

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

618

CA 18-01138

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

TAMMY A. CLEVELAND, INDIVIDUALLY AND AS
ADMINISTRATRIX OF THE ESTATE OF MICHAEL E.
CLEVELAND, DECEASED,
PLAINTIFF-APPELLANT-RESPONDENT,

V

MEMORANDUM AND ORDER

GREGORY C. PERRY, M.D., FDR MEDICAL
SERVICES, P.C., KALEIDA HEALTH AND KALEIDA
HEALTH/DEGRAFF MEMORIAL HOSPITAL,
DEFENDANTS-RESPONDENTS-APPELLANTS.
(APPEAL NO. 2.)

BURKWIT LAW FIRM, PLLC, ROCHESTER (CHARLES F. BURKWIT OF COUNSEL), FOR
PLAINTIFF-APPELLANT-RESPONDENT.

SUGARMAN LAW FIRM, LLP, SYRACUSE (JENNA W. KLUCSIK OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS-APPELLANTS GREGORY C. PERRY, M.D., AND FDR
MEDICAL SERVICES, P.C.

GIBSON, MCASKILL & CROSBY, LLP, BUFFALO (MICHAEL J. WILLETT OF
COUNSEL), FOR DEFENDANTS-RESPONDENTS-APPELLANTS KALEIDA HEALTH AND
KALEIDA HEALTH/DEGRAFF MEMORIAL HOSPITAL.

Appeal and cross appeals from an order of the Supreme Court,
Niagara County (Frank Caruso, J.), entered May 8, 2018. The order
granted in part defendants' motions for summary judgment dismissing
plaintiff's complaint.

It is hereby ORDERED that the order so appealed from is
unanimously modified on the law by granting that part of the motions
of defendants seeking summary judgment dismissing the sixth and eighth
causes of action, and as modified the order is affirmed without costs.

Same memorandum as in *Cleveland v Perry* ([appeal No. 1] – AD3d –
[Aug. 22, 2019] [4th Dept 2019]).

Entered: August 22, 2019

Mark W. Bennett
Clerk of the Court