

**Munoz v New York Presbyt-Columbia Univ. Med. Ctr.**

2023 NY Slip Op 31933(U)

June 7, 2023

Supreme Court, New York County

Docket Number: Index No. 805037/2017

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*

-----X

ADONIS MUNOZ,

Plaintiff,

- v -

NEW YORK PRESBYTERIAN-COLUMBIA UNIVERSITY  
MEDICAL CENTER, MARIA VALERIA SIMONE, M.D., and  
RACHEL CAMPBELL, M.D.,

Defendants.

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**INDEX NO.** 805037/2017

**MOTION DATE** 06/06/2023

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 80, 81, 82, 83, 84, 85

were read on this motion to/for REARGUMENT/RECONSIDERATION.

This is an action to recover damages for medical malpractice. The plaintiff moves pursuant to CPLR 2221(d) for leave to reargue his opposition to that branch of the defendants' motion for summary judgment that sought dismissal of his claims against the defendants New York Presbyterian-Columbia University Medical Center (NYPH) and Maria Valeria Simone, M.D., to recover for psychiatric illness, which had been granted in an order dated April 10, 2023. Upon reargument, the plaintiff requests the court to deny that branch of the motion. The defendants oppose the motion. Leave to reargue is granted and, upon reargument, the determination in the April 10, 2023 order summarily dismissing the claims to recover for psychiatric illness against NYPH and Simone is vacated, and that branch of the defendants' motion seeking summary judgment dismissing those claims against those defendants is thereupon denied.

The facts of this dispute are set forth in detail in the April 10, 2023 order. In short, the plaintiff alleged that, on March 16, 2016, the defendants negligently performed an umbilical hernia repair procedure when they implanted mesh that trapped a significant portion of bowel

tissue, causing that tissue first to become ischemic and then necrotic. The plaintiff further alleged this malpractice required him to undergo several additional surgeries to remove a substantial portion of bowel tissue, leaving him with additional scarring. As relevant to the instant motion, the plaintiff also contended that the trauma caused by the additional surgeries had a significant adverse effect on his mental health. Specifically, he contended that, shortly after the surgeries, and continuing through 2021, he experienced severe adverse mental health symptoms, including depression and suicidal ideation with a plan, after creating self-inflicted wounds to his left forearm, four of which were new, and several of which were old and scarred. Although the plaintiff denied having experienced auditory or visual hallucinations, his sister advised physicians at NYPH that he had in fact told her of hearing voices and that he had threatened people close to him, including his mother. Between January 2018 and 2021, the plaintiff was hospitalized on several occasions for treatment of depression, bipolar disorder, alcohol and recreational drug abuse, psychotic events, violent outbursts, and auditory hallucinations, as well as suicidal ideation and self-inflicted cutting wounds.

In the April 10, 2023 order, this court summarized the expert affirmation of the defendants' retained board-certified psychiatrist and neurologist Steven Fayer, M.D., who essentially concluded that none of the mental health conditions and symptoms that the plaintiff sustained between 2018 and 2021 were causally related to any trauma arising from the 2016 umbilical repair surgery and revision surgeries. In that order, the court concluded that the plaintiff did not submit an affirmation or affidavit from an expert in the field of psychiatry, but only unsupported opinions of a surgeon concerning the plaintiff's mental health. It thus held that the plaintiff failed to raise a triable issue of fact in opposition to the defendants' prima facie showing that he did not sustain long-term mental health injuries as a proximate result of the surgeries. Ultimately, the court awarded summary judgment to NYPH and Simone dismissing, as against them, the plaintiff's claims to recover for "the creation or exacerbation of diagnosable psychiatric

injuries that allegedly manifested themselves subsequent to the plaintiff's March 26, 2016 discharge from New York Presbyterian-Columbia University Medical Center.”

As the Appellate Division, First Department, has explained,

“A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing ‘that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision’”

(*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992], quoting *Schneider v Solowey*, 141 AD2d 813, 813 [2d Dept 1988]; see *Matter of Setters v AI Props. & Devs. (USA) Corp.*, 139 AD3d 492, 4492 [1st Dept 2016]). Here, the court overlooked the fact that the plaintiffs actually had submitted the affirmation of expert psychiatrist Yadagiri Chepuru, M.D., that did indeed address the expert opinions expressed by Dr. Fayer; thus, leave to reargue must be granted (see *Fuessel v Chin*, 179 AD3d 899, 900-901 [2d Dept 2020]).

