

**Perez v Village for Care**

2024 NY Slip Op 33373(U)

September 25, 2024

Supreme Court, New York County

Docket Number: Index No. 159471/2019

Judge: David B. Cohen

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DAVID B. COHEN PART 58**

*Justice*

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MICHELLE PEREZ,

Plaintiff,

- v -

VILLAGE FOR CARE, VILLAGE CENTER FOR CARE  
D/B/A VILLAGECARE REHABILITATION AND NURSING  
CENTER, VILLAGECARE REHABILITATION AND  
NURSING CENTER

Defendants.

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INDEX NO. 159471/2019

MOTION DATE 06/05/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126

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

In this medical malpractice action, plaintiff, Administrator of the Estate of the deceased, Grace Johnson, sues defendants for violations of Public Health Law §§ 2801-d and 2803-c, negligence, gross negligence, and wrongful death.

By notice of motion, defendants Village Center for Care, Village Center for Care s/h/a Village Center for Care d/b/a Villagecare Rehabilitation and Nursing Center and Village Center for Care s/h/a Villagecare Rehabilitation and Nursing Center (collectively, Village Care) move pursuant to CPLR 3212 for an order summarily dismissing the complaint against them. Plaintiff opposes.

On a motion for summary judgment, the movant must “establish his cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in his favor” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). After this showing has been made, “the burden shifts to the party opposing the

motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez*, 68 NY2d at 324; *see also Zuckerman*, 49 NY2d at 562).

Public Health Law § 2801-d provides a private cause of action to patients of residential health care facilities who are injured therein, while Public Health Law § 2803-c sets forth the rights possessed by patients in certain medical facilities. A defendant moving for summary judgment on a claim that it deprived a patient of her rights under the Public Health Law meets its prima facie burden by evidence that the patient’s injuries did not arise through defendant’s actions or negligence (*Russell v River Manor Corp.*, 216 AD3d 827 [2d Dept 2023]).

At issue in this case is whether defendants caused and/or failed to properly treat the deceased’s right heel wound, which defendants contend was “unavoidable” due to the deceased’s various and related medical conditions. Plaintiff asserts that the wound was not unavoidable but also improperly treated by defendants.

The parties offered competing expert opinions to support their arguments. Village Care submits an expert affirmation from a vascular surgeon, who opines that the care provided by Village Care to the decedent was within the standard of care and that it was not responsible for the development of the right heel wound, which he characterized as an unavoidable wound caused by both a recent fall and injury and longstanding disease (NYSCEF 104). It also submits an affirmation from a geriatric medicine expert, who submits the same opinion (NYSCEF 105).

Plaintiff relies on the affirmation of a licensed medical doctor, “trained and experienced in the standards of care for wound care in acute care patients and long-term care residents,” who is currently employed as the Attending Staff member in family medicine/geriatrics at several care centers. She opines that defendants violated the decedent’s rights and acted unreasonably

and in disregard for the decedent's health and well-being, and that their violations caused wounds to develop on the decedent's body. Thus, the expert concludes, defendants departed from the standard of care (NYSCEF 122).

