

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

Gupta v. Long Is. Jewish Med. Ctr.

Gupta, 2026 N.Y. Slip Op. 02106 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2021-03211 · Decided April 8, 2026

SUMMARY

The Appellate Division, Second Department, modified an order granting summary judgment to medical defendants in an action involving alleged medical malpractice and wrongful death. The court held that the plaintiff’s expert affirmation raised triable issues of fact concerning departures from accepted medical standards and causation. The court affirmed dismissal of the loss-of-services claim because it was time-barred and did not relate back to the original complaint.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Colleen D. Duffy, J.P.; William G. Ford, J.; Donna-Marie E. Golia, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	April 8, 2026
DOCKET	2021-03211
DISPOSITION	other
PROCEDURAL POSTURE	The plaintiff appealed from an order granting the defendants summary judgment dismissing the medical-malpractice, wrongful-death, and loss-of-services causes of action.
STANDARD OF REVIEW	On a motion for summary judgment in a medical-malpractice action, the defendant must make a prima facie showing of no departure from accepted medical practice or that the plaintiff was not injured thereby; once that burden is met, the plaintiff must demonstrate a triable issue of fact.
PRECEDENTIAL VALUE	published
PARTIES	Savita Gupta, as administrator of the estate of Reginald Tewari v. Long Island Jewish Medical Center, Elizabeth A. Brothers, Brendan A.

TOPICS

medical malpractice

summary judgment

wrongful death

statute of limitations

appellate procedure

PRACTICE AREAS

medical malpractice

wrongful death

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the plaintiff's expert affirmation raised a triable issue of fact concerning departures from accepted standards of medical care and proximate causation after the defendants established their prima facie entitlement to summary judgment.
2. Whether the plaintiff's wrongful-death claim was subject to dismissal on summary judgment.
3. Whether the derivative loss-of-services claim was timely and related back to the original complaint.

HOLDINGS

1. Summary judgment should have been denied because the plaintiff's expert affirmation raised triable issues of fact as to whether the defendants departed from accepted standards of care and whether those departures proximately caused the decedent's injuries and death.
2. Summary judgment should have been denied on the wrongful-death claim because the plaintiff's expert raised triable issues concerning medical departures and proximate causation of the decedent's death.
3. The loss-of-services claim was time-barred because it was interposed after expiration of the limitations period governing the underlying medical-malpractice claim and did not relate back to the original complaint, which did not give notice that a loss-of-services claim would be asserted.

KEY QUOTATIONS

"The purpose of a bill of particulars is to amplify pleadings, limit proof, and prevent surprise at trial, not to provide evidentiary material" ([*2])

FACTUAL BACKGROUND

Reginald Tewari received treatment and care at Long Island Jewish Medical Center in October 2014 and later died. The estate alleged that the medical defendants' departures from accepted medical practice caused the decedent's injuries and death. After Savita Gupta became the estate administrator, she added a derivative claim for loss of services.

PROCEDURAL HISTORY

The Public Administrator of Queens County commenced the action in 2016 concerning the decedent's treatment at Long Island Jewish Medical Center in October 2014. Savita Gupta was later substituted as administrator and served an amended complaint adding a derivative loss-of-services claim. Supreme Court, Queens County,

granted the defendants summary judgment on the medical-malpractice, wrongful-death, and loss-of-services claims; the Appellate Division modified that order by denying summary judgment on the medical-malpractice and wrongful-death claims while affirming dismissal of the loss-of-services claim.

DISPOSITION

other

REMAND INSTRUCTIONS

The order was modified by deleting the grants of summary judgment dismissing the medical-malpractice and wrongful-death causes of action and substituting provisions denying those branches; dismissal of the loss-of-services claim was affirmed.

