

Stack v Rehman

2010 NY Slip Op 30325(U)

January 28, 2010

Supreme Court, Suffolk County

Docket Number: 05-9060

Judge: Ralph T. Gazzillo

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ORDERED that the motion (002) by defendants, Francis S. Stellaccio, s/h/a Francis Stellaccio, M.D., and Stony Brook Anesthesiology, PC for an order pursuant to CPLR 3212 granting summary judgment in their favor dismissing plaintiff's complaint, is denied; and it is further

ORDERED that the cross motion (003) by plaintiff, for an order precluding and/or waiving the limited liability benefit of CPLR Article 16 by any defendant or remaining defendant is denied.

In this medical malpractice action, plaintiff, Jacqueline Stack, as administratrix of the estate of decedent Herman Santiago (hereinafter "the patient"), seeks damages for alleged departures from accepted standards of medical care by defendants from May 13 to May 19, 2004, during the patient's admission to nonparty Stony Brook University Hospital (hereinafter "the hospital"). Defendants Francis S. Stellaccio, M.D. and Stony Brook Anesthesiology, PC move for summary judgment dismissing the complaint asserted against them. Plaintiff cross-moves to preclude defendants from obtaining the limited liability benefits of CPLR Article 16.

The record reveals that the patient presented to the hospital emergency room on May 13, 2004, complaining of difficulty voiding. He had recently undergone a cystoscopy and pyelogram to treat kidney stones at a local hospital. He had a history of obesity, high blood pressure and diabetes. A foley catheter was inserted to treat the urinary retention. He was then admitted to the hospital to undergo a transurethral resection of the prostate gland (hereinafter "TURP"), which was performed on May 17, 2004 by defendant Jamil Rehman, M.D., a urology attending physician. Defendant Francis Stellaccio, M.D., an attending anesthesiologist, performed a preanesthesia assessment. Prior to surgery in the holding area, defendant Stellaccio informed the patient of the risks of anesthesia and obtained the patient's consent for spinal and general anesthesia.

The record further reveals that, in the operating room, defendant Stellaccio instituted the patient's spinal anesthesia. He exited the operating room at 10:00 a.m., leaving defendant Rakesh Patel, M.D., a first-year anesthesia resident to manage the patient. The surgery was performed by defendant, Jamil Rehman, M.D., a urology attending physician. During surgery, defendant Patel was instructed by the surgical team to administer a total dose of 60 mg of lasix, a diuretic, to reduce the amount of fluid in the patient's body due to the infusion of Glycine, which is used during the resection. Defendant Stellaccio returned to the operating room at approximately 11:15 a.m. and, shortly thereafter, the surgery was completed. Stellaccio and Patel escorted the patient to the Anesthesia Intensive Care Unit ("AICU"), also known as the recovery room. Although the patient did not exhibit any signs of fluid overload, was awake and moving all extremities, Defendant Stellaccio spoke with the AICU anesthesia resident, defendant Keith Witt, M.D., and told Witt that the patient had received 60 mg of Lasix, and that he was concerned that the patient might develop TURP syndrome from water intoxication or congestive heart failure from fluid overload. At this point, the care of the patient by Defendant Stellaccio ended.

While in AICU, the patient was initially awake and talking, however, he complained of blurred vision and nausea, which are signs of TURP syndrome. Witt reported these symptoms to the AICU attending, nonparty Dr. Rosenfeld and a plan was generated to continue administering lasix. Four hours later, the patient's mental status became altered to the effect that he began speaking gibberish. The record reveals that his serum sodium level was decreased and serum ammonia, a byproduct of glycine

metabolism in the liver, rose to an abnormally high level. Dr. Rosenfeld consulted with another anesthesiologist attending at 4:15 p.m. The patient required intubation and was transferred to the surgical intensive care unit. The record reveals that on May 19, 2004, the patient had no brain activity and died from cerebral edema and uncal herniation.

The requisite elements of proof in a medical malpractice case are (1) a deviation or departure from accepted practice, and (2) evidence that such departure was a proximate cause of injury or damage (*Amsler v Verrilli*, 119 AD2d 786, 501 NYS2d 411 [2d Dept 1986]; *De Stefano v Immerman*, 188 AD2d 448, 591 NYS2d 47 [2d Dept 1992]). The issue of the duty owed as between physicians and, ultimately, to the patient, is a question of law (*Lipton by Lipton v Kaye*, 214 AD2d 319, 624 NYS2d 590 [1st Dept 1995]). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v N.Y. University Medical Center*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]; *Zuckerman v New York*, 49 NY2d 557, 562, 427 NYS2d 595 [1980]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404, 165 NYS2d 498 [1957]).

In support of their motion for summary judgment, defendants Stellaccio and Stony Brook Anesthesiology, PC, submit, *inter alia*, the pleadings, the bill of particulars, a copy of the hospital medical record, defendant Stellaccio's deposition testimony, the deposition testimony of defendants Rehman, Witt and Patel, and the affirmation by Peter Bayard Kane, M.D. By way of the bill of particulars, plaintiff alleges that the moving defendants departed from accepted medical practice in failing to properly administer and monitor the amount of glycine used during the performance of the TURP, failing to properly maintain the patient's hemodynamic status, failing to stop the surgery when fluid was or could have been suspected and immediately inform the surgeon of possible TURP syndrome or fluid over load, failing to timely treat TURP syndrome, failing to check serial sodium levels, failing to check ammonia levels, failing to timely diagnose and treat hyponatremia, failing to administer hypertonic saline, and failing to limit the position of the irrigation bag to a maximum 60 cm. above the surgical field. Plaintiff alleges that these departures caused the patient's uncal herniation and cerebral edema, causing his death.

Defendant Stellaccio testified that he is employed by the State University of New York, Stony Brook Clinical Practice Management Plan department and Stony Brook Anesthesia, PC. He is an attending anesthesiologist and professor at the hospital. He is duly licensed to practice medicine in the State of New York. He stated that he first met the patient in the operating room holding area on May 17, 2004. He performed a pre-anesthesia assessment and informed the patient regarding the risks of anesthesia, and obtained consent to administer the anesthesia. He administered sedatives to the patient. Once in the operating room, defendant Stellaccio administered a spinal anesthetic. At approximately 10:00 a.m., he stated that he left the operating room due to illness and told the anesthesia resident, defendant Patel, to monitor the patient. When he returned at approximately 11:15 a.m., he learned of the lasix orders and that Patel did not question the surgical team regarding the dosage. He stated that such an amount would be excessive and that normally a patient would receive .1 to 1 mg /kg of body weight. He stated that he would have hoped that Patel would have called him about the later doses of lasix. In any event, he stated that he examined the patient and noted that he did not exhibit any signs of TURP syndrome. The patient was awake, oriented and moving his extremities.

Defendant Stellaccio stated that he accompanied the patient to the AICU where he spoke with defendant Witt, the AICU anesthesiology resident. He told Witt to observe the patient for symptoms of TURP syndrome and congestive heart failure. He also told Witt that the patient had already received 60 mg of Lasix. Defendant Stellaccio then left the AICU and eventually left the hospital at noon.

Defendant Patel testified that he was a first year anesthesiology resident at the hospital in May, 2004. He was present in the operating room on May 17, 2004, during the patient's surgery and monitored the patient alone after the spinal anesthetic was administered by defendant Stellaccio. He administered the lasix as ordered by the surgical team and did not question the orders. He stated that he did not order the lasix himself and did not notify Stellaccio. He noted that the patient's blood pressure increased for a short time and he told the surgeon. When defendant Stellaccio returned to the operating room, he informed Stellaccio of the lasix doses that he had given and that there were no signs of fluid overload at that time.

Defendant Rehman testified that he is a physician duly licensed to practice medicine in the State of New York. He is employed by the hospital as an attending urologist as well as an assistant professor of urology. He performed the TURP upon the patient on May 17, 2004, which consists of a cystoscopy and a resection of the prostate gland. He stated that he limits the time of the resection portion of the surgery to one hour to decrease the risk of absorption of the glycine, which is used for resection of the tissue with electrocautery. When performing the cystoscopy portion of the surgery, normal saline is used. During surgery, he communicates with the anesthesiologist to be sure that the patient is not absorbing too much fluid and, if so, surgery is stopped. He stated that, during this surgery, nothing was reported to him by Patel, therefore, he completed the procedure. He told the patient that the surgery went very well.

Defendant Rehman stated that during any endoscopic procedure, it is his custom and practice to use lasix to diurese the patient so that the patient absorbs less fluid. He usually orders lasix in the beginning, middle, and end of each procedure. He usually gives a total of 20 to 40 mg of lasix. During the surgery, defendant stated that the intravenous fluid would be managed and monitored by the anesthesiologist and the bladder irrigants would be managed and monitored by the nurses. After the surgery, defendant stated that the patient's lungs were clear, there was no bleeding, and the foley catheter was draining well. He stated that the patient's recovery from anesthesia was not his responsibility. It was the responsibility of the anesthesiologists and nurses to monitor the recovery of a patient's mental status, fluid and electrolytes, and recovery from spinal anesthesia.

Defendant Witt testified that he was a second year anesthesia resident in May, 2004. He first saw the patient upon his arrival to the AICU on May 17, 2004 at 11:30 a.m. He recalled speaking to defendant Stellaccio, who told him that he was concerned that this patient had absorbed an excessive amount of fluid. Stellaccio compared the patient's status to his pre-operative physical examination and stated that it appeared that there was an excessive amount of swelling to the airway and jaw and that Witt should keep an eye on the patient. Witt stated that he also spoke with the surgical resident, Dr. Lipke, who assisted Rehman. Lipke told Witt that the patient was a candidate for TURP syndrome and to check the lab results. Witt conceded that this was the first time he had cared for a patient with TURP syndrome. He learned that he needed to watch for a change in mental status, low sodium levels, blurred vision, and nausea. He spoke with his attending, Dr. Rosenfeld, who dictated a plan to give more lasix

and normal saline. Witt noted that the patient was initially somnolent, but arousable, and complained of blurred vision. He was told by Rosenfeld to monitor the mental status and check the lab results, which revealed a low sodium level. At this point, Dr. Rosenfeld became more involved with the patient's care and consulted with another anesthesia attending regarding the patient's status. At 4:30 p.m., the patient was intubated. Witt went off duty at 5:30 p.m.

Dr. Kane affirms that he is duly licensed to practice medicine in the State of New York and is board certified in anesthesia. He avers that there was no deviation from the standard of care by defendant Stellaccio. Moreover, nothing that defendant did or did not do was a substantial factor or proximate cause of the patient's claimed injuries, given that an appropriate preanesthesia evaluation was performed, spinal anesthesia was appropriately administered without complication, and the patient received the treatment indicated for TURP syndrome, if suspected, by the attending urologist. In addition, the patient was awake, alert, oriented and moving all extremities at the close of surgery and the patient was transferred from the operating room to the care of the anesthesia attending in AICU. Further, defendant Stellaccio appropriately recommended monitoring the patient's condition in the AICU.

Based on the above submissions, defendants have made a *prima facie* showing sufficient to warrant judgment in their favor as a matter of law by establishing that they did not depart from accepted standards of medical care, shifting the burden to plaintiff to demonstrate the existence of a triable issue of fact (*see, Baez v Lockridge*, 259 AD2d 573, 686 NYS2d 496 [2d Dept 1999]).

In opposition, plaintiff submits the affirmation of her expert, whose name has been redacted in accordance with *Carrasquillo v Rosencrans*, 208 AD2d 488, 617 NYS2d 51 (2d Dept 1994).¹ The original unredacted affidavit has been submitted to the court for inspection under separate cover. The expert states that he is a physician duly licensed to practice medicine in the State of New York and is board certified in anesthesiology and pediatrics. He avers that defendant Stellaccio departed from accepted standards of medical care by his failure to ensure the care of the patient by another attending anesthesiologist during his absence from the operating room for one hour and fifteen minutes. He also failed to notify the surgical team where to find him if needed. He further states that defendant Patel should have been aware that at the time the blood pressure rose that TURP syndrome was evolving with the ongoing glycine administration and that the patient could have been absorbing excess water. At that time, sodium and electrolyte levels should have been ordered immediately. The repeated administration of lasix was also a departure of accepted medical standards without first learning the sodium level. The expert notes that defendant Stellaccio testified that he would have taken action regarding the last two doses of lasix, which shows that improper anesthesiology care was rendered. At this time, the surgery should have been stopped pending lab results. The adverse events that ultimately led to the patient's demise could have been avoided through the presence of a qualified anesthesiologist who could diagnose and treat TURP syndrome. In addition, the expert states that Stellaccio failed to take action prior to

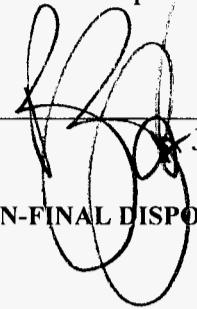
¹ The Court has conducted an in-camera inspection of the original unredacted affirmation and finds it to be identical in every way to the redacted affirmation in plaintiff's opposition papers with the exception of the redacted expert's name. In addition, the Court has returned the unredacted affirmation to the plaintiff's attorney.

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transferring the patient's care to AICU staff. This conflicting opinion precludes a finding of summary judgment (*Viti v Franklin General Hospital*, 190 AD2d 790, 593 NYS2d 840 [2d Dept 1993]).

Accordingly, the motion for summary judgment by defendant Stellaccio and Stony Brook Anesthesia, PC is denied. As a result, Article 16 is not applicable and plaintiff's cross motion is denied.

Dated: 1/28/10



J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION