

McMore v Constantinides
2018 NY Slip Op 31831(U)
August 1, 2018
Supreme Court, New York County
Docket Number: 805042/2015
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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SHAWN McMORE,

Plaintiff,

Index No.
805042/2015

**DECISION and
ORDER**

- against -

Mot. Seq. #001

MINAS CONSTANTINIDES, M.D. and MINAS
CONSTANTINIDES, M.D., F.A.C.S., P.C.,

Defendants.

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HON. EILEEN A. RAKOWER, J.S.C.

On January 29, 2015, Plaintiff Shawn McMore (“McMore”) commenced this medical malpractice action against Defendants Minas Constantinides, M.D., and Minas Constantinides, M.D., F.A.C.S., P.C. (“Defendants”). McMore alleges that Defendants departed from accepted standards of medical practice by failing to properly perform McMore’s revision rhinoplasty. McMore also claims that Defendants failed to procure his informed consent. Originally, McMore retained the Law Office of Steven A. Epstein, PLLC (“Epstein”).¹ On February 18, 2015, Defendants filed their Answer.

Presently before the Court is Epstein’s Order to Show Cause pursuant to CPLR 321 (b) to withdraw as counsel for McMore. Epstein states that the firm has reached an impasse with McMore as to how the matter should proceed. (affirmation of Epstein at 2) Additionally, Epstein provides that, “This impasse constitutes by definition, irreconcilable differences between the attorney and client with respect to the proper course to be pursued in the litigation.” (affirmation of Epstein at 2) McMore does not oppose. Defendants do not oppose Epstein’s Order to Show Cause but cross-move for an order directing McMore or his incoming counsel to *inter alia* “furnish an affirmation/affidavit from a qualified medical

¹ Included with the Summons and Complaint is a Certificate of Merit wherein Steven A. Epstein, Esq. avers that he “has consulted a physician about the case, and . . . concluded on the basis of such . . . consultation that there is a reasonable basis for the commencement of an action.” (McMore complaint at 6)

professional attesting to the merits of the instant action.” (affirmation of Demaria at 1)

On July 31, 2018, this Court conferenced the instant application with the parties.

Attorney Withdrawal

CPLR 321 (2) provides, “An attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct.” The First Department has stated, “[A]n attorney may withdraw as counsel of record upon a showing of good and sufficient cause, and reasonable notice to the client.” (*Mason v MTA New York City Transit*, 832 NYS2d 153, 154 [1st Dept 2017]).

Certificate of Merit

CPLR 3012-a (a)(1) provides in pertinent part,

“In any action for medical . . . malpractice, the complaint shall be accompanied by a certificate, executed by the attorney for the plaintiff, declaring that . . . the attorney has . . . consulted with at least one physician in medical malpractice actions . . . and that the attorney has concluded on the basis of such . . . consultation that there is a reasonable basis for the commencement of such action.”

Discussion

Because McMore and Epstein have reached an impasse as to how this litigation should proceed, irreconcilable differences exist. Accordingly, Epstein has made a showing of good and sufficient cause, and given reasonable notice to McMore. (*Mason v MTA New York City Transit*, 832 NYS2d 153, 154 [1st Dept 2017].) Although Defendants cross-move for an order directing McMore or his incoming counsel to “furnish an affirmation/affidavit from a qualified medical professional attesting to the merits of the instant action,” Epstein already filed a

Certificate of Merit pursuant to CPLR 3012-a. Additionally, Defendants do not cite any authority in support of their request.

Wherefore it is hereby

ORDERED that the motion of the Law Office of Steven A. Epstein, PLLC to be relieved as attorneys for plaintiff Shawn McMore is granted without opposition; and it is further

ORDERED that no further proceedings may be taken in this matter without leave of this court for a period of 30 days from the date of this order within which time plaintiff Shawn McMore must appoint a substitute attorney by August 31, 2018 or shall be deemed to be proceeding *pro se*; and it is further

ORDERED that, WITHIN 3 DAYS OF THE DATE OF THIS DECISION, the Law Office of Steven A. Epstein, PLLC serve a copy of this order with notice of entry upon Shawn McMore and upon the attorneys for all other parties appearing herein by overnight mail; and it is further

ORDERED that, WITHIN 3 DAYS OF THE DATE OF THIS DECISION, the Law Office of Steven A. Epstein, PLLC serve a copy of the disbursements, costs and expenses upon Shawn McMore; and it is further

ORDERED that, WITHIN 5 DAYS OF THE DATE OF THIS DECISION, Shawn McMore pay the disbursements, costs and expenses or provide security therefor; and it is further

ORDERED that, WITHIN 6 DAYS OF THE DATE OF THIS DECISION, the Law Office of Steven A. Epstein, PLLC serve Shawn McMore's client file upon Shawn McMore; and it is further

ORDERED that any new attorney retained by plaintiff Shawn McMore shall file a notice of appearance with the Clerk of the Trial Support Office (Room 158) and the Clerk of the Part; and it is further

ORDERED that all parties are directed to appear for a compliance conference on September 11, 2018, at 9:30 AM in Part 6, 71 Thomas Street, Room 205 D to set a schedule for outstanding discovery.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: ~~SEP~~ ^{AUG} 1, 2018



Eileen A. Rakower, J.S.C.