

H.N. v Gronau

2017 NY Slip Op 30447(U)

February 24, 2017

Supreme Court, New York County

Docket Number: 805198/2013

Judge: Joan B. Lobis

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

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H__ N__, an infant, by Her Mother and Natural Guardian,
CHRISTINE NEW,

Plaintiff,

Index No. 805198/2013

-against-

**Decision, Order
And Judgment**

KAREN GRONAU, M.D., DAVID SEUBERT, M.D.,
HEIDI S. ROSENBERG, M.D., CARMIT ARCHIBALD,
M.D., JOHN WIRTH, M.D., AUTUMN EDENFIELD,
M.D., CITYSCAPE OB/GYN, P.L.L.C., and NYU
LANGONE MEDICAL CENTER,

Defendants.
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Plaintiff (the infant), by her mother Christine New (plaintiff), alleges serious and permanent injuries to the infant on October 13, 2008, when plaintiff went into labor and the infant was born. In particular, plaintiff claims that defendants failed to diagnose her preterm labor or to order tocolytics or administer corticosteroids in a timely fashion, to delay the labor until closer to term, to obtain a sufficient medical history related to plaintiff's pregnancy or to take sonograms or other proper tests or analyze any test results properly, and to monitor her while she was NYU Langone Medical Center (NYU). Plaintiff was admitted to NYU on October 13 at 7:21 a.m., she went into labor by 6:34 p.m. and into active labor by 7:00 p.m. Plaintiff's membranes spontaneously ruptured at 10:52 p.m., making delivery imminent. The infant was born at 11:46 p.m.

In motion sequence number six, defendant John Wirth, M.D., the Tisch on-call attending physician (TOCA) on the date in question, moves for summary judgment. Motion seven seeks summary judgment on behalf of defendants Cityscape Ob/Gyn, P.L.L.C. (Cityscape), where

plaintiff received prenatal care, and Heidi S. Rosenberg, M.D. of Cityscape, who was plaintiff's personal attending physician, on call the evening of October 13. The remaining defendants – Karen Gronau, M.D. and Carmit Archibald, M.D. of Cityscape, David Seubert, M.D., Autumn Edenfield, M.D., and NYU – seek summary judgment in motion sequence number eight. Dr. Gronau treated plaintiff at Cityscape and was plaintiff's personal attending physician, who was on call at NYU during the day on October 13, 2008; Dr. Archibald provided prenatal care to plaintiff at Cityscape; and Drs. Edenfield (who performed the delivery) and Seubert (who first treated plaintiff at NYU) worked at NYU on the date in question.

The original return date for these motions was November 15, 2016. On November 15, instead of submitting opposition to the motions, plaintiff's counsel moved to be relieved as counsel. Plaintiff failed to appear or to submit opposition to the motion by the appearance date, December 13, 2016. Accordingly, the Court granted the motion on default and adjourned the summary judgment motions to January 31, 2017 to give plaintiff the opportunity to obtain new counsel and, either through counsel or on her own behalf, oppose the motions. Plaintiff neither opposed the motions nor requested an extension.

Motion sequence number six is by Dr. Wirth, who argues that any claims relating to the failure to detect plaintiff's premature delivery must be dismissed against him, because his role was limited to entering the operating room after he was notified that plaintiff's membranes had ruptured, delivery was imminent, and plaintiff's private physician was not on site. He states that Dr. Edenfield, delivered the infant without his supervision or assistance; by the time he arrived in the delivery room, the procedure was nearly over. Dr. Wirth's expert, a New York-licensed

physician certified in maternal-fetal medicine, obstetrics, and gynecology, submits an affidavit stating that Dr. Wirth was in no way involved in any of the allegedly negligent actions.

Motion sequence number seven is by Dr. Rosenberg and Cityscape. Plaintiff first presented to Cityscape for prenatal services on May 16, 2008, with an estimated due date of December 23, 2008. These movants state through their expert – a New York-licensed physician board certified in obstetrics and gynecology – that they conformed to the standard of care during all prenatal visits, which in no way contributed to plaintiff's premature labor. Dr. Rosenberg assumed on-call coverage for plaintiff the evening of October 13, 2008, by which point plaintiff remained stable but under observation and monitoring at NYU. Dr. Gronau, who had been on call that day, had fully briefed Dr. Rosenberg about plaintiff's condition. The expert states that as plaintiff's condition was stable, the standard of care did not require Dr. Rosenberg to be on site or to contact NYU for frequent updates. The expert further explains that because there was a TOCA at the hospital, the standard of care did not require Dr. Rosenberg to head to NYU once labor began. When she received notification that plaintiff's membranes had ruptured, the expert states, Dr. Rosenberg headed immediately to NYU, and this was consistent with the standard of care.

The final motion, sequence number eight, seeks judgment on behalf of the remaining defendants. Dr. Archibald, the motion states, should be dismissed because she only treated plaintiff prenatally and at Cityscape, and the action does not allege malpractice during plaintiff's prenatal treatment there. The expert, a New York-licensed physician board-certified in maternal-fetal medicine, obstetrics, and gynecology, details plaintiff's extensive prenatal treatment at Cityscape and discusses the medical charts regarding her condition at her appointments. She

opines that there were no deviations during plaintiff's prenatal care prior to October 13 and there was no proximate cause between any treatment plaintiff received prior to October 13 and plaintiff's premature delivery. She contends that plaintiff was properly monitored on October 13, that a thorough history was taken at NYU, that several doctors examined her during the course of the day, that Dr. Seubert, who first examined plaintiff at NYU, properly consulted with Dr. Gronau, who was on call, and that both doctors handled the treatment of plaintiff appropriately. She argues that none of the defendants failed to detect preterm labor, as all of plaintiff's signs were normal until that evening. When she did go into active labor, the expert says, it could not be delayed because of plaintiff's ruptured placenta and signs that she had chorioamnionitis.

Based on the above, all movants have established prima facie cases. Plaintiff has not opposed the motions or sought an extension of time. Therefore, it is

ORDERED that motion sequences six, seven, and eight are granted and the case is dismissed in its entirety, and the clerk shall enter a judgment of dismissal; and it is further

ORDERED that judgment is stayed for two months from the service of a copy of this order with notice of entry upon the pro se plaintiff, in order to provide her with time to move to vacate. Proof of service should be e-filed with the Court. Any motion to vacate must be accompanied by an affidavit of merit by a physician, supporting documents, and a showing of excusable default.

Dated: Feb. 24, 2017

ENTER:



JOAN B. LOBIS, J.S.C.