Hannan v Southside Hosp.
2023 NY Slip Op 35285(U)
April 14, 2023
Supreme Court, Suffolk County
Docket Number: Index No. 606281/2019
Judge: Joseph A. Santorelli
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SHORT FORM ORDER

INDEX No. 606281/2019
CAL. No. 202200615MM

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 9/29/22
ADJ. DATE 12/8/22
Mot. Seq. # 003 MD
Mot. Seq. # 004 MD

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JACQUELYN HANNAN,

Plaintiff,

- against -

SOUTHSIDE HOSPITAL, MEDICAL STAFF OF SOUTHSIDE HOSPITAL FOUNDATION, INC. and NORTHWELL HEALTH, INC., MOUNT SINAI REHABILITATION CENTER, THE MOUNT SINAI HOSPITAL, THE MOUNT SINAI MEDICAL CENTER, INC., MOUNT SINAI HEALTH NETWORK, LLC, MOUNT SINAI HEALTH SYSTEM, INC. and MOUNT SINAI HOSPITALS GROUP, INC.,

Defendants.

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Upon the following papers read on these e-filed motions for summary judgment : Notice of Motion/Order to Show Cause and supporting papers by defendants The Mount Sinai Medical Center, Inc, Mount Sinai Health Network, LLC, Mount Sinai Health System, Inc., and Mount Sinai Hospitals Group, Inc., filed September 1, 2022; by defendants Southside Hospital and Northwell Health, Inc., filed September 1, 2022 ; Notice of Cross-Motion and supporting papers __; Answering Affidavits and supporting papers by plaintiff, filed November 17, 2022; by plaintiff, filed November 17, 2022 ; Replying Affidavits and supporting papers by defendants The Mount Sinai Medical Center, Inc, Mount Sinai Health Network, LLC, Mount Sinai Health System, Inc., and Mount Sinai Hospitals Group, Inc., filed December 7, 2022; by defendants Southside Hospital and Northwell Health, Inc., filed December 7, 2022 ; Other __; it is

ORDERED that the motion by defendants The Mount Sinai Medical Center, Inc, Mount Sinai Health Network, LLC, Mount Sinai Health System, Inc., and Mount Sinai Hospitals Group, Inc., and the motion by defendants Southside Hospital and Northwell Health, Inc. are consolidated for purposes of this determination; and it is further

ORDERED that the motion by defendants The Mount Sinai Medical Center, Inc, Mount Sinai Health Network, LLC, Mount Sinai Health System, Inc., and Mount Sinai Hospitals Group, Inc. for summary judgment dismissing the complaint against them is denied; and it is further

ORDERED that the motion by defendants Southside Hospital and Northwell Health, Inc. for summary judgment dismissing the complaint against them is denied.

This is a medical malpractice action to recover damages for injuries allegedly arising from the treatment of plaintiff Jacquelyn Hannan by defendants Southside Hospital and Northwell Health, Inc. ("Northwell defendants") from August 27, 2017 through October 5, 2017 and by defendants The Mount Sinai Medical Center, Inc, Mount Sinai Health Network, LLC, Mount Sinai Health System, Inc., and Mount Sinai Hospitals Group, Inc. ("Mount Sinai defendants") from October 5, 2017 through November 15, 2017. Plaintiff alleges that defendants were negligent in, among other things, failing to prevent development and worsening of her pressure ulcers, failing to evaluate and treat her pressure ulcers, and failing to diagnosis and treat her infections.

The facts of this case, subject to some dispute, can be summarized as follows: plaintiff was struck by a vehicle on August 27, 2017 and taken to Southside Hospital by ambulance. Upon arrival to Southside Hospital, plaintiff had no sensation or movement to her lower extremities and required intubation. She sustained various injuries, including fractures and brain hemorrhages due to the collision. She underwent surgeries to treat her injuries on August 29, 2017, August 30, 2017, and September 22, 2017. On September 27, 2017, a stage II ulcer was observed on plaintiff's coccyx. Plaintiff was discharged from Southside Hospital on October 5, 2017 with a stage II ulcer of her right buttock. She was then transferred to Mount Sinai Hospital for acute rehabilitation on the same day. On November 15, 2017, plaintiff was discharged to home from Mount Sinai Hospital with an unstageable sacral ulcer.

The Mount Sinai defendants now move for summary judgment dismissing the complaint against them on the ground that they did not depart from good and accepted practices in the medical treatment provided to plaintiff, and that such treatment did not cause her injuries. They submit, in support of the motion, copies of the pleadings and the bills of particulars, the transcripts of the deposition testimony of plaintiff, Gemma Bonitto, R.N., David Murphy, and Beth Hannan-Abesamis, the medical records of Southside Hospital, Mount Sinai Hospital, Landauer MedStar, and Northwell Health, and the affidavit of Valrose Green-Colon, R.N. In opposition, plaintiff argues that a triable issue of fact remains as to whether the Mount Sinai defendants departed from the accepted standards of care and whether their treatment caused her injuries. She submits, in opposition, copies of the pleadings and the bills of particulars, the transcript of her deposition testimony, the transcripts of the depostion testimony of Ruth Leiva, Gemma Bonitto, Beth Hannan-Abesamis, and the medical records of Southside Hospital, Mount Sinai Hospital, Catholic Home Care, and North Shore-LIJ Wound Care Clinic, and the affirmation of Perry Starer, M.D.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (*id.*). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*id.*). Once such proof has been offered, the burden then shifts to the opposing party, who must proffer evidence in admissible form and must show facts sufficient to require a trial of any issue of fact to defeat the motion for summary judgment (CPLR 3212 [b]; ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 ; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]).

Healthcare providers owe a duty of reasonable care to their patients while rendering medical treatment; a breach of this duty constitutes medical malpractice (***Dupree v Giugliano***, 20 NY3d 921, 958 NYS2d 312 [2012]; ***Scott v Uljanov***, 74 NY2d 673, 675, 543 NYS2d 369 [1989]; ***Tracy v Vassar Bros. Hosp.***, 130 AD3d 713, 13 NYS3d 226 [2d Dept 2015]). To recover damages for medical malpractice, a plaintiff patient must prove both that his or her healthcare provider deviated or departed from good and accepted standards of medical practice, and that such departure proximately caused his or her injuries (***Gross v Friedman***, 73 NY2d 721, 535 NYS2d 586 [1988]; ***Bilyavskiy v Parikh***, 197 AD3d 605, 152 NYS3d 721 [2d Dept 2021]; ***Samer v Desai***, 179 AD3d 860, 116 NYS3d 377 [2d Dept 2020]; ***Macancela v Wyckoff Hgts. Med. Ctr.***, 176 AD3d 795, 109 NYS3d 411 [2d Dept 2019]; ***Jagenburg v Chen-Stiebel***, 165 AD3d 1239, 85 NYS3d 558 [2d Dept 2018]; ***Bongiovanni v Cavagnuolo***, 138 AD3d 12, 24 NYS3d 689 [2d Dept 2016]; ***Stukas v Streiter***, 83 AD3d 18, 918 NYS2d 176 [2d Dept 2011]). To establish prima facie entitlement to summary judgment in a medical malpractice action, a defendant healthcare provider must prove, through medical records and competent expert affidavits, the absence of any departure from good and accepted standards of medical practice, or, if there was a departure, that such departure did not proximately cause the plaintiff's injuries (***Mirshah v Obedian***, 200 AD3d 868, 158 NYS3d 226 [2d Dept 2021]; ***Huichun Feng v Accord Physicians, PLLC***, 194 AD3d 795, 148 NYS3d 234 [2d Dept 2021]; ***Pirri-Logan v Pearl***, 192 AD3d 1149, 145 NYS3d 545 [2d Dept 2021]; ***Macancela v Wyckoff Heights Med. Ctr.***, 176 AD3d 795, 109 NYS3d 411; ***Wright v Morning Star Ambulette Servs., Inc.***, 170 AD3d 1249, 96 NYS3d 678 [2d Dept 2019]; ***Wodzenski v Eastern Long Is. Hosp.***, 170 AD3d 925, 96 NYS3d 80 [2d Dept 2019]; ***Jagenburg v Chen-Stiebel***, 165 AD3d 1239, 85 NYS3d 558; ***Mitchell v Grace Plaza of Great Neck, Inc.***, 115 AD3d 819, 982 NYS2d 361 [2d Dept 2014]). The defendant must address and rebut specific allegations of malpractice set forth in the plaintiff's bill of particulars (***Mirshah v Obedian***, 200 AD3d 868, 158 NYS3d 226; ***Huichun Feng v Accord Physicians, PLLC***, 194 AD3d 795, 148 NYS3d 234; ***Pirri-Logan v Pearl***, 192 AD3d 1149, 145 NYS3d 545; ***Wall v Flushing Hosp. Med. Ctr.***, 78 AD3d 1043, 912 NYS2d 77 [2d Dept 2010]). However, "bare conclusory assertions by defendants that they did not deviate from good and accepted medical practices . . . do not establish that the cause of action has no merit so as to entitle defendants to summary judgment" (***DiLorenzo v Zaso***, 148 AD3d 1111, 1112, 50 NYS3d 503 [2d Dept 2017], quoting ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853, 487 NYS2d 316; *see* ***Garcia-DeSoto v Velpula***, 164 AD3d 474, 77 NYS3d 887 [2d Dept 2018]).

If a defendant establishes a prima facie case of entitlement to summary judgment, the burden shifts to the plaintiff to submit evidentiary facts or materials that raise a triable issue as to whether a deviation or departure occurred and whether this departure was a competent cause of the plaintiff's injuries (***Macancela***

v Wyckoff Hgts. Med. Ctr., 176 AD3d 795, 109 NYS3d 411; ***Williams v Bayley Seton Hosp.***, 112 AD3d 917, 977 NYS2d 395 [2d Dept 2013]; ***Makinen v Torelli***, 106 AD3d 782, 965 NYS2d 529 [2d Dept 2013]; ***Stukas v Streiter***, 83 AD3d 18, 918 NYS2d 176). The plaintiff need only raise a triable issue as to the elements on which the defendant met the prima facie burden (***Bueno v Allam***, 170 AD3d 939, 96 NYS3d 623 [2d Dept 2019]; ***Spiegel v Beth Israel Med. Ctr.-Kings Hwy. Div.***, 149 AD3d 1127, 53 NYS3d 166 [2d Dept 2017]). "General allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat defendant physician's summary judgment motion" (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 325, 508 NYS2d 923; *see* ***Pirri-Logan v Pearl***, 192 AD3d 1149, 145 NYS3d 545; ***Wright v Morning Star Ambulette Servs., Inc.***, 170 AD3d 1249, 96 NYS3d 678; ***Spiegel v Beth Israel Med. Ctr.-Kings Hwy. Div.***, 149 AD3d 1127, 53 NYS3d 166). Summary judgment is inappropriate in a medical malpractice action where the parties present conflicting opinions by medical experts (***Clarke v New York City Health and Hosps.***, 210 AD3d 631, 177 NYS3d 681 [2d Dept 2022]; ***Mendoza v Maimonides Med. Ctr.***, 203 AD3d 715, 160 NYS3d 663 [2d Dept 2022]; ***Mirshah v Obedian***, 200 AD3d 868, 158 NYS3d 226 ; ***Williams v Light***, 196 AD3d 668, 151 NYS3d 687 [2d Dept 2021]).

