

Present:

HON. JOHN S. LOCKMAN

Justice.

TRIAL/IAS, PART 10  
NASSAU COUNTY

RALPH PRESS, as administrator of the  
Estate of PHYLLIS PRESS, deceased  
Plaintiff

INDEX  
NUMBER....., 19...

--against--

LILA G. HOLLIN, as Executrix of the  
Estate of SIDNEY HOLLIN, M.D.  
Deceased  
Defendant

MOTION  
DATE 3/22....., 199...

TRIAL  
CAL. NUMBER.....

The following papers read on this motion..... to dismiss complaint.....

Notice of Motion/Order to Show Cause.....	1
Answering Affidavits.....	2
Replying Affidavits.....	3
Pleadings -- Exhibits -- Stipulation.....	
Briefs: Plaintiff's/Petitioner's.....	Defendant's /Respondent's.....
<del>Upon the foregoing papers it is ordered that this motion.....</del>	

Upon the foregoing papers it is ordered that this motion by defendant for an order dismissing the complaint pursuant to CPLR 3211(a)(5), 214-a and EPTL §5-4.1 on the grounds that the action is barred by the statute of limitations is granted, and the complaint is dismissed.

The last date defendant's decedent treated plaintiff's decedent after surgery performed in 1975, was June 10, 1981, two years and ten months prior to her death. Thus, the two and one half year Statute of Limitations for medical malpractice had expired, and this action cannot be maintained unless plaintiff can establish a toll under the continuous treatment doctrine. Here plaintiff alleges that the decedent's subsequent treating physicians consulted Dr. Hollin regarding his treatment of her, and that the consultations satisfy the elements required for the

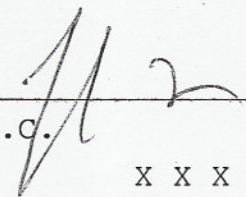
In the matter of RALPH PRESS,

v

LILA G. HOLLIN

continuous treatment toll. However, the law is to the contrary and plaintiff has offered no authority for her position. The record is devoid of any evidence that the decedent, after her final visit to Dr. Hollin in 1981, retained the "'continuous trust and confidence' which underlies the continuous treatment doctrine" (McSheffrey v Helou, \_\_AD2d\_\_, slip op. April 22, 1991, quoting Richardson v Orentreich, 64 NY2d 896). Accordingly, the action is dismissed.

Dated May 23, 1991

  
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J.S.C.

X X X

ENTERED

MAY 28 1991

HAROLD W. McCONNELL  
COUNTY CLERK OF MASSAU COUNTY