

Chatterton v Stapleton
2021 NY Slip Op 32071(U)
March 8, 2021
Supreme Court, Ulster County
Docket Number: EF15-2075
Judge: Christopher E. Cahill
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**STATE OF NEW YORK
SUPREME COURT COUNTY OF ULSTER**

**MARY LOU CHATTERTON, as Executrix of the
Estate of KEITH NACCARATO, deceased,**

Plaintiff,

-against-

**Decision & Order
Index No. EF15-2075**

**GEORGE STAPLETON, M.D., ABUL B. KHUDA,
M.D., KAMALELDIN KAMAL, M.D., JOSEPH
CHRISTIANA, M.D., FAREED FAREED, M.D.
CHERYL C. COLBERT, M.D., MARIDANIELLE
ANNICCHIARICO, P.A., HEALTHALLIANCE
HOSPITAL BROADWAY CAMPUS f/k/a THE
KINGSTON HOSPITAL HEALTHALLIANCE, INC.,
EMERGENCY MEDICAL ASSOCIATES, PLLC,
EMERGENCY MEDICAL ASSOCIATES OF NEW
JERSEY, P.A., KINGSTON EMERGENCY MEDICAL
ASSOCIATES, PLLC, HEALTH QUEST MEDICAL
PRACTICE, P.C. and HUDSON VALLEY CARDIO-
VASCULAR PRACTICE, P.C.,**

Defendants.

Supreme Court, Ulster County
Motion Return Date: August 3, 2020
RJI No.: 55-158-01956

Present: Christopher E. Cahill, JSC

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Cahill, J.:

Defendant Drs. Khuda, Kamal, Christiana, Colbert and Healthalliance Hospital Broadway Campus, f/k/a the Kingston Hospital by various separate motions move to dismiss the plaintiff's individual cause of action for wrongful death against the moving defendants pursuant to CPLR 3211(a)(7). The defendants maintain that the plaintiff is not a distributee of decedent Keith Naccarato under the Estate Powers & Trusts Law. The plaintiff opposes the motions and cross-moves for an order seeking leave to amend the Bill of Particulars. The defendants oppose the cross-motion.

The plaintiff was the domestic partner of the decedent for over ten years. The decedent was treated by the defendants during his admission to the hospital from July 26, 2013 to July 28, 2013. The decedent died on August 24, 2013. At the time of his death, the decedent was survived by his parents and three siblings. The plaintiff was the sole beneficiary of decedent's Last Will and Testament and the named Executrix. Letters testamentary were issued to the plaintiff on October 28, 2013. On June 30, 2015, the plaintiff commenced this action for medical malpractice, negligence and wrongful death. While she did not specifically assert an individual cause of action for pecuniary damages, the complaint alleges that the decedent suffered loss of quality of life, loss of enjoyment of life and incurred medical expenses, and, as a result, Ms. Chatterton, in her capacity as Executrix, seeks damages "in an amount which exceeds the jurisdictional limits of all lower courts . . .". In her opposition to the motion, she maintains that she should be considered as an EPTL "distributee," and she should share in the monetary proceeds resulting if the case is successful.

In support of their motion, the defendants maintain that: since the plaintiff is not the spouse of the decedent, she is not a “distributee” pursuant to EPTL § 1-2.5 and EPTL § 4-1.1; that a wrongful death action is not the property of the decedent but belongs to the distributees of the estate pursuant to EPTL § 5-4.3; that wrongful death damages pass outside the estate to decedent’s statutory distributees; that damages in a wrongful death action are exclusively for the benefit of decedent’s distributees pursuant to EPTL § 5-4.1; that nonmarried domestic partners are not legal spouses, and, consequently, the surviving partner is not a “distributee.” The defendants do agree with the plaintiff that as the personal representative of the estate, she may bring an action for wrongful death on behalf of the estate’s distributees.

The plaintiff claims that as the domestic partner of the decedent, she should be considered a “distributee.” In support of this claim, the plaintiff asserts she and the decedent were recognized as domestic partners for health insurance purposes pursuant to Public Health Law § 2961(6-a). The plaintiff contends that the domestic partnership between her and the decedent created an expectation of future support based upon the decedent’s past support while he was alive. The plaintiff asks the Court to expand the wrongful death statute in order to achieve the social and equitable intent of the statute. The plaintiff maintains as the domestic partner of the decedent, she should be able to recover for pecuniary damages as a result of Keith Naccarato’s wrongful death.

There are two distinct causes of action to recover for a person’s death: 1) a survivorship cause of action that belongs to the estate for the decedent’s pre-death pain and suffering and 2) a wrongful death cause of action which belongs to decedent’s distributees who are determined by statute (Hesin v County of Greene, 14 NY3d 67 [2010]). EPTL § 4-1.1 outlines those persons

who are considered a distributee of the decedent for estate distribution purposes. Both EPTL § 4-1.1 and EPTL § 5-1.2 require a person to be the legally married spouse of the decedent to be considered a distributee. The plaintiff, as the domestic partner/girlfriend of the decedent, is not a distributee as required by the relevant statutes. In addition, New York State does not recognize common law marriage within its borders (Baron v Suissa, 74 AD3d 1108 [2nd Dept 2010]). As a result, although the plaintiff, as the Executrix of the decedent's estate, may be a proper party to bring a wrongful death action, she is not entitled to recover for her individual claim for wrongful death (Langan v St. Vincent's Hosp of N.Y., 25 AD3d 90 [2nd Dept 2005], appeal dismissed, 6 NY3d 890 [2006]).

