

McLaurin v New York City Health & Hosps. Corp.

2024 NY Slip Op 30724(U)

March 7, 2024

Supreme Court, Kings County

Docket Number: Index No. 502168/2020

Judge: Consuelo Mallafre Melendez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part MMESP7 of the Supreme Court of the State of NY, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 7th day of March 2024.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
HARRIET MCLAURIN, as administrator of the estate of
WILLIEANN MCLAURIN, deceased,

Petitioner,

-against-

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION and JOHN AND JANE DOES, M.D. and R.N.
(1-10), names being fictitious and unknown persons intended
being physicians, nurses and other personnel who treated plaintiff
Willieann McLaurin at East New York Diagnostics & Treatment
Center on November 1, 2018 and prior and subsequent thereafter,

Respondents.

-----X
HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.

DECISION & ORDER

Index No. 502168/2020
Mo. Seq. 1

Recitation, as required by CPLR §2219 [a], of the papers considered in the review:

NYSCEF #s: 1-4, 6-15, 38-39

Petitioner Harriet McLaurin, as administrator of the estate of Willieann McLaurin, moves (Seq. No. 1) for an Order, pursuant to General Municipal Law (“Gen. Mun.”) § 50-e (5), granting leave to file a late notice of claim upon New York City Health and Hospitals Corporation (“NYCHH”), and to deem the notice of claim as timely served *nunc pro tunc*. NYCHH opposes this petition.

The underlying notice of claim involves medical malpractice allegations against NYCHH, in connection to treatment and care received by Willieann McLaurin from approximately October 2017 through November 2018 at East New York Diagnostic and Treatment Center (“East New York”). The decedent alleged that she presented at East New York multiple times with respiratory complaints and was treated with antibiotics. On December 8, 2018, the decedent underwent a chest CT at Kings County Hospital Center and was diagnosed with stage IV lung cancer. She alleged that East New York failed to detect her condition and allowed it to spread.

The decedent served a purported notice of claim on NYCHH on July 30, 2019, exceeding the 90-day window after the claim arose without leave of the Court. Per the decedent's affidavit, she was focused on her cancer diagnosis and chemotherapy treatments and did not obtain counsel until July 2019.

The petition herein was initially brought by Order to Show Cause on January 28, 2020, by the decedent Willieann McLaurin. The decedent also commenced her action on the underlying claims against NYCHH by filing a summons and complaint on January 29, 2020 (Index No. 502261/2020). On February 23, 2020, Willie McLaurin died and both cases were automatically stayed.

The complaint in the related action was amended to substitute Harriet McLaurin as administrator of Willie McLaurin's estate in March 2021, and discovery is ongoing in that case. However, the stay remained in effect for this petition until February 9, 2024, when it was lifted by motion (Seq. No. 2) and Harriet McLaurin was substituted as administrator of the estate.

As outlined by the Second Department:

“In determining whether to exercise discretion to extend the time for a petitioner to serve a notice of claim, the court must consider all relevant facts and circumstances, including, but not limited to, whether (1) the municipality or public corporation acquired actual knowledge of the essential facts constituting the claim within 90 days after the claim arose or a reasonable time thereafter, (2) the delay would substantially prejudice the municipality or public corporation in its defense, and (3) the claimant demonstrated a reasonable excuse for the failure to serve a timely notice of claim” (*Matter of Ibrahim v New York City Tr. Auth.*, 202 AD3d 786, 787 [2d Dept 2022]).

“The presence of absence of any one of these factors is not dispositive” (*Matter of Balbuenas v New York City Health & Hosps. Corp.*, 209 AD3d 642, 644 [2d Dept 2022], quoting *Rodriguez v Westchester Med. Ctr. (WMC)*, 196 AD3d 659, 660 [2d Dept 2021]).

Here, the petitioner established that NYCHH was served with a notice of claim on July 30, 2019, approximately six months after the last instance of the treatment at issue. Additionally, the decedent was diagnosed with stage IV lung cancer at Kings County Hospital Center, which is also under the control of NYCHH, on or about December 8, 2018. A copy of the results and diagnosis were reported to East New York “within days of the testing” and the apical mass was referenced in her East New York records no later than December 13, 2018.

“Merely having or creating hospital records, without more, does not establish actual knowledge of a potential injury where the records do not evince that the medical staff, by its acts or omissions, inflicted any injury” (*Contreras v 357 Dean Street Corp.*, 77 AD3d 604, 606 [2d Dept 2010], quoting *Williams ex rel. Fowler v Nassau County Medical Center*, 6 NY3d 531 [2006]). However, medical records do constitute actual notice where they “suggest injury attributable to malpractice,” even in the absence of an expert affirmation (*see Rojas v New York City Health and Hospitals Corp.*, 127 AD3d 870 [2d Dept 2015]; *Cifuentes v New York*

City Health and Hospitals Corp., 43 AD3d 385 [2d Dept 2007]). The Court finds that the delayed or inconsistent diagnosis of lung cancer within the records in East New York’s possession establishes that the petitioner’s injury may be attributable to malpractice, and therefore, NYCHH acquired actual notice of the essential facts within the 90-day period. Even if her records were not enough to evince a malpractice injury, actual notice is only one factor for the Court to consider, alongside the petitioner’s reasonable excuse and the lack of prejudice to the defendant.

The petitioner provided a reasonable excuse for the late notice of claim, averring that she was undergoing cancer treatments, which were the center of her focus during that time and rendered her unable to pursue her legal claims within the initial 90-day period. A notice of claim was promptly filed once she obtained legal counsel in July 2019, and this petition to extend the time to file was brought before the statute of limitations elapsed.

“To establish a lack of substantial prejudice, the petitioner must meet a threshold burden of presenting some evidence or plausible argument that supports a finding of no substantial prejudice (*Matter of Shumway v Town of Hempstead*, 187 AD3d 758, 759 [2d Dept 2020]). “Such a showing need not be extensive” (*Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 466 [2016]). Here, the petitioner argues that NYCHH and its hospitals were in possession of Willieann McLaurin’s medical records and have had the opportunity to “review plaintiff’s file and perform any investigation.” The petitioner also served a detailed notice of claim within a reasonable time, three to four months after the 90 days expired. A six-month delay in notice of claim, for medical malpractice cases, has been considered “relatively short” and not prejudicial to the defendant (*Rojas*, at 873).

NYCHH submitted a limited opposition to this motion before the Court was informed of Willie McLaurin’s death. Their sole argument was that the notice of claim petition was “premature” before any discovery was undertaken, i.e., obtaining treatment records and depositions, to determine if her claims were time-barred by the statute of limitations. Since then, there have been relevant discovery exchanges and affirmative defenses asserted in the related action Index No. 502261/2020, and these objections are moot or not applicable.

The additional years that elapsed since this petition was filed, resulting from Willieann McLaurin’s death and the automatic stay in all proceedings, have no impact on whether the decedent’s claims were outside the statute of limitations when this action was originally commenced. NYCHH did not raise any issues in opposition to counter the petitioner’s showing that there was no substantial prejudice arising from the notice of claim delay. That delay is the Court’s focus here – not the toll that occurred later through no fault of the decedent’s passing. Although no substitution or dismissal occurred under this petition, due to oversight of *both* parties’ counsel, the companion action (Index No. 502261/2020) had its stay lifted within one year, and

discovery has been ongoing since 2021. Pursuant to Gen. Mun. § 50-e (5), leave to serve late notice of claim shall not be denied on the ground it was sought concurrent with or after commencement of an action.

Accordingly, it is hereby:

ORDERED that the motion (Seq. No. 1) for an Order granting the petitioner leave to serve late notice of claim is **granted**; and it is further

ORDERED that the previously served notice of claim shall be served upon NYCHH in accordance with Gen Mun. § 50-e within 30 days of this Order, and service shall be deemed timely *nunc pro tunc*.

This constitutes the decision and order of this Court.

ENTER.



Hon. Consuelo Mallafre Melendez

J.S.C.