In his affirmation, Dr. Chepuru averred that he conducted a two-hour, in-person evaluation of the plaintiff on September 21, 2022. Dr Chepuru concluded that,

“[b]ased upon the history documented in the medical records and as obtained from Mr. Munoz, it is my opinion with a reasonable degree of medical certainty that his experience in the aftermath of his hernia repair was a traumatic and life-changing event. He was expecting to undergo a minimally invasive laparoscopic procedure as an out-patient, and instead underwent several operative procedures and a prolonged hospital and Intensive Care Unit course.”

He diagnosed the plaintiff with a moderate to severe degree of Post-Traumatic Stress Disorder (PTSD), a moderate degree of Anxiety Disorder, and a moderate degree of Major Depressive Disorder. Dr. Chepuru further opined that the plaintiff's hernia surgery and resulting complications, which required additional surgical procedures, along with his stay in an ICU and an extended recuperation period, “were significant factors contributing to the development of these psychiatric disorders.”

As Dr. Chepuru explained it, the plaintiff was left with a grotesque abdominal scar that is a constant reminder of his traumatic experience. He asserted that every individual reacts to

trauma and stress differently and that, inasmuch as the plaintiff is a person who takes great pride in his physical appearance, the results of his several surgeries has made him become distrustful of others and hopeless about his future. According to Dr. Chepuru, his “self-image has been undermined by the change in his physical appearance. He articulates feelings of helplessness and hopelessness and abandonment.”

Dr. Chepuru asserted that he administered appropriate standard psychiatric tests, including the National Stressful Events survey, PTSD-short Scale, Anxiety Adult Short Form, and Depression-Adult Scale. He averred that these tests are approved by the American Psychiatric Association for the assessment of Post-Traumatic Stress Disorder, Major Depressive Disorder, and Anxiety Disorder, respectively. As Dr. Chepuru characterized it, the plaintiff met the Diagnostic and Statistical Manual (DSM)-V criteria for PTSD, based upon the fact that he was exposed to “threatened death” and “serious injury” in the course of the surgeries. Dr. Chepuru further asserted that the plaintiff manifested the symptoms of “recurrent, involuntary, and intrusive distressing memories of the traumatic event,” “intense or prolonged psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event,” “persistent avoidance of stimuli associated with the traumatic event,” “negative alterations in cognitions and mood associated with the traumatic event, beginning or worsening after the traumatic event,” and “persistent and exaggerated negative beliefs or expectations about oneself, others, or the world as well as feelings of detachment or estrangement from others.”

In addition, Dr. Chepuru explained that, although the plaintiff had not sought psychiatric treatment between the March 2016 surgeries and January 31, 2018, a physician’s certificate attested to by Meredith Senter, M.D., and generated upon the plaintiff’s admission for psychiatric care on that date, indicated that the plaintiff has experienced “2 years of symptoms of Depression, anxiety, PTSD and Psychosis. 1 prior interrupted suicide attempt in August 2017, two CPEP presentation in August 2017 but no psych admissions.” Dr. Chepuru characterized

the second certification, signed by Alexander Kane, M.D., as similar to that of Dr. Senter. He thus suggested that there was not a two-year delay in the onset of psychiatric symptoms, but that the plaintiff had been suffering from them continually for two years immediately following the surgeries, but simply waited to seek medical assistance from mental health professionals.

Dr. Chepuru explicitly rejected Dr. Fayer's opinion that the plaintiffs' psychiatric disorders were not caused or adversely affected by the hernia surgeries, but instead by childhood trauma and abandonment. As he explained it, upon reviewing the records relied upon by Dr. Fayer, he recognized that the plaintiff only had two psychiatric evaluations prior to the surgery---the first conducted eight years before the surgery on April 1, 2008 by Steven Kushner, M.D., who identified Axis I problems, including patient-child relation problem, intermittent explosive disorder, attention deficit hyperactivity disorder, learning disorder, and borderline intellectual functioning, and the second conducted shortly before the surgery on March 2, 2016 at the Metropolitan Mental Health Center, which reflected moderate to severe depression. Dr. Chepuru asserted that there was no record or other evidence of any psychiatric assessment, diagnosis, or treatment prior to the hernia surgery in March 2016, nor was there any evidence of a suicide attempt or psychiatric hospitalization. He opined that Bipolar Disorder was not an appropriate diagnosis and did not apply to the plaintiff, who had not taken medications prescribed for Bipolar Disorder for two years, and nonetheless did not report any episodes of acute manic behavior. Dr. Chepuru concluded that, "[b]ased upon the fact that this patient has been stable for that period of time without taking medication, I believe that Bipolar Disorder can be definitively ruled out.

