

Singleton v Morgan
2020 NY Slip Op 32731(U)
August 21, 2020
Supreme Court, Kings County
Docket Number: 504469/2016
Judge: Marsha L. Steinhardt
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.

At an IAS Term, Part MMESP7 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21st day of August 2020.

P R E S E N T:

HON. MARSHA L. STEINHARDT,
Justice

----- X
KRISTIN SINGLETON,

Plaintiff,

DECISION AND ORDER
Index No. 504469/2016

-against-

DANIEL J. MORGAN, M.D., NABIL ABDELMALAK, M.D.,
MOUNT SINAI BETH ISRAEL HOSPITAL – Brooklyn,

Defendant.

----- X

The following papers numbered 1 to 3 read herein:

Papers Numbered

Notice of Motion _____

_____ 1 _____

Memo of Law _____

_____ 2 _____

Affirmation in Opposition _____

_____ 3 _____

Reply _____

_____ 4 _____

This is a motion, brought on by Defendant, Dr. Nabil Abdelmalak, for an order granting summary judgment as to him and dismissing Plaintiff’s complaint. Plaintiff opposes said application. The Court notes that the causes of action alleged against Dr. Daniel J. Morgan and Mount Sinai Beth Israel Hospital - Brooklyn have been discontinued by Plaintiff.

This is an action sounding in medical malpractice. Plaintiff, Kristin Singleton, alleges that Defendant, Dr. Abdelmalak, an anesthesiologist, negligently administered anesthetic agents

and sedation on June 22, 2015 during a total hip replacement surgery, performed by Dr. Morgan, at Mt. Sinai Beth Israel Hospital - Brooklyn. Specifically, Plaintiff alleges that Defendant failed to administer the correct dosages of anesthetic medications in order to sedate her during surgery; failed to properly monitor her level of sedation during surgery; failed to monitor her level of consciousness during surgery; and failed to note on the June 22, 2015 Anesthesia/Pain Management record, generated by him during the surgical procedure, when and if anesthetic agents and sedatives were administered to her. Plaintiff alleges that due to Defendant's negligence she was fully awake and cognizant of the surgical procedures performed upon her. Although admitting she suffered no pain during the procedure, she claims to have been "traumatized" because she heard and sensed everything that took place during the surgery. At the oral argument of this motion, the parties indicated that Plaintiff suffers from Post-Traumatic Stress Disorder, caused by her experience in the Operating Room.

In support of his application, Defendant submits the affirmation of Dr. David Albert, a physician board certified in anesthesia, with a focus on anesthesia in orthopedic cases. Dr. Albert opines that the anesthesia plan outlined by Defendant, at the time of the surgery, conformed to Plaintiff's history, consisting of co-morbidities (asthma) and medications and her social history (addictions). The decision to use spinal anesthesia was, according to Dr. Albert, both advantageous to Plaintiff and preferable, based on her history. In a patient, such as Plaintiff, who suffered from asthma, the use of a general anesthetic would have been risky in terms of respiratory issues. The expert further states that the total amount of Propofol administered to Plaintiff (200 mg) was appropriate for her. Had this been administered in one dose, combined with the other drugs (Fentanyl and Versed), she would have been over sedated and not under sedated, the claim that is the gravamen of this lawsuit. In addition, Plaintiff's

allegation that Defendant did not administer the anesthetic correctly is belied by the fact that she testified she was numb from the waist down until much later on the day of the procedure. Dr. Albert refers to the anesthesia record, the surgical record, and the PACU record as all indicating that the Plaintiff was sedated during and after the hip replacement. That were the anesthesia level inadequate, Plaintiff would have been agitated and uncomfortable during the operation. In sum and substance, Dr. Albert expresses his opinion that Defendant administered the anesthesia to Plaintiff on June 22, 2015 within acceptable standards of medical (anesthesiology) practice.

In opposition, Plaintiff submits a redacted affirmation from the Director of the Department of Anesthesiology and Pain Management at the Brooklyn Veteran's Administration Hospital, who is also an attending anesthesiologist at Methodist Hospital. After reading this affirmation, the Court can unequivocally state that if she (the Court) was in need of a record keeper, she would not choose Defendant to fill the bill. However, the affirmation does not specify what the medical departures allegedly committed by Defendant consist of. Bad record keeping is not tantamount to malpractice. The document completely ignores the opinion advanced by Dr. Albert, that if the entire dose of Propofol was administered at the commencement of the surgical procedure, Plaintiff would have been over medicated, contrary to the claim. In addition, the affirmation is totally silent as to the connection between Plaintiff's alleged experience in the operating room and the damages she is now claiming (PTSD). It is this Court's opinion that the expert affirmation submitted by Plaintiff is vague, conclusory and fails to raise a triable issue of fact.

“[E]xpert opinions that are conclusory, speculative, or unsupported by the record are insufficient to raise triable issues of fact” (*Feng Xie v New York City Health and Hospitals Corporation*, 2020 N.Y. Slip Op. 00403 [2d Dept 2020], quoting *Lowe v. Japal*, 170 AD3d 701,

702 [2d Dept 2018]). Plaintiff's expert was speculative and conclusory (*see Feng Xie v New York City Health and Hospitals Corporation*, 2020 N.Y. Slip Op. 00403). In addition, Plaintiff's expert affirmation did not adequately controvert the opinion asserted by Defendant's expert (*see id.*).

Accordingly, Defendant's motion is granted in its entirety and the above action, currently pending against Dr. Nabil Abdelmalak, is dismissed.

This constitutes the opinion, decision and order of this Court.

ENTER,



HON. MARSHA L. STEINHARDT
J.S.C.