

Gandler v Cobble Hill Health Ctr., Inc.

2019 NY Slip Op 32132(U)

July 19, 2019

Supreme Court, New York County

Docket Number: 451992/2017

Judge: William Franc Perry

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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INDEX NO. 451992/2017

DEBRA GANDLER, AS ADMINISTRATOR OF THE ESTATE OF
GODEL GANDLER

MOTION DATE 11/15/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

COBBLE HILL HEALTH CENTER, INC.,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83

were read on this motion to/for PARTIAL SUMMARY JUDGMENT

Upon the foregoing documents, the motion is denied.

Plaintiff commenced this medical malpractice action alleging that defendant's negligent conduct violated the Public Health Law causing the death of her father Godel Gandler ("decedent").

Mr. Gandler was admitted to New York Presbyterian Hospital (NYPH) on January 23, 2013 from an outpatient facility for a left leg ulceration and fluid overload. He was discharged from NYPH on January 29, 2013. The discharge instructions from NYPH noted that he had follow up appointments with other physicians. On January 29, 2013, the Mr. Gandler was admitted to defendant Cobble Hill for short term sub-acute rehabilitation. Upon admission he was noted to be alert and verbally responsive. He was also noted to have a history of falls. A Fall Risk Assessment Tool was completed upon his admission noting him to be at a high risk for falls.

A risk for falls comprehensive care plan was initiated based on his fall risk score. The care plan reflected a fall risk score of 16. Interventions on the care plan included placing the bed in the lowest position, placing items within reach, anticipating the needs of the resident, supervising activities and monitoring for signs of agitation. It was noted that Mr. Gandler tried to get out of bed at times and was redirected. It was also noted that he was agitated.

On February 1, 2013 at 11:05 pm, Mr. Gandler was found lying on the floor next to the clothes closet, with a broken nose. He was then transferred to Long Island College Hospital, where he died. The death certificate indicated that the cause of death was cardiac arrest due to congestive heart failure and hypertension.

Plaintiff alleges that defendant was negligent in the nursing rehabilitation and care rendered to Mr. Gandler by failing to take the necessary precautions to prevent him from falling and fracturing his nose while he was a resident at the defendant's nursing home facility. Plaintiff contends that Mr. Gandler's fall and injuries sustained in the fall were contributing causes to his death on February 3, 2013.

Plaintiff also alleges that during Mr. Gandler's stay at defendant's facility, they failed to recognize Mr. Gandler's propensity to fall and injure himself; failed to take proper cognizance of his history of falls, diminished mental status and diminished physical strength; failed to prevent Mr. Gandler from falling and fracturing his nasal bone and anterior maxilla; failed to perform a proper "Fall Risk Assessment"; failed to institute a proper Fall Prevention plan; failed to modify the care plan to better fit Mr. Gandler's needs; failed to modify the care plan to better fit Mr. Gandler's needs; failed to properly train and supervise its personnel, particularly its CNAs, nursing staff and nursing supervisors and/or other personnel concerning the prevention of

resident falls; and failed to have adequate staffing level of nurses, nurses' assistants and other personnel to ensure prompt and proper care to Mr. Gandler.

Plaintiff's expert asserts that the violations of the decedent's rights causing the fall were a precipitating factor and proximate cause of the unstable vital signs including elevated blood pressure and reduced oxygen saturation leading to cardiac arrest and his death. The expert also states that the decedent did not receive proper care at defendant's facility, specifically adequate fall protection and maintaining adequate staffing, which was a proximate cause of defendant's fall and demise. Plaintiff states that defendant's moving papers do not address any of the documented "failures" of Cobble Hill Nursing Home to provide adequate fall protection to Mr. Gandler.

Defendant asserts that it is entitled to partial summary judgment on the medical malpractice action, as a matter of law, as there is no nexus between the decedent's demise and his fall at defendant's facility. Defendant states that plaintiff expert's ultimate assertions are speculative and/or not supported by any evidentiary foundation and should be given no probative force by this Court. Defendant also claims that punitive damages as defined under the Public Health Law are not warranted under the facts of this case, as there was no indication of any intentional actions that would warrant such damages.

Defendant argues that this motion does not concern liability but is one for partial summary judgment regarding wrongful death as well as punitive damages under the Public Health Law. Plaintiff claims that Mr. Gandler was "deprived of his rights and benefits" as a resident of defendant and that there is speculation as to whether there was a cause of death other than cardiac arrest due to or as a consequence of preexisting congestive heart failure and hypertension.

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law. *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986). The party moving for summary judgment must make a showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form demonstrating the absence of material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 (1985). A failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *Smalls v. AJI Indus. Inc.*, 37 AD3d 324 (2007). Once a prima facie showing has been made, however, “the burden shifts to the nonmoving party to produce proof in evidentiary form sufficient to establish the existence of material issues of fact that require a trial for resolution. *Giuffrida v. Citibank Corp.*, 100 NY2d 81 (2003


When deciding a summary judgment motion, the Court’s role is solely to determine if any triable issues exist, not to determine the merits of any such issues. *Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395 (1957). The Court views the evidence in the light most favorable to the nonmoving party and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence. *Negri v. Stop & Shop, Inc.*, 65 NY2d 625 (1985). If there is any doubt as to the existence of a triable issue, summary judgment should be denied. *Rotuba Extruders Inc. v Ceppos*, 46 NY2d 500 (1978).

In a medical malpractice action, the elements of proof are, (a) a deviation from the accepted standard of medical care and (b) evidence that this departure proximately caused the alleged injury or damage. *River v. Kleinman* 16 NY3d 757 (2011).

In the case at bar, there are issues of fact regarding the circumstances surrounding Mr. Gandler’s death. Specifically, defendant admits that its documentation of Mr. Gandler’s stay lacks consistency. Defendant’s expert Dr. Goldberg concedes that there is conflicting

documentation in the medical records concerning a bed or chair alarm and simply concludes that Mr. Gandler was properly monitored without addressing any of the nursing home's own records indicating the lack of interventions. Questions regarding defendant's poor record keeping must be evaluated by the trier of fact to determine what actually happened on the date of Mr. Gandler's fall. There are also issues related to whether there is a connection between the fall and Mr. Gandler's death. In addition, there is an issue as to whether defendant complied with Public Health Law 2801(d) in its care and treatment of Mr. Gandler. Defendant has not come forward with any proof that the defendant did not violate the Public Health Law. Absent such proof, summary judgment may not be granted.

This is the decision and order of the Court.

<u>7/19/2019</u> DATE			 W. FRANC PERRY, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> REFERENCE