CASES CITED

- Hiegel v Orange Regional Med. Ctr., 219 AD3d 910, 913
- Bhuiyan v Germain, 211 AD3d 667, 668
- Barnaman v Bishop Hucles Episcopal Nursing Home, 213 AD3d 896, 898
- Hackett v Bybordi, 212 AD3d 598
- Bowe v Brooklyn United Methodist Church Home, 150 AD3d 1067, 1068
- Toth v Bloshinsky, 39 AD3d 848, 849
- Rich v Donnenfeld, 191 AD3d 909, 910
- Liff v Schildkrout, 49 NY2d 622, 632
- Maxson v Delaware, Lackawanna & W. R.R. Co., 112 NY 559
- Rothfarb v Brookdale Hosp., 139 AD2d 720, 722
- Lucido v Vitolo, 251 AD2d 383, 384
- Clausell v Ullman, 141 AD2d 690, 691

OPINION

Gupta v. Long Is. Jewish Med. Ctr. 2026 NY Slip Op 02106
PER CURIAM.

<div>Gupta v Long Is. Jewish Med. Ctr. - 2026 NY Slip Op 02106 <div> skip to main content
</div> <div> <p>It appears you are using Adblock. Please disable Adblock to best experience our website.</p> </div> <div> <header> <div> </div> <div> Law Reporting

Bureau Thomas J.K. Smith, State Reporter <nav>
Court Decisions Resources About </nav> </div> <div> </div> </header> </div> <nav> Home All Court Decisions
Decisions </nav> <div> <div> <h1>Gupta v Long Is. Jewish Med. Ctr.</h1>
<p>2026 NY Slip Op 02106</p> <p>April 8, 2026</p> <p>Appellate Division, Second

Department

Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This decision is uncorrected and subject to revision before publication in the Official Reports.

Savita Gupta, etc., appellant,

v

Long Island Jewish Medical Center, et al., respondents, et al., defendants.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on April 8, 2026

2021-03211, (Index No. 711672/16)

Colleen D. Duffy, J.P.

William G. Ford

Donna-Marie E. Golia

Susan Quirk, JJ.

Michael Manoussos & Co PLLC, Kew Gardens, NY, for appellant.

Heidell, Pittoni, Murphy & Bach, LLP, New York, NY (Daniel S. Ratner and Greg Freedman of counsel), for respondents.

[*1]

DECISION & ORDER

In an action, inter alia, to recover damages for medical malpractice, etc., the plaintiff appeals from an order of the Supreme Court, Queens County (Peter J. O'Donoghue, J.), entered May 5, 2021. The order, insofar as appealed from, granted those branches of the motion of the defendants Long Island Jewish Medical Center, Elizabeth A. Brothers, Brendan A. Berry, Mityanand Ramnarine, Danielle Conforti, and Gyaneswari Kotha which were for summary judgment dismissing the causes of action alleging medical malpractice, wrongful death, and loss of services insofar as asserted against them.

ORDERED that the order is modified, on the law, by deleting the provision thereof granting those branches of the motion of the defendants Long Island Jewish Medical Center, Elizabeth A. Brothers, Brendan A. Berry, Mityanand Ramnarine, Danielle Conforti, and Gyaneswari Kotha which were for summary judgment dismissing the causes of action alleging medical malpractice and wrongful death insofar as asserted against them, and substituting therefor a provision denying those branches of the motion; as so modified, the order is affirmed insofar as appealed from, with costs to the plaintiff.

In September 2016, the Public Administrator of Queens County (hereinafter the Public Administrator), in his capacity as the administrator of the estate of Reginald Tewari (hereinafter the decedent), commenced this action against, among others, the defendants Long Island Jewish Medical Center (hereinafter LIJMC), Elizabeth A. Brothers, Brendan A. Berry, Mityanand Ramnarine, Danielle Conforti, and Gyaneswari Kotha (hereinafter collectively the defendants), inter alia, to recover damages for medical malpractice and wrongful death that the Public Administrator alleged arose out of the decedent's treatment and care at LIJMC in October 2014. After Savita Gupta (hereinafter the plaintiff) was substituted as the administrator of the decedent's estate, she served a supplemental summons and amended complaint dated November 15, 2019, among other things, adding a derivative cause of action on her behalf for loss of services. The defendants separately answered and asserted, inter alia, the affirmative defense of the statute of limitations.

