Edmond v Kings County Hosp. Ctr.
2019 NY Slip Op 31759(U)
June 17, 2019
Supreme Court, Kings County
Docket Number: 506311/2017
Judge: Marsha L. Steinhardt
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At an IAS Term, Part 15 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 17th day of June 2019.

PRESENT:

HON. MARSHA L. STEINHARDT,
Justice

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TATYANNA EDMOND,

Plaintiff,

DECISION AND ORDER
Index No. 506311/2017

-against-

KINGS COUNTY HOSPITAL CENTER and
NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION,

Defendant.

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The following papers numbered 1 to 4 read herein:	Papers Numbered
Notice of Motion	1
Affirmation in Opposition	2
Memorandum of Law	3
Reply	4

Upon the foregoing papers, Defendants, Kings County Hospital Center (KCH) and New York City Health and Hospitals Corporation (HHC), move for an Order, pursuant to CPLR § 3212, granting them Summary Judgment. Plaintiff opposes Defendants motion.

Background

Plaintiff, Tatyanna Edmond, commenced this medical malpractice action against Defendants claiming that they negligently treated her during her admission to KCH from February 28, 2016 through March 10, 2016, causing her injuries.

Notice of Claim was filed on May 23, 2016. This action was commenced by the filing of a Summons and Verified Complaint on March 30, 2017 and issue was joined by all Defendants. Plaintiff served a Verified Bill of Particulars on July 12, 2017.

On February 28, 2016, Plaintiff, as a pedestrian, was struck from behind by an automobile. She was transported by ambulance to KCH and evaluated in the Emergency Department (ED) around 1:09am. The initial ED note reported that Plaintiff was "...hit from behind and fell onto her left foot". Plaintiff suffered a displaced left bimalleolar ankle fracture, abrasions to her left calf, left buttocks, right hip, and right buttocks, and extensive lower extremity and lower back muscle contusions. Plaintiff was then admitted to KCH and an initial skin assessment was performed which noted that skin was intact and a Braden scale score of 18.

On March 1, 2016, an external fixation of the left ankle was performed with a plan for an open reduction and internal fixation (ORIF) once swelling decreased. On March 5, 2016, Plaintiff complained of continued pain to the lower back and swelling. An x-ray was ordered. On March 6, 2016, a lower back hematoma was noted with a hospital acquired, right buttocks stage II pressure ulcer. Ulcer treatments were put in place and Plaintiff was counseled about pressure ulcers and the importance of position change and getting out of bed.

The hospital acquired, right buttocks stage II pressure ulcer was again noted on March 7, 2016, March 8, 2016 and March 9, 2016. It was also noted on March 9, 2016 that the stage II pressure ulcer was not pressure related, however the pressure ulcer treatment remained the same. On March 10, 2016, Plaintiff was discharged from KCH.

On March 15, 2016, Plaintiff followed up in the KCH orthopedic clinic with complaints of left-sided back pain. A large hematoma was observed on Plainitffs' left buttocks which was

diagnosed as a Morel-Lavallee lesion (MLL) and she was referred to the trauma clinic for evaluation. On March 16, 2016, a CT scan showed a large left-sided buttocks collection which the radiologist stated most likely represented a hematoma. A smaller abscess of the right buttocks was also noted.

On March 23, 2016, Plaintiff underwent ORIF at KCH for the left ankle fracture and continued to follow up in the trauma and orthopedic clinics over the next two months. Plaintiff then stopped following up at KCH.

On July 22, 2016, Plaintiff presented to New York Community Hospital with persistent left buttocks pain and swelling. Physical examination revealed left buttocks swelling, tenderness, and hematoma. A CT of the pelvis and left lower extremity revealed "large gluteal subcutaneous fat oval-shaped fluid collection measuring 18 x 6 cm in size with some surrounding inflammation and some overlaying thickening predominantly in the left gluteal region extending past the midline to the medial right gluteal region as well". Irrigation and drainage procedure was performed during which fluid was aspirated and "a well-formed wall" was observed. Cultures of the fluid were negative. Plaintiff testified that because of the large hematoma, she developed scar tissue and left buttocks deformity.

Plaintiff contends that Defendants were negligent in failing to properly treat a hematoma of the left buttocks and failing to provide proper preventative skin care to the right buttocks causing her to develop a stage II decubitus ulcer to the right buttocks as well as the unfettered progression and growth of her left buttocks' hematoma, causing scarring and cosmetic deformity. Defendants contend that Plaintiff never developed pressure related injuries at KCH and that her buttock wounds were traumatic injuries caused by the motor vehicle collision and that such

injuries were appropriately diagnosed and treated by KCH during her admission.

Motion for Summary Judgment

On a motion for summary judgment, the moving party has the initial burden to provide sufficient proof, in admissible form, to enable a court to determine that it is entitled to judgment as a matter of law. If this burden is not met, the court must deny the relief sought (CPLR § 3212; *Zuckerman v. City of New York,* 49 NY2d 557 [1980]). However, once the movant on a summary judgment motion has made a prima facie showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Garnham & Han Real Estate Brokers v. Oppenheimer*, 148 AD2d 493 [1989]; *see also Zuckerman,* 49 NY2d at 562).

