

APPELLATE DIVISION, FIRST DEPARTMENT, SUPREME COURT OF THE
STATE OF NEW YORK

Hinkson v. New York-Presbyt. Queens

Hinkson, 2025 NY Slip Op 07095 (Appellate Division First Department Supreme Court of the State of New York 2025) · No. Index No. 153104/18; Appeal No. 5428; Case No. 2024-01885 · Decided December 18, 2025

SUMMARY

The Appellate Division, First Department, reversed an order denying the City of New York and FDNY EMS's motion to dismiss or for summary judgment in a medical malpractice action. The court held that the plaintiff failed to establish or sufficiently allege a special duty, and that the derivative loss-of-services claim therefore could not survive independently.

CASE DETAILS

COURT	Appellate Division, First Department, Supreme Court of the State of New York
WRITING FOR THE COURT	Kern, J.P.; Scarpulla, J.; Friedman, J.; Shulman, J.
JURISDICTION	Appellate Division, First Department, New York
DECIDED	December 18, 2025
DOCKET	Index No. 153104/18; Appeal No. 5428; Case No. 2024-01885
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants The City of New York and FDNY EMS appealed from an order denying their motion to dismiss under CPLR 3211(a)(7) or, alternatively, for summary judgment dismissing the complaint against them.
STANDARD OF REVIEW	The court reviewed the denial of a CPLR 3211(a)(7) motion and the alternative summary judgment motion for legal error and determined that dismissal was warranted because plaintiff failed to establish or sufficiently allege a special duty.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	The City of New York, FDNY EMS v. Ebony Hinkson, etc., et al., Drew Guadalupe

TOPICS

medical malpractice

municipal liability

motions to dismiss

summary judgment

appellate procedure

PRACTICE AREAS

medical malpractice

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QUESTIONS PRESENTED

1. Whether the complaint sufficiently alleged or established a special duty owed by the City Defendants to the infant decedent to support a medical malpractice claim against the municipality and FDNY EMS.
2. Whether the evidence submitted in opposition to summary judgment established a triable issue of fact concerning the existence of a special duty.
3. Whether the derivative loss-of-services claim could survive independently after dismissal of the underlying medical malpractice claim.
4. Whether plaintiff's purported supplemental bill of particulars could be considered when it was actually an amended bill served after the note of issue without leave of court.

HOLDINGS

1. The medical malpractice claim against the City of New York and FDNY EMS must be dismissed because plaintiff failed to allege or establish the existence of a special duty.
2. The 911 operator's assurance that an ambulance was on its way did not establish a special duty beyond the duty to dispatch an ambulance, and any special duty created by that assurance was fulfilled when the first ambulance arrived five minutes later.
3. The loss-of-services claim could not survive independently because it was derivative of the dismissed medical malpractice claim.
4. The document submitted as a supplemental bill of particulars could not be considered because it was actually an amended bill served after the note of issue and without leave of court.

KEY QUOTATIONS

“The medical malpractice claim should have been dismissed as against defendants The City of New York and FDNY EMS (the City Defendants) based on the absence of a special duty” ([*1])

“It is not enough that they arrived and provided treatment because that is what emergency responders do for any member of the public” ([*1])

“any special duty created by the 911 operator's purported assurance that the ambulance was on its way was fulfilled when the first ambulance” ([*1])

FACTUAL BACKGROUND

An infant decedent's grandmother called 911, and a 911 operator assured her that an ambulance was on its way. A New York-Presbyterian EMS ambulance arrived five minutes later, while an FDNY advanced-life-support ambulance dispatched at the same time arrived approximately 14 minutes after the call. Plaintiff challenged the

delay in transport by the NYP-EMS ambulance and the FDNY paramedics' alleged failure to properly intubate the decedent, and asserted medical malpractice and derivative loss-of-services claims against the City Defendants.

PROCEDURAL HISTORY

Supreme Court, New York County, denied the City Defendants' motion. The Appellate Division, First Department, reversed the order, granted the motion, and directed the Clerk to enter judgment accordingly.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The motion of The City of New York and FDNY EMS was granted, and the Clerk was directed to enter judgment accordingly. No further remand instructions were stated.

CASES CITED

- *Ferreira v City of Binghamton*, 38 NY3d 298, 304, 308-316 [2022]
- *Applewhite v Accuhealth, Inc.*, 21 NY3d 420, 425-431 [2013]
- *Velasquez-Spillers v Infinity Broadcasting Corp.*, 51 AD3d 427, 428 [1st Dept 2008]
- *Paisley v Coin Device Corp.*, 5 AD3d 748, 750 [2d Dept 2004]
- *Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141-142 [2017]
- *Stovall v Lenox Hill Hosp.*, 200 AD3d 570, 571 [1st Dept 2021]
- *Gaisor v Gregory Madison Ave., LLC*, 13 AD3d 58, 59-60 [1st Dept 2004]
- *Leon v Martinez*, 84 NY2d 83, 88 [1994]
- *Betancourt v City of New York*, 237 AD3d 597, 598 [1st Dept 2025]
- *Estate of Kyle A. v New York City Hous. Auth.*, 181 AD3d 492, 493 [1st Dept 2020]
- *Brown v Transcare N.Y., Inc.*, 27 AD3d 350, 351 [1st Dept 2006]

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