Hamilton v O'Brien
2021 NY Slip Op 33016(U)
November 19, 2021
Supreme Court, Richmond County
Docket Number: Index No. 151312/2016
Judge: Charles M. Troia
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
----------X

CHRISTINE HAMILTON,

Plaintiff,

-against-

MARLENE O'BRIEN, ROSEANNA GUZMAN-CURTIS, NICOLE TETREAULT, SHEAN SATGUNAM, WILLIAM O'MALLEY, UNIVERSITY OF ROCHESTER MEDICAL CENTER and HIGHLAND HOSPITAL

Defendants.

----------X

DCM Part 1

Present:
Hon. Charles M. Troia

DECISION AND ORDER

Index No.: 151312/2016

The following papers numbered 1 to 3 were fully submitted on the 10th day of September, 2021. Argument by counsel was heard on the 17th day of September, 2021.

Defendants Marlene O'Brien, Roseanna Guzman-Curtis, Nicole Tetreault, William O'Malley, University of Rochester Medical Center and Highland Hospital, Motion for Summary Judgment with Supporting Papers and Exhibits.
(Filed on November 20, 2020) 1

Plaintiff's Opposition with Supporting Papers and Exhibit.
(Filed on March 10, 2021) …….....2

Defendants' Reply Affirmation. [1]
(Filed on September 10, 2021) …….....3

Upon the foregoing papers, defendants' motion for summary judgment dismissing

[1] All named defendants joined in the instant motion, except Shean Satgunam. The defendants who moved for summary judgment are herein referred to as "defendants."

the complaint against them is denied in part, and granted in part.

Plaintiff brought this action to recover damages for injury caused by defendants' alleged failure to diagnose and repair plaintiff's small bowel obstruction following duodenal switch bariatric surgery performed on April 21, 2014. In support of their motion for summary judgment, defendants submitted an affidavit by their expert, Dr. Kaul. In his affidavit, he opines that defendants did not depart from good and excepted medical practice in caring for plaintiff. Specifically, Dr. Kaul details how plaintiff's condition was not an emergency, and that the care defendants provided was proper. Plaintiff opposes defendants' motion, but does not dispute defendants' argument that claims based on *res ipsa loquitur*, lack of informed consent, and failure to comply with rules and regulations should be dismissed.

In support of her opposition to the motion, plaintiff submitted an expert's affidavit. Plaintiff's expert affidavit describes the following allegations. On April 21, 2014, plaintiff underwent duodenal switch bariatric surgery performed by Dr. O'Malley at co-defendant Highland Hospital. Plaintiff was discharged from the hospital on April 23, 2014, with uncontrolled pain despite the use of narcotic pain medication. Plaintiff's abdominal pain worsened, and she called the hospital the morning of April 24, 2014. Approximately 12 hours later on April 24, 2014, plaintiff went to the emergency department at Highland Hospital, complained of various abnormalities including pain and other symptoms of a bowel blockage, and was admitted to Highland Hospital. On April 25, 2014, plaintiff was seen by co-defendant Dr. Guzman-Curtis. Also on April 25, 2014, plaintiff was seen by Dr. Satgunam, and was examined by co-defendant Dr. O'Brien. On April 26, 2014, co-defendant Dr. Tetreault noted plaintiff experienced tachycardia. On April 26, 2014, Dr. O'Malley returned to the hospital and learned that plaintiff's condition worsened. Also on April 26, 2014, Dr. Tetreault ordered a CT scan without contrast. Dr. O'Malley performed surgery on plaintiff in the afternoon of April 26, 2014, and he discovered a bowel blockage which caused large portions of plaintiff's small intestines to become necrotic.

Plaintiff's expert asserts that the patient suffered multiple system organ failure, and entered a coma after the April 26, 2014 surgery. Plaintiff's abdomen was left open for future abdominal surgeries over a year, she was hospitalized until 2016, and continued to have serious gastrointestinal issues.

Plaintiff's expert opines that Dr. O'Malley and the other co-defendant doctors started and continued a departure from good and accepted medical practice when they failed to diagnose and treat plaintiff's bowel blockage as an emergency on April 24, 2014. The expert contends that if the bowel blockage had been treated in a timely fashion, plaintiff's intestines would not have perforated or become so necrotic that it could not be resected.