The Mount Sinai defendants' submissions established a prima facie case of entitlement to summary judgment dismissing the medical malpractice claim against them by demonstrating the absence of a deviation or departure from good and accepted standards of medical practice in the medical treatment rendered to plaintiff and lack of causation (*see* ***Mirshah v Obedian***, 200 AD3d 868, 158 NYS3d 226 ; ***Joynes v Donatelli***, 190 AD3d 845, 140 NYS3d 241 [2d Dept 2021]; ***Larcy v Kamler***, 185 AD3d 564, 127 NYS3d 122 [2d Dept 2020]; ***Jagenburg v Chen-Stiebel***, 165 AD3d 1239, 85 NYS3d 558). In her affidavit, Ms. Green-Colon stated that she has a nursing certificate in wound, ostomy, and continence, and that she reviewed the complaint, the bills of particulars, the deposition testimony of plaintiff, David Murphy, Beth Abesamis-Hannan, and Gemma Bonitto, and the medical records of Southside Hospital, Mount Sinai Hospital, and North Shore-LIJ Wound Care Clinic. She opined within a reasonable degree of medical certainty that Mount Sinai Hospital and its employees, servants, and agents did not department from any good and accepted standards of medical practice in their treatment of plaintiff and that such treatment did not cause her alleged injuries.

Ms. Green-Colon explained that a deep tissue injury is a pressure injury that may not be visible in its early stages, as it begins in the muscle closest to the bone, and that it can deteriorate rapidly once it reaches the skin surface, despite appropriate preventive interventions. She stated that the rapid deterioration of a deep tissue injury into an advanced stage III or IV is common, because deep tissue is already compromised and often dead before the wound becomes evident with the loss of the full thickness of skin at the wound site. She also stated that due to dead tissue deep inside the wound, the size and appearance of a pressure ulcer that begins as a deep tissue injury frequently evolves over weeks or months to appear significantly worse before it can heal. Ms. Green-Colon opined that this does not indicate that the wound is worsening throughout that time.

Ms. Green-Colon opined that plaintiff was at an increased risk of developing pressure ulcers due to her paraplegia and inability to feel her lower extremities following severance of her spinal cord on August 27, 2017. She stated that plaintiff had a stage I blister on her left heel upon admission to Mount Sinai Hospital, which resolved without becoming an open wound prior to her discharge. She also stated that the

only new ulcer documented at Mount Sinai Hospital was a small stage I closed ulcer to plaintiff's right heel noted on October 16, 2017, which resolved within two days. She stated that plaintiff had no active skin impairment on her feet at the time of her discharge.

Ms. Green-Colon opined that plaintiff developed a deep tissue injury to her sacrum at Southside Hospital, which was first documented on September 26, 2017. She stated that on September 27, 2017, plaintiff's sacral wound opened and was described as stage II, meaning that the skin surface opened to expose the subdermal tissue. Ms. Green-Colon opined that plaintiff's sacral ulcer was later described as "unstageable" during her admission to Mount Sinai Hospital, meaning that it had full thickness skin loss with its wound bed covered by necrotic tissue or eschar, preventing the true stage of the wound from identification.

Ms. Green-Colon stated that treatment to plaintiff's sacral pressure ulcer was appropriate and within the standard of care, and actively helped the wound to evolve and heal without infection or complications. Ms. Green-Colon stated nothing was done or not done throughout plaintiff's admission to Mount Sinai Hospital that could have prevented the wound from appearing to become larger and deeper as it evolved and healed.

Ms. Green-Colon opined that repeated debridement to remove necrotic tissue from an unstageable pressure ulcer is appropriate and necessary to allow for the eventual exposure of healthy tissue that can granulate and heal. She explained that the wound itself will become larger and deeper through the process of debridement and that such enlargement is not an indication that the pressure ulcer is becoming worse. Ms. Green-Colon also explained that debridement of necrotic tissue at the edges of intact skin can cause undermining of a pressure ulcer, which describes empty cavities under the surface of intact skin at the edges of a pressure wound and is not an indication that the pressure ulcer is becoming worse. Ms. Green-Colon opined that the change in measurements of the sacral wound from October 5, 2017 to November 8, 2017 was a necessary and appropriate consequence of the seven debridements that were performed to treat plaintiff's sacral pressure ulcer while admitted to Mount Sinai Hospital.

