

Medrano v New York City Health & Hosp. Corp.

2015 NY Slip Op 30806(U)

April 10, 2015

Sup Ct, Bronx County

Docket Number: 350074/09

Judge: Douglas E. McKeon

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX - PART IA-19A

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MEDRANO, JESUS MIGUEL ALBERTO

Plaintiff(s),

- against -

INDEX NO: 350074/09

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION,

DECISION/ORDER

Defendant(s)

-----X

HON. DOUGLAS E. MCKEON

Defendant's motion for summary judgment is decided as follows.

In this matter, plaintiffs have alleged that defendant NYCHHC was negligent in the prenatal, perinatal and neonatal care of the plaintiff and infant plaintiff including failing to timely deliver the infant by C-section, failing to timely resuscitate the infant after birth and failing to properly monitor and treat the infant in the neonatal period. Movants argue that there were no departures by it nor were there any actual omissions that proximately caused the infant any harm. Instead, movant argues that all of the infant's problems are attributable to prematurity.

On August 16, 2007 the then 29 year old plaintiff presented to the Emergency Room of Lincoln Medical and Mental Health Center with complaints of abdominal pain. A pelvic ultrasound indicated a pregnancy between 7 and 8 weeks of

development. She had previously given birth following term pregnancies to an 8 pound 1 ounce child on December 12, 1999 and a 7 pound infant via cesarean section on November 11, 2006. A third pregnancy resulted in a spontaneous abortion. The mother also had a history of Hepatitis C.

In support of its motion, movant has provided the Court with an affirmation of obstetrician/gynecologist Dr. James Howard, and the affirmation of neonatologist, Dr. Lance Parten, and the affirmation of pediatric neurologist, Dr. Ingrid Taff.

According to the affirmation of Board Certified Obstetrician/Gynecologist, Dr. James Howard, movant did not deviate from the standard of care in its treatment of the infant plaintiff. He opines, to a reasonable degree of medical certainty, that the plaintiff was seen at appropriate intervals of approximately four weeks or less throughout her pregnancy and ultrasound examinations appropriately performed on August 16, 2007, September 12, 2007, October 2, 2007 and November 21, 2007.

Dr. Howard opines that there was no indication for the administration of medications during the plaintiff's pregnancy and no indication to order bed rest. He further explains that when plaintiff presented to Lincoln on December 18th at 25 weeks 6 days gestation, fully dilated with regular contractions, she was properly triaged and promptly and appropriately admitted to labor and delivery. Dr. Howard opines that it was within the standard of care to administer Betamethasone and Magnesium Sulfate at this time and it was also appropriate to administer Ampicillin. According to Dr. Howard, the fetal heart rate was appropriately monitored and was

averaging between the 150s and 160s with minimal variability. Although there was occasional decelerations and a small period of tachycardia around 5:00 p.m. there was a quick return to baseline. Furthermore, there were multiple periods of loss of contact which is common with preemies because they move around a lot in the uterus. Dr. Howard explained that once the plaintiff's membranes ruptured at 7:02 p.m. the progression of labor was extremely rapid so it was appropriate to prepare for a stat C-section at that time. The delivery was rapid but peditrics was present within four minutes of delivery and the infant was intubated within one minute of delivery. Dr. Howard comments that the infant's weight which was 2.2 pounds led to the Apgar scores of 5, 6 and 7 which are consistent with a preemie of this age. Dr. Howard concludes that neither the Apgars nor the cord blood gases of 7.26 arterial and 7.28 venous are consistent with hypoxia or brain damage suffered during labor and delivery.

According to movant's other expert, Dr. Lance Parton, a Board Certified Neonatologist, pediatric care rendered to the infant at Lincoln Hospital between December 18th and his discharge on March 3rd were at all time appropriate and within the standard of care. Furthermore, no negligent act or omission at Lincoln proximately caused any injury to the infant plaintiff and the infant's problems are entirely attributable to complications of extreme prematurity. Dr. Parton agrees with Dr. Howard that peditrics was appropriately summoned to labor and delivery after the mother's membranes spontaneously ruptured and that their arrival four minutes

after birth at which time they appropriately put the infant on a ventilator was appropriate. Dr. Parton further agrees that the Apgar scores and cord blood gases are inconsistent with hypoxia and brain damage. He notes that the infant had initial temperature instability and respiratory distress syndrome which is typical of a 26 week pre-term infant. Dr. Parton opines that all the therapies administered after birth were appropriate and that the infant's labs were appropriately monitored. He further notes that the head ultrasound on December 24th which showed a grade three intra ventricular hemorrhage was a complication of prematurity. Also according to Dr. Parton the infant's isolated episodes of desaturation and bradycardia were appropriately documented and treated and were expected in a preemie of this gestational age.

