

Youngsam v Soutan
2021 NY Slip Op 31320(U)
April 15, 2021
Supreme Court, Kings County
Docket Number: 508760/2017
Judge: Bernard J. Graham
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ANTHONY YOUNGSAM and MARCIA POMMELLS,
as Co-Administrators of the Goods, Chattels and Credits
which were of JACKAE MANNNS, deceased,

Plaintiffs,

-against-

EMMA SOULTAN, M.D., GEORGE NOUMI, M.D.,
LEONARD J. EMMA, M.D. and THE BROOKLYN
HOSPITAL CENTER,

Defendants.

Index No.: 508760/2017

DECISION/ORDER

Hon. Bernard J. Graham
Supreme Court Justice

**Recitation, as required by CPLR 2219(a), of the papers considered on the review of
this motion to: award summary judgment to the defendants, pursuant to CPLR sec. 3212.**

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	___ 1-2, 3-4 ___
Order to Show cause and Affidavits Annexed.....	_____
Answering Affidavits.....	___ 5 ___
Replying Affidavits.....	___ 6 ___
Exhibits.....	_____
Other: (memo).....	_____

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Defendants, Eman Soutlan, M.D. (“Dr. Soutlan”), George Noumi, M.D. (“Dr. Noumi”), and Leonard J. Emma, M.D. (“Dr. Emma”) have moved (seq. 3), pursuant to CPLR § 3212, for an Order awarding summary judgment and a dismissal of plaintiffs’ complaint upon the grounds that there are no issues of fact with respect to the care and treatment that was rendered to Jackae Manns (“decedent”) which would warrant a trial in this matter. In addition, defendant The Brooklyn Hospital Center, (“Brooklyn Hospital”) has likewise moved (seq. 4) for an Order awarding summary judgment and a dismissal of plaintiffs’ complaint.

Counsel for the plaintiffs, Anthony Youngsam and Marcia Pommels, as Co-Administrators of the Estate of Jackae Manns, has opposed the motions for summary judgment upon the grounds that there are issues of fact with regard to the causes of action that have been pled by the plaintiffs, as against the defendants, for negligence and medical, nursing and hospital malpractice, as well as for wrongful death, and whether the departure from good and accepted practice through their acts and omissions was a proximate cause of the decedent's injuries and her subsequent death.

Background:

The within action sounding in medical malpractice was commenced by the filing of a summons and complaint with the Clerk of this Court, on or about May 4, 2017. Issue was joined, on or about June 2, 2017, by the service of a verified answer on behalf of defendant, Brooklyn Hospital. Thereafter, on or about June 23, 2017, the verified answers on behalf of defendants, Dr. Soultan, Dr. Noumi and Dr. Emma were filed.

Plaintiffs' complaint contains three causes of action wherein it is alleged: that the defendants departed from accepted standards of medical care in the treatment that was rendered to the decedent; the defendants failed to obtain informed consent; and the death of the decedent resulted in both loss of services and support to the plaintiffs. In plaintiffs' Bill of Particulars, it is alleged that the defendants negligently performed the Caesarean section ("C-section") delivery by failing to completely remove placental tissue, resulting in infection and sepsis which caused and/or contributed to decedent's wrongful death. It is also alleged that the defendants failed to diagnose and treat both the infection and preeclampsia. It is further alleged that the decedent was prematurely discharged from Brooklyn Hospital on May 1, 2015 and then not provided with proper discharge instructions.

A deposition was conducted of the co-administrator Anthony Youngsam on February 28, 2018 and co-administrator Marcia Pommels on April 30, 2018. In addition, an EBT of defendant Dr. Emma was held on September 27, 2018 and of defendant Dr. Noumi on November 8, 2018. The plaintiff waived the deposition of Dr. Soultan and a

witness on behalf of Brooklyn Hospital was not designated, and thus that EBT was not conducted.

A Note of Issue and Certificate of Readiness was filed on behalf of the plaintiffs on or about February 25, 2020.

Facts:

In the morning of April 27, 2015, the decedent, who was 41.2 weeks pregnant, and whose delivery date was estimated to be April 17-19, presented to Brooklyn Hospital for induction of labor. This was the first pregnancy for the decedent who was twenty-six (26) years old. At the time, the decedent had been under the pre-natal care and treatment of Dr. Emma, since October 2014. Dr. Emma was a private physician who had privileges at Brooklyn Hospital. During the course of the pre-natal care, which was characterized as being uneventful, the decedent was prescribed iron tablets and prenatal vitamins for anemia, an antibiotic for proteinuria (excess protein in the urine) and for a urinary tract infection. On April 25th, Dr. Emma directed the decedent to undergo an induction of labor.

