

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

1282

CA 16-02123

PRESENT: WHALEN, P.J., SMITH, LINDLEY, NEMOYER, AND CURRAN, JJ.

ANTHONY P. COMUSO, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

JAY A. SUPNICK AND LAW ENFORCEMENT PSYCHOLOGICAL ASSOCIATES ("L.E.P.A."), DEFENDANTS-RESPONDENTS.

ANTHONY P. COMUSO, PLAINTIFF-APPELLANT PRO SE.

GIBSON, MCASKILL & CROSBY, LLP, BUFFALO (JOSEPH W. DUNBAR OF COUNSEL), FOR DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Monroe County (Thomas A. Stander, J.), entered September 8, 2016. The order, inter alia, granted the motion of defendants for summary judgment dismissing the complaint.

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

Memorandum: Supreme Court properly granted defendants' motion for summary judgment dismissing plaintiff's complaint for psychological malpractice. Defendants met their initial burden by establishing as a matter of law that, as a psychologist hired by plaintiff's employer for the sole purpose of assessing plaintiff's continued fitness for duty, defendant Jay A. Supnick did not have a doctor-patient relationship with plaintiff (*see Gedon v Bry-Lin Hosps.*, 286 AD2d 892, 893-894 [4th Dept 2001], *lv denied* 98 NY2d 601 [2002]; *Lee v City of New York*, 162 AD2d 34, 36-38 [2d Dept 1990], *lv denied* 78 NY2d 863 [1991]; *see generally Forrester v Zwanger-Pesiri Radiology Group*, 274 AD2d 374, 374 [2d Dept 2000]). Plaintiff failed to raise a triable issue of fact to defeat the motion (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Moreover, plaintiff makes no claim that Supnick affirmatively treated, advised, or injured him during the assessment (*cf. Bazakos v Lewis*, 12 NY3d 631, 634-635 [2009]; *Heller v Peekskill Community Hosp.*, 198 AD2d 265, 266 [2d Dept 1993]). Thus, we conclude that "a cause of action sounding in [psychological] malpractice may not be maintained against the defendants" (*Lee*, 162 AD2d at 38; *see Gedon*, 286 AD2d at 893-894).

Entered: December 22, 2017

Mark W. Bennett
Clerk of the Court