

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

Daniels v. Jerome

Daniels, 2026 NY Slip Op 03944 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2021-08648 · Decided June 24, 2026

SUMMARY

The Appellate Division, Second Department, affirmed a judgment dismissing a medical malpractice action against Eric L. Jerome and Nephro-Care, Inc. The court upheld the denial of the plaintiff’s motion to set aside the jury verdict in favor of Nephro-Care and upheld the trial court’s decision to set aside the verdict against Jerome and enter judgment as a matter of law in his favor. The court addressed standards governing CPLR 4404(a) motions, evidentiary rulings, jury charges, and medical malpractice liability.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Lillian Wan; Janice A. Taylor; Donna-Marie E. Golia
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	June 24, 2026
DOCKET	2021-08648
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from a judgment dismissing her medical-malpractice complaint after a jury found for the plaintiff against Eric L. Jerome on liability but for Nephro-Care, Inc. against the plaintiff. The Supreme Court granted Jerome's CPLR 4404(a) motion to set aside the verdict against him and enter judgment as a matter of law, and denied the plaintiff's CPLR 4404(a) motion concerning Nephro-Care.
STANDARD OF REVIEW	A CPLR 4404(a) motion for judgment as a matter of law is granted where there is no valid line of reasoning and permissible inferences that could lead rational persons to the jury's conclusion, with the evidence viewed in the light most favorable to the nonmoving party. A

	motion to set aside a verdict in the interest of justice is reviewed under the substantial-justice and likely-prejudice considerations, and evidentiary rulings are reviewed for an improvident exercise of discretion.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Rachelle Daniels v. Eric L. Jerome, Nephro-Care, Inc.

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QUESTIONS PRESENTED

1. Whether the Supreme Court properly denied the plaintiff's CPLR 4404(a) motion to set aside the verdict in favor of Nephro-Care, Inc. in the interest of justice and for a new trial.
2. Whether the Supreme Court properly granted Jerome's CPLR 4404(a) motion to set aside the verdict against him and enter judgment as a matter of law dismissing the claims against him.
3. Whether the Supreme Court properly denied the plaintiff's requested Noseworthy and vicarious-liability jury charges.

HOLDINGS

1. The plaintiff failed to establish that allegedly missing medical records existed, were relevant, or would have supported her claim; therefore, the Supreme Court properly denied the motion to set aside the verdict in favor of Nephro-Care and for a new trial.
2. The Supreme Court properly set aside the jury verdict in favor of the plaintiff and against Jerome and entered judgment as a matter of law dismissing the complaint insofar as asserted against him.
3. Medical-malpractice liability requires proof that the defendant departed from accepted community standards of practice and that the departure proximately caused the plaintiff's injuries; the verdict against Jerome could not be sustained because the trial evidence did not permit rational inferences establishing liability under the applicable standard.
4. The Supreme Court properly denied the plaintiff's requests for a Noseworthy charge and a vicarious-liability charge.

KEY QUOTATIONS

"A motion pursuant to CPLR 4404(a) to set aside a verdict and for a new trial in the interest of justice encompasses errors in the trial court's rulings on the admissibility of evidence, mistakes in the charge, misconduct, newly discovered evidence, and surprise" ([*1])

"In considering such a motion, a trial judge must decide whether substantial justice has been done and whether it is likely that the verdict has been affected, and must rely on his or her own common sense, experience and sense of fairness" ([*1])

"trial courts are accorded wide discretion in making evidentiary rulings and those rulings should not be disturbed on appeal absent an improvident exercise of discretion" ([*1])

"A motion pursuant to CPLR 4404(a) to set aside a jury verdict and for judgment as a matter of law will be granted where there is no valid line of reasoning and permissible inferences which could possibly lead rational persons to the conclusions reached by the jury on the basis of the evidence presented at trial" ([*1])

"In order to establish liability for medical malpractice, a plaintiff must prove that the defendant deviated or departed from accepted community standards of practice and that such departure was a proximate cause of the plaintiff's injuries" ([*1])

FACTUAL BACKGROUND

The decedent, who was receiving hemodialysis through an arteriovenous graft, was admitted to Interfaith Medical Center on December 18, 2001, after bleeding from the graft. Physicians, including nephrologist Eric L. Jerome, suspected that the graft was infected and referred the decedent to a surgical team for possible removal or ligation. Although the surgical team examined the decedent on December 20 and the vascular surgeon was updated, no surgical intervention occurred. The decedent began bleeding profusely from the graft on December 21, suffered cardiac arrest, and died.

