

<b>Chaudhry v Gonzales</b>
2021 NY Slip Op 33486(U)
November 10, 2021
Supreme Court, Nassau County
Docket Number: Index No. 605340/2018
Judge: Helen Voutsinas
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU - IAS/TRIAL PART 19  
Present: Hon. Helen Voutsinas, J.S.C.**

-----X  
**NAMA CHAUDHRY,**

**Index No.: 605340/2018  
Motion Sequence No.: 001**

**Plaintiff,**

**-against**

**Short Form Order**

**MARGUERITA GONZALES & MICHAEL  
TERRANI @ GARDEN OBGYN,**

**Defendants.**  
-----X

**The following papers were read on this motion:**

<b>Notice of Motion, Affirmation, Expert Affirmation, Exhibits.....</b>	<b>1</b>
<b>Affidavit and Response to Notice of Motion, Exhibits.....</b>	<b>2</b>
<b>Reply Affirmation.....</b>	<b>3</b>

Upon the foregoing papers, the motion by defendants Marguerita Gonzales, M.D. and Michael Terrani, M.D. s/h/a Michael Terrani @ Garden Obgyn, for an Order pursuant to CPLR §3212 granting summary judgment in favor of defendants and dismissing all claims against them, is determined as herein provided.

This is an action for medical malpractice brought by plaintiff Namra Chaudhry, pro se, based on gynecological services rendered to plaintiff between September 24, 2015 and November 18, 2015. Plaintiff alleges in her complaint that on November 12, 2015, Dr. Gonzalez performed a surgical procedure for the removal of a cyst in which her functioning right ovary and right fallopian tube was removed. Plaintiff alleges that a sonogram taken before the surgery indicated that the cyst was in the left ovary and claims that the treatment by defendants resulted in the negligent removal of the wrong ovary and fallopian tube.

In her bill of particulars as to Dr. Terrani, plaintiff alleges that he failed to properly review what the surgery was for; failed to ensure proper diagnosis of the massive cyst on the left ovary; failed to spend time reviewing the images and confirming the correct location of the cyst before surgery; failed to communicate or consult with plaintiff's other physicians; and negligently referred plaintiff to an unskilled surgeon.

In her bill of particulars as to Dr. Gonzales, plaintiff alleges that she failed to operate on the correct body part; failed to locate and remove a 7-8 CM massive cyst on the left ovary; failed to spend time reviewing the images and confirming the correct location of the cyst before and

during surgery; failed to obtain plaintiff's consent for the surgical removal of her functioning ovary; failed to attempt to only remove the cyst as indicated on the consent form and instead removing the plaintiff's entire healthy right ovary and fallopian tube on the wrong side; and failed to properly review what the surgery was for.

Defendants argue that they are entitled to summary judgment as a matter of law on the grounds that there were no deviations or departures from the accepted medical practice by Dr. Gonzales or Dr. Terrani in their treatment of plaintiff and that their treatment was not a proximate cause of the injuries alleged in this case. In support of their motion, defendants submit the expert affirmation of a Lisa Dabney, M.D., the deposition transcripts of plaintiff and her husband, Syed Rizvi, a nonparty, and plaintiff's medical records from Garden OB/GYN and Long Island Jewish Hospital ("LIJ").

Defendants' expert, Dr. Dabney, is a licensed physician in New York State, board certified in Obstetrics and Gynecology, Urogynecology and Pelvic Reconstructive Surgery. She is currently an assistant professor of Medicine and an attending physician in the Department of Obstetrics, Gynecology and Reproductive Science at Mount Sinai Medical Center. Dr. Dabney states that the opinions set forth in her affirmation are based upon her review of Garden OB/GYN records and the records from LIJ pertaining to plaintiff's care and treatment as well as the post-surgical treatment, the pleadings, deposition testimony and her 21 years of clinical experience in the field of Obstetrics, Gynecology and Urogynecology.

In regard to Dr. Terrani, defendants' expert notes states that plaintiff was not seen by Dr. Terrani during the time period of the alleged negligence, from September 24, 2015 to November 18, 2015. Dr. Dabney states that the Garden OB/GYN records indicate that plaintiff was last seen by Dr. Terrani on August 4, 2015, and that Dr. Terrani's involvement with plaintiff's treatment for the subject time period was limited to plaintiff's visit with him on August 4, 2015 at which time he referred her for a gynecological sonogram which was performed on September 24, 2015. Dr. Dabney asserts that the gynecological sonogram showed a mid-line ovarian cyst possibly originating from the right ovary, and that Dr. Terrani did not interpret the sonogram, did not recommend surgery, and did not participate in the surgery.

Dr. Dabney attests that it her opinion to a reasonable degree of medical certainty, that based upon her review of plaintiff's records from Garden OB/GYN and LIJ, and the claims asserted by plaintiff, Dr. Terrani's treatment of the plaintiff was within the accepted standards of medical care and that no act attributable to Dr. Terrani resulted in any of the alleged injuries claimed by plaintiff.

In regard to Dr. Gonzales, defendant's expert states that Dr Gonzales saw plaintiff for a surgical consultation on September 29, 2015. On that date, Dr. Gonzales counseled plaintiff on a laparoscopy versus exploratory laparotomy for a removal of a dermoid cyst. On November 12, 2015, Dr. Gonzales performed a laparoscopic right salpingo-oophorectomy and extensive lysis of adhesions at LIJ. Dr. Abney opines, to a reasonable degree of medical certainty, that the procedure was performed within the accepted standards of care. During the procedure, Dr. Gonzales noted

that the left adnexa was normal appearing and that there were dense adhesions to the sigmoid colon and right adnexa. Based on her findings during the operation, Dr. Gonzales determined that there was a right ovarian cyst and removed the cyst with the right ovary and fallopian tube.

Dr. Dabney states that this surgery was indicated and properly performed, and that there is no merit to plaintiff's contention that the wrong ovary was removed. She notes that plaintiff signed a consent form for the removal of the right adnexa, that there was no indication to remove the left ovary and Dr. Gonzales' operative descriptions indicate that there was no cyst present in the left adnexa. Plaintiff's expert opines that Dr. Gonzales' treatment of plaintiff was appropriate and within the accepted standards of gynecological care, and that no act or omission attributable to Dr. Gonzales caused or contributed to any alleged injury.

In opposition, plaintiff argues that defendants' motion should be denied on the grounds that exhibits in the record show that medical records signed off by Dr. Gonzales before the surgery indicate that the cyst was diagnosed on the left side.

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing of entitlement to judgment as a matter of law after tendering evidence sufficient to eliminate any material issue of fact from the case. (See *Beck v. Westchester County Health Care Corp.* 52 AD3d 555 [2d Dept 2008]). Defendant has the burden of affirmatively demonstrating the merits of its defense. Until the movant establishes its entitlement to judgment as a matter of law, the burden does not shift to the opposing party to raise an issue of fact and the motion must be denied. Further, the courts are required upon defendant's motion for summary judgment to view the evidence in the light most favorable to the plaintiff. (See *Healy v. Spector*, 287 AD2d 541 [2d Dept 2001]). However, once the moving party establishes its entitlement to judgment through the tender of admissible evidence, the burden shifts to the non-moving party to raise a triable issue of fact. (See *Pierson v. Good Samaritan Hosp.* 208 AD2d 513 [2d Dept 1994]). These standards are of course equally applicable to motions for summary judgment in medical malpractice actions.

The requisite elements of proof in a medical malpractice action are a deviation or departure from accepted practice and evidence that such departure was a proximate cause of injury or damage. On a motion for summary judgment, a defendant doctor has the burden of establishing the absence of any departure from good and accepted medical practice or that the plaintiff was not injured as a result. (See *Rebozo v. Wilen* 41 AD3d 457 [2d Dept 2007]). "In a medical malpractice action, the party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by showing the absence of a triable issue of fact as to whether the defendant physician (and/or hospital were) negligent." (*Taylor v. Nyack Hospital* 18 AD3d 537 [2d Dept 2005] citing *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]).

Upon careful review and consideration of defendants' motion papers, the Court finds that defendants have failed to meet their burden of proof to establish their prima facie entitlement to summary judgment.

Among the medical records submitted by defendants, and ostensibly relied upon by their expert, is a medical record dated September 29, 2015, indicating that plaintiff was seen by Dr. Gonzales on that date. Under the heading “REASON FOR VISIT”, the record states “SONO TODAY SHOWS MIDLINE OVARIAN CYST, POSSIBLY ORIGINATING FROM **LEFT** OVARY, 9 CM, UNCHANGED, MAY BE DERMOID”. Under the heading “ASSESSMENT” the record states “Exam: **Left dermoid cyst**. Counseled on possible laprascopy vs exploratory lapratomy for removal of dermoid cyst”. [Emphasis added] The records bear Dr. Gonzales’ initials and a notation that it was electronically signed by her on September 29, 2015.

There is also a medical record from September 24, 2015 for a sonogram (presumably the one referred to by Dr. Gonzales in her September 29, 2015 notes discussed in the preceding paragraph) which indicates “MID-EXTENDING TO **LEFT SIDE** IS A COMPLEX CYST– ‘SNOWFALL LIKE’ LESIONS/SUBSTANCE MEASURING 8.7 X 7.3 X 7.0 CM CANNOT R/O CYSTIC TERAROMA”. . . . REFERRAL GIVEN FOR SURGERY CONSULT WITH DR. M. GONZALES . . . DISCUSSED WITH DR. TERRANI.” [Emphasis added]<sup>1</sup>

The Operative Report regarding the November 12, 2015 surgery performed by Dr. Gonzalez includes the following notations:

PREOPERATIVE DIAGNOSIS”: Pelvic pain and **right ovarian cyst**.  
OPERATION: Laparoscopic right salpingo-oophorectomy and extensive lysis of adhesions.  
[Emphasis added]

A medical record of Garden OB/GYN dated November 14, 2015 (after the surgery) indicates a post operative visit and that the patient had an ovarian cyst removed on November 12, 2015, with complications. Plaintiff was complaining of pelvic pain and abdominal pain and fever. The record references a pelvic ultrasound performed during that visit which indicates:

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<sup>1</sup> In their Statement of Material Facts, at paragraph 6, defendants assert that “[a] September 24, 2015 transvaginal sonogram report describes cysts on plaintiff’s right ovary. See Exhibit “G” [Garden OB/GYN medical records] pp. 147-148.” It appears that defendants are misconstruing the dates of their own medical records. At the top of the page referenced by defendants is indicated “**Gynecological Report - 1 of 5 visit(s) - Date: 10/26/2009**”. A few inches from the top, appears “**Gynecological Report – Preliminary 9/24/2015**”. Then immediately below that, the report indicates “**Naima Chaudry D.O.B. xx/xx/71 (38 years) Date 10/26/2009**”. Plaintiff was 38 years old in 2009, and she was 44 years old in 2015. The “**Gynecological Report – Preliminary 9/24/2015**” notation appears to reflect the date that a compilation of plaintiff’s previous visits (over the course of several years) were printed or displayed. This is evidenced by a review of several other records that also bear the “**Gynecological Report – Preliminary 9/24/2015**” notation but pertain to records from 10/26/2009, 2/15/2012 and 8/4/2015. The actual sonogram report dated September 24, 2015 appears at pages 32-34 of Defendants’ Exhibit “G” and refers to the left ovary.

The Right ovary not seen.

The **Left** ovary measures 7.32 x 6.36 x 7.38 cm.

**Cystic area noted** Posterior Midline to Uterus measuring 6.5 x 6.3 x 6.7 cm.

[Emphasis added].

In her affirmation, plaintiff's expert states (at paragraph 3) that "[t]he records from Garden OB/GYN indicate that on September 24, 2015, a transvaginal ultrasound showed cysts on plaintiff's *right* ovary. Plaintiff was then referred by Dr. Rosemarie Hazoglou to Dr. Gonzales for management of ovarian cysts. On November 12, 2015 plaintiff underwent a laparoscopic right salpingo-oophorectomy."

Plaintiff's expert is incorrect in her statement that the September 24, 2015 ultrasound showed a cyst on plaintiff's *right* ovary. In fact, the September 24, 2015 ultrasound showed a cyst in plaintiff's *left* ovary. The Court finds this to be a crucial error in the recitation of the relevant medical records which was relied upon by plaintiff's expert in forming her opinion. Accordingly, plaintiff's expert affirmation is insufficient to support defendants' summary judgment motion. The medical records indicate that a cyst existed on plaintiff's left ovary both before and after the November 12, 2015 surgery.

In regard to Dr. Terrani, defendants' counsel and expert each state that Dr. Terrani did not see plaintiff from September 24, 2015 to November 18, 2015, the time period of the alleged malpractice, and that Dr. Terrani's involvement with plaintiff's treatment was limited to plaintiff's visit with him on August 4, 2015 and a referral for a gynecological sonogram which was performed on September 24, 2015. However, there is no sworn statement by Terrani, and the affirmations or counsel and plaintiff's expert are insufficient to meet Dr. Terrani's burden.

Accordingly, and based upon all of the foregoing, defendants' motion for summary judgment is **DENIED** regardless of the sufficiency of plaintiff's opposition papers (see *Carew v. Urological Surgeons of Long Island, P.C.*, 292 AD2d 484 [2d Dept 2002], *Francis V. Mishra*, 60 AD3d 806 [2d Dept 2009]).

Any other relief sought herein but not specifically ruled upon is **DENIED**.

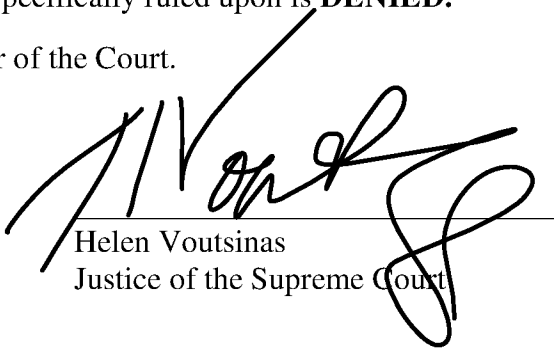
This constitutes the Decision and Order of the Court.

Dated: November 10, 2021  
Mineola, NY

**ENTERED**

**Nov 15 2021**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

  
Helen Voutsinas  
Justice of the Supreme Court