SUMMARY JUDGMENT IN A MEDICAL MALPRACTICE ACTION

"In order to establish liability of a physician for medical malpractice, a plaintiff must prove that the physician deviated or departed from accepted community standards of practice, and that such departure was a proximate cause of plaintiff's injuries" (*Spilbor v Styles*, 191 AD3d 722, 722 [2d Dept 2021], *quoting Stukas v Streiter*, 83 NY3d 18, 23 [2011] [internal quotation marks omitted]). "In moving for summary judgment, a physician-defendant must establish, prima facie, either that there was no departure or that any departure was not a proximate cause of plaintiff's injuries (*Spilbor v Styles*, 191 AD3d at 722 [citations and quotation marks omitted]). "Once a defendant has made such a showing, the burden shifts to plaintiff to submit evidentiary facts or materials to rebut the prima facie showing by the defendant-physician" (*id.*).

"Summary judgment is a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues" (*Stukas v Streiter*, 83 NY3d 18, 23). "The function of the court on a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist" (*Kolivas v Kirchoff*, 14 AD3d 493, 493 [2d Dept 2005], *cited by Stukas v Streiter*, 83 NY3d at 23]). "To defeat summary judgment, the nonmoving party need only raise a triable issue of fact with respect to the element of the cause of action or theory of nonliability that is the subject of the moving party's prima facie showing" (*Silveri v Glaser*, 166 AD3d 1044, 1047 [2d Dept 2018]).

In the case at hand, the conflicting expert affidavits raise issues of fact as to whether defendants departed from accepted practice and that such departure was a proximate cause of plaintiff's injuries (*see Florio v Kosimar*, 79 AD3d [1st Dept 2010]).

HOSPITAL LIABILITY FOR MEDICAL PERSONNEL MALPRACTICE

A hospital may be held vicariously liable for the negligence or malpractice of medical professionals who are employees or act as its agents, whereas mere affiliation with a hospital is insufficient to impute a doctor's actions to a hospital (*Shafran v St. Vincent's Hosp. and Medical Center*, 264 AD2d 553 [1st Dept 1999]).[2] In the instant motion, co-defendants University of Rochester Medical Center and Highland Hospital do not argue that the named doctors were not their employees. Instead, defendants argue that the hospitals cannot be held vicariously liable for the actions of co-defendants Dr. O'Brien, Dr. Guzman-Curtis, and Dr. Tetreault, because they were residents who were supervised by Dr. O'Malley and did not exercise independent medical judgment.

"A resident who assists a doctor during a medical procedure, and who does not exercise any independent medical judgment, cannot be held liable for malpractice so long as the doctor's directions did not so greatly deviate from the normal practice that the resident should be held liable for failing to intervene" (*Tsocanos v Zaidman*, 180 AD3d 841, 841-842 [2d Dept 2020] [internal quotation marks and citations omitted]). In the case at hand, defendants have not established prima facie that they did not exercise any independent medical judgment, or that the doctor's directions did not so greatly deviate from the normal practice that the resident should not be held liable for failing to intervene.

CONCLUSION

The moving defendants met their prima facie burden of showing that there was no deviation or departure from accepted community standards of practice, or that such departure was not a proximate cause of plaintiff's injuries. Also, there is no dispute that co-defendants Dr. O'Brien,

[2] An exception to this general rule exists when a patient comes to an emergency room seeking treatment from the hospital rather than a particular physician chosen by the patient (*Johnson v Jamaica Hosp. Medical Center*, 21 AD3d 881 [2d Dept 2005]; *Mduba v Benedictine Hosp.*, 52 AD2d 450 [3d Dept 1976]).

Dr. Guzman-Curtis, and Dr. Tetreault were residents. In opposition, plaintiff raised triable issues of fact as to individual liability and vicarious liability, but only for medical malpractice beginning on April 24, 2014, and ending on April 26, 2014.

As to the claims alleging medical malpractice starting on April 24, 2014, and ending on April 26, 2014, the conflicting affidavits have raised triable issues of fact as to the standard of care and proximate cause (*see Florio v Kosimar*, 79 AD3d 625 [1st Dept 2010]). The claims based on *res ipsa loquitur*, lack of informed consent, and failure to comply with rules and regulations were not opposed by plaintiff, and were therefore abandoned (*see Martin Associates, Inc. v Illinois National Insurance Company*, 188 AD3d 572 [1st Dept 2020]).

Accordingly, it is hereby,

ORDERED, defendants' motion dismissing the claims based on *res ipsa loquitur*, lack of informed consent, and failure to comply with rules and regulations is granted; and it is further,

ORDERED, that defendants' motion dismissing claims of medical malpractice that allegedly occurred prior to April 24, 2014, is granted; and it is further,

ORDERED, that defendants' motion dismissing claims of medical malpractice that allegedly occurred after April 26, 2014, is granted; and it is further,

ORDERED, that defendants' motion is otherwise denied.

This constitutes the decision and order of the court.

ENTER,

Dated: November 19, 2021

A.J.S.C.
Hon. Charles M. Troia
Justice of the Supreme Court