PROCEDURAL HISTORY

The plaintiff commenced a medical-malpractice action against Jerome, Nephro-Care, and others following the death of her decedent. After trial, the jury found Jerome liable but found Nephro-Care not liable. The Supreme Court granted Jerome judgment as a matter of law, denied the plaintiff's request for relief concerning Nephro-Care, and entered a judgment dismissing the complaint. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Bhim v Platz, 207 AD3d 511, 513
- Schuster v Sourour, 207 AD3d 491, 494
- Micallef v. Miehle Co., Micallef v Miehle Co., Div. of Miehle-Goss Dexter, 39 NY2d 376, 381
- Hervey v Northern Westchester Hosp., 238 AD3d 1117, 1118
- Molina v Goldberg, 231 AD3d 46, 51
- Walsh v Akhund, 198 AD3d 1010, 1012
- Lifrieri v Gambale, 222 AD3d 860, 860-861
- Jae Duk Ahn v Kyong Koo Kang, 192 AD3d 994, 994

- *Montagnino v Inamed Corp.*, 120 AD3d 1317, 1319
- *Noseworthy v City of New York*, 298 NY 76
- *Mattocks v Ellant*, 231 AD3d 813, 818
- *Feltus v Staten Is. Univ. Hosp.*, 285 AD2d 445, 446
- *Weiszberger v KCM Therapy*, 189 AD3d 1121, 1122-1123
- *Vittiglio v Gaurino*, 100 AD3d 987, 987-988
- *Barril v McClure*, 163 AD3d 752, 752-753
- *Hamilton v Rouse*, 46 AD3d 514, 516
- *Szczerbiak v Pilat*, 90 NY2d 553, 556
- *Nugent v Highland Rehabilitation & Nursing Ctr.*, 240 AD3d 601, 602
- *Gruen v Brathwaite*, 215 AD3d 927, 928
- *Keun Young Kim v Lenox Hill Hosp.*, 156 AD3d 774, 774-775
- *Chicoine v Mendola*, 233 AD3d 841, 843
- *Brown v Shah*, 109 AD3d 948, 949-950

OPINION

PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. Rachelle Daniels, etc., appellant, v Eric L. Jerome, et al., respondents. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 24, 2026 2021-08648, (Index No. 47476/03) Lara J. Genovesi, J.P. Lillian Wan Janice A. Taylor Donna-Marie E. Golia, JJ. Daniel H. Gilberg, New York, NY, for appellant.

Dorf Nelson & Zauderer, LLP (Mauro Lilling Naparty LLP, Woodbury, NY [Caryn L. Lilling, Katherine Herr Solomon, and Kathryn Beer], of counsel), for respondent Eric L. Jerome. McAloon & Friedman, P.C., New York, NY (Gina Bernardi Di Folco of counsel), for respondent Nephro-Care, Inc. [*1] DECISION & ORDER In an action, inter alia, to recover damages for medical malpractice, the plaintiff appeals from a judgment of the Supreme Court, Kings County (Ellen M. Spodek, J.), dated October 26, 2021.

The judgment, upon a jury verdict in favor of the defendant Nephro-Care, Inc., and against the plaintiff on the issue of liability, and in favor of the plaintiff and against the defendant Eric L. Jerome on the issue of liability, and upon an order of the same court dated January 8, 2021,

granting that branch of the motion of the defendant Eric L. Jerome which was pursuant to CPLR 4404(a) to set aside the jury verdict in favor of the plaintiff and against him and for a judgment as a matter of law, in effect, dismissing the complaint insofar as asserted against him and denying the plaintiff's motion pursuant to CPLR 4404(a) to set aside the jury verdict in favor of the defendant Nephro-Care, Inc., on the issue of liability and for judgment as a matter of law, or, in the alternative, to set aside the jury verdict in favor of the defendant Nephro-Care, Inc., on the issue of liability as contrary to the weight of the evidence or in the interest of justice and for a new trial, or, in the alternative, to set aside the jury's apportionment of fault and for a new trial, is in favor of the defendants Eric L. Jerome and Nephro-Care, Inc., and against the plaintiff dismissing the complaint.

ORDERED that the judgment is affirmed, with one bill of costs. On December 18, 2001, the plaintiff's decedent was admitted to Interfaith Medical Center (hereinafter Interfaith) after suffering a bleed from his arteriovenous graft (hereinafter the AV graft), used for hemodialysis. Various physicians who examined the decedent at Interfaith, including his nephrologist, the defendant Eric L. Jerome, suspected that the AV graft was infected and referred the decedent to a surgical team to examine the decedent and perform a removal or ligation of the AV graft if indicated.

Although members of Interfaith's surgical team examined the decedent on December 20, 2001, and Interfaith's vascular surgeon, Roland Purcell, was updated on the decedent's condition, no surgical intervention was performed.

On December 21, 2001, the decedent began to bleed profusely from the AV graft, suffered cardiac arrest, and died as a result. The plaintiff commenced this action, inter alia, to recover damages for medical malpractice against, among others, Jerome and the defendant Nephro-Care, Inc. (hereinafter Nephro-Care), the dialysis center where the decedent was treated prior to his hospitalization.

