

Coleman v Eden Park Health Servs., Inc.

2007 NY Slip Op 31703(U)

April 4, 2007

Supreme Court, Albany County

Docket Number: 0019362/0051

Judge: Joseph C. Teresi

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

DEBRA COLEMAN, as Administratrix by
Limited Letters of Administration of the
Estate of SUSAN COLEMAN, deceased,

Plaintiffs,

-against-

DECISION and ORDER
RJI NO.:01-05-084235
INDEX NO.:1936-05

EDEN PARK HEALTH SERVICES, INC.,
d/b/a EDEN PARK NURSING HOMES,
EDEN PARK MANAGEMENT, INC., EDEN
PARK ALF CORP., ROBERT B. GLOCK,

Defendants.

Albany County Supreme County All Purpose Term April 30, 2007
Assigned to Justice Joseph C. Teresi

APPEARANCES:

George L. Sarachan, Esq.
Rosenblum, Rosen, Kessler & Sarachan, LLP
Attorneys for Plaintiff
110 Great Oaks Office Park
Albany, New York 12203

Edwin J. Tobin, Jr., Esq.
Maynard, O'Connor, Smith & Catalinotto, LLP
Attorneys for Defendant, Dr. Hsu
6 Tower Place
Albany, New York 12203

Debra J. Young, Esq.
Thuillez, Ford, Gold, Butler & Young, LLP
Attorneys for Defendant, Eden Park Health Services, Inc.
20 Corporate Woods, Blvd 6th Floor
Albany, NY 12211

TERESI, J.:

Defendant, Po-Chun Hsu, MD., brings this motion for summary judgment pursuant to CPLR § 3212. Defendants, Eden Park Health Services, Inc. And related entities (hereinafter Eden Park) also bring a motion for summary judgment. Plaintiff opposes both motions.

After fully reviewing the record, this Court denies summary judgment to Defendant, Eden Park and grants summary judgment to Defendant, Dr. Hsu regarding Plaintiff's PHL § 2801-d claim, only.

Debra Coleman was admitted to Eden Park in July 2001 at the age of 78 because her family could no longer care for her various ailments, which included: diabetes, cerebrovascular accidents, peripheral vascular disease, hypertension, temporal arteritis, fecal and urinary incontinence, immobility and mild dementia. According to Plaintiff, in May, 2002, Ms. Coleman developed pressure ulcers on her left heel and in August 2002 she developed a pressure ulcer on her right heel, a stage four pressure ulcer on the top of her right foot and a stage 2 pressure ulcer on her left buttock. On October 10, 2002, Dr. Hsu noted an additional pressure ulcer on the top of Ms. Coleman's right foot during her bimonthly evaluations. Ms. Coleman was referred to a surgeon on October 28, 2002. The ulcers had developed gangrene requiring a double amputation. She died two years later.

Plaintiff alleges that although Ms. Coleman's underlying health problems placed her at risk for pressure ulcers, an untreated albumin deficiency increased the risk and that the gangrene and subsequent amputations were caused by Defendants' neglect and poor care. According to Plaintiffs, Eden Park and Dr. Hsu failed to make documented weekly assessments of Ms. Coleman's pressure ulcers, delayed in assessing her left heel ulcer from May 9, 2002 until August 22, 2002, delayed providing her with multipodes boots for the left heel from May 9, 2002 until

September 20, 2002, delayed in providing mutlipodes boots for the right heel from August 14, 2002 until September 209, 2002, failed to identify the top of Ms. Coleman's feet as a pressure area and continued applying pressure to the top of her feet until the pressure ulcers developed gangrene, failed to treat Ms. Coleman's low albumin values from October 4, 2001 until June 24, 2002 and delayed referring Ms. Coleman to a surgeon for approximately seven weeks after the pressure ulcer developed on the top of Ms. Coleman's left foot.

Defendants each claim that they acted reasonably and within the bounds of the appropriate standards of care. According to Defendants, the ulcers were an inevitable result of Ms. Coleman's complicated medical history.

Plaintiff brings this claim as a cause of action under Public Health Law § 2801-d under which the facility is liable for a patient's deprivation of "any right or benefit created or established for the well-being of the patient by the terms of any contract" or by any federal or state statute, code, rule or regulation. Such a care facility can evade liability by establishing as an affirmative defense that it "exercised all care reasonably necessary to prevent and limit the deprivation and injury" (*Public Health Law § 2801-d[2]*). Plaintiff alleges that Eden Park and Dr. Hsu violated 10 NYCRR 415.12(c) which states, in part, that such a facility will ensure:

- (1) a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable despite every reasonable effort to prevent them; and
- (2) a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

Eden Park contends that Plaintiff's PHL § 2801-d claim must be dismissed because PHL

2801-d does not provide a private cause of action where a plaintiff could plead and prove common law negligence or medical malpractice. Eden Park's contention is based upon a Fourth Department ruling in *Goldberg v. Plaza Nursing Home*, 222 AD2d 1082 [4th Dept 1995]) which was overturned after the Fourth Department noted that PHL § 2801-d did not extend strict liability in such cases because it offered an affirmative defense to nursing homes (*Doe v. Westfall Health Care Center, Inc.*, 303 AD2d 102 [4th Dept 2002])["Instead, we conclude that the clear intent of section 2801-d was to expand the existing remedies for conduct that, although constituting grievous and actionable violations of important rights, did not give rise to damages of sufficient monetary value to justify litigation"]. Moreover, the First Department has consistently permitted individuals to pursue a private cause of action against nursing homes based on the failure to prevent and treat pressure ulcers (*Zeides v. Hebrew Home for Aged at Riverdale*, 300 AD2d 178 [1st Dept 2002]). Accordingly, this Court finds that PHL § 2801-d is intended to provide a private cause of action to nursing home residents for whom recovery under common law negligence would be insufficient.

Eden Park further contends that even if PHL § 2801-d does provide a private cause of action, it is entitled to summary judgment because it has established via expert affidavit that it exercised all care reasonably necessary to prevent and limit Ms Coleman's pressure ulcers. "Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue" (*Napierski v. Finn*, 229 AD2d 869, 870 [3d Dept 1996]). The court's main function in granting summary judgment is issue identification, rather than issue determination (See *Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]). The party seeking summary judgment has the burden of establishing its entitlement thereto as a matter

of law (See Wingrad v. New York University Medical Center, 64 NY2d 851 [1985]). The party opposing the motion will be given the benefit of every reasonable inference (See Boyce v. Vazquez, 249 AD2d 724; see also Dykestra v. Winridge Condominium One, 175 AD2d 482 [3d Dept 1991]). Here, Plaintiffs and Defendants have each presented affidavits from medical experts that entirely contradict each other regarding the sufficiency of the care that Ms. Coleman received and the inevitability of her developing pressure ulcers.

Defendant, Dr. Hsu correctly notes that PHL § 2801-d applies to institutions rather than individual practitioners. While, depending on Dr. Hsu's employment status, Eden Park may be vicariously liable for Dr. Hsu's actions, Dr. Hsu is not liable pursuant to PHL § 2801-d. This Court accordingly dismisses the PHL § 2801-d cause of action against Dr. Hsu.

In regards to Plaintiff's first cause of action for common law negligence, Eden Park objects to the claim for punitive damages which are available pursuant to PHL § 2801-d(2) "where the deprivation of any such right or benefit if found to have been willfull or in reckless disregard of the lawful rights of the patient." Plaintiffs appear to concede that their potential entitlement to punitive damages is based on the PHL § 2801-d cause of action, rather than the common law negligence cause of action. A triable issue of fact remains as to whether Eden's Park care of Ms. Coleman amounts to willfull or reckless disregard of her lawful rights.

As regards Plaintiff's negligence claim against Eden Park and Dr. Hsu, triable issues of fact exist preventing summary judgment at this point.

Therefore, this Court denies summary judgment to Defendant, Eden Park and grants summary judgment to Defendant, Dr. Hsu regarding Plaintiffs' PHL § 2801-d claim, only.

All papers, including this Decision and Order, are being returned to the attorney for the Plaintiffs. The signing of this Decision and Order shall not constitute entry or 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: May 4, 2007

Albany, New York



JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Defendant, Po-Chun Hsu, MD.'s, Notice of Motion, dated March 26, 2007 with Attached Exhibits A-E.
2. Defendant, Po-Chun Hsu, MD.'s, Original Expert Affidavit, dated March 20, 2007
- 3). Defendant, Eden Park's, Notice of Motion, dated March 26, 2007 with Attached Exhibits A-P.
- 4). Defendant, Eden Park's, Expert Affidavit, dated March 24, 2007 with Attached Exhibit A.
- 5). Plaintiff's Attorney Affirmation, dated April 18, 2007
- 6). Plaintiff's Vol I-II of Exhibits, dated April 18, 2007
- 7). Defendant, Eden Park's, Affidavit in Further Support, dated April 18, 2007.
- 8). Plaintiff's Supplemental Exhibit to Opposition, dated May 1, 2007