

**Lynch v Willoughby Rehabilitation & Health Care
Ctr. LLC**

2023 NY Slip Op 32908(U)

August 16, 2023

Supreme Court, Kings County

Docket Number: Index No. 518053/2019

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 80 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 16th day of August 2023.

P R E S E N T:

HON. GENINE EDWARDS

Justice.

-----x
LORNA LYNCH, as Administratrix of the Estate of
WINSTON LYNCH, and LORNA LYNCH, Individually,

Plaintiffs

-against-

Decision and Order

Index No.: 518053/2019

WILLOUGHBY REHABILITATION AND HEALTH
CARE CENTER LLC d/b/a SPRING CREEK
REHABILITATION AND NURSING CARE CENTER
and MOUNT SINAI HOSPITAL,

Defendants.
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The following e-filed papers read herein:

NYSEF Nos.:

Notice of Motion and Affidavits (Affirmations).....25-28
Opposing Affidavits (Affirmations).....46-47
Affidavits/ Affirmations in Reply.....54-55

In this action asserting causes of action of medical malpractice, negligence, wrongful death and violations of Public Health Laws 82801-d and 2801-c, and 10 NYCRR 8415.12, plaintiff alleged that defendant WILLOUGHBY REHABILITATION AND HEALTH CARE CENTER LLC d/b/a SPRING CREEK REHABILITATION AND NURSING CARE CENTER (hereinafter “Spring Creek”) from November 30, 2016 to March 15, 2017, failed to provide proper nutrition, hydration, care, and treatment to Winston Lynch, the decedent, by failing to treat his pressure ulcer(s). Following

plaintiff's filing of the Note of Issue, Spring Creek moved for summary judgment dismissing the complaint. Plaintiffs opposed the motion.

The elements of a medical malpractice action are a deviation or departure from accepted practice and evidence that such departure was a proximate cause of injury or damage. *See Templeton v. Papathoma*, 208 A.D.3d 1268, 175 N.Y.S.3d 544 (2d Dept. 2022); *Stukas v. Streiter*, 83 A.D.3d 18, 918 N.Y.S.2d 176 (2d Dept. 2011). "When moving for summary judgment, a defendant... must establish the absence of any departure from good and accepted medical practice or that... plaintiff was not injured thereby." *Barnaman v. Bishop Hucles Episcopal Nursing Home*, 213 A.D.3d 896, 184 N.Y.S.3d 800 (2d Dept. 2023). To sustain the burden, a defendant "must address and rebut any specific allegations of malpractice set forth in plaintiff's bill of particulars." *Mackauer v. Parikh*, 148 A.D.3d 873, 49 N.Y.S.3d 488 (2d Dept. 2017).

In opposition, plaintiff must "raise a triable issue of fact regarding the element or elements on which defendant has made its prima facie showing." *Aliosha v. Ostad*, 153 A.D.3d 591, 61 N.Y.S.3d 55 (2d Dept. 2017). To do so, plaintiff must submit the affidavit of "a[n expert] physician attesting to a departure from good and accepted practice, and stating the physician's opinion that the alleged departure was a competent producing cause of plaintiffs injuries." *Shectman v. Wilson*, 68 A.D.3d 848, 890 N.Y.S.2d 117 (2d Dept. 2009). *See Burns v. Goyal*, 145 A.D.3d 952, 44 N.Y.S.3d 180 (2d Dept. 2016) ("Expert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause.").

Here, Spring Creek established its prima facie entitlement to judgment as a matter of law by submitting the affirmation of an expert physician, who opined that the decedent's skin breakdown, ulcers and death were inevitable due to the decedent's underlying conditions; that proper care was provided by Spring Creek to Mr. Lynch throughout his admissions, no Public Health Laws were violated; no medical malpractice

or negligence occurred; and that the pressure ulcer that he had at the time of his death in Mt. Sinai hospital did not arise during the times that he was in Spring Creek, was not a proximate cause of his death, and that the care provided by Spring Creek met all standards for proper care.

In opposition, plaintiff's expert affirmation raised triable issues of fact. Among other things, plaintiff's expert opined that defendant failed to stage or size the decedent's pressure ulcers and did not turn and position the decedent according to accepted medical standards. Prior to his arrival at Spring Creek, on November 14, 2016, Mr. Lynch was admitted to non-party NY Community Hospital's facility for acute hospital care due to weakness and hyperglycemia. A physical examination was conducted upon his admission to the hospital, which revealed that his skin was intact, thin, and frail with no openings, rashes, or edema. Throughout his stay at NY Community Hospital, skin breakdown prevention protocols had been implemented.

The records provided by Spring Creek show that upon Mr. Lynch's admission to Spring Creek from NY Community Hospital, the Occupational Therapy evaluation performed on December 1, 2016, noted that his skin was intact. However, on December 8, 2016, the Spring Creek records show "PU: sacral". There are no records that date nor any subsequent dates that indicate the sacral pressure ulcer was sized. None of the subsequent daily records of Mr. Lynch's physical therapy and other treatments indicate that any evaluation of or treatment for the pressure ulcer was ordered although Spring Creek's medical records note "PU: sacral" approximately fourteen (14) times during Mr. Lynch's admission to its facility from November 30, 2016 through March 15, 2017. (See Def's Ex. H, at 135, 143-144, 145-146, 149, 152-153, 154-156, 156-158, 158-159, 161-163, 164, 167-169, 173-175, 177-178, 180-182). Although he was admitted to Spring Creek with a Braden score that indicated a risk for pressure ulcers, and despite the multiple notations of sacral P.U., the medical records fail to indicate any staging or sizing of the "PU: sacral." Further, the records lack any indication that treatment or

interventions such as ordering turning and positioning or providing a pressure relieving mattress were implemented.

Spring Creek's expert noted that "he did not have any specific treatment for pressure ulcers while a resident at Spring Creek because his skin remained intact for the duration of his stay." (See Def's Aff., Exhibit "A" ¶ 12). However, Spring Creek's own records belie its assertion that no pressure ulcers arose during Mr. Lynch's admission, and the failure to size and treat Mr. Lynch's noted pressure ulcer violated his rights under the Public Health law.

In reply, Spring Creek reasserted its position that the alleged pressure ulcers at issue did not develop at Spring Creek, and thus Spring Creek is not liable. A further affidavit from defendant's expert emphasized that Mr. Lynch's nutritional needs were met (he gained weight during his stay at Spring Creek); that when Mr. Lynch was transferred to the emergency room at Mt. Sinai on March 15, 2017 for difficulty breathing, there was no mention of a pressure ulcer; and that no pressure ulcer was noted at Mt. Sinai until a month later, on April 15, 2017, when a Stage II pressure ulcer of the sacrococcyx area was documented.

“Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions.” *Cerrone v. North Shore-Long Is. Jewish Health Sys., Inc.*, 197 A.D.3d 449, 152 N.Y.S.3d 147(2dDept.2021). In this matter, there are clear issues of fact as to the existence of and significance of a sacral pressure ulcer noted multiple times in defendant’s records; defendant’s assertion that no pressure ulcers arose during Mr. Lynch’s residency in Spring Creek contrary to the notations, and whether any treatment was provided for the sacral ulcer or as a preventative measure considering Mr. Lynch’s Braden score upon his admission.

Accordingly, defendant’s motion for summary judgment is denied.

This constitutes the decision and order of this Court.

ENTER,

HON. GENINE D. EDWARDS

J.S.C.