

Perez v New York Presbyt. Hosp.
2021 NY Slip Op 31254(U)
March 24, 2021
Supreme Court, New York County
Docket Number: 805432/2016
Judge: Judith N. McMahon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDITH REEVES MCMAHON PART IAS MOTION 30
Justice
INDEX NO. 805432/2016
MOTION DATE N/A
MOTION SEQ. NO. 002

JESLYN PEREZ,

Plaintiff,

- v -

THE NEW YORK PRESBYTERIAN HOSPITAL, NEW YORK
PRESBYTERIAN MORGAN STANLEY CHILDREN'S
HOSPITAL

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents,

Defendant's Order to Show Cause which requests an Order, pursuant to CPLR §3212, granting summary judgment in favor of Defendant New York Presbyterian Hospital s/h/a the New York and Presbyterian Hospital and New York Presbyterian Morgan Stanley Children's Hospital, ("NYPH"), and dismissing Plaintiff's Complaint as against said Defendant, in its entirety and with prejudice, is denied as detailed herein.

This is an action for medical malpractice which arises out of claims that Defendant departed from good and accepted medical practice with regard to the medical treatment they provided to Plaintiff Jeslyn Perez, during her May 9, 2014 admission to NYPH, with regard to the negligent placement of a peripheral IV line in her right wrist, which was a substantial factor in causing injury to her right wrist in the form of De Quervain's syndrome that resulted in pain and weakness in her right hand and wrist and required surgical intervention and the excision of a large synovial cyst.

Defendant now moves for summary judgment to dismiss Plaintiff's allegations against them.

“Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions.” *Rosario v. Our Lady of Consolation Nursing & Rehab. Care Ctr.*, 186 A.D.3d 1426, 128 N.Y.S.3d 906 (N.Y.A.D. 2nd Dept. 2020).

Defendant established a prima facie entitlement to judgment by showing there was no departure from good and accepted medical practice via the Affirmation of Orthopedic Surgeon Dr. Bennett Brown. *See Stukas v. Streiter*, 83 A.D.3d 18, (N.Y.A.D. 2nd Dept. 2011); *See also Joyner-Pack v. Sykes*, 54 A.D.3d 727, (N.Y.A.D. 2nd Dept. 2008).

In support of Defendant’s summary judgment motion, Dr. Brown opined that,

the testimony of Nurse Harris, along with the NYPH medical records, discredits the plaintiff’s claim that the location of the original IV line was in or around the actual right wrist joint, Nurse Harris testified that the IV she removed from the "right wrist" was the original IV placed in the "right forearm" by Nurse Thomas. (Transcript regarding the June 19, 2019 deposition of Nurse Harris at pp. 16, 19, 21-22). Nurse Harris also testified that the NYPH EMR system (electronic medical records) has a "drop down" menu for the PIV flowsheets, which includes the choice of a description of "right wrist" to document the anatomical location of a peripheral IV, and that this accounts for Nurse Harris' documentation that the IV that she removed was located in the "right wrist". (Nurse Harris' deposition transcript at pp. 33-34). Additionally, neither Nurse Harris nor Nurse Thomas testified that the original IV was placed in or about the actual wrist joint. Therefore, it is my opinion, within a reasonable degree of medical certainty, that the EMR "drop down" menu, along with the deposition testimony of Nurse Thomas and Nurse Harris, accounts for the fact that Nurse Thomas noted the original IV to be in the "right foreman" and that Nurse Harris noted the original IV to be in the "right wrist". Regardless of the semantics, Nurse Harris testified (and the NYPH medical records support) that both notations refer to the same original IV, in the same anatomical location on the forearm; specifically, within 2 to 3 inches proximal from the wrist joint, in the cephalic vein of the right forearm. (Nurse Harris deposition transcript at pp. 33-36). *See also* NYPH medical records and nursing Flowsheets. It is also my opinion, within a reasonable degree of medical certainty, that said location is a proper for the placement of a peripheral IV.

Dr. Brown concluded, “that the plaintiff did not experience any nerve injury as a result of the peripheral IV inserted into the cephalic vein of the right forearm. Generally speaking, a nerve injury

allegedly resulting from insertion of an IV would result in immediate pain and would be immediately symptomatic.”

“Once this showing has been made, a plaintiff, in opposition, need only demonstrate the existence of a triable issue of fact as to those elements on which the defendant met the prima facie burden.” *Reid v. Soultz*, 138 A.D.3d 1087, 31 N.Y.S.3d 527 (N.Y.A.D. 2nd Dept. 2016); *See also Zuckerman v. City of New York*, 49 N.Y.2d 557, 404 N.E.2d 718 (1980).

Plaintiff submitted an Affirmation from a Plastic and Reconstructive Surgeon in Opposition to Defendant’s motion.

In Opposition to Defendant’s motion, Plaintiff’s Expert opined that, “defendants' departed from good and accepted medical practice with regard to the medical treatment they provided to the plaintiff, Jeslyn Perez, during her May 9, 2014 admission to NYPH, with regard to the insertion of a peripheral IV line in her right wrist, which was a substantial factor in causing injury to her right wrist in the form of De Quervain's syndrome that resulted in pain and weakness in her right hand and wrist, and required surgical intervention.”

