NYSBA CasePrepPlus

A New York State Bar Association member benefit

October 31, 2025

Editor:
Robert S. Rosborough IV

Summarizing recent significant New York appellate cases

May a parent plaintiff recover purely emotional damages for prenatal medical malpractice based on a lack of informed consent, where the child is born alive? No, the Court of Appeals recently held, clarifying that its precedent bars such recovery, unless the plaintiff falls within one of New York's three limited exceptions to the bar on recnovery for purely emotional harm. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

TORTS, MEDICAL MALPRACTICE

SanMiguel v Grimaldi, 2025 NY Slip Op 05780 (Ct App Oct. 21, 2025)

Issue: **May a parent plaintiff recover purely emotional damages for prenatal medical malpractice based on a lack of informed consent?**

Facts: The mother was admitted to the hospital for childbirth, where the treating doctor unsuccessfully attempted to vacuum extract the baby, and ultimately delivered the child by C-section, in serious condition. The child passed away 8 days later, and the mother brought a medical malpractice action against the hospital and doctor, alleging, among other claims, prenatal medical malpractice based on lack of informed consent, seeking only recovery for emotional harm. The doctor moved for summary judgment dismissing that claim, arguing that the Court of Appeals' prior holding in *Sheppard-Mobley v King* (4 NY3d 627 [2005]), which held that "a birthing parent may not recover damages for emotional harm where alleged medical malpractice causes in utero injury to the fetus, subsequently born alive," barred the plaintiff's claim.

Supreme Court denied the doctor's motion for summary judgment, holding that "there is a triable issue of fact as to whether plaintiff consented to Dr. Grimaldi's use of a vacuum extractor to attempt to deliver the infant, and the parties dispute whether the use of the vacuum extractor proximately caused plaintiff's alleged injuries." The Appellate Division, First Department, with one Justice dissenting in part, affirmed, reasoning that "*Sheppard-Mobley* did not bar plaintiff's claim for emotional harm arising from the alleged lack of informed consent for the vacuum extraction procedure" because "a claim for lack of informed consent is separate and distinct from general allegations of medical negligence like those at issue in *Sheppard-Mobley*."

Holding: The Court of Appeals, in a 4-3 opinion, reversed, granted the doctor's motion for summary judgment, and dismissed the mother's claim for neonatal medical malpractice based on lack of informed consent. The Court reaffirmed its adherence to the *Sheppard-Mobley* rule that a parent plaintiff may not recover solely emotional damages for neonatal medical malpractice claims based on lack of informed consent where the child is alleged to have been harmed in-utero, but is born alive.

The Court explained that its precedent has recognized only three limited instances where a plaintiff may recover for solely emotional harm in the absence of physical injury: (1) negligence based on "false reports of a family member's death or serious illness, or the mishandling of a family member's remains"; (2) "where a defendant's breach of a duty of care unreasonably places the plaintiff in fear of physical harm, resulting in emotional harm with 'physical manifestations'"; or (3) "negligent infliction of emotional distress where [the plaintiff] suffer[s] emotional injury upon witnessing a physical injury to an immediate family member while the plaintiff is in the 'zone of danger' created by the defendant's negligent conduct." In the absence of one of those three very circumscribed scenarios, the Court held, its "long-established precedent dictates that a birthing parent may not recover for their purely emotional suffering due to medical malpractice resulting in in-utero injuries to their child who is born alive."

Contrary to the Appellate Division's reasoning, the Court explained, "a lack of informed consent claim is a type of medical malpractice claim. Thus, a straightforward reading of *Sheppard-Mobley* forecloses plaintiff's claim. Looking beyond the clear language of that opinion, there is no legal or logical reason to treat lack of informed consent claims differently from traditional medical malpractice claims for present purposes. Both seek recovery for injuries resulting from a medical procedure performed in breach of a professional duty. True, as the Appellate Division observed, the claims 'comprise different elements: traditional medical malpractice requires a plaintiff to prove a breach of the duty of care, while lack of informed consent requires the plaintiff to prove a breach of the duty to inform. And yet neither plaintiff nor the Appellate Division explained why these technical distinctions are dispositive. At bottom, both claims arise from injury caused by a medical procedure performed in breach of a professional duty." Thus, the Court clarified, "[t]he core question is whether plaintiff's claim for emotional injuries falls within any exception to that general rule. Because lack of informed consent claims are indistinguishable from traditional medical malpractice claims for purposes of that rule, our holding in *Sheppard-Mobley* forecloses" the mother's claim.