The decedent upon admission to Brooklyn Hospital's Labor and Delivery Department was under the care of Dr. Emma. The decedent reported positive fetal movement and denied leaking fluid, vaginal bleeding or having any medical problems, including prior surgeries. At 10:00 A.M., the staff of Brooklyn Hospital carried out the orders of Dr. Emma by giving Cervidil for induction of labor. The plan was to continue the use of Cervidil until 4:00 A.M., the following day. Early the next morning at 12:30 A.M., at the request of the decedent, an epidural was administered for pain management. At 4:09 A.M., the decedent was noted to be 4 cm dilated, 100% effaced and -3 station. Even though there were no contractions, the plan remained for a vaginal delivery and re-examination of the decedent every 3-4 hours. By 8:00 A.M., the decedent was having 60 second contractions every four-six minutes. At 5:00 P.M., the fetal heart tracings showed moderate variability with early decelerations. At approximately 10:40 P.M., when labor was still not progressing, a C-section was recommended for both the well-being of the

fetus and the mother. Dr. Emma had contacted Dr. Noumi to assist with the C-section. After allegedly explaining the risks and benefits of the procedure, the decedent's consent was obtained, a C-section was performed and a baby boy was delivered at 11:13 P.M. The fetus was found in "direct occiput posterior position". The umbilical cord was wrapped around the baby's leg three times and there was no evidence of fetal distress. The placenta was delivered intact, the uterus was allegedly exteriorized and wiped with a lap sponge, the purpose of which was to assure complete removal of the placenta. The uterine incision was then closed and the ovaries were found to be normal.

The decedent was transferred to the recovery room where she showed no signs of infection following surgery. The decedent was medicated with Toradol¹ and a Foley catheter was in place which was later removed.

The decedent's lab results as of May 1, 2015 indicated that her platelets, liver enzymes and creatinine were all within normal levels. The preeclamptic laboratory values were also found to be normal. When her blood pressure which had been briefly elevated and her temperature were also at normal levels, the decedent was discharged with written instructions to follow up with Dr. Emma in one to two (1-2) weeks for a wound check and in six (6) weeks for postpartum care. The decedent was given medication prescriptions for Vitamin C, ferrous sulfate and pain medication.

On May 5, 2015, four days after being discharged from Brooklyn Hospital, the decedent was transported to Brookdale Hospital in cardiac arrest. The decedent's boyfriend, Anthony Youngsam (co-plaintiff) stated that the decedent had complained of shortness of breath, headaches and weakness for two days, and that when her condition worsened, he called EMS at approximately 4:00 A.M. When EMS arrived, the decedent went into respiratory arrest which condition progressed to cardiac arrest. Efforts at resuscitation were unsuccessful and the decedent passed away at 4:55 A.M. The autopsy performed on May 6, by the Office of the Chief Medical Examiner of the City of New York determined the cause of death to be hypertensive and atherosclerotic cardiovascular

¹ Toradol is a non-steroidal anti-inflammatory drug.

disease. There were findings by the Medical Examiners Office of “deciduitis of post-partum retained placental tissues”.

Parties’ Contentions:

Here, the Court is presented with the issue as to whether a question of fact exists with respect to the alleged negligence of Dr. Soultan, Dr. Noumi, Dr. Emma and Brooklyn Hospital, and if they deviated from the standard of care in the performance of a C-section on the plaintiff and her subsequent discharge. As plaintiffs have not opposed Brooklyn Hospital’s motion to dismiss or the portion of the motion to dismiss as against Dr. Soultan, we will only address Dr. Noumi and Dr. Emma’s motion to dismiss.

In support of Dr. Soultan, Dr. Noumi, and Dr. Emma’s motion, counsel offers the affirmation of Sandra Reznik, M.D. (“Dr. Reznik”), who opines that Dr. Noumi and Dr. Emma did not deviate from the standard of care in performing the C-section and removing the placenta, and none of the treatment rendered proximately caused the decedent’s injuries and death. Counsel also offers the affidavit of Dr. Soultan, who allegedly did not treat the decedent and whose name appears on the operative report in error.

