

Dawson v MJ-MC Home Health Care Agency, Inc.

2021 NY Slip Op 31189(U)

April 9, 2021

Supreme Court, Kings County

Docket Number: 513064/18

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

At an I.A.S. Trial Term, Part 80 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 9th day of April, 2021

P R E S E N T :

Hon. Genine D. Edwards, Justice

HILTON DAWSON, as Administrator of the Estate of LENNIE DAWSON, and HILTON DAWSON, Individually,

Index No. 513064/18

Plaintiffs,

- against -

MJ-MC HOME HEALTH CARE AGENCY, INC., ALLEN HEALTH CARE SERVICES, VISITING NURSE SERVICE OF NEW YORK HOME CARE and CROWN HEIGHTS CENTER FOR NURSING AND REHABILITATION d/b/a MARCUS GARVEY NURSING HOME,

Defendants.

The following papers numbered 1 to 3 read on this motion	Papers Numbered
Notice of Motion-Order to Show Cause And Affidavits (Affirmations) Annexed	_____1_____
Answering Affidavit (Affirmation)	_____2_____
Reply Affidavit (Affirmation)	_____3_____

In an action to recover damages for medical malpractice, negligence and public health law violations, defendant MJ-MC Home Health Care Agency, Inc. moves pursuant to CPLR 3212 granting summary judgment and dismissing the complaint with prejudice against said defendant as there are no triable issues of fact or law requiring trial, or pursuant to CPLR 3212(e) granting partial summary judgment as to any of the causes of action or claims that the Court finds defendant has demonstrated its entitlement to summary judgment. Plaintiff opposes the motion.

Defendant provided home health care services to 85-year old decedent, Lennie Dawson, from January 2, 2016 to January 29, 2016. Decedent was legally blind, bedbound, incontinent, a total care hemiplegic, who suffered from Alzheimer's, dementia, diabetes, mellitus, CAD, hypertension, and anemia. Registered Nurse Danny Bronshtein ("Bronshtein") conducted decedent's first assessment on January 5, 2016 and discovered that decedent had a newly developed mild skin discoloration (lighter tone) in the mid/lower sacral area. The assessment noted that the skin discoloration was a change and that decedent was at an increased risk for impaired skin integrity. The following day, January 6, 2016, Bronshtein drafted a narrative note that recommended a hospital bed, hooyer-lift, and regular diapers as opposed to pull-up diapers,¹ and instructed the home health aides regarding proper positioning, skin breakdown, meal preparation and feeding assistance, and the care plan, which required decedent to be turned and positioned every two hours.

On January 12, 2016, Doctors On Call visited decedent and noted decedent's Alzheimer's was progressing and she was less conversive. *See Doctors On Call Notes, Dated 01/12/2016.* Also noted in the records was "Denies Rash. Denies, Denies Rash on feet. Denies, Denies Scaly lesions of skin/scalp. Denies, Denies H/o skin cancer. Denies, Denies Skin lesion(s). Denies, Denies Skin oozing. Denies, Denies Sun Sensitivity." *Doctors On Call Notes, Dated 01/12/2016.* Thereafter, on January 24, 2016 or January 25, 2016, Home Health Aide Opet Campbell, reported skin breakdown to defendant, decedent's son, and the next PCA.² *Affidavit of Opet Campbell, Paragraph 4.* Doctors On

¹ Decedent did not receive a hospital bed, hooyer-lift, or regular diapers.

² "In January of 2016, I was employed by MJ-MC HOME HEALTH CARE AGENCY. I was assigned to work as an PCA for Lennie Dawson over 4 different 2-days shifts in January of 2016. I last worked for Ms. Dawson from January 24 - January 25, 2016. Ms. Dawson required 24 hour/7 days per week and I worked at her residence from 8:00 a.m. on January 24, 2016 - 8:00 a.m. on January 26, 2016." *Affidavit of Opet Campbell, Paragraph 2.* "The last time I worked with her, I noticed that Ms. Dawson developed a closed dark spot over her sacrum. I showed it to Ms. Dawson's son Hilton and I called MJ-MC to report it. The nurse supervisor I spoke with at MJ-MC told me they would send someone to examine the patient. I continued to provide care as directed by the care plan for the remainder of the shift. When I went off shift, I told the oncoming PCA Hazel about the sacral ulcer before I left to go home." *Affidavit of Opet Campbell, Paragraph 4.*

Call Physician Assistant Lilya Shil visited on January 27, 2021 and noted “SKIN: pressure ulcer stage 2 sacral, mild surrounding errethema (sic)” and “boil on the left heel, fluid filled, non tender, no errethema (sic), edema or darainage (sic).” *Doctors On Call Notes, Dated 01/27/2016*. She recommended silvadene cream 1% once a day on the affected area, that the home health care aides change decedent’s position every 2 hours, and requested a wound care nurse. *Doctors On Call Notes, Dated 01/27/2016*. On January 29, 2016, Home Health Aide Hazel Hemmings³ called an ambulance and decedent was transferred to Methodist hospital which noted decedent had a “stage 3 Sacral decubitus ulcer on R sacral area. No prurulence, drainage, or surrounding erythema.” *Notice of Motion, Exhibit P, Methodist Hospital Records.*, p. 54. The following day, January 30, 2016, Methodist conducted measurements of decedent’s pressure ulcers. Decedent was noted as having an unstageable sacral pressure ulcer that measured 7 x 6.5 cm, an unstageable left heel pressure ulcer that measured 4 x 4 cm, and an unstageable right heel pressure ulcer with deep tissue injury.

Upon oral argument and review of the foregoing cited papers, defendant failed to establish its prima facie entitlement to summary judgment. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 487 N.Y.S.2d 316 (1985) (A movant for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, providing sufficient evidence to eliminate any material issues of fact). For instance, there was insufficient evidence that the care plan was adhered to during the time defendant provided services to decedent. Defendant’s expert, Marvette Lowrie-Morris, RN, MSM (HONS), LNHA, CLNC, stated that the services home health aides provide are “dictated by care plans which are created by RN Supervisors who review the patient's medical records and who perform an in person assessment to determine what services they need.” *Notice of Motion, Exhibit 1, Paragraph 8*. The affidavits of Home Health Aides Opet Campbell and Hazel Hemmings indicate that they provided care to decedent

³ Home Health Aide Hazel Hemmings worked at decedent’s residence from January 26, 2016 to January 29, 2016.

as directed in the care plan. Those affidavits, however, only address the care decedent received from January 24, 2016 to January 29, 2016, a mere three days of the 27 days that defendant rendered services to the decedent.

Accordingly, defendant MJ-MC Home Health Care Agency, Inc.'s motion for summary judgment is denied.

This constitutes the Decision of this Court.

For Clerks use only

MG____

MD____

Motion Seq.#: 4

E N T E R

Genine D. Edwards

J.S.C.