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| Kakheladze v Moezinia |
| 2022 NY Slip Op 33043(U) |
| September 7, 2022 |
| Supreme Court, Kings County |
| Docket Number: Index No. 521006/2020 |
| Judge: Bernard J. Graham |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

TAMARA KAKHELADZE,

Plaintiffs,

-against-

PATRICIA MOEZINIA, DDS, FRANKLIN DENTAL
ASSOCS., PC and EMPOWER YOUR SMILE, PC,

Defendants.

Index No.: 521006/2020

DECISION/ORDER

Hon. Bernard J. Graham
Supreme Court Justice

Recitation, as required by CPLR 2219(a), of the papers considered on the review of this motion to: award summary judgment and dismiss plaintiff's complaint, pursuant to CPLR sec. 3212.

| Papers | Numbered |
|---|-----------------|
| Notice of Motion and Affidavits Annexed..... | 1-2 |
| Order to Show cause and Affidavits Annexed..... | _____ |
| Answering Affidavits..... | 3 |
| Replying Affidavits..... | 4 |
| Exhibits..... | _____ |
| Other: (memo)..... | _____ |

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Defendants, Patricia Moezinia, DDS, ("Dr. Moezinia"), Franklin Dental Assocs., PC, and Empower Your Smile, PC, ("defendants") have moved (Seq. #1), pursuant to CPLR § 3212, for an Order awarding summary judgment and a dismissal of plaintiff's complaint upon the grounds that there was no departure from accepted medical/dental practice in the care and treatment rendered to Tamara Kakheladze ("plaintiff") and that any alleged departure was not the proximate cause of the alleged injuries.

In opposition to the defendants' motion, the plaintiff asserts that summary judgment and a dismissal of the complaint as against Dr. Moezinia is not warranted as there are triable issues of fact as to whether this defendant departed from good and

accepted medical/dental practice in the care and treatment rendered to the plaintiff, and that those departures were a substantial factor in causing the injuries that she sustained.

Background:

The within motion sounding in dental/medical malpractice was commenced by the filing of a summons and complaint with the Clerk of this Court on or about October 28, 2020. Issue was joined, on or about December 1, 2020, by the service of the verified answer by the defendants.

The plaintiff filed a verified bill of particulars as to the defendants, on or about December 10, 2020, in which it was alleged that defendants were negligent in the placement of dental crowns on plaintiff's maxillary (upper teeth), specifically teeth #5, 7, 8, 9, 10, 12 and 13. Plaintiff also claims that there was a lack of informed consent.

A deposition of the plaintiff was held on June 23, 2021, followed by a deposition of defendant Dr. Moezinia on December 3, 2021.

A Note of Issue and Certificate of Readiness was filed on behalf of the plaintiff on or about December 23, 2021.

Facts:

The plaintiff, who was 49 years old, began treating with Dr. Moezinia on February 4, 2015, during which visit an examination was performed, a cleaning was conducted, and x-rays were taken. Plaintiff also had a cosmetic consultation with Dr. Moezinia regarding her maxillary teeth. That same year, plaintiff received treatment from an orthodontist and had braces put on to correct the gaps between her maxillary teeth. Although the braces were intended to remain on plaintiff's teeth for one and a half to two years, plaintiff requested their removal after one year, during which it is alleged that some progress had been made in closing the gaps between plaintiff's maxillary teeth, but they were not completely closed.

On June 4, 2019, plaintiff returned to Dr. Moezinia to further address the gaps between her maxillary teeth. During the exam, plaintiff complained of cosmetic issues

with her teeth, as well as sensitivity and decay. Although Dr. Moezinia advised plaintiff she had other dental issues, plaintiff only wanted Dr. Moezinia to perform cosmetic treatments on her teeth.

On February 17, 2020, plaintiff returned to Dr. Moezinia for treatment. Plaintiff had several cosmetic complaints. Her complaints were that she was not happy with her smile and wanted to change it, and she was not happy with the space between her teeth, as well as their shape and color. Plaintiff stated that she wanted to change her fillings to white restorations and change all her darkened teeth. Plaintiff also stated she did not want braces or Invisalign, or to address her impacted canines. The proposed treatment consisted of laminates (veneers) or Porcelain crowns from #3 to #14. Plaintiff was allegedly informed of the potential risks and benefits of the proposed treatment and signed the consent form. Following the consultation, Dr. Moezinia administered an anesthetic and performed treatments on teeth #5, 7, 8, 9, 10 and 12. Dr. Moezinia excavated the old restorations, as well as the decays under the old restorations, and determined that the plaintiff needed crowns rather than veneers because there was not enough tooth structure remaining. Plaintiff was fitted with temporary crowns and was advised that if she experienced any symptoms, her teeth may require root canal therapy.

