

Muth v Wali Mohammad, M.D. P.C.

2014 NY Slip Op 32633(U)

September 16, 2014

Supreme Court, Bronx County

Docket Number: 301314/10

Judge: Stanley B. Green

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IAS PART 6

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LORRAINE MUTH, as Administratrix of the Goods, Chattels
and Credits which were of MARCUS X. MUTH, Deceased
and LORRAINE MUTH, individually,

INDEX №.301314/10

Plaintiff(s),

-against-

WALI MOHAMMAD, M.D..P.C., WALI
MOHAMMAD, HOWARD M. ROMBOM, PHD.,
P.C., HOWARD M/ ROMBOM, MULTI-SPECIALTY
PAIN MANAGEMENT, P.C., BRAIN
HAFTEL,

DECISION

Defendant(s).

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HON. STANLEY GREEN

The motion by defendants Howard M. Rombom, PhD, s/h/a/ Howard M. Rombom and Howard M. Rombom, PhD, P.C. for summary judgement dismissing the complaint against them is granted only as to Howard M. Rombom, PhD, individually.

On September 27, 2002, decedent, then forty-three years old, was injured on the job while working as a sanitation worker. He developed severe lower back pain and came under the care of defendant Brian Haffel, a doctor specializing in pain management. Apparently, the treatment and medication prescribed by Heffel did not alleviate the pain. Decedent became increasingly depressed due to the pain and his inability to work and support his family. In October 2002, he overdosed with Vicodin and was admitted to Jacobi Hospital.

In November 2005, decedent came under the care of defendant Wali Mohammed, a psychiatrist, who had initially seen him at Westchester Square Medical Center in 2003 for

depression. Dr. Mohammed diagnosed decedent with major depression with psychosis and prescribed Effexor XR and Seroquel. Decedent continued to complain of pain and depression and remained “objectively manic and delusional.” He experienced side effects from his medication, including paranoia from Requip and restless leg syndrome from Seroquel. He reported feelings of helplessness due to his pain. By September 2007, Dr. Mohammed noted that decedent was thinking about dying all the time. Decedent last saw Dr. Mohammed on November, 5, 2007 when he became angry with him for refusing to write a letter to Worker’s Compensation causally connecting his depression to his work related injury.

Decedent first saw Dr. Nicholas Radcliffe, a licensed psychologist and an employee of defendant Howard M. Rombom, PhD, P.C. on January 16, 2008. Radcliffe evaluated decedent on the 16th, utilizing a battery of tests, and a report was prepared for Worker’s Compensation in which it was concluded that there was a link between decedent’s injuries and his work accident. Decedent saw Radcliffe two more times, on January 23, 2008 and January 30, 2008. He did not appear for his next scheduled appointment or at any time thereafter. On February 22, 2008, decedent shot himself with a shotgun and died moments later.

In support of this motion, Defendants Rombom and Rombom, P.C. submit the affirmation of Paul Nassar, M.D., a board certified psychiatrist. He opines that Radcliffe exercised correct professional judgment on each of the three occasions that he saw decedent. Nassar states, based on his review of the records, that the first visit was solely for the purpose of a Worker’s Compensation evaluation and that Radcliffe did a proper evaluation, including appropriate testing. Radcliffe asked decedent about his current medical state and noted that he was well-groomed, cooperative and agitated, depressed and anxious and that his speech was

normal and his thought process was intact. He inquired about current and prior drug use. He did not find any psychotic symptoms. Upon questioning, Radcliffe found that decedent had suicidal ideation but no suicidal plans. Nassar opines that, since decedent did not express any plans to take his life, it was not necessary for Radcliffe to inquire about any access decedent may have had to weapons. Nassar also asserts that Radcliffe continued to properly evaluate the suicide risk on the second and third visits, and that he properly told decedent to call 911 or his office if he encountered severe problems. Nassar also believes that Radcliffe was not negligent in not contacting Mohammed, after decedent told him not to because he felt betrayed by Mohammed, or in not referring him to another psychiatrist, after decedent refused his suggestion to see one, because that would cause resistance to Radcliffe's ongoing evaluation of decedent. He also believes that forced hospitalization was not appropriate because Radcliffe's assessments were negative for acute suicidality. He also opines that it was not necessary to involve decedent's family in his treatment or to have decedent see a vocational expert.

He also states that any claims that Radcliffe prescribed Effexor are without merit because Radcliffe is a psychologist, not a medical doctor, and thus cannot prescribe any medication.

