

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

Coffey v. Mansouri

2022 NY Slip Op 05678 (App. Div. 2022) · No. 2019-05006 · Decided October 12, 2022

SUMMARY

The Appellate Division, Second Department, reversed an order denying summary judgment to the defendants in a medical malpractice action. The court held that the defendants established prima facie entitlement to judgment through expert evidence and that the plaintiff's opposing expert affidavit was conclusory and speculative because it did not identify the alternative vessel or provide competent support for the alleged departures from the standard of care.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Sheri S. Roman, J.; Joseph J. Maltese, J.; Lara J. Genovesi, J.
JURISDICTION	New York
DECIDED	October 12, 2022
DOCKET	2019-05006
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from an order denying their motion for summary judgment in a medical malpractice action.
STANDARD OF REVIEW	Summary judgment is appropriate where the moving defendant establishes prima facie entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact. In a medical malpractice action, a defendant physician must show either no departure from good and accepted medical practice or that the plaintiff was not injured thereby.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Mehran Mansouri, Hamid Noorollah, North Shore LIJ Plainview Hospital v. Bonnie Coffey

TOPICS

medical malpractice

summary judgment

standard of care

standard of review

appellate procedure

PRACTICE AREAS

medical malpractice

professional negligence

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the defendants established prima facie entitlement to summary judgment in the medical malpractice action.
2. Whether Coffey's opposing expert affidavit raised a triable issue of fact regarding departure from the accepted standard of medical care.

HOLDINGS

1. The defendants established prima facie entitlement to judgment as a matter of law by submitting their vascular-surgery expert's affirmation opining that the care and treatment rendered by Plainview Hospital, Mansouri, and Noorollah did not deviate from accepted medical standards.
2. Coffey failed to raise a triable issue of fact because her expert's opinions were conclusory and speculative, failed to identify which alternative vessel should have been used or where the bypass should have been performed, and lacked competent evidentiary support for the claimed failure to verify postoperative perfusion.

KEY QUOTATIONS

*"To prevail on a motion for summary judgment in a medical malpractice action, a defendant physician "must make a prima facie showing that there was no departure from good and accepted medical practice or that the plaintiff was not injured thereby"" (at *2)*

*"General and conclusory allegations of medical malpractice, . . . unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat a defendant physician's summary judgment motion"" (at *2)*

*"In order not to be considered speculative or conclusory, expert opinions in opposition should address specific assertions made by the movant's experts, setting forth an explanation of the reasoning and relying on specifically cited evidence in the record"" (at *2)*

FACTUAL BACKGROUND

On February 11, 2013, Bonnie Coffey underwent right femoral popliteal bypass surgery at Plainview Hospital. The surgery was performed by vascular surgeon Mehran Mansouri, assisted by physician assistant Hamid Noorollah, but was unsuccessful. Two additional bypass surgeries also failed, and Coffey underwent a right leg below-knee amputation on May 2, 2013. Coffey alleged that Mansouri's negligence during the first bypass surgery caused the amputation.

PROCEDURAL HISTORY

Bonnie Coffey sued, among others, vascular surgeon Mehran Mansouri, physician assistant Hamid Noorollah, Plainview Hospital, and North Shore Long Island Jewish Health System, Inc., alleging that negligence during bypass surgery led to amputation of her right leg. After discovery, the defendants moved for summary judgment. The Supreme Court, Nassau County, granted summary judgment to North Shore Long Island Jewish Health System, Inc., but denied the remaining branches of the motion. The Appellate Division reversed insofar as appealed from and granted summary judgment to Mansouri, Noorollah, and Plainview Hospital.

DISPOSITION

reversed

CASES CITED

- Stukas v. Streiter, 83 AD3d 18, 24
- Matthis v. Hall, 173 AD3d 1162, 1163
- Spilbor v. Styles, 191 AD3d 722, 723
- Myers v. Ferrara, 56 AD3d 78, 84
- Tsitrin v. New York Community Hosp., 154 AD3d 994, 996
- Matter of Joseph v. City of New York, 74 AD3d 440
- Schwartz v. Partridge, 179 AD3d 963, 965
- Wagner v. Parker, 172 AD3d 954, 955