

Sawyer v Ganem

2017 NY Slip Op 32653(U)

November 13, 2017

Supreme Court, Bronx County

Docket Number: 23179/2004

Judge: Douglas E. McKeon

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX - PART IA-19A

-----X
CHARLES SAWYER, as Administrator of the Estate
of DENISE SAWYER and CHARLES SAWYER,
Individually,

Plaintiff(s),

- against -

INDEX NO: 23179/2004

MEYER M. GANEM, M.D., and MONTEFIORE
MEDICAL CENTER,

DECISION/ORDER

Defendant(s).

-----X

HON. DOUGLAS E. MCKEON

Motion by defendants Meyer M. Ganem, M.D. and Montefiore Medical Center for summary judgment and an order dismissing plaintiff's complaint in its entirety is decided as follows.

Defendants submit the affirmation of four experts, Dr. Sakalis for Internal Medicine, Dr. Haydock for emergency department medicine, Dr. Farber for Infectious Disease and Dr. Smith for pulmonology. Each of these affirmations demonstrate, to a reasonable degree of medical certainty, that the defendants did not deviate from the standards of care during the relevant time period in caring and treating Ms. Sawyer and that no act or omission of defendants proximately caused decedent's injuries. As such, defendants have demonstrated a *prima*

facie entitlement to summary judgment.

In opposition, plaintiffs have provided the court with the affirmation of expert Edward C. Weissman, M.D., a doctor Board Certified in Internal Medicine. Dr. Weissman opines, within a reasonable degree of medical certainty, that at the time of Ms. Sawyer's call to Dr. Ganem's office on April 21, 2003 she should have been told to come immediately to the office or to go to the emergency room as she was experiencing a worsening of the symptoms previously reported on Friday, including the "worrisome" right sided pain.

Dr. Weissman also opines that it was a departure from the standard of care for Dr. Ganem to not advise Mr. Sawyer on April 22, 2003 to immediately bring his wife to the office or to the emergency room. He disagrees with Dr. Farber's opinion that even had Mrs. Sawyer been seen on April 22, 2003 it would have made no difference in the ultimate outcome. Dr. Weissman opines that had appropriate antibiotic therapy another treatment had been started on April 21st or April 22, 2003 Ms. Sawyer could have been treated and survived.

Plaintiff has also provided the court with the affidavit of David Dorsky, an expert in Internal Medicine and Infectious Diseases. This doctor opines that had Dr. Ganem appropriately responded to decedent's call to his office on April 21, 2003 or to Mr. Sawyer's call the following day an examination would have led to the prompt diagnosis of pneumonia and treatment would have begun earlier and that even as late as April 22, 2003 Ms. Sawyer most likely would not have died

from sepsis due to streptococcal pneumonia. Plaintiff has also provided the court with the expert opinion of Dr. Levin who is board certified in internal medicine oncology and hematology. He is critical of the handling of the telephone calls to Dr Ganem's office arguing that it is not within standard of care for a non medical staff member to offer a diagnosis to a patient or to propose any treatment (even an over the counter medication) so that the call of April 18, 2003 should have been referred to a physician and the patient been given an appointment. Furthermore, concerning the testimony about Mr. Sawyer's conversation with Dr. Ganem on April 22, 2003 and his question to the doctor about whether he should bring his wife in, this expert opines that Dr. Ganem should have responded yes or refered the patient to a emergency facility rather than advising that she keep her scheduled appointment for the following day. This was a departure from an accepted standard of care which delayed diagnosis and treatment and allowed the advancement of the ongoing infectious process which ultimately caused the patient's death.

The court notes that, initially, none of plaintiff's experts address the treatment provided at Montefiore on April 23, 2003. Accordingly, summary judgment and all direct claims of liability against Montefiore Medical Center are dismissed as defendants have shown that it neither departed from the standard of care nor did any alleged departures caused plaintiff's injury and plaintiff failed to raise a triable issue of fact with regard thereto. The motion is denied as to

defendant Dr. Ganem. Plaintiff has provided the court with multiple expert opinions by doctors who opine that there is at least a question of fact as to whether Dr. Ganem met the appropriate standard of care in this matter with regard to non medical staff members discussing patient's treatment, giving patient an immediate appointment based on her symptoms, referring the patient to an emergency facility, and whether these issues allowed the advancement of the infectious process which ultimately caused the patient's death herein.

So ordered.

Dated: 11/13/17



Douglas E. McKeon, J.S.C.