

Young v New York City Health & Hosps. Corp.
2010 NY Slip Op 34012(U)
November 10, 2010
Supreme Court, Bronx County
Docket Number: 24749/05
Judge: Douglas E. McKeon
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DEC 13 2010

PART 19A

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

Case Disposed ☐
Settle Order ☐
Schedule Appearance ☐

YOUNG, SHAMARIE

Index No. 0024749/2005

-against-

Hon. DOUGLAS E. MCKEON

NYC HEALTH & HOSPITALS CORP

Justice.

The following papers numbered 1 to _____ Read on this motion, REARGUE/RENEW/RESETTLE/RECONSIDER
Noticed on March 30 2010 and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

motion is decided per annexed memorandum decision.

Motion is Respectfully Referred to: _____
Justice: _____
Dated: _____

CLERK'S OFFICE
NOV 22 2010

Dated: 11 / 10 / 10

Hon. 
DOUGLAS E. MCKEON, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: 1A 19A

-----X
SHAMARIE YOUNG, an infant by his mother and natural
guardian, LYDIA GRIFFITH and LYDIA GRIFFITH,
Individually,

Plaintiff,

MEMORANDUM DECISION

-against-

Index No. 24749/05

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION (LINCOLN MEDICAL and
MENTAL HEALTH CENTER) and ST. LUKE'S-
ROOSEVELT HOSPITAL CENTER,

Defendants.

-----X
HON. DOUGLAS E. MCKEON:

Motion by Defendant, NYCHHC, to renew and reargue the order of this court dated February 2, 2010, which granted the Plaintiff's motion for leave to file a late Notice of Claim, is granted to the following limited extent:

That portion of the motion seeking reargument on the basis that the court, in its prior order, overlooked or misapprehended matters of fact or law in allowing Lydia Griffith to file a late Notice of Claim is granted only so that the court may clarify that leave to file a late Notice of Claim was granted solely to the infant-Plaintiff, Shamarie Young. Plaintiff's papers in support of the late claim motion made is clear that the motion was filed on behalf of the infant-Plaintiff alone. Also, although the Plaintiff's mother, Lydia Griffith, was named individually in the caption, the body of the notice indicates a sole claimant, Shamarie Young, with Lydia Griffith as his mother and natural guardian. Furthermore, the

Notice of Claim alleged injuries sustained by the infant-claimant only. Finally, the court reminds movant that, in a March 5 decision, it ordered Lydia Griffith to serve and file a stipulation of discontinuance relative to any individual claims in this action.

That portion of the motion seeking reargument on the basis that the court overlooked NYCHHC's argument that the Lincoln Medical records did not contain the essential facts constituting the claim is denied. The court did not overlook the argument that there could be no documentation in the Lincoln Hospital record concerning the mother's labor and delivery or the infant-Plaintiff's medical condition at birth as he was not born at Lincoln Hospital. However, Defendant's expert, Dr. Halbridge, in reviewing the prenatal records from Lincoln Hospital, opined that the sonogram examination of May 11th 2004 revealed intrauterine growth restriction and severe oligohydramnios, signs of placental insufficiency which necessitated prompt delivery. Dr. Halbridge further opined that this prenatal chart from Lincoln Hospital provided NYCHHC with actual knowledge of harm to the fetus. Movant's argument that the court mistakenly relied upon records from St. Luke's and Long Island College Hospital in holding that the essential facts of the malpractice claim are evident from the Lincoln Hospital records is unfounded as whatever consideration the court may or may not have given to those records cannot be inferred from this court's prior order. As such, when this court concluded that movant had demonstrated, by specific citations to medical records and deposition testimony, (of Gary DiCanio, M.D. and Dr. Sayemi, M.D.) that the facts constituting Plaintiff's claim were evident on the face of the medical records the court did not misapprehend or overlook any matter of fact or law. The

court applied settled law to the particular facts of the case and exercised its discretion in granting plaintiff's initial motion for leave to file a late Notice of Claim.

NYCHHC's argument that after the prior motion papers were submitted it learned that Plaintiff's expert, Dr. Rosario Trifiletti, was not licensed to practice medicine in either New York or New Jersey is unavailing. This information was previously submitted to the court under cover of an attorney's letter dated February 1, 2010. Since then, Plaintiff's attorneys have responded to that letter pointing out that Dr. Trifiletti was indeed licensed to practice medicine in New York or New Jersey on October 13, 2009, when he executed his affirmation in support of the late Notice of Claim motion. The court notes that the same argument to disregard an affirmation submitted by Dr. Trifiletti was made by Defendant and rejected by the Honorable Justice Suarez in Almonte v. Montefiore Medical Center, Supreme Court, Bronx County, Index Number 21079/06 (March 18, 2010). In that decision, Justice Suarez noted that registration is "primarily a ministerial and revenue generating concept." Moreover, submitting an expert affirmation is not "diagnosing, treating, operating or prescribing such as to constitute the practice of medicine." Id. The court agrees.

In conclusion, this motion is granted only to the extent of clarifying this court's February 2, 2010 order. As discussed, supra, there is no basis for renewal or reargument of the motion and cross-motion resulting in that order.

So ordered.

DATED: BRONX, NEW YORK
November 10, 2010


