

State of New York
Court of Appeals
Decided and Entered on the
fifteenth day of September, 2021
Present, Hon Jenny Rivera, Senior Associate Judge,
presiding.

Mo. No. 2021-424

Helen Gardner,
Appellant,

v.

New York Presbyterian Brooklyn Methodist
Hospital,

Respondent,
et al.,
Defendants.

Appellant having moved for reargument of a motion for leave to appeal to the Court of Appeals and other relief in the above cause; Upon the papers filed and due deliberation it is ORDERED. That the motion for reargument is denied; and it is further ORDERED, that the motion for other relief is dismissed upon the ground that this Court does not have jurisdiction to entertain it (see NY Const, art VI, § 3).

Chief Judge DiFiore took no part.

John P. Asiello
Clerk of the Court

State of New York
Court of Appeals
Decided and Entered on the
Thirtieth day of March, 2021
Present, Hon. Jenny Rivera, Senior Associate
Judge, presiding.
Mo. No 2020-930
Helen Gardner,
Appellant,
v.
New York Presbyterian Brooklyn Methodist
Hospital,
Respondent,
Et al.,
Defendants.

Appellant having moved for leave to appeal to the
Court of Appeals in the above
Cause; Upon the papers filed and due deliberation, it
is ORDERED, that the motion is dismissed upon the
ground that the order sought to be appealed from
does not finally determine the action within the
meaning of the Constitution.
Chief Judge DiFiore took no part.

John P. Asiello
Clerk of the Court

Supreme Court of the State of New York
Appellate Division: Second Judicial Department
M273767
MB/

REINALDO E. RIVERA, J.P.
JEFFREY A. COHEN
SYLVIA O. HINDS-RADIX
ANGELA G. IANNACCI, JJ.

2019-13202 DECISION & ORDER
ON MOTION

Helen Gardner, appellant, v New York
Presbyterian Brooklyn Methodist Hospital,
Respondent, et al., defendants.
(Index No. 3010/2017)

Appeal from an order of the Supreme Court, Kings County, dated July 15, 2019, which was deemed dismissed pursuant to 22 NYCRR 1250.10(a). Motion by the appellant pursuant to 22 NYCRR 1250.10(c) to vacate the dismissal of the appeal and to extend the time to perfect the appeal and for poor person relief. Upon the papers filed in support of the motion and no papers having been filed in opposition or in relation thereto, it is ORDERED that the branch of the motion which is for waiver of the filing fee of the motion is granted and it is further, ORDERED that the motion is otherwise denied.

RIVERA, J.P., HINDS-RADIX and INNACCI, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court
October 30, 2020

4a

GARDNER v NEW YORK PRESBYTERIAN
BROOKLYN METHODIST HOSPITAL

At an IAS Term, Part 15 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York' on the 15'h day of July 2019.

PRESENT:

HON. MARSHA L. STEINHARDT,

Justice

HELEN CARDNER,

Plaintiff,

-against-

NEW YORK PRESBYTERIAN BROOKLYN{
METHODIST HOSPITAL, KARINA M. DSOUZA,
M.D., LIEN.KHANG P.TRAN, M.D., THOMAS
CHEN, M.D., JOSIF SHOLOMON

M.D., ALANA SHOLOMON, D.O., DR. JORDAN, ET
AL.,

Defendants.

DECISION AND ORDER

Index No. 3010/2017

The following papers numbered 1 to 3 read herein:

Papers Numbered

Notice of Motion 1

Opposition 2

Reply 3

This instant matter appeared on this Courts' motion calendar on July 11, 2019. All parties appeared, and the matter was heard. Plaintiff appeared pro-se. After much discussion, it was ascertained that the nature of Plaintiff's application is to vacate a default judgment, taken against her on September 13, 2018

referred same to the undersigned, as the instant matter sounds in medical malpractice. On or about July 16, 2018, Defendants made a motion to dismiss based on Plaintiff's failure to timely commence this action (see CPLR §3211). Plaintiff failed to appear at oral argument and a default judgment was entered against her. Plaintiff now seeks to vacate this judgment. CPLR §5015(1)(a) permits a Court to vacate a judgment entered on default when the moving party demonstrates a reasonable excuse for the default and the existence of a meritorious claim. Here, Plaintiff is required to demonstrate a reasonable excuse for her failure to appear and a potentially meritorious cause of action (see Hanscom v. Goldman, 109 A.D.3d 964 [2d Dept. 2013]). Upon oral argument, plaintiff indicated that she was unaware of the motion date, hence Her non-appearance. Assuming this Court gives credence to that statement, Plaintiffs papers are devoid of an Affidavit of Merit. The matter was adjourned several times to give Plaintiff the opportunity to submit an Affidavit of Merit. Further, Plaintiff herself has not submitted an affidavit reciting the facts and circumstances of the merits of her case.

For all the foregoing reasons, Plaintiffs' motion to vacate judgment is denied.

This constitutes the opinion, decision and order of this Court.

ENTER,

HON. MARSHA L. STEINHARDT
J.S.C.