The defendants moved for summary judgment dismissing the complaint insofar as asserted against them. In an order entered May 5, 2021, the Supreme Court, inter alia, granted those branches of the defendants' motion which were for summary judgment dismissing the causes of

[*2]

action alleging medical malpractice, wrongful death, and loss of services insofar as

asserted against them. The plaintiff appeals.

The requisite elements of proof in a medical malpractice action are a deviation or departure from accepted community standards of practice and evidence that such departure was a proximate cause of injury or damage. On a motion for summary judgment, a defendant 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 (*see* *Hiegel v Orange Regional Med. Ctr.*, 219 AD3d 910, 913; *Bhuiyan v Germain*, 211 AD3d 667, 668). To sustain this burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff's bill of particulars (*see* *Barnaman v Bishop Hucles Episcopal Nursing Home*, 213 AD3d 896, 898; *Hackett v Bybordi*, 212 AD3d 598). "In opposition, the plaintiff must demonstrate the existence of a triable issue of fact as to the elements on which the defendant has met his or her initial burden" (*Bowe v Brooklyn United Methodist Church Home*, 150 AD3d 1067, 1068). "The purpose of a bill of particulars is to amplify pleadings, limit proof, and prevent surprise at trial, not to provide evidentiary material" (*Toth v Bloshinsky*, 39 AD3d 848, 849).

On appeal, the plaintiff does not challenge the Supreme Court's determination that the defendants met their prima facie burden of showing that there was no departure from good and accepted medical practice or that the decedent was not injured thereby (*see* *Hiegel v Orange Regional Med. Ctr.*, 219 AD3d at 913). However, in opposition, the affirmation of the plaintiff's expert in emergency medicine was sufficient to raise triable issues of fact as to whether the defendants departed from accepted standards of care and whether such departures were a proximate cause of the decedent's injuries and death. Contrary to the defendants' contention, the plaintiff did not raise new theories of liability in opposition to the defendants' motion for summary judgment (*see* *Rich v Donnenfeld*, 191 AD3d 909, 910; *Toth v Bloshinsky*, 39 AD3d at 849).

Accordingly, the Supreme Court should have denied those branches of the defendants' motion which were for summary judgment dismissing the causes of action alleging medical malpractice and wrongful death insofar as asserted against them.

The Supreme Court properly granted that branch of the defendants' motion which was for summary judgment dismissing the cause of action alleging loss of services insofar as asserted against them, albeit for reasons different than those relied upon by the court. This cause of action, which is limited to the period prior to the decedent's death (*see* *Liff v Schildkrout*, 49 NY2d 622, 632), is a derivative one (*see id.*) and, thus, is governed by the same period of limitations that controls the underlying cause of action, i.e., 2½ years for medical malpractice (*see* *Maxson v Delaware, Lackawanna & W. R.R. Co.*, 112 NY 559; *Rothfarb v Brookdale Hosp.*, 139 AD2d 720, 722). The plaintiff did not interpose her derivative cause of action until the statute of limitations on the underlying cause of action alleging medical malpractice had expired (*see* CPLR 214-a). Because the original complaint did not give the defendants notice that a claim for loss of services would be asserted, the derivative cause of action does not relate back to the time when the action was originally commenced and is time-barred (*see id.* § 203[f];

Lucido v Vitolo, 251 AD2d 383, 384; *Clausell v Ullman*, 141 AD2d 690, 691).

The parties' remaining contentions are without merit.

DUFFY, J.P., FORD, GOLIA and QUIRK, JJ., concur.

ENTER:

Darrell M. Joseph

Clerk of the Court

Court Decisions

All Court Decisions Official Reports Service Bound Volumes Decision Search

Resources

RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index

About

About the Law Reporting Bureau About our Operations Contact Us Twitter

Quick Contact Info

17 Lodge Street

Albany, NY 12207

Phone: (518) 453-6900

Links to or from other sites do not signify endorsement or relationship with them.