The essential elements of medical malpractice are (1) a deviation or departure from accepted medical practice, and (2) evidence that such departure was a proximate cause of injury (*see Holbrook v. United Hosp. Med. Ctr.*, 248 AD2d 358, 359 [2d Dept 1998]). Therefore, on a medical malpractice motion for summary judgment, a moving physician must establish, prima facie, either that there was no departure from accepted standards of medical care or that any departure was not a proximate cause of the plaintiff's injuries (*Uchitel v. Fleischer*, 137 AD3d 1111, 1112 [2d Dept 2016]; *Senatore v. Epstein*, 128 AD3d 794, 795 [2d Dept 2015]).

To sustain this burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff's bill of particulars (*Wall v. Flushing Hosp. Med. Ctr.*, 78 AD3d 1043, 1044–1045 [2d Dept 2010]; *Grant v. Hudson Val. Hosp. Ctr.*, 55 AD3d 874, 874 [2d Dept 2008]). Once this showing has been made, the burden shifts to the plaintiff to submit

evidentiary facts or materials to rebut the defendant's prima facie showing, but only "as to those elements on which the defendant met the prima facie burden" (*Harris v. Saint Joseph's Med. Ctr.*, 128 AD3d 1010, 1012 [2d Dept 2015]; *see Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "General allegations that are conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice are insufficient to defeat summary judgment" (*DiMitri v. Monsouri,* 302 AD2d 420, 421 [2003] [citations omitted]; *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 NY2d 966 [1988]). Further, "[s]ummary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions . . . [because] such credibility issues can only be resolved by a jury" (*Feinberg v. Feit*, 23 AD3d 517, 519 [2d Dept 2005] [internal citations omitted]).

Defendants Motion for Summary Judgment

In support of their motion, Defendants submitted an expert affirmation from Philip S. Barie, MD, MBA, a physician Board Certified and thrice recertified in Surgery and Surgical Critical Care by the American Board of Surgery. Dr. Barie opines that the treatment provided by KCH to Plaintiff conformed in all respects to good and accepted medical practice and the departures alleged by Plaintiff were not a proximate cause of her injuries. Specifically, Dr. Barie opines that Plaintiff never developed pressure sores during her admission to KCH or while following up at KCH and that the injuries to her buttocks were caused by the motor vehicle collision trauma, not any alleged malpractice by the Defendants.

Dr. Barrie opines that Defendants diagnosis of a MLL on Plaintiffs left buttocks was appropriate and accurate within the standard of care and was caused when Plaintiff was struck by the automobile. Dr. Barrie states that "a MLL is generally diagnosed in the days, weeks, or

months after trauma occurs" and "[a]s such, it was entirely consistent with the known natural history of such injuries that Ms. Edmond's MLL did not become evident until approximately two weeks after she was struck by the taxi". Dr. Barrie further states that "the finding of a 'well-formed wall' is consistent with the original diagnosis of MLL". It is also Dr. Barrie's opinion that "there was no medical intervention available between the accident and diagnosis of the MLL that would have prevented the development of the MLL".

As for the right buttocks wound, Dr. Barie opines that it "was not a pressure wound, but rather the result of the underlying trauma sustained when a taxi struck Ms. Edmond." Dr. Barie argues that Nurse Arthur, a nurse specializing in wound care, supports his opinion because she documented the wound as "not pressure related". Further, Dr. Barie opines that this small, right buttocks wound likely opened due to scratching or itching by Plaintiff.

In opposition, Plaintiff submitted an expert affirmation from a physician who is a Diplomate of the National Board of Medical Examiners and American Board of Internal Medicine, Fellow of the American College of Chest Physicians. Plaintiffs' expert opines that Defendants departed from good and accepted medical practice by failing to "offload pressure from the left buttocks which was a proximate cause of the stage II decubitus ulcer which developed on the right buttock". Plaintiffs' expert states that Defendants "failed to address the repeated and persistent complaints of pain and swelling of the left buttocks and failed to properly treat the large, developing left buttocks hematoma". Plaintiffs' expert further states that Defendants "failed to appreciate the clinical significance of the left buttocks injury as it related to proper skin care of the right buttocks, including the over-compensation pressure effect from the left buttocks".

Plaintiffs' expert rebuts Dr. Baries' affirmation. Specifically, Plaintiffs' expert states that Dr. Baries' opinion that the pressure ulcer to the right buttocks was opened "likely due to scratching or itching by Ms. Edmond's" is pure speculation. Plaintiffs' expert further states that Dr. Baries' analysis of the hematoma of the left buttocks "fails to comprehend the need to drain the hematoma at an early stage as well as the over-compensation effect to the right buttocks, which created ample pressure to develop the stage II ulcer while admitted to the hospital". Further, Plaintiffs' expert opines that the skin breakdown of the right buttocks is consistent with pressure related skin breakdown as hospital-acquired pressure ulceration.

Here, the parties clearly present conflicting medical expert opinions. This Court, therefore, finds that the conflicting expert opinions presented herein sufficiently establish the existence of questions of fact that require a jury's determination.

Accordingly, it is

ORDERED, that Defendants motion for summary judgment is denied

This constitutes the opinion, decision and Order of this Court.

ENTER,

HON. MARSHA L. STEINHARDT
J.S.C.