

Jaen v Rahaman

2015 NY Slip Op 31172(U)

June 17, 2015

Supreme Court, Bronx County

Docket Number: 303716/11

Judge: Stanley Green

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IA-6M

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ANA JAEN,

INDEX No. 303716/11

Plaintiff(s),

- against-

JAMAL RAHAMAN, MD, PETER DOTTINO, MD
and THE MOUNT SINAI HOSPITAL,

Defendant(s)

DECISION

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HON. STANLEY GREEN:

The motion by Peter Dottino, M.D. for an order pursuant to CPLR §3212 granting summary judgment dismissing the complaint is granted.

On January 15, 2009, plaintiff underwent laparoscopic surgery at The Mount Sinai Hospital due to the presence of a large mass that was concerning for malignancy. The surgery was performed by Dr. Rahaman. During the surgery, an aberrant vessel that was supplying blood to the mass began bleeding excessively while being dissected by Dr. Rahaman. Dr. Rahaman requested the assistance of Dr. Dottino, who was in an adjacent operating room. Dr. Dottino scrubbed in and assisted Dr. Rahaman in identifying the bleeding vessel. Dr. Rahaman successfully controlled the bleeding by placing a five millimeter hemoclip over the bleeding vessel. Dr. Dottino remained in the OR for a few minutes before leaving and Dr. Rahaman continued the surgery.

Plaintiff claims that both Dr. Rahaman and Dr. Dottino departed from proper standards of medical care “when during the course of the surgical procedure together they placed a clip across Mrs. Jaen’s iliac artery, thereby compromising the blood flow to her legs...” and that as a result

of this departure, she suffered difficulty walking with lower extremity tenderness and swelling, requiring multiple re-admissions to the Mt. Sinai Hospital for medical treatment and surgeries.

Dr. Dottino seeks dismissal of the complaint against him on the ground that his role in the surgery was limited to providing an intra-operative consult to identify the source of the bleeding and the care he provided was proper and did not cause plaintiff's claimed injuries.

In support of the motion, defendant submits the affirmation of Dr. John Lovecchio, who is Board Certified in Obstetrics and Gynecology. Dr. Lovecchio opines, based upon his review of the records and testimony, inter alia, that: (1) Dr. Dottino's role in the surgery was limited to an intra-operative consult; (2) Dr. Rahaman made all of the medical and surgical decisions; (3) Dr. Rahaman placed the five millimeter hemoclip over the bleeding vessel, after which Dr. Dottino left the operating room; and (4) that no act by Dr. Dottino was a proximate cause of plaintiff's claimed injuries.

Plaintiff contends that Dr. Lovecchio's affirmation lacks probative value because he assumes material facts not supported by evidence and is based on facts that were selected to support Dr. Dottino's position, and failed to consider other evidence, such as: (1) the fact that the Operative Report dictated by Dr. Rahaman lists Dr. Dottino as "Co-surgeon;" (2) when Dr. Dottino was asked whether Dr. Rahaman told him how to assist, he responded: "No Nobody -- people work together. We're colleagues. So its not like one man orders another man to do things;" and (3) that Dr. Rahaman's testimony shows that after the vessel was secured "He [Dr. Dottino] stayed for another ten to 12 minutes so we can dissect out the mass... And then we made a decision not to resect the mass, because that would have been too risky an undertaking."

In a medical malpractice action, a defendant physician establishes prima facie

entitlement to summary judgment when he establishes that in treating the plaintiff there was no departure from good and accepted medical practice or that any departure was not the proximate cause of the injuries alleged (Roques v. Noble, 73 AD3d 204). Once the defendant has met his prima facie burden, the burden shifts to the plaintiff to present competent evidence sufficient to show that the defendant departed from accepted standards of practice and that such departure was a proximate cause of the plaintiff's injuries (Kafka v. New York Hospital, 228 AD2d 332). In order to sustain this burden, the plaintiff must show, through expert evidence, that the defendant departed from accepted standards of practice and that such departure was a proximate cause of the plaintiff's injuries (Kafka v. NY Hospital, 228 AD2d 332).

Despite plaintiff's contention to the contrary, the affirmation of Dr. Lovecchio, which is based upon his review of the records and testimony, is sufficient to establish, prima facie, that Dr. Dottino's role in the surgery was to assist Dr. Rahaman in identifying the bleeding vessel, that Dr. Rahaman was the decision-maker and that Dr. Dottino never exercised any independent medical or surgical judgment as to plaintiff's care. The fact that Dr. Rahaman listed Dr. Dottino, who was the Head of the Department, as a "Co-surgeon" or that Dr. Rahaman used the term "we" throughout his testimony in describing the course of the surgery is insufficient to raise a material issue of fact because Dr. Rahaman's testimony also shows that he was assisted by Dr. Samantha Cohen, that he asked for Dr. Dottino's assistance and that after the bleeding vessel was identified he [Dr. Rahaman] placed the hemoclip that allegedly caused plaintiff's injuries. Most importantly, Dr. Rahaman did not use the pronoun "we" when testifying about who actually placed the clip, which is what plaintiff claims caused her problems. Therefore, even if Dr. Dottino remained in the OR for 10 -12 minutes according to Dr. Rahaman, there is no evidence

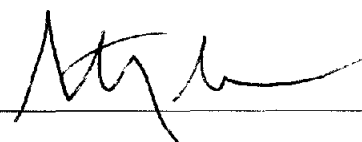
that anything but the placement of the hemoclip caused any of the claimed injuries.

There being no competent evidence that Dr. Dottino played any direct role in plaintiff's care, that he committed any departures from accepted medical practice or that he had a duty to advise Dr. Rahaman as to how to stop the bleeding, Dr. Dottino is entitled to summary judgment dismissing the complaint (Pol v. Our Lady of Mercy Medical Center, 51 AD3d 430).

Movant shall serve a copy of this order with notice of entry on the Clerk of the Court who shall enter judgment dismissing the complaint as against Peter Dottino, MD.

This constitutes the decision and order of the court.

Dated: June 17, 2015



STANLEY GREEN, J.S.C.