

**Supreme Court of the State of New York
Appellate Division: Second Judicial Department**

D34726
Y/kmb

_____AD3d_____

Argued - February 14, 2012

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2011-06243

DECISION & ORDER

Kevin Kowalski, respondent, v St. Francis Hospital
and Health Centers, et al., appellants, et al., defendants.

(Index No. 6848/07)

The Law Offices of Steinberg, Symer & Platt, LLP, Poughkeepsie, N.Y. (Robert R. Haskins of counsel), for appellant St. Francis Hospital and Health Centers.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, N.Y. (Richard E. Lerner and Judy C. Selmecci of counsel), for appellant Chandra Chintapalli.

Phelan, Phelan & Danek, LLP, Albany, N.Y. (Timothy S. Brennan of counsel), for appellant Emergency Physician Services of New York, P.C.

Bleakley Platt & Schmidt, LLP, White Plains, N.Y. (John P. Hannigan, Vincent W. Crowe, and Susan E. Galvão of counsel), for respondent.

In an action to recover damages for medical malpractice, etc., the defendant St. Francis Hospital and Health Centers appeals, and the defendant Emergency Physician Services of New York, P.C., separately appeals, as limited by their respective briefs, from so much of an order of the Supreme Court, Dutchess County (Sproat, J.), entered June 1, 2011, as denied their respective motions for summary judgment dismissing the complaint insofar as asserted against them, and the defendant Chandra Chintapalli appeals, as limited by his brief, from so much of the same order as denied that branch of his motion which was for summary judgment dismissing the complaint insofar as asserted against him.

ORDERED that the order is reversed insofar as appealed from, on the law, with one bill of costs payable to the appellants, the motions of the defendants St. Francis Hospital and Health

May 1, 2012

Page 1.

KOWALSKI v ST. FRANCIS HOSPITAL AND HEALTH CENTERS

Centers and Emergency Physician Services of New York, P.C., for summary judgment dismissing the complaint insofar as asserted against them are granted, and that branch of the motion of the defendant Chandra Chintapalli which was for summary judgment dismissing the complaint insofar as asserted against him is granted.

On December 20, 2006, at approximately 11:20 A.M., the plaintiff, while intoxicated from the consumption of alcohol, voluntarily came to the defendant St. Francis Hospital and Health Centers (hereinafter St. Francis) seeking entry into a detoxification program. However, several hours later, the plaintiff left the hospital before he was formally discharged. At about 5:30 P.M., the plaintiff was struck by a vehicle while trying to cross Route 9, near its intersection with Marist Drive in Poughkeepsie. The plaintiff commenced this action against, among others, his examining physician Chandra Chintapalli, St. Francis, and Emergency Physician Services of New York, P.C. (hereinafter EPS), alleging that they were negligent in not detaining him involuntarily.

A person who is brought voluntarily to a medical facility for treatment of alcoholism cannot be involuntarily confined solely for that treatment (*see* Mental Hygiene Law § 22.09[d]; *Lawlor v Lenox Hill Hosp.*, 74 AD3d 695, 696; *Mottau v State of New York*, 174 Misc 2d 884, 888; *Matter of Michael S.*, 166 Misc 2d 875, 878). Here, the defendants Chintapalli, St. Francis, and EPS established, *prima facie*, via their respective motions for summary judgment, that they lacked authority to confine the plaintiff upon his departure from St. Francis, where he voluntarily sought treatment. In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court should have granted the respective motions of St. Francis and EPS for summary judgment dismissing the complaint insofar as asserted against them, and that branch of Chintapalli's motion which was for summary judgment dismissing the complaint insofar as asserted against him (*see Zuckerman v City of New York*, 49 NY2d 557, 562-563).

The parties' remaining contentions either are without merit or have been rendered academic in light of our determination.

RIVERA, J.P., CHAMBERS, AUSTIN and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court