Clahar v North Shore Univ. Hosp.
2009 NY Slip Op 31375(U)
June 8, 2009
Supreme Court, Nassau County
Docket Number: 150/07
Judge: Karen V. Murphy
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Short Form Order

SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 20 NASSAU COUNTY

PRESENT:

Honorable Karen V. Murphy
Justice of the Supreme Court

x

KAMILAH CLAHAR,

Plaintiff(s),

-against-

NORTH SHORE UNIVERSITY HOSPITAL,

Defendant(s).

x

Index No. 150/07

Motion Submitted: 4/23/09
Motion Sequence: 001

The following papers read on this motion:

Notice of Motion/Order to Show Cause........................X
Answering Papers..XX
Reply...X
Briefs: Plaintiff's/Petitioner's.......................................
Defendant's/Respondent's................................

Motion by defendant North Shore University Hospital ("the Hospital") for summary judgment dismissing the complaint is granted.

On June 17, 2006, the then twenty-three year-old plaintiff was brought to the Hospital's emergency room by her parents after waking them at 4a.m. in an agitated state, concerned about a communist takeover. According to the hospital record, she was brought in for "depression, decreased po intake and increased stress level"(Hospital Record annexed as Exhibit D to the moving papers, at clinical abstract, p.1). The Hospital Record further contains the information that plaintiff "had dropped out of college about five years ago to

work to help out her mother. She expressed sad feelings and inability to sleep. She lost 10-15 lbs. over the last few months due to decreased po intake" (Id.). In the Hospital Record there is a notation that while in the Emergency Room plaintiff "began to go in and out of a confused state. When the psychiatric resident was speaking with her she became angry and pulled out the IV line. She also refused the potassium" (Psychiatry consultation by Dr. Chaudry).

Plaintiff consented to admission to the Hospital on June 18, 2006, for treatment of hypokalemia (low potassium in the blood resulting from malnutrition, potentially life threatening if left untreated), and "psychosis, not otherwise specified, rule out psychotic episode, first break or possible schizophrenia" (Hospital Record, clinical abstract at p. 2). At approximately 8:00 a.m. on June 19, 2006, plaintiff suddenly and without provocation stood up on the bed and struck a nurse with an IV pole. After this incident the Patient Care Services Nurse Manager initiated the process for involuntary psychiatric admission. At approximately 5:30 p.m. on June 19, 2006, plaintiff was transferred to the psychiatric department for involuntary commitment.

Plaintiff filed a petition for release pursuant to §9.31 of the Mental Hygiene Law, and a hearing was held on that application on June 30, 2006, before the Honorable Tammy S. Robbins. Dr. Sanders, the Director of Psychiatric In-Patient Services at the Hospital, testified at the hearing. He opined that plaintiff had made slow and steady improvement during her time at the hospital (Hearing transcript, annexed as Exhibit H to the moving papers, pp. 10-11). He stated that when plaintiff first arrived, "she was utterly disorganized, she did not respond to questions or direct interrogation. After lying inert with her eyes closed in bed, she jumped out of bed, ran out of the room, attempted to run to the nurses' station, at one point attempted to run out the door. When I asked her where she was later in the day after not answering me for a few minutes she replied that she was in Israel." Her delusions and acute paranoia receded, and she did not, at the time of the hearing, pose a danger to herself or others. However, Dr. Sanders averred that plaintiff was unable to take proper care of herself on June 30, 2006, and that hospitalization was in her best interests until assisted outpatient treatment could be arranged.

In opposition to continued confinement, plaintiff's father testified that he has extensive knowledge of psychiatry having worked twenty of his twenty-five years in the health care industry in the field of psychiatry. He and his wife would take care of the plaintiff and ensure that she took the medication prescribed. The father wanted to pursue "private care" for plaintiff, and he stated that he would take appropriate action if there were any signs of "decompensation" in his daughter.

At the end of the hearing, Judge Robbins directed the release of the plaintiff to her parents.

In February, 2007, plaintiff commenced this action against the Hospital. She alleges causes of action for involuntary imprisonment and common law assault and battery. On this motion the Hospital seeks summary judgment dismissing the complaint.

Summary judgment is the procedural equivalent of a trial (***SJ Capelin Assoc. Inc v. Globe Mfg. Corp.***, 34 N.Y.2d 338, 341, 34 N.Y.2d 338, 313 N.E.2d 776, 357 N.Y.S.2d 478 [1974]). The proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact [see ***Alvarez v. Prospect Hosp.***, 68 N.Y.2d 320, 501 N.E.2d 572, 508 N.Y.S.2d 923 (1986); ***Zuckerman v. City of New York***, 49 N.Y.2d 557, 404 N.E.2d 718, 427 N.Y.S.2d 595 [1980]). Once the movant makes its *prima facie* showing, the burden shifts to the opponent, who must produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial (***Alvarez***; ***Zuckerman***). Mere conclusions, expressions of hope, or unsubstantiated allegations are insufficient (***Zuckerman***)]. Summary judgment will not be defeated by surmise, conjecture or suspicion (***Shaw v. Time-Life Records***, 38 N.Y.2d 201, 207, 341 N.E.2d 817, 379 N.Y.S.2d 390 [1975]).