Plaintiffs, by their attorneys, oppose the defendants’ motion for summary judgment, arguing that the defendants committed specific acts of medical malpractice in the treatment of the decedent, such as failure to remove all of the placenta from the uterus, which plaintiffs claim caused and/or contributed to the decedent’s development of post-partum infection and deciduitis, which resulted in a fatal cardiorespiratory arrest and her death.

Discussion:

A defendant moving for summary judgment in a case sounding in medical malpractice “must make a prima facie showing either that there was no departure from accepted medical practice, or that any departure was not a proximate cause of the

plaintiff's injuries." Guctas v Pessolano, 132 AD3d 632, 633 [2d Dept 2015], quoting Matos v Khan, 119 AD3d 909, 910 [2d Dept 2014].

This Court finds that the defendants have presented evidence sufficient to meet this burden, including an expert affirmation. Dr. Reznik opines that Dr. Emma and Dr. Noumi satisfied all their professional obligations to the decedent in removing all placental tissue, monitoring the decedent post-partum, and discharging with instructions to immediately seek further medical care in the event she experienced any shortness of breath, weakness, or other symptoms of infection or heart disease. Dr. Reznik opines that there was no evidence in the Medical Examiner's records of retained products of conception in any of the uterine samples, and no evidence that sepsis or another infectious process was a cause or contributing factor in the decedent's death.

The Operative Report and the deposition testimony of Dr. Emma and Dr. Noumi state that the placenta was delivered intact, the uterus was wiped with a lap sponge, and there were no visible products of conception retained therein. Dr. Reznik states that for retained products of conception to cause infection and sepsis to the extent alleged by the plaintiffs, physical evidence of products of conception would be visible in the autopsy photographs. After review of these photographs, Dr. Reznik opines that there are no grossly visible retained products of conception. In addition, Dr. Reznik claims that it is unlikely that microscopic traces of products of conception could cause infection or sepsis to the extent alleged by plaintiffs' counsel. After review of the uterine tissue slides, Dr. Reznik opines that there is no microscopic evidence of retained products of conception.² Dr. Reznik also asserts there was no microscopic evidence of sepsis in any of the slides, and that while there were large thrombi present, the number and size of thrombi present were normal for a postpartum uterus. Dr. Reznik explains that in sepsis, there are a large number of much smaller thrombi, which were not present on any of the decedent's uterine tissue slides. Dr. Reznik also states there was no bacteria present in any of the

² According to Dr. Reznik, a diagnosis of retained products of conception is made based on the presence of chorionic villi (fingerlike projections of placental tissue that are clearly distinguishable from uterine tissue). Dr. Reznik asserts that these chorionic villi were not present in any of the uterine slides, which rules out the presence of microscopic retained products of conception in the decedent's uterus following the c-section.

uterine slides that would confirm an infectious presence. Dr. Reznik examined the decedent's kidney tissue slides and found no signs of acute tubular necrosis, which is an expected kidney-specific finding in the presence of sepsis, which, considered with the other pathological findings, indicates that the decedent did not experience sepsis. Dr. Reznik opines after examination of the decedent's heart tissue there is no evidence of ischemia or small hemorrhages evidencing sepsis or another infectious process. However, upon examination of the decedent's lung tissue slides, Dr. Reznik found an impressive number of macrophages (commonly referred to as "heart failure cells"), as well as significant areas filled with fluid, which Dr. Reznik argues is consistent with heart failure and pulmonary edema. Dr. Reznik opines that it could take two days of the heart beating poorly for the heart failure cells to permeate the decedent's lung tissue to the extent seen on the slides, which was not only likely, but consistent with the decedent's medical history given at Brookdale Hospital by the decedent's boyfriend (that decedent complained of shortness of breath and weakness for two days prior to seeking medical care). Dr. Reznik also states that the decedent denied complaints of fever, chills or fatigue, which would be expected in the setting of sepsis or an infectious process. Dr. Reznik asserts that the cause of the decedent's death was peripartum cardiomyopathy, which can develop two days following delivery in an otherwise healthy woman with no history of heart disease.

Dr. Reznik opines that there were no indications in decedent's chart of any signs or symptoms that would have warranted further cardiac workup prior to her C-section or during her admission at Brooklyn Hospital. Dr. Reznik asserts that the decedent was properly instructed to seek medical attention if she experienced signs and symptoms of infection or heart failure, including any shortness of breath, chills, fever, excessive pain, incisional redness, warmth, swelling, or constant cough that worsens overnight.

