

<b>Kim v New York Presbyt.</b>
2018 NY Slip Op 30251(U)
February 14, 2018
Supreme Court, New York County
Docket Number: 160555/2014
Judge: Judith N. McMahon
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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SUSAN KIM, a/k/a DOSUN SUSAN KIM and  
SANG WOOK KIM,

PART 10 - MED MAL

Plaintiff(s),  
-against-

Present:  
HON. JUDITH N. MCMAHON

DECISION AND ORDER

NEW YORK PRESBYTERIAN a/k/a THE UNIVERSITY  
HOSPITAL OF COLUMBIA AND CORNELL, a/k/a  
NEW YORK PRESBYTERIAN COLUMBIA UNIVERSITY  
MEDICAL CENTER and SIMONE LIBERTY LOW  
f/k/a SIMONE O'DONOVAN

Index No. 160555/2014  
Motion No. 001

Defendant(s).

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The following papers numbered 1 to 3 were used on this motion this 14<sup>th</sup> day of February, 2018:

Notice of Motion [Defendants](Affirmation in Support).....	1
Affirmation in Opposition [Plaintiff] .....	2
Reply Affirmation [Defendants] .....	3

On or about October 24, 2015, the plaintiff, SUSAN KIM, a/k/a DOSUN SUSAN KIM, [KIM], commenced this medical malpractice action against defendants NEW YORK PRESBYTERIAN a/k/a THE UNIVERSITY HOSPITAL OF COLUMBIA AND CORNELL, a/k/a NEW YORK PRESBYTERIAN COLUMBIA UNIVERSITY MEDICAL CENTER [the HOSPITAL] and SIMONE LIBERTY LOW f/k/a SIMONE O'DONOVAN [the NURSE], alleging the HOSPITAL and the NURSE were negligent with respect to nursing care on November 2, 2011. Issue has been joined. Presently, the defendants are moving to dismiss on the ground that KIM's claims are time-barred by the applicable statute of limitations.

It is undisputed that KIM underwent an initial consultation on July 7, 2011, for evaluation of bilateral internal carotid artery aneurysms. A MRA study documented a left posterior

communicating artery aneurysm of 6 millimeters, as well as a stable 2-3 millimeter right posterior communicating artery aneurysm. Neurosurgeon Robert Solomon recommended a surgical procedure to 'clip' the left side aneurysm, and KIM was admitted to the HOSPITAL on November 1, 2011, for the procedure. The procedure was performed on November 1, 2011.

On November 2, 2011, KIM was found to be neurologically stable. Two neurosurgery residents each authorized KIM to be transferred to a regular floor from the Post Anesthesia Care Unit "PACU" and for KIM to be allowed out of bed.

At 8:00 a.m., the NURSE noted that KIM's neuro evaluation was within normal limits, but that KIM 'seemed to repeat herself.' At 9:30 a.m., on November 2, 2011, KIM wanted to walk to the restroom. The NURSE, based on her evaluation of KIM, transported KIM to the bathroom using a wheelchair. At 4:30 p.m., KIM was once again taken to the restroom by wheelchair.

At or around 5:30 p.m., the NURSE again took KIM to the restroom by wheelchair. The NURSE testified that as she had done on each of the trips before, the NURSE instructed KIM to wait for her assistance before getting out of the wheelchair, but that KIM insisted on getting up herself, and in fact did get up herself, as she had done each trip before. The NURSE testified that KIM moved herself onto the toilet and then the NURSE left the restroom to give KIM privacy because KIM insisted that NURSE leave. While NURSE was standing outside the restroom, KIM fell off of the toilet.

KIM was examined after the fall, and an 18 millimeter maximal width left frontal subdural hematoma with 7-8 millimeters of midline shift was found. KIM was taken for surgery to remove the hematoma a few hours later.

"An action for medical, dental or podiatric malpractice must be commenced within two

years and six months of the act, omission or failure complained of or last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the said act, omission or failure.” *CPLR 214-a*. It is not disputed that this action was commenced more than two and a half years beyond the deadline required by *CPLR 214-a*. Therefore, all claims involving medical malpractice are barred by the statute of limitations and must be dismissed.

However, “simple negligence principles are applicable in those cases where the alleged negligent act may be readily determined by the trier of the facts based on common knowledge.” *Coursen v. New York Hosp.-Cornell Med. Ctr.*, 114 A.D.2d 254, 499 N.Y.S.2d 52 (1986).

Applying these principles here, [as to the NURSE], expert opinion is unnecessary to enable the trier of the facts to determine whether there was negligence in allowing the patient to...remain in the bathroom unattended or without assistance. Whether there was a deviation from the standard of due care is a matter which can be determined by the jurors, as laymen, applying their own common knowledge to the legal principles applicable to the case. Neither specialized medical knowledge nor professional expert testimony is necessary to determine whether [the NURSE] acted in a reasonably prudent manner. Therefore, since it is conceded that the action was instituted within the three-year negligence Statute of Limitations, the action was timely commenced. *Id.*

Therefore, the only remaining claim of KIM is the question of negligence regarding

KIM's use of the restroom at the time she is alleged to have fallen off the toilet. This is a factual determination to be decided by the trier of fact.

Accordingly, it is

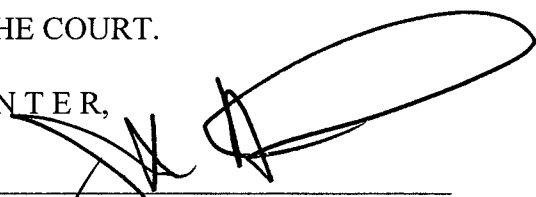
ORDERED that the Defendants' motion to dismiss pursuant to CPLR 214-a is granted as to all claims in Plaintiffs' Complaint EXCEPT for the claim of failing to properly and adequately supervise the Plaintiff when using the restroom; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that all parties appear on February 21, 2018, at 2:15 p.m., as previously scheduled.

THIS IS THE DECISION AND ORDER OF THE COURT.

Dated: 2/14/18

ENTER, 

Hon. Judith N. McMahon  
Justice of the Supreme Court