On February 26, 2020, three periapical films and one bitewing film were taken, anesthetic was administered, and the old restoration at #13 was excavated, along with the decays. Like the previously treated teeth, there was not enough tooth structure remaining, and a crown was needed. In addition, tooth #14 had a previous root canal treatment, with an amalgam core extending to the root. The old crown was excavated and the tooth was prepped for a new crown. Plaintiff was referred to a periodontist to evaluate and to perform crown lengthening before finalizing the prep for #14.

On March 3, 2020, after the administration of an anesthetic, teeth #3 and #4 were prepped. Plaintiff returned on March 10, 2020 to finalize the preps and take impressions of teeth #4, 5, 7, 8, 9, 10, 12, and 13. Plaintiff decided not to continue treatment on teeth #3 and #14 with Dr. Moezinia, and stated that she would seek treatment of those teeth with a dentist that participated with her insurance. The proposed cosmetic procedures, as

well as the potential benefits and risks, were purportedly discussed with plaintiff after which she signed the informed consent form.

On June 2, 2020, Dr. Moezinia inserted the laminate on tooth #4 and put crowns on teeth #5, 7, 8, 9, 10, 12, and 13. After the crowns and laminate were cemented, Dr. Moezinia verified the fit and removed excess cement. Plaintiff was satisfied with the fit and aesthetics, and was advised to contact the office if she experienced any discomfort.

On June 11, 2020, plaintiff returned to Dr. Moezinia with complaints about the shape of her teeth. In response to these complaints, the crowns were reshaped and made thinner. Plaintiff no longer wanted her teeth to be very square, as she had requested at the beginning of treatment, and asked Dr. Moezinia to make them rounder. After reshaping her teeth, plaintiff was happier with the look and her teeth were polished.

On July 28, 2020, plaintiff returned to Dr. Moezinia's office and was treated by Dr. Mehrshid Sedaghatpour, who performed crown lengthening on tooth #14.

On August 6, 2020, Dr. Moezinia removed the sutures and made a temporary crown, and advised plaintiff to return to redo the crown at no charge. Plaintiff did not return to Dr. Moezinia's office, but rather called that office on August 21, 2020 to request a refund of the fees paid.

Parties' Contentions:

Here, the Court is presented with the issue of whether the defendants departed from accepted dental practice in the preparation and placement of plaintiff's crowns and laminates, and if so, whether that departure from accepted dental practice was the proximate cause of plaintiff's alleged injuries, including pain, sensitivity, and inflamed gums.

In support of the motion for summary judgment by the defendants and a dismissal of plaintiff's cause of action against Dr. Moezinia, counsel offers the expert affirmation of Dr. Louis DeSantis ("Dr. DeSantis"), who opines that the treatment rendered to the plaintiff by Dr. Moezinia was in accordance with the proper standard of care. Dr.

DeSantis asserts that Dr. Moezinia utilized standard techniques, and the end result of the cosmetic work was aesthetically pleasing.

Plaintiff, by her attorneys, opposes the relief sought in the motion by offering the expert affirmation of Richard Ricci, DDS (“Dr. Ricci”) who opines that Dr. Moezinia departed from the standard of care by changing the treatment plan to crown work while plaintiff was in the dental chair and not obtaining proper informed consent. Additionally, Dr. Ricci argues that the temporary and permanent crowns Dr. Moezinia provided were “severely overbulked” and lacking in crown embrasure spaces, and contained food traps, open margins, open contacts, and sub gingival cement. Dr. Ricci further opines that the treatment rendered by Dr. Moezinia caused plaintiff to have pain, sensitivity, and inflamed gums.

Discussion:

A defendant moving for summary judgment in a case sounding in medical malpractice “must make a prima facie showing either that there was no departure from accepted medical practice, or that any departure was not a proximate cause of the plaintiff’s injuries.” Guctas v Pessolano, 132 AD3d 632, 633 [2d Dept 2015], quoting Matos v Khan, 119 AD3d 909, 910 [2d Dept 2014].

Once the movant has made a prima facie showing, the plaintiff must submit evidence in opposition to rebut the movant’s prima facie showing. Alvarez v Prospect Hosp., 68 NY2d 320 [1986]; Poter v Adams, 104 AD3d 925 [2d Dept 2013]; Stukas v Streiter, 83 AD3d 18 [2d Dept 2011]. The plaintiff must “lay bare her proof and produce evidence, in admissible form, sufficient to raise a triable issue of fact as to the essential elements of a medical malpractice claim, to wit, (1) a deviation or departure from accepted medical practice, [and/or] (2) evidence that such a departure was a proximate cause of injury.” Sheridan v Bieniewicz, 7 AD3d 508, 509 [2d Dept 2004]; Gargiulo v Geiss, 40 AD3d 811-812 [2d Dept 2007]. In order to prevail on a claim for medical malpractice, “expert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause.” Nicholas v Stammer, 49 AD3d 832-

