

Brown v Reiss

2008 NY Slip Op 30278(U)

January 25, 2008

Supreme Court, New York County

Docket Number: 0108568/2003

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

ALICE SCHLESINGER

Pf

Index Number : 108568/2003

PART **1A** Part 16

BROWN, DANIEL

VS.

REISS, RONALD M.D., F.A.C.O.G.

SEQUENCE NUMBER : 003

SUMMARY JUDGEMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

JAN 31 2008

NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION.**

JAN 25 2008

Dated: _____

ALICE SCHLESINGER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
DANIEL BROWN, an infant under the age of 10
years by and through his parent and natural guardian,
LORI BROWN and LORI BROWN individually,

Plaintiffs,

-against-

RONALD REISS, M.D., F.A.C.O.G, LENOX HILL
HOSPITAL, EVA DUNCAN, M.D. ARMANDO E.
GRASSI, M.D., P.C. and ARMANDO E. GRASSI,
M.D.,

Defendants.

-----X
SCHLESINGER, J.:

Index No. 108568/03

Motion Seq. No. 003

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In this medical malpractice action, plaintiff assert that departures by the various defendants before and during the delivery of the infant, Daniel Brown, caused the infant to suffer from cerebral palsy and other deficits and resulted in a loss of services to the plaintiff mother. After the completion of discovery and the filing of the Note of Issue, defendants Lenox Hill Hospital and Armando E. Grassi, M.D. moved for summary judgment (mot. seq. 003). Additionally, defendant Ronald Reiss, M.D. moved for summary judgment (mot. seq. 004). The action had previously been discontinued against defendant Eva Duncan, M.D. Although given ample opportunity to oppose the motions, plaintiff did not do so. The motions have been consolidated for disposition, with the issue in each being whether the moving defendant has established a prima facie case entitling it to a judgment dismissing the action as a matter of law.

Background Facts

Plaintiff Lori Brown was a private patient under the care of defendant Dr. Reiss during her pre-natal period, beginning in December 1992 when she was about seven weeks pregnant. On May 10, 1993, at about 31 weeks gestation, Ms. Brown presented to Dr. Reiss with some

vaginal bleeding. Bed rest was recommended. On May 12, Ms. Brown presented to Lenox Hill Hospital with ruptured membranes and was admitted as a patient of Dr. Reiss. Dr. Reiss managed Ms. Brown's care and the labor and the vaginal delivery on May 14, which was uneventful. Although the child was about 8 weeks premature, he was assigned Apgar scores of 8 and 9 by Dr. Grassi, a Lenox Hill physician. The infant was then transferred to the Neonatal Intensive Care Unit (NICU) at the hospital due to his prematurity. Neither Dr. Reiss nor Dr. Grassi cared for the child thereafter. While in the NICU, the infant manifested symptoms which plaintiff characterizes as cerebral palsy and deficits caused by departures from the standard of care by the various defendants before and during the delivery and while the infant was hospitalized.

The Motion By Lenox Hill and Dr. Grassi is Granted

As our courts have repeatedly stated:

To establish a prima facie case of medical malpractice, a plaintiff must show that the doctor deviated from accepted medical practice and also that the alleged deviation proximately caused her injury.

Dallas-Stephenson, et al., v. Waisman, et al., 39 AD3d 303, 306-07 (1st Dep't 2007), citing *Koeppel v. Park*, 228 AD2d 288, 289 (1st Dep't 1996). Defendants Lenox Hill Hospital and Dr. Grassi submitted with their motion two expert affidavits, medical records and other evidence which establishes as a matter of law that the moving defendants neither departed from the accepted standard of care, nor caused any injury to plaintiffs.

Lenox Hill correctly asserts that it is not vicariously liable for any acts or omissions by Dr. Reiss, a private attending physician not employed by Lenox Hill. See, *Hicks v. Ronald Fraser Clinic*, 169 AD2d 558, 559 (1st Dep't 1991). With respect to any alleged acts or

omissions by the Lenox Hill staff or Dr. Grassi, defendants have presented two expert affidavits which persuasively establish in detailed fashion that defendants at all times acted in accordance with the standard of care in connection with plaintiffs' care and treatment.

The first affirmation is from Dr. Harold Grossman, a Board-Certified Obstetrician/Gynecologist and Associate Clinical Professor of Obstetrics and Gynecology at New York University School of Medicine. He opines with a reasonable degree of medical certainty that the labor and delivery were appropriately managed and that any injury to the infant was caused by the infant's prematurity, rather than any medical malpractice.

The second affirmation is from Dr. Stephen Kandall, Board-Certified in Pediatrics and Perinatal Medicine. Dr. Kandall served as the Chief of Neonatology at Beth Israel Medical Center and Professor of Pediatrics at Mount Sinai School of Medicine. He opines that the infant suffered from an Intraventricular hemorrhage as a consequence of prematurity, that the hemorrhage was timely discovered and appropriately managed, and that there were no departures by defendants Lenox Hill or Dr. Grassi during labor and delivery or while the infant was in the NICU.

Based on all of the above, and in light of plaintiff's failure to submit any opposition, defendants' motion is granted.

The Motion By Dr. Reiss is Granted

Like the other defendants, the attending physician Dr. Reiss has established his entitlement to summary judgment dismissing this action. In support of his motion, Dr. Reiss has submitted an affirmation from Dr. Steven Chasen, a physician Board-Certified in Obstetrics and Gynecology and in Maternal-Fetal Medicine. Dr. Chasen opines to a reasonable degree of medical certainty that Dr. Reiss met and exceeded the standard of care regarding the treatment of the plaintiff mother and the infant. In his affidavit, he discusses in detail the care

and treatment which Dr. Reiss provided during the pre-natal period and when Ms. Brown presented at the hospital with ruptured membranes and explains why the various decisions and actions by Dr. Reiss were appropriate and consistent with the standard of care in effect at the time.

Dr. Reiss also supports his motion with an affirmation from Dr. Dennis Davidson, a physician Board-Certified in Pediatrics and the subspecialty of Neonatal-Perinatal Medicine. Dr. Davidson first asserts that any allegations against Dr. Reiss related to pediatric care are without merit as Dr. Reiss, an obstetrician, did not care for the infant in the Neonatal Intensive Care Unit. With respect to the delivery, Dr. Davidson's persuasively rebuts plaintiff's allegation in the Bill of Particulars that it was a departure not to administer corticosteroids during labor. He further opines with a reasonable degree of medical certainty and with specificity that Dr. Reiss' decision to proceed with a vaginal delivery and his management of the delivery were appropriate in all respects. Considering the detailed showing by Dr. Reiss and his experts and plaintiffs' failure to respond, the motion by Dr. Reiss is granted.

Accordingly, it is hereby

ORDERED that the motions for summary judgment by defendants Lenox Hill Hospital, Angelo E. Grassi, M.D., and Ronald Reiss, M.D., are granted and the complaint is dismissed with prejudice and without costs and disbursements; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: January 25 2008

JAN 25 2008

Alice Schlesinger
FILED **J.S.C.**
ALICE SCHLESINGER
JAN 31 2008
NEW YORK
COUNTY CLERK'S OFFICE