

R.A.J. v Long Island Surgi-Center

2005 NY Slip Op 30124(U)

March 29, 2005

Supreme Court, Suffolk County

Docket Number: 0014150/2001

Judge: Ralph F. Costello

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**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXVII SUFFOLK COUNTY**

PRESENT:

Honorable Ralph F. Costello

_____ x
R.A.J.,

R/D 8-31-04
S/D 12-7-04
Motion No. 003-MD

Plaintiff

-against-

LONG ISLAND SURGI-CENTER,

PLAINTIFF'S ATTORNEY
LAW OFF. JOHN J. GUADAGNO PC
136 E. Main Street
E. Islip, NY 11736

Defendant

_____ x

DEFENDANT'S ATTORNEY
MURPHY & HIGGINS, LLP
1 Radisson Plaza
New Rochelle, NY 10801

Upon the following papers numbered 1 to 17 read on this motion to set aside a verdict Notice of Motion and supporting papers 1-11 ; Answering Affidavits and supporting papers 12-15 ; Reply Affidavits 16-17 ; it is,

ORDERED, that the motion of defendant Long Island Surgi-Center pursuant to CPLR 4404 to set aside the verdict as against the weight of the evidence is denied.

This action was commenced by plaintiff R.A.J. to recover damages for, inter alia, negligence. It was alleged that defendant, in disregard of plaintiff's specific instructions, revealed to plaintiff's mother that she had undergone an abortion at defendant's facility. The complaint alleged causes of action sounding in negligence, negligent infliction of emotional distress, breach of fiduciary duty and duty of confidentiality, as well as the breach of statutory duties. Compensatory and punitive damages were sought.

When the matter was called for trial, defendant conceded its liability, and a trial was conducted on the issue of damages only. The jury rendered separate special verdicts in favor of

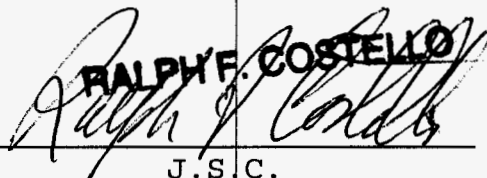
disregard of plaintiff's rights as to "transcend mere carelessness" (*Zabas v Kard*, 194 AD2d 784, 599 NYS2d 832 [2d Dept 1993]; cf. *Doe v Roe*, 190 AD2d 463, 599 NYS2d 350 [4th Dept 1993]).

It is noted further that the Public Health Law permits recovery of punitive damages against a facility where such facility deprives a patient of his/her rights. PHL §2803-c(5) provides that "[e]ach facility shall prepare a written plan and provide appropriate staff training to implement each patient's right[s]. . .". At bar, the three employees who testified on behalf of defendant gave three different versions of a "policy" regarding patients' phone instructions. From this evidence, a jury could reasonably conclude that the defendant facility failed to instruct its employees as to its policy, or that no single, cohesive policy existed at all.

Finally, defendant argues that punitive damages may not be imposed against a corporation unless officers or directors authorized, participated in, consented to or ratified the conduct giving rise to the request for such damages. The term "facility," in this court's mind, is, however, tantamount to "corporation" or any other business form a facility chooses to take. To hold that direct evidence of officer or director involvement is necessary to impose liability against a "facility," which must naturally act through its agents and employees, would be to emasculate the legislature's clear intention to protect the public from conduct such as that at bar.

Defendant's remaining contentions are unpersuasive, and accordingly, the motion is denied in its entirety (cf. *Doe v Roe*, supra at 475-476).

Dated: March 29, 2005


 RALPH F. COSTELLO
 J.S.C.