

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, September 2, 2021 (arguments begin at noon)

No. 57 Lividini v Goldstein

Westchester resident Racquel Lividini brought this medical malpractice action against Dr. Harold Goldstein, WestMed Medical Group, and Rye Ambulatory Surgery Center, alleging that she received negligent podiatric care from Dr. Goldstein at the offices of WestMed and Rye in Westchester County in 2016. Lividini filed the lawsuit in the Bronx on the basis that the Bronx address Dr. Goldstein listed on his medical license registration with the State Education Department made the Bronx his principal place of business. The defendants moved for change of venue to Westchester County, where WestMed and Rye each have their principal place of business and where Lividini was treated. Dr. Goldstein said in an affidavit that he resides in Westchester County, is employed by WestMed in Westchester, and derives most of his income there, making it his principal place of business. However, he also said he maintained privileges at St. Barnabas Hospital in the Bronx, supervised podiatric residents at two of the hospital's Bronx clinics on two afternoons per week, and saw about 20 to 25 patients per month at a Bronx Park Medical pavilion.

Supreme Court granted the motion and transferred the case to Westchester County, saying "the affidavit by Dr. Goldstein sufficiently describes why his principal place of business is at WestMed ... in Westchester County. In opposition, the evidence submitted by plaintiff merely demonstrates that Dr. Goldstein is affiliated with St. Barnabas Hospital in the Bronx."

The Appellate Division, First Department reversed on a 3-2 vote and returned the case to the Bronx, saying "Dr. Goldstein failed to show that plaintiff's designation of Bronx as the venue at the commencement of the action was improper. It is a defendant's burden to show that venue was improperly placed, and not a plaintiff's, as the dissent appears to suggest. Plaintiff relied on documentary evidence to establish residency; Dr. Goldstein did not dispute this evidence, did not submit documentary evidence, and indeed admitted in his own affidavit that he maintains a regular practice in the Bronx."

The dissenters argue Westchester is the proper venue. They said, "Plaintiff and defendants reside in Westchester County, the alleged medical malpractice occurred in Westchester County and the individual defendants are sued based on their actions as employees of corporations having their principal place of business in Westchester County.... Merely listing a mailing address with a regulatory agency in order to obtain a license to practice medicine in New York is not proof of a licensee's principal place of business.... Finally..., Bronx County has no nexus with this dispute and does not qualify as proper venue...."

For appellants WestMed and Rye: Daniel S. Ratner, White Plains (914) 559-3100
For respondent Lividini: Frank A. Longo, Manhattan (212) 661-9000

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, September 2, 2021 (arguments begin at noon)

No. 58 People v Bradford Shanks

In 2015, Bradford Shanks was indicted in Otsego County on one count of third-degree grand larceny for allegedly submitting a false tax return to his insurance company in order to obtain payment of \$35,193.20 for lost wages after he was injured in a car accident. Over the next two years leading up to his trial, Shanks was represented by six different attorneys as assigned counsel. The first attorney withdrew from the case after one month due to a conflict of interest; the second withdrew after six months due to illness; the third withdrew after two weeks due to a conflict; and the fourth withdrew after two months because he was moving to Atlanta, Georgia.

Shanks' fifth attorney, after six weeks, wrote to County Court asking to withdraw due to a "complete and total breakdown of the attorney/client relationship" caused by Shanks "hollering at me." The court relieved her. Shanks' sixth, and last, assigned counsel wrote to the court seeking to withdraw after three months because of his client's "behavior, his demands, his threats, and his unwillingness to prepare for trial." The attorney tempered his remarks at a court appearance, saying that while Shanks was occasionally aggressive or agitated and alienated his legal staff, the attorney himself "got along okay" with him. But he also said he could not adequately prepare for trial in the short time remaining.

County Court relieved the sixth attorney and, over Shanks' protests, refused to appoint new counsel. The court said, "I have repeatedly advised you that you have to cooperate with your attorneys. You have to work with them. You have to listen to them. You can't expect them to file baseless motions and when they refuse to file a frivolous motion react with anger and agitation and make threats of filing lawsuits against them or claims of incompetency or ethical violations, and yet you continue to do that.... You're welcome to hire counsel but I'm not going to assign an attorney to represent you any further." Shanks was required to represent himself at trial, with the help of a legal advisor, and he was found guilty as charged. In a negotiated agreement on sentencing, Shanks waived his right to appeal in return for a sentence of time served and the resolution of unrelated criminal charges.

The Appellate Division, Third Department affirmed, rejecting Shanks' claim that he was denied his right to counsel. The court said he "knowingly, voluntarily and intelligently waived his right to appeal," despite "isolated uses of language more appropriate for a waiver executed as part of a plea agreement," and it held the waiver included his right to counsel claim. It also found his argument would fail on the merits, noting that he "had a string of attorneys" because of "the role defendant's behavior had repeatedly played in the breakdown of the attorney-client relationship." Even if his argument "survives his valid appeal waiver..." it said, "we cannot agree with it due to 'his persistent pattern of threatening, abusive, obstreperous, and uncooperative behavior with successive assigned counsel'...."

Shanks argues that the constitutional right to counsel is so fundamental that it cannot be waived and, in this case, the waiver he signed was invalid because "both the court's colloquy and the written waiver of appeal indicated that no appellate rights survived the waiver." On the merits, he argues the lower courts erred in finding that he forfeited his right to counsel because any alleged misconduct on his part did not rise to the "egregious" level that might warrant forfeiture. "While there were six different attorneys assigned to represent [him] throughout the course of this case, the record shows that the majority of them asked to be relieved for reasons other than an inability to work with Appellant..." he says. "[O]nly two of them asked to be relieved due to difficulties relating to Appellant."

For appellant Shanks: Kathy Manly, Selkirk (518) 635-4005

For respondent Otsego County district attorney: Christopher James Di Donna, Schenevus (607) 547-4249