October 3, 2019

Ms. Helen Gardner
30 Third Avenue, Apt 5F
Brooklyn, New York 11217
718-838-8232

Honorable Lawrence Knipel
Administrative Judge
Civil Matters, 2nd Judicial District
360 Adams Street
Brooklyn, New York 11201
347-296-1022

Your Honor,

I am writing this letter of Complaint against Judge Marsha L. Steinhardt and Attorney/Principal Law Clerk Alexis Riley regarding the **WRONGFUL DEATH of my Daughter, SHARAE GARDNER, Case No. 3010/2017**, in which I am the Pro se Plaintiff.

The basis for my Complaint are explained below:

1. Case 3010/2017 is being tossed around between two judges: Debra Silber and Marsha L. Steinhardt. They are both issuing Motions pertaining to my case thus creating chaos and confusion for me, a Pro se litigant.
2. Earlier this month, September 2019, I received notice that Judge Steinhardt **DISMISSED** my case. One of the several improper justifications for the Dismissal was that my Motions were devoid of an **AFFIDAVIT of MERIT**. The judge has been **repeatedly** reminded, that in the

1. **State of New York, CPLR §3012-a(f) clearly states that NO Pro se Plaintiff must supply an AFFIDAVIT/CERTIFICATE of MERIT.** Steinhardt's refusal to acknowledge and abide by New York State Law is a gross **MISUSE of JUDICIAL POWERS.** Therefore Steinhardt's motion to dismiss should be denied.
2. Attorney Alexis Riley is possibly using her influence with the defense' law firm, with which she is on a first name basis with Partner Susan [A. Vari], to ostensibly make decisions pertaining to this case. There seems to exist a possible **Conflict of Interest.** This is just one example of her possible gross **PROFESSIONAL MISCONDUCT.**

There are additional improprieties that Steinhardt and Riley have committed that I will enumerate at the Court's request.

At this time, I am respectfully requesting that you, Honorable Judge Knipel:

1. Reinstate my case
2. Transfer my case to a Judge who **will abide by the CIVIL PRACTICE LAW and RULES for the STATE of NEW YORK.**

Respectfully submitted,
Helen Gardner

This Story Goes From Bad To Much Much Worse
New York Attorney Malpractice Blog By Andrew
Lavoott Bluestone on July 25, 2018

A medical malpractice case is almost always a tragedy. Someone has been unnecessarily hurt, someone has unnecessarily died. How can it get worse?

Marinelli v Sullivan Papain Block McGrath & Cannavo, P.C. 2018 NY Slip Op 31610(U) July 10, 2018 Supreme Court, Kings County Docket Number: 519958/2016 Judge: Marsha L. Steinhardt is one example of how the situation can get even worse. A hurt mother, a dead infant and then a question of the results of an autopsy.

"On or about April 13, 2012, the law firm of Sullivan, Papain, Block, McGrath and Cannavo, P.C ("SPBMC") was retained by the Marinelli's to prosecute said claims against the midwife and doctors involved in the delivery of Valentino Nicola. The New York Methodist Hospital was named as an additional defendant to the lawsuit. The action ran the usual course and, ultimately, appeared before the undersigned in the Medical Malpractice Trial Readiness Part. Conferences between the attorneys for plaintiffs and (medical) defendants occurred and the matter was resolved in the total amount of one million, two hundred thousand dollars (\$1,200,000.00); one hundred thousand dollars (\$100,000.00) thereof being allocated to the wrongful death of the infant. The New York Methodist Hospital did not participate in the settlement. Said matter has been deemed "disposed" by the Court.

On February 17, 2015 an action on behalf of Lily and Vito Marinelli, in their capacity as co-administrators of the Estate of Valentino Nicola Marinelli, and individually, against The New York Methodist Hospital, sounding in loss of sepulcher, was filed by the above-named defendants in the Office of the Kings County Clerk. "The gravamen of plaintiffs' complaint is that by failing to pursue the return of deceased infant's organs for burial, defendant breached a duty to plaintiffs that "constituted a deviation from proper representation." i.e. legal malpractice. In particular, plaintiffs' Fourth Cause of Action seeks monetary damages for breach of contract, alleging that said contract was created at some point prior to plaintiffs' retention of defendant law firm {April2012} to pursue their medical malpractice (personal injury wrongful death) action. That at all times relevant "... [T]he return of decedent's organs for burial was of significantly greater importance to the plaintiffs than recovering monetary damages for the personal injuries and wrongful death." That defendant agreed, in February 2012, to try to effectuate the return of the organs. And that by "doing nothing" until such time as the organs were disposed of by Methodist Hospital, renders it liable for breach of contract. That the consideration given by the Marinelli's was the retention, by them, of the defendant to pursue their claims."

"Assuming, for the purpose of this discussion, that it was the intention of Mr. and Mrs. Marinelli to create a contract with defendant law firm, requiring it to pursue the return of decedent's organs, it is this Court's opinion that they did not fulfill their "portion of the deal" for at least two months. Based on the

identical affidavits submitted by them in opposition to defendant's motion, it is undisputed that they did not sign a retainer agreement until April. Thus, there was no quid pro quo between the parties until, at minimum, the date the retainer agreement was signed. Plaintiffs' allege that had defendant sought return of the organs in February or March of 2012 "the organs could have been recovered and could have received a proper religious burial." It is this Court's opinion that no legal relationship existed between the parties in February or March of 2012 and that defendant considered plaintiffs at that time to be, at most, potential clients to whom no actual duty was owed. At that point, no enforceable contract (written or oral) existed."