

**AFFIDAVIT OF MOTHER OF PLAINTIFF, WHO HAS A MASTER’S DEGREE  
IN BIOLOGY SCIENCE, AND UNDATED E-MAIL FROM A FORENSIC  
VETERINARIAN ARE INSUFFICIENT TO RAISE AN ISSUE OF FACT  
IN OPPOSITION TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Kim v. Zawie, 66 Misc. 3d 137(A), (N. Y. 2020)

**BASIS OF THE COMPLAINT:**

Yelena Kim, Plaintiff, alleged that Drs. Zawie and Ruggiero failed to timely diagnose her dog, Zoye with pyometra, failed to discuss any possible complications that could happen during and after surgery, and failed to perform a surgery with care, which led to injury to Zoye’s as well as subsequent surgery.

**LEGAL PROCEEDINGS:**

Defendants, Drs. Zawie and Ruggiero, moved for summary judgment dismissing the complaint and submitted an expert affidavit from a licensed veterinarian who averred, based on the medical records, that it was his opinion, with a reasonable degree of medical certainty, that none of the defendants had departed from good and accepted veterinary practice in their treatment of Zoye.

Kim submitted an affirmation noting some immaterial factual inconsistencies made in defendants’ papers, and an affidavit by her mother, who has a master’s degree in biology science, rebutting some findings in defendants’ expert affidavit. The court subsequently afforded Kim an additional three weeks to submit supplemental opposition papers to include an expert’s affidavit. In supplemental papers, Kim submitted an undated email from a forensic veterinarian who stated that he had reviewed the majority of documents submitted with respect to Zoye but that he would like more time so that he could consult with his “colleagues who were previously involved in the medical and surgical aspects of this case.” He indicated that one of his colleagues” had been resistant to discuss the pathology report findings with him and requested a three-to-four-week postponement of the motion “until after this critical collegial discussion.”

The court granted the motion by defendants, stating that plaintiff had failed to rebut defendants’ prima facie showing with an affidavit from an expert veterinarian.

**DISCUSSION OF THE COURT:**

Generally, in a malpractice action, expert opinion is necessary to establish the applicable standard of care, as well as a deviation from such standard, which resulted in injury, unless the matter is one within the experience and observation of the average layperson.

Here, the moving papers included an affidavit by an expert which made a prima facie showing of a lack of malpractice on the part of any of the defendants. In opposition, neither the affidavit by plaintiff’s mother, who is not a veterinarian and not a qualified expert, nor the unsworn e-mail from a forensic veterinarian raised an issue of fact as to whether defendants’ treatment of Zoye was not in conformity with accepted veterinary standards of practice.

We find that the Civil Court properly dismissed the complaint as against all defendants.

**JUDGMENT:**

The order of the Civil Court is affirmed.