Once the movant has made a prima facie showing, the plaintiff must submit evidence in opposition to rebut the movant's prima facie showing. Alvarez v Prospect Hosp., 68 NY2d 320 [1986]; Poter v Adams, 104 AD3d 925 [2d Dept 2013]; Stukas v Streiter, 83 AD3d 18 [2d Dept 2011]. The plaintiff must "lay bare her proof and produce

evidence, in admissible form, sufficient to raise a triable issue of fact as to the essential elements of a medical malpractice claim, to wit, (1) a deviation or departure from accepted medical practice, [and/or] (2) evidence that such a departure was a proximate cause of injury.” Sheridan v Bieniewicz, 7 AD3d 508, 509 [2d Dept 2004]; Gargiulo v Geiss, 40 AD3d 811-812 [2d Dept 2007]. In order to prevail on a claim for medical malpractice, “expert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause.” Nicholas v Stammer, 49 AD3d 832-833 [2008].

In opposing the defendants’ motions, plaintiffs’ expert has pointed to several possible departures by Dr. Emma, and Dr. Noumi. Plaintiffs’ expert opines that the cause of the decedent’s death was deciduitis of post partum retained placental tissues, which contributed to hypertensive and atherosclerotic cardiovascular disease. Plaintiffs’ expert asserts the retained placental tissue³ was caused by the defendant’s failure to completely remove the placental tissue from the uterus following the C-section delivery, which is a deviation from good and accepted medical practice.

Plaintiffs’ expert asserts that Dr. Noumi was the physician who performed the C-section and was contacted by Dr. Emma to perform the procedure as Dr. Emma’s malpractice insurance did not cover it. However, plaintiffs’ expert also asserts that Dr. Noumi and Dr. Emma were acting “in concert” and it cannot be discerned what role each played in the performance of the C-section.

Plaintiffs’ expert refers to Dr. Noumi’s deposition testimony, in which he states that it is his custom and practice to remove the placental by wiping the uterus with a lap sponge multiple times, as well as with his hand, to ensure that there are no membranes remaining. In addition, Dr. Emma testified that either he or Dr. Noumi would directly visualize the uterus to ensure it was fully wiped with no placenta intact. However, plaintiffs’ expert notes that Dr. Noumi does not have any memory of this specific

³ Plaintiffs’ expert states that there are three types of retained placenta and that the decedent suffered from placenta adherens, which is when the placenta remains attached to the uterus.

procedure and whether he followed his custom and practice following the decedent's C-section delivery.

Plaintiffs' expert also refers to the autopsy report, which refers to retained placental tissues and an infectious process, and that the findings on gross (visual) examination that the placental implantation site had purplish/tan and friable tissues coursed with thrombotic vessels adherent to the myometrium are consistent with retained placental tissue and an infectious process. In addition, plaintiffs' expert states that the autopsy report confirms the microscopic presence of septic thrombosis, degenerating decidual vessels, necrosis, neutrophilic infiltration and bacteria-like infiltration. Plaintiffs' expert argues that good and accepted medical practice requires the removal of all placental tissue from the uterus during the performance of a C-section. Further, plaintiffs' expert asserts that if there was any question whether all the placental tissue had been removed from the uterus, good and accepted medical practice would require that the placental tissue that had been removed be sent to pathology for examination in order to determine whether or not placental tissue remained.

Plaintiffs' expert opines that Dr. Noumi and Dr. Emma's departures from good and accepted medical standards were a proximate cause and a substantial contributing factor resulting in retained placental tissues, deciduitis, infection, cardiorespiratory arrest, and wrongful death. Plaintiffs' expert disagrees with Dr. Reznik's assertion that the decedent's cause of death was a sudden and unpreventable peripartum cardiomyopathy. Plaintiffs' expert claims that this would mean the decedent developed this condition on April 29, 2015, two days before she was discharged from Brooklyn Hospital. However, plaintiffs' expert asserts the decedent did not demonstrate any signs of peripartum cardiomyopathy during that time. Plaintiffs' expert maintains that the decedent's shortness of breath, weakness, headaches, and vaginal bleeding/blood clots were caused by the retained placental tissue and an infectious process which ultimately caused her cardiorespiratory arrest and death.

