

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1302

CA 16-01952

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, DEJOSEPH, AND WINSLOW, JJ.

JOHN GUIDO AND SALLY GUIDO,
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

COUNTY OF CAYUGA, JACKIE WOJESKI, RN, CAROL WALLACE, RN, "JANE" LITTY, RN, CPT. JOHN MACK, C.O. "JOHN" FLETCHER, SGT. "JOHN" PERKINS, PANGH LAY KOOI, MD, DEFENDANTS-RESPONDENTS, ET AL., DEFENDANTS.

COUNTY OF CAYUGA, JACKIE WOJESKI, RN, CAROL WALLACE, RN, CHRISTINE LITTY, RN, CPT. JOHN MACK, C.O. BRETT FLETCHER, SGT. SHANE PARKINS, AND PANGH LAY KOOI, MD, THIRD-PARTY PLAINTIFFS,

V

AUBURN COMMUNITY HOSPITAL, ALSO KNOWN AS AUBURN MEMORIAL HOSPITAL, PHILIP GOTTLIEB, MD, THIRD-PARTY DEFENDANTS-RESPONDENTS, ET AL., THIRD-PARTY DEFENDANTS.

KENNETH B. GOLDBLATT, MOHEGAN LAKE, D.J. & J.A. CIRANDO, ESQS., SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR PLAINTIFFS-APPELLANTS.

THE LAW FIRM OF FRANK W. MILLER, EAST SYRACUSE (CHARLES C. SPAGNOLI OF COUNSEL), FOR DEFENDANTS-RESPONDENTS AND THIRD-PARTY PLAINTIFFS.

FELDMAN KIEFFER, LLP, BUFFALO (JAMES E. EAGAN OF COUNSEL), FOR THIRD-PARTY DEFENDANT-RESPONDENT AUBURN COMMUNITY HOSPITAL, ALSO KNOWN AS AUBURN MEMORIAL HOSPITAL.

MACKENZIE HUGHES LLP, SYRACUSE (RYAN T. EMERY OF COUNSEL), FOR THIRD-PARTY DEFENDANT-RESPONDENT PHILIP GOTTLIEB, MD.

Appeal from an order of the Supreme Court, Cayuga County (Mark H. Fandrich, A.J.), entered July 29, 2016. The order granted the motion of third-party defendant Philip Gottlieb, MD, to vacate the note of issue and certificate of readiness, and denied the cross motion of plaintiffs to sever the third-party action from the main action.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained by plaintiff John Guido after defendants allegedly failed to provide him with his prescription medication while he was incarcerated at a facility operated by defendant County of Cayuga. Third-party defendant Philip Gottlieb, MD moved to vacate the note of issue and certificate of readiness, and plaintiffs cross-moved pursuant to CPLR 1010 to sever the third-party action from the main action. Supreme Court granted Gottlieb's motion and denied plaintiffs' cross motion. We affirm.

Contrary to plaintiffs' contention, we conclude that the court did not abuse its discretion in denying the cross motion for severance inasmuch as plaintiffs failed to show substantial prejudice (see CPLR 1010; *Coffee v Tank Indus. Consultants, Inc.*, 133 AD3d 1305, 1306 [4th Dept 2015]; *Neckles v VW Credit, Inc.*, 23 AD3d 191, 192 [1st Dept 2005]). The court also properly granted the motion to vacate the note of issue and certificate of readiness because, among other things, "the third-party action was commenced after the note of issue was filed in the main action, and [Gottlieb] had outstanding requests for discovery" (*Coffee*, 133 AD3d at 1306; see 22 NYCRR 202.21 [e]).