

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

Black v. Taub

2026 NY Slip Op 01177 (App. Div. 2d Dep't 2026) · No. 2024-06143; 2024-06656 · Decided March 4, 2026

SUMMARY

The Appellate Division, Second Department affirmed a judgment dismissing a medical malpractice complaint against emergency medicine physician Steven Piriano. The court held that although the plaintiff established a reasonable excuse for her default in opposing the physician's summary judgment motion, she failed to show a potentially meritorious opposition because she did not submit a medical expert affirmation. The court also dismissed the appeal from the intermediate order because the right to directly appeal that order terminated upon entry of judgment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Barry E. Warhit, J.; Janice A. Taylor, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	March 4, 2026
DOCKET	2024-06143; 2024-06656
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from an order denying her motion under CPLR 5015(a)(1) to vacate an order entered upon her default in opposing the defendant's summary-judgment motion, and from the resulting judgment dismissing the medical-malpractice complaint against the defendant.
STANDARD OF REVIEW	A motion to vacate a default under CPLR 5015(a)(1) requires both a reasonable excuse for the default and a potentially meritorious opposition. The Appellate Division reviewed the denial of the motion and the resulting judgment for whether the Supreme Court providently exercised its discretion and properly applied that standard.
PRECEDENTIAL VALUE	Published New York Appellate Division decision

PARTIES

Shauna Black v. Steven Piriano

TOPICS

medical malpractice

summary judgment

civil procedure

appellate procedure

standard of review

PRACTICE AREAS

medical malpractice

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QUESTIONS PRESENTED

1. Whether the appeal from the February 29, 2024 order had to be dismissed because entry of the April 23, 2024 judgment terminated the right to a direct appeal from the order.
2. Whether the plaintiff demonstrated both a reasonable excuse for her default in opposing the defendant's summary-judgment motion and a potentially meritorious opposition sufficient to vacate the default under CPLR 5015(a)(1).
3. Whether the plaintiff demonstrated a potentially meritorious medical-malpractice opposition by submitting evidence, including a medical-expert affirmation, rebutting the defendant's expert proof.

HOLDINGS

1. The appeal from the order must be dismissed because the plaintiff's right to take a direct appeal from that order terminated upon entry of the judgment.
2. A party seeking to vacate an order or judgment entered upon a default in opposing a motion must demonstrate both a reasonable excuse for the default and a potentially meritorious opposition to the motion.

KEY QUOTATIONS

“A party seeking to vacate an order or judgment entered upon his or her default in opposing a motion must demonstrate both a reasonable excuse for the default and a potentially meritorious opposition to the motion”
(at *2)

“However, the Supreme Court properly determined that the plaintiff failed to demonstrate a potentially meritorious opposition to that branch of the defendant's motion which was for summary judgment dismissing the complaint insofar as asserted against him.” (at *2)

FACTUAL BACKGROUND

In February 2021, Shauna Black presented to a hospital emergency room with abdominal pain, and a CT scan revealed a mild anterior mediastinal soft-tissue density. She was later diagnosed with stage-four thymoma cancer. Black alleged that emergency-medicine physician Steven Piriano negligently failed to recognize and assess the CT finding. Piriano's expert opined that he properly appreciated, documented, and relayed the finding and that his care complied with accepted medical practice and did not proximately cause Black's alleged injuries.

PROCEDURAL HISTORY

The defendant moved for summary judgment dismissing the medical-malpractice claims against him, and the Supreme Court, Orange County, granted the motion as unopposed on January 8, 2024. The plaintiff then moved to vacate that order under CPLR 5015(a)(1). The Supreme Court denied the motion on February 29, 2024, and entered judgment dismissing the complaint against the defendant on April 23, 2024. The Appellate Division dismissed the appeal from the order because direct appellate review terminated upon entry of judgment, reviewed the order's issues on the appeal from the judgment, and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Matter of Aho, 39 NY2d 241, 248
- Gellert v. Shannon, 215 AD3d 805, 806
- Schenk v. Staten Is. Univ. Hosp., 108 AD3d 661, 662
- Bank of Am., N.A. v. Murjani, 199 AD3d 630, 631
- Charles v. Nouveau El. Indus., Inc., 228 AD3d 612, 613-614
- Percival v. Northwell Health Sys., 173 AD3d 916, 918
- Gilmore v. Garvey, 31 AD3d 381, 382

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