

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Barnhart v Kingston NH Operation LLC

Barnhart, 2026 NY Slip Op 02904 (Appellate Division of the Supreme Court of the State of New York Third Department 2026) · No. CV-24-1831 · Decided May 7, 2026

SUMMARY

The Appellate Division, Third Department dismissed as moot an appeal from an order denying defendants' motion to dismiss a nursing home malpractice action. The appeal became moot after the trial court granted summary judgment dismissing the underlying action based on immunity under New York's Emergency or Disaster Treatment Protection Act, and the court concluded that the issue was not likely to evade review.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Powers, J.; Clark, J.P.; Ceresia, J.; Fisher, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	May 7, 2026
DOCKET	CV-24-1831
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant appealed from an order of the Supreme Court, Ulster County, denying defendants' pre-answer motion to dismiss a nursing-home malpractice complaint. While the appeal was pending, the Supreme Court granted defendant summary judgment dismissing the underlying action based on EDTPA immunity.
PRECEDENTIAL VALUE	published
PARTIES	Kingston NH Operation LLC, doing business as Ten Broeck Center for Rehabilitation & Nursing v. Gloria Barnhart, as proposed administrator of the Estate of Donald Milton Parker Sr., deceased

TOPICS

- mootness
- appellate procedure
- nursing home liability
- health law
- civil procedure

PRACTICE AREAS

appellate procedure

civil procedure

health law

nursing home liability

torts

QUESTIONS PRESENTED

1. Whether the appeal from the denial of defendants' motion to dismiss became moot after the Supreme Court subsequently granted defendant summary judgment dismissing the underlying action.
2. Whether an exception to the mootness doctrine applied because the issues presented were likely to evade review.

HOLDINGS

1. The subsequent dismissal of the underlying action rendered defendant's appeal from the denial of its motion to dismiss moot because defendant had already received all the relief sought through the appeal.
2. The exception to the mootness doctrine did not apply because the issues were not likely to evade review; plaintiff could appeal from the later summary judgment order on a more fully developed record.

KEY QUOTATIONS

*“Defendant has therefore received all the relief which it seeks by way of this appeal” (*1)*

*“The issues presented are not likely to evade review inasmuch as plaintiff may appeal from the summary judgment order on the now more developed record.” (*2)*

FACTUAL BACKGROUND

Donald Milton Parker Sr. resided at Ten Broeck Center for Rehabilitation & Nursing, a facility owned and operated by Kingston NH Operation LLC. Parker contracted COVID-19 while residing there and died soon afterward. His daughter, Gloria Barnhart, commenced a nursing-home malpractice action alleging negligent care before and during the COVID-19 pandemic.

PROCEDURAL HISTORY

Plaintiff commenced the nursing-home malpractice action in May 2022. Defendants moved before answering to dismiss, arguing in part that Kingston NH Operation LLC was immune under the New York Emergency or Disaster Treatment Protection Act and the federal Public Readiness and Emergency Preparedness Act. The Supreme Court denied the motion on September 25, 2024, finding, among other things, that the supporting affidavit was insufficient to establish EDTPA immunity. After oral argument in the appeal, the Supreme Court granted defendant summary judgment dismissing the underlying complaint, and the Appellate Division dismissed the appeal as moot.

DISPOSITION

dismissed

CASES CITED

- Estate of Middleton v CLR Troy LLC, 247 AD3d 1422, 1423-1424 [3d Dept 2026]
- Whitehead v Pine Haven Operating LLC, 222 AD3d 104, 109 [3d Dept 2023]
- Fusco v Town of Colonie, 196 AD3d 956, 957 [3d Dept 2021]
- Rafferty Sand & Gravel, LLC v Kalvaitis, 116 AD3d 1290, 1291 [3d Dept 2014]
- People v Clark, 239 AD3d 1145, 1146 [3d Dept 2025]
- Matter of Grimaldi v Suffolk County Dept. of Health, 210 AD3d 1263, 1264 [3d Dept 2022]
- Matter of Estate of Ingber, 244 AD3d 1413, 1419-1420 [3d Dept 2025]
- Stefanik v Hochul, 229 AD3d 79, 82 n 3 [3d Dept 2024], affd 43 NY3d 49 [2024]
- Fitzgerald Morris Baker Firth P.C. v Mayor of the Vil. of Hoosick Falls, 179 AD3d 1361, 1364-1365 [3d Dept 2020]
- Matter of Hoyt v Figueroa, 246 AD3d 1172, 1174 [3d Dept 2026]
- Matter of Elizabeth LL. [Thomas OO.], 174 AD3d 1094, 1096 [3d Dept 2019]
- City of New York v Maul, 14 NY3d 499, 507 [2010]
- Matter of Hearst Corp. v Clyne, 50 NY2d 707, 714-715 [1980]

OPINION

Barnhart v. Kingston NH Operation LLC 2026 NY Slip Op 02904

PER CURIAM.

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Bryant, J.), entered September 25, 2024 in Ulster County, which denied defendants' motion to dismiss the complaint.

Donald Milton Parker Sr. (hereinafter decedent) was a resident at Ten Broeck Center for Rehabilitation & Nursing in the Town of Lake Katrine, Ulster County, a nursing home facility owned and operated by defendant Kingston NH Operation LLC (hereinafter defendant). While residing there, he contracted COVID-19 and soon after passed away. Plaintiff, decedent's daughter and the proposed administrator of his estate, commenced this nursing home malpractice action in May 2022 against defendant, as well as defendant ABC Corporation and defendant ABC Partnership, alleging that they owned and operated defendant. Plaintiff alleged that defendant, among other things, was negligent in the care of decedent prior to and during the COVID-19 pandemic. Defendants ^{FN1} moved pre-answer to dismiss the complaint arguing, as is most relevant here, that defendant was entitled to immunity under the state Emergency or Disaster Treatment Protection Act (*see* Public Health Law former art 30-D, §§ 3080-3082, repealed by L 2021, ch 96, § 1 [hereinafter the EDTPA]) and the federal Public Readiness and Emergency Preparedness Act (*see* 42 USC § 247d-6d *et seq.*). Supreme Court denied defendant's motion finding, along with certain other determinations, that the affidavit in support of the motion was insufficient to establish defendant's entitlement to EDTPA immunity. Defendant appeals.

This Court has become aware that, after oral argument on this appeal, Supreme Court granted defendant's motion for summary judgment seeking dismissal of the underlying complaint against it (NY St Cts Elec Filing [NYSCEF] Doc No. 216, decision and order on motion, in *Barnhart v Kingston NH Operation LLC*, Sup Ct, Ulster County, index No. EF2022-947). In that decision, the court found that defendant's submissions demonstrated its entitlement to EDTPA immunity and that plaintiff had failed to raise a triable issue of fact in opposition (*see generally* *Estate of Middleton v CLR Troy LLC*, 247 AD3d 1422, 1423-1424 [3d Dept 2026]; *Whitehead v Pine Haven Operating LLC*, 222 AD3d 104, 109 [3d Dept 2023]).

Defendant has therefore received all the relief which it seeks by way of this appeal (*see* *Fusco v Town of Colonie*, 196 AD3d 956, 957 [3d Dept 2021]; *Rafferty Sand & Gravel, LLC v Kalvaitis*, 116 AD3d 1290, 1291 [3d Dept 2014]; *cf. People v Clark*, 239 AD3d 1145, 1146 [3d Dept 2025]; *Matter of Grimaldi v Suffolk County Dept. of Health*, 210 AD3d 1263, 1264 [3d Dept 2022]). Accordingly, dismissal of the underlying action has rendered this appeal moot (*see* *Matter of Estate of Ingber*, 244 AD3d 1413, 1419-1420 [3d Dept 2025]; *Stefanik v Hochul*, 229 AD3d 79, 82 n 3 [3d Dept 2024], *affd* 43 NY3d 49 [2024]; *cf.* *Fitzgerald Morris Baker Firth P.C. v Mayor of the Vil. of Hoosick Falls*, 179 AD3d 1361, 1364-1365 [3d Dept 2020]). The issues presented are not likely to evade ^[2] review inasmuch as plaintiff may appeal from the summary judgment order on the now more developed record. Consequently, the exception to the mootness doctrine does not apply and this appeal must be dismissed (*see* *Matter of Hoyt v Figueroa*, 246 AD3d 1172, 1174 [3d Dept 2026]; *Matter of Elizabeth LL. [Thomas OO.]*, 174 AD3d 1094, 1096 [3d Dept 2019]; *see generally* *City of*

New York v Maul, 14 NY3d 499, 507 [2010]; *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715 [1980]).

Clark, J.P., Ceresia and Fisher, JJ., concur.

Ordered that the appeal is dismissed, as moot, without costs.

Footnotes

Footnote 1

While this motion was made on behalf of all defendants, the ABC defendants have not appeared in any capacity on this appeal, nor did they have any role in the subsequent motion for summary judgment.

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PER CURIAM.

Barnhart v Kingston NH Operation LLC - 2026 NY Slip Op 02904 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Barnhart v Kingston NH Operation LLC 2026 NY Slip Op 02904 May 7, 2026 Appellate Division, Third 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. Gloria Barnhart, as Proposed Administrator of the Estate of Donald Milton Parker Sr., Deceased, Respondent, v Kingston NH Operation LLC, Doing Business as Ten Broeck Center for Rehabilitation & Nursing, Appellant, et al., Defendants. Decided and Entered: May 7, 2026 CV-24-1831 Calendar Date: March 23, 2026 Before: Clark, J.P., Ceresia, Fisher And Powers, JJ. Hall Booth Smith, PC, New York City (Jeffrey T. Wolber of counsel) and Phelan, Phelan & Danek, LLP, Albany (Timothy S. Brennan of counsel), for appellant. Napoli Shkolnik PLLC, Melville (Joseph L. Ciaccio of counsel), for respondent. [*1] Powers, J. Appeal from an order of the Supreme Court (Kevin Bryant, J.), entered September 25, 2024 in Ulster County, which denied defendants' motion to dismiss the complaint. Donald Milton Parker Sr. (hereinafter decedent) was a resident at Ten Broeck Center for Rehabilitation & Nursing in the Town of Lake Katrine, Ulster County, a nursing home facility owned and operated by defendant Kingston NH Operation LLC (hereinafter defendant). While residing there, he contracted COVID-19 and soon after passed away. Plaintiff, decedent's daughter and the proposed administrator of his estate, commenced this nursing home malpractice action in May 2022 against defendant, as well as defendant ABC Corporation and defendant ABC Partnership, alleging that they owned and operated defendant. Plaintiff alleged that defendant, among other things, was negligent in the care of decedent prior to and during the COVID-19 pandemic. Defendants FN1

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Footnotes

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