After trial, the jury returned a verdict in favor of the plaintiff and against Jerome on the issue of liability, and in favor of Nephro-Care and against the plaintiff on the issue of liability. The plaintiff moved pursuant to CPLR 4404(a) to set aside the jury verdict in favor of Nephro-Care on the issue of liability as contrary to the weight of the evidence or in the interest of justice and for a new trial.

Jerome moved, among other things, pursuant to CPLR 4404(a) to set aside the jury verdict in favor of the plaintiff and against him and for judgment as a matter of law, in effect, dismissing the complaint insofar as asserted against him.

In an order dated January 8, 2021, the Supreme Court, inter alia, granted that branch of Jerome's motion and denied the plaintiff's motion. On October 26, 2021, the court issued a judgment in favor of Jerome and Nephro-Care and against the plaintiff dismissing the complaint.

The plaintiff appeals. "A motion pursuant to CPLR 4404(a) to set aside a verdict and for a new trial in the interest of justice encompasses errors in the trial court's rulings on the admissibility of evidence, mistakes in the charge, misconduct, newly discovered evidence, and surprise" (*Bhim v Platz*, 207 AD3d 511, 513 [internal quotation marks omitted]; see *Schuster v Sourour*, 207 AD3d 491, 494).

In considering such a motion, a trial judge must decide "whether substantial justice has been done" and "whether it is likely that the verdict has been affected," and must rely on his or her own "common sense, experience and sense of fairness" (*Micallef v Miehle Co., Div. of Miehle-Goss Dexter*, 39 NY2d 376, 381 [internal quotation marks omitted]; see *Hervey v Northern Westchester Hosp.*, 238 AD3d 1117, 1118). "[T]rial courts are accorded wide discretion in making evidentiary rulings and those rulings should not be disturbed on appeal absent an improvident exercise of discretion" (*Molina v Goldberg*, 231 AD3d 46, 51 [internal quotation marks omitted]; see *Walsh v Akhund*, 198 AD3d 1010, 1012).

Contrary to the plaintiff's contention, the Supreme Court properly denied that branch of her motion which was pursuant to CPLR 4404(a) to set aside the jury verdict in favor of Nephro-Care on the issue of liability in the interest of justice.

The plaintiff did not establish that certain allegedly missing medical records existed, or that the records were relevant and would have supported her claim (see *Lifrieri v Gambale*, 222 AD3d 860, 860-861; *Jae Duk Ahn v Kyong Koo Kang*, 192 AD3d 994, 994; *Montagnino v Inamed Corp.*, 120 AD3d 1317, 1319).

The Supreme Court also properly denied the plaintiff's request for a jury charge consistent with *Noseworthy v City of New York* (298 NY 76) (see *Mattocks v Ellant*, 231 AD3d 813, 818; *Feltus v Staten Is. Univ. Hosp.*, 285 AD2d 445, 446) and for a jury charge for vicarious liability (see generally *Weiszberger v KCM Therapy*, 189 AD3d 1121, 1122-1123). "A motion pursuant to CPLR 4404(a) to set aside a jury verdict and for judgment as a matter of law will be granted where there is no valid line of reasoning and permissible inferences which could possibly lead rational persons to the conclusions reached by the jury on the basis of the evidence presented at trial" (*Vittiglio v Gaurino*, 100 AD3d 987, 987-988; see *Barril v McClure*, 163 AD3d 752, 752-753).

"In considering such a motion, 'the trial court must afford the party opposing the motion every inference which may properly be drawn from the facts presented, and the facts must be considered in a light most favorable to the nonmovant'" (*Hamilton v Rouse*, 46 AD3d 514, 516, quoting *Szczerbiak v Pilat*, 90 NY2d 553, 556; see *Nugent v Highland Rehabilitation & Nursing Ctr.*, 240 AD3d 601, 602). "'In order to establish liability for medical malpractice, a plaintiff must prove that the defendant deviated or departed from accepted community standards of practice and that such departure was a proximate cause of the plaintiff's injuries'" (*Gruen v Brathwaite*, 215 AD3d 927,

928, quoting *Keun Young Kim v Lenox Hill Hosp.*, 156 AD3d 774, 774-775; see *Chicoine v Mendola*, 233 AD3d 841, 843).

The Supreme Court properly granted that branch of Jerome's motion which was pursuant to CPLR 4404(a) to set aside the jury verdict in favor of the plaintiff and against him and [*2] for judgment as a matter of law, in effect, dismissing the complaint insofar as asserted against him (see *Brown v Shah*, 109 AD3d 948, 949-950).

Here, there was no valid line of reasoning and permissible inferences which could possibly lead rational persons to the conclusion reached by the jury on the basis of the evidence presented at trial. The plaintiff's remaining contentions need not be reached in light of our determination. GENOVESI, J.P., WAN, TAYLOR and GOLIA, 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.