

Nasir v New York Univ. Hosps. Ctr.

2022 NY Slip Op 32527(U)

July 25, 2022

Supreme Court, New York County

Docket Number: Index No. 805402/2016

Judge: John J. Kelley

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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INDEX NO. 805402/2016

SYED NASIR and KEIKO NASIR,
Plaintiff,

MOTION DATE 05/19/2022

MOTION SEQ. NO. 001

- v -

NEW YORK UNIVERSITY HOSPITALS CENTER,
ANAND KUMAR SWAMINATHAN, M.D., ANNETTE
PEPE, R.N., JOSEPH AGUILAR, R.N., and "JOHN
DOE", intended to be that individual who assisted plaintiff
out of bed in the emergency department on March 13,
2016,

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24,
25, 26, 27, 28

were read on this motion to/for AMEND CAPTION/PLEADINGS

In this consolidated medical malpractice action, the plaintiff Keiko Nasir, as the duly
appointed representative of the estate of the deceased plaintiff Syed Nasir, moves pursuant to
CPLR 1015 and 1021 to be substituted as a party plaintiff in his place and stead, to vacate the
automatic stay of proceedings imposed by operation of law upon the decedent's death, and
pursuant to CPLR 305(c) for leave to amend the caption accordingly. The motion is granted,
without opposition.

On October 7, 2016, the plaintiffs commenced an action to recover damages for medical
malpractice and loss of spousal consortium against several defendants, arising from care
rendered to the decedent at the defendant New York University Hospitals Center by the
defendants Anand Kumar Swaminathan, M.D., Annette Pepe, R.N., and Joseph Aguilar, R.N.
On November 11, 2017, all of the defendants served an answer to the complaint, along with
numerous demands for discovery and inspection.

On February 27, 2018, the court (Madden, J.) fully consolidated a separate action commenced by the plaintiffs in 2017 against New York University Hospitals Center with the action commenced on October 7, 2016. April 5, 2018, the court (Madden, J.) issued a preliminary conference order in the consolidated action, setting forth a schedule for the completion of discovery, including deadlines for responding to written discovery requests and submitting to depositions. On August 5, 2019, the same court issued a compliance order. Between September 26, 2019 and February 19, 2020, the same court issued three status conference orders, the last of which set a schedule for discovery, including a deadline for the plaintiff's designation of a deposition witness on behalf of the defendant New York University Hospitals Center, a date for the deposition of that witness, and a date for the physical examination of the injured plaintiff. The order fixed April 2, 2020 as the deadline for the filing of a note of issue, but also scheduled a further status conference for April 16, 2020 in the event that the parties requested, and the court granted, a further extension of the note of issue filing deadline. By then, the courts were closed due to the COVID-19 pandemic.

Syed Nasir died on November 14, 2020, and all proceedings in this action thus were automatically stayed by operation of law on that date, pending substitution of a representative of the decedent's estate (*see Perez v City of New York*, 95 AD3d 675, 677 [1st Dept 2012]). The action was reassigned to this court on or about March 9, 2021. On September 22, 2021, the decedent's attorneys informed the court of his death. By order dated September 27, 2021, this court memorialized the automatic stay that had gone into effect on November 14, 2020.

On February 4, 2022, the Surrogate's Court, New York County, issued letters of administration to Keiko Nasir, and appointed her as the administrator of the estate of the deceased plaintiff, Syed Nasir, thus permitting her to prosecute this action. She now moves to be substituted in this action for him as a party plaintiff, to vacate the automatic stay, and for leave to amend the caption accordingly.

It is well settled that, where an administrator or executor is appointed as representative of the estate of a decedent who was the party to a pending action, substitution and amendment of the caption is appropriate (*see Tag 380, LLC v Estate of Howard P. Ronson*, 69 AD3d 471, 473-474 [1st Dept 2010]). Keiko Nasir has submitted sufficient proof that she has been duly appointed as administrator of the estate of Syed Nasir. Hence, her motion must be granted.

Accordingly, it is,

ORDERED that the motion of Keiko Nasir, as administrator of the estate of Syed Nasir, deceased, to be substituted as party plaintiff in this action, dissolve the stay imposed upon the decedent's death, and amend the caption accordingly is granted, without opposition; and it is further,

ORDERED that Keiko Nasir, as administrator of the estate of Syed Nasir, deceased, is substituted as party plaintiff in this action in his place and stead; and it is further,

ORDERED that the automatic stay of proceedings imposed by operation of law upon the decedent's death is dissolved; and it is further,

ORDERED that the caption is amended to read as follows:

 KEIKO NASIR, as administrator of the estate SYED NASIR,
 deceased, and KEIKO NASIR, individually

Plaintiff,

Index No. 805402/2016

v

NEW YORK UNIVERSITY HOSPITALS CENTER,
 ANAND KUMAR SWAMINATHAN, M.D., ANNETTE
 PEPE, R.N., JOSEPH AGUILAR, R.N., and "JOHN
 DOE", intended to be that individual who assisted plaintiff
 out of bed in the emergency department on March 13,
 2016,

Defendants.
 -----;

and it is further,

ORDERED that the plaintiff shall serve a copy of this order upon the Trial Support Office (60 Centre Street, Room 148, New York, NY 10007), and shall file the notice required by CPLR

8019(c) and a completed Form EF-22, and the Trial Support Office shall thereupon amend the court records accordingly; and it is further,

ORDERED that, on or before August 24, 2022, the parties shall submit a proposed status conference order to the Part 56 Part Clerk at SFC-Part56-Clerk@nycourts.gov.

This constitutes the Decision and Order of the court.

JOHN J. KELLEY, J.S.C.

7/25/2022

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE