

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 24-01303

PRESENT: BANNISTER, J.P., MONTOUR, SMITH, GREENWOOD, AND HANNAH, JJ.

SUZANNE K. CIANCI, LIMITED ADMINISTRATOR
OF THE ESTATE OF DONALD J. TUOHEY, SR., DECEASED,
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

THE UNIVERSITY OF ROCHESTER, DEFENDANT-APPELLANT.

OSBORN, REED & BURKE, LLP, ROCHESTER (AIMEE LAFEVER KOCH OF COUNSEL),
FOR DEFENDANT-APPELLANT.

PHETERSON SPATORICO, LLP, ROCHESTER (STEVEN A. LUCIA OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County
(William K. Taylor, J.), entered July 12, 2024. The judgment awarded
plaintiff money damages upon a jury verdict.

It is hereby ORDERED that the judgment so appealed from is
unanimously reversed on the law without costs, defendant's motion for
a directed verdict is granted, and the complaint is dismissed.

Memorandum: Plaintiff commenced this action for, inter alia,
medical malpractice, arising from an incident in which defendant's
employees performed chest compressions on plaintiff's decedent after
he became unresponsive shortly after he presented to the emergency
department of defendant's hospital with complaints of, inter alia,
abdominal pain. The employees were not aware at the time that
decedent had previously executed a Medical Order for Life-Sustaining
Treatment (MOLST) in which he declined life-saving measures, including
chest compressions. The chest compressions were successful in
reviving decedent but allegedly resulted in injuries to decedent's
chest, including fractures to his ribs. Several hours later, decedent
suffered another heart attack and died. Plaintiff alleged that the
employees breached the applicable standard of care by performing chest
compressions on decedent in derogation of the MOLST, causing pain and
suffering via the resulting injuries to decedent's chest area.
Supreme Court denied defendant's motion seeking to dismiss the
complaint pursuant to, inter alia, CPLR 3211 (a) (7), and the matter
proceeded to a jury trial. The court subsequently denied defendant's
motion for a directed verdict and its motion to set aside the verdict
in favor of plaintiff. Defendant now appeals from the final judgment
awarding plaintiff damages.

Contrary to defendant's contention with respect to its motion to dismiss, the complaint states a cause of action for medical malpractice as opposed to "wrongful life." Plaintiff properly sought damages "for decedent's pain and suffering, which the complaint alleges was the result of medical malpractice in that [defendant's employees] breached the standard of care by administering treatments without consent and in direct contravention of decedent's wishes" as articulated in the MOLST (*Greenberg v Montefiore New Rochelle Hosp.*, 205 AD3d 47, 50 [1st Dept 2022]; see *Lanzetta v Montefiore Med. Ctr.*, 210 AD3d 535, 536 [1st Dept 2022]). We reject defendant's further contention that plaintiff's cause of action for medical malpractice sounds in battery and is thus time-barred. As alleged by plaintiff, defendant's employees were simply unaware of decedent's MOLST and his desire to avoid life-saving measures, i.e., they "negligently exceeded the scope of the patient's consent" (*Mitchell v Lam*, 186 AD3d 1072, 1072 [4th Dept 2020]; see *Ponholzer v Simmons*, 78 AD3d 1495, 1496 [4th Dept 2010], *lv dismissed* 16 NY3d 886 [2011]).

Defendant further contends that plaintiff's cause of action for medical malpractice is barred in the absence of an explicit statute creating a private cause of action for the violation of a MOLST and that the court thus erred in denying defendant's motion to dismiss. Even assuming, arguendo, that no such statutory right exists, we conclude that plaintiff's cause of action may proceed "under traditional common-law principles" of medical malpractice (*Chapman v Silber*, 97 NY2d 9, 20 [2001]; see generally *Greenberg*, 205 AD3d at 50).

Defendant contends in the alternative that the court erred in denying its motion to dismiss because there can be no cause of action for violating a MOLST in an emergency situation as alleged in the complaint. We reject that contention. The right of competent adults to refuse medical treatment, even life-saving treatment, is a "fundamental common-law right" (*Rivers v Katz*, 67 NY2d 485, 492 [1986], *rearg denied* 68 NY2d 808 [1986]; see *Myers v Schneiderman*, 30 NY3d 1, 10 [2017], *rearg denied* 30 NY3d 1009 [2017]), and an advance directive may provide for the withholding of cardiopulmonary resuscitation, i.e., the withholding of care in acute emergency situations (see e.g. Public Health Law § 2994-bb). Thus, although the existence of life-threatening or emergency circumstances may be relevant to whether the standard of care has been breached in a particular situation, it does not, in and of itself, relieve a defendant from the general responsibility to abide by a MOLST. We reject defendant's related contention that it is statutorily immune from suit and that the court thus erred in denying its motion to dismiss. Although health care providers may disregard an order not to resuscitate if, inter alia, they "believe in good faith that consent to the order has been revoked" or if "other significant and exceptional medical circumstances warrant disregarding the order" (Public Health Law § 2994-ee [1] [a]; [2]), here plaintiff alleged that defendant's employees were simply unaware that the MOLST existed, not that they decided to disregard the order in good faith or due to any circumstance other than that they were unaware of the MOLST.

We agree with defendant, however, that the court erred in denying its motion for a directed verdict. "[V]iewing the evidence in [the] light most favorable to [plaintiff] and affording [plaintiff] the benefit of every inference," we conclude that there was "no rational process by which a jury could find in favor of" plaintiff inasmuch as there was no expert testimony establishing the applicable standard of care or a breach thereof (*Clune v Moore*, 142 AD3d 1330, 1331 [4th Dept 2016]; see *Hytko v Hennessey*, 62 AD3d 1081, 1083-1084 [3d Dept 2009]; see generally *James v Wormuth* [appeal No. 2], 93 AD3d 1290, 1291 [4th Dept 2012], *affd* 21 NY3d 540 [2013]). At trial, plaintiff's expert described how a hospital could communicate a patient's MOLST in order to ensure that it was honored, what hospitals were "allowed" to do, what he would "expect," what "should" happen, and what "option[s]" were available, but he did not state what an accepted standard of care required. Further, even assuming, *arguendo*, that plaintiff's expert articulated a standard of care, we conclude that he failed to opine that any such standard was violated under the specific circumstances of this case (see *Navarro v Ortiz*, 203 AD3d 834, 835-836 [2d Dept 2022]; see generally *James*, 93 AD3d at 1291).

In light of our determination, we do not reach defendant's remaining contention.