

Ruiz v Guadino

2021 NY Slip Op 30259(U)

January 27, 2021

Supreme Court, Kings County

Docket Number: 519190/19

Judge: Lawrence S. Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 57 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 27th day of January, 2021.

P R E S E N T:

HON. LAWRENCE KNIPEL,
Justice.

-----X

ANGEL LUIS RUIZ,
Plaintiff,

- against -

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SALVATORE GUADINO, DPM; BROOKLYN PODIATRY ASSOCIATES; JOSE P. LOOR DPM; DELOOR PODIATRY ASSOCIATES and DR. NIRAL PATEL, DPM,

Defendants.

-----X

The e-filed papers read herein:

NYSCEF Doc Nos.¹

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____

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Upon the foregoing papers in this podiatric malpractice action, defendant Niral Patel, DPM (Patel) moves (in motion sequence [mot. seq.] three) for an order modifying the October 16, 2020 preliminary conference order (PC Order).

Patel seeks to modify and clarify the PC Order on the ground that it does not resolve the discovery issues that exist in this medical malpractice case. Patel notes that paragraph 4 (a) of the PC Order directs that authorizations be provided from "the date of

¹New York State Courts Electronic Filing Document Numbers.

the accident,” including subsequent and continuing treatment for alleged injuries, but argues that this podiatric malpractice case does not involve an “accident.” Patel contends that the authorizations to be provided pursuant to the PC Order are insufficient, as they are geared to accident cases rather than medical malpractice cases. Specifically, Patel asserts that the PC Order does not require that authorizations be provided for prior *conditions* underlying the need for medical services, but only for prior accidents.

Patel also seeks authorizations for all medical providers for a period of five years prior to the alleged malpractice, contending that the fact that plaintiff has not worked for three years is tantamount to a claim of loss of enjoyment of life. In addition, Patel seeks authorizations regarding plaintiff’s lost earnings and Arons interview authorizations for plaintiff’s various medical providers.

Plaintiff, in opposition, asserts that Patel’s motion should be denied because he provided IRS authorizations in satisfaction of defendant’s lost earnings demand and notes that he has not worked since August 18, 2017, the date of the surgery/alleged malpractice herein, and not due to some prior, undisclosed condition.

Patel, in reply, appends a list of authorization demands that were not the subject of the motion and raised for the first time in reply, including a request for prior surgeries to plaintiff’s shoulder and knee and subsequent podiatric surgery.

Discussion

The PC Order was designed to encompass medical malpractice claims notwithstanding the fact that the term “accident” is used as opposed to the form specifying the alleged acts of malpractice. As such, the inclusive definition of “accident”

in the form requires disclosure of plaintiff's prior and subsequent treatments, as well as prior and subsequent injuries to the body parts that are the subject of the complaint. For these reasons, there is no need to vacate or modify the PC Order.

Patel has failed to annex plaintiff's bill of particulars and has failed to demonstrate that plaintiff is alleging a loss of enjoyment of life claim requiring him to provide authorizations beyond those related to the alleged injuries in this matter. Moreover, the defendants should have records of plaintiff's medical history, at least as it pertains to the treatment and surgical procedures performed by them, and thus, can delineate which authorizations they require as to any alleged pre-conditions for which authorizations have not been provided. Patel has failed to substantiate any additional demands for authorizations.

Patel has asserted that plaintiff had subsequent podiatric surgery, and plaintiff did not deny this. Accordingly, plaintiff must provide authorizations for the podiatric surgery that took place on April 27, 2018, at Manhattan Eye Ear and Throat. In any event, pursuant to the PC Order, plaintiff is obligated to give Arons authorizations and authorizations for all prior and subsequent treatment to the body parts asserted in this action. Accordingly, it is

ORDERED that Patel's motion to modify the PC Order is denied to the extent that it seeks to modify or vacate the PC Order, and is only granted to the extent that the parties are directed to comply with the discovery set forth in the PC Order; and it is further

ORDERED that plaintiff provide the following authorizations on or before February 25, 2021: (1) authorizations for his April 27, 2018 surgical procedure; (2) authorizations for any prior or subsequent treatments related to the body parts impacted by the alleged malpractice herein, to the extent not previously provided, and (3) Arons authorizations.

This constitutes the decision and order of the court.

E N T E R,

J. S. C.


HON. LAWRENCE KING
ADMINISTRATIVE JUDGE