

Graham v Loona

2023 NY Slip Op 32325(U)

June 23, 2023

Supreme Court, Kings County

Docket Number: Index No. 500743/2019

Judge: Consuelo Mallafre Melendez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS:

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KAREN PATTEN GRAHAM,

Plaintiff,

-against-

JUSTIN LOONA, M.D., HAROLD PERSAUD,
R.T., KEVIN HEWITT, M.D., NATACHA
CHARLES, R.N., NEW YORK CITY HEALTH
AND HOSPITALS CORPORATION, and NURSE
STAFFING, LLC d/b/a NURSES 24/7,

Defendants.

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HON. CONSUELO MALLAFRE MELENDEZ, J.S.C

Recitation, as required by CPLR §2219 [a], of the papers considered in the review: NYSCEF #s: 162-186, 240-252; 187-212, 246-251, 254-255; 216-232, 234-239, 253.

This case involves extravasation that occurred when contrast was injected into Plaintiff Karen Patten-Graham’s arm through an IV prior to a CT scan. Plaintiff claims that the IV was not placed in her arm correctly, and that the defendants failed to monitor her and the IV site prior to and during the administration of the contrast. This court considers each defendant’s motion for summary judgment herein.

Defendants JUSTIN LOONA, M.D., HAROLD PERSAUD, R.T., KEVIN HEWITT, M.D., NEW YORK CITY HEALTH AND HOSPITALS CORPORATION (“NYCHHC”), move this court for an Order Pursuant to CPLR § 3212, granting summary judgment and dismissing Plaintiff’s Complaint in its entirety as to the moving Defendants. Plaintiff submitted opposition to this motion. Defendant NURSE STAFFING, LLC d/b/a NURSES 24/7 moves this court for an Order Pursuant to CPLR § 3212, granting summary judgment and dismissing all claims against Nurses 24/7 as a matter of law. Defendant NATACHA CHARLES, R.N. moves this court for an Order pursuant to CPLR § 3212, granting summary judgment and dismissing all claims against Defendant Natacha Charles, R.N. Plaintiff submitted opposition to this motion.

“In order to establish the liability of a physician for medical malpractice, a plaintiff must prove that the physician deviated or departed from accepted community standards of practice, and that such departure was a proximate cause of the plaintiff's injuries [internal citations omitted].” *Hutchinson v. New York City Health and Hosps. Corp.*, 172 AD3d 1037, 1039 [2d Dept. 2019] citing *Stukas v. Streiter*, 83 AD3d 18, 23 [2d Dept. 2011]. “Thus, in moving for summary judgment, a physician defendant must establish, prima facie, ‘either that there was no departure or that any departure was not a proximate cause of the plaintiff's injuries.’” *Hutchinson*, 132 AD3d at 1039, citing *Lesniak v. Stockholm Obstetrics & Gynecological Servs., P.C.*, 132 AD3d 959, 960 [2d Dept. 2015]. “Expert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause [internal citations omitted].” *Navarro v. Ortiz*, 203 AD3d 834, 836 [2d Dept. 2022]. “When experts offer conflicting opinions, a credibility question is presented requiring a jury's resolution.” *Stewart v. North Shore University Hospital at Syosset*, 204 AD3d 858, 860 [2d Dept. 2022] citing *Russell v. Garafalo*, 189 A.D.3d 1100, 1102, [2d Dept. 2020] [internal citations omitted]. “Any conflicts in the testimony merely raised an issue of fact for the fact-finder to resolve.” *Palmiero v. Luchs*, 202 AD3d 989, 992 [2d Dept. 2022] citing *Lavi v. NYU Hosps. Ctr.*, 133 A.D.3d 830, 832 [2d Dept. 2015]. However, “expert opinions that are conclusory, speculative, or unsupported by the record are insufficient to raise a triable issue of fact [internal citations omitted].” *Wagner v. Parker*, 172 AD3d 954, 966 [2d Dept. 2019].

Defendants' expert, Anis Dizdarevic, M.D., a physician board-certified in pain medicine and anesthesiology established that they are qualified to opine as to the care and treatment rendered by Justin Loona, M.D., Harold Persaud, R.T., and NYCHHC. Defendants' expert, Karen Fried, M.D., is a physician board-certified by the American Board of Radiology. Dr.

Fried also established that they are qualified to opine as to the care and treatment rendered by Justin Loona, M.D., Harold Persaud, R.T., and NYCHHC. Plaintiff's expert is a board-certified neurologist. This expert established that they are qualified to opine as to the plaintiff's injuries in this case. Plaintiff's expert, a physician board-certified in radiology, also established their expertise to opine as to the care and treatment rendered by Justin Loona, M.D., Harold Persaud, R.T., and NYCHHC.

Defendants Justin Loona, M.D., Harold Persaud, R.T., and NYCHHC have established their prima facie burden to summary judgment. However, in opposition, Plaintiff raises issues of fact requiring denial of summary judgment as to all claims against Justin Loona, M.D. and NYCHHC.

As a preliminary matter, Defendant R.T. Persaud establishes that he did not administer the contrast. R.T. Persaud testified that the doctor would handle the medication which includes contrast and oxygen, and that he was not allowed to administer contrast in 2018. R.T. Persaud further testified that he was only responsible for the radiation and scanning in this procedure including, dispensing radiation to the patient, shielding and protecting the patient, reducing the radiation dose, selecting anatomy to be scanned, and preparing the scan for the radiologist to start the injection. Dr. Loona was the attending physician and, as he testified, it was his responsibility to supervise the technologist. Although Plaintiff's expert radiologist highlights that defendants Dr. Loona and R.T. Persaud disagree as to who administered the contrast in each of their deposition testimonies this does not raise an issue of fact because the evidence that R.T. Persaud was not being allowed to administer contrast in 2018 and that Dr. Loona is responsible to supervise him is not controverted. Therefore, summary judgment is granted and all claims relating to Harold Persaud, R.T. are dismissed.

In reviewing the evidence regarding the administration of the contrast, defense expert, Anis Dizdarevic, M.D., states that “[e]xtravasation occurs when IV contrast goes beyond the vein and enters the tissue.” Defense expert, Karen Fried, M.D., opines that “[e]xtravasation is an accepted risk of radiology procedures involving contrast.” Dr. Fried further opines that defendants Justin Loona, M.D. and NYCHHC did not deviate from the standard of care in verifying the placement of the IV and addressing the patient’s complaint of pain, without providing any support for such information in their affirmation. Dr. Fried also states that the defendants immediately stopped the procedure and applied a cold compress to the patient’s elevated arm upon the patient complaining of pain.

This is nevertheless refuted by Plaintiff’s expert radiologist. This expert states that Plaintiff testified she felt pain and began to cry immediately upon injection of the contrast, but that the entire dose of 95 cc was injected and accumulated outside the vein into the nearby tissue. Plaintiff’s expert opines that if extravasation is suspected, the standard of care requires immediately stopping the injection, removing the IV, and following appropriate treatment measures. Plaintiff’s expert further opines that defendants Justin Loona, M.D. and NYCHHC deviated from the standard of care by failing to adequately monitor Ms. Patten-Graham during the administration of the contrast and by failing to timely cease the administration of the contrast, assuming the patient’s crying and complaints of pain, thereby raising issues of fact as to the same.

Furthermore, Defendants’ expert, Anis Dizdarevic, M.D., opines that the injuries alleged by Plaintiff are not related to the extravasation in this case but rather caused mostly by musculoskeletal and degenerative changes. Defendants’ expert further opines that immediate injuries of swelling were resolved upon the patient’s discharge. However, based on the physical

examination of Plaintiff's right arm, performed by Plaintiff's expert neurologist, Plaintiff's expert opines that Plaintiff's injuries include pain and swelling in her right arm, neck, and face. Originally, the pain was "isolated to the arm, but it subsequently spread to her neck, face, and shoulder." Additionally, the patient reported that the pain is needle-like and sharp, and "has been unrelenting, though it waxes and wanes in severity." Moreover, the patient's right arm, face, and neck sometimes become swollen, more so when she uses her right arm. Plaintiff's expert opines that extravasation of contrast media can lead to the injuries described in this case. In contrast to the opinion of defense expert, Plaintiff's expert neurologist opines that the extravasation in this case was a substantial factor in causing or contributing to the plaintiff's injuries. Thus, Plaintiff's expert raises an issue of fact as to whether the alleged departures by the moving defendants were a substantial factor in causing the plaintiff's injuries.

Accordingly, summary judgment is denied as to all claims of medical malpractice relating to Justin Loona, M.D. and as to New York City Health and Hospitals Corporation as his employer.

Defendant Nurses 24/7, through the evidence submitted in support of its motion, established its prima facie burden for summary judgment as to all claims against Nurses 24/7. In opposition, Plaintiff failed to raise an issue of fact.

As stated in the affidavit of the Marion McLean, Chief Nursing Officer at Nurses 24/7, "Nurses 24/7 is a healthcare staffing company that specializes in staffing per diem, contract, travel and permanent placement of nurses primarily in acute care facilities." Ms. McLean further states that "Defendant Natacha Charles, R.N. was employed by Nurses 24/7 beginning [i]n August 2016 through January 2020" and exclusively worked at Kings County Hospital, under the direct supervision of the hospital personnel during that time. Defendant Nurses 24/7 argues that

they did not supervise or train Defendant Natacha Charles, R.N., and that Defendant Nurses 24/7 did not owe a duty of care to Plaintiff. On this basis and noting that Plaintiff has not submitted opposition to the same, summary judgment is granted as to all claims relating to NURSE STAFFING, LLC d/b/a NURSES 24/7, and such claims are dismissed.

