

Martinez v New York City Health & Hosp. Corp.

2015 NY Slip Op 30591(U)

March 8, 2015

Sup Ct, Bronx County

Docket Number: 350373/10

Judge: Douglas E. McKeon

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX - PART IA-19A

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JANELLE MARTINEZ, an Infant by her Mother
and Natural Guardian, BRENDA MARQUEZ,

Plaintiff(s),

- against -

INDEX NO: 350373/10

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION (LINCOLN HOSPITAL,

DECISION/ORDER

Defendant(s)
-----X

HON. DOUGLAS E. MCKEON

Motion by defendant for an order dismissing the action pursuant to CPLR §
3212 is granted as follows.

This is a medical malpractice action concerning the prenatal and obstetrical
care provided to Brenda Marquez in conjunction with the birth of Janelle Martinez.
Janelle Martinez is a seven year child who suffers from developmental delay and
Cerebral Palsy.

In support of the motion, movant has provided the Court with the expert
affirmation of OB/GYN Henry Prince, M.D. Dr. Prince opines, within a reasonable
degree of medical certainty, that the Lincoln staff properly managed this pregnancy
and prenatal care, properly determined that Ms. Marquez suffered from pre-term
labor and not cervical insufficiency and that, therefore, there was no indication to

perform a cervical cerclage. Furthermore, Dr. Prince opines that Ms. Marquez was timely and appropriately treated when she presented to Lincoln on June 17, 2005 with bulging membranes and the fetus in the breach position. An emergency C-section was timely and properly recommended and performed and any care rendered at Lincoln is not the proximate cause of the infant plaintiff being born prematurely or suffering from Cerebral Palsy and developmental delays.

In opposition, plaintiff argues that it has shown, through the affirmations of its own experts, Drs. Halbridge and Savino, that plaintiff has demonstrated departures from good and accepted standards of care, the medical consequences thereof and the injuries suffered as a result. They argue that summary judgment is not appropriate herein as the parties have provided conflicting medical expert opinions and that such credibility issues can only be resolved by a jury. See Halkias v. Otolaryngology-Facial Plastic Surgery Associates 282 A.D.2d 650, See also Deutsch v. Chaglassian 71 A.D.3d 718 (2nd Dept. 2010). Plaintiffs also argue that medical literature supports that use of rescue or emergency cerclage has a high success rate for prolonging the pregnancy that would have helped this pregnancy continue into the third trimester herein and that there was cervical insufficiency here based on the entry in the medical record by obstetric resident Dr. Lauriston who wrote on June 17, 2005 under admission note assessment/plan "incompetent cervix."

In the reply papers, movants argue that Dr. Halbridge's affidavit should be

disregarded as his opinions are contradictory, erroneous and conclusory. For example, in Paragraph 14, he opines that when Ms. Marquez was first eligible for cerclage on June 1, 2005 she did not have any degree of cervical dilation and there was no evidence of funneling or infection. However, he concludes that Ms. Marquez had an incompetent cervix. Movants argue that the May 27, 2005 ultrasound showed that the plaintiff's mother had a normal size cervix at 4 cm and there was no funneling and therefore cerclage was not indicated. Movant also points out that Dr. Halbridge opines that it was a departure for Lincoln to not refer Ms. Marquez to the high risk clinic on May 27, 2005 when in fact she was referred to the high risk clinic and was in fact seen there on June 1, 2005. Furthermore, Dr. Halbridge states in Paragraph 14 of his affidavit that Ms. Marquez was given no prenatal precautionary advise to be on bed rest or avoid sexual activity. However, as documented in the Lincoln chart on June 1, 2005 Dr. Price instructed Ms. Marquez accordingly. Movant argues that these inconsistencies call into question whether Dr. Halbridge reviewed the applicable chart. Furthermore, Dr. Halbridge failed to appreciate that on May 27, 2005 when Ms. Marquez underwent her ultrasound at Lincoln she was actually at 22 weeks gestation not the 16 weeks as originally reported. As explained by Dr. Prince, a cerclage at this gestation is considered a rescue or urgent cerclage which is only indicated in patients with a history of three or more second trimester pregnancy losses and a cervix shorter than 2.5 cm. These parameters do not apply

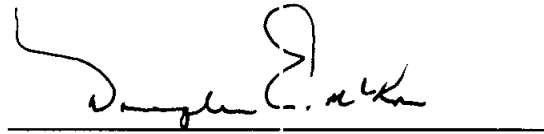
to Ms. Marquez. Furthermore, Dr. Halbridge did not comment on the documented risks and complications associated with the second trimester cerclage at issue. Dr. Halbridge does not discuss that the literature states that there is disagreement among studies as to how late a cerclage should be performed and there is a high risk of pre-term labor or membrane rupture associated with the second trimester cerclage and that the success rate of rescue cerclage is unpredictable. See Williams Obstetrics 22nd Edition Page 237.

The Court rejects Dr. Halbridge's affirmation herein. The Court notes that his opinion that Dr. Lauriston documented in the June 17, 2005 admission note that Ms. Marquez suffered from an incompetent cervix is erroneous. At her deposition, Dr. Lauriston testified that such was not the assessment but instead was "part of the differential". Therefore, there was never a diagnosis made of an incompetent cervix. The Court agrees that Dr. Halbridge has made numerous factual errors that raise a legitimate question as to whether he reviewed the entire chart and depositions before submitting his affidavit. Furthermore, as Dr. Savino's findings are based on those of Dr. Halbridge, which the Court finds to be insufficient to raise a question of fact, Dr. Savino's affidavit is also disregarded. Because of that, because Dr. Halbridge's failure to address the opinions of Dr. Prince that a cerclage at the gestation point in question was not indicated in this matter, and because movant has established its *prima facie* entitlement to summary judgment, defendant's

motion for an order dismissing the action is granted.

So ordered.

Dated: *March 9, 2015*

A handwritten signature in black ink, appearing to read "Douglas E. McKeon", is written above a solid horizontal line.

Douglas E. McKeon, J.S.C.