

Rich v Cohen

2017 NY Slip Op 33522(U)

January 5, 2017

Supreme Court, Nassau County

Docket Number: Index No. 604646/15

Judge: Antonio I. Brandveen

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

DAVID RICH, as Administrator of the Estate of
KELLY HUNTER RICH,

Plaintiff,

- against -

TODD J. COHEN, MD, WINTHROP
CARDIOLOGY ASSOCIATES, PC,
WINTHROP UNIVERSITY HOSPITAL, GINA
C. GRECO, DO, EAST MEADOW FAMILY
PRACTICE, PC and PROHEALTH CARE
ASSOCIATES, LLP,

Defendant.

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Motion Sequence No. 002, 003

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1, 2</u>
Answering Affidavits	<u>3</u>
Replying Affidavits	<u>4</u>
Briefs: Plaintiff's / Petitioner's	<u> </u>
Defendant's / Respondent's	<u> </u>

The defendants Winthrop Cardiology Associates, P.C. and Todd J. Cohen, M.D. move (Sequence 002) pursuant to CPLR 3101 for an order compelling the plaintiff David Rich, as Administrator of the Estate of Kelly Hunter Rich to provide access to Kelly Hunter Rich's social media accounts. The underlying medical malpractice action involves the care and treatment rendered to the decedent, Kelly Hunter Rich by Dr. Cohen

beginning on October 24, 2012, and continuing until death on October 11, 2013.

The defendants Gina C. Greco, DO, East Meadow Family Practice, PC and Prohealth Care Associates, LLP move (Sequence 003) pursuant to CPLR 3124 for an order compelling David Rich, as Administrator of the Estate of Kelly Hunter Rich to provide access to the decedent's social media accounts.

Winthrop Cardiology Associates, P.C. and Todd J. Cohen, M.D. assert the question is whether the defendants are entitled to obtain access to the deceased's social media accounts before the deposition of the plaintiff administrator, who was also the decedent's husband. Winthrop Cardiology Associates, P.C. and Todd J. Cohen, M.D. aver they are unable to depose Kelly Hunter Rich to evaluate the claims of severe conscious pain and suffering and emotional distress. Winthrop Cardiology Associates, P.C. and Todd J. Cohen, M.D. contend they are unable to evaluate by a deposition of Kelly Hunter Rich the comfort and society that the deceased allegedly gave to David Rich. Winthrop Cardiology Associates, P.C. and Todd J. Cohen, M.D. maintain they will be unable to examine Kelly Hunter Rich by a cardiologist or a psychiatrist. Winthrop Cardiology Associates, P.C. and Todd J. Cohen, M.D. argue they will be unable to explore what triggered two episodes of taking an overdose of medications approximately one year apart. Winthrop Cardiology Associates, P.C. and Todd J. Cohen, M.D. insist the next best method to evaluate the basis of the claims for conscious pain and suffering and emotional distress, loss of the comfort and society and Kelly Hunter Rich's mental status

is to review the social media accounts.

Gina C. Greco, DO, East Meadow Family Practice, PC and Prohealth Care Associates, LLP note the decedent had a long psychiatric history, attempted suicide about one year before death and was treated at Winthrop University Hospital. Gina C. Greco, DO, East Meadow Family Practice, PC and Prohealth Care Associates, LLP assert the decedent admitted to having suicidal ideation and taking medication with alcohol, and was taken to South Nassau Communities Hospital after becoming unresponsive at home in October 2013.

In opposition to both motions, the plaintiff contends there was a glaring error by the defendants in not discussing the autopsy report. The plaintiff argues as to the issues of medical practice. The plaintiff asserts the defense must identify relevant information in the social media accounts of Kelly Hunter Rich as a predicate for the Court to grant the motion for access to the social media accounts. The plaintiff claims legal precept prohibits the disclosure of social media accounts. The plaintiff maintains Kelly Hunter Rich's prescribed medications were in therapeutic levels on an autopsy.

In reply, the defense contends the plaintiff failed to raise the issue of privacy rights. The defense asserts the only issue is whether the defendants demonstrate a good faith basis for the request of access to these social media accounts. The defense maintains it has no other means by which to discover the information that they seek, and no other means to evaluate the thinking and mental status of Kelly Hunter Rich prior to

the decedent's death.

The Court determines the defendants satisfy their burdens to compel the plaintiff to provide access to Kelly Hunter Rich's social media accounts (*see Spearin v Linmar, L.P.*, 129 A.D.3d 528 [1st Dept. 2015]). The defendants provide a sufficient showing that the material sought by their motions is material and necessary in the defense of this litigation, and would be contradicting the plaintiff's claims regarding severe conscious pain and suffering and emotional distress, loss of comfort and society and Kelly Hunter Rich's mental status (*Yoshida v Hsueh-Chih Chin*, 111 A.D.3d 704 [2d Dept. 2013]). The defense demonstrates the information will assist their preparation for trial by sharpening the issues and reducing the delay and prolixity (*Allen v Crowell-Collier Publ. Co.*, 21 N.Y.2d 403 [1968]). The defense shows the requested information is unavailable from other sources. In opposition, the plaintiff fails to show the information sought is useless and unreasonable (*U.S. Ice Cream Corp. v Carvel Corp.*, 190 A.D.2d 788 [2d Dept. 1993]). The plaintiff does not show a protective order is necessary to prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice (CPLR 3101[a]); *Berkowitz v 29 Woodmere Blvd. Owners', Inc.*, 135 A.D.3d 798 [2d Dept. 2016]).

ORDERED that the motion (Sequence 002) by Winthrop Cardiology Associates, P.C. and Todd J. Cohen, M.D. is GRANTED to compel the plaintiff David Rich, as Administrator of the Estate of Kelly Hunter Rich to provide access to Kelly Hunter Rich's

social media accounts, and it is also,

ORDERED that the motion (Sequence 003) by Gina C. Greco, DO, East Meadow Family Practice, PC and Prohealth Care Associates, LLP is GRANTED to compel David Rich, as Administrator of the Estate of Kelly Hunter Rich to provide access to the decedent's social media accounts, and it is further,

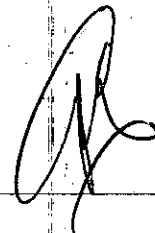
ORDERED that David Rich, as Administrator of the Estate of Kelly Hunter Rich is directed to provide the social media sought by the defendants to the Court prior to any access to the defendants for an in camera review of Kelly Hunter Rich's social media within 30 days after service of a copy of this order with notice of entry upon the plaintiff or the plaintiff's attorney. If the plaintiff is unable to recover any deleted material, plaintiff is directed to obtain Kelly Hunter Rich's entire record from social media, including any records previously deleted or archived by the operators of social media.

This decision will constitute the order of the Court.

So ordered.

Dated: **January 5, 2017**

ENTER:



J. S. C.

ENTERED

NON FINAL DISPOSITION

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COUNTY CLERK'S OFFICE

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