

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

Nims v. Riley

2026 NY Slip Op 00698 (4th Dep't 2026) · No. 129 CA 25-00365 · Decided February 11, 2026

SUMMARY

The New York Appellate Division, Fourth Department, unanimously affirmed an order denying defendants' motions for summary judgment in a medical malpractice action involving an alleged failure to timely diagnose and treat deep vein thrombosis. The court held that plaintiffs' expert affirmations created a triable issue of fact, presenting a battle of the experts properly left for jury resolution.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Whalen, P.J.; Lindley, J.; Ogden, J.; Greenwood, J.; Hannah, J.                                                                                                                                                                                                                                                                                                                               |
| JURISDICTION          | Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department                                                                                                                                                                                                                                                                                                        |
| DECIDED               | February 11, 2026                                                                                                                                                                                                                                                                                                                                                                             |
| DOCKET                | 129 CA 25-00365                                                                                                                                                                                                                                                                                                                                                                               |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Defendants appealed from an order denying their respective motions for summary judgment dismissing the medical malpractice complaint.                                                                                                                                                                                                                                                         |
| STANDARD OF REVIEW    | On a motion for summary judgment in a medical malpractice action, the defendant must initially establish either that there was no deviation or departure from the applicable standard of care or that any alleged departure did not proximately cause the plaintiff's injuries. If that prima facie burden is met, the burden shifts to the plaintiff to demonstrate a triable issue of fact. |
| PRECEDENTIAL VALUE    | Published New York Appellate Division opinion                                                                                                                                                                                                                                                                                                                                                 |
| PARTIES               | James T. Riley, M.D., Samaritan Medical Center, Jefferson Anesthesiologist Services, P.C., Susan M. Walker, FNP-C v. James Nims, III, Sabrina Nims                                                                                                                                                                                                                                            |

## TOPICS

medical malpractice

summary judgment

standard of care

proximate cause

standard of review

## PRACTICE AREAS

medical malpractice

civil procedure

appellate procedure

## QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment in the medical malpractice action after establishing their prima facie entitlement to judgment on the alleged departures from the accepted standard of care.
2. Whether plaintiffs' conflicting expert affirmations raised a triable issue of fact concerning medical negligence and causation.

## HOLDINGS

1. Although defendants met their initial burden concerning the alleged deviations from the accepted standard of medical care, plaintiffs' opposing expert affirmations raised a triable issue of fact; therefore, summary judgment was properly denied.

## KEY QUOTATIONS

*"In moving for summary judgment in a medical malpractice action, a defendant has "the initial burden of establishing either that there was no deviation or departure from the applicable standard of care or that any alleged departure did not proximately cause the plaintiff's injuries"" (\*1)*

*"resulting in "a classic battle of the experts that is properly left to a jury for resolution"" (\*2)*

## FACTUAL BACKGROUND

James Nims, III, allegedly sustained injuries because defendants failed to timely diagnose a deep vein thrombosis and provide appropriate treatment. Defendants moved for summary judgment, submitting expert affirmations addressing the alleged deviations from the accepted standard of medical care. Plaintiffs opposed the motions with affirmations from a pain management expert and a vascular surgeon that directly contradicted defendants' experts.

## PROCEDURAL HISTORY

Plaintiffs commenced a medical malpractice action alleging that defendants negligently failed to timely diagnose a deep vein thrombosis and provide appropriate treatment. Supreme Court, Jefferson County, denied the summary judgment motions of Walker, Jefferson Anesthesiologist Services, Riley, and Samaritan Medical Center. The Appellate Division unanimously affirmed.

## DISPOSITION

affirmed

#### CASES CITED

- Occhino v. Fan, 151 A.D.3d 1870, 1871 (4th Dep't 2017)
- Bubar v. Brodman, 177 A.D.3d 1358, 1359 (4th Dep't 2019)
- Nowelle B. v. Hamilton Med., Inc., 177 A.D.3d 1256, 1258 (4th Dep't 2019)
- Thomas v. Eckhert, 229 A.D.3d 1237, 1239 (4th Dep't 2024)

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