

Ahmed v Nassau Health Care Corp.

2011 NY Slip Op 31630(U)

May 26, 2011

Supreme Court, Nassau County

Docket Number: 1689/09

Judge: Karen V. Murphy

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 15 NASSAU COUNTY**

PRESENT:

Honorable Karen V. Murphy
Justice of the Supreme Court

_____ x

**FARZANA AHMED, individually and as mother and
natural guardian of RESHAD AHMED, an infant,**

Plaintiff(s),

-against-

**NASSAU HEALTH CARE CORPORATION d/b/a
NASSAU UNIVERSITY MEDICAL CENTER,**

Defendant(s).

_____ x

Index No. 1689/09

Motion Submitted: 3/23/11

Motion Sequence: 001

The following papers read on this motion:

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

The motion brought by the Defendant, Nassau Health Care Corporation s/h/a Nassau Health Care Corporation d/b/a Nassau University Medical Center in the above captioned medical malpractice action for an order of this Court pursuant to Rule 3212 of the CPLR, granting summary judgment to the movant dismissing the Plaintiffs' verified complaint herein is granted in all respects.

Based upon all the papers submitted for this Court's consideration, the Court makes the following findings of undisputed facts:

The Plaintiff Farzana Ahmed, came under the prenatal care of the Defendant on or about March 3, 2008 when she was referred to the Defendant's OB Clinic.

Prenatal visits to the Defendant's OB Clinic by the said Plaintiff occurred on March 3, 2008, March 31, 2008, April 18, 2008, April 25, 2008, May 9, 2008, May 23, 2008, May 30, 2008, June 6, 2008, June 13, 2008 and June 20, 2008.

At approximately 5:25 p.m. on June 25, 2008, the Plaintiff, Farzana Ahmed, presented at the Defendant's obstetrical emergency room and after a sonogram was performed she was admitted at approximately 6:45 p.m. of the same day. She was admitted with a chief complaint of labor with an expected due date of June 24, 2008. She presented with mild irregular contractions, her membranes were intact and there was no vaginal bleeding. Mrs. Ahmed remained at the Defendant and was continuously monitored until 12:15 a.m. on June 26, 2008 when her membranes spontaneously ruptured.

The infant Plaintiff was born at 9:38 a.m. on June 26, 2008. The placenta was delivered at 9:40 a.m. The infant's presentation was vertex. The infant Plaintiff was delivered by normal spontaneous vaginal delivery. The delivery was not traumatic and the infant's stay at the Defendant was uneventful until June 28, 2008 the day of his scheduled discharge.

Immediately prior to his scheduled discharge, the infant Plaintiff developed clonic movements of the right arm, hiccuping movements, jerky movement of all extremities, lip smacking, staring and a bruise on the right cheek. The infant Plaintiff's discharge was cancelled and the infant, was transferred to the Defendant's NICU at 11:28 a.m. where he was given IV fluids, phenobarbital and subsequently dilation to control possible focal seizures and to prevent reoccurrence and blood work was performed.

The infant Plaintiff was transferred and transported to Schneider Children's Hospital, LIJ., and admitted there at 6:45 p.m. on June 28, 2008. Upon admission to Schneider Children's Hospital, a brain MRI and MRA showed a left frontal lobe parenchymal hematoma with surrounding edema, mass effect and midline shift. A front subdural hematoma was also noted. There was minimal intraventricular hemorrhage present. An MR venogram of head without contrast revealed no evidence of dural venous sinus thrombosis. The diagnosis at the time of the infant Plaintiff's subsequent discharge from Schneider Children's Hospital was intracranial hemorrhage.

