

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 The court held that the appeal from the underlying order was dismissed as superseded by the judgment and that the plaintiff's challenge to dismissal for lack of prosecution was academic because he did not contest separate determinations that he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

PARTIES

Martin Phillip v. Brooklyn Hospital Center

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final judgment rule

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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

OPINION

PER CURIAM.

Phillip v Brooklyn Hosp. Ctr. (2026 NY Slip Op 00269) Phillip v Brooklyn Hosp. Ctr. 2026 NY Slip Op 00269 Decided on January 21, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on January 21, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department VALERIE BRATHWAITE NELSON, J.P.

WILLIAM G. FORD HELEN VOUTSINAS LAURENCE L. LOVE, JJ. 2023-10002 2023-11868 (Index No. 520185/19) [*1]Martin Phillip, etc., appellant, v Brooklyn Hospital Center, respondent. Krentsel Guzman Herbert, LLP (Horn Appellate Group, Brooklyn, NY [Scott T. Horn], of counsel), for appellant. Furman Kornfeld & Brennan LLP (Mauro Lilling Naparty LLP, Woodbury, NY [Caryn L. Lilling and Melissa A. Danowski], of counsel), for respondent.

DECISION & ORDER In an action to recover damages for medical malpractice, the plaintiff appeals from (1) an order of the Supreme Court, Kings County (Ellen M. Spodek, J.), dated October 10, 2023, and (2) a judgment of the same court entered November 16, 2023.

The order, insofar as appealed from, granted that branch of the defendant's cross-motion which was pursuant to CPLR 3216 to dismiss the complaint. The judgment, upon the order, is in favor of the defendant and against the plaintiff, in effect, dismissing the complaint. ORDERED that the

appeal from the order is dismissed; and it is further, ORDERED that the judgment is affirmed; and it is further, ORDERED that one bill of costs is awarded to the defendant.

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 (see Matter of Aho, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (see CPLR 5501[a][1]; Matter of Aho, 39 NY2d at 248).

The plaintiff commenced this action in September 2019 as attorney-in-fact for his father to recover damages for medical malpractice in connection with care rendered to his father. In March 2020, the defendant moved pursuant to CPLR 3211(a)(8) to dismiss the complaint for lack of personal jurisdiction based on the plaintiff's failure to effectuate service of the summons and complaint within 120 days as required by CPLR 306-b.

The plaintiff then moved to extend the time to serve the summons and complaint. The Supreme Court granted the plaintiff's motion and, in effect, denied the defendant's motion. In August 2021, the plaintiff's counsel notified the court that the plaintiff's father (hereinafter the decedent) had died.

The plaintiff then sought to be appointed the decedent's personal representative and was granted letters of administration in June 2023. During this time, it was revealed that the decedent had in fact died in 2017, well before this action was commenced.

In July 2023, the plaintiff moved to restore the action to the Supreme Court's calendar and to amend the caption. The defendant cross-moved (1) for leave to renew its prior motion [*2]pursuant to CPLR 3211(a)(8) to dismiss the complaint for lack of personal jurisdiction and its opposition to the plaintiff's motion to extend the time to serve the summons and complaint and, upon renewal, inter alia, to grant the defendant's prior motion, (2) pursuant to CPLR 3211(a)(3) to dismiss the complaint based on the plaintiff's lack of capacity to commence this action when the summons and complaint was filed, with prejudice pursuant to CPLR 3126 as a sanction for failing to timely disclose the decedent's death, and (3) pursuant to CPLR 3216 to dismiss the complaint for lack of prosecution.

In an order dated October 10, 2023, the court denied the plaintiff's motion and granted every branch of the defendant's cross-motion. On November 16, 2023, a judgment was entered, upon the order, in favor of the defendant and against the plaintiff, in effect, dismissing the complaint.

The plaintiff appeals. On appeal, the plaintiff contends only that the Supreme Court improperly granted that branch of the defendant's cross-motion which was pursuant to CPLR 3216 to dismiss the complaint for lack of prosecution.

The plaintiff, however, advances no arguments concerning those portions of the order which granted those branches of the defendant's cross-motion which were (1) for leave to renew its prior motion pursuant to CPLR 3211(a)(8) to dismiss the complaint for lack of personal jurisdiction and its opposition to the plaintiff's motion to extend the time to serve the summons and complaint and, upon renewal, inter alia, to grant the defendant's prior motion and (2) pursuant to CPLR 3211(a)(3) to dismiss the complaint for lack of capacity to bring the action.

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 (see *AA Med., P.C. v Employee Med. Health Plan of Suffolk County*, 229 AD3d 487; *Champion Mtge.*

Co. v Antoine, 214 AD3d 698, 701; see also *Dorce v Family Dollar Stores of N.Y.*, 197 AD3d 1289; *Armatas v Kestenbaum*, 189 AD3d 1319). Thus, we affirm the judgment without reaching the plaintiff's contentions concerning CPLR 3216 (see *AA Med., P.C. v Employee Med. Health Plan of Suffolk County*, 229 AD3d at 487; *Champion Mtge. Co. v Antoine*, 214 AD3d at 701).

BRATHWAITE NELSON, J.P., FORD, VOUTSINAS and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court