SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHY J. KING** **PART** **06**

Justice

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AISCHA JOHNSON, ARIEL B. GIBBS, MYIAN CAMERON, AND IAN CAMERON, ARIEL B. GIBBS,

Plaintiffs,

- v -

MOUNT SINAI HOSPITAL, PAUL E. STELZER, ERIC H. STERN, USMAN BABER, PRASHANT VAISHNAVA, JOHN DOES, 1-10

Defendant.

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INDEX NO. 805269/2017

MOTION DATE 05/11/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138

were read on this motion to/for JUDGMENT - SUMMARY.

After oral argument, and upon review of the papers herein, defendants' motion for summary judgment, pursuant to CPLR § 3212, is decided as set forth below.

In this medical malpractice action, plaintiffs, Aischa Johnson, individually and as mother and Administrator of the estate of the decedent, Ariel B. Gibbs, seek to recover from defendants Mt. Sinai Hospital ("Mt. Sinai"), Paul E. Stelzer, M.D. ("Dr. Stelzer") and Prashant Vaishnava, M.D. ("Dr. Vaishnava"), for injuries and death of plaintiffs' decedent, Ariel B. Gibbs. Plaintiffs' complaint alleges five causes of action: 1) medical malpractice; 2) wrongful death; 3) conscious pain and suffering; 4) loss of parental care and guidance by decedent's infant children; and 5) negligent hiring and/or supervision.

Plaintiffs oppose the motion of the moving defendants, Mt. Sinai, Dr. Stelzer and Dr. Vaishnava only, since Eric H. Stern, M.D. and Usman Baber, M.D. have been discontinued from the action. Additionally, the Court notes that plaintiffs do not allege any departures by Dr.

Stelzer and Dr. Vaishnava relating to the medical care rendered to plaintiffs' decedent by these defendants in 2015, and do not oppose dismissal of all such claims asserted during this period.

Dr. Vaishnav, a cardiologist, and Dr. Stelzer, a cardiothoracic surgeon, were following and treating plaintiffs' decedent for aortic stenosis from February 2015 to the time of her death on February 18, 2016. By way of background, the record indicates that aortic stenosis is a narrowing of the aortic valve which causes reduced blood flow through the valve. Aortic stenosis is a chronic disease that progresses over time if surgical replacement of the valve is not done and if left untreated, causes death.

On January 26, 2016, plaintiffs' decedent called Dr. Vaishnava and advised that she was experiencing fatigue and shortness of breath when walking one block. Plaintiffs allege that Dr. Vaishnava took no steps to advise Dr. Stelzer of plaintiffs' decedent's symptoms, or make arrangements for surgery. Plaintiffs further allege that he failed to advise plaintiffs' decedent of the risk of sudden death due to her condition.

On February 5, 2016, Dr. Vaishnava saw plaintiffs' decedent in his office and noted her fatigue, chest pain, shortness of breath, weight gain (with no increased appetite or intake) and occasional blurry vision. An echocardiogram allegedly showed worsening of the condition. Dr. Vaishnava arranged for plaintiffs' decedent to see Dr. Stelzer. On February 16, 2016, plaintiffs' decedent presented to Dr. Stelzer's office, and based on her symptoms Dr. Stelzer scheduled her for aortic valve replacement surgery to be performed one month later. At his deposition, Dr. Stelzer admitted that plaintiffs' decedent was in heart failure on that date. He did not advise her of the risk of sudden death due to her condition.

On February 18, 2016, only 48 hours after seeing Dr. Stelzer, the plaintiffs' decedent died suddenly in an elevator at work. At the time of her death, she was a 21-year-old single mother of two young children.

The gravamen of the claims asserted in plaintiffs' complaint allege that Dr. Vaishnava and Dr. Stelzer, were negligent in failing to send plaintiffs' decedent to the Emergency Room and/or arranging for emergent valve replacement when she presented to them in January and February of 2016, with worsening symptoms, indicating that she was in heart failure. Plaintiffs also allege that neither physician advised plaintiffs' decedent that her condition could result in sudden death.

In support of the within motion for summary judgment, defendants argue that there were no departures from the standard of care by the defendant cardiologists, and that in any event no act or omission by the defendants was the proximate cause of plaintiffs' decedent's injuries and death.

It is well-established that the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by submitting admissible evidence that demonstrates the absence of material issues of fact that would require a trial (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]. In medical malpractice actions, a movant must provide evidentiary proof in the form of expert opinions and factual evidence establishing: the defendant complied with accepted standards of medical care and practice, obtained informed consent; and/or the defendant's conduct was not a proximate cause of plaintiffs' alleged injuries (*see* Public Health Law § 2805-d; *Alvarez v Prospect Hosp.*, 68 NY2d 320; *see also Koeppel v Park*, 228 AD2d 288 [1st Dept 1996]; *Quille v New York City Health & Hosp. Corp.*, 152 AD3d 808

[2d Dept 2017]; *Johnson v Staten Is. Med. Group*, 82 AD3d 708 [2d Dept 2011]; *Barracca v St. Francis Hosp*., 237 AD2d 396 [2d Dept 1997]).

"Once the defendant has made such a showing, the plaintiff, in opposition, must submit evidentiary facts or materials to rebut the defendant's prima facie showing, but only as to those elements on which the defendant met the prima facie burden" (*Guctas v Pessolano,* 132 AD3d 632, 633 [2d Dept 2015]). To defeat a motion for summary judgment, a plaintiff must demonstrate, with admissible evidence, that: the defendant departed from good and accepted standards of medical care and practice and/or failed to obtain the plaintiff's informed consent; and such departure or failure to obtain consent was a substantial factor in causing plaintiff's damages (*see Mosezhnik v Berenstein*, 33 AD3d 895 [2d Dept 2006]; *Johnson v Staten Is. Med. Group*, 82 AD3d 708). "In order not to be considered speculative or conclusory, expert opinions in opposition should address specific assertions made by the movant's experts, setting forth an explanation of the reasoning and relying on specifically cited evidence in the record" (*Tsitrin v New York Community Hosp*., 154 AD3d 994, 996 [2d Dept 2017] [internal quotation marks omitted]; *see Bum Yong Kim v North Shore Long Is. Jewish Health Sys., Inc*., 202 AD3d 653 [2d Dept 2022]).

Here, the Court finds that the expert affirmations of Drs. Phillips and Grossi, respectively, were sufficient to meet defendants' prima facie burden of establishing the absence of a departure from good and accepted medical practice, or that any such departure was not a proximate cause of plaintiffs' decedent's death (*Einach v Lenox Hill Hosp.*, 160 AD3d 443 [1st Dept 2018]).

As to Dr. Vaishnava, Dr. Phillips, a board-certified cardiologist in echocardiography, opines to a reasonable degree of medical certainty, that Dr. Vaishnava's treatment of the plaintiffs' decedent was limited to a consultation and referral to Dr. Stelzer, a cardiothoracic

specialist, who assumed responsibility for the care of plaintiffs' decedent, and scheduled her for aortic valve replacement surgery, the timing of which was entirely at the discretion of Dr. Stelzer. He further opines that no act or omission by Dr. Vaishnava in the medical treatment rendered to plaintiffs' decedent proximately caused her injuries, including her death.

As to Dr. Stelzer, Dr. Grossi, a board-certified thoracic surgeon, opines with a reasonable degree of medical certainty, that there were no departures by Dr. Stelzer, and no act or omission by him proximately caused plaintiffs' decedent's injuries and death. Dr. Grossi opines that it was appropriate and within the standard of care for Dr. Stelzer to have recommended aortic valve replacement surgery given plaintiffs' decedent severe aortic stenosis. He further opines that it was appropriate to schedule the surgery one month later, based on the surgery's "complexities", the need for pre-op testing, and the need for childcare for plaintiffs' decedent's two children.

