

Rodgers v Long Beach Med. Ctr.

2011 NY Slip Op 30241(U)

January 21, 2011

Sup Ct, Nassau County

Docket Number: 14602/06

Judge: Denise L. Sher

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

DEBRA RODGERS and JUSTIN RODGERS,

TRIAL/IAS PART32
NASSAU COUNTY

Plaintiffs,

- against -

Index No.: 14602/06
Motion Seq. No.: 02
Motion Date: 10/20/10

LONG BEACH MEDICAL CENTER,

Defendant.

The following papers have been read on this motion:

| | Papers Numbered |
|--|-----------------|
| Notice of Motion, Affirmation and Exhibits | 1 |
| Affirmation in Opposition and Exhibits | 2 |
| Affirmation in Reply | 3 |

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Defendant moves, pursuant to CPLR § 3212, for an order granting summary judgment and dismissing plaintiffs' complaint and, in the event that the motion is denied, due to outstanding discovery, an extension of time to move for summary judgment of sixty (60) days following completion of discovery. Plaintiffs oppose defendant's motion.

On or about September 4, 2005, decedent plaintiff Debra Rodgers, then fifty years old, allegedly sustained an injury (a fractured left femur) when she slipped while attempting to walk unassisted to a portable commode in her room at defendant hospital where she was a patient.

Decedent plaintiff Debra Rodgers had a history of emphysema and was on methadone. The impression on admission to the hospital was described as "deep vein thrombosis." Following commencement of this action, decedent plaintiff Debra Rodgers passed away on April 1, 2007. Her death was unrelated to the subject accident. Plaintiff Justin Rodgers, the decedent's husband, was appointed as the administrator of her estate by the Surrogate's Court of Nassau County. The caption of the action, however, appears not to have been changed.

In this action, plaintiffs charge defendant with acts of malpractice in failing to act diligently/skillfully with regard to the care/supervision of decedent plaintiff Debra Rodgers and to provide adequate safeguards/supervision to prevent her fall.

According to the deposition testimony of plaintiff Justin Rodgers, his wife, decedent plaintiff Debra Rodgers, broke her leg when she slipped on a vinyl mat on the floor of her hospital room when she got out of bed, unassisted, to use a commode which had been placed about three feet to the left of her bed. A commode was provided to the patient for safety reasons because she had a history of seizures, had fallen previously, had difficulty walking and was sometimes a bit unsteady.

Plaintiff Justin Rodgers testified that he first learned of his wife's fall when he visited her at approximately 7:00 a.m. on the morning after the accident. She explained to him that the guardrail on the bed was down when she got up to use the commode. Although she called for a nurse, she did not wait for assistance because the nurse was either busy or she did not want to bother her. She, therefore, attempted to walk to the commode without help from the nurse. At

some point, she “was caught off guard by the mat¹ on the floor and the vinyl on the floor” and when she took a step, “the mat went out from under her” and she fell.

Defendant seeks summary judgment dismissing the complaint in the absence of any evidence that said defendant created the alleged dangerous condition or had actual or constructive notice thereof. In this regard, defendant contends that, plaintiff Justin Rodgers’ description of the alleged accident is inadmissible hearsay.² Defendant further asserts that plaintiff decedent Debra Rodgers herself caused the accident by her own negligence in either failing to use the call bell or, if it was in fact used, by failing to wait for hospital staff to assist her.

In opposition to the motion, plaintiffs offer the affidavit of a legal nurse consultant and patient services administrator for New York Presbyterian Hospital who reviewed the medical records in this case and opines that:

1) “[d]espite conflicting documentation regarding cognitive status, the patient’s co-morbidities, poly pharmacy and impaired functional status placed her at a high fall risk”
and

“the appropriate risk reduction measures for the level of risk identified were not implemented, including clarification of activity orders.”

The expert notes in her affidavit that defendant incorrectly scored patient decedent plaintiff Debra Rodgers as a 35 on the Morse Fall Scale (September 2, 2005) when she should

¹The mat was described as a standard non-disposable mat measuring approximately 3' x 3-1/2' in size. It was used to protect bedding in event of accident. Normally it is placed under the patient to protect the bed linen from being soiled.

²Mr. Rodgers was not present in his wife’s hospital room when the accident occurred and no witnesses to the accident have been identified.

have been scored as a 50 which is above the facility's cut-off score of 45 for identifying high risk patients. It appears from the record that the fall/safety measures in place in this case were limited to a call bell within reach and frequent rounds. It's unclear what, if any, additional measures were implemented. Defendant offers no rebuttal to the affidavit except to reiterate that plaintiffs have failed to produce any evidence that defendant contributed to or caused decedent plaintiff Debra Rodgers' accident. The expert's affidavit is, in the Court's opinion, sufficient to raise a factual issue as to defendant's liability in this case.

A hospital or medical facility has a general duty to exercise reasonable care and diligence in safeguarding a patient, based in part on the capacity of the patient to provide for his or her own safety. *See D'Elia v. Menorah Home and Hosp. for Aged and Infirm*, 51 A.D.3d 848, 859 N.Y.S.2d 224 (2d Dept. 2008). An action to recover for personal injuries or wrongful death against a medical practitioner, medical facility or hospital may be based either on negligence principles or on the more particularized medical malpractice standard. Simple negligence principles apply to those cases where the alleged negligent act may be determined based on common knowledge. Where, however, the directions given or treatment received by the patient is at issue, the professional skill and judgment of the practitioner or facility must be considered and the theory of medical malpractice applies. *See Santana v. St. Vincent Catholic Medical Center of New York*, 65 A.D.3d 1119, 886 N.Y.S.2d 57 (2d Dept. 2009); *Friedman v. New York Hospital-Cornell Med. Center*, 65 A.D.3d 850, 884 N.Y.S.2d 733 (1st Dept. 2009).

Here, the gravamen of plaintiffs' complaint is that defendant breached a duty to adequately supervise, treat and take proper, adequate and necessary safeguards to prevent decedent plaintiff Debra Rodgers' fall. In essence, the action sounding in malpractice questions defendant's assessment of decedent plaintiff Debra Rodgers' fall risk and the degree of

supervision rendered. *See Scott v. Uljanov*, 74 N.Y.2d 673, 543 N.Y.S.2d 369 (1989); *Caso v. St. Francis Hosp.*, 34 A.D.3d 714, 825 N.Y.S.2d 127 (2d Dept. 2006). To establish a *prima facie* case of liability in a medical malpractice action, a plaintiff must prove (1) the standard of care at the facility where the treatment occurred; (2) that the defendant breached that standard; and (3) that the breach was the proximate cause of the injury. *See Elliot v. Long Island Home, Ltd.*, 12 A.D.3d 481, 784 N.Y.S.2d 615 (2d Dept. 2004). To sustain this burden, plaintiffs must present expert testimony that the defendant's conduct constituted a deviation from the requisite standard of care. *See Texter v. Middletown Dialysis Center, Inc.*, 22 A.D.3d 831, 803 N.Y.S.2d 687 (2d Dept. 2005).

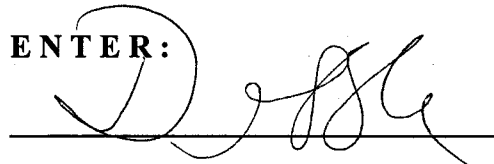
While a hospital is protected from tort liability if it follows the orders of a physician when the matter is within his exclusive competence (*Alaggia v. North Shore University Hosp.*, 92 A.D.2d 532, 459 N.Y.S.2d 96 (2d Dept. 1983)), a hospital may be held liable not only for a failure to follow a physician's order to use side rails, but also in those instances where employees had notice that the patient's condition required their use. *See Harrington v. St. Mary's Hosp.*, 280 A.D.2d 912, 720 N.Y.S.2d 693 (4th Dept. 2001) *lv to app den.*, 96 N.Y.2d 710, 727 N.Y.S.2d 696 (2001); *Mossman v. Albany Medical Center Hospital*, 34 A.D.2d 263, 311 N.Y.S.2d 131 (3d Dept. 1970).

Accordingly, the motion by defendant for summary judgment dismissing the complaint is hereby denied. Plaintiffs have raised a factual issue as to whether defendant deviated from accepted medical practice in its care/supervision of decedent plaintiff Debra Rodgers. Summary judgment should only be granted where it clearly appears that no material and triable issue of fact has been presented. *See Sillman v. Twentieth Century- Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957).

The issue of outstanding discovery did not factor into the Court's determination on this motion.

All parties shall appear for Trial in Nassau County Supreme Court, Differentiated Case Management Part (DCM) at 100 Supreme Court Drive, Mineola, New York, on February 9, 2011 at 9:30 a.m.

This constitutes the decision and order of this Court.

ENTER: 
DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
January 21, 2011

ENTERED
JAN 26 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE