

**Arguinzoni v Montefiore Med. Ctr.**

2014 NY Slip Op 32441(U)

March 11, 2014

Sup Ct, Bronx County

Docket Number: 301824/09

Judge: Douglas E. McKeon

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This opinion is uncorrected and not selected for official publication.



PART 19A

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

Case Disposed   
Settle Order   
Schedule Appearance

-----X  
ARGUINZONI,EDMALUZ

Index No. 0301824/2009

-against-

Hon. DOUGLAS MCKEON

MONTEFIORE MEDICAL CENTER

Justice.

-----X

The following papers numbered 1 to \_\_\_\_\_ Read on this motion, SUMMARY JUDGEMENT DEFENDANT  
Noticed on February 19 2013 and duly submitted as No. \_\_\_\_\_ on the Motion Calendar of \_\_\_\_\_

|  | PAPERS NUMBERED |  |
|--|-----------------|--|
| 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 of the Court.

So ordered.

Motion is Respectfully Referred to:  
Justice: \_\_\_\_\_  
Dated: \_\_\_\_\_

APR 8 2014

Dated: 3 / 11 / 14

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

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX - PART IA-19A

-----X  
EDMALUZ ARGUINZONI and  
ELISEO QUINONES,

Plaintiff(s)

- against -

INDEX NO: 301824/09

MONTEFIORE MEDICAL CENTER - THE  
UNIVERSITY HOSPITAL FOR THE ALBERT  
EINSTEIN COLLEGE OF MEDICINE, JACK D.  
WIELER DIVISION, HENRY AND LUCY  
MOSES DIVISION, SARAH KIM, M.D., HYE J.  
HEO, M.D., V. MORALES, M.D., PAMELA  
DEFOREST, M.D., and NARAIN KHAIMRAJIE,  
R.N.,

DECISION/ORDER

Defendant(s)

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**HON. DOUGLAS E. MCKEON**

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

Initially, the Court notes that plaintiff has stated in her opposition papers that she is discontinuing her claims as to defendants Dr. Heo, Dr. Deforest, and Dr. Morales. As of this time said discontinuances have been e-mailed to movants but the originals have not been fully executed and filed with the Court. As such, the Court grants summary judgment to those aforementioned moving defendants given plaintiff's clear intent to discontinue this action against them. The Court will now

address the summary judgment motion brought by the remaining defendants, Montefiore Medical Center, Dr. Kim and Nurse Naraine. This is a medical malpractice action wherein plaintiff alleges that defendants improperly positioned her legs during labor and delivery, resulting in the separation of her pubic symphysis.

Plaintiff presented to Montefiore Medical Center on September 16, 2006 at 39 weeks. She delivered a healthy baby girl at 9:40 p.m. Present at the delivery were Dr. Kim, and Nurse Naraine Khaimrajie ("Nurse Naraine"). Dr. Kim and Nurse Naraine have testified that plaintiff was placed only with her feet above her at the same level as the hips often in stirrups with the perineum positioned at the edge of an examination table. The Montefiore chart corroborates this testimony and there is no documentation of plaintiff being placed in a different position. There is also no documentation that plaintiff complained of pain other than that associated with contractions. One day post-delivery, plaintiff complained of pain in the supra pubic area. An x-ray showed a 13 mm separation of the symphysis pubis which is described as the upper limits of normal. An x-ray on November 1<sup>st</sup> revealed a separation of 6.3 mm and an MRI on November 22<sup>nd</sup> showed no evidence of a pubic symphysis separation. Nine months postpartum, plaintiff developed and complained of various ailments and sought multiple opinions and evaluations from medical providers including orthopedic surgeons. None of these individuals attributed her ailments to the labor and delivery.