Plaintiffs, in opposition, submit the expert affirmation of Dr. Charash, a physician board certified in Internal Medicine and Cardiovascular Medicine, which demonstrates the existence of a triable issue of fact sufficient to rebut defendants' prima facie showing. Dr. Charash opines that on January 26, 2016 and February 5, 2016, Dr. Vaishnava departed from accepted standards of medical care in failing to: 1) recognize that plaintiffs' decedent was at risk for imminent sudden death due to her underlying condition and the onset of new symptoms; 2) send plaintiffs' decedent to the Emergency Room and/or arrange for her immediate admission to the hospital for the surgery; 3) advise plaintiffs' decedent that she was at risk of sudden imminent death due to her symptomatic critical aortic stenosis; 4) call Dr. Stelzer at that time and advise him of the specifics of plaintiffs' decedent's symptoms, and that she required urgent surgical aortic valve replacement within 1-2 weeks; and 5) arrange for urgent valve replacement within 1 -2 weeks, either through Dr. Stelzer or through admission to the hospital. Dr. Charash further opines that

the delay in performing the aortic valve replacement surgery resulted in plaintiffs' decedent's death on February 18, 2016.

As to Dr. Stelzer, Dr. Charash opines that he departed from accepted standards of care on February 5, 2016 and February 16, 2016, in his care and treatment of plaintiffs' decedent's condition, which proximately caused her sudden death on February 18, 2016, from a cardiac arrhythmia. Specifically, Dr. Chase opines that when Dr. Vaishnava called Dr. Stelzer on February 5th and advised him of plaintiffs' decedent's symptoms he: 1) failed to inquire as to the specifics and severity of the symptoms and whether she was in heart failure; 2) failed to schedule a firm date for the surgery to be done no later than one week's time; and 3) failed to appreciate that plaintiffs' decedent was at risk for sudden death based on her condition and new onset of symptoms.

Dr. Charash further opines that on February 16, 2016, Dr. Stelzer departed from good and accepted standards of care in failing to send plaintiffs' decedent to the Emergency Room and/or arrange for emergency surgery for valve replacement to be performed within 24-48 hours, and failed to appreciate the severity of her condition and risk of sudden imminent death, which proximately caused plaintiffs' decedent's death.

Additionally, the expert affirmation of Dr. Charash raises an issue of fact concerning whether plaintiffs' decedent was suffering from "severe" or "critical" aortic stenosis. Defendants' experts opine that based on a review of the medical records plaintiffs' decedent suffered from "severe" aortic stenosis. On the other hand, Dr. Charash opines that plaintiffs' decedent suffered from "critical" aortic stenosis, which is the most severe classification of the disease, requiring emergent hospitalization and surgical intervention.

Based on the conflicting medical opinions herein, the Court finds that consistent with prevailing case law, "[s]ummary judgment is not appropriate ... [when] the parties [submit] conflicting medical expert opinions because [s]uch conflicting expert opinions will raise credibility issues which can only be resolved by a jury" (*Cummings v Brooklyn Hosp. Ctr.*, 147 AD3d 902, 904 [2d Dept 2017], quoting *DiGeronimo v Fuchs,* 101 AD3d 933 [2d Dept 2012] [internal quotation marks omitted]; *see Elmes v Yelon,* 140 AD3d 1009 [2d Dept 2016]; *Leto v Feld,* 131 AD3d 590 [2d Dept 2015]).

The Court notes that defendants do not address plaintiffs' cause of action for negligent hiring/supervision by Mount Sinai, and therefore, the movants request for relief on this issue shall not be considered.

Based on the foregoing, it is hereby

ORDERED, that defendants' motion for summary judgment and dismissal of the complaint is granted to the following extent: 1) as to Eric H. Stern and Usman Baber, M.D., since plaintiffs have discontinued this action against those defendants, and submit no opposition as to that branch of defendants' motion; and 2) as to any and all claims against Paul E. Stelzer, M.D. and Prashant Vaishnava, M.D., arising from their care and treatment of the plaintiffs' decedent in 2015, which plaintiffs do not oppose; and it is further

ORDERED, that in all other respects, defendants' motion is denied.

This constitutes the Decision and Order of the Court.

11/27/2023	
DATE	KATHY J. KING, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE