

Karlsson v Westchester County Health Care Corp.
2019 NY Slip Op 34724(U)
December 19, 2019
Supreme Court, Westchester County
Docket Number: Index No. 50250/2016
Judge: Sam D. Walker
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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
WESTCHESTER COUNTY
PRESENT: HON. SAM D. WALKER, J.S.C.

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JAMIE-ANN KARLSSON and MICHAEL B. KARLSSON II, DECISION & ORDER
Index No. 50250/2016
Plaintiff, Motion Sequence 10

-against-

WESTCHESTER COUNTY HEALTH CARE CORP.,
PUTNAM HOSPITAL CENTER, EOS MEDICAL GROUP,
P.C., STUART ROBERTS, M.D., PUTNAM IMAGING
ASSOCIATES, P.C., MASAHI KAI, M.D., DAVID
SPIELVOGEL, M.D.,
Defendants.

-----X
The following papers were read on the motion for summary judgment dismissing the complaint, pursuant to CPLR 3212:

Notice of Motion/Affirmation/Exhibits A-W 1-25

Factual and Procedural Background

The plaintiffs commenced this medical malpractice action alleging that EOS Medical Group ("EOS") deviated from the accepted standards of medical care, proximately causing the plaintiff, Jamie-Ann Karlsson ("Karlsson") to suffer injuries. The plaintiffs' bill of particulars alleges that PA Schajer and Dr. Dittrich, employees of EOS, misdiagnosed Karlsson with a Stanford Type "A" ascending aortic dissection and relying on the interpretation of a single CT angiogram, transferred Karlsson to Westchester Medical Center without first ordering further testing to either confirm or rule out the diagnosis.

EOS now files the instant motion for summary judgment to dismiss the complaint arguing that, as emergency medicine practitioners, PA Schajer and Dr. Dittrich, properly relied on Dr. Blanco's radiology diagnosis in determining that Karlsson required immediate transfer to Westchester Medical Center for cardiothoracic surgery services. In support of its motion, EOS relies upon, *inter alia*, the affirmations of Timothy Haydock, M.D., Karl H.

Kreiger, M.D., the affidavit of Lawrence Schek, M.D., the deposition transcripts, medical records, an attorney's affirmation and copies of the pleadings and other court documents.

Discussion

"[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact," (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when such a showing has been made does the burden shift and the opposing party must set forth evidentiary proof establishing the existence of a material issue of fact (see e.g. *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The parties' competing contentions are viewed in the light most favorable to the party opposing the motion (see *Marine Midland Bank, N.A. v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 [2d Dept 1990]).

"In order to establish the liability of a physician for medical malpractice, a plaintiff must prove that the physician deviated or departed from accepted community standards of practice and that such departure was a proximate cause of the plaintiff's injuries" (see *Stukas v Streiter*, 83 AD3d 18, 23 [2d Dept 2011]; see also *Aronov v Soukkary*, 104 AD3d 623). "[A] defendant physician seeking summary judgment must make a prima facie showing that there was no departure from good and accepted medical practice or that the plaintiff was not injured thereby" (*Id.*). In opposition, a plaintiff must submit evidentiary facts or materials to rebut the defendant's prima facie showing, so as to demonstrate the existence of a triable issue of fact. (*Id.*) Typically, the moving party's prima facie case is established by affidavits or affirmations submitted by expert medical professionals and the opposing party can only show genuine issues of material facts by offering their own expert medical testimony countering that of the moving party, (see *Kambat v St. Francis Hosp.*, 89 NY2d 489, 496 [1997]).

Bestowing the benefit of every reasonable inference to the party opposing the motion (*Boyce v. Vasquez*, 249 A.D.2d 724, 726 [3d Dept., 1998]), the Court finds that EOS has met its prima facie burden of establishing its entitlement to summary judgment and demonstrated that its employees did not deviate from good and accepted medical practice in the treatment of Karlsson (see *Dandrea v Hertz*, 23 AD3d 332 [2d Dept 2005]).

Dr. Haydock, board certified in emergency medicine, affirmed, to a reasonable degree of medical certainty, that the record establishes that the care and treatment provided to Karlsson by PA Schajer and Dr. Dittrich, comported with good and accepted standards of emergency medicine practice and did not proximately cause any injury to Karlsson. Dr. Haydock opines that, in light of Karlsson presenting complaints and radiology diagnosis with an ascending aortic dissection, which is a potentially fatal condition, and the inability of the physicians at Putnam Hospital Center to treat a patient diagnosed with this condition, PA Schajer and Dr. Dittrich acted appropriately in immediately arranging for Karlsson to be transferred to Westchester Medical Center to be treated.

Dr. Kreiger, board certified in cardiothoracic surgery, opined that good and accepted practice mandated immediate transfer of the patient to Westchester Medical Center and it was the responsibility of the accepting physician to exercise his judgment as to whether to perform additional testing. Dr. Kreiger opined that the staff acted in a manner consistent with the standard of care and it would be inconsistent with the standard of care to perform additional studies in the presence of a possible dissection.

EOS has made out a prima facie case for entitlement to summary judgment. The burden now shifts to the plaintiffs to submit evidentiary facts or materials to rebut the prima facie showing, so as to demonstrate the existence of a triable issue of fact.

The plaintiffs did not oppose the motion, therefore, they have failed to demonstrate the existence of any issues of fact to rebut EOS' prima facie showing.

Accordingly, based on the foregoing, EOS' motion for summary judgment is granted and it is

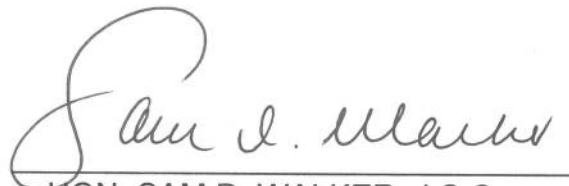
ORDERED that the motion for summary judgment is granted and it is further

ORDERED that the action is dismissed as against EOS Medical Group, P.C.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York
December 19, 2019

ENTER


HON. SAM D. WALKER, J.S.C.