

Hobson v St. Luke's-Roosevelt Hosp. Ctr.
2002 NY Slip Op 30184(U)
November 21, 2002
Supreme Court, New York County
Docket Number: 120189/99
Judge: Sheila Abdus-Salaam
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. SHEILA ABDUS-SALAAM
Justice

PART 13

Michael Hobson, as Administrator of the Estate
of Rondine Hobson, deceased

INDEX NO. 120189/99
MOTION DATE 10/7/02
MOTION SEQ. NO. 001
MOTION CAL. NO. 66

-v-

St. Luke's-Roosevelt Hospital Center,
Columbus Cardiology Associates,
Luciano Del Guzzo, M.D., Waterview Nursing Care Center,
Lawrence N. Diamond, M.D. and
Malcolm R. Blecher, M.D

11/2

FILED
NOV 29 2002
COUNTY OF NEW YORK
CLERK OF THE SUPREME COURT

The following papers, numbered 1 to _____

RECEIVED
NOV 26 2002
I.A.S. HOBSON
SUPPORT OFFICE

Notice of Motion/Order to Show Cause - Affidavits _____

Answering Affidavits - Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion by defendant Lawrence N. Diamond, M.D. and the cross-motion by defendant Waterview Nursing Care Center, Inc. for summary judgment dismissing the complaint against them is granted.

As a preliminary matter, I note that both defendants were granted 120 days from the filing of the note of issue to move for summary judgment, as per the preliminary conference order issued by Justice Moskowitz, and that these motions are therefore timely. Movants' counsel indicate in their papers that they are not aware of any published Part Rules that limit the time within which to move for summary judgment, and that they have recently learned that I routinely limit parties' time to move for summary judgment to 60 days after the filing of the note

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of issue. Counsel are referred to the Local Rule 17 of Supreme Court, New York County (those rules are published monthly by the New York Law Journal in an insert entitled "Judges' Part Rules") which provides that "[u]nless specified in a particular case, pursuant to CPLR 3212 (a) all motions for summary judgment must be made no later than 60 days after the filing of the note of issue." This Local Rule is the basis upon which I direct in my preliminary conference orders that summary judgment motions are to be filed within 60 days.

This action for medical malpractice and wrongful death relates to the care and treatment rendered to plaintiff's decedent Ms. Hobson, first by defendant Dr. Del Guzzo at St. Luke's Hospital Center, and then by defendant Waterview. Drs. Diamond and Blecher were physicians employed by Waterview who rendered care to decedent.

Ms. Hobson had been admitted to St. Luke's Hospital on April 21, 1999 for treatment of chest and abdominal pain, and she remained there, under the care of her physician, Dr. Del Guzzo, until May 4, 1999, when she was transferred to Kateri Nursing Home. She was sent back to the hospital on May 5, 1999, where she remained through May 19, 1999 when she was transferred to Waterview. On September 17, 1999, Ms. Hobson was transferred to Lenox Hill Hospital (not a party here) due to an elevated white blood count, where she remained for five months until she died on February 15, 2000. The autopsy report indicates that extreme decubiti ulcers (bed sores) had resulted in sepsis, pneumonia and death.

Regarding Ms. Hobson's treatment at St. Luke's Hospital prior to her transfer to Waterview, the records indicate that Ms. Hobson had suffered a compression fracture at thoracic 8 causing paralysis from the mid back down, and that the fracture had apparently occurred sometime between April 23, 1999 and April 24, 1999. The records also indicate that decedent had developed bed sores during the time of her admissions to the hospital, prior to her treatment at Waterview. Plaintiff's claims against Waterview and Dr. Diamond are essentially that they departed from good and accepted medical practice in that Ms. Hobson's bed sores were not appropriately treated or cared for, and that defendants permitted decedent to become anemic, malnourished, dehydrated and septic, resulting in injury and ultimately her death.

In support of the motion, defendant Waterview has submitted the affirmation of Vincent Marcello, M.D., a physician who is a Diplomate in Geriatric Medicine and who is currently the Medical Director of the Kings Harbor Care Center. Defendant Dr. Diamond has submitted the affirmation of Howard D. Kolodny, M.D., a physician who is board certified in internal medicine and endocrinology and who is an attending physician at Long Island Jewish Hospital. Both Dr. Marcello and Dr. Kolodny opine that the care and treatment rendered to Ms. Hobson by Dr. Diamond and Waterview was at all times within good and accepted practice of medicine, and that the care rendered by them did not cause or contribute to Ms. Hobson's death.

