

<b>Martino v Montefiore Med. Ctr.</b>
2020 NY Slip Op 35107(U)
April 30, 2020
Supreme Court, Westchester County
Docket Number: Index No. 70480/2017
Judge: Terry Jane Ruderman
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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  
COUNTY OF WESTCHESTER.

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KARENAAN MARTINO as Executrix of the Estate of  
JOAN R. MADDI, a/k/a JOAN RHODA MADDI,  
deceased,

DECISION and ORDER

Plaintiff,

Motion Sequence No. 2

-against-

Index No. 70480/2017

MONTEFIORE MEDICAL CENTER,

Defendant.

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RUDERMAN, J.

The following papers were considered in connection with the motion of defendant Montefiore Medical Center for an order pursuant to CPLR 3212 granting it partial summary judgment based on the lack of causation for certain of the claimed injuries to plaintiff's decedent:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Exhibits A - Q	1
Affirmation in Opposition	2
Reply Affirmation	3

This is a medical malpractice action arising from the care and treatment provided by defendant Montefiore Medical Center to plaintiff's decedent, Joan Maddi, then 87 years old, following hip replacement surgery she underwent on October 17, 2016. Plaintiff claims that Maddi was negligently prescribed and administered postoperative Dilaudid after the surgery, allegedly causing her to suffer, inter alia, acute hypoxic failure, cardiac arrest, and 17 days later, a stroke.

This action was commenced by Joan Maddi on December 14, 2017, and depositions of the parties had been completed by the time of Maddi's death on May 12, 2019. Letters testamentary were issued to her daughter, Karenaan Martino, on December 5, 2019.

In moving for partial summary judgment, defendant Montefiore does not challenge plaintiff's claim that Maddi was given an overdose of opioids on the evening of October 17, 2016, and that as a result she experienced acute hypoxic failure and aspiration pneumonia. Rather, it contends that plaintiff cannot connect the alleged departures by the hospital to causation of the stroke on November 3, 2016. It relies on plaintiff's medical records, the depositions of the parties and the affidavit of board-certified neurologist, Dr. Stanley Tuhrim, who opines to a reasonable degree of medical certainty that the cerebral vascular accident ("CVA") – the stroke – suffered by Maddi, has no relation to the medication she was given on October 17, 2016. Specifically, Dr. Tuhrim asserts that to the extent the decedent's blood pressure was slightly low on October 17, 2016 at 11:33 p.m. and on October 19, 2016, it was nevertheless stable, and not capable of causing a CVA via hypotension. Dr. Tuhrim notes that the decedent's documented blood pressure was consistently normal from October 20, 2016 through her discharge on October 25, 2016, and that any transient hypotension was medically insignificant and not of the severity necessary to cause a CVA.

In opposition, plaintiff submits the affirmation of its expert physician, who is board-certified in Critical Care Medicine, who is familiar with the standards of good and accepted medical practice with regard to the causes of cerebral vascular accidents. Although plaintiff's expert agrees with defendant's expert that Maddi did not suffer her CVA until November 3, 2016 at Providence Rest, and that the CVA was not due to "hypotension" or "hypoperfusion," plaintiff's expert nevertheless concludes that Maddi's overdose, the immediate treatment and the

resulting conditions, caused her stroke 17 days later. Noting that before the hip surgery Maddi had been an extremely healthy 87-year old woman who played tennis three times a week, and that she had no prior history of deep vein thrombosis, stroke, or other neurological abnormality, plaintiff's expert maintains that the cardiac depression, resuscitation, respiratory hypoxia, intubation, aspiration pneumonia, and blood transfusion to treat anemia, which all resulted from the overdose, increased Maddi's risk of stroke.

Plaintiff's expert explains that pneumonia is well known to increase the risk of stroke for up to one month, due to infection, inflammation, debilitation, and the increased risk of clots. According to plaintiff's expert, Maddi's aspiration pneumonia caused inflammation, weakness, and immobility. The expert notes that Maddi's debilitation was continuing and ongoing at the time she was transferred from Montefiore to Providence Rest on October 25, 2016, observing that on that date the records list her as non-ambulatory, needing two assistants to be transferred, and extensive assistance even for bed mobility. In contrast to defendant's suggestion that Maddi's non-ambulatory status was related to the hip surgery, according to Maddi's surgeon, her rehabilitation should have progressed by that point to her being able to walk on her own.

Maddi's condition continued to further deteriorate thereafter, according to plaintiff's expert, in that by October 31st she was still nonambulatory, was suffering from stasis edema, and experiencing depression, fatigue and variable intake, with difficulty swallowing food and reduced breath sounds bilaterally. The expert asserts that the critical illness and worsening debilitation, sequelae of the overdose, increased the risk of, and contributed to causing, the stroke.

In reply, counsel for Montefiore suggests that the ultimate assertions of plaintiff's expert are speculative or unsupported by any evidentiary foundation.

### Discussion

"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" (*Hayden v Gordon*, 91 AD3d 819, 820 [2d Dept 2012], quoting *DiMitri v Monsouri*, 302 AD2d 420, 421 [2d Dept 2003]). "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" (*DiLorenzo v Zaso*, 148 AD3d 1111, 1112 [2d Dept 2017] [internal quotation marks and citation omitted]). Where a defendant makes the requisite prima facie showing, "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" (*Stukas v Streiter*, 83 AD3d 18, 25 [2d Dept 2011]).

"Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions" (*Feinberg v Feit*, 23 AD3d 517, 519 [2d Dept 2005]), although "[g]eneral and conclusory allegations of medical malpractice, . . . unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat a defendant physician's summary judgment motion" (*Myers v Ferrara*, 56 AD3d 78, 84 [2d Dept 2008]).

With the affidavit of Dr. Tuhim and the medical records, defendant made the necessary prima facie showing that the undisputed departure was not a proximate cause of Maddi's stroke. However, plaintiff successfully rebutted defendant's showing by raising a triable issue of fact on the causation issue. The submitted expert affirmation established that plaintiff's expert was qualified to render an opinion regarding the causation of Maddi's stroke following the overdose 17 days earlier, and further, the affirmation establishes that the expert's conclusion was reached

upon consideration of specific factors in the medical records, as well as his or her own knowledge. The affirmation was therefore sufficient to demonstrate the existence of issues of fact, to defeat the motion for partial summary judgment (*see Allone v University Hosp. of New York Univ. Med. Ctr.*, 235 AD2d 447, 448 [2d Dept 1997]).

Accordingly, it is hereby

ORDERED that defendant Montefiore's motion for partial summary judgment is denied, and it is further

ORDERED that all parties are directed to appear in the Settlement Conference Part, in room 1600 of the Westchester County Courthouse located at 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York 10601 to schedule a trial, on a date to be subsequently announced by the Settlement Conference Part.

This constitutes the decision and order of the Court.

Dated: White Plains, New York  
April 30, 2020



HON. TERRY JANE RUDERMAN, J.S.C.