In support of the motion for summary judgment, defendants have provided the Court with the expert affirmation of Dr. Rebecca Brightman, Board Certified in Obstetrics and Gynecology. Dr. Brightman has opined, to a reasonable degree of medical certainty, that a separation of the pubic symphysis is a natural occurrence of childbirth and not evidence of medical malpractice. The natural separation of the pubic symphysis happens during pregnancy secondary to hormones that cause laxity of the cartilage which allows for enough space for passage of the baby's head through the birth canal. Furthermore, with each pregnancy the cartilage is slightly more relaxed, thereby rendering the chance of a separation more likely. Dr. Brightman opines that this is true in the case of plaintiff who had a total of three vaginal deliveries. Dr. Brightman has acknowledged plaintiff's testimony describing her positioning during labor, but opines that even accepting plaintiff's description of the events of the delivery as true, it would not have caused a separation of the pubic symphysis as the separation is a natural occurrence which is a known and accepted consequence of labor and delivery.

In opposition, plaintiff argues that Nurse Naraine failed to properly assist her and made her participate in repeated labor exercises wherein Nurse Naraine would push only her right leg forward while demanding that she push during contractions. Nurse Naraine continued these exercises despite plaintiff's protests and complaints of pain. The morning after she delivered her daughter, plaintiff complained of pain

around her pelvic region. On September 18<sup>th</sup> an x-ray confirmed that she had pubic symphysis separation postpartum measuring 13 mm in diameter. She was told by hospital personnel that it would take her a few months to get better. Plaintiff was bed bound for three to four months. At approximately ten months she started to walk unassisted. She was unable to drive until 2008. She claims that she continues to suffer from pelvic instability which lead to a fall and a broken toe requiring surgery in May 2010. She still experiences pain on a daily basis.

Plaintiff's husband and eyewitness, Lizette Morales, support plaintiff's statement about what occurred during the delivery. Essentially, they state that the repeated labor exercises which Nurse Naraine "compelled" plaintiff to do while hyper flexing only her bent right leg up toward her chest was negligent. In support of the opposition, plaintiff has provided the Court with the affidavit of a physician licensed to practice medicine in New Jersey and Board Certified in Obstetrics and Gynecology. This doctor opines, within a reasonable degree of medical certainty, that the pubic symphysis diastasis sustained by plaintiff during labor and delivery and all injuries resulting therefrom were caused by departures from good and accepted practice by Dr. Kim and Nurse Naraine. This doctor refers to the eyewitness accounts of Nurse Naraine compelling plaintiff to participate in labor exercises where she would lift plaintiff's right leg and press the right knee up toward plaintiff's chest or chin. Furthermore, plaintiff was placed in position without the use

of stirrups so that plaintiff's feet and legs rested on the bed when they were not being lifted to facilitate fetal delivery. This doctor admits that the injury in question can occur naturally during childbirth. However, he states that it is generally accepted that external pressure can also cause the injury in question. This doctor opines that the record shows that Nurse Naraine was overly aggressive in the prolonged application of what is known as the McRoberts Maneuver both during labor and during delivery. He opines that the maneuver should always be performed with both legs symmetrically.

The motion is denied. The Court finds that plaintiff's expert has raised at least a question of fact as to whether the remaining defendants departed from good and accepted standards during the labor and delivery of September 16, 2006. This expert has demonstrated, by reference to medical literature, that pubic symphysis diastasis may result from excessive force or when there is a prolonged placement of the patient's legs in a hyper flex position. Furthermore, this expert opines that Nurse Narain should have performed the exercises on plaintiff with both legs symmetrically and there is, at least, a question of fact raised by plaintiff and her eyewitnesses herein that such was not the case. The experts' opinions conflict as to whether one leg up and one leg down positioning during labor and delivery would cause a separation of the pubic symphysis.

Because there are questions of fact raised by conflicting expert opinions

herein, the motion is denied.

So ordered.

Dated: *March 11, 2014*

A handwritten signature in cursive script, appearing to read "Douglas E. McKeon".

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Douglas E. McKeon, J.S.C.