

Swan v. Simoni
(Case No. 10S00960)

This small claims appeal matter was taken under submission, the court hereby rules as follows:

The court finds that plaintiff, Valorie Swan, has failed to meet her burden of proof to establish any of her claims through competent evidence against the defendant, Payman Simoni. It was undisputed that Ms. Swan retained the services of Dr. Simoni to perform plastic surgery to repair damage done as the result of numerous prior surgeries performed by other doctors. What is disputed are the details of their agreement regarding the steps to be taken by Dr. Simoni as a result of his pre-operation consultation with Ms. Swan.

At the outset two things must be established: First, even in small claims cases, the plaintiff must meet his/her burden of proof in order to prevail in his/her claims against a defendant. And, second, the credibility of the witnesses must be taken into account in the court's evaluation of all testimony presented in a given trial. In this case, the plaintiff has failed to present sufficient evidence to support what appears to the court to be a claim of malpractice alleged against by Dr. Simoni. Ms. Swan presented only a single letter from her current doctor regarding her medical condition. Although a single letter could, under certain circumstances, be sufficient to meet a plaintiff's burden of proof, the letter in this case falls short of the evidence needed. Nowhere in the correspondence from Dr. Usha Rajagopal is there a critical opinion expressed regarding the surgery performed by Dr. Simoni based upon her review of his work. Absent some form of competent evidence indicating that Dr. Simoni's work fell below medical professional standards, Ms. Swan has failed to meet her burden.

On the related issue of fraud and/or misrepresentation by Dr. Simoni Ms. Swan, again, has failed to establish her claim. The testimony from each side of this issue was diametrically opposed, causing the court to very closely analyze the credibility of the evidence presented. To accept Ms. Swan's version of the facts it must be believed that Dr. Simoni intentionally prescribed a sedating medication to be taken by her prior to her arrival for surgery and that upon her arrival at the surgical facility, *for the first time*, he advised her that he was completely changing his intended surgical plan. Thereafter, while still under the influence of the sedative, Dr. Simoni required Ms. Swan to sign the requisite consent and waiver forms to allow the performance of the surgery in question. Conversely, Dr. Simoni testified that all discussions regarding his surgical plan occurred the day *prior* to the surgery. And that, as far as he knew personally, Ms. Swan was not under the influence of any substance which might alter her ability to think and understand clearly during his pre-op consultation with her. On balance, the court finds Dr. Simoni's version to be the more credible.

Accordingly, judgment is entered in favor of the defendant, Dr. Simoni. The plaintiff shall take nothing.

January 31, 2011


Leslie E. Brown, Judge