

Caffaro-Magdalany v Hadid

2018 NY Slip Op 34336(U)

November 9, 2018

Supreme Court, Westchester County

Docket Number: Index No. 69277/2016

Judge: Terry Jane Ruderman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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RITA CAFFARO-MAGDALANY and ROBERT JOHN
MAGDALANY;

Plaintiff,

Index No. 69277/2016

-against-

DECISION AND ORDER
Sequence Nos. 1 and 2

AHMAD A. HADID, M.D., JOSEPH A. GEORGE, M.D.,
AHMAD B. HADID, M.D., WESTCHESTER MEDICAL
CENTER ADVANCED PHYSICIAN SERVICES, P.C.,
DAVID HARRISON, M.D., CRYSTAL RUN
HEALTHCARE, LLP, and ST. LUKE'S CORNWALL
HOSPITAL,

Defendants.

-----X
RUDERMAN, J.

The following papers were considered on the motions (1) by defendants David Harrison, M.D. and Crystal Run Healthcare, LLP for summary judgment dismissing the complaint and any cross-claims as against them (sequence 1) and (2) by defendants Ahmad A. Hadid, M.D. ("Dr. A. Hadid"), Joseph A. George, M.D., Ahmad B. Hadid, M.D. ("Dr. B. Hadid")¹, and Westchester Medical Center Advanced Physician Services, P.C. ("APS"), for summary judgment dismissing the complaint and any cross-claims as against them (sequence 2):

<u>Papers - Sequence 1</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Affidavit, Exhibits A - P	1
Affirmation in Opposition, Exhibits A - D	2
Reply Affirmation	3

¹ The two Drs. Ahmad Hadid are cousins, and the 'A' and 'B' initials are used to distinguish one from the other.

- Sequence 2

Notice of Motion, Attorney Affirmation, Expert Affirmation, Exhibits A - N	4
Affirmation in Opposition, Exhibits A - D	5
Reply Affirmation	6

Plaintiff Rita Caffaro-Magdalany² was a patient of defendant Advanced Physician Services, P.C. ("APS") beginning in January, 2011; after a cardiac workup, she was diagnosed with a myocardial infarction in 2011, and Dr. A. Hadid placed a stent to treat a right coronary artery occlusion. Dr. A. Hadid continued to treat plaintiff for her cardiac condition in the years that followed. Following a November 12, 2015 office visit at which she complained of left shoulder numbness and pain, plaintiff underwent treadmill stress testing and myocardial perfusion imaging on November 17, 2015. The stress testing was monitored by Dr. Joseph A. George and the perfusion imaging was interpreted by Dr. B. Hadid. Dr. George's observations regarding the results included the remark that the stress electrocardiogram was abnormal, showing changes suggestive of ischemia.

Plaintiff's claims against Dr. A. Hadid, and vicariously against APS, focus on his response to the results of the tests performed on November 17, 2015, particularly his failure to refer plaintiff for cardiac catheterization at that time. Plaintiff sustained a myocardial infarction on December 29-30, 2015, which she claims occurred as a result of Dr. A. Hadid's failure to have a cardiac catheterization performed follow the November 2015 stress test. Plaintiff was admitted to defendant St. Luke's Cornwall Hospital on December 30, 2015, and on that day, defendant Dr. David Harrison performed a permanent pacemaker implantation; on January 1,

² The term plaintiff will be used to refer to Rita Caffaro-Magdalany; Robert John Magdalany has a derivative claim.

2016, Dr. A. Hadid performed a stenting procedure.

The basis for plaintiff's claims against Dr. Harrison first came to light when it was determined on February 22, 2016 that a sponge had been left in the cavity below the implanted pacemaker. Plaintiff alleges that Dr. Harrison, and by extension Crystal Run Healthcare, departed from good and accepted medical practice by failing to conduct a thorough inspection of the operative field for the presence of foreign bodies before closing the plaintiff's incision.

All defendants except St. Luke's Cornwall Hospital have now moved for summary judgment dismissing the complaint and cross-claims against them. Plaintiffs oppose the motions with regard to their claims as against Dr. A. Hadid, for whom Westchester Medical Center Advanced Physician Services, L.L.C. is vicariously liable, and as against Dr. David Harrison, for whom Crystal Run Healthcare, LLP is vicariously liable. Plaintiffs do not oppose the motion as to Dr. Joseph A. George and Dr. B. Hadid.

In support of motion sequence 1, brought by Dr. David Harrison and Crystal Run Healthcare, LLP, Dr. Harrison submits his own affidavit, asserting that he did not deviate from the applicable standard of care either during or after the surgery:

"The standard of accepted surgical care requires the surgeon to perform an examination and search for surgical sponges only if the count is reported as incorrect. As documented, I confirmed with the nursing staff that all sponges were accounted for; as such, the standard of care would never require me to remove the pacemaker and leads and search the pocket for surgical sponges or other instruments, needles, or foreign bodies. Plaintiffs allege I failed to order post-operative images, presumably to locate the radiopaque fibers embedded in the surgical sponge. Consistent with the applicable standard of care, I did order a post-operative chest x-ray, which was reported as showing only the pacemaker and leads. What is more, another chest x-ray, on January 3, 2016, was reported as normal as well."

Dr. Harrison goes on to describe his handling of plaintiff's care when she returned on February 2,

2016 complaining of redness and tenderness at the incision site, although she denied experiencing pain, fever, chills or drainage. He explains that he properly prescribed antibiotics, performed an incision and drainage of fluid and ordered a culture of the fluid, and followed up over the following days, until plaintiff stopped returning. He concludes that “the retention of the surgical sponge and the lapse of time prior to its discovery, were not caused by any failure to comply with the standard of acceptable care.”

Plaintiffs submit in opposition to motion sequence 1 by Dr. Harrison and Crystal Run Healthcare LLP, an affidavit from a Board Certified general surgeon. This expert opines, with a reasonable degree of medical certainty, that Dr. Harrison departed from good and accepted medical practice in failing to conduct a thorough inspection of the operative field for the presence of foreign bodies, and failing to examine the subcutaneous pocket created for the housing of the permanent pacemaker to make sure that nothing was left behind, and that he had a responsibility to not close the incision until he was personally satisfied that no foreign bodies were left behind, which responsibility is not obviated by any nursing/technician responsibility to perform their own sponge and instrument counts. The expert asserts that Dr. Harrison’s departures from good and accepted medical practice were substantial contributing factors to Mrs. Caffaro-Magdalany’s injuries attributable to a retained foreign body, which was not removed until February 22, 2016.

In support of motion sequence 2, Dr. A. Hadid and APS rely on the affirmation of Lawrence A. Reduto, M.D., who reviewed plaintiff’s medical records and the case records, and opined that Dr. A. Hadid,

“appropriately recommended medical therapy upon receipt of the November 17, 2015 stress test. The November 17, 2015 stress test is considered ‘mildly abnormal.’ The degree of ST depression on EKG was borderline abnormal and

only a small area of ischemia was noted. Based on these results, a conservative approach with medical therapy, as was provided to Ms. Caffaro-Magdalany, was appropriate.”

Dr. Reduto added,

“Moreover, it is my opinion that even had a cardiac angiography or catheterization been performed by Dr. A. Hadid immediately after the November 17, 2015 stress test, Ms. Caffaro-Magdalany's heart block and MI would not have been prevented.”

Finally, he asserted that “[h]er infarction will not result in any disability.”

In opposing motion sequence 2, plaintiff's expert, a Board-Certified internist with a subspecialty Board Certification in cardiovascular disease, provided an affirmation disagreeing with the opinion of Dr. Reduto regarding Dr. A. Hadid's treatment of plaintiff. This affirmation asserted, with a reasonable degree of medical certainty, that Dr. A. Hadid's non-interventional approach, by which he waited for an increase in symptoms before recommending or ordering a cardiac catheterization, was a departure from the applicable standard of care in the face of the stress test findings from November 17, 2015.

“Dr. "A" Hadid failed to timely and properly refer his patient for cardiac catheterization based upon the patient's prior cardiac history, her complaints at the November 12, 2015 office visit and the abnormal results of the November 17, 2015 stress testing. Instead of firmly directing the patient to present for cardiac catheterization, Dr. "A" Hadid either adopted a noninterventional plan for his patient, or, as reflected by his deposition testimony, left the decision on how to proceed in his patient's hands. It is my opinion with a reasonable degree of medical certainty that Mrs. Caffaro-Magdalany was suffering from unstable angina as of the date of the office visit, as reflected by her complaints of pain at rest, and that a timely cardiac catheterization was required in order to diagnose any new arterial blockages and to determine the patency of the previously placed cardiac stent. . . . Dr. "A" Hadid's failure to obtain cardiac catheterization resulted in the progression of his patient's cardiac disease, resulting in the December 29-30, 2015 myocardial infarction.”

Analysis

The elements of proof in a medical malpractice action are a deviation or departure from accepted practice, and evidence that the departure was a proximate cause of injury or damage (see *Thompson v Orner*, 36 AD3d 791 [2d Dept 2007]). In moving for summary judgment, the defendant has the burden of establishing the absence of any departure from good and accepted medical practice, or the absence of injury as a result of any alleged malpractice (see *Williams v Sahay*, 12 AD3d 366, 368 [2d Dept 2004]).

With regard to their handling of plaintiff's care, the moving defendants have made a prima facie showing that they did not deviate from the applicable standard of care. Briefly, Dr. Harrison asserts that his handling of the pacemaker placement comported with the standard of care, as did his treatment of plaintiff when she returned with complaints regarding the incision site. Dr. Reduto asserts that Dr. A. Hadid's conservative approach, using medical therapy, was appropriate, and that even had a cardiac catheterization been performed, plaintiff's December myocardial infarction would not have been prevented.

In response to defendants' prima facie showing on each motion, the burden switched to plaintiff to "submit evidentiary facts or materials to rebut the defendant's prima facie showing" (*Stukas v Streiter*, 83 AD3d 18, 30 [2d Dept 2011]). The expert opinions submitted by plaintiff were sufficiently specific and supported by competent evidence to create issues of fact (see *Bendel v Rajpal*, 101 AD3d 662, 663 [2d Dept 2012]). With regard to the claims against Dr. Harrison, the assertion that the sponge was not visually detectable once the pacemaker was placed does not eliminate the possibility of liability. Further, this Court rejects Dr. Harrison's argument that the claim against him arising from his post-operative care of plaintiff must be

dismissed. His assertion that he did not cause a delay in the discovery of the surgical sponge fails as prima facie grounds to dismiss that aspect of plaintiff's claim.

In reply on both motions, defendants correctly observe that plaintiff did not support her claims for lack of informed consent. Therefore, to the extent the complaint includes informed consent claims, in the absence of support, that portion of the complaint must be dismissed.

ORDERED that the motion of defendants David Harrison, M.D. and Crystal Run Healthcare LLP for summary judgment pursuant to CPLR 3212 dismissing plaintiff's complaint and any cross-claims against them (sequence 1) is granted only as to the cause of action for lack of informed consent, and is otherwise denied; and it is further

ORDERED that the motion of defendants Ahmad A. Hadid, M.D., Joseph A. George, M.D., Ahmad B. Hadid, M.D., and Westchester Medical Center Advanced Physician Services, P.C., for summary judgment pursuant to CPLR 3212 dismissing the complaint and any cross-claims as against them (sequence 2) is granted as to the claims against defendants Joseph A. George, M.D. and Ahmad B. Hadid, M.D., and as to the informed consent cause of action, and is otherwise denied; and it is further

ORDERED that the remaining parties are directed to appear on Tuesday, January 9, 2019 at 9:15 a.m., in the Settlement Conference Part, room 1600 of the Westchester County Courthouse located at 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
November 9, 2018


HON. TERRY JANE RUDERMAN, J.S.C.