Finally, the Court declined the invitation to overrule *Sheppard-Mobley*, holding instead that stare decisis counseled against rewriting its clear and easy to apply rule. Although the "emotional pull" to allow a recovery in these instances was "undeniable," the majority declined to rewrite New York's predictable rules governing recovery for medical malpractice, and provided clarity for plaintiffs, hospitals, and doctors across the state.

FAMILY LAW, TERMINATION OF PARENT RIGHTS

***Matter of K.Y.Z. (W.Z.)*, 2025 NY Slip Op 05781 (Ct App Oct. 21, 2025)**

Issue: **Did the child service agency satisfy its burden to demonstrate by clear and convincing evidence that it made affirmative, repeated, and meaningful efforts to assist the parent in overcoming particular obstacles to reunification, or that such efforts would be detrimental to the child?**

Facts: "Father W.Z. and mother Q.Y.Z. are parents of K.Y.Z., their only child. One week after the child's birth in 2014, the New York City Administration for Children's Services (ACS) removed the newborn from his parents and placed him in foster care with Good Shepherd Services (the agency), based on ACS's assessment that mother's schizophrenia rendered her unable to care for him. Thereafter, Family Court found that the parents neglected the child, and the child entered foster care. In 2017, the agency petitioned to terminate father's and mother's parental rights on the ground of permanent neglect. During several months between 2019 and 2020, Family Court held a fact-finding hearing where father, an agency caseworker, and mother's doctor testified."

The evidence at the hearing showed that notwithstanding multiple foster placements, the agency failed to provide a placement that spoke the father's native language, which inhibited the father's ability to communicate with the child. Although the father attended conferences with the child, the agency noted that his onerous work schedule made visiting the child difficult. "The record evidence demonstrates that the agency took years to provide father with access to the basic services it deemed part of the plan for reunification."

Following the hearing, Family Court "concluded that the agency proved by clear and convincing evidence that mother's mental illness precluded her from appropriately caring for the child. The court further determined that the agency's diligent efforts, although minimal, were reasonable, as required by statute, and that the agency met its burden of proving that both parents permanently neglected the child." "The Appellate Division affirmed Family Court's order. As relevant to father, the Appellate Division held that clear and convincing evidence supports the determination that, despite the agency's diligent efforts, he permanently neglected the child by failing to consistently maintain contact with or plan for the future of the child. It found the agency's efforts diligent, and that it adequately addressed the language barrier by using Mandarin interpreters to communicate with father and referring him for dyadic therapy and a parenting skills class that were provided in Mandarin, which he understood."

Holding: The Court of Appeals reversed, explaining that because "[a] parent's right to the custody and care of their child is perhaps the oldest of the fundamental liberty interests protected by the Constitution," a child service agency has a heavy burden to demonstrate, by clear and convincing evidence, that the parent has permanently neglected the child before it may terminate the parent's parental rights. In making that showing, the Court explained, the agency must establish that "it made diligent efforts to encourage and strengthen the parental relationship," which are statutorily defined to include "consultation and cooperation with the parents in developing a plan for appropriate services to the child and [their] family; making suitable arrangements for the parents to visit the child . . . ; provision of services and other assistance to the parents . . . so that problems preventing the discharge of the child from care may be resolved or ameliorated; [and] informing the parents at appropriate intervals of the child's progress, development and health." Thus, the Court clarified, "an agency must always determine the particular problems facing a parent with respect to the return of their child and make affirmative, repeated, and meaningful efforts to assist the parent in overcoming these handicaps. In evaluating the over-all efforts undertaken by the agency, the courts should always refer to the statutory guidelines. An agency has not made diligent efforts to reunite the parent and child if it fails to provide particular services aimed at the barriers to reunification that it has identified. And, as the Legislature recognized, the degree to which a parent has upheld their obligations to their children cannot be meaningfully measured when the agency itself has not undertaken diligent efforts on behalf of reuniting parent and child."

