

**Stork v Columbia Mem. Physician Hosp. Org., Inc.**

2011 NY Slip Op 32886(U)

November 1, 2011

Sup Ct, Greene County

Docket Number: 08-1979

Judge: Joseph C. Teresi

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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF GREENE

VICTORIA STORK, Individually and as  
Administratrix of the Estate of  
NORBERT STORK, Deceased,

Plaintiffs,

**DECISION and ORDER**  
**INDEX NO. 08-1979**  
**RJI NO. 19-09-4224**

-against-

COLUMBIA MEMORIAL PHYSICIAN  
HOSPITAL ORGANIZATION, INC. (A/K/A  
THE COLUMBIA MEMORIAL HOSPITAL),  
RONALD J. POPE, D.O. and JEFFERSON  
HEIGHTS FAMILY CARE CENTER,

Defendants.

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Supreme Court Greene County All Purpose Term, September 30, 2011 and October 28, 2011  
Assigned to Justice Joseph C. Teresi

**APPEARANCES:**

Victoria Stork  
Plaintiff Pro Se  
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Attorneys for Defendants Columbia Memorial Hospital and Jefferson Heights Family Care  
Center  
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Maynard, O'Connor, Smith & Catalinotto, LLP  
Attorneys for Defendant Ronald J. Pope, D.O.

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**TERESI, J.:**

The defendants, Columbia Memorial Hospital, Jefferson Heights Family Care Center and Dr. Ronald Pope move for summary seeking the dismissal of plaintiff's medical malpractice causes of action against them. Alternatively, the defendants seek an order pursuant to CPLR 3126 and CPLR 3101(d) precluding the plaintiff from offering any testimony from any experts as she has failed to timely respond to defendants' demand for expert witness information. The plaintiff opposes the motions.

The plaintiff commenced this pro se medical malpractice action on December 18, 2008 alleging the medical care provided by the defendants was substandard leading to the death of her husband, Norbert Stork, on January 1, 2007 at Columbia Memorial Hospital.

The decedent suffered a stroke in August of 2006. Dr. Pope saw Mr. Stork as a new patient on October 4, 2006. Mr. Stork informed Dr. Pope that he noticed blood in his stool. Mr. Stork never had a colonoscopy and Dr. Pope referred him to Dr. Packard for that procedure. Dr. Pope prescribed Crestor for the decedent's high cholesterol. Mr. Stork did not comply with Dr. Pope's recommendations. Mr. Stork did not have a colonoscopy that was scheduled for November 22, 2006, did not get his blood work and did not take the cholesterol drug, Crestor. Mr. Stork had a follow up visit with Dr. Pope on November 7, 2006. At that time, Dr. Pope determined the decedent suffered from COPD, hyperlipidemia and diabetes. At that visit, the decedent did not complain of any rectal bleeding. Dr. Pope saw Mr. Stork on November 28, 2006 and he did not complain of any rectal bleeding. Upon examination, Dr. Pope did not observe any

rectal bleeding. On December 28, 2006, the decedents's wife called Dr. Pope's office and advised the staff nurse that Mr. Stork had heavy rectal bleeding. Dr. Pope spoke with the plaintiff, Mrs. Stork and advised her to call 911 and go directly to Columbia Memorial Hospital. Mr. Stork did not go to the hospital on December 28, 2006. On December 31, 2006, the decedent sustained continued rectal bleeding and was taken to Columbia Memorial Hospital by ambulance. The decedent was treated at the emergency room for low blood pressure, abnormally low blood counts and for anemia as a result of the blood loss from rectal bleeding.

The decedent was seen by Dr. Monkash, a gastroenterologist, at Columbia Memorial Hospital. Dr. Monkash maintains the decedent needed to be stabilized before a colonoscopy could be performed to ascertain the cause of the bleeding. The decedent was given blood transfusions and admitted to the intensive care unit. On January 1, 2007, Dr. Monkash performed an upper GI endoscopy in order to rule out bleeding from the upper GI tract. The decedent was seen by Dr. Clinton a cardiologist and Dr. Maben, a general surgeon. Although the medical team recognized the decedent's condition was unstable, surgery was scheduled in an effort to stop the blood loss. As the decedent was prepared for surgery, he passed away less than 24 hours from when he entered the emergency room. An autopsy revealed the decedent had a very large cancerous ulcerated tumor in the colon that extended into the rectum

The defendants allege they are entitled to summary judgment since there were no departures from accepted standards of medical care and there was no casual connection between the care provided to the decedent prior to his death. In addition, the defendants allege they are prejudiced and unable to adequately prepare for trial as the plaintiff has not complied with any expert disclosure requests.

The plaintiff contends the defendants failed to recommend blood tests to detect carcinoma, failed to diagnose the decedent's colon cancer or the presence of the cancerous tumor, failed to order an immediate colonoscopy or biopsy, failed to properly or timely diagnose the decedent's rectal tumor, failed to determine the cause of the bleeding and caused the decedent to experience cardiac ischemia and myocardial infarction. The plaintiff further claims the defendants and/or their agents carelessly and negligently rendered medical care and treatment to Norbert Stork that deviated from the standard, good and accepted medical practice. The plaintiff maintains she does not have an expert witness as it was impossible for her to afford one. The plaintiff alleges it was never recommended to the decedent that he go to the hospital on December 28, 2006. The plaintiff maintains x-rays of the decedent's abdomen did not disclose the tumor.

The attorneys for Dr. Pope allege law office failure resulted in the late filing of the Notice of Motion dated September 16, 2011 returnable October 28, 2011. On December 9, 2010 this Court directed all dispositive motions to be filed before October 31, 2011. An Amended Scheduling Order dated December 15, 2010 required all dispositive motions to be filed by September 30, 2011. The defendants' attorney claims he failed to correct the return date of the motion pursuant to the Amended Scheduling Order.

The Court hereby excuses the late return date of the instant motion pursuant to CPLR § 2005. The motion was filed and served on September 16, 2011 returnable on October 28, 2011. The plaintiff filed and served an Affidavit in Opposition on September 28, 2011. The plaintiff has not demonstrated any prejudice as she had the opportunity to review the motion and file an appropriate response.

On a motion for summary judgment, the movant must establish by admissible proof the right to judgment as a matter of law. (Alvarez v Prospect Hospital, 68 NY2d 320 [1986]; Gilbert Frank Corp. v Federal Insurance Co., 70 NY2d 966 [1988]). The burden shifts to the opponent of the motion to establish by admissible proof, the existence of genuine issues of fact. (Zuckerman v City of New York, 49 NY2d 557 [1980]). It is well established that on a motion for summary judgment, the court's function is issue finding, not issue determination. (Barr v. County of Albany, 49 NY2d 557 [1980]), and all evidence must be viewed in the light most favorable to the opponent to the motion. (Davis v. Klein, 88 NY2d 1008 [1996]).

In opposing a motion for summary judgment, one must produce evidentiary proof in admissible form . . . mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient. (Zuckerman v City of New York, 49 NY2d at 562). It is incumbent upon the non-moving party to lay bare her proof in order to defeat summary judgment. (O'Hara v Tonner, 288 AD2d 513 [3<sup>rd</sup> Dept. 2001]). Mere conclusionary assertions, devoid of evidentiary fact, are insufficient to raise a genuine triable issue of fact on a motion for summary judgment as is reliance upon surmise, conjecture or speculation. (Banco Popular North America v. Victory Taxi Management, Inc., 1 NY3d 381 [2004]).

In medical malpractice actions, a plaintiff must prove that the defendants deviated or departed from accepted community standards of practice, and that such departure was a proximate cause of the plaintiff's injuries. (Stukas v. Streiter, 83 AD3d 18 [2<sup>nd</sup> Dept. 2011]). A defendant seeking summary judgment in a medical malpractice action "must make a prima facie showing that there was no departure from good and accepted medical practice or that the plaintiff was not injured thereby". (Brady v. Westchester County Healthcare Corp., 78 AD3d 1097 [2<sup>nd</sup>

Dept. 2010]). A plaintiff must rebut the defendants's prima facie showing to demonstrate the existence of a triable issue of fact. (Alvarez v. Gerberg, 83 AD3d 974 [2<sup>nd</sup> Dept. 2011]). An expert's testimony that makes general allegations of medical malpractice, merely conclusory in nature, and unsupported by competent evidence, is insufficient to defeat defendants' summary judgment motion. (Taylor v. Nyack Hospital, 18 AD3d 537 [2<sup>nd</sup> Dept. 2005]; (Fileccia v. Massapequa Gen. Hospital, 63 NY2d 639 [1984]).

The defendants established their prima facie entitlement to summary judgment based upon the decedent's medical records, hospital records and the affidavits of Dr. Pope and Dr. Monkash which concluded that the treatment of the decedent did not deviate from accepted medical practice. The plaintiff offered no medical testimony in opposition to the defendants' summary judgment motions. Since the plaintiff did not offer an expert's affidavit in support of her claims, her general allegations of medical malpractice, are conclusory and unsupported by competent evidence and are insufficient to defeat summary judgment. (Deutsch v. Chaglassian, 71 AD3 718 [2<sup>nd</sup> Dept. 2010]; Snyder v. Simon, 49 AD3d 954 [3<sup>rd</sup> Dept. 2008]). Moreover, if the plaintiff does not come forward with an adequate expert opinion as to deviation and causation, the defendants are entitled to summary judgment. (DeLorenzo v. St. Clare's Hospital, 69 AD3d 1177 [3<sup>rd</sup> Dept. 2010]).

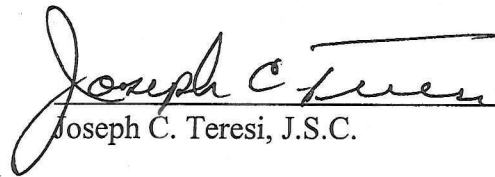
Accordingly, the defendants' motions for summary judgment pursuant to CPLR 3212 are granted.

This Decision and Order is returned to the attorney for defendants, Columbia Memorial Hospital and Jefferson Heights Family Care Center. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Greene County Clerk

for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provision of that section relating to filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York  
November / , 2011

  
Joseph C. Teresi, J.S.C.

**PAPERS CONSIDERED:**

1. Notice of Motion dated August 29, 2011;
2. Affidavit of Justin O'C. Corcoran, Esq. dated August 29, 2011 with Exhibits A-H;
3. Defendants's Memorandum of Law dated August 29, 2011;
4. Affidavit of Victoria Stork dated September 19, 2011 with Exhibits A-L;
5. Notice of Motion dated September 16, 2011;
6. Affidavit of Alexander L. Stabinski, Esq. dated September 16, 2011 with Exhibits A-L;
7. Affidavit of Dr. Ronald J. Pope dated September 14, 2011;
8. Defendant's Memorandum of Law dated September 16, 2011;
9. Affidavit of Victoria Stork dated September 27, 2011 with Exhibits;
10. Affirmation of Alexander L. Stabinski dated October 5, 2011 with Exhibit A.
11. Affidavit of Victoria Stork dated October 17, 2011 with Exhibit.