Ms. Green-Colon opined that the orders to reposition plaintiff every two hours while in bed and to avoid a flat positioning were appropriate directions to the nursing staff to treat plaintiff's unstageable sacral ulcer. She stated that the medical records document that proper daily turning and repositioning every two hours were performed. She opined that the records also document the implementation of appropriate practices and strategies to manage plaintiff's bladder and bowel incontinence to prevent worsening or infection of her sacral ulcer. Ms. Green-Colon stated that there is no evidence in the medical records that plaintiff's ulcer was ever contaminated with urine or feces during her admission to Mount Sinai Hospital. She stated that plaintiff's bowel movements were managed on a daily schedule and that she was catheterized every six hours for her neurogenic bladder, which prevented accidental urination from getting onto her clothing or bed. She opined that plaintiff had no signs, symptoms, or lab results to suggest that her sacral ulcer was infected at any time during admission to Mount Sinai Hospital.

Ms. Green-Colon opined that the Hite-Rite mattress ordered by Dr. Bryce and provided on October 8, 2017 was appropriate, as plaintiff was immobilized due to paraplegia and had an advanced sacral pressure ulcer. She explained that a low air loss mattress is designed to prevent and treat pressure wounds, because

it is composed of inflatable air tubes that alternately inflate and deflate, mimicking the movement of a patient shifting in bed or being rotated and never leaving the patient in one position for any extended length of time. Ms. Green-Colon determined that the recommendation by Mount Sinai Hospital for plaintiff to use a Hite-Rite bed or its equivalent upon discharge was appropriate, as it was intended to allow for continued improvement of the sacral ulcer by alleviating the pressure on her sacrum while she was in bed at home. Ms. Green-Colon opined that plaintiff's decision to return the low air loss mattress ordered by Mount Sinai Hospital and delivered to her, and her refusal to replace it with another low air loss mattress was a significant contributing factor in the worsening of plaintiff's sacral ulcer from November 15, 2017 through March 2018. She stated that the mattress ultimately purchased by plaintiff was not a medically designed mattress for alleviating pressure in a paraplegic person who already has an advanced stage pressure ulcer on the sacrum.

The Mount Sinai defendants, having met their burden on the matter, shifted the burden to plaintiff to submit admissible evidence raising a triable issue of fact (*see* ***Jagenburg v Chen-Stiebel***, 165 AD3d 1239, 85 NYS3d 558; ***Williams v Bayley Seton Hosp.***, 112 AD3d 917, 977 NYS2d 395; ***Makinen v Torelli***, 106 AD3d 782, 965 NYS2d 529; ***Stukas v Streiter***, 83 AD3d 18, 918 NYS2d 176). In his affirmation, Dr. Starer stated that he is board certified in internal medicine with a subspecialty in geriatric medicine and that he reviewed the pleadings, the bills of particulars, deposition testimony, medical records, and Ms. Green-Colon's affidavit. He opined within a reasonable degree of medicine certainty that the Mount Sinai defendants departed from good and accepted standards of medical practice in their treatment of plaintiff and that such departures caused her injuries.

Dr. Starer opined that Mount Sinai Hospital failed to provide proper care to prevent deterioration of plaintiff's sacral ulcer. He opined that her sacral ulcer worsened from stage II to stage IV while admitted to Mount Sinai Hospital with documented periods of unstageability and exhibited increased undermining. Dr. Starer explained that undermining occurs when significant erosion occurs underneath the visible wound margins resulting in more extensive damage beneath the skin surface, which can indicate infection or increase the likelihood of infection in the wound. He disagreed with Ms. Green-Colon's characterization that deterioration of the wound was unavoidable, explaining that undermining indicates worsening of a wound. He explained that undermining is caused by friction and shear on the skin when the patient is dragged across the bed rather than lifted, or by infection. Dr. Starer opined that treating a pressure ulcer requires more than just turning and positioning a patient. He stated that there was no evidence that plaintiff was turned every two hours while admitted to Mount Sinai Hospital.

Dr. Starer disagreed with Ms. Green-Colon's opinion that there were no signs or symptoms of infection at Mount Sinai Hospital. He stated that there was a foul odor and a new area of tunneling on October 26, 2017 after debridement of a pus pocket. He opined that pus is a sign of infection, and that debridement and discovery of that pus pocket did not eradicate the infection. Dr. Starer opined that these signs and symptoms of infection were not properly addressed by Mount Sinai Hospital's staff. He stated that the infection was not identified before it festered and resulted in her hospitalization on November 29, 2017.

Dr. Starer concluded that the nursing staff failed to appreciate the potential harm to plaintiff and that she suffered a worsened sacral ulcer, infections, and the need for a colostomy as a result. He opined that

each of the departures, individually and collectively, were a significant factor and proximate cause in plaintiff's injuries, which decreased her chances of a better outcome.

As Dr. Starer described the applicable standards of care under the circumstances and Mount Sinai Hospital departed from the applicable standards of care, his affirmation is sufficient to raise a triable issue of fact (*see* ***Clarke v New York City Health & Hosps.***, *supra*; ***Joynes v Donatelli***, *supra*; ***Larcy v Kamler***, *supra*; ***M.C. v Huntington Hosp.***, 175 AD3d 578, 106 NYS3d 382 [2d Dept 2019]; ***Memoli v Winthrop-University Hosp.***, 147 AD3d 931, 47 NYS3d 128 [2d Dept 2017]). As the parties have presented conflicting opinions by medical experts as to whether Southside Hospital departed from good and accepted medical practice, summary judgment dismissing the cause of action for medical malpractice against the Mount Sinai defendants is denied (*see* ***Rich v Donnenfeld***, 191 AD3d 909, 138 NYS3d 381 [2d Dept 2021]; ***Jagenburg v Chen-Stiebel***, 165 AD3d 1239, 85 NYS3d 558).

The Court now turns to the motion by the Northwell defendants for summary judgment dismissing the complaint against them on the ground that they did not depart from good and accepted practices in the medical treatment provided to plaintiff, and that such treatment did not cause her injuries. They submit, in support of the motion, copies of the pleadings and the bills of particulars, the transcripts of the deposition testimony of plaintiff, Gemma Bonitto, Ruth Leiva, R.N., David Murphy, and Beth Abesamis-Hannan, the medical records of Southside Hospital and Mount Sinai Hospital, and the affirmation of Lawrence Diamond, M.D.

The Northwell defendants failed to establish a prima facie case of entitlement to summary judgment (*see* ***Stiso v Berlin***, 176 AD3d 888, 110 NYS3d 139 [2d Dept 2019]; ***Metcalf v O'Halleran***, 137 AD3d 758, 25 NYS3d 679 [2d Dept 2016]; ***Reiss v Sayegh***, 123 AD3d 787, 998 NYS2d 438 [2d Dept 2014]; ***Plato v Guneratne***, 54 AD3d 741, 863 NYS2d 726 [2d Dept 2008]; ***Trabal v Institute for Men's Cosmetic Surgery***, 296 AD2d 545, 745 NYS2d 207 [2d Dept 2002]; ***Muscatello v City of New York***, 215 AD2d 463, 627 NYS2d 567 [2d Dept 1995]). Dr. Diamond relied upon disputed facts when he opined, among other things, that Southside Hospital's nurses properly turned and positioned plaintiff. Plaintiff testified that she was never repositioned while at Southside. She also testified that she was turned onto her side once by her friend Eileen, a nurse at Southside Hospital, who discovered a wound on her buttock. She stated that after Eileen discovered the wound, she was "turned to the left side always," but could not recall how many times. Such an issue of fact is material to plaintiff's claim that the Northwell defendants failed to properly turn and position her. Having determined that the Northwell defendants failed to meet their prima facie burden, it is unnecessary to consider whether plaintiff's papers in opposition are sufficient to raise a triable issue of fact (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316).

Accordingly, the motions are denied.

Dated: APR 14 2023

HON. JOSEPH A. SANTORELLI
J.S.C.

____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION