

**Omaro v St. Vincent's Catholic Med. Ctrs. of N.Y.**

2021 NY Slip Op 33910(U)

September 30, 2021

Supreme Court, Richmond County

Docket Number: Index No. 100757-2005

Judge: Judith N. McMahon

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**

**IAS PART 6**

\_\_\_\_\_  
DOROTHY OMARO, as Administrator DBN of the  
Estate of RITA RENEA WALTON, Deceased,

ORDER

Plaintiffs,

- against -

Index Number: 100757-2005

ST. VINCENT'S CATHOLIC MEDICAL CENTERS OF  
NEW YORK - ST. VINCENT'S HOSPITAL STATEN  
ISLAND, RONALD A. MANFREDI, M.D., MICHAEL  
L. MORETTI, M.D., JAMES PULLANO, M.D., KRAYAL  
SAMBANDAM, M.D., DENNIS A. BLOOMFIELD, M.D.,  
and JAY M. NFONOYIM, M.D.,

Hon. Justice  
Judith N. McMahon

Defendants.

\_\_\_\_\_  
Defendants' motion (sequence # 002), pursuant to CPLR § 3212, for an Order granting summary judgment in favor of and dismissing all claims against all Defendants, is granted in part and denied in part as detailed herein.

This medical malpractice action was commenced by the filing of a Summons and Verified Complaint on or about March 11, 2005. The Verified Complaint contains four causes of action sounding in medical malpractice, negligent hiring, lack of informed consent and wrongful death. Plaintiff alleges that Defendants failed to recognize, consider, and/or address the heightened risk for an embolism during Plaintiff Decedent Rita Renea Walton's pre-natal stage, labor and delivery, and post-partum stage when she presented with multiple known risk factors.

Defendants now move for summary judgment to dismiss Plaintiff's case as against them.

"The requisite elements of proof in a medical malpractice action are a deviation or departure from accepted standard of care and evidence that the deviation or departure was a proximate cause of injury or damage. In order to establish prima facie entitlement to judgment as a matter of law, a defendant in a medical malpractice action must negate either of these two elements." *Arocho v. Kruger*, 110 A.D.3d 749, 973 N.Y.S.2d 252 (N.Y.A.D. 2<sup>nd</sup> Dept 2013).

Defendants established a prima facie entitlement to judgment by showing there was no departure from good and accepted medical practice via the Affirmations of Dr. Iffath Abbashi Hoskins, Dr. David Diuguid, Dr. Martin Griffel, and Dr. Joshua Weintraub. See *Stukas v. Streiter*, 83 A.D.3d 18, (N.Y.A.D. 2<sup>nd</sup> Dept. 2011); See also *Joyner-Pack v. Sykes*, 54 A.D.3d 727, (N.Y.A.D. 2<sup>nd</sup> Dept. 2008).

In support of Defendants' motion, Dr. Hoskins opined that, "A pregnant patient is deemed in a hypercoagulable state and at increased risk for clotting due to physiologic and metabolic changes during pregnancy. For that and other reasons, regular prenatal assessment and laboratory workup is performed throughout pregnancy. The mere fact of a pregnancy and a hypercoagulable state is not an indication to administer anticoagulant therapy. Administering anticoagulation, such as Heparin/Lovenox/Coumadin, is seldom done during pregnancy unless there is a significant risk of clotting and an indication for "blood thinners." In this case, Ms. Walton did not present with a risk of clotting that warranted anticoagulation therapy. The patient was placed on oral baby aspirin 81mg taken once daily, on August 20, 2002, when the MFMs [maternal-fetal medicine specialists] first began prenatal care, and she was appropriately continued on a daily baby aspirin dose throughout the pregnancy because of her complicated obstetrical history, in particular the two fetal deaths at term. There is nothing in the record to show any compelling reason for Ms. Walton to have received low molecular weight Heparin or Lovenox or any other "blood thinner" during her pregnancy."

In support of Defendants' motion, Dr. Diuguid opined "that the thromboembolic workup ordered by Ms. Walton's Maternal Fetal Medicine specialists, Defendants Drs. Moretti and Pullano, was thorough and appropriate in every respect. It is my further opinion that Ms. Walton's Protein S of 53 was to be expected in light of the fact that she was pregnant. Every pregnant woman has decreased Protein S as a result of hormone levels during pregnancy. Similarly, records show Ms. Walton had decreased hemoglobin and hematocrit, which is also consistent with pregnancy and for which the patient was given iron supplements. As for the remainder of the patient's thromboembolic workup, the results were negative and there was no indication for any different pre- or post-delivery treatment."

Dr. Diuguid further opined "that the patient's Maternal Fetal Medicine specialists Drs. Moretti and Pullano and the Hospital's Obstetrical team had no reason to have a heightened index of suspicion prior to the occurrence of the PE on the morning of March 6th. All pregnant patients and those who deliver by Cesarean section are at increased risk of forming clots. Signs of calf tenderness and bilateral leg swelling are to be expected for such patients in the days after delivery. The fact of a surgical delivery and post-partum swelling was not an indication to provide the patient with anticoagulation therapy post-delivery. The Hospital staff timely recognized Ms. Walton's condition on the morning of March 6th and correctly ordered all necessary interventions to save the patient's life. There was no indication for Ms. Walton to receive low-dose Heparin during her prenatal period. A marginally low Protein S and hemoglobin and hematocrit (H/H) are to be expected during pregnancy. The patient's levels were entirely consistent with a pregnant patient and not an indication for anticoagulation prior to the syncopal event and PE on March 6, 2003. The record also shows Ms. Walton was correctly placed with sequential compression devices (SCDs) in the operating room prior to delivery, and the SCDs were maintained as she became ambulatory."

In support of Defendants' motion, Dr. Griffel opined that, "I find the patient's clinical prediction criteria did not indicate Ms. Walton to be at risk for DVT or thromboembolic event. Defendants rendered the patient correct and timely treatment and no act or omission caused her injury...It is my opinion within a reasonable degree of medical certainty that treatment with Epogen in 2003 was well within the standard of care. Ms. Walton was experiencing chronic decreased iron and red blood cell levels, and iron supplementation and Epogen were properly ordered for the patient. Any claim this patient, who had undergone a Cesarean section-an abdominal surgery-and a myomectomy, should have been placed following the C-section on anticoagulation therapy is incorrect. Standard of care was met with placement of SCDs and instruction to the patient to ambulate, and post-surgical anticoagulation was not indicated for this patient."

In support of Defendants' motion, Dr. Weintraub opined, "that Dr. Manfredi's placement of the filter was 'textbook correct.' In women of child-bearing years who have suffered a PE, an IVC filter is recommended to be placed supra-renal for a number of reasons. In this case Ms. Walton was 33-years-old with the potential for bearing children in the future, and Dr. Manfredi correctly placed the filter supra-renal. Placing the filter infra-renal in a woman still young enough to conceive is not done because the gravid uterus can put pressure on the IVC filter at the infra-level which could, in turn, cause a 'leg' of the filter to push through the vein and into the uterus."

"Once this showing has been made [by Defendants], 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).

Accordingly, the burden shifts to Plaintiffs "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 501 N.E.2d 572 (1986). In a medical malpractice action, this requires that a plaintiff "submit evidentiary facts or materials to rebut the prima facie showing by the defendant physician that he was not negligent in treating plaintiff so as to demonstrate the existence of a triable issue of fact... General allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat defendant['s]... summary judgment motion." *Id.*

"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).

"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); *see also Boston v. Weissbart*, 62 A.D.3d 517, 879 N.Y.S.2d 108 (N.Y.A.D. 1st Dept. 2009).

Plaintiff submitted Affirmations from three doctors in Opposition to Defendants' motions. The doctors offering opinions in opposition to Defendants' motion were an OB-GYN, a Pulmonologist, and a Vascular Surgeon.

In Opposition to Defendants' motion, Plaintiff's OB-GYN opined that "Ms. Walton had distinct risk factors upon her first presentation to Defendant Doctors Moretti and Pullano during her pregnancy, and then developed additional risk factors once she was hospitalized for the delivery of her baby. During her pregnancy, Ms. Walton presented with the following factors and conditions, each representing a substantial medical basis for the elevation of the patient's risk for development of a PE: (I)Obesity...(II)Family History of Pulmonary Embolism...(III)Protein S Deficiency Coupled with Ms. Walton's Recurrent Pregnancy...(IV)Pregnancy... Thereafter, following Ms. Walton's three days of labor, C-Section delivery of her baby daughter and contemporaneous myomectomy, as of the afternoon of March 5, 2003, Ms. Walton had the following additional risk factors for the development of a PE: (V)Extensive Abdominal Surgery...(VI)The Performance of an Unnecessary and Additional Pelvic Surgery...(VII)The Administration of a Spinal Anesthetic Agent...(VIII)Immobility."

Plaintiff's OB-GYN elaborated, explaining that, "Thus, while defendants' obstetrical expert contends that 'there is nothing in the record to show any compelling reason to have received low-molecular weight Heparin or Lovenox or any blood thinner during her pregnancy,' this opinion ignores the significance of each of these specific risk factors and further disregards the physiologic effects brought about by the combination of these multiple risk factors."

In Opposition to Defendants' motion, Plaintiff's Pulmonologist opined, "that Ms. Walton was at a high risk for the development of clots, including a PE, during her pregnancy, her labor, and in her immediate post-partum period. Despite being at such a high risk, she received no meaningful prophylactic treatments, and as a result suffered a massive PE on March 6, 2003. The massive PE was not appropriately treated with either timely or appropriately-dosed Heparin, nor with the lysing of the clots via thrombolysis. As a result, the clots continued to propagate and grow. Ms. Walton was then prematurely discharged from the Hospital while still making physical complaints and exhibiting multiple abnormal signs and symptoms, and before having critical imaging studies done, including an echocardiogram, which had been ordered no less than five times during her hospitalization. The failure of Defendants to prophylactically treat Ms. Walton to ensure she did not develop clots, and the subsequent failure to properly treat her once she suffered the massive PE, each led to her untimely demise exactly two days after being discharged from the Defendant Hospital."

Plaintiff's Pulmonologist also opined, "that the failure of Defendants Doctors Bloomfield, Nfonoyim and Sambandam to order and arrange for necessary thrombolysis allowed the clots to propagate, and was a significant factor leading to Ms. Walton's pain and suffering and, ultimately, her wrongful death."

In Opposition to Defendants' motion, Plaintiff's Vascular Surgeon opined that, "The fundamental basis for Defendants' experts' opinions regarding treatment and care rendered to Ms. Walton during her pregnancy, labor, and post-partum period is that there was no reason for Defendant Doctors Pullano and Moretti 'to have a heightened index of suspicion for an embolic event prior to the event.' I strongly disagree with this assessment and other similar opinions expressed by Defendants' experts, since they ignore the exceedingly high number of known and well-recognized risk factors with which this patient presented...As explained above, during her pregnancy Ms. Walton had five specific risk factors for the development of a PE: the hypercoagulable state that accompanies every pregnancy, a Protein S deficiency, a family history of PE, obesity, and a very complicated obstetrical history, including, most significantly, two fetal uterine deaths (i.e. stillbirths) at term. Defendants concede that pregnancy itself is a risk factor."

As to the other Defendants, Plaintiff's Vascular Surgeon opined that, "Defendant Doctor Manfredi deviated from good and accepted standards of medical care in inserting the Greenfield Filter in a supra-renal position as opposed to the required infra-renal position."

Plaintiff's Vascular Surgeon also opined that, "The patient was in a hospital setting, and should there have been any unusual blood loss, such possibility would have been immediately remedied with a blood transfusion. Moreover, the risk factors associated with bleeding complications – i.e. older age, diabetes, cancer, bleeding in the brain – were not present here. As such, the benefits of thrombolysis far outweighed the risks and represented the standard of surgical and medical care. As such, it is my firm opinion to a reasonable degree of medical certainty, that the failure of Defendants Doctors Bloomfield, Nfonoyim and Sambandam to order and arrange for necessary thrombolysis allowed the clots to propagate, and was a significant factor leading to Ms. Walton's pain and suffering and, ultimately, her wrongful death."

Plaintiff's Vascular Surgeon concluded that, "Given this most unusual array of PE risk factors in the patient's history creating unmistakable 'red flags' pointing directly to an overwhelming potential for her to suffer a pulmonary embolism it was a departure from accepted standards of care for Defendant Doctors Moretti and Pullano to fail to schedule a consultation with a physician who possessed the knowledge and experience to advise and treat this high risk patient. This failure, moreover, to arrange for a consultation with an expert physician resulted in an abject failure to recognize and provide required testing, treatment and care, and was a substantial factor in Ms. Walton suffering a massive PE and subsequently her untimely demise."

"In opposition, Plaintiff[s] 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[s] 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. 2<sup>nd</sup> Dept. 2017).

There are questions of fact created by Plaintiff’s Experts including, but not limited to, whether or not Defendants adequately appreciated and addressed Ms. Walton’s risk of a pulmonary embolism, whether the IVC filter was properly placed, and whether it was proper to discharge Ms. Walton on March 10, 2003.

However, Plaintiff did not offer any opposition to Defendants’ motion to dismiss on the allegations regarding informed consent and negligent hiring, so those allegations are severed and dismissed.

“Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions.” *Joyner v. Middletown Med., P.C.*, 183 A.D.3d 593, 123 N.Y.S.3d 169 (N.Y.A.D. 2<sup>nd</sup> Dept. 2020).

**ORDERED** that Defendants’ motion (sequence # 001), for summary judgment in favor of and dismissing all claims against all Defendants is granted only as to Plaintiff’s allegations related to informed consent and negligent hiring; and it is further

**ORDERED** that Plaintiff’s allegations related to informed consent and negligent hiring are severed and dismissed; and it is further

**ORDERED** that the remainder of Defendants’ motion (sequence # 001), for summary judgment in favor of and dismissing all claims against all Defendants is denied; and it is further

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

**ORDERED** that all parties shall appear for a conference, to be conducted via Microsoft Teams, on December 7, 2021, at 11:30 AM; and it is further

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

Dated: September 30, 2021

So Ordered.

ENTER

J.S.C

Hon. Judith N. McMahon  
J.S.C.