Plaintiff’s Expert also opined that, “defendants departed from good and accepted medical practice in placing the peripheral IV catheter in the plaintiff's right wrist, It is well known in the medical community that a peripheral IV not be inserted into the wrist joint. The plaintiff testified at her Examination Before Trial that the IV was placed approximately 3 inches below the knuckle and in the location of a scar where Dr. Lenzo performed his surgery, which was in the area of the wrist joint. Nurse, Jade Harris entered into the medical record that she observed the IV in the patient's right wrist. Nurse Harris also indicated that the patient did not tolerate the IV in that location and moved it to the top of the patient's hand.”

Plaintiff’s Expert concluded that, “the trauma caused by the insertion of the IV into the wrist of the patient, Jeslyn Perez, was a substantial contributing factor in causing her to develop De Quervain's Syndrome which required surgical intervention...It is also well known that direct trauma in the area of the wrist joint can be a cause of De Quervain's syndrome.”

“A plaintiff's expert opinion must demonstrate the requisite nexus between the malpractice allegedly committed and the harm suffered.” *Dallas-Stephenson v. Waisman*, 39 A.D.3d 303, 833 N.Y.S.2d 89 (N.Y.A.D. 1st Dept. 2007).

At her August 28, 2018 Examination Before Trial, Plaintiff testified that during her May 9, 2014 admission, a nurse originally inserted an IV in her right wrist, 3 inches below the big knuckle of her thumb. *Perez EBT page 55.*

Plaintiff further testified that, “When [the nurse] inserted the IV on my wrist the first thing I did was scream like extremely loud. Then I told her what are you doing and she's like everything will be fine, I've been doing this for twenty years. So then my husband started telling them can we get another nurse that puts the IV in another place because I kept on complaining that it was hurting and she said the same thing again, I've been doing this for twenty years, it's going to be fine.” *Perez EBT page 56.*

Francilla Thomas has been identified as the nurse who inserted the original IV during Plaintiff's May 9, 2014 admission.

Nurse Thomas appeared for an Examination Before Trial on May 22, 2019. Nurse Thomas testified that she did not specifically remember Plaintiff's admission, but referred to the medical records and relied on her custom and practice to answer questions. Nurse Thomas testified that the IV was inserted into Plaintiff's right forearm based solely on the notation in the medical records and not based on her recollection of the event. *Francilla Thomas EBT pages 23 – 25.*

At Nurse Thomas' Examination Before Trial, Nurse Thomas was asked and answered,

Q. If the catheter was placed in the area of the wrist, would that be a departure from good accepted nursing practice?

A. No, you put it where you find a vein that is accessible.

Nurse Thomas was also asked and answered,

Q. In your training were you taught to avoid the wrist area?

A. No.

Francilla Thomas EBT pages 28 – 30.

At some point during Plaintiff's admission, Nurse Thomas transferred care of Plaintiff to Jade Harris. Nurse Harris appeared for an Examination Before Trial on June 19, 2019. At her Examination Before Trial,

Nurse Harris testified that she did not have independent recollection of Plaintiff's admission, but relied on the medical records to answer questions.

At Nurse Harris' Examination Before Trial, the following exchange took place:

Q. Based upon your review of the medical record at some point did you place an IV into Ms. Perez's right hand?

A. I did see that in here.

Q When was that done?

...

A. It looks like I documented that at 7:03. It might have been any time between 7:00 and 7:03.

Q. Okay. Do you know why the IV was placed in the right hand at that time?

A. She needed IV access.

Q. Now, was this the second IV or was it moved from the right wrist to the right hand?

A. It doesn't say what number IV. It just says that I placed it and I don't have any recollection.

Q. Just so I'm clear, as you sit here right now you don't recall if she had two IVs or if it was placed on the right wrist to the right hand?

A. I don't have any recollection of this case. I'm only going based on what's documented.

Q. Okay. If you can turn to Page 563, this note was made on May 9, 2014, also at 7:03 p.m.?

A. Yes, I see that.

Q. It indicates that the IV insertion date is 5/9/14 in the site of the right wrist. Do you see that?

A. I see that.

Jade Harris EBT pages 18 -19.

There are inconsistencies in the medical records as to the site of the IV insertion and neither of the nurses responsible for the insertion of IVs specifically recollected where the IV had been placed or why it was moved. Plaintiff testified that she immediately complained about the pain from the IV insertion into her wrist.

There are questions of fact, including but not limited to, where the IV was inserted into Plaintiff during her May 9, 2014 admission.

“In opposition, Plaintiff raised a triable issue of fact by submitting an expert affirmation from a physician, who opined with a reasonable degree of medical certainty that Defendant departed from the accepted standard of care.” *Cummings v. Brooklyn Hosp. Ctr.*, 147 A.D.3d 902, 48 N.Y.S.3d 420 (N.Y.A.D. 2nd Dept. 2017).

ORDERED that Defendant’s Order to Show Cause which requests an Order, pursuant to CPLR §3212, granting summary judgment in favor of Defendant New York Presbyterian Hospital s/h/a the New York and Presbyterian Hospital and New York Presbyterian Morgan Stanley Children’s Hospital and dismissing Plaintiff’s Complaint as against said Defendant, in its entirety and with prejudice, is denied; and it is further

ORDERED that any and all other requested relief is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly.

<u>3/24/2021</u> DATE					<u>JUDITH REEVES MCMAHON, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	