For a hospital to detain a patient for involuntary psychiatric care, it must demonstrate by clear and convincing evidence that (1)the patient is mentally ill and in need of continued, supervised care and treatment; and (2) that the patient poses a substantial threat of physical harm to herself and/or others (***New York* City *Health and Hospitals Corp. v. Brian H.***, 51 A.D.3d 412, 857 N.Y.S.2d 530 (1st Dept., 2008); see ***Seltzer v. Grace J.***, 213 A.D.2d 412 [2d Dept., 1995]). Involuntary confinement, pursuant to Mental Hygiene Law Article 9, is deemed privileged in the absence of medical malpractice (***Tewksbury v. State of New York***, 273 A.D.2d 376, 710 N.Y.S.2d 909 (2d Dept., 2000), lv app den 95 N.Y.2d 766 (2000); ***Porter v. Westchester County Medical Center***, 252 A.D.2d 518, 675 N.Y.S.2d 364 (2d Dept., 1998); ***Ferretti v. Town of Greenburgh***, 191 A.D.2d 608, 610, 595 N.Y.S.2d 494 (2d Dept., 1993), app dsmd 82 N.Y.2d 748, lv app den 82 N.Y.2d 662 [1993]). Mental Hygiene Law §9.27 provides for involuntary confinement based upon medical certifications by two physicians.

In support of its motion for summary judgment dismissing the complaint, the Hospital relies upon the lengthy testimony of its expert, Dr. Fayer. Dr. Fayer opines that both in the Emergency Room and when first admitted plaintiff suffered from paranoid delusions, unpredictable and irrational behavior, and an inability to understand the necessity for medical treatment. He gives examples from the hospital record of each, including the instance in the Emergency Room when plaintiff pulled out her IV line and refused the necessary potassium. He avers that "This clearly was a Psychiatric Emergency and Hospitalization was a necessity". (Fayer affirmation, pp. 9-10).

According to Dr. Fayer, the certifications by Dr. Downhill and Dr. Sherman, which documented the basis for plaintiff's involuntary admission, were "entirely appropriate and reasonable" (Fayer affirmation, p.10). He noted that the certification requirement of a "substantial threat of harm to self or others," was met by plaintiff's voluntary, and possibly life-threatening malnutrition, together with the incident of striking the nurse with the IV pole. He goes on to state:

> It would be unfair and certainly inaccurate to allege that the patient was not a candidate for involuntary admission on June 19, simply because she was found no longer to be a substantial threat of physical harm to herself, eleven days later as of June 30. It is my medical opinion that the patient improved to some degree in the hands of the health care providers . . . .

(Fayer affirmation, p.11). In conclusion, Dr. Fayer states that the care and treatment rendered by the Hospital to the plaintiff "was at all times within acceptable standards of medical care, and further it was not only reasonable but required by the standard of care to have admitted her involuntarily for the inpatient psychiatric care which she received" (Fayer affirmation, p. 15). On this record, defendant has met its *prima facie* burden of showing the requisite basis for plaintiff's involuntary admission and the absence of any negligence or psychiatric malpractice.

In opposition, plaintiff's expert concedes that plaintiff has a mental illness and was in need of treatment (Plaintiff's expert affirmation, par 4). He challenges the second requirement for involuntary commitment, namely, that plaintiff presented a substantial threat of physical harm to herself or others on June 19, 2006. He relies upon the statement in the Emergency Room record that plaintiff "has no suicidal or homicidal ideation" (Hospital Record, at clinical abstract, p.1). He describes plaintiff's conduct in striking the nurse with the IV pole as a "lone reference in the chart to a possible violent episode" (Plaintiff's expert affirmation, par. 7). Plaintiff's expert then notes the statement by Dr. Sanders that at the time of the hearing plaintiff no longer posed a substantial threat of physical harm to herself or others, and he characterizes this statement as an inability to justify not only the continued commitment, but also the initial commitment (Plaintiff's expert affirmation, par. 9).

The Court is troubled by the fact that plaintiff's expert minimizes the violent incident with the IV pole, glosses over the incident in the Emergency Room of pulling out the IV and refusing potassium, and fails to address plaintiff's arrival to the Hospital with voluntary malnutrition. The Emergency Room finding that plaintiff had "no suicidal or homicidal ideation," is not equivalent to "not a substantial threat of physical harm" to herself or others. Furthermore, characterization by plaintiff's expert of Dr. Sanders' testimony at the hearing is wholly unsupported in the record.

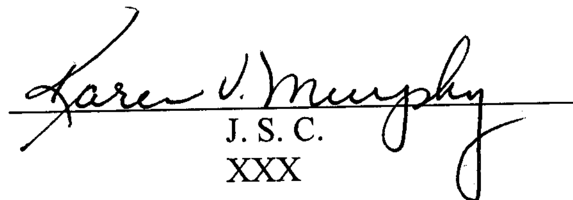
Overall, the Court finds that plaintiff's expert has failed to controvert the opinions of defendant's expert, by failing to support his conclusions with facts in the record. Where an expert's ultimate conclusions are speculative or unsupported by any evidentiary foundation, the opinion should be given no probative force and is insufficient to withstand summary judgment (***Diaz v. New York Downtown Hosp.***, 99 N.Y.2d 542, 544, 784 N.E.2d 68, 754 N.Y.S.2d 195 [2002]). Such is the case here. Plaintiff's expert fails to raise a triable issue of fact as to the substantial threat of physical harm that plaintiff posed to herself and others, and the existence of any negligence or medical malpractice.

As the act of involuntary confinement is privileged in the absence of a showing of negligence or medical malpractice, and no such showing has been made here, the confinement was privileged, and plaintiff has no cause of action for assault and battery arising from the facts alleged (cf. generally ***Ferris v. Millman***, 17 Misc.3d 898, 847 N.Y.S.2d 373 [Sup. Ct., Kings Co, 2007]). Indeed, Plaintiff did not rebut the proof that she consented to take the medications offered to her during her hospitalization.

Based on the foregoing, defendant's motion for summary judgment dismissing the complaint in its entirety must be granted.

The foregoing constitutes the Order of this Court.

Dated: June 8, 2009
Mineola, N.Y.



J. S. C.
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