

Karlsson v Westchester County Health Care Corp.
2019 NY Slip Op 34728(U)
December 19, 2019
Supreme Court, Westchester County
Docket Number: Index No. 50250/2016
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
WESTCHESTER COUNTY
PRESENT: HON. SAM D. WALKER, J.S.C.**

-----X
JAMIE-ANN KARLSSON and MICHAEL B. KARLSSON II,

Plaintiff,

DECISION & ORDER
Index No. 50250/2016
Motion Sequence 7

-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-T

1-21

Factual and Procedural Background

The plaintiffs commenced this medical malpractice action against the defendant, Putnam Imaging Associates, P.C. ("PIA"), alleging negligence in misdiagnosing the plaintiff, Jamie Ann Karlsson ("Karlsson"), with an ascending thoracic aortic aneurism, based upon a single pulmonary angio CT scan with IV nonionic contrast, which was ordered to rule out pulmonary embolism.

The plaintiffs filed a verified bill of particulars alleging that PIA failed to recommend further diagnostic testing, failed to recommend a repeat CT scan timed for contrast to fill the aorta, failed to recommend a transesophageal echocardiogram or MRI, failed to heed the plaintiff's demand for further testing, administered morphine to Karlsson without her consent and misinformed Karlsson as to her true condition. The plaintiffs also allege that PIA ignored Karlsson's lack of signs and symptoms of an ascending aortic dissection, and

thereby improperly helped to facilitate her transfer to Westchester Medical Center without her consent.

PIA now files the instant motion for summary judgment arguing that Dr. Barbara Blanco's interpretation of the July 11, 2013 CT angiogram of Karlsson's chest was within good and accepted practice of radiology. In support of its motion, PIA relies upon the affidavit of Scott G. Luchs, M.D., deposition transcripts, the 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 PIA has met its prima facie burden of establishing his entitlement to summary judgment and demonstrated that its physician 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. Luchs, a board certified radiologist, states, to a reasonable degree of radiologic certainty, that he agrees with the interpretation by Dr. Blanco at PIA, of the chest CT angiogram taken of Karlsson. Dr. Luchs states that the study was done to rule out a pulmonary embolism and focused on visualizing Karlsson's pulmonary arteries. Dr. Luchs states that since the study was not cardiac gated, there was a significant amount of artifact created in the ascending aorta, which mimicked the appearance of an aortic dissection, because artifact can sometimes make it appear as if something is present, when it actually is not present. Dr. Luchs states that it was well within good and accepted practice of radiology for Dr. Blanco to interpret the study as consistent with an aortic dissection, which is a life threatening situation and he agrees with the decision by the Putnam Hospital Center physicians to transfer Karlsson emergently to Westchester Medical Center, where she could receive the level of life saving care that Putnam Hospital Center could not provide.

Dr. Luchs states that a cardiac gated study, to time the pulsation of the heart was not a test available to Putnam Hospital Center, because it did not have the technology for such a study. Dr. Luchs further states that, a Sandord Type A dissection of the thoracic aorta is a critical emergency and every second matters to the patient's survival. Performing another study to confirm a diagnosis, which could have led to Karlsson's death, would have been a waste of time. Similarly, recommending a transesophageal echocardiography to confirm the diagnosis of the aortic dissection, which was the standard for diagnosis prior to CT scans, would also have been a waste of time, since Karlsson could have died if she did have the aortic dissection. Dr. Luchs opines that an MRI would also have been time consuming and not recommended under the circumstances.

Based on the foregoing, the Court finds that PIA 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 PIA's prima facie showing.

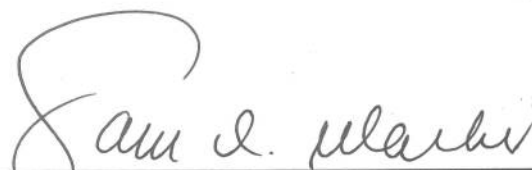
Accordingly, based on the foregoing, PIA's motion for summary judgment is granted and it is

ORDERED that the motion for summary judgment is granted and it is further ORDERED that the action is dismissed as against Putnam Imaging Associates, P.C..

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

Dated: White Plains, New York
December 19, 2019

ENTER

A handwritten signature in cursive script, reading "Sam D. Walker", is written over a horizontal line.

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