

Djeddah v Williams

2011 NY Slip Op 31711(U)

June 23, 2011

Supreme Court, New York County

Docket Number: 111319/95

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY PART 16

PRESENT: SCHELESINGER ALICE SCHLESINGER
Justice

PART 16

RICHARD DJEDDAH

- v -

DANIEL TUREK WILLIAMS

INDEX NO. 111319/95
MOTION DATE _____
MOTION SEQ. NO. 9
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is denied in accordance with the accompanying memorandum decision.

FILED

JUN 24 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: JUN 23 2011

Alice Schlesinger
ALICE SCHLESINGER *AS.c.*

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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

-----X
RICHARD DJEDDAH and RACHEL DJEDDAH,

Plaintiffs,

-against-

DANIEL TURK WILLIAMS, M.D.,

Defendant.

-----X
SCHLESINGER, J.:

Index No. 111319/95
Mot. Seq. 009

FILED

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NEW YORK
COUNTY CLERK'S OFFICE

This action, sounding in medical malpractice, was commenced in 1995. At that time, Richard Djeddah, a psychiatric patient of Dr. Daniel Turk Williams from 1992 -1994, alleged that Dr. Williams had negligently failed to diagnose and treat his many serious conditions. His wife Rachel Djeddah had filed a derivative claim. At the time both were represented by counsel.

On or about September 2007, Richard Djeddah signed a stipulation of discontinuance, discontinuing his two claims against Dr. Williams, sounding in medical malpractice and informed consent. However, Rachel Djeddah wished to continue her own loss of consortium claim. She was then appearing *pro se*. This led to defendant moving for summary judgment dismissing the action on the ground that Richard Djeddah had terminated the main action and therefore the derivative action was barred. However, Justice Abdus-Salaam, to whom the action was assigned, denied the motion. She noted at that time that Rachel had not signed the discontinuance, as required by CPLR §3217(a)(2).

Following the above events, Rachel continued in her refusal to sign the discontinuance, prompting defendant to file an Order to Show Cause asking the judge to

“So Order” the stipulation of discontinuance signed by Richard. Rachel Djeddah opposed this request and filed a cross-motion to amend the pleadings to allow her to assert a direct cause of action of malpractice against Dr. Williams in her own right, as well as a claim for intentional infliction of emotional distress and defamation. The Order to Show Cause and cross-motion were determined in a decision and order of Justice Abdus-Salaam dated February 19, 2009, wherein the court granted defendant’s motion in part by “So Ordering” Richard’s stipulation of discontinuance but designating the discontinuance “without prejudice”. The court reasoned that it was clear that Mrs. Djeddah intended to pursue her derivative claim and by acceding to defendant’s request that the discontinuance be “with prejudice”, Mrs. Djeddah would not be able to do that. Such a dismissal “with prejudice” would mandate a dismissal of the derivative claim.¹

As to Mrs. Djeddah’s cross-motion for leave to amend her complaint, that was denied. With regard to the direct malpractice claim, Justice Abdus-Salaam said that she had “failed to include an affidavit of merit by a medical expert to support her motion to add a direct claim of medical malpractice against defendant”. As to the remaining claims, defamation and intentional infliction of emotional distress, the court found that Mrs. Djeddah had not demonstrated a valid cause of action and “Additionally, the original

¹In this regard, defendant relentlessly pursued a dismissal. He first moved to renew his motion for summary judgment as to Rachel’s loss of consortium claim then assigned to Justice Joan Carey, arguing that he was entitled to this relief because the discontinuance was “So Ordered “ by Justice Abdus-Salaam. However, Justice Carey noted the careful wording that Justice Abdus-Salaam had used in ordering the discontinuance, which made her position clear that Rachel could pursue her own derivative claim even though Richard had discontinued his main claim. On this basis, on December 15, 2009, Justice Carey denied defendant’s motion. Defendant appealed this denial, but the Appellate Division on April 26, 2011 denied the appeal, stating that “the motion court properly permitted the wife’s claim to proceed.”

pleading does not give notice of these proposed causes of action sounding in intentional tort and thus the relation-back role of CPLR 203(f) is not applicable here.”

Just about two years later, on February 14, 2011, by Order to Show Cause, Rachel Djeddah asked this Court once again to allow her to amend her own causes of action by adding a direct claim of medical malpractice, defamation, intentional infliction of emotional distress and punitive damages. Not surprisingly, defendant strenuously objected.

In voluminous papers, which include Dr. Williams’ office records vis-a-vis Richard, Mrs. Djeddah first included a long letter dated January 30, 2011 with attachments in an attempt “to explain to the court the major difficulties that I encountered and why this motion was not filed earlier”. This, of course, was considered by the Court together with all the other papers. However, I find that I must deny the motion in all respects and not because the motion is arguably untimely. In this regard, I recognize the extraordinary physical and emotional stresses that Mrs. Djeddah has lived with in the last few years. But I am doing this because Mrs. Djeddah has still failed to include an affidavit of merit by a medical expert to support a direct medical malpractice claim, and the other intentional torts are barred by the applicable statutes of limitation.

On the medical malpractice claim, what Mrs. Djeddah has submitted is an April 22, 2010 letter addressed to her from Dr. Stephen Bates Billick, a Clinical Professor of Psychiatry, New York Medical College. It is exhibit “F” to the motion. It has the heading “Affidavit of Merit”, and it is subscribed and sworn to. It reads in its entirety as follows:

Dear Ms. Djeddah,

I have today reviewed with you the report from
Albert Crum, M.D., 9/9/98, the Court Psychiatric
Evaluation from Daniel Feinberg, M.D, 10/26/94,

the Scarsdale Family Counseling Services records, 1994, and the clinical records made by Daniel Williams, M.D.

As you know, I have no financial interest in the outcome of this case. You have consulted with me for a one time Forensic Psychiatric Consultation regarding whether you may have a viable action against Dr. Williams. I am an expert in forensic psychiatry and have attached my curriculum vitae to this letter in support of my expertise.

You have been a patient of Dr. Williams, seen alone and in conjoint sessions with your former husband.

It is my opinion that your case has merit and you have your own cause of action.

If you would like me to consult with your attorney, I would be happy to do this regarding your request today.

Thank you.

Sincerely,
Stephen Bates Billick, MD

Defense counsel argues that this letter/affidavit is wholly conclusory and not supportive of a direct cause of action sounding in medical malpractice. I agree. There is no explanation as to why Dr. Billick believes Mrs. Djeddah was a patient of Dr. Williams in her own right, or why he believes her direct case of malpractice against him has merit. Further, regarding the doctor-patient relationship, no specific reference is made to any part(s) of the voluminous records in Richard Djeddah's chart that proves this assertion.

As to the merits of her claim, there is no explanation as to why or how Dr. Billick finds merit. Nor is there anything connecting any injuries that she allegedly suffered to acts of malpractice by Dr. Williams. Further, to the extent the letter/affidavit cites to other

documents such as Dr. Crum's report (which is an exhibit) and Dr. Feinberg's evaluation (also an exhibit), these are hearsay and to the extent they even pertain to Mrs. Djeddah, they cannot form a basis for a finding of merit to her claim.

Finally, I find that the malpractice claim, as well as the other two intentional torts, defamation and intentional infliction of emotional injury, are precluded by the controlling statutes.² The statute of limitations for medical malpractice claims is two and one-half years (CPLR §214-a) and for intentional torts, one year (CPLR §215, subd. 3). In order to relate back to the time when an action was commenced and rebut a claim of untimeliness, a plaintiff has the burden of establishing that the new claims "relate back" to the original ones [CPLR §203(b) or ©]. One does this by proving that the new claims are connected to the original ones so that one could say that the defendant was on notice of the new ones. That has not been shown here.

The direct medical malpractice is not related to Mrs. Djeddah's derivative claim. That is based solely on Dr. Williams' alleged malpractice toward her former husband Richard and to the argument that Richard's injuries and/or disabilities caused her injury as his spouse. It is unrelated to Mrs. Djeddah's claim that Dr. Williams committed malpractice directly against her. As to the intentional torts, it is clear they do not relate back to Richard's malpractice claim or Rachel's derivative one. Therefore, they are all time-barred. Regarding the two intentional torts, Justice Abdus-Salaam said as much in her March 2009 decision.

²Besides being untimely, no valid causes of action regarding Mrs. Djeddah's intentional torts have been stated. While she does detail in her 50-page affidavit the ways in which Dr. Williams "has committed many wrongs" and "caused me irreparable and irreversible damage I suffer from until today", she fails to make out legally cognizable causes of action.

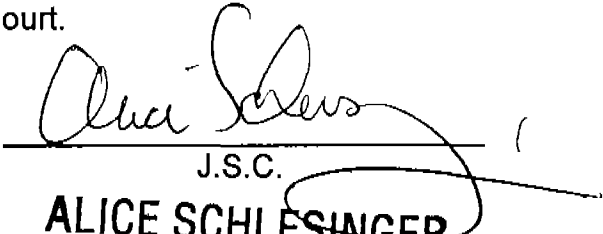
Therefore, for the reasons stated above, the absence of provable merit and the untimeliness of the claims, the motion to amend the complaint is denied.

The case is scheduled for a pre-trial conference in Room 222, on Wednesday, July 20, 2011 at noon. Among the issues discussed will be the timeliness of any future dispositive motions and the selection of a trial date. Mrs. Djeddah may participate by telephone if necessary by calling 646-386-3318.

This constitutes the decision and order of the Court.

Dated: June 23, 2011

JUN 23 2011



J.S.C.
ALICE SCHLESINGER
FILED

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