The Plaintiff's verified Bill of Particulars alleges the following: Defendants, their agents, servants and or employees were negligent in causing and permitting the infant plaintiff to sustain an intraparenchymal hemorrhage in the left frontal lobe, with adjacent epidural, subdural and subarachnoid hemorrhage and focal seizures; that defendants failed to timely call in appropriate and necessary consultations; failed to timely diagnose, examine and treat the infant's condition; that defendants caused, permitted and/or allowed infant

plaintiff to sustain a fall in the nursery; failed to provide appropriate prenatal, perinatal and post natal care and treatment; failed to institute proper delivery methods to avoid injury to plaintiff; failed to timely and properly read and evaluate all diagnostic tests and/or procedures performed and/or in failing to perform and order all appropriate tests; and in causing and/or failing to protect the infant from sustaining trauma to the head and face; failed to document the injury sustained by the baby; and *res ipsa loquitur*, in that the hemorrhage to the infant plaintiff's brain could not have occurred in the absence of trauma and that the trauma would not have occurred to the newborn infant in the absence of negligence on the part of the hospital staff caring for the baby.

It is well recognized that summary judgment is a drastic remedy and as such should only be granted in the limited circumstances where there are no triable issues of fact. (*Andre v. Pomeroy*, 35 N.Y.2d 361, 320 N.E.2d 853, 362 N.Y.S.2d 131 [1974]). Summary judgment should only be granted where the court finds as a matter of law that there is no genuine issue as to any material fact. (*Cauthers v. Brite Ideas, LLC*, 41 A.D.3d 755, 837 N.Y.S.2d 594, [2d Dept., 2007]). Once a *prima facie* showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish a material issue of fact, which requires a trial of the action (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 501 N.E.2d 572, 508 N.Y.S.2d 923 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 404 N.E.2d 718, 427 N.Y.S.2d 595 [1980]). The Court's analysis of the evidence must be viewed in the light most favorable to the non-moving party, herein Plaintiff. (*Makaj v. Metropolitan Transportation Authority*, 18 A.D.3d 625, 796 N.Y.S.2d 621 [2d Dept., 2005]).

In support of the instant motion the Defendant has submitted affidavits from Steven G. Pavlakis, M.D. and Robert David Zimmerman, M.D., as well as transcripts of the examination before trial of plaintiff Farzana Ahmed, defendant by Chetna Kothari; Ashesh Mehta, a non party neurosurgeon; and the plaintiffs' medical records.

Dr. Pavlakis, a physician duly licensed to practice medicine in the State of New York, graduated from Brown University School of Medicine in 1979. He is Board Certified in Pediatrics, Neurology, Pediatric Neurology, and Neuro-developmental Disabilities. He is Chief of Pediatric Neurology at Maimonides Medical Center and is affiliated with Mount Sinai Hospital. Pavlakis rendered an opinion, to a reasonable degree of medical certainty, that the doctors, nurses, and staff at NHCC did not deviate from the accepted standard of care in the field of medicine in connection with the care and treatment rendered to Reshad Ahmed and/or Farzana Ahmed and further opined, to a reasonable degree of medical certainty, that the care and treatment rendered by the doctors, nurses, and staff at NHCC to Reshad Ahmed and/or Farzana Ahmed was not the proximate cause of the Plaintiff's alleged injuries and/or damages. The opinions contained in this affidavit are based upon his review of the testimony

provided and the medical records and diagnostic films of NHCC and Long Island Jewish Schneider Children's Hospital. He further opined, to a reasonable degree of medical certainty, that the allegations that NHCC failed to provide appropriate prenatal, perinatal, and postnatal care and treatment are without merit.

A CT scan was ordered and performed at 4:16 p.m. by the staff at NHCC, after seizure activity was detected. Additionally, blood work was done and the patient was kept under constant observation. The CT scan was interpreted to reveal the intraparenchymal hemorrhage. All tests that were required to be done were performed in a timely fashion and correctly interpreted and utilized to formulate a care plan for the infant, according to Dr. Pavlakis. Thus he opines, to a reasonable degree of medical certainty, that the allegations that NHCC failed to timely and properly read and evaluate all diagnostic tests and/or procedures performed and/or failed to and order all appropriate tests are without merit.

Pavlakis' review of the labor and delivery records provides no evidence of an injury being caused during delivery or that an improper delivery method was employed. The infant was delivered without complication, without forceps or other instrumentation and without any special maneuvers performed by the doctors or nursing staff. The infant was born by normal spontaneous vaginal delivery and had Apgar scores of 9 after one minute and 9 after five minutes. Accordingly, it is his opinion, to a reasonable degree of medical certainty, that the allegations that NHCC failed to execute proper delivery methods to avoid injury to the infant plaintiff is without merit.

