

Chapman v Olean Gen. Hosp.
2023 NY Slip Op 35268(U)
April 25, 2023
Supreme Court, Cattarugus County
Docket Number: Index No. 88235
Judge: Terrence M. Parker
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STATE OF NEW YORK
SUPREME COURT: COUNTY OF CATTARAUGUS

EDWARD C. CHAPMAN, as Executor of the
Estate of BETTY JANE CHAPMAN, Deceased,

Plaintiff

v

Decision & Order
Index No. 88235

OLEAN GENERAL HOSPITAL,

Defendant.

Parker, J.

Betty Chapman commenced this lawsuit on June 25, 2019, by the filing of a summons and complaint. The complaint alleged one cause of action seeking damages as a result of an alleged slip and fall on ice and snow in the parking lot of Olean General Hospital on December 19, 2017. (§ 8, DOC 37). The complaint also referenced Defendant's negligence "in failing to properly discharge a patient." (§ 9, DOC 37). Ms. Chapman died of unrelated causes and her son, Edward C. Chapman as Executor of her estate was substituted as plaintiff. An Amended Complaint was filed on May 28, 2020, asserting the same one cause of action. (DOC 43). Plaintiff served a verified bill of particulars (DOC 45) in which Defendant's negligence focused on the parking lot and its care and maintenance, or lack thereof. There was only one allegation that did not relate to the care of the parking lot, which alleged Defendant was negligent "in failing and omitting to properly discharge the plaintiff's decedent." (§ 7(u), DOC 45). Plaintiff and her husband who was with her at the time of the accident were both deceased before depositions were conducted. Discovery was completed and a note of issue filed. (DOC 56).

Defendant now moves for summary judgment. (DOC 35-61). Plaintiff

has cross-moved to amend the complaint and has also opposed Defendant's summary judgment motion. (DOC 63-72). Defendant opposed the cross-motion and also filed reply papers in further support of its motion for summary judgment. (DOC 73-81). Plaintiff filed a reply affidavit in further support of his cross-motion to amend the complaint. (DOC 82-83). As part of the motions parties served statements of fact and counter-statements of fact as required by this Court's local rules. The Court has reviewed all of the documents submitted and heard oral argument by counsel on April 20, 2023.

Defendant argues that there are no issues of fact and that there is no evidence of a dangerous condition of accumulated ice and/or snow in the area where decedent allegedly fell, and that Defendant did not have actual or constructive notice of any such condition prior to the accident. Defendant contends that Plaintiff cannot identify the cause of decedent's accident without engaging in speculation. Defendant submitted the affidavit of David Miller, director of facilities, who conducts routine inspections of the sidewalks and parking lot area near the emergency room entrance including before and after the incident in question. Mr. Miller never observed any dangerous condition or accumulation of snow or ice. Defendant further argues that decedent was discharged with hospital slip resistant socks on her feet and refused to utilize a wheelchair or have hospital personnel walk her to her car. Defendant contended that decedent insisted to walk out of the hospital with her husband.

It is undisputed that decedent arrived at Defendant's hospital by ambulance with no shoes. It is further undisputed that at discharge, decedent was wearing slip resistant socks provided by the Defendant. It is also undisputed that decedent insisted on walking out of the hospital at discharge with her husband and refused a wheelchair or assistance by

Defendant.

Plaintiff testified that he was present at the hospital and had no problems traversing the area in question. Plaintiff did not actually see his mother's fall. Plaintiff noticed his mother's feet sticking to the cement as she was walking. Plaintiff testified his mother told him she slipped because it was icy and her husband indicated decedent fell due to the hospital socks.

Plaintiff opposes Defendant's motion arguing there is a question of fact. Plaintiff also seeks to amend the complaint to add a claim for medical negligence. Plaintiff submitted an affidavit of Dr. Dana Sterns alleging that Defendant failed to conduct a fall risk assessment of decedent and based on decedent's history, she should have been considered a fall risk. Additionally, the expert opines that decedent should not have been discharged in socks and should have been transported with a wheelchair. Plaintiff argues there is no surprise or prejudice in amending the complaint and it is just clarifying the pleading.

Prior to the present motions, the Court was involved in disputes that arose during discovery. Throughout the course of this litigation, Plaintiff's counsel has repeatedly confirmed that the case was premised on negligence and was a slip and fall case along with a claim that decedent should not have been discharged in socks. There was no claim of any medical malpractice throughout the litigation.

"In a slip and fall case, a defendant may establish its prima facie entitlement to judgment as a matter of law by submitting evidence that the plaintiff cannot identify the cause of his or her fall' without engaging in speculation." (citations omitted) (*Rinallo v. St. Casimir Par.*, 138 A.D.3d 1440, 1441, [4th Dept 2016]) A defendant "may establish its prima facie entitlement to judgment as a matter of law by submitting evidence that the plaintiff cannot identify the cause of his or her fall without engaging in

speculation.” (*Dixon v. Superior Discounts & Custom Muffler ex rel. Jones*, 118 A.D.3d 1487, 1487–88, [4th Dept 2014]) A defendant’s negligence cannot be presumed merely from the happening of an accident. (*Smart v. Zambito*, 85 A.D.3d 1721 [4th Dept 2011]) “A plaintiff’s inability to identify the cause of the fall is fatal to the cause of action, because a finding that the defendant’s negligence, if any, proximately caused the plaintiff’s injuries would be based on speculation.” (*O’Connor v. Metro Mgmt. Dev., Inc.*, 130 A.D.3d 698, 699–700, [2d Dept 2015]). Defendant has met its burden. In this case, it is just as likely that decedent fell due to a misstep or loss of balance. Additionally, Defendant has submitted evidence establishing that it had no actual or constructive notice of any dangerous condition prior to the accident. Defendant’s representative confirmed there was no accumulation of snow or ice based on inspections of the area in question. Although Plaintiff testified that he saw snow on the day in question, he did not identify snow in the parking lot or area where the decedent fell, and in fact testified he had no problems traversing the area on his way in or out of the hospital.

Defendant permitted decedent to walk out of the hospital in hospital issued socks and with her husband rather than in a wheelchair or escort by Defendant’s employees. Defendant has established that decedent was a competent adult who declined assistance. Defendant must abide by a competent patient’s wishes.

Plaintiff has failed to raise a question of fact and failed to establish decedent’s fall was related to Defendant’s negligence. The Court finds there are no genuine issues of fact and Defendant is entitled to summary judgment.

Plaintiff has filed a cross-motion to amend the complaint to add a medical negligence claim. Leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party and where the

amendment is not patently lacking in merit. (*Pink v. Ricci*, 100 A.D.3d 1446 [4th Dept 2012]). The present matter has been in litigation since 2019. Throughout the course of litigation, plaintiff's counsel has represented to defense counsel and the court that this is a negligence case involving a slip and fall due to snow/ice or the hospital socks given to decedent when she left the hospital. Plaintiff has never submitted a certificate of merit for medical malpractice. Now, after a note of issue has been filed, a trial date set, and summary judgment motion filed, Plaintiff presents an affidavit from a physician asserting allegations of alleged failure to conduct fall assessment and improper discharge of decedent on the day of the accident. Permitting an amendment at this late stage of the litigation would prejudice Defendant. Defendant would have to conduct further depositions and retain medical experts to evaluate and defend these new claims. Plaintiff's cross-motion to amend is denied.

This shall constitute the Decision and Order of the Court. Submission of an Order by the parties is not necessary. The filing of this Decision and Order by the Court to counsel shall not constitute Notice of Entry.

Dated: April 25, 2023



Terrence M. Parker, AJSC