833 [2008]. In addressing the issue of proximate cause, the Court notes that “[i]n a medical malpractice action, where causation is often a difficult issue, a plaintiff need do no more than offer sufficient evidence from which a reasonable person might conclude that it was more probable than not that the injury was caused by the defendant.” Johnson v Jamaica Hosp. Med. Ctr., 21 AD3d 881, 883 [2d Dept 2005]. “A plaintiff’s evidence of proximate cause may be found legally sufficient even if his or her expert is unable to quantify the extent to which the defendant’s act or omission decreased the plaintiff’s chance of a better outcome or increased the injury, as long as evidence is presented from which the jury may infer that the defendant’s conduct diminished the plaintiff’s chance of a better outcome or increased [the] injury.” Semel v Guzman, 84 AD3d 1054, 1055-1056 [2d Dept 2011]. “The issue is whether a doctor’s negligence is more likely than not a proximate cause of [a plaintiff’s] injury is usually for the jury to decide.” Polanco v Reed, 105 AD3d 438, 439 [1st Dept 2013]. It has also been held that where “a failure to treat is alleged, the plaintiff simply must show that it was probable that some diminution in the chance of survival had occurred.” Borawski v Huang, 34 AD3d 409, 410 [2d Dept 2006]. “[T]he evidence presented by the plaintiff need not eliminate every other possible cause of the resulting injury.” Clarke v Limone, 40 AD3d 571, 571-572 [2d Dept 2007], *lv denied* 9 NY3d 809 [2017].

This Court finds that Dr. Moezinia has established prima facie entitlement to summary judgment by the submission of the affirmation of Dr. DeSantis, who opines that there were no deviations from the standard of care in the treatment of plaintiff. Dr. DeSantis maintains that Dr. Moezinia used the standard technique for dentists during the preparation and crown placement and there is nothing in the testimony, films, or records to reflect negligent placement of the crowns. Dr. DeSantis claims that plaintiff’s crowns were not “overbulked”, but had to be wide enough to close the gaps between her teeth, which plaintiff refused to correct via orthodontia or Invisalign prior to Dr. Moezinia’s treatment. Dr. DeSantis opines that although plaintiff did have gingivitis, (a reversible condition that does not extend to the osseus structure) plaintiff did not have periodontal disease prior to the placement of the crowns. Defendants assert that plaintiff was referred

to a periodontist to evaluate and perform crown lengthening for tooth #14, and plaintiff also declined to have Dr. Moezinia treat tooth #14, and therefore plaintiff's claim that Dr. Moezinia provided restoration work without first treating plaintiff's periodontal disease is meritless.

However, in opposition, plaintiff has raised multiple questions of fact with respect to the alleged departures from the standard of care by Dr. Moezinia, including intentionally ordering "overbulked" crowns, cementing crowns with open margins, creation of food traps, the existence of subgingival cement, inadequately seated crowns, the closing of contact spaces with composite, and the failure to address plaintiff's periodontal disease. Dr. Ricci opines that Dr. DeSantis concedes plaintiff had perio pocket depths "greater than 3 mm in some areas," and that although plaintiff was referred to a periodontist for treatment of tooth #14, that was not the only affected area. Dr. Ricci asserts that Dr. DeSantis admitted the crowns on teeth #5 and #12 have open margins, the presence of which is a departure from the standard of care, as it leaves the plaintiff at risk for decay. Dr. Ricci also claims that Dr. DeSantis is incorrect in his assertion that there was no composite material left between teeth #2 and #3, as the x-rays of the area show composite material present, as well as excess cement. Further, Dr. Ricci claims that the x-rays, lab prescription and photos of the study models indicate that the crowns were "overbulked" intentionally so that the arch space difference was filled in. With respect to the claim of lack of informed consent, plaintiff testified in her deposition that she was never shown the initial pages of any of the consent forms and was only given the signature pages to sign.

It is well settled that where parties to a medical malpractice action offer conflicting expert opinions on the issue of malpractice and causation, issues of credibility require resolution by the factfinder (see Loaiza v Lam, 107 AD3d 951, 953 [2013]; Omane v Sambaziotis, 150 AD3d 1126, 1129 [2d Dept. 2017]; Dandrea v Hertz, 23 AD3d 332, 333 [2005]). Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical opinions (see Elmes v Yelon, 140 AD3d 1009, 1011 [2d Dept. 2016], Feinberg v Feit, 23 AD3d 517, 519 [2d Dept. 2005];

Shields v Baktidy, 11 AD3d 671, 672 [2d Dept. 2014]). Accordingly, defendants' motion for summary judgment dismissing plaintiff's claims for medical malpractice and lack of informed consent are denied.

Conclusion:

For the reasons stated herein, the motion for summary judgment on behalf of the defendants to dismiss plaintiff's medical malpractice claim is denied.

This shall constitute the decision and order of this Court.

Dated: September 7, 2022
Brooklyn, New York

ENTER



Hon. Bernard J. Graham, Justice
Supreme Court, Kings County