Here, the Court held, "[t]he record below demonstrates that the child services agency failed to present evidence of diligent efforts to help reunite father and his child before it petitioned to terminate father's parental rights. First, the agency failed to adequately accommodate and account for father's linguistic needs. Father does not speak or understand English, but the agency never provided interpretive services during family visits, which were the most significant interactions between father, the child, the agency caseworker, and the child's foster parents. The agency also failed to provide interpretation services at the child's medical appointments or even give father advance notice of when those appointments were scheduled, precluding him from taking part in that critical aspect of his child's care. Second, despite the child services agency's belief that father's lack of insight into mother's mental health needs and their impact on parenting the child was the weightiest barrier to reunification, it failed to refer father to individual counseling or a support group so he could gain that insight. Finally, although the child services agency identified father's living arrangements and onerous work schedule as further obstacles to reunification, it took few steps to help him secure appropriate housing or employment, which could have made it easier for father to visit his child. In short, in this proceeding, rather than foster reunification, almost all of the child services agency's actions—and its failures to take action—ensured that the parent-child bond disintegrated. Thus, the child services agency failed to meet its burden as a matter of law."

FREEDOM OF INFORMATION LAW, REASONABLE DESCRIPTION OF RECORDS

***Matter of Wagner v New York City Dept. of Educ.*, 2025 NY Slip Op 05783 (Ct App Oct. 21, 2025)**

Issue: **When an administrative agency receives a Freedom of Information Law request, may it determine whether the records requested are reasonably described on the basis of whether the agency can retrieve them using reasonable efforts?**

Facts: "Petitioner requested all emails between the DOE and a certain domain name during the period April 2021 to August 2022. The DOE responded that the documents sought were 'not reasonably described' because it could not 'launch an effective search to locate and identify the records sought with reasonable effort.' More particularly, the DOE stated that attempts to search its emails 'failed to execute' using the parameters provided by petitioner, and thus it asked petitioner to focus his request on a narrower timeframe or specific parties or to provide key terms to search. When petitioner declined to do so, his request was deemed withdrawn." On the petitioner's administrative appeal, DOE "reiterated that a request reasonably describes records when the description provides sufficient ability, with reasonable effort, to launch an effective search to locate and identify the records sought." Although DOE acknowledged that it understood the petitioner's request, because DOE's electronic searches for the emails "failed to execute," DOE concluded that the request was not reasonably described.

In the ensuing Article 78 proceeding challenging DOE's denial, "Supreme Court denied the petition. The Appellate Division affirmed, concluding that the documents were not 'reasonably described' as required under Public Officers Law § 89(3)(a) because the administrative record and the DOE's proffered affidavits demonstrate that the descriptions provided are insufficient for purposes of extracting or retrieving the requested documents from the virtual files through an electronic word search by name or other reasonable technological effort."

Holding: The Court of Appeals held that "the DOE and the Appellate Division conflated petitioner's obligation to reasonably describe the documents with the agency's obligation to retrieve the documents if it has the ability to do so with reasonable effort. The requirement that requested records be reasonably described exists to ensure that the responding agency has the ability to locate the records sought . . . Here, the DOE concedes that it understands what documents petitioner seeks and knows they are located in the agency's electronic email database. Indeed, the record establishes that the description in the request was sufficient for the DOE to fashion and run electronic searches which, if successful, would have retrieved the records sought. The fact that those searches timed out or failed to execute using the DOE's software is not determinative of the legal sufficiency of the request.

Whether the DOE can retrieve those documents with reasonable effort is a separate question, and we do not decide that question today. If it can retrieve the documents with reasonable effort, it must do so . . . On its face, the reasonable effort language, as codified, applies to all instances where an agency is asked to make electronic records available and is best understood as providing that the responding agency must 'retrieve or extract a record or data maintained' in a computer system unless doing so requires the agency to undertake unreasonable efforts."

The Court explained, "[e]valuating the reasonable description and reasonable effort requirements separately should alleviate the confusion that the combined test has produced. Whether a requestor has reasonably described an electronic record does not turn on the degree of effort necessary to retrieve it, and the inability of an agency to retrieve a document with reasonable effort does not implicate whether the description in the request was sufficient to allow the agency to locate it. Again, if a responding agency can retrieve the requested documents with reasonable effort, it must do so. What constitutes reasonable effort is necessarily a case-specific determination, and efforts are not unreasonable solely because the agency declined to execute the requestor's preferred document retrieval method. While FOIL imposes no obligation on the agency at the administrative level to describe its efforts to retrieve the requested records, the agency might find it beneficial to describe its efforts in its correspondence with the requestor." Because DOE admitted that it understood the FOIL request, the Court annulled the DOE denial determination and remanded to the agency to undertake reasonable efforts to retrieve the requested documents.

CasePrepPlus | October 31, 2025

To view archived issues of CasePrepPlus,
visit NYSBA.ORG/caseprepplus/.