Drs. Marcello and Kolodny both stress that when the patient was transferred to Waterview, she had a significant medical history, very limited mobility and a very serious skin problem which included a severe bed sore on her mid-back. Dr. Marcello points out that Waterside doctors saw the patient a total of 45 times in 4 months, which is "an incredible amounts [sic] of visits, as the average patient is probably seen three times a month . . ." (Marcello affirmation, § 7). Dr. Marcello also points out that the records show that the patient had a depressed albumin level on admission, which in addition to her anemia, placed her at a high risk for ulcers. Both doctors opine that Ms. Hobson was appropriately evaluated and treated for that condition.

Dr. Marcello states that in his opinion, "it is not unexpected that in a patient who is transferred to a nursing home setting with severe hospital acquired bed sores, paralysis from the mid back down that severely restricted her movement, and the various other extensive medical ailments and conditions evidenced by the medical records, that her condition would become progressively worse." (Marcello affirmation, § 12). Dr. Kolodny offers a similar opinion when he states that "deterioration of this patient was not an unanticipated occurrence, despite proper and appropriate medical evaluations and treatments that were provided to her at Waterview." (Kolodny affirmation, § 18). Both doctors conclude that Ms. Hobson's deterioration is not evidence of a departure on the part of Waterview or Dr. Diamond.

In opposition to the motion, plaintiff has submitted the affirmation of Joshua S. Fink, M.D., a physician who is board certified in internal medicine and pulmonary disease, and defendants St. Luke's Hospital, Columbus Cardiology Associates and Dr. Del Guzzo have submitted the affirmation of Roy Goldberg, M.D., who is board

certified in internal medicine and geriatrics, and is currently an attending physician at Sound Shore Medical Center. The affirmations of these experts are substantially identical. Significantly, both physicians state that "[t]he prognosis of a patient with limited mobility, decubitus ulcers and other medical conditions, who is transferred to a nursing home facility *is that the patient will become worse.*" (Goldberg affirmation, § 6, emphasis supplied). They then go on to opine in conclusory and speculative terms that there is "a question as to whether more specialized care and treatment should have been implemented given the presence of multiple medical problems in order to prevent further worsening of the decubitus ulcer." (Goldberg, affirmation, § 7).

The doctors don't specify what additional "specialized care and treatment" should have been provided, other than to question whether decedent actually received adequate nutrition. They don't actually opine that Ms. Hobson did not receive adequate nutrition, they only ask the question. These statements are insufficient to demonstrate a triable issue of fact (see Brugaletta v. Staten Island University Hospital, 295 AD2d 461). And, their vague opinions that the care and treatment rendered by Dr. Diamond and Waterview *can* be causally related to the decedent's injuries, are not sufficient to defeat movants' prima facie showing of entitlement to summary judgment (see Candia v. Estepan, 289 AD2d 38). Finally, the arguments of counsel for the Hospital, Columbus Cardiology Associates and Dr. Del Guzzo is not expert medical opinion, which is the proof required to demonstrate merit in a medical malpractice action (see Fiore v. Galang, 64 NY2d 999).

In sum, summary judgment is warranted based upon the failure of plaintiff and St. Luke's Hospital, et al., to rebut movants' prima facie showing that Waterview and Dr. Diamond were not negligent in the treatment of the decedent (see Carrera v. Mount Sinai Hospital, 294 AD2d 154).

ORDERED that the Clerk enter judgment dismissing the action against defendants Waterview Nursing Care Center and Lawrence Diamond, M.D., and severing the action against the remaining defendants; and it is further

ORDERED that the names of Waterview Nursing Care Center and Lawrence Diamond, M.D. are deleted from the caption of this action and movants are directed to serve a copy of this order upon the Trial Support Office so that the court's records

can be amended to reflect that the aforementioned defendants are no longer parties to this action.

Dated 11/21/02

ENTER: SA-S
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

FILED
NOV 29 2002
COUNTY CLERK'S OFFICE
NEW YORK