

Medina v Richmond Univ. Med. Ctr.

2015 NY Slip Op 31093(U)

April 28, 2015

Supreme Court, Richmond County

Docket Number: 103266/2012

Judge: Philip G. Minardo

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

JOSE MEDINA,

Plaintiff(s),

-against-

RICHMOND UNIVERSITY MEDICAL CENTER,

Defendant(s).

DCM PART 6

HON. PHILIP G. MINARDO

DECISION AND ORDER

Index No.: 103266/2012

Motion No. 350-002

The following papers numbered 1 to 3 were fully submitted on the 5th day of March, 2015.

	Papers Numbered
Defendant’s Notice of Motion, dated January 20, 2015, with Supporting Papers and Exhibits _____	1
Plaintiff’s Affirmation in Opposition, dated January 28, 2015 _____	2
Defendant’s reply Affirmation, dated March 4, 2015 _____	3

The motion by defendant RICHMOND UNIVERSITY MEDICAL CENTER (“RUMC”) for summary judgment, pursuant to CPLR 3212, dismissing the claims of plaintiff JOSE MEDINA (“MEDINA”), is granted.

MEDINA alleges that he suffered personal injuries during the early morning of August 31, 2012 when he fell from a bed after his admission to RUMC. MEDINA, 92 years old at the time of the incident, suffered a right frontal epidural hematoma and cervical bulging/herniation with subsequent limited range of motion. Specifically, MEDINA claims that his fall was due to the negligence of RUMC’s staff as they caused, permitted and allowed the premises to be in a dangerous

and inadequate condition by leaving the bed rail down; failing to assist him getting out of the bed; failing to properly supervise and assure his safety particularly when the staff knew or should have known that he had a high risk of falling; and that they failed to respond to his call to assist him while going to the bathroom.

RUMC contends that MEDINA was properly assessed immediately upon his admission as having a high risk of fall; that he was alert and oriented upon admission; that he received and understood instructions to request assistance from the nursing staff if he was to get out of bed; that he was told to use a bed pan; and that the appropriate interventions were put in place including the raising of the side rails of the bed.

In support of its motion for summary judgment, RUMC submits the affirmation of an expert who opines that the medical care and treatment provided by RUMC to MEDINA was within good and accepted standards of medical practice. Specifically the expert concludes that the original evaluation by RUMC's staff that MEDINA was a fall risk as well as the subsequent precautions and treatment implemented by the nurses including providing MEDINA with appropriate footwear; the raising of the side rails of the bed; the placement of the call bell; and the instructions given to MEDINA support the expert's contention that RUMC met the standards of applicable care.

In *Contreras v. Adeyemi*, 102 AD3d 720 [2014], the Appellate Division, Second Department sets forth as follows:

To establish liability of a [hospital] for medical malpractice, a plaintiff must prove that the [hospital] deviated or departed from accepted standards of practice, and that such departure was a proximate cause of the plaintiff's injuries (*Stukas v. Streiter*, 83 AD3d 18 [2011]; see also *Gillespie v. New York Hosp. Queens*, 96 AD3d 901

[2012]; *Swanson v. Raju*, 95 AD3d 1105 [2012]; *Heller v. Weinberg*, 77 AD3d 622 [2010]). A defendant [hospital] moving for summary judgment dismissing a complaint alleging medical malpractice must establish, prima facie, either that there was no departure from good and accepted medical practice or that the plaintiff was not injured thereby (see *Stukas v. Streiter*, 83 AD3d at 24; see also *Gillespie v. New York Hosp. Queens*, 96 AD3d at 902; *Swanson v. Raju*, 95 AD3d at 1106; *Heller v. Weinberg*, 77 AD3d at 622-623). Once a defendant has made such a showing, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of fact (see *Stukas v. Streiter*, 83 AD3d at 24; see also *Gillespie v. New York Hosp. Queens*, 96 AD3d at 902; *Heller v. Weinberg*, 77 AD3d at 623). In order to defeat a defendant's motion for summary judgment, a plaintiff must only rebut the defendant's prima facie showing (see *Stukas v. Streiter*, 83 AD3d at 30; see also *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324). Summary judgment is not appropriate where the parties adduce conflicting medical expert opinions, as issues of credibility can only be resolved by a jury (see *Hayden v. Gordon*, 91 AD3d 819, 821 [2012]; *Bengston v. Wang*, 41 AD3d 625, 626 [2007]; *Feinberg v. Feit*, 23 AD3d 517, 519 [2005]).
Accord, *Iulo v. Staten Island Univ. Hosp.*, 106 AD3d 696 [2013].

As RUMC has established, prima facie, that it did not depart from good and accepted medical practice in its treatment and care of MEDINA, it is incumbent for him to provide sufficient grounds to rebut defendant's showing. In his opposition to RUMC's motion, MEDINA did not submit an expert opinion as he claims that this is not an action premised on medical malpractice rather it is a claim for ordinary negligence. However, it is clear that MEDINA's allegations, such as improper supervision by RUMC staff and inadequate placement of the bed rails, are attributable to the medical treatment received by MEDINA from RUMC and are based on medical malpractice rather than ordinary negligence (*Caso v. St. Francis Hospital*, 34 AD3d 714 [2006], *Fox v. White Plains Med. Ctr.*, 125 AD2d 538 [1986]). Accordingly, MEDINA has failed to rebut RUMC's establishment of its entitlement to summary judgment.

Accordingly, it is

ORDERED, that the motion by defendant RICHMOND UNIVERSITY MEDICAL CENTER for summary judgment, pursuant to CPLR 3212, dismissing the claims of plaintiff JOSE MEDINA is granted.

This shall constitute the decision and order of the court.

Dated: April 28, 2015

E N T E R,

/s/ Philip G. Minardo
HON. PHILIP G. MINARDO