Craig v TC Ambulance Corp.
2018 NY Slip Op 32389(U)
August 13, 2018
Supreme Court, Bronx County
Docket Number: 302768/2011
Judge: Lewis J. Lubell

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX - PART IA-19A

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Judy Craig, etc.,

Plaintiff,

- against - INDEX NO: 302768/2011

TC Ambulance Corporation, et ano., DECISION/ORDER

Defendants.

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HON. LEWIS J. LUBELL

Defendant TC Ambulance Corporation (TC) moves for summary judgment dismissing plaintiff's complaint. Plaintiff opposes the motion.

This action arises out of the birth of the infant plaintiff, who was transported to defendant Jacobi hospital by defendant TC. It was alleged, generally, on the prior motion by the defendant hospital for summary judgment that a placental abduction[1] occurred approximately 24 to 48 hours prior to the delivery of the infant. The mother arrived at Jacobi hospital at 10:23, was registered at 10:40, a fetal monitor was placed at 10:40, a decision to perform a C-section was made at 11:12, and the infant delivered at 11:32. The infant suffers from global hypoxic ischemia.

That part of the motion seeking reargument is granted, and the Order of this Court dated May 3, 2108 (Lubell, J.) is vacated and recalled. As reflected in the enumeration

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[1] "...[A]bruptio placentae (also known as placental abruption) is the premature separation of the placenta from the uterus." (People v Jorgensen, 26 N.Y.3d 85, 93, 41 N.E.3d 778, 782, 19 N.Y.S.3d 814, 818, ft. 1 [2015].)

of the prior motion, the Court did not have before it all of the papers submitted on the prior motion.

That Part of the motion seeking renewal is denied. Plaintiff seeks renewal based on the Decision and Order of Justice McKeon dated March 17, 2016, in which Justice McKeon denied co-defendant NYCHHC's motion for summary judgment.[2] Justice McKeon found that issues of fact existed as to whether the delay in performing a C-section resulted in harm to the infant plaintiff. Plaintiff's experts, in opposition to the defendant hospital's motion, contended that the C-section should have been performed immediately, and that, even conceding that the abruption occurred 24 to 48 hours before delivery, an earlier C-section, even by minutes, would have been ameliorative. It is unnecessary to grant renewal based on Justice McKeon's prior ruling as Justice McKeon did not address any of the issues relating to defendant TC.

On reargument, the Court finds as follows:

Defendant TC submits the expert affidavit of Steven James Sugrue, a registered nurse with expertise in emergency nursing, who states that the ambulance team did not delay in responding to the patient or transporting her to the hospital. He relies on records showing that 911 was called at 9:49 p.m.; the ambulance arrived at 9:57 p.m.; vital signs were taken; the patient was placed in the ambulance at 10:17 p.m.; and the ambulance arrived at Jacobi hospital at 10:23 p.m.

In opposition, plaintiff's expert Dr. Halbridge contends that within 10 minutes after the mother arrived at labor and delivery at 10:40 p.m., sufficient information was gleaned to determine that the patient required an immediate C-section. However, Dr. Halbridge

[2] NYCHHC subsequently settled the action, and the settlement was approved in an infant compromise order signed by Justice McKeon.

does not address any alleged negligence on the part of TC. Only plaintiff's expert in emergency medicine, James Thomas, D.O., address the arguments of TC. Dr. Thomas states that the mother advised the ambulance crew that her due date was not until March 20, but he admits that she did not inform the ambulance crew of her cocaine and marijuana use. Dr. Thomas further states that the ambulance crew advised the ER nurse at Jacobi hospital that the mother had premature rupture of the membranes, contractions one minute apart, and was in preterm labor. Dr. Thomas opines that it was a departure for the ambulance crew not to radio ahead as to the mother's status, which would have "saved" six minutes in rendering treatment to her.

Analysis

"A defendant in a medical malpractice action establishes prima facie entitlement to summary judgment by showing that in treating the plaintiff, he or she did not depart from good and accepted medical practice, or that any such departure was not a proximate cause of the plaintiff's alleged injuries." (*Anyie B. v Bronx Lebanon Hosp.*, 128 A.D.3d 1, 3, 5 N.Y.S.3d 92, 93, [1st Dept. 2015] [citation omitted]). If a defendant in a medical malpractice action establishes prima facie entitlement to summary judgment, by a showing either that he or she did not depart from good and accepted medical practice or that any departure did not proximately cause the plaintiff's injuries, plaintiff is required to rebut defendant's prima facie showing "with medical evidence that defendant departed from accepted medical practice and that such departure was a proximate cause of the injuries alleged." (*Pullman v. Silverman*, 125 A.D.3d 562, 562, 5 N.Y.S.3d 38 [1st Dept.

2015], aff'd 28 N.Y.3d 1060, 66 N.E.3d 663, 43 N.Y.S.3d 793 [2016]; s*ee Scalisi v. Oberlander,* 96 A.D.3d 106, 120, 943 N.Y.S.2d 23 [1st Dept. 2012].)

Defendant TC has made a prima facie showing of entitlement to judgment as a matter of law by submitting medical records, deposition testimony, and the affirmation of an expert demonstrating that the defendant did not depart from accepted ambulance standards. (*See e.g. Kristal R. v. Nichter*, 115 AD3d 409, 411, 981 N.Y.S.2d 399 [1st Dept. 2014]). The burden thus shifts to the plaintiff to demonstrate otherwise. A plaintiff's expert's opinion "must demonstrate 'the requisite nexus between the malpractice allegedly committed' and the harm suffered." (*Dallas-Stephenson v. Waisman*, 39 A.D.3d 303, 307, 833 N.Y.S.2d 89 [1st Dept. 2007]). If "the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation . . . the opinion should be given no probative force and is insufficient to withstand summary judgment" (*Diaz v. New York Downtown Hosp.*, 99 N.Y.2d 542, 544, 784 N.E.2d 68, 754 N.Y.S.2d 195 [2002]; *Giampa v. Marvin L. Shelton, M.D., P.C.,* 67 A.D.3d 439, 886 N.Y.S.2d 883 [1st Dept. 2009]). Further, the plaintiff's expert must address the specific assertions of the defendant's expert with respect to negligence and causation (*see Foster-Sturrup v. Long*, 95 A.D.3d 726, 728-729, 945 N.Y.S.2d 246 [1st Dept. 2012]).

Dr. Thomas does not dispute that despite arriving at the hospital at 10:23 p.m., the mother was not examined until 10:40 p.m. Moreover, Dr. Thomas concedes that the ambulance crew related all of the appropriate information to the ER nurse. Dr. Thomas also states that the Jacobi ER personnel registered the patient as “low priority,” despite having all of the pertinent information accurately relayed to the ER by TC. In view of these undisputed facts, it is completely speculative and unsupported to suggest that had

the same information been radioed ahead, six minutes of treatment time would have been saved. Moreover, there is not the slightest indication that the hospital ER – an advanced metropolitan emergency center -- required that the information to be relayed in advance of the patient's arrival in order to accurately triage the patient and assemble the appropriate response team. Dr. Thomas' opinion is speculative and unsupported by any evidentiary foundation.

Accordingly, it is

ORDERED that renewal is denied, and it is further

ORDERED that reargument is granted, and upon reargument, the motion by defendant TC is granted dismissing all claims against it.

Dated: August 13, 2018

Lewis J. Lubell, J.S.C.