

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)

OPINION

PER CURIAM.

Nims v Riley (2026 NY Slip Op 00698) Nims v Riley 2026 NY Slip Op 00698 Decided on February 11, 2026 Appellate Division, Fourth 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 February 11, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: WHALEN, P.J., LINDLEY, OGDEN, GREENWOOD, AND HANNAH, JJ. 129 CA 25-00365 [*1]JAMES NIMS, III, AND SABRINA NIMS, PLAINTIFFS-RESPONDENTS, v JAMES T. RILEY, M.D., SAMARITAN MEDICAL CENTER, JEFFERSON ANESTHESIOLOGIST SERVICES, P.C., SUSAN M. WALKER, FNP-C, DEFENDANTS-APPELLANTS, ET AL., DEFENDANTS.

O'CONNOR FIRST, BINGHAMTON (RACHEL E. MILLER OF COUNSEL), FOR DEFENDANT-APPELLANT JAMES T. RILEY, M.D. SUGARMAN LAW FIRM, LLP, SYRACUSE (CORY J. SCHOONMAKER OF COUNSEL), FOR DEFENDANT-APPELLANT SAMARITAN MEDICAL CENTER. BROWN, GRUTTADARO & PRATO, PLLC, ROCHESTER (JOHN M. CONIGLIO OF COUNSEL), FOR DEFENDANTS-APPELLANTS JEFFERSON ANESTHESIOLOGIST SERVICES, P.C.

AND SUSAN M. WALKER, FNP-C. DEFRANCISCO & FALGIATANO, LLP, EAST SYRACUSE (CHARLES L. FALGIATANO OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS. Appeals from an order of the Supreme Court, Jefferson County (James P. McClusky, J.), entered September 3, 2024.

The order denied the motions of defendants Jefferson Anesthesiologist Services, P.C., Susan M. Walker, FNP-C, James T. Riley, M.D. and Samaritan Medical Center for summary judgment dismissing the complaint against them. It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs. Memorandum: In this medical malpractice action seeking damages for injuries that plaintiff James Nims, III, allegedly sustained as a result of defendants' negligence in, inter alia, failing to timely diagnose a deep vein thrombosis and to provide

appropriate treatment for that condition, defendants Susan M. Walker, FNP-C (Walker) and Jefferson Anesthesiologist Services, P.C.

(Jefferson); defendant James T. Riley, M.D.; and defendant Samaritan Medical Center appeal from an order denying their respective motions for summary judgment dismissing the complaint against them. We affirm. 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" (*Occhino v Fan*, 151 AD3d 1870, 1871 [4th Dept 2017] [internal quotation marks omitted]).

We conclude that defendants met their initial burden on their respective motions with respect to the alleged deviations from the accepted standard of medical care, and the burden thus " 'shift[ed] to... plaintiff[s] to demonstrate the existence of a triable issue of fact... as to the elements on which... defendant[s] met the prima facie burden' " (*Bubar v Brodman*, 177 AD3d 1358, 1359 [4th Dept 2019]).

In opposition, however, plaintiffs submitted the affirmation of a pain management expert and the affirmation of an expert vascular surgeon, both of which "squarely oppose[d]" the affirmations of defendants' experts, resulting in "a classic battle of the experts that is properly left to a jury for resolution" (*Nowelle B. v Hamilton Med., Inc.*, 177 AD3d 1256, 1258 [4th Dept 2019] [internal quotation marks omitted]; see *Thomas v Eckhert*, 229 AD3d [*2]1237, 1239 [4th Dept 2024]).

We have considered the remaining contentions of Walker and Jefferson and conclude that they lack merit. Entered: February 11, 2026 Ann Dillon Flynn Clerk of the Court