Contained within the chart are notes indicating that the infant plaintiff had an abrasion to the right cheek area and to a portion of the upper right ear. According to the deposition testimony of the plaintiff's mother, as well as the testimony of the doctors and a review of the medical records, this finding was timely and properly documented, once it was observed. Likewise, once the patient was noted to have an intracranial hemorrhage, that fact was promptly and timely noted within the chart. Accordingly, the allegation that NHCC failed to document the injury or injuries sustained by the infant plaintiff is without merit.

Pavlakis' review of the medical records and testimony provided also yields no evidence or indication that the infant plaintiff sustained a fall while in the nursery or anywhere else within the hospital while in the care of the doctors, nurses, or staff at the hospital. Additionally, on multiple occasions, from the time of birth until the time that the seizures were first observed, the infant plaintiff was in the sole custody of his mother for variable time periods. No one, including Mrs. Ahmed has ever testified that a fall or any trauma to the infant occurred in the hospital. As such, the allegation that the infant plaintiff sustained a fall in the nursery or elsewhere in the hospital is pure speculation and is unsupported by any of the information and materials contained in the deposition testimony

or medical records. Accordingly, Pavlakis opines, to a reasonable degree of medical certainty, that the allegation that the defendant, NHCC, caused, permitted, and/or allowed the infant plaintiff to sustain a fall in the nursery is without merit.

While the infant plaintiff did sustain an abrasion or possibly a minor bruise to the right cheek and to the top portion of the right ear, there is no evidence that this condition was traumatically induced. Multiple explanations for the abrasion/bruise exist, including a self-inflicted abrasion caused by the seizure activity affecting the right upper extremity, irritation and/or friction while being held to nurse/to feed, by being held by the infant's mother, father or other visitors, as well as, from the delivery. Such a facial abrasion or bruise is not unexpected and could have occurred without any negligence or malpractice on the part of the hospital staff. No evidence of trauma to the face or any other body part is noted in the records. While the CT scan reveals an intraparenchymal hemorrhage in the left frontal lobe, a review of the diagnostic films shows no distortion of the skull in that region or any portion of the skull. Additionally, the medical records and the testimony show no evidence of any bruising or injury to the external features or the skull of the infant plaintiff corresponding to the exterior of the left frontal lobe.

According to Pavlakis' review of the diagnostic films from NHCC and from LIJ there is no evidence of a traumatically induced brain injury. The occurrence of intracranial bleed to newborns can occur spontaneously without any traumatic event and can be due to blood disorders, malformations of the vasculature of the brain, as well as, pressure on the skull during delivery. Specifically, the films taken at NHCC and Long Island Jewish Schneider Children's Hospital demonstrate no evidence of traumatically induced injury sustained by the infant plaintiff. The medical records at both institutions show no evidence of external injury in the area of the left frontal lobe, which is the location of the hemorrhage in question. Further, there is no evidence in the records that demonstrate that the infant plaintiff sustained hypoxia in utero or any evidence of brain damage resulting from the labor and delivery process. The location and nature of the abrasion/bruise on the infant's right cheek and upper ear does not correlate with the type or location of the hematoma that is evident on films. It appears that the child suffered from an idiopathic hematoma, which occurred spontaneously either at birth or shortly before or thereafter.

As such, it is Pavlakis' opinion, to a reasonable degree of medical certainty, that the doctors, nurses, and staff at NHCC did not cause or permit the infant plaintiff to sustain an intraparenchymal hemorrhage in the left frontal lobe with adjacent epidural, subdural, and subarachnoid hemorrhage and focal seizures, nor did the staff at NHCC cause and/or fail to protect the infant from sustaining trauma to the head and face.

