

Rivera v St. Vincent's Hosp.
2008 NY Slip Op 32159(U)
July 31, 2008
Supreme Court, New York County
Docket Number: 0101900/2004
Judge: Joan B. Lobis
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: _____
Justice

PART 20

Index Number : 101900/2004
RIVERA, KASSANDRA
vs
ST. VINCENT'S HOSPITAL
Sequence Number : 002
SUMMARY JUDGMENT

INDEX NO. 101900/04
MOTION DATE 7/16/08
MOTION SEQ. NO. 002
MOTION CAL. NO. _____

is motion to/for _____

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...
Answering Affidavits -- Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

1-7
8-21
-

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

MOTION DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION AND ORDER

FILED
AUG 04 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 7/31/08

JBL
JOAN B. LOBIS, J.S.C. 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
NEW YORK COUNTY: IAS PART 6

-----X
KASSANDRA RIVERA, an Infant by her
Mother and Natural Guardian, SANDRA MENDEZ, and
SANDRA MENDEZ, Individually,

Plaintiffs,

Index No. 101900/04

-against-

Decision and Order

ST. VINCENT'S HOSPITAL,

Defendant.

FILED

AUG 04 2008

COUNTY CLERK'S OFFICE
NEW YORK COUNTY

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JOAN B. LOBIS, J.S.C.:

Defendant St. Vincent's Hospital (hereinafter "St. Vincent's") moves for summary judgment pursuant to C.P.L.R. Rule 3212 in favor of defendant on the ground that there are no material issues of fact to support plaintiffs' claim of obstetrical mismanagement.

This is an action for medical malpractice which arises from the birth of infant-plaintiff
Kassandra Rivera, who suffers from neurological impairment, mental retardation and cerebral palsy.
Ms. Mendez, infant-plaintiff's mother, arrived at St. Vincent's on April 17, 2001 complaining of
abdominal pain. She was at 39 weeks gestation. Ms. Mendez was examined in the Obstetrics and
Gynecology clinic and in Labor and Delivery. She was instructed to return the following day for a
scheduled elective caesarean section, which she did on April 18, 2001. Ms. Mendez suffers from
epilepsy for which she takes Dilantin.¹ Dilantin was administered at 10:50 a.m. and 2:00 p.m. to

¹ Dilantin is an anti-seizure medication Ms. Mendez was taking for her epilepsy. Ms. Mendez took Dilantin throughout the duration of her pregnancy.

insure that she did not suffer from a seizure during surgery. Fetal heart monitoring was also started. Prior to the caesarean section, Ms. Mendez was experiencing contractions, as indicated in her chart. The caesarean section was performed later in the day and infant-plaintiff was born at 5:32p.m. Infant's Apgar scores were 4 at one minute of life and 8 at five minutes of life. Infant was resuscitated after being delivered. At birth, infant had no respirations, was blue in color, and had reduced tone and reflexes.

Plaintiffs commenced this action on February 6, 2004. Plaintiffs allege that obstetrical mismanagement caused infant-plaintiff's injuries due to defendant's administration of improper doses of Dilantin and defendant's failure to deliver the infant at the first signs of fetal distress. Defendant seeks summary judgment on all causes of action, asserting that the obstetrical care rendered was at all times within accepted standards of medical care and treatment by defendant was not the proximate cause of infant-plaintiff's injuries.

The party moving for summary judgment in a medical malpractice action must make a *prima facie* showing of entitlement to judgment as a matter of law by showing the absence of triable issues of fact as to whether the defendant physician was negligent. Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986). In response, the burden shifts to the party opposing the motion "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." Id. However, "general allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the

essential elements of medical malpractice, are insufficient to defeat defendant physician's summary judgment." Id. at 325.

In support of the motion, defendant submitted an affirmation by Andrew Corwin, M.D., a board-certified physician in the field of Obstetrics and Gynecology and the physician who delivered infant-plaintiff on April 18, 2001. Dr. Corwin opines that the administration of Dilantin was necessary to prevent Ms. Mendez from suffering a seizure during pregnancy or during delivery. Any seizure activity during surgery could place both the patient and fetus at serious risk of injury, so Dilantin levels were raised to therapeutic level prior to surgery. Furthermore, Dr. Corwin claims that there was never any indication of fetal distress prior to or during infant-plaintiff's delivery; thus there was no need for an earlier delivery and the caesarean section was timely. Moreover, Dr. Corwin asserts that the care and treatment by defendant was not the proximate cause of infant-plaintiff's injuries and there was no deviation from the standards of medical care.

In response to the motion, plaintiffs submitted an expert affirmation by Bruce L. Halbridge, M.D., a board-certified physician in Obstetrics and Gynecology, as well as an expert affirmation by Rosario R. Trifiletti, M.D., a physician board-certified in Pediatrics and Neurology. According to Dr. Halbridge, St. Vincent's deviated from the standard of care by administering Dilantin. Although Ms. Mendez was given Dilantin at 10:50 a.m. and her levels were checked to ensure they reached therapeutic level, she was given another dosage at 2:00 p.m. and her Dilantin levels were never checked prior to and after delivery. There is also no record of a vaginal


examination or additional sonograms, which, according to Dr. Halbridge, should have been performed prior to the delivery. Additionally, Dr. Halbridge's analysis of the fetal heart monitoring strips (which began at 1:43 p.m.) reveals episodes of hyper-stimulation of the uterus due to labor at 2:10 p.m. and 2:40 p.m. At 3:00 p.m., accelerations disappeared and there was long-term variability noticeably diminished. According to Dr. Halbridge, this shows that the fetus was not tolerating labor and was suffering fetal distress, as evidenced by the non-reassuring strips. The delayed caesarean section resulted in a depressed infant at birth, who was not breathing and blue. Dr. Halbridge opines that the delayed caesarean section, when there was obvious long-term variability, was the proximate cause of the infant-plaintiff's injuries. Dr. Trifiletti confirms that the unnecessary delay of the caesarean section was a proximate cause of infant-plaintiff's suffering a hypoxic insult during the last hours of labor and causing injuries, including infant-plaintiff's loss of respiration, blue color at birth, and cerebral palsy.

Defendant failed to meet the burden in showing an absence of triable issues. Defendant's expert affirmation was "conclusory, in that it did not rebut specific factual references of negligence alleged." Grandell Rehab. and Nursing Ctr. Inc. v. Serby, 21 A.D.3d 346, 347 (2d Dep't 2005). Defendant does not refer to the diagnosis of cephalopelvic disproportion, as indicated in Ms. Mendez's chart, or the fatal signs of hypoxia at infant-plaintiff's birth. Defendant has also not replied to plaintiff's opposition to rebut plaintiff's allegations and further support the motion of summary judgment. Defendant does not establish a *prima facie* entitlement to summary judgment since material issues of fact remain in dispute.

Even assuming *arguendo* that defendant met the burden for summary judgment, the motion is denied. “Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions. Such credibility issues can only be resolved by a jury.” Bengston v. Wang, 41 A.D.3d 625, 626 (2d Dep’t 2007) (citations omitted). These conflicting opinions raise issues of fact as to whether defendant departed from the standard of care premised by plaintiffs. Forbose v. Weiner, 19 A.D.3d 258 (1st Dep’t 2005). Conflicting affidavits by expert witnesses, with sufficient evidence of medical malpractice, create “a classic conflict between experts,” thus precluding a summary judgment motion in a medical malpractice case. Santiago v. Brandeis, 309 A.D.2d 621, 622 (1st Dep’t 2003).

The motion for summary judgment is denied in its entirety. The parties are directed to appear for a pre-trial conference on Tuesday, September 23, 2008 at 10:00 a.m. in Courtroom 345, 60 Centre Street. This constitutes the decision and order of the court.

Date: July 31, 2008


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 JOAN L. ROBIS, J.S.C.
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