It is well settled that where parties to a medical malpractice action offer conflicting expert opinions on the issue of malpractice and causation, issues of credibility

require resolution by the factfinder (see Loaiza v Lam, 107 AD3d 951, 953 [2013]; Omane v Sambaziotis, 150 AD3d 1126, 1129 [2d Dept. 2017]; Dandrea v Hertz, 23 AD3d 332, 333 [2005]). Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical opinions (see Elmes v Yelon, 140 AD3d 1009, 1011 [2d Dept. 2016], Feinberg v Feit, 23 AD3d 517, 519 [2d Dept. 2005]; Shields v Baktidy, 11 AD3d 671, 672 [2d Dept. 2014]). As such, the defendants' motions for summary judgment dismissing plaintiffs' medical malpractice claim are denied.

In reaching this determination, this Court considered the argument of defendants' counsel that the C-section was performed properly and as there was no placenta retained in the uterus upon completion of the surgery, the decedent's injuries were not caused by any actions or omissions by Dr. Noumi and Dr. Emma, but by peripartum cardiomyopathy, which can develop two days following delivery in an otherwise healthy woman with no history of heart disease. This argument is refuted by the plaintiffs through their expert, who asserts that there are issues of fact as to whether Dr. Noumi and Dr. Emma had fully removed the placenta, and in doing so properly wiped and visualized the uterus after delivery, or send the placenta to pathology, to ensure no placental tissue remained.

As to the informed consent claim, a plaintiff must prove (1) the person providing the professional treatment failed to disclose alternatives thereto and failed to inform the patient of reasonably foreseeable risks associated with the treatment, and the alternatives, that a reasonable medical practitioner would have disclosed in the same circumstances; (2) that a reasonably prudent patient in the same position would not have undergone the treatment if he or she had been fully informed; and (3) that the lack of informed consent is a proximate cause of the injury. See Zapata v Buitriago, 107 AD3d 977, 979, 969 NYS2d 79 [2d Dept 2013]; Spano v Bertocci, 299 AD2d 335, 749 NYS2d 275 [2d Dept 2002].

Dr. Reznik opines that the informed consent document within the hospital chart clearly explains the reasonable risks of the proposed surgery, including infection, blood clots, injury to organs, heart attack, and possibly death. Dr. Reznik notes that the

decedent signed this document on April 28, 2015. Dr. Reznik asserts that Dr. Emma and Dr. Noumi provided a thorough explanation of the reasonable risks, benefits and alternatives of the C-section before performing the surgery, and that a reasonable person in the decedent's situation would have consented to the C-section. As plaintiffs did not offer argument in opposition to the merits of this cause of action, this Court finds that the plaintiffs' claim for lack of informed consent is dismissed as against Dr. Noumi and Dr. Emma.

Conclusion:

While the defendants have met their burden for establishing a prima facie case for summary judgment, the plaintiffs, in opposition, have met her burden to offer admissible evidence raising a question of fact as to whether the defendants departed from good and accepted medical practice in the diagnosis and treatment of the decedent. The issue of credibility regarding conflicting expert testimony must be submitted to the trier of fact. Accordingly, the motion by the defendants Dr. Noumi and Dr. Emma for summary judgment and a dismissal of plaintiffs' complaint, pursuant to CPLR §3212, is granted only to the extent of dismissing the cause of action of lack of informed consent. In all other respects the motion is denied.

In addition, the motions by defendants Dr. Sultana and Brooklyn Hospital for summary judgment and a dismissal of plaintiffs' complaint, pursuant to CPLR §3212 are granted.

In accordance with the above, the caption is amended to read as follows:

 ANTHONY YOUNGSAM and MARCIA POMMELLS,
 as Co-Administrators of the Goods, Chattels and Credits
 which were of JACKAE MANNS, deceased,

Plaintiffs,

-against-

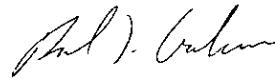
GEORGE NOUMI, M.D., and LEONARD
 J. EMMA, M.D.

Defendants.

This shall constitute the decision and order of this Court.

Dated: April 15, 2021
 Brooklyn, NY

ENTER



 Hon. Bernard J. Graham, Justice
 Supreme Court, Kings County

HON. BERNARD J. GRAHAM

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 KING'S COUNTY
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