

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

Phillip v. Brooklyn Hosp. Ctr.

2026 NY Slip Op 00269 · No. 2023-10002; 2023-11868 · Decided January 21, 2026

SUMMARY

The New York Appellate Division, Second Department affirmed a judgment dismissing a medical malpractice action against Brooklyn Hospital Center. The court held that the appeal from the underlying order was dismissed as superseded by the judgment and that the plaintiff's challenge to dismissal for lack of prosecution was academic because he did not contest separate determinations that he lacked capacity to sue and that personal jurisdiction had not been obtained. The court therefore affirmed without reaching the CPLR 3216 issue.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; William G. Ford, J.; Helen Voutsinas, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	January 21, 2026
DOCKET	2023-10002; 2023-11868
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting the defendant's cross-motion and from the resulting judgment dismissing the medical-malpractice complaint. On appeal, plaintiff challenged only dismissal for lack of prosecution under CPLR 3216.
STANDARD OF REVIEW	The Appellate Division reviewed the judgment and the issues raised concerning the prior order under CPLR 5501(a)(1). Because plaintiff did not challenge the independent determinations that he lacked capacity to sue and that the court never obtained personal jurisdiction over the defendant, the court treated the challenge to dismissal under CPLR 3216 as academic and affirmed without reaching it.
PRECEDENTIAL VALUE	Published

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QUESTIONS PRESENTED

1. Whether the appeal from the interlocutory order had to be dismissed after entry of the final judgment.
2. Whether plaintiff's challenge to dismissal for lack of prosecution under CPLR 3216 was academic because plaintiff did not challenge the independent dismissals based on lack of capacity and lack of personal jurisdiction.

HOLDINGS

1. The direct appeal from the order was dismissed because the right to appeal from the order terminated upon entry of the final judgment; the issues raised from the order were reviewable on the appeal from the judgment.
2. The challenge to dismissal under CPLR 3216 was academic because plaintiff did not challenge the separate determinations that he lacked capacity to sue and that the court never obtained personal jurisdiction over the defendant; the judgment was therefore affirmed without reaching the CPLR 3216 contentions.

KEY QUOTATIONS

"The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment in the action" (at *1)

"Inasmuch as the plaintiff does not challenge the court's determination that he lacked the capacity to sue and that the court never obtained personal jurisdiction over the defendant, the plaintiff's contention that the complaint was not subject to dismissal pursuant to CPLR 3216 is academic" (at *2)

FACTUAL BACKGROUND

Plaintiff commenced a medical-malpractice action in September 2019 as attorney-in-fact for his father. The defendant challenged service and personal jurisdiction, while plaintiff sought an extension of time to serve the summons and complaint. In 2021 plaintiff reported that his father had died, but it was later discovered that the father had actually died in 2017, before the action was filed. Plaintiff was subsequently appointed the decedent's personal representative, but the Supreme Court dismissed the action on multiple grounds.

PROCEDURAL HISTORY

Plaintiff commenced the action in September 2019 as attorney-in-fact for his father. The Supreme Court initially extended the time for service and effectively denied the defendant's motion to dismiss for lack of personal jurisdiction. After learning that the father had died in 2017, before the action was commenced, plaintiff sought appointment as personal representative and later moved to restore the action and amend the caption. The Supreme Court denied plaintiff's motion and granted all branches of defendant's cross-motion, including dismissal for lack of personal jurisdiction, lack of capacity, sanctions, and lack of prosecution. The Appellate Division dismissed the appeal from the order and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Matter of Aho, 39 NY2d 241, 248
- AA Med., P.C. v Employee Med. Health Plan of Suffolk County, 229 AD3d 487
- Champion Mtge. Co. v Antoine, 214 AD3d 698, 701
- Dorce v Family Dollar Stores of N.Y., 197 AD3d 1289
- Armatas v Kestenbaum, 189 AD3d 1319

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