

Hill v Ogoke
2019 NY Slip Op 31200(U)
March 29, 2019
Supreme Court, Westchester County
Docket Number: 51391/2016
Judge: Sam D. Walker
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. SAM D. WALKER, J.S.C.

-----X
YASHIKA HILL, as Proposed Administratrix of the Estate,
of JODI WILLIAMS, Deceased, and YASHIKA HILL,

DECISION AND ORDER
INDEX NO: 51391/2016
Seq # 6 & 7

Plaintiffs,

-against-

BENTLEY OGOKE, OGEDI OHAJEKWE,
WESTCHESTER SURGERY, PC. And MONTEFIORE
MOUNT VERNON,

Defendants.

-----X

The following papers were received and considered in connection with the above-captioned matter:

Notice of Motion/Affirmation/Exhibits A-G	1-9
Notice of Cross-Motion/Affirmation/Exhibits 1-15	10-26
Affirmation in Opposition/Exhibits A-B	27-28

The plaintiffs commenced this medical malpractice/wrongful death action on February 4, 2016, against the named defendants alleging that, the defendants departed from accepted standards of medical, surgical, nursing, wound care and other good practices when treating the plaintiff decedent, Jodi Williams, in 2014, resulting in her sustaining severe, serious and permanent personal injuries and ultimately her death.

By Decision and Order, dated March 29, 2017, this Court granted the plaintiffs' motion for a default judgment against the defendants, Ogedi Ohajekwe, M.D. ("Dr. Ohajekwe") and Westchester Surgery, P.C. On July 20, 2017, Dr. Ohajekwe hired an

attorney to represent him in this action and on August 8, 2017 he filed for bankruptcy. On September 29, 2017, Dr. Ohajekwe's attorney filed a motion to vacate the default, but subsequently withdrew that motion on October 10, 2017, purportedly due to the bankruptcy. On May 18, 2018, the bankruptcy court issued an Order of Discharge, which was filed by the plaintiffs on November 14, 2018.

Dr. Ohajekwe by his attorney now files a second motion to vacate the default judgment asserting that he has a reasonable excuse and a meritorious defense. The plaintiffs oppose the motion and file a cross-motion seeking an inquest.

In support of the motion, Dr. Ohajekwe relies upon, *inter alia*, the bankruptcy petition, the order of discharge, his affidavit, an expert affirmation and his attorney's affirmation. Dr. Ohajekwe avers that, for the past seven years he has been dealing with a very difficult family situation, in that, his 17 year old son has been suffering from a serious medical condition, which has required multiple surgeries in 2015 and 2016. Dr. Ohajekwe states that he is a divorced father of three and his son's medical issues have been a major source of stress, anxiety and distraction, and at the same time he was struggling financially and eventually had to declare bankruptcy. As a result, he has been unable to appear in this action.

Dr. Ohajekwe also submitted the affirmation of Thomas Cerabona, M.D., who opined that the surgery that Dr. Ohajekwe performed on the decedent on January 31, 2014, was indicated and appropriate. Dr. Cerabona opines that Dr. Ohajekwe appropriately requested medical clearance from the patient's primary care physician and ordered appropriate blood work. Dr. Cerabona states that the surgery was

performed properly with no complications. Dr. Cerabona opines that Dr. Ohajekwe's post-operative care complied with the accepted standards of care in all respects. And the patient was appropriately discharged on February 1, in a stable condition, after being closely monitored overnight. Dr. Cerabona states that Dr. Ohajekwe followed up on February 7, 2014, and noted that Ms. Williams was feeling well, had no complaints and wished to return to work immediately.

The plaintiff opposes the motion arguing that Dr. Ohajekwe and Westchester Surgery, P.C. have not set forth a reasonable excuse for their default and the plaintiffs seek an inquest on the issue of damages.

Discussion

'CPLR 5015(a) provides that a party may be relieved from a judgment on the ground of, among others, "excusable default" (*Eugene Di Lorenzo, Inc v A.C. Dutton Lumber Co., Inc.*, 67 NY2d 138, 141 [1986]). Specifically, CPLR 5015(a)(1) entitles a defendant to relief from a default judgment on the ground of excusable neglect if the motion is made within one year from the date that defendant is served with a copy of the judgment. Relief upon this ground requires a showing of "both a reasonable excuse for [the defendant's] default and a meritorious defense" (*Hageman v Home Depot U.S.A., Inc.*, 25 AD3d 760, 761 [2d Dept 2006]). "The determination of what constitutes a reasonable excuse for a default lies within the sound discretion of the Supreme Court", (*Star Indus., Inc. v Innovative Beverages, Inc.*, 55 AD3d 903, 904).

Upon review of all the circumstances in this case, the Court has determined that Dr. Ohajekwe has failed to proffer a reasonable excuse for his default in appearing in

this action. The plaintiffs' attorney avers that a paralegal from the office contacted Dr. Ohajekwe and advised him that his answer was due and then waited two months before filing for a default judgment. Dr. Ohajekwe failed to notify his carrier although he stated that he had and therefore, the insurance carrier has disclaimed coverage.

Dr. Ohajekwe's subsequently hired his own attorney, who filed a notice of appearance on July 20, 2017. This Court directed the parties to appear for a settlement conference on November 13, 2018 and Dr. Ohajekwe and his attorney failed to appear. Dr. Ohajekwe filed this motion to vacate after discovery has been completed and the note of issue was filed. However, Dr. Ohajekwe had an opportunity throughout this case to appear or move to vacate and failed to do so.

Furthermore, the Court notes that Dr. Ohajekwe failed to provide any type of documentation to support his claims of his son's illness and surgeries, which prevented him from participating in this action. Since, the Court has found that Dr. Ohajekwe failed to set forth a reasonable excuse for his default, there is no need for the Court to address his meritorious defense.

Accordingly, based on the foregoing, it is

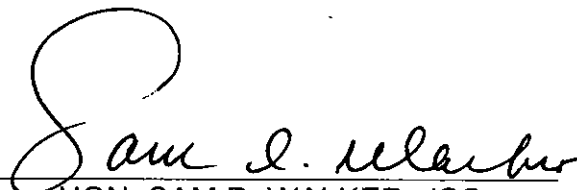
ORDERED that the motion to vacate the default judgment and return the action to the compliance part to complete discovery, is DENIED; and it is further

ORDERED that the motion for an inquest and in opposition to the motion to vacate, is GRANTED.

The parties are directed to appear before the Settlement Conference Part in Courtroom 1600 on May 14, 2019 at 9:15 a.m.

The foregoing shall constitute the decision and order of the Court.

Dated: White Plains, NY
March 29, 2019


HON. SAM D. WALKER, JSC