

Dwyer v Montefiore New Rochelle Hosp.

2019 NY Slip Op 34752(U)

October 3, 2019

Supreme Court, Westchester County

Docket Number: Index No. 65537/2016

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

FILED: WESTCHESTER COUNTY CLERK 10/04/2019 09:46 AM

INDEX NO. 65537/2016

NYSCEF DOC. NO. 205

RECEIVED NYSCEF: 10/03/2019

SUPREME COURT : STATE OF NEW YORK
IAS PART WESTCHESTER COUNTY
PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

To commence the statutory time period 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.

-----X
MAURICE DWYER and MICHAEL DWYER
Individually and as Administrators of the Estate of
MICKIE H. DWYER,

Plaintiffs,

DECISION & ORDER

-against-

Index No: 65537/2016

MONTEFIORE NEW ROCHELLE HOSPITAL;
SCHAFER EXTENDED CARE CENTER; SOUND
SHORE MEDICAL CENTER OF WESTCHESTER
A/K/A NEW ROCHELLE HOSPITAL ASSOCIATION;
MONTEFIORE MOUNT VERNON HOSPITAL;
MONTEFIORE COMPREHENSIVE HEALTH
SERVICES, INC. a/k/a MONTEFIORE HEALTH PLAN,
INC.; MONTEFIORE HEALTH SYSTEM, INC.;
MELISSA ALETA, M.D.; ROSIE LYO, M.D.; EMILY
BIBIT, R.N.; JOHN DOE No.1 through JANE DOE No.
100," inclusive, the name of the last 100 defendants being
fictitious, intended to designate persons, presently
unknown to plaintiffs, having involvement in the action
alleged herein.,

Motion Return Date:
June 21, 2019
Motion Seq. #4

Defendants.

-----X
The following papers (e-filed documents 82-112; 132-141; 193) were read on the motion by the defendants Montefiore New Rochelle, Melissa Aleta, M.D. and Rosie Lyo, M.D., for an order granting summary judgment dismissing the complaint insofar as asserts a cause of action against them.

Notice of Motion, Affirmation (Exhibits A-R)
Affirmation in Opposition (Exhibits1-7)
Reply Affirmation

Upon reading the foregoing papers it is

ORDERED the motion is granted, and so much of the complaint as asserts as cause of action against the defendants, Montefiore New Rochelle, Melissa Aleta, M.D. and Rosie Lyo, M.D., is dismissed.

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INDEX NO. 65537/2016

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Mickie Dwyer, the father of plaintiffs, Maurice Dwyer and Michael Dwyer, was admitted to Montefiore New Rochelle Hospital on October 7, 2014, with complaints of swelling and pain in his lower left leg. Upon admission Mr. Dwyer was 80 years old with a medical history of congestive heart failure, kidney disease, hypertension, heart disease, diabetes, hypothyroidism and peripheral vascular disease. His surgical history included a right leg amputation below the knee and coronary artery bypass graft surgery.

On October 16, 2014, Mr. Dwyer was discharged from Montefiore and admitted to Schaffer Extended Care Center, a long term care facility.

On October 23, 2014, Mr. Dwyer was again admitted to Montefiore because he had developed an infection.

On November 4, 2014, Mr. Dwyer was discharged from Montefiore and admitted to Glen Island Nursing Home.

On November 13, 2014, Mr. Dwyer was again admitted to Montefiore due to an altered mental state. At Montefiore Mr. Dwyer's altered mental state was determined to be caused by hypercapnic respiratory failure.

On November 20, 2014, Mr. Dwyer was discharged back to Schaffer Extended Care Center.

On November 23, 2014, Mr. Dwyer vomited while being fed. A Code Blue was called and despite efforts to revive him, Mr. Dwyer passed away. The death certificate states the immediate cause of death as aspiration of gastric contents with coronary artery disease as a contributing factor.

Plaintiffs sue alleging medical malpractice and negligence.

Following completion of discovery Montefiore New Rochelle, Melissa Aleta, M.D. and Rosie Lyo, M.D. move for an order granting summary judgment dismissing the complaint insofar as it asserts a cause of action against them.

"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. A defendant moving for summary judgment in a medical malpractice case must demonstrate the absence of any material issues of fact, with respect to at least one of these elements. Where a defendant makes a prima facie showing on both elements, the burden shifts to the plaintiff to rebut the defendant's showing by raising a triable issue of fact as to both the departure element and the causation element. Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions. General and conclusory allegations of medical malpractice, however, unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat a defendant physician's summary judgment motion" (*Gilmore v Mihail*, 174 AD3d 686, 687 [2d Dept 2019]).

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INDEX NO. 65537/2016

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Here, defendants, Montefiore New Rochelle, Melissa Aleta, M.D. and Rosie Lyo, M.D., established their prima facie entitlement to judgment as a matter of law by demonstrating through the submission of an expert affirmation that they did not deviate from acceptable medical care in their treatment of Mr. Dwyer.

In opposition, plaintiffs failed to raise a triable issue of fact. Plaintiffs' experts failed to identify any medical records or other evidence in the record which indicate that the defendants, Montefiore New Rochelle, Melissa Aleta, M.D. and Rosie Lyo, M.D., deviated from acceptable medical practice. The opinions expressed by plaintiffs' experts as to any purported deviation are conclusory, speculative and unsupported by the evidence in the record.

ENTER,

Dated: White Plains, New York
October 3, 2019


HON. JOAN B. LEFKOWITZ, J.S.C.