

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

Ashley v. Upstate Emergency Medicine, Inc.

Ashley, 2026 NY Slip Op 01689 (Supreme Court of the State of New York Appellate Division Fourth Judicial Department 2026) · No. 890 CA 25-00150 · Decided March 20, 2026

SUMMARY

The New York Appellate Division, Fourth Department unanimously affirmed an order denying defendants' motion for summary judgment in a medical malpractice action involving an alleged failure to diagnose and treat a spinal abscess. The court held that plaintiff's expert submissions raised triable issues concerning the applicable standard of care and alleged departures by the physician assistant. The court also concluded that claims against the supervising physician and his employer could proceed based on alleged supervisory responsibility and respondeat superior.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Smith, J.; Greenwood, J.; DelConte, J.; Hannah, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
DECIDED	March 20, 2026
DOCKET	890 CA 25-00150
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order denying their motion for summary judgment dismissing a medical malpractice complaint.
STANDARD OF REVIEW	Summary judgment is proper only where the movant establishes entitlement to judgment as a matter of law; in a medical malpractice action, defendants must initially establish either no departure from the applicable standard of care or that any departure did not proximately cause the plaintiff's injuries. If defendants meet that burden, the plaintiff must submit expert proof raising a triable issue of fact.
PRECEDENTIAL VALUE	Published Appellate Division opinion; precedential under New York law, subject to correction before publication in the Official Reports.

PARTIES

Upstate Emergency Medicine, Inc., Anthony J. Klimek, III, M.D.,
Diane B. Tschudi, P.A. v. Justin K. Ashley

TOPICS

medical malpractice professional negligence summary judgment standard of care vicarious liability

PRACTICE AREAS

medical malpractice health law civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether defendants established entitlement to summary judgment by showing that they did not depart from the applicable medical standard of care or that any departure did not proximately cause plaintiff's injuries.
2. Whether plaintiff's New Jersey-licensed emergency-room expert was sufficiently familiar with the New York standard of care to raise a triable issue of fact.
3. Whether plaintiff's expert affidavits were conclusory or speculative.
4. Whether Klimek established as a matter of law that he appropriately supervised Tschudi and was not medically responsible for her alleged malpractice.
5. Whether UEM was entitled to summary judgment on plaintiff's respondeat superior claim because Klimek was employed by UEM.

HOLDINGS

1. Plaintiff's expert, a New Jersey-licensed emergency-room physician, was sufficiently qualified to opine on the applicable New York standard of care because he had worked in New York emergency rooms, worked with New York physicians, and stated that New York applied the same emergency-room standard of care as New Jersey and nationally.
2. Plaintiff raised a triable issue of fact concerning whether Tschudi departed from the applicable standard of care by submitting expert affidavits from a qualified emergency-room physician.
3. Klimek was not entitled to summary judgment because he failed to establish as a matter of law that he appropriately supervised Tschudi or that he was not medically responsible for her alleged malpractice.
4. UEM was not entitled to summary judgment because plaintiff's claims against Klimek remained viable and it was undisputed that Klimek was employed by UEM.

KEY QUOTATIONS

"Instead, the opinions present "a classic battle of the experts that is properly left to a jury for resolution""
([*2])

FACTUAL BACKGROUND

Justin K. Ashley presented to an emergency room at a nonparty hospital with severe upper back pain. He alleged that Diane B. Tschudi, P.A., and her supervising physician, Anthony J. Klimek, III, M.D., failed to timely and properly diagnose and treat his spinal abscess, causing injuries. Upstate Emergency Medicine, Inc., which employed Klimek, was sued on a respondeat superior theory.

PROCEDURAL HISTORY

Plaintiff commenced a medical malpractice action alleging negligent diagnosis and treatment of a spinal abscess and vicarious liability against his treating providers' employer. Defendants moved for summary judgment. Supreme Court, Onondaga County, denied the motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Zielinski v. Blessios, 227 A.D.3d 1385, 1386 (4th Dep't 2024)
- Kristie M. v. Mercy Hosp. of Buffalo, 240 A.D.3d 1228, 1229 (4th Dep't 2025)
- Bubar v. Brodman, 177 A.D.3d 1358, 1359 (4th Dep't 2019)
- M.C. v. Huntington Hosp., 175 A.D.3d 578, 580-581 (2d Dep't 2019)
- Nestorowich v. Ricotta, 97 N.Y.2d 393, 398 (2002)
- Sanchez v. VanRiper, 217 A.D.3d 1358, 1359 (4th Dep't 2023)
- Mason v. Adhikary, 159 A.D.3d 1438, 1439 (4th Dep't 2018)
- Clark v. Rachfal, 207 A.D.3d 1173, 1176 (4th Dep't 2022), amended on reargument, 210 A.D.3d 1456 (4th Dep't 2022)
- Fargnoli v. Warfel, 186 A.D.3d 1004, 1005 (4th Dep't 2020)
- Kubera v. Bartholomew, 167 A.D.3d 1477, 1481 (4th Dep't 2018)
- Judith M. v. Sisters of Charity Hosp., 93 N.Y.2d 932, 933 (1999)