

STATE OF MAINE
SAGADAHOC, SS.

SUPERIOR COURT
Civil Action
Docket No. CV-2017-16

MARYANN MYRICK,)
as Personal Representative of the)
Estate of MICHAEL L. MYRICK,)
Plaintiff,)

v.)

NICOLE NALCHAJIAN, M.D.,)
et al,)
Defendants.)

ORDER ON DEFENDANTS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT

Pending before the court is the Defendants' Motion for Partial Summary Judgment. For the reasons stated below, the motion is GRANTED.

As a matter of law, the facts alleged by the Plaintiff in the summary judgment record are insufficient as a matter of law to allow a reasonable jury to conclude that Dr. Nalchajian acted with ill will towards Michael Myrick or acted in a way that was so outrageous that malice can be implied. The facts alleged fall well short of the outrageous acts of the defendant in *Morin v. Eastern Maine Med. Ctr.*, 779 F. Supp. 2d 166 (D. Me. 2011). Though this court believes the Law Court would likely hold that punitive damages may be available in a medical malpractice action, the Law Court would not do so based on the facts of this case.

Similarly, this court is satisfied that the Law Court would adopt *Restatement (Second) of Torts §925* that requires that a decedent's gross earnings be reduced to reflect a decedent's own living expenses. In this case, during the discovery period, the Plaintiff produced no evidence that would allow the jury to make such a calculation. Without such evidence, the Defendants are entitled to judgment as a matter of law on that portion of the Plaintiff's claim.

The Plaintiff has withdrawn the fraud claim. It is ORDERED that, by agreement of the parties, Count III will not be presented to the jury.

The Clerk is directed to incorporate this Order by reference into the docket for this case, pursuant to Rule 79(a), Maine Rules of Civil Procedure.

Dated: April 24, 2020


JUSTICE, MAINE SUPERIOR COURT

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Filing Document: COMPLAINT
Filing Date: 04/24/2017

Minor Case Type: MEDICAL MALPRACTICE

Docket Events:

04/24/2017 FILING DOCUMENT - COMPLAINT FILED ON 04/24/2017

04/24/2017 Party(s): MARYANN MYRICK PR
ATTORNEY - RETAINED ENTERED ON 02/24/2017
Plaintiff's Attorney: OWEN B PICKUS

Party(s): MICHAEL L MYRICK EST OF
ATTORNEY - RETAINED ENTERED ON 02/24/2017
Plaintiff's Attorney: OWEN B PICKUS

04/24/2017 NOTE - OTHER CASE NOTE ENTERED ON 04/24/2017
REQUEST FOR PANEL CHAIR ISSUED CHIEF JUSTICE COLE

05/01/2017 Party(s): MARYANN MYRICK PR, MICHAEL L MYRICK EST OF
SUPPLEMENTAL FILING - NOTICE OF CLAIM FILED ON 04/28/2017
Plaintiff's Attorney: OWEN B PICKUS
AMENDED NOTICE OF CLAIM FOR PROFESSIONAL NEGLIGENCE

05/10/2017 Party(s): MID COAST HOSPITAL
OTHER FILING - ENTRY OF APPEARANCE FILED ON 05/08/2017
Defendant's Attorney: JAMES MARTEMUCCI

05/10/2017 Party(s): MID COAST HOSPITAL
ATTORNEY - RETAINED ENTERED ON 05/08/2017
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vs

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4/24/20
SUPERIOR COURT
SAGADAHO, ss.
Docket No BATSC-CV-2017-00016

DOCKET RECORD

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