Plaintiff's expert, a nurse licensed to practice nursing in the State of New York, established their expertise to opine as to the care and treatment rendered by Natacha Charles, R.N. in this case.

Plaintiff claims that Defendant Natacha Charles, R.N. failed to ensure proper placement of the IV and failed to monitor the IV to ensure its proper functioning. The court finds that Defendant has not established its prima facie burden to summary judgment without an expert affirmation. It is well settled that expert testimony is required to establish the standard of care in a medical malpractice action. *Percival v. Northwell Health System*, 173 AD3d 916, 917 [2d Dept. 2019] citing *Courell v. Kuzner*, 118 AD2d 677, 678 [2d Dept. 1986] [“Since the plaintiff's medical malpractice claim is predicated upon matters not within the ordinary experience and knowledge of laymen, expert medical opinion evidence is required to demonstrate merit”]. Also, Defendant does not address whether the claims against her were a substantial factor in causing the plaintiff's injuries. Accordingly, summary judgment is denied as to these claims.

Even assuming Defendant Natacha Charles, R.N. established their prima facie burden to summary judgment, Plaintiff raises an issue of fact in opposition. Plaintiff's expert opines that Defendant Natacha Charles, R.N. deviated from good and accepted medical practice by failing to ensure proper placement of the IV and failing to ensure its proper functioning. Plaintiff's expert opines that extravasation can be caused by improper needle or catheter placement, patient movement, and mechanical issues with the IV system. However, even if Nurse Charles had

submitted expert opinion or any other evidence to show whether she properly placed the IV, Plaintiff's submission would preclude summary judgment.

Additionally, there is no dispute that, as Plaintiff's expert states, Nurse Charles placed the plaintiff's IV in the plaintiff's arm at or about 2:25 am. Plaintiff's expert opines that Nurse Charles did not document in the record that she monitored the patient's IV site between the time she placed it in the patient's arm and the time she left at 8:00 am, which they opine was a deviation from the standard of care. In sum, Plaintiff's expert also raises an issue of fact as to whether Natacha Charles, R.N. failed to properly place and monitor the patient's IV site.

However, Defendant Natacha Charles, R.N. did not have a duty to monitor the patient's IV at the time the contrast was administered as her shift ended at 8:00 am and she left the hospital at or about that time. The contrast was administered at 9:01 am. Thus, Nurse Charles's duty to monitor the patient ended when her shift ended at 8:00 am, prior to the contrast being administered to the patient. As stated by the Second Department, "[a]lthough physicians owe a general duty of care to their patients, that duty may be limited to those medical functions undertaken by the physician and relied on by the patient [internal quotation marks omitted]." *McCarthy v. Askikari*, 206 AD3d 718, 720 [2d Dept. 2022] citing *Cooper v. City of New York*, 200 A.D.3d 849, 851 [2d Dept. 2021], quoting *Meade v. Yland*, 140 A.D.3d 931, 933, [2d Dept. 2016]. Here, the same applies to Natacha Charles, R.N. as a medical professional. Therefore, summary judgment is granted only as to the claim that Defendant Natacha Charles, R.N. failed to monitor the plaintiff's IV at the time the contrast was administered, and such claim is dismissed.

Plaintiff does not oppose that portion of Defendants' motion seeking dismissal of claims relating to the alleged negligent care rendered by resident Kevin Hewitt, M.D. Accordingly,

summary judgment is granted and all claims relating to Kevin Hewitt, M.D. are dismissed, as unopposed by the plaintiff.

In conclusion, summary judgment is DENIED as to all claims relating to Justin Loona, M.D. and New York City Health and Hospitals Corporation.

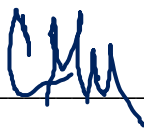
Summary judgment is GRANTED only to the extent that all claims against Defendant Natacha Charles, R.N. for failure to monitor Plaintiff after 8:00 am are dismissed; and DENIED as to all remaining claims relating to Natacha Charles, R.N.

Summary judgment is GRANTED as to Nurse Staffing, LLC d/b/a Nurses 24/7, Kevin Hewitt, M.D. and Harold Persaud R.T. and accordingly all claims relating to these defendants are dismissed. The Clerk is directed to enter judgment accordingly as to these defendants.

This constitutes the decision and order of the court.

Dated: June 23, 2023

ENTER.



Hon. Consuelo Mallafré Meléndez,
J.S.C.