Dr. Chepuru again noted that, prior to the hernia surgery, there was no report in any record that the plaintiff made a suicide attempt, and further noted that, prior to the surgery, he had never been hospitalized for a psychiatric condition. Dr. Chepuru commented that it was only after the hernia surgeries that the plaintiff made a suicide attempt and was hospitalized and treated for psychiatric conditions. As he described it,

“[t]he documented diagnoses which predate the hernia surgery do not include any diagnosis which Dr. Fayer opines to except for a single episode of Major Depressive Disorder. The factors cited by Dr. Fayer as ‘precursors’ to the development of Bipolar Disorder and polysubstance abuse predated those evaluations, yet those diagnoses were not made. The existence of ‘psychiatric difficulties as a child and as an adolescent’ labelled as ‘precursors’ by Dr. Fayer, do not mean that a person will necessarily develop Bipolar Disorder or polysubstance abuse. They may, however, mean that an individual is vulnerable.”

Dr. Chepuru opined that the temporal relationship between the trauma sustained by the plaintiff as a consequence of the March 2016 surgeries and his subsequent deterioration is not a mere coincidence. Dr. Chepuru asserted that

“[t]he trauma itself and the feelings of hopelessness and loss in my opinion clearly were significant contributory factors to the onset of the psychiatric disorders which I diagnosed and which are supported by the results of the scores on the standardized, APA approved tests that I administered to him.”

As he alternatively phrased it,

“the failed hernia repair and the subsequent operations and ICU admission represented a significant, life-altering traumatic experience for Mr. Munoz which was a substantial factor contributing to his current psychiatric conditions as I have diagnosed them.”

In opposition to the motion, the defendants submitted an attorneys’ affirmation, in which counsel, relying upon Dr. Fayer’s affirmation, asserted that Dr. Chepuru’s conclusions were speculative and that the onset or existence of various psychiatric symptoms in 2018 was too attenuated from the 2016 surgeries to be proximately related, particularly in light of the plaintiff’s pre-surgical history of psychiatric problems caused by other stressors.

In the April 10, 2023 order, the court analyzed in detail the elements of a medical malpractice cause of action and considerations applicable to summary judgment motions in medical malpractice actions. Applying those analyses, the court concludes that, upon reargument, the plaintiff has raised a triable issue of fact as to whether the malpractice of NYPH and Simone caused or contributed to “the creation or exacerbation of diagnosable psychiatric injuries that allegedly manifested themselves subsequent to the plaintiff’s March 26, 2016 discharge from New York Presbyterian-Columbia University Medical Center.”

Accordingly, it is

ORDERED that the plaintiff's motion for leave to reague is granted; and it is further,

ORDERED that, upon reargument, the determination in the April 10, 2023 order awarding summary judgment to the defendants New York Presbyterian-Columbia University Medical Center and Maria Valeria Simone, M.D., dismissing, as against them, so much of the medical malpractice cause of action as sought to recover for the creation or exacerbation of diagnosable psychiatric injuries that allegedly manifested themselves subsequent to the plaintiff's March 26, 2016 discharge from New York Presbyterian-Columbia University Medical Center is vacated; and it is further,

ORDERED that, upon reargument, the branch of the defendants' motion seeking summary judgment dismissing, insofar as asserted against the defendants New York Presbyterian-Columbia University Medical Center and Maria Valeria Simone, M.D., so much of the medical malpractice cause of action as sought to recover for the creation or exacerbation of diagnosable psychiatric injuries that allegedly manifested themselves subsequent to the plaintiff's March 26, 2016 discharge from New York Presbyterian-Columbia University Medical Center, is denied, and that claim is reinstated insofar as asserted against those defendants; and it is further,

ORDERED that the parties shall appear for a pretrial settlement conference on July 27, 2023, at 9:00 a.m., rather than July 6, 2023, at 2:30 p.m., as previously scheduled.

This constitutes the Decision and Order of the court.

JOHN J. KELLEY, J.S.C.

6/7/2023  
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