Nassar points out that Rombom never saw decedent, he merely scored the tests and recommended to Radcliffe that he refer decedent to a psychiatrist.

Finally, he opines that the actions of decedent in the three weeks between the last visit with Radcliffe and the suicide were not indicative of a person who is acutely suicidal. He talked to his family about looking forward to certain milestones and activities, such as travel, return to work, his daughter opening a bakery and getting married and his son getting a driver's license and playing baseball. He had plans for future medical treatment for his back. He saw Dr. Haffle

for pain management and had had a surgical consultation with Dr. Shein. On the day of his death, he had an electromyogram and had received approval for a CT scan.

Based on Nassar's affirmation, movants have established prima facie entitlement to summary judgment. The burden now shifts to the plaintiff to establish that issues of fact exist which require denial of the motion.

In opposition, plaintiff has submitted the affirmation of a board certified psychiatrist (name redacted but original submitted to the Court in camera) who opines that Radcliffe had a psychologist-patient relationship and that he departed from good and accepted medical and psychological standards by failing to perform a competent psychological evaluation of decedent and by failing to formulate an appropriate treatment plan for him and that such departures were substantial factors in causing decedent to commit suicide.

Plaintiff claims that Radcliffe's evaluation was deficient because he did not inquire into decedent's access to firearms, past suicide attempts, past and current substance abuse, family history of suicide and prior mental health treatment history, including hospitalizations. Plaintiff also claims that Radcliffe failed to formulate a treatment plan such as considering hospitalization, referring decedent to a physician capable of using medication to address his depression, psychosis and anxiety or mitigating any of his suicide risk factors, by referring him to occupational counseling and involving his wife in monitoring his behavior.

In reply, defendants challenge the existence of a psychologist-patient relationship only for the January 16, 2008 visit, not the two subsequent ones. Therefore, there can be no dispute that Radcliffe was a treating psychologist.

Also, defendants do not dispute that Rombom's professional corporation, a defendant

herein, was Radcliffe's employer and thus vicariously liable if Radcliffe was negligent.

Plaintiff's expert's affirmation only refers to Radcliffe and makes no mention of any departures by Rombom individually. Therefore, the claim against Howard M. Rombom, PhD, is dismissed.

Plaintiff claims that Radcliffe's evaluation of decedent was deficient because he allegedly failed to inquire about past suicide attempts but in an email dated January 25, 2008, Radcliffe notes that previous suicide attempt. Plaintiff's expert says Radcliffe failed to inquire about past and present substance abuse but does not refer to any evidence of substance abuse, aside from the suicide attempt, of which Radcliffe was aware. He also says Radcliffe departed from good and accepted practice by failing to inquire about family history of suicide, but there is no evidence of any such history. Also, there is no evidence of any mental health hospitalizations submitted by plaintiff, except for that for the suicide attempt. Thus, these claims are without merit.

The only claimed departure relating to the evaluation that may be of merit is the failure to inquire about decedent's access to firearms. Defendants' expert says Radcliffe did a proper suicide assessment by asking decedent if he had thoughts of suicide and, if so, whether he had plans to commit suicide. He opines that, since decedent did not express a plan to take his life, it was unnecessary for Radcliffe to inquire about access to weapons.

It should be noted that there is no evidence that Radcliffe knew or should have known, that decedent had purchased a shotgun. Although, the plaintiff knew about the shotgun, she did not convey this information to Radcliffe.

Plaintiff's expert opines that Radcliffe departed from good and accepted practice by failing to inquire about access to weapons because decedent clearly suffered from suicidal ideation. He says that inquiry about access to weapons is not dependent upon the existence of an

actual plan, but is based on the existence of suicidal ideation in combination with decedent's multiple risk factors.

Neither expert has referred to any medical literature, definitive or otherwise, to support their claim regarding the nature and extent of the required inquiry. Thus, the conflict in the expert's opinions creates an issue of fact as to whether Radcliffe departed by not inquiring about decedent's access to weapons.

There is also a question of fact as to whether Radcliffe should have referred decedent to a psychiatrist or for other therapies and assistance, should have attempted to have him committed to a hospital or should have contacted the plaintiff, decedent's wife.

Accordingly, the motion is denied except as to Rombom individually.

This constitutes the decision and order of the Court.

Dated: September 16, 2014



STANLEY GREEN, J.S.C.