Pavlakis opined, to a reasonable degree of medical certainty, that any additional allegations contained within the Verified Bill of Particulars, Supplemental Bill of Particulars, and Amended Bill of Particulars are unsupported by the medical records and/or testimony introduced in this matter and, based upon a review of the testimony and all relevant medical records, that the care and treatment rendered by the doctors, nurses, and staff at NHCC was in accordance with the accepted standard of care in the field of medicine and was not a proximate cause of alleged injuries and/or damages claimed in this matter.

Dr. Robert David Zimmerman, a physician duly licensed to practice medicine in the State of New York, graduated from the Albert Einstein College of Medicine of Yeshiva University. He attended an internship and residency at Montefiore Hospital followed by fellowship in diagnostic neuroradiology at George Washington University Medical Center. He is board certified in neuroradiology and diagnostic radiology and is affiliated with New York Presbyterian Hospital.

Based upon his review of the Notice of Claim, Plaintiff's Summons and Complaint, Verified Bill of Particulars, Amended Verified Bill of Particulars, Supplemental Verified Bill of Particulars, 50-H hearing testimony and deposition testimony of Farzana Ahmed, Deposition testimony of Chetna Kothari, M.D, Deposition testimony of Ashesh Metha, M.D., Medical records of Farzana Ahmed, fetal monitoring strips for the labor and delivery of Reshad Ahmed/Farzana Ahmed, and medical records of Reshad Ahmed from NUMC, Hospital records from Schneider Children's Hospital, Diagnostic films and reports from Nassau University Medical Center and Diagnostic films and reports from Long Island Jewish/Schneider Children's Hospital, as well as, his experience and knowledge in the field of pediatric neurology, it is Dr. Zimmerman's opinion, to a reasonable degree of medical certainty, that the doctors, nurses and staff at NHCC did not deviate from the accepted standard of care in the field of medicine in connection with the care and treatment rendered to Reshad Ahmed and/or Farzana Ahmed. He further opined to a reasonable degree of medical certainty, that the care and treatment rendered by the doctors, nurses, and staff at NHCC to Reshad Ahmed and/or Farzana Ahmed was not the proximate cause of the Plaintiff's alleged injuries and/or damages.

His opinions were based on the following findings reported in the records: shortly prior to 11:28 a.m. on June 28, 2008, the infant was noted to have focal seizures affecting primarily the right upper extremity and the infant was transferred to the neonatal intensive care unit. In Zimmerman's opinion, such transfer was timely. The abrasion/bruise on the right cheek and an abrasion on the superior portion of the right ear was appreciated on the morning of June 28, 2008 and noted in the infant's medical chart. A pediatric neurologist was timely consulted over the phone. All of the pediatric neurologist's orders were timely carried out. Transfer to the NICU was accomplished by 11:28 a.m. A CT scan of the brain

was performed at approximately 4:16 p.m. on June 28, 2008, which was interpreted to reveal an intraparenchymal hemorrhage in the left frontal lobe, with adjacent epidural, subdural, and subarachnoid hemorrhage. There was midline shift to the right with patent basilar cisterns.

In response to the seizures, the infant plaintiff was promptly started on a loading dose of Phenobarbital 20 mg per kilogram per dose, which initially stopped his seizures. After additional focal seizures, Phenobarbital 5 mg per kilogram per dose was given. Thereafter, the infant was given Dilantin 20 mg per kilogram per dose in accordance with the orders of pediatric neurology.

In the NICU, the patient was continuously cared for and monitored by a pediatrician and NICU nurses, was sent for the CT scan, and a pediatric neurology consult was conducted. Additional consults were called for in hematology, neurology, and neurosurgery upon transfer to LIJ. A neurosurgery consult was conducted by Dr. Mehta at approximately 6:00 p.m. Arrangements were made on June 28, 2008 for the baby to be transferred to LIJ Schneider Children's Hospital.

The infant was picked up for transfer by Schneider Children's Hospital's transportation team at 6:45 p.m., at which time, treatment by Nassau Health Care Corporation ended. The infant was treated at LIJ for further evaluation and continued management of care in the NICU at LIJ. During this admission, the patient was maintained on Phenobarbital and Dilantin, which continued after delivery. No surgical intervention was undertaken and the infant was again monitored and watched. No additional seizure activity occurred at LIJ and no additional bleeding was appreciated. During the admission to LIJ, an MRI and MRA were performed on June 29, 2008, an MRV on July 1, 2008, and a CT scan July 3, 2008.

