

Monreal v Lefton

2006 NY Slip Op 30200(U)

July 12, 2006

Supreme Court, Albany County

Docket Number: 0033492/0071

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

F. JAVIER MONREAL, MD,

Plaintiff,

-against-

DECISION and ORDER
INDEX NO. 3349-07
RJI NO. 01-07-089509

ANDREA M. LEFTON, MD
JEROME S. HALLER, MD
JENNIFER C. YOLLES, MD

Defendants.-

Supreme Court Albany County All Purpose Term, June 21, 2006
Assigned to Justice Joseph C. Teresi

APPEARANCES:

F. Javier Monreal, M.D.
Plaintiff Pro Se
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TERESI, J.:

The defendant brings this motion for dismissal of the plaintiff's complaint with prejudice pursuant to CPLR § 3211 (a)(2)(5)(7).

The facts underlying this matter are that the plaintiff, a board certified pediatric neurologist, was the subject of an investigation by the New York State Department of Health's Office of Professional Medical Conduct ("OPMC") stemming from a complaint lodged by one of

his patients. As part of that investigation, OPMC requested and retained the defendant, Dr. Jennifer C. Yolles, a psychiatrist, to perform a psychiatric evaluation of plaintiff and provide OPMC with a report of her findings and opinion as to whether plaintiff could safely practice medicine in New York State. Subsequently, Dr. Yolles met with the plaintiff on two separate occasions. She prepared and forwarded a report to OPMC in which she voiced concerns regarding the plaintiff's ability to safely practice medicine, and also noted her impression that plaintiff suffered from Narcissistic Personality Disorder. Plaintiff then sued Dr. Yolles seeking money damages allegedly due to injury suffered as a result of the allegations.

The defendant moves for dismissal based on (1) a lack of subject matter jurisdiction; (2) a failure to state the cause of action; and (3) an expiration of the applicable statute of limitations regarding a claim of an intentional tort.

First, claims against the State for money damages may only be maintained in the Court of Claims. Court of Claims Act § 8; see also Olsen v. New York State Dept. Of Environmental Conservation, 307 A.D.2d 595 (3d Dept. 2003)(actions against state officers, employees or agents, are properly prosecuted in the Court of Claims); citing Morell v. Balasubramanian, 70 N.Y.2d 297, 300 (1987)(actions against state officers acting in their official capacity in the exercise of governmental functions are deemed claims against the state and suable only in the Court of Claims); Monreal v. New York State Department of Health, et al, 38 A.D.3d 118 (3d Dept. 2007)(Court of Claims has exclusive jurisdiction over claims against the state); citing, Olsen, supra.

In the instant case, the Defendant's evaluation and report were made at the specific request of the state, and therefore she is considered an agent of the State. As such, pursuant to

Section 8 of the Court of Claims Act, this Court lacks subject matter jurisdiction and will dismiss the complaint pursuant to CPLR § 3211 (a)(2).

Second, it is a well established rule that individuals cannot recover against physicians absent proof that a patient-physician relationship existed. See Kinsley v. Carravetta, 244 A.D. 213 (1st Dept. 1935). A physician-patient relationship has been deemed to be created when professional services are rendered and accepted for purposes of medical treatment. See Miller v. Sullivan, 214 A.D.2d 822 (3d Dept 1995)(citing Heller v. Peaskill Community Hosp., 198 A.D.2d 265 [2d Dept. 1993]). A cause of action in a case resulting from an independent medical examination is limited to instances where the physician “affirmatively advises the patient.” See Lawliss v. Quellman, 38 A.D.3d 1123 (3d Dept. 2007).

There is no such allegation in this case. The Plaintiff has not contended that the defendant affirmatively advised him or made recommendations to him during her evaluation. Further, the Defendant Yolles is entitled to immunity under Public Health Law §§ 230(16), 2805-m (3), and the New York Education Law § 6527. As such, this Court will dismiss the Plaintiff’s complaint.

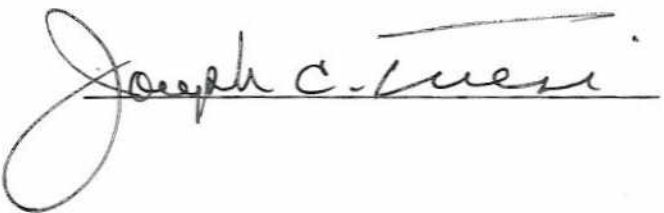
Third, Plaintiff alleges that Dr. Yolles provided OPMC with reports containing “defamatory, libelous, and slanderous conclusions.” Dr. Yolles report was dated July 7, 2005 and the Plaintiff filed this action on April 30, 2007. To the extent that this is considered a claim for an intentional tort, it is dismissed pursuant to CPLR §3211(a)(5) for failure to bring a claim within one year of the statute of limitations.

All papers including this Decision and Order, are being returned to the attorneys for Defendant. The signing of this Decision and Order shall not constitute entry of filing under

CPLR § 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
July 12, 2006

A handwritten signature in cursive script, reading "Joseph C. Tresi", is written over a horizontal line. The signature is positioned to the right of the date.

PAPERS CONSIDERED:

1. Answering Affidavit by F. Javier Monreal, MD to the Motion to Dismiss of the Defendant dated May 30, 2007.
2. Notice of Motion by Daniel R. Ryan, Esq., dated May 30, 2007.
3. Affidavit in Support of Defendant's Motion for Dismissal by Daniel R. Ryan, dated May 30, 2007.
4. Answer by Jerome S. Haller, M.D., dated June 1, 2007.
5. Answer by Andrea M. Lefton, M.D., dated June 20, 2007.
6. Affidavit of Service by Lisa M. Parker, dated June 21, 2007.