

Gonzalez v Sanchez

2017 NY Slip Op 31763(U)

August 21, 2017

Supreme Court, Suffolk County

Docket Number: 11-36565

Judge: Daniel Martin

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

INDEX No. 11-36565

CAL. No. 15-02231MM

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 9 - SUFFOLK COUNTY

PRESENT:

Hon. DANIEL MARTIN

MOTION DATE 5-10-16 (002)

MOTION DATE 4-29-16 (003, 004)

ADJ. DATE 1-24-17

Mot. Seq. # 002 - MG

003 - MG

004 - MG

SANDRA G. GONZALEZ, as Administratrix of
the Estate of MARIA DOLORES
QUINTANILLA, Deceased, and MARIO
QUINTENILLA Individually,

Plaintiffs,

- against -

CARL-HENRI SANCHEZ, M.D., CARL-HENRI
SANCHEZ, M.D., P.C., FRANK JOSEPH
KARPOWICZ, M.D., AARON RICHARD
HARRISON, M.D., WESTERN SUFFOLK
GASTROENTEROLOGY ASSOCIATES,
L.L.P., PEDRO J. ROQUE-RODRIGUEZ, M.D.,
PEDRO J. ROQUE, M.D., P.L.L.C., PEDRO J.
ROQUE, L.P., and NORTH SHORE
UNIVERSITY HOSPITAL AT SOUTHSIDE,

Defendants.

DUFFY & DUFFY
Attorney for Plaintiffs
1370 RXR Plaza
West Tower, 13th Floor
Uniondale, New York 11556

GABRIELE MARANO, LLP
Attorney for Defendants Sanchez
100 Quintin Roosevelt Blvd.
P.O. Box 8022
Garden City, New York 11530

SHAUB, AHMUTY, CITRIN & SPRATT, L.L.P.
Attorney for Defendant Southside Hospital
1983 Marcus Avenue
Lake Success, New York 11042

GALLAGHER, WALKER,
BIANCO & PLASTARAS
Attorney for Defendants Karpowicz, Harrison, and
Western Suffolk Gastroenterology Associates,
98 Willis Avenue
Mineola, New York 11501

SANTANGELO, BENVENUTO & SLATTERY
Attorney for Defendants Roque-Rodriguez,
Pedro J. Roque, M.D., PLLC & Pedro J. Roque, LP
1800 Northern Blvd.
Roslyn, New York 11576

Gonzalez v Sanchez

Index No. 11-36565

Page 2

Upon the following papers numbered 1 to 37 read on these motions for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 17; 18 - 27; 28 - 37 ; Notice of Cross Motion and supporting papers ____; Answering Affidavits and supporting papers ____; Replying Affidavits and supporting papers ____; Other ____; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that the motions by defendants Pedro J. Rogue, M.D., Pedro J. Rogue, L.P., Pedro J. Roque-Rodriguez, M.D., Carl-Henri Sanchez, M.D., Carl-Henri Sanchez, M.D., P.C. and Southside Hospital s/h/a North Shore University Hospital at Southside are consolidated for purposes of this determination; and it is

ORDERED that the motion (seq. 002) by defendants Pedro J. Rogue, M.D., Pedro J. Rogue, L.P., and Pedro J. Roque-Rodriguez, M.D. for summary judgment in their favor dismissing the complaint and all cross claims asserted against them is granted; and it is further

ORDERED that the motion (seq. 003) by defendants Carl-Henri Sanchez, M.D., and Carl-Henri Sanchez, M.D., P.C. for summary judgment in their favor dismissing the complaint and all cross claims asserted against them is granted; and it is further

ORDERED that the motion (seq. 004) by defendant Southside Hospital s/h/a North Shore University Hospital at Southside for summary judgment in its favor dismissing the complaint and all cross claims asserted against it is granted; and it is further

ORDERED that the Clerk is directed to remove defendants Carl-Henri Sanchez, M.D., Carl-Henri Sanchez, M.D., P.C., Pedro J. Rogue, M.D., Pedro J. Rogue, L.P., Pedro J. Roque-Rodriguez, M.D. and Southside Hospital s/h/a North Shore University Hospital at Southside from the caption.

Sandra G. Gonzalez, as administratrix of the estate of Maria Dolores Quintanilla, and Mario Quintanilla, the husband of Maria Dolores, individually, commenced this action to recover for personal injuries of plaintiffs' decedent related to alleged medical malpractice in the failure to diagnose gastric cancer, lack of informed consent, wrongful death, loss of services, and negligence. Issue has been joined, discovery is complete, and a note of issue has been filed.

Pedro J. Rogue, M.D., Pedro J. Rogue, L.P., and Pedro J. Roque-Rodriguez, M.D. (hereinafter collectively "Dr. Rogue") now move for summary judgment in their favor dismissing the complaint and all cross claims asserted against them. In support of the motion, Dr. Rogue submits, among other things, copies of the pleadings, decedent's medical records, his own deposition transcript and the deposition transcripts of Dr. Carl Henri-Sanchez, Dr. Aaron Harrison, Dr. Frank Karpowicz and the expert affirmation of Dr. Michael Goldstein.

Carl-Henri Sanchez, M.D., and Carl-Henri Sanchez, M.D., P.C. (hereinafter collectively "Dr. Sanchez") move for summary judgment in their favor dismissing the complaint and all cross claims asserted against them. In support of the motion, Dr. Sanchez submits, among other things, copies of the pleadings, his own deposition transcript, decedent's medical records and the expert affirmation of Dr. Emily M. Stein.

Southside Hospital, s/h/a North Shore University Hospital at Southside, moves for summary judgment in its favor dismissing the complaint and all cross claims asserted against it. In support of the motion, Southside Hospital submits a copy of the pleadings, decedent's medical records, and the expert affirmation of Dr. Gregory Mazarin.

The medical records reveal that plaintiffs' decedent was admitted to Southside Hospital on June 26, 2009 under the service of Dr. Sanchez. Dr. Sanchez testified that she complained of a headache, melena, weight loss, dyspepsia, hematemesis and abdominal pain. Dr. Sanchez testified that he had never seen the patient anytime prior to her admission to the hospital and did not see her after her discharge on June 30, 2009. Dr. Sanchez further testified plaintiffs' decedent had a past medical history of migranes and gastritis, and upon examination she was guaiac positive and mildly anemic. He assessed her with a likely upper GI bleed secondary to gastritis. Dr. Sanchez testified he recommended a gastroenterology consult.

On June 27, 2009, the medical records indicate decedent was seen by Dr. Frank Karpowicz, a gastroenterologist. Dr. Karpowicz noted an intentional weight loss of 20 pounds over the past year, a previous diagnosis of an ulcer, dyspepsia and regurgitation over the last several weeks. Her stools were noted to have occult blood and her hemoglobin moved downward from 10.9 to 10.2. Her history was negative for colon cancer and colon polyps. A digital rectal exam revealed no blood. Dr. Karpowicz planned a elective upper endoscopy for June 29, 2009. On June 28, 2009, the decedent reported feeling better, her vital signs were stable, and her hemoglobin and hematocrit levels had increased slightly. On June 29, 2009, Dr. Aaron Harrison performed an upper GI endoscope which revealed thickened fold in the proximal stomach, possibly related to gastritis. Biopsies revealed polypoid gastric mucosa with mild oxyntic gland hyperplasia, no dysplasia or unusual inflammation noted. No H. pylori organism was noted. On June 30, 2009, decedent was seen again by Dr. Sanchez and was noted to be feeling okay with no headache, abdominal pain, nausea or vomiting. She was discharged on June 30, 2009 with follow-up with her primary care physician and gastroenterologist, and prescriptions for Omeprazole and Percocet.

On March 19, 2010, decedent was seen by Dr. Roque. She reported a history of peptic ulcer disease and that in June of 2009 she vomited blood (hematemesis). She had previously seen Dr. Roque for treatment from November 2005 through February 2006. Thereafter, decedent reported she had nausea, indigestion and bleeding. An abdominal exam showed no positive signs of a mass, pain, or rebound tenderness. Dr. Roque testified his impression was peptic ulcer disease and referred decedent to a gastroenterologist. She was seen by Dr. Karpowicz on March 29, 2009, June 8, 2010, September 7, 2010, and October 13, 2010. On October 5, 2010, she was seen by Dr. Rogue with complaints of body aches, cough, sore throat and ear ache. A physical examination revealed her abdomen was soft with no pain tenderness or rebound. She was advised by Dr. Rogue to see her gastroenterologist for any abdominal complaints and to return in one month for follow-up.

On November 1, 2010, decedent saw Dr. Rogue with complaints of abdominal discomfort, constipation and poor appetite. Dr. Rogue testified that his differential diagnosis was a possible urinary tract infection. On November 3, 2010, decedent's family called Dr. Rogue and advised decedent's abdominal pain had increased in severity. Dr. Rogue advised that decedent go to Stony Brook University Hospital emergency room for treatment. On November 12, 2010, decedent passed away.

To make a prima facie showing of entitlement to summary judgment in an action to recover damages for medical malpractice, a defendant must establish through medical records and competent expert affidavits that it did not deviate or depart from accepted medical practice in the treatment of the plaintiff or that it was not the proximate cause of plaintiff's injuries (*see Castro v New York City Health & Hosps. Corp.*, 74 AD3d 1005, 903 NYS2d 152 [2d Dept 2010]; *Deutsch v Chaglassian*, 71 AD3d 718, 896 NYS2d 431 [2d Dept 2010]; *Plato v Guneratne*, 54 AD3d 741, 863 NYS2d 726 [2d Dept 2008]; *Jones v Ricciardelli*, 40 AD3d 935, 836 NYS2d 879 [2d Dept 2007]; *Mendez v City of New York*, 295 AD2d 487, 744 NYS2d 847 [2d Dept 2002]). To satisfy this burden, the defendant must present expert opinion testimony that is supported by facts in the record and addresses the essential allegations in the bill of particulars (*see Roques v Noble*, 73 AD3d 204, 899 NYS2d 193 [1st Dept 2010]; *Ward v Engel*, 33 AD3d 790, 822 NYS2d 608 [2d Dept 2006]). Conclusory statements that do not address the allegations in the pleadings are insufficient to establish entitlement to summary judgment (*see Garbowski v Hudson Val. Hosp. Ctr.*, 85 AD3d 724, 924 NYS2d [2d Dept 2011]). A physician owes a duty of reasonable care to his or her patients and will generally be insulated from liability where there is evidence that he or she conformed to the acceptable standard of care and practice (*see Spensieri v Lasky*, 94 NY2d 231, 701 NYS2d 689 [1999]; *Barrett v Hudson Valley Cardiovascular Assoc., P.C.*, 91 AD3d 691, 936 NYS2d 304 [2d Dept 2012]; *Geffner v North Shore Univ. Hosp.*, 57 AD3d 839, 871 NYS2d 617 [2d Dept 2008]).

Failure to demonstrate a prima facie case requires denial of the summary judgment motion, regardless of the sufficiency of the opposing papers (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 5088 NYS2d 923 [1986]). Once the defendant makes a prima facie showing, the burden shifts to the plaintiff to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact which require a trial of the action (*see Alvarez v Prospect Hosp.*, *supra*; *Kelley v Kingsbrook Jewish Med. Ctr.*, 100 AD3d 600, 953 NYS2d 276 [2d Dept 2012]; *Fiorentino v TEC Holdings, LLC*, 78 AD3d 911 NYS2d 146 [2d Dept 2010]). In a medical malpractice action, a plaintiff opposing a motion for summary judgment need only raise a triable issue of fact with respect to the element of the cause of action or theory of nonliability that is the subject of the moving party's prima facie showing (*see Bhim v Dourmashkin*, 123 AD3d 862, 999 NYS2d 471 [2d Dept 2014]; *Hayden v Gordon*, 91 AD3d 819, 937 NYS2d 299 [2d Dept 2012]; *Stukas v Streiter*, 83 AD3d 18, 918 NYS2d 176 [2d Dept 2011]; *Schichman v Yasmer*, 74 AD3d 1316, 904 NYS2d 218 [2d Dept 2010]).

Each of the moving parties has established a prima facie case of entitlement to summary judgment. Dr. Rogue's expert, Dr. Michael J. Goldstein, states that decedent did not present to Dr. Rogue until March 19, 2010, approximately 9 months after her discharge from Southside Hospital, and opines that the care and treatment she received from him conformed with good and accepted medical practices. He further opines that proper evaluation and assessment was performed during decedent's office visits on March 19, 2010, October 5, 2010, and November 1, 2010, and that referrals to her gastroenterologist were appropriate. He avers that gastric cancer is not a diagnosis which can normally be established using the tools available in the office setting. Finally, he opines that the injuries sustained by decedent were not proximately caused by any action or inaction by Dr. Roque.

Dr. Emily M. Stein, Dr. Sanchez's expert, opines the care and treatment rendered by Dr. Sanchez was within good and accepted medical practice and was otherwise rendered in the exercise of sound medical judgment. She avers that Dr. Sanchez was not the proximate cause or significant contributing factor to any


Gonzalez v Sanchez
Index No. 11-36565
Page 5

illness or death alleged by plaintiffs on behalf of plaintiffs' decedent. Dr. Sanchez's treatment of plaintiffs' decedent was from June 26, 2009 through June 30, 2009, during her admission to Southside Hospital. During the hospital stay she was examined by gastroenterologist Dr. Karpowicz and was directed to follow up with her primary care physician and gastroenterologist. Dr. Stein opines that during this hospital stay there were no signs or symptoms that would reasonably interpreted to suggest cancer or increased risk of cancer. She notes the patient had no family history of colon cancer, did not smoke and her weight loss was intentional through diet.

Dr. Gregory Mazarin, Southside Hospital's expert, opines that the care and treatment received by plaintiffs' decedent was appropriate and in accordance with the standard of care. He further opines that the actions or inactions of Southside Hospital did not cause or contribute to the injuries or death of Maria Quintanilla.

Plaintiffs do not oppose the motions and have failed to raise a triable issue of fact. Accordingly the motions by Dr. Rogue, Dr. Sanchez, and Southside Hospital are granted.

Dated: August 24, 2017


A.J.S.C.
HON. DANIEL MARTIN

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION