

Ortiz-Castro v Gurunathan
2023 NY Slip Op 35161(U)
February 9, 2023
Supreme Court, Bronx County
Docket Number: Index No. 23243/2018E
Judge: Joseph E. Capella
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NEW YORK SUPREME COURT - COUNTY OF BRONX
PART 23

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LAWRENCE ORTIZ-CASTRO and MARIA
ALINDATO CASTRO,

Index #: 23243/18
DECISION/ORDER

Plaintiffs,

- against -

Present:

Hon. Joseph E. Capella
J.S.C.

RAJAN GURUNATHAN, M.D., MAHRE OZCAN,
M.D., ST. BARNABAS HOSPITAL, ALI TABARROKI,
M.D., and HIGHLAND VIEW CARE CENTER
OPERATING CO., LLC, d/b/a THE CITADEL REHAB
AND NURSING CENTER AT KINGSBRIDGE,

Defendants.

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The following papers numbered 1 to 3 read on this motion dated April 8, 2022.

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION & AFFIRMATION	1
ANSWERING AFFIRMATION	2
REPLY AFFIRMATION	3

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS AS FOLLOWS:

Motion by defendants, Rajan Gurunathan, M.D., and St. Barnabas Hospital, for summary judgment (CPLR 3212) and dismissal of plaintiffs' complaint, which alleges medical malpractice, informed consent and loss of services, and essentially centers around skin ulcers on plaintiff, Lawrence Ortiz-Castro, during two admissions (i.e., May 25 - June 17, 2016, and June 27 - July 19, 2016), is granted in part and denied in part. The initial burden is on defendants to make a *prima facie* showing of an entitlement to summary judgment as a matter of law by tendering sufficient evidence to eliminate any material issues of fact. (*Alvarez v Prospect*, 68 NY2d 320 [1986].) If they do, then the

burden shifts to plaintiffs to produce evidentiary proof in admissible form sufficient to create issues of fact to warrant a trial (*Alvarez*, 68 NY2d 320), and denial of summary judgment.

It must be noted at the outset that neither party addressed the issues of informed consent and loss of services, and it does not appear from a review of the motion papers that these two issues were either withdrawn or resolved in some other way. Setting this issue aside for now, in support of the motion is an expert affirmation by Dr. Flavio Crisari, who opines that the care provided by Dr. Gurunathan during the admission of May 25, and the care and treatment rendered by the staff of St. Barnabas Hospital during both admissions was appropriate in all respects. According to Dr. Crisari, Mr. Castro did nothing to control his diabetes, leading to diabetic neuropathies, blindness, poor wound healing and tissue destruction at a cellular level, which were unmodifiable risk factors he presented with on May 25. Dr. Crisari opines that damage had already been done to all organs and tissues, and it was too late on May 25 to suddenly declare that pressure relief could effectively undo any of this damage.

Dr. Crisari goes on to note that alleging pressure ulcers ignores Mr. Castro's severe spinal cord tissue injuries of compression and cauda equina with three emergency spinal surgeries, since tissue degradation at a cellular level to the point of skin breakdown evidenced in the outer skin layer typically occurs within weeks post spinal cord injuries, which is what occurred here. Dr. Crisari opines that pressure relief could never have

prevented skin deterioration in Mr. Castro, especially after the multiple severe spinal injuries. Based on the aforementioned, the Court is satisfied that defendants have met their burden for summary judgment, (*Zuckerman v City of NY*, 49 NY2d 557 [1980]; *Kaffka v NY Hospital*, 228 AD2d 332 [1st Dept 1996]), as to plaintiffs' medical malpractice claim, and the burden now shifts to plaintiffs to demonstrate that issues of fact exist to warrant a trial on this issue.

In opposition, plaintiffs provide an expert affidavit by a board certified internal medicine physician who opines that St. Barnabas Hospital departed from good and accepted medical practice in (1) allowing Mr. Castro to remain sitting out of bed in excess of one hour on June 10, (2) failing to document the turning and repositioning every two hours, (3) failing to document the assessment, progression and/or trajectory of the pressure ulcers on a daily basis, and (4) failing to provide a wound care consult until June 17 even though it was first indicated on the June 9 chart. Plaintiffs' expert does not specify how each of these departures caused and/or contributed to the skin ulcers in question, and without such an explanation, these opinions are conclusory. (*Lowell v Flom*, 195 AD3d 801 [2nd Dept 2021].) Plaintiffs' expert does provide four additional opinions with more specificity. For example, this expert states that on June 8, 2016, an ulcer with black discoloration was identified on Mr. Castro's right heel, indicating that it was there much earlier, and that St. Barnabas Hospital's staff failed to perform adequate and timely skin checks.

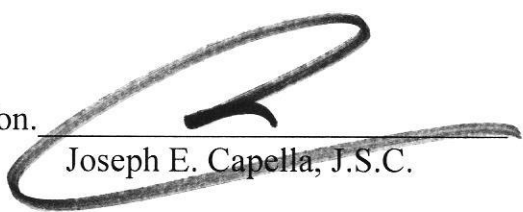
This expert also notes that Mr. Castro's coccygeal ulcer was first identified on June 9; however, St. Barnabas Hospital staff did not inform the attending physician, Dr. Gurunathan, until June 16. And this delay caused a further delay in appropriate medical management/intervention resulting in a "worsening deterioration of the ulcers during this interval." The expert also states that on June 27, St. Barnabas Hospital staff left Mr. Castro on a gurney in the emergency department until June 29, and during these three days, they failed to identify and treat the stage IV sacral ulcer, which "caused worsening and deterioration . . . sepsis . . . and pain and suffering." Lastly this expert opines that Dr. Gurunathan departed from good and accepted practice in failing to identify the presence of the coccygeal ulcer until June 16, despite the nursing staff's earlier documentation, and failing to timely order a wound care consult, increasing the risk of harm. In response to the motion, this expert disagrees with defendants' expert that the ulcers were unavoidable, and instead opines that proper steps were not taken to avoid their development.

Viewing the evidence in a light most favorable to plaintiffs, (*O'Sullivan v Presbyterian*, 217 AD2d 98 [1st Dept 1995]), the Court is satisfied that the aforementioned four additional departures create issues of fact sufficient to warrant a trial. Therefore, that portion of the summary judgment motion seeking dismissal of these four departures is denied, and that portion seeking dismissal of the additional departures alleged in the complaint and bill of particulars is granted. As noted earlier, plaintiffs' claims for informed consent and loss of services were not addressed and remain in the

action. Defendants are directed to serve a copy of this decision with notice of entry by first class mail upon all sides within 30 days of receipt of copy of same. This constitutes the decision and order of this court.

____ 2/9/23 ____
Dated

Hon. _____


Joseph E. Capella, J.S.C.