

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.

TOPICS

medical malpractice

standard of review

appellate procedure

civil procedure

PRACTICE AREAS

medical malpractice

civil procedure

appellate procedure

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