No evidence of trauma to the face or any other body part is noted in the records. While the CT scan, which was performed, reveals an intraparenchymal hemorrhage in the left frontal lobe, a review of the diagnostic films shows no distortion or fracture of the skull in that region or in any portion of the skull. Additionally, the medical records and the testimony show no evidence of any soft tissue swelling, bruising, or injury to the external features or the skull of the infant plaintiff corresponding to the exterior of the frontal lobe. Furthermore, upon Zimmerman's review of the diagnostic films from NHCC and from LIJ likewise he saw no evidence of a traumatically induced brain injury. Specifically, the films taken at NHCC and at Long Island Jewish Schneider Children's Hospital demonstrate no evidence of traumatically induce injury sustained by the infant plaintiff. He opined, without contradiction, that it appears that the child suffered from an idiopathic hematoma, which occurred spontaneously either at birth or shortly before or thereafter.

As such, Zimmerman opined, to a reasonable degree of medical certainty, that the doctors, nurses, and staff at NHCC did not cause or permit the infant plaintiff to sustain an intraparenchymal hemorrhage in the left frontal lobe with adjacent epidural, subdural, and subarachnoid hemorrhage and focal seizures, nor did the staff at NHCC cause and/or fail to protect the infant from sustaining trauma to the head and face.

Zimmerman concurred with the findings set forth by Pavlakis that the allegation that the infant plaintiff sustained a fall in the nursery or elsewhere in the hospital is pure speculation and is unsupported by any of the information and material contained in the deposition testimony or medical records.

Based upon Zimmerman's review of the various diagnostic films, including the MRI and MRA films of June 29, the MRV of July 1, 2008, and CT scan of July 3, 2008, it is his opinion, to a reasonable degree of medical certainty, that the hematoma depicted in the films is not consistent with external trauma and rather is consistent with a spontaneous hemorrhage.

Zimmerman opined to a reasonable degree of medical certainty, that the additional allegations contained within the Verified Bill of Particulars, Supplemental Bill of Particulars, and Amended Bill of Particulars are unsupported by the medical records and/or testimony introduced in this matter. Therefore, it is his opinion, to a reasonable degree of medical certainty, based upon a review of the testimony and all relevant medical records, that the care and treatment rendered by the doctors, nurses, and staff at NHCC was in accordance with the accepted standard of care in the field of medicine and was not a proximate cause of alleged injuries and/or damages claimed in this matter and further, that none of the allegations raised are meritorious as against any of the doctors, nurses, or staff at NHCC and do not support a claim for negligence and/or malpractice against the named defendant; that the care and treatment rendered by the doctors, nurses, and staff at NHCC was within the accepted standard of care, did not constitute negligence and/or malpractice, and was not a proximate cause of any of the injuries or damages claimed in this matter.

Based on the Affidavits of Drs. Pavlakis and Zimmerman, transcripts and copies of the medical records submitted by the Defendant, movant has met its *prima facie* burden of proof showing entitlement to judgment as a matter of law.

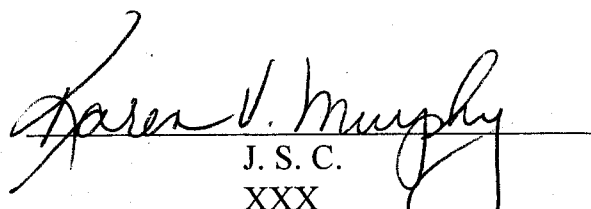
The burden now shifts to the Plaintiff to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue or issues of fact requiring a trial herein (*Alvarez v. Prospect Hospital, supra*).

The Plaintiffs having elected not to submit opposition to the instant motion, failed to establish the existence of a triable issue of fact.

The Verified Complaint is, therefore, dismissed.

Settle judgment on Notice.

Dated: May 26, 2011
Mineola, N.Y.



J. S. C.
XXX

ENTERED

JUN 08 2011

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**