As to the plaintiff's cross-motion for leave to amend the Bill of Particulars, the court notes that the Note of Issue has not been filed and no previous amendments have been made. The amended Bill of Particulars seeks to add pecuniary damages suffered by plaintiff's father and mother, who are indisputably distributees of the decedent's estate under EPTL, because of the wrongful death of their son. In support, the plaintiff maintains that the respondents will not be surprised by the amendment.

The defendants oppose, contending that plaintiff's original Bill of Particulars was served in August 2016 and did not claim a pecuniary loss on behalf of decedent's parents, and they claim that at plaintiff's deposition, she admitted that the decedent's parents did not rely on him for financial support and did not suffer any pecuniary loss as a result of his death. The defendants point out that the moving papers do not contain an affidavit from decedent's surviving father and they maintain that at this late stage of litigation, the amendment should be denied as they will sustain surprise.

Leave to amend a pleading rests within the trial court's discretion and should be freely granted in the absence of prejudice or surprise resulting from the delay except in situations where the proposed amendment is wholly devoid of merit (see CLR 3025; Ramos v Baker, 91 AD3d 930 [2nd Dept 2012]). Whether to grant or deny leave to amend is committed to the Supreme Court's discretion to be determined on a case by case basis (Capezzano Const Corp. v Weinberger, 150 AD3d 811 [2nd Dept 2017]). Leave to amend may be denied where the opposing party has been or would be prejudiced by a delay in seeking the amendment (Fahey v County of Ontario, 44 NY2d 934 [1978]). The parties opposing the amendment bear the burden of establishing they have been prejudiced and must show that they have been hindered in the preparation of their case or otherwise prevented from taking measures in support of their defense. (Noble v Slavin, 150 AD3d 1345 [3rd Dept 2017]).

The court concludes that plaintiff's cross-motion for leave to file an amended Bill of Particulars must be granted. The court is not persuaded that the granting of leave to amend would prejudice or surprise the defendants (Berman v. Children's Aid Society, 151 AD3d 180 [2nd Dept 2017]), and it is the preference of New York courts that cases should be decided on the merits (Henry v Datson, 140 AD3d 1120 [2nd Dept 2016]). As for defendants' reliance on Ms. Chatteron's EBT testimony that decedent's patients did not receive support from him, the court finds that the patients should have the opportunity to speak for themselves on this issue. The court will utilize its discretion and permit the plaintiff to file an amended Bill of Particulars. (see CPLR § 2001; CPLR 3025(b); Betz v Blatt, 160 AD3d 689 [2nd Dept 2018]).

Finally, with regard to the dismissal motions brought by defendant's Kamal and Khuda, HealthAlliance Hospital Broadway Campus, f/k/a The Kingston Hospital, and HealthAlliance

Inc., as well as by defendant Health Quest Medical Practice, PC, based on plaintiff's failure to comply with various discovery demands which the plaintiff has not opposed, and which, despite the dismissal of Ms. Chatterton's individual claim, apply to the decedent's parents' claim, the court finds that a 45-day conditional order of dismissal is appropriate.

Accordingly, it is

ORDERED that defendants' motions to dismiss plaintiff's individual claim for wrongful death are granted, and it is further

ORDERED that plaintiff's motion to amend the Bill of Particulars is granted and that plaintiff shall serve the amended Bill of Particulars within forty-five (45) days from the date of service of a copy of this decision and order, together with notice of entry, and it is further

ORDERED that plaintiff shall respond to defendants' discovery requests within 45 days of service of copy of this decision/order, together with notice of entry, or be precluded from offering evidence at trial.

This shall constitute the Decision and Order of the Court. The original Decision and Order and all other papers are being delivered to the Supreme Court Clerk for transmission to the Ulster County Clerk for filing. The signing of this Decision and Order shall not constitute entry

or filing under CLR 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: Kingston, New York

March 8, 2021

ENTER,


CHRISTOPHER E. CAHILL, JSC

PAPERS CONSIDERED:

1. Notice of Motion dated March 6, 2020; Affirmation of Kimberly L. Brown, Esq. dated March 6, 2020 with exhibits A-F; Memorandum of Law dated March 6, 2020;
2. Notice of Motion dated March 20, 2020; Affirmation of Chelsea A. Four-Rosenbaum, Esq. dated March 20, 2020 with exhibits A&B;
3. Notice of Motion dated July 15, 2020; Affirmation of Sarah E. Pizzola, Esq. dated July 15, 2020 with exhibits A-F;
4. Notice of Motion dated July 16, 2020; Affirmation of Namita K. Mehta, Esq. dated July 16, 2020;
5. Notice of Cross-Motion dated July 17, 2020; Affirmation of Amina Karic, Esq. dated July 17, 2020; Memorandum of Law dated July 17, 2020;
6. Affirmation of Sarah E. Pizzola, Esq. dated July 30, 2020;
7. Affirmation of Jennifer J. Bennice, Esq. dated July 31, 2020;
8. Affirmation of Kimberly L. Brown, Esq. dated July 31, 2020;
9. Affirmation of Chelsea A. Four-Rosenbaum, Esq. dated July 31, 2020;
10. Affirmation of Namita K. Mehta, Esq. dated August 12, 2020.