122 AD3d 608, 609). Contrary to the plaintiffs' contention, the court did not err in determining that the infant plaintiff is competent to testify without conducting a preliminary examination (*see* *Serrano v Lutheran Social Servs. of Metro.*

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