

Williams v Montefiore Med. Ctr.
2011 NY Slip Op 33988(U)
October 24, 2011
Supreme Court, Bronx County
Docket Number: 28929/02
Judge: Douglas E. McKeon
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[* 1]

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 19A

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

Katharine Williams X

-against-

Montefiore Medical Center, et al. X

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

Index No. 282-01 29829/0

Hon. Douglas E. McKeon

Justice

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPER NO.	
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 in accordance with the annexed decision and order.

So ordered.

Motion is Respectfully Referred to:
Justice:
Dated:

Dated: 10/24/11

Hon. DE
J.S.C.

Douglas E. McKeon

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX - PART IA-19A

-----X
KATHERINE WILLIAMS, deceased, by her
Administrator, SYRUS WILLIAMS and SYRUS
WILLIAMS, individually,

Plaintiff

- against -

INDEX NO.28929/02

MONTEFIORE MEDICAL CENTER,
PATRICK ANDERSON, M.D.,
RONALD ST. LOUIS, M.D.,
THANJAVUR RAVIKUMAR, M.D.,

DECISION/ORDER

Defendant

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

Motion by defendants for summary judgment and an order dismissing the claims against them is decided as follows:

The history of this case is as follows: The decedent first presented to non-party Jacobi Medical Center where she was admitted between April 1, 1999 and April 19, 1999. At that time she was 64 years old, weighed over 300 pounds and had been admitted to the general surgery service from the emergency room with an abdominal abscess which was incised and drained on April 3, 1999. The abdominal wall was explored and found to have necrotic fat and tracking of purulence. Significant to the allegations herein is that during the submission the patient made

complaints of vaginal bleeding. A pelvic ultrasound was performed and showed a thickened endometrium "suggestive of carcinoma" as described in the Jacobi discharge summary. The gynecology service instructed the patient to follow up in that department for further evaluation as an out-patient. At discharge she was given an appointment to return to the gynecology clinic for which she did not appear.

Regarding the case at hand, 14 months after the ultrasound at Jacobi was suggestive of malignancy, decedent presented to the Montefiore Emergency Room on June 16, 2000 with a complaint of vaginal bleeding for ten days and blood clots when urinating. She explained to the ER staff that she had had vaginal bleeding intermittently for 3 years with the last episode of similar severity 1 year prior. Her past medical history was significant for diabetes, arthritis and gout and her surgical history included the 1999 draining of the abdominal abscess. Physical examination demonstrated an 8 inch protuberance on the left side of the abdomen. Labs were drawn and confirmed that the patient had no excessive blood loss. She was given saline and discharged with follow-up appointments which the ER staff made for her in the Montefiore Gynecology Clinic to take place on June 19, 2000 and in the Montefiore Medical Clinic to take place on June 22, 2000. The decedent failed to appear for either of those appointments. On July 20, 2000 the patient presented without an appointment to the Montefiore Gynecology Clinic where she was seen by resident Dr. Jenny Tang. She was noted to have post-menopausal bleeding for 2 years which was heavy for 15 days and light for 15 days each month. She was

to be morbidly obese and in no acute distress. Dr. Tang performed a vaginal examination but was unable to perform an endometrial biopsy and unable to palpate the patient's uterus due to vaginal stenosis and her morbid obesity. Dr. Tang obtained a PAP smear which proved negative for malignant cells but the adequacy of the specimen was limited by severe inflammation. Dr. Tang therefore called Montefiore Imaging Center and obtained an August 14, 2000 appointment for the patient to have a pelvic ultrasound to rule out endometrial thickening. Dr. Tang was unaware that doctors at Jacobi had obtained a pelvic ultrasound 16 months earlier which confirmed endometrial thickening. Decedent had not set such information forth in her history. The decedent failed to appear for the transvaginal ultrasound.

The patient first had contact with defendant Dr. Ronald St. Louis at an unscheduled walk-in visit to the Montefiore Medical Clinic on August 14, 2000. He took a history from her during which she reported her June 16, 2000 ER visit and that she had been seen by gynecology in July and had been referred to medicine for a follow-up. He noted the negative pap of July 20, 2000 and that the patient, according to the given history, had a pelvic ultrasound scheduled. She made no abdominal complaints. He noted that she required follow-up with gynecology and that she had a mammogram scheduled. A note in the Patient Teaching Section indicates that he reinforced to the patient that she should follow-up with gynecology and that she was given an appointment to return to the Medical Clinic on October 17, 2000. Decedent failed to appear at the lab for the blood work Dr. St. Louis

recommended and failed to appear for the transvaginal ultrasound appointment which was scheduled for that day. She also failed to appear for the Medical Clinic appointment on October 17th or follow-up with gynecology as he had instructed her.

Plaintiff next appeared at Montefiore before Dr. St. Louis for another unscheduled visit on May 16, 2001. Her chief complaint was a skin rash but she also reported continued post-menopausal bleeding. She made no abdominal complaints. She told Dr. St. Louis that she had been seen by gynecology and that there was no further evaluation needed. The records provide no support for the proposition that the patient had been told by anyone in the Gynecology Clinic that she needed no further follow-up. Rather, the records indicate that decedent never appeared for a gynecologic clinic appointment as suggested by Dr. Tang or Dr. St. Louis. After the May 16, 2001 examination Dr. St. Louis noted he needed the gynecological records to evaluate what the patient told him. His recommendation to patient went unheeded as she did not have blood work drawn as requested by Dr. St. Louis. Instead, her next treatment at Montefiore was on June 20, 2001 when she was admitted through the ER with complaints of abdominal pain for two weeks. She reported that she had pain all over her abdominal growth which had been there for ten years but that it had rapidly grown in size in the past two weeks. She complained of nausea, vomiting, constipation and bleeding for many years. A pelvic exam was performed. The impression was a large hernia which required surgical treatment. A CT scan was taken and the assessment was a large hernia.

Defendant Dr. Ravikumar, a general surgeon, wanted to observe the decedent for the next 24 hours. After that, he performed a hernia repair surgery upon her. During the course of the procedure, it was discovered that the bowel was abnormal and covered with tumors. Lesions were sent to pathology for evaluation and they were reported as malignant tumors. Dr. Ravikumar called for a gynecology-oncology consult which was performed by defendant Dr. Patrick Anderson intra-operatively. Dr. Anderson observed that the patient had abdominal cancer Stage IV. He recommended an abdominal hysterectomy which Dr. Ravikumar performed after discussing it with the decedent's son. Due to the extent of tumor in the uterus, the uterus was removed. Dr. Ravikumar and Dr. Anderson evaluated the patient a few more times over the next several days. Between July 6, 2001 and July 18, 2001 Dr. Ravikumar was in regular contact with visiting nurses with respect to the condition of patient's surgical wound. On July 18, 2001 she was brought to the ER to drain a possible abscess. At this point Dr. Ravikumar knew the patient was terminal and that she would not live long. The family declined hospice care. Patient was discharged on July 23, 2001. Patient was admitted to Jacobi on August 13, 2001 and stayed there until she died on September 5, 2001. The autopsy report described extensive cancer with involvement of the pancreas, bowel, lungs and liver. In the end, decedent died of cancer.

Initially, the Court grants summary judgment to Dr. Ravikumar and Dr. Anderson. The two physician affirmations submitted in opposition to defendants'

motions contain no allegations of medical departures by either doctor. Furthermore, based on the record before it, the Court finds that both doctors acted appropriately and in accordance with good and accepted medical standards.

In essence, plaintiff's opposition papers discuss two departures. The first, that Montefiore failed to order gynecological consult and diagnostic studies such as an MRI or CT scan to evaluate the patient's complaints of vaginal bleeding while she was in the Emergency Department. Secondly, that Dr. St. Louis, who worked in the medical clinic, failed to ensure that the patient followed up on the instructions given by him, Dr. Tang and Montefiore to appear for a scheduled transvaginal sonogram and to follow-up with the Gynecology Clinic thereafter. The Court rejects these arguments.

In support of its motion, movants have provided the Court with the affirmation of Dr. Cohen, a doctor Board certified in obstetrics and gynecology with a certified sub-specialty in gynecologic oncology. Dr. Cohen states that an emergency room is just that, a place for urgent care on an emergency basis, and that there was nothing about this patient's presentation which required diagnostic and clinical care while there. Dr. Cohen has stated that while post-menopausal bleeding requires evaluation via pelvic exam and endometrial biopsy. The emergency room is not the normal or optimal setting for such care in the absence of acute symptoms which were absent here. Furthermore, as decedent did not report that she had already been diagnosed with endometrial thickening by sonogram at another hospital 14

months earlier, there was no indication for further treatment in the emergency room, no need to admit her and no emergency conditions requiring immediate attention. The standard of good medical care required a prompt work-up by gynecology which was arranged by the scheduling of a gynecological evaluation for the plaintiff three days later on Monday June 19, 2000. Furthermore, as indicated by Dr. Cohen, there is no medical or gynecological standard of care requiring physicians or hospitals who have identified areas of concern requiring follow-up, and who have advised patients of such concerns to actually chase the patient to make certain that the patient appears for blood tests, attends procedures that were scheduled, or returns to the medical clinics as instructed. The Court agrees with Dr. Cohen that such would be an unrealistically burdensome standard which does not exist in the medical community.

The Court also rejects the plaintiff's expert's criticism that Dr. St. Louis on August 14, 2000, should have ordered the patient's June 16, 2000 and July 20, 2000 gynecology clinic records. Her presentation to the medical clinic on August 14, 2000 was an unscheduled walk-in visit. It was entirely consistent with the standard of care for Dr. St. Louis to take and accept the patient's history. It is clear from Dr. St. Louis' note that he reinforced to her the need to follow-up with the gynecology clinic for the vaginal bleeding. Furthermore, as face to face instructions to decedent had repeatedly been ignored by her, there is no reason to believe that a follow-up phone call or letter in the mail would have prompted her to appear for her

scheduled exams. As opined by Dr. Cohen, and based on the medical records in this matter, the actions taken by Montefiore and Dr. St. Louis were appropriate. The patient was appropriately evaluated on an emergency basis, given timely appointments, and appropriately scheduled for a transvaginal sonogram. She thereafter was appropriately evaluated by Dr. St. Louis who reinforced to her the need to follow up with gynecology.

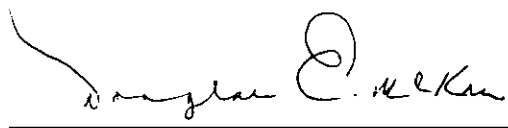
The Court finds that plaintiff's expert in oncology has drawn conclusions which are conclusory and speculative. Movant's expert, Dr. Cohen, has stated that the cancer in June, 2000 was advanced based on patient's history vaginal bleeding dating back to 1997, the 1999 ultrasound suggestive of carcinoma and the massive extent of the disease at the time of the diagnosis in June, 2001 with her death in September, 2001. As such the Court finds that plaintiff's experts' conclusion that as of June, 2000 the patient could still possibly have had Stage II cancer to be nothing more than a guess. The experts' claim that the Montefiore records support the conclusion that decedent's cancerous condition was potentially curable at the time she initially presented to MMC on June 16, 2000 does not meet the requisite standard of expert proof to raise an issue of fact herein. There is no medical evidence in support and it is merely speculative and conclusory.

In sum, the Court finds that plaintiff's experts fail to raise an issue of fact sufficient to defeat movant's motion for summary judgment because the oncology experts' conclusions are speculative and have no support in the medical record and

the family practice experts' statements with respect to the standard of care are also unsupported. There is no support for the statement that the standard of care would require doctors and hospitals to, in effect, chase patients to make certain they show up for scheduled tests and appointments. As such, defendant's motion for summary judgment is granted in its entirety.

So ordered.

Dated: *October 24, 2011*



Hon. Douglas E. McKeon, J.S.C.