Movant has also provided the Court with the affirmation of Board Certified Pediatric Neurologist, Dr. Ingrid Taff. Dr. Taff opines that, within a reasonable degree of medical certainty, the perinatal and neonatal care rendered the infant was at all times appropriate and that plaintiff has Autism which is often associated with extreme prematurity and that this infant's condition was not the result of a hypoxic brain injury and was in no way caused by defendant. Dr. Taff diagnosed the infant with Autism when he was three and a half years old following a physical examination on July 1, 2011. The exam failed to show any evidence of Cerebral Palsy. Dr. Taff explained that this infant was born prior to 26 weeks gestation with a birth weight of less than 1,000 grams at a time when the brain is still extremely underdeveloped.

Between 26 and 40 weeks gestation there is a four-fold increase in brain surface and three-fold increase in brain volume. Dr. Taff opines that this brain formation is extremely vulnerable to any disturbances that occur when the baby is not in the womb. Dr. Taff also agreed that the gestationally appropriate Apgar scores and normal cord gases are inconsistent with prenatal hypoxia or hypoxia at birth and do not explain the patient's clinical picture to date.

In opposition, plaintiff argues that there are issues of fact regarding whether the care and treatment provided to the infant conformed to applicable standards of care so that defendant's motion must be denied.

Plaintiff has provided the Court with affirmations of various doctors including Dr. Bruce Halbridge who is Board Certified in Obstetrics and Gynecology, Stuart J. Danoff, M.D. who is Board Certified in Pediatrics, and Chone Ken Chen, M.D., who is Board Certified in Pediatrics and Neurology. Dr. Halbridge has opined that there were departures from the standard of care provided to the mother during her labor and delivery. He believes there should have been an emergency C-section when the patient presented fully dilated and that it was a departure from the standard of care not to have a pediatrician present at the time of delivery to immediately resuscitate and intubate the infant. He opines that the standard of care for a pre-term infant presenting in breach position with delivery imminent as in this case was an emergency C-section. As such, treating the mother with Betamethasone and Magnesium Sulfate was not indicated. Dr. Halbridge disagrees with Dr. Howard's

claim that pediatrics didn't have enough time to get to the delivery room because of the rapid nature of the delivery. Dr. Halbridge opines that it was a departure to not call the pediatric team or pediatrician prior to delivery of the infant.

Plaintiff's neonatology expert, Dr. Stuart Danoff, disagrees with defense expert Dr. Lance Parton and opines that the care rendered to the infant during the NICU admission between December 18th through March 3rd did not meet the applicable standard. He further opines that the infant's problems are not entirely attributable to complications of prematurity. He opines that the injuries were the result of avoidable complications and that if the infant were timely and appropriately delivered by C-section and had been intubated within one minute of life he more likely than not would have avoided the development of Grade 3 IVH and its sequelae. Dr. Danoff further opines that the record reflects departures by defendant including the failure to properly monitor the infant plaintiff ABG's (arterial blood gasses) with sufficient frequency so as to make necessary and timely adjustments to the infant's ventilator to avoid over ventilating the infant. Dr. Danoff opines that this departure contributed to the infant's brain injury.

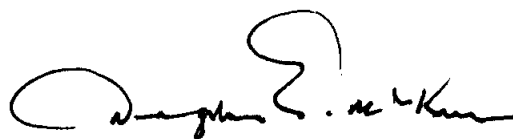
Dr. Chen disagrees with the opinions of defense expert, Ingrid Taff, when she states that the perinatal and neonatal care rendered the infant was appropriate. He agrees that there were inappropriate ventilator settings and departures in the intrapartum and postpartum periods that resulted in the infant suffering from systemic hypoxia and ischemia. Dr. Chen disagrees with Dr. Taff's diagnosis that

excludes Cerebral Palsy. Furthermore, Dr. Chen found the child after examination to have good eye contact, to be sociable and mostly cooperative with the examination so he disagrees that the infant has autism spectrum disorder.

The instant motion is denied. Although movants have made out a *prima facie* entitlement to summary judgment shifting the burden to plaintiff to raise a question of fact, the Court finds that plaintiff has, via their expert opinions which were derived from the contents of the Lincoln Medical and Medical Health Center records and deposition testimony, raised sufficient questions of fact to defeat the instant motion. Drs. Halbridge, Danoff and Chen support their opinions based on the recorded facts and have substantiated their rationale for their opinions as to the infant's injuries. As this is a situation where conflicting expert affidavits raise issues of fact and credibility that cannot be resolved on a motion for summary judgment, the motion is denied. See Bradley v. Soundview Health Center, 4 A.D.3d 194 (1st Dept. 2004).

Dated:

April 10, 2015



Douglas E. McKeon, J.S.C.