

<b>Eng v NYU Hosps. Ctr.</b>
2020 NY Slip Op 31370(U)
May 14, 2020
Supreme Court, New York County
Docket Number: 156810/2014
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12EFM

*Justice*

-----X

DOROTHY ENG,

Plaintiff,

- v -

NYU HOSPITALS CENTER,

Defendant.

-----X

INDEX NO. 156810/2014  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 007

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 207-228 were read on this motion for reargument.

By decision and order dated December 10, 2019, the verdict in favor of defendant was set aside, and judgment was entered in favor of plaintiff, executor of Hing May Eng (decedent), on her cause of action for false imprisonment, with a trial on damages to be held, as defendant was found as a matter of law to have intentionally, without privilege, confined decedent and that decedent was conscious of her confinement.

Now, by notice of motion, defendant moves pursuant to CPLR 2221 for an order granting leave to argue, and on reargument, denying plaintiff’s motion and reinstating the judgment in favor of defendant or, in the alternative, directing a trial on the issues of “intent” and “justification.” Plaintiff opposes.

Defendant contends that whether defendant was confined is a factual determination, as demonstrated by the fact that court instructed the jury to determine whether decedent was confined. Moreover, as a jury issue, it is not reviewable by the court. It argues that as decedent was permitted to leave, albeit not in the manner she wished, she was not confined. In addition, as

decedent lacked mental capacity to participate in discharge planning and it is undisputed that it would have been unsafe for her to go home alone, defendant asserts that it was prohibited by the Public Health Law (PHL) § 2803(1)(g) and 10 NYCRR § 405.9(h)(1) from discharging her. As a matter of public policy, it also argues that hospitals should not be held liable for false imprisonment by placing restrictions on their patients' independence, as it would "encourage hospitals to choose patient independence over patient safety."

Should the jury's finding that decedent was not confined not be reinstated, defendant seeks a new trial on the issues of intent and privilege as it did not intend to confine decedent, observing that it discharged her on the second day of her admission, and that privilege is a factual issue. That the Mental Hygiene Law (MHL) does not apply, it argues, does not mean that defendant must release patients who lack the capacity to participate in discharge planning or that they can be discharged against medical advice, as such a result is "absurd." To the extent 10 NYCRR § 405.9(b)(13) prohibits the retention of a patient against their will, it conflicts with PHL § 2803(1)(g) and other provisions of 10 NYCRR § 405.9, and thus, cannot be followed. (NYSCEF 208).

In opposition, plaintiff contends that there is no issue of fact as to whether defendant confined decedent, relying on defendant's argument that it was statutorily required to detain decedent and limit the conditions of her discharge. Plaintiff denies that whether decedent was confined constitutes a question of fact. She maintains, moreover, that the evidence at trial demonstrates that defendant intended, without privilege, to confine decedent and that plaintiff was aware and did not consent to the confinement, and that the confinement was not privileged under the PHL. Rather, when a hospital believes a patient lacks capacity to make decisions, it must seek a court under the Mental Hygiene Law. (NYSCEF 211).

In reply, defendant reiterates its earlier contentions. (NYSCEF 227).

A motion for leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.” (CPLR 2221[d][2]).

To prevail on a cause of action for false imprisonment, “the plaintiff must demonstrate that the defendant intended to confine the plaintiff, that the plaintiff was conscious of the confinement, that the plaintiff did not consent to the confinement and that the confinement was not privileged.” (*Torres v Jones*, 26 NY3d 742, 759 [2016]). It is undisputed that defendant intentionally mandated that decedent remain in its custody unless she agreed to be discharged home with her daughter or a nurse service. Moreover, decedent was aware of and objected to the conditions placed on her discharge, wanting instead to be discharged home alone. Whether these undisputed facts, established at trial, constitute confinement for the purposes of false imprisonment as a matter of law depends on whether defendant’s actions were privileged. (*See* 59 N.Y. Jur. 2d False Imprisonment § 20 [“a conditional confinement from which release may be effected by compliance with a condition which the defendant has no right to impose constitutes false imprisonment”]).

Pursuant to PHL § 2803(1)(g), hospitals must adopt, make public, and provide each patient with a “statement of the rights and responsibilities of patients,” including the right to a review process for patient quality of care and complaints, the right to a discharge plan, and the right to a discharge review. In addition, it provides that “[a] patient who requires continuing health care services in accordance with a patient’s discharge plan may not be discharged until such services are secured or determined by the hospital to be reasonably available to the patient.” In conjunction with this statutory requirement, 10 NYCRR § 405.9(h) provides, in part, that

“[n]o patient who requires continuing health care services in accordance with such patient discharge plan may be discharged until such services are secured or determined by the hospital to be reasonably available to the patient.”

Defendant offers no authority for the proposition that these provisions implicitly permit it to confine a patient not capable of participating in discharge planning. The regulation defendant relies on expressly rejects that interpretation, providing that “[n]o patient 18 years of age or older shall be detained in a hospital against his will, nor shall a minor be detained against the will of his parent or legal guardian, except as authorized by law.” (10 NYCRR § 405.9[b][13]). In addition, 10 NYCRR § 405.9(b)(1) mandates that patients be advised of their rights pursuant to section 405.7, which provides, as pertinent here, that a hospital must permit patients to “refuse treatment to the extent permitted by law and to be informed of the reasonably foreseeable consequences of such refusal.” Accordingly, the prohibition set forth in the PHL on discharging patients without a discharge plan is designed to prevent hospitals from discharging those who both require and desire continuing care. It does not, however, give hospitals the authority to unilaterally deem a patient incapable of discharge planning and refuse to discharge them over their objection unless they comply with certain conditions.

That the PHL allows for a patient to refuse treatment does not render a hospital powerless when caring for an incapacitated patient. Pursuant to 10 NYCRR § 405.9(b)(13), a hospital is permitted to “persuade a patient to remain in the hospital in his/her own interest” or temporarily detain a “mentally disturbed patient for the protection of himself/herself or others, pending prompt legal determination of his/her rights.” And, when applicable, a hospital may rely upon the MHL for guidance with respect to patients lacking mental capacity to participate in their treatment. When defendant determined that decedent lacked capacity and that it was unsafe for

her to return home alone, as it responsibly did, it was statutorily required to seek a legal determination as to decedent’s rights, rather than confining her indefinitely against her wishes. Defendant offers no authority to the contrary.

To the extent that the jury instructions and verdict sheet reflect that confinement and privilege are issues of fact, both were objected to by each party (NYSCEF 217), and thus, are not law of the case. (Cf *Cornier v Spagna*, 101 AD2d 141, 145 [1st Dept 1984] [party bound to jury charge as law of case where party failed to except]).

Having failed to identify overlooked or misapprehended material factual issues as to whether decedent was confined or legal authority that such confinement was privileged, leave for reargument is not warranted.

Accordingly, it is hereby

ORDERED, that defendant’s motion for leave to reargue is denied in its entirety.

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BARBARA JAFFE, J.S.C.

5/14/2020  
DATE

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APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE