

Martinez v New York City Health & Hosps. Corp.
2022 NY Slip Op 32206(U)
January 24, 2022
Supreme Court, Bronx County
Docket Number: Index No. 21501/2015E
Judge: Alicia Gerez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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MARY MARTINEZ, as Executrix of the Estate of
GLORIA MARTINEZ, Deceased,

DECISION and ORDER
Index No. 21501/2015E

Plaintiff,

- against -

NEW YORK CITY HEALTH & HOSPITALS
CORPORATION, JACOBI MEDICAL CENTER,
BAY PARK CENTER FOR NURSING AND
REHABILITATION, LLC,

Defendants.

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HON. ALICIA GEREZ

Upon defendant’s August 11, 2021, notice of motion and the affirmation and exhibits submitted in support thereof; plaintiff’s October 22, 2021, affirmation in opposition and the exhibits submitted therewith; defendant’s November 15, 2021, affirmation in reply; and due deliberation; defendant’s motion for an order granting summary judgment is granted in part.

FACTS & PROCDURAL BACKGROUND

Plaintiff decedent suffered a fall and presented to Jacobi Medical Center (Jacobi) on January 17, 2014, where she was diagnosed with a severely comminuted and displaced left femur fracture. Decedent’s medical history is uncontroverted as significant for diabetes mellitus, hypertension, chronic lower extremity weakness, intermittent urinary retention due to spinal stenosis, degenerative disease escalated after a prior fall, as well as a left total knee replacement.

While at Jacobi on the day of admission, decedent was treated without surgery via a knee immobilizer or Bledsoe brace. Decedent’s x-ray during this initial admission to Jacobi was limited to the day of the closed reduction. A left fascia nerve block was utilized to manage the decedent’s pain.

It is undisputed that on January 28, 2014, decedent was admitted to defendant-movant Bay Park via ambulette, 11 days post-admission to Jacobi. Decedent's left leg was immobilized and noted to have non-weight bearing status. Upon admission, decedent was noted as alert and able to communicate with staff. A notation was made that at approximately 6 p.m., there was a "pressured area" to the outer knee. An admission evaluation and physical examination was performed on January 29, 2014. A treatment plan was created to administer medication, restrict fluids, and to participate in rehab. Decedent returned to Jacobi on February 11, 2014, for an orthopedic follow-up where an x-ray discovered a bone spike with skin tenting at the knee. Decedent was admitted to Jacobi and underwent Open Reduction Internal Fixation to repair the fracture.

Plaintiff commenced this action against Bay Park alleging defendant failed to diagnose and treat the decedent's left femur fracture and nerve injuries, leading to "drop foot," an uneven gait, leg-length disparity, the need for physical therapy, and an Open Reduction Internal Fixation ('ORIF'), excessive blood loss necessitating a blood transfusion, "immobilization," decreased range of motion, and pain. In addition, plaintiff alleges Bay Park failed to protect decedent's skin integrity and prevent the development of pressure ulcers, and an "infection" to the right middle finger; diagnose and/or treat a UTI, treat Reynaud's disease, and provide proper diet management for diabetes which led to a reaction to medication. Defendant Bay Park now moves for summary dismissal pursuant to CPLR 3212.

LEGAL STANDARD & ANALYSIS

In moving for summary judgment dismissing a cause of action alleging medical malpractice, a defendant must establish, prima facie, that there was no departure or deviation from the accepted standard of care or that such departure or deviation was not a proximate cause of any injury to the plaintiff (*Attia v Klebanov*, 192 AD3d 650 [2d Dept 2021] [internal citation omitted]). In response,

the plaintiff bears the burden of raising a triable issue of fact regarding the element or elements on which the defendant has made its prima facie showing (*id.*)

The court's function on this motion for summary judgment is issue finding rather than issue determination (*Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . . ruling on a motion for summary judgment" (*Asabor v Archdiocese of New York*, 102 AD3d 524, 527 [1st Dept 2013] [citation and internal quotation marks omitted]).

At the outset, defendant has established prima facie entitlement to judgment on plaintiff's claims for excessive blood loss, "immobilization," decreased range of motion, pain, skin integrity, ulcers, UTI, Reynaud's disease, and proper diet management for diabetes. In opposition to defendant's expert, plaintiff failed to raise a triable issue of fact or other otherwise even address these contentions. As such, those claims are aptly dismissed. Defendant's remaining contentions are addressed below.

In support of defendant's motion to dismiss the orthopedic claims, defendant submits the expert affidavit of Jeffery Richmond, M.D., a Board-Certified Orthopedic Surgeon, who opines that defendant did not depart from good and accepted standards of practice, and/or no departure(s) proximately caused or contributed to decedent's injuries. Specifically, Dr. Richmond found no departures with respect to Bay Park failing to order a left leg x-ray or an orthopedic consult during decedent's brief admission period.

In opposition to defendant's prima facie showing, plaintiff's expert affidavit sufficiently raises an issue an issue of fact to foreclose summary relief. Plaintiff submits the affirmation of an orthopedic surgeon who opines that good nursing home practice would have been to have an orthopedic consult

to ensure that the fracture had not migrated, particularly after it was noted on admission that decedent had “pressured area” to the outer knee – which suggests fracture migration. Further, defendant departed from good and accepted medical practice in failing to x-ray the left femur to monitor for fracture migration based on decedent’s complaints of severe pain.

In reply, defendant contends that plaintiff’s expert’s reliance on the January 28, 2014, observation of “pressured area to the left outer knee” as indicative of fracture migration is speculative because “pressured area” is not a medical term, but instead a subjective observation not fully elucidated in the medical records. This, however, merely raises a question of the expert’s credibility for the jury to evaluate during cross-examination.

Accordingly, it is hereby

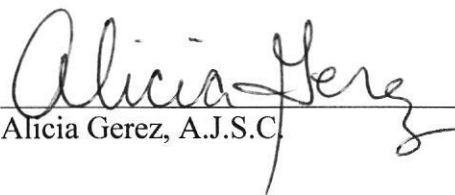
ORDERED, that the motion seeking summary judgment on the claims earlier deemed to be abandoned are granted, and those claims are dismissed; and it is further

ORDERED, that the motion is otherwise denied in all respects.

This constitutes the decision and order of the court.

Dated: 1/24/22

ENTER


Alicia Gerez, A.J.S.C.