

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

J.L. v. Sklar

2026 NY Slip Op 01952 · No. 2020-04092 · Decided April 1, 2026

SUMMARY

The Appellate Division, Second Department, reversed portions of a Supreme Court, Kings County, order granting summary judgment to an obstetrician, her practice, and a medical center in a medical malpractice action. The court held that the defendants failed to establish prima facie entitlement to judgment because their expert submissions did not address specific malpractice allegations or eliminate triable issues concerning labor induction, vacuum extraction, cesarean delivery, hospital staff negligence, and causation. The court also reversed the dismissal of derivative loss-of-services claims.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Linda Christopher, J.; Barry E. Warhit, J.; Helen Voutsinas, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 1, 2026
DOCKET	2020-04092
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed from an order granting separate defendants' motions for summary judgment dismissing the medical-malpractice and loss-of-services causes of action against them.
STANDARD OF REVIEW	Summary judgment is appropriate only where the moving party establishes entitlement to judgment as a matter of law. In a medical-malpractice action, the defendant must establish prima facie that there was no departure from accepted medical practice or that any departure was not a proximate cause of injury; the defendant must address and rebut the specific malpractice allegations in the complaint and bill of particulars.
PRECEDENTIAL VALUE	Published intermediate appellate decision

PARTIES

J.L., etc., et al. v. Elaine Sklar, etc., et al., Boro Park Obstetrics and Gynecology, P.C., Maimonides Medical Center

TOPICS

medical malpractice

professional negligence

standard of care

standard of review

appellate procedure

PRACTICE AREAS

medical malpractice

health law

torts

appellate procedure

QUESTIONS PRESENTED

1. Whether Sklar and Boro Park established prima facie entitlement to summary judgment on the medical-malpractice claims by demonstrating no departure from accepted medical practice or no proximate causation.
2. Whether Maimonides established prima facie entitlement to summary judgment by eliminating triable issues concerning independent negligence by its employees and proximate causation.
3. Whether the derivative loss-of-services claims should also be dismissed on summary judgment.

HOLDINGS

1. Sklar and Boro Park failed to establish prima facie entitlement to judgment as a matter of law because their expert affirmation did not address specific malpractice allegations and did not eliminate triable issues concerning the medication dosage, vacuum extraction, possible need for emergency cesarean section, and proximate causation.
2. Maimonides failed to establish prima facie entitlement to summary judgment because its experts did not eliminate triable issues concerning independent negligent acts by hospital staff, and its neonatologist's affirmation was conclusory and insufficient.
3. The loss-of-services claims also should not have been dismissed because they are derivative and the medical-malpractice claims against the defendants remained viable.

KEY QUOTATIONS

“The elements of a medical malpractice cause of action are a deviation or departure from accepted community standards of practice, and that such departure was a proximate cause of the plaintiff's injuries” ([*1])

“In moving for summary judgment dismissing a cause of action alleging medical malpractice, a defendant must establish, prima facie, that there was no departure or deviation from the accepted standard of care or that such departure or deviation was not a proximate cause of any injury to the plaintiff” ([*1])

“In order to sustain this prima facie burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff's complaint and bill of particulars” ([*1])

*“Although, generally, a hospital cannot be held vicariously liable for the negligence of a private attending physician, concurrent liability will be imposed where, inter alia, a hospital's employees commit independent acts of negligence” ([*1])*

FACTUAL BACKGROUND

The plaintiffs alleged that Elaine Sklar, Boro Park Obstetrics and Gynecology, P.C., and Maimonides Medical Center deviated from accepted medical practice during the mother's labor and the infant plaintiff's delivery at Maimonides. The alleged departures included ordering an improper medication dosage to induce labor and attempting vacuum extraction instead of performing an emergency cesarean section despite indications of uterine tachysystole. Plaintiffs alleged resulting injuries to both the mother and the infant plaintiff, as well as derivative loss-of-services claims.

PROCEDURAL HISTORY

Plaintiffs commenced an action alleging medical malpractice arising from labor and delivery at Maimonides Medical Center. Elaine Sklar and Boro Park Obstetrics and Gynecology, P.C., and separately Maimonides Medical Center, moved for summary judgment. The Supreme Court, Kings County, granted the challenged branches of the motions, and the Appellate Division reversed insofar as appealed from and denied those branches.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The challenged branches of the separate summary-judgment motions by Sklar and Boro Park, and by Maimonides, are denied. The opinion does not state additional remand instructions.

CASES CITED

- Schwartz v. Partridge, 179 A.D.3d 963, 964
- Barnaman v. Bishop Hucles Episcopal Nursing Home, 213 A.D.3d 896, 898
- Attia v. Klebanov, 192 A.D.3d 650, 651
- Daniels v. Pisarenko, 222 A.D.3d 831, 832
- Wiater v. Lewis, 197 A.D.3d 782, 783
- Martinez v. Orange Regional Med. Ctr., 203 A.D.3d 910, 912
- Danziger v. Mayer, 236 A.D.3d 755, 758
- Huichun Feng v. Accord Physicians, PLLC, 194 A.D.3d 795, 797
- Smarkucki v. Kleinman, 171 A.D.3d 1118, 1119
- Rosenstack v. Wong, 106 A.D.3d 804, 805
- Pezulich v. Grecco, 206 A.D.3d 827, 829

- Corletta v. Fischer, 101 A.D.3d 929, 930
- Hiegel v. Orange Regional Med. Ctr., 219 A.D.3d 910, 914
- Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853
- Buzeska v. Crystal Run Healthcare Physicians, LLP, 234 A.D.3d 656, 659
- Sokoloff v. Schor, 176 A.D.3d 120, 133

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