

**Sorrento v Levy**

2016 NY Slip Op 32731(U)

November 2, 2016

Supreme Court, Erie County

Docket Number: 2011-004190

Judge: Christopher J. Burns

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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

RONALD SORRENTO and  
KATHLEEN SORRENTO,

Plaintiffs

vs.

Index No. 2011-004190

ELAD LEVY, M.D.,  
LARRY SHANNON, M.D., and  
MILLARD FILLMORE GATES CIRCLE HOSPITAL,

Defendants

Appearances : Laurence M. Deutsch, Esq.  
Attorney for Plaintiffs

Connors LLP  
By: Lawlor F. Quinlan, III, Esq.  
Attorneys for Defendant Levy

Roach, Brown, McCarthy & Gruber, P.C.  
By: John P. Danieu, Esq.  
Attorneys for Defendants Shannon and  
Millard Fillmore Gates Circle Hospital

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ERIE COUNTY CLERK

**MEMORANDUM DECISION**

**BURNS, CHRISTOPHER J., J.S.C.**

The instant action was commenced on or about November 22, 2011 with the filing of a Summons and Complaint alleging medical malpractice against each defendant. Defendant Levy and Defendants Shannon and Millard Fillmore Gates Circle Hospital (the Hospital Defendants) have each

moved separately for summary judgment dismissing the action in its entirety asserting, in part, that the treatment rendered to the plaintiff Ronald Sorrento at all times met the appropriate standards of care. Plaintiff opposes the motion.

The allegations of malpractice against the defendants stem from a diagnostic angiogram procedure performed on June 18, 2009 at Millard Fillmore Gates Circle Hospital. The procedure was performed by defendant Shannon, who at that time was completing his first year of endovascular fellowship training through the University of Buffalo. Defendant Levy was the director of the fellowship program and was the "Supervising Attending" for the procedure. Plaintiffs contend that, during the course of the procedure, Mr. Sorrento developed a "significant clot" or "thrombus" which was not fully appreciated or treated and resulted in a stroke and brain damage to the plaintiff. Defendant Levy submits the affidavit of Dr. Raphael Davis, M.D., who asserts that the procedures followed and employed by defendant Levy were appropriate and within the accepted standards of care. In addition, the Hospital defendants offer the affidavit of defendant Shannon who also asserts that the procedures followed and employed by himself and defendant Levy were appropriate and within the accepted standards of care. The affidavits of Dr. Davis and defendant Shannon are sufficient to establish a prima facie showing of the defendants' entitlement to summary judgment. As such, the burden shifts to the plaintiffs to raise a material question of fact (*see generally, Alvarez v Prospect Hosp.*, 68 NY2d 320).

In opposition to defendants' motions, plaintiffs offer an affidavit from Dr. Marc Hamet, M.D. a licensed physician, practicing in the specialty of Interventional Radiology. Dr. Hamet, notes that the performance of "cerebral angiograms," like the one performed upon the plaintiff, is a "shared discipline." He goes on to note that these procedures are performed by

neurosurgeons, such as Defendant Levy as well as interventional radiologists with specialized training, such as himself. Dr. Hamet states that, based upon his practice, he is familiar with the standards of care for performing an angiogram safely and effectively and "to prevent and manage complications" that may arise during the procedure. Contrary to defendant Levy's contentions, at this stage of the proceeding, the affidavit of Dr. Hamet establishes a basis for him to render an opinion upon the procedure which forms the basis for this action. Dr. Hamet's affidavit goes on to make specific assertions regarding the malpractice of Dr. Levy. These assertions focus upon an alleged delay in appreciating a clot or thrombus during the procedure and subsequently failing to provide timely and effective treatment to the clot material. This is in stark contrast to the defendants' contention that proper treatment was rendered and that the drug therapy suggested by Dr. Hamet was not appropriate for the plaintiff.

Plaintiffs have asserted four separate causes of action against defendants in their complaint. The first asserts medical malpractice by the defendants, the second asserts a cause of action based on lack of informed consent, the third alleges negligent supervision of Dr. Shannon by defendant Levy and the fourth is a loss of consortium claim being asserted by Kathleen Sorrento. As counsel noted during oral argument, the plaintiffs' expert has not addressed the cause of action for lack of informed consent and, as such, that cause of action is dismissed as to all defendants. Further, the Court finds that the plaintiffs' expert has failed to articulate distinct acts of malpractice that would be attributable to defendant Shannon or the Hospital. The expert's attempt to assert such a claim based upon follow-up care to the plaintiff fails to appreciate defendant Levy's role as the attending doctor and misstates defendant Shannon's experience at the time of the procedure. Where the plaintiffs' expert has failed to identify deviations in the exercise of

independent medical judgment on the part of Dr. Shannon or the hospital, the claims against those defendants must be dismissed (*see generally Green v Hall*, 119 AD3d 1366, *Wulbrect v Jehle*, 92 AD3d 1213). As such, the Hospital defendants' motion is granted in its entirety. The Court further notes that any claims of malpractice asserted by the expert against defendant Levy are based upon his direct intervention in the angiogram procedure and/or his alleged failure to commence appropriate treatment once the clot material was appreciated. For the foregoing reasons, the allegations asserted in the affidavit of Dr. Hamet, create an issue of fact as to the medical practice of defendant Levy relative to the first and fourth causes of action asserted against him. Those causes of action must be decided by a jury.

The motions for summary judgment are granted, in part, to the extent set forth above. Counsel for the hospital defendants is directed to submit an Order within ten (10) days of the granting of this decision and after circulation to all counsel.

Hon. Christopher J. Burns, J.S.C.

Dated: Buffalo, New York  
November 2, 2016

**GRANTED**

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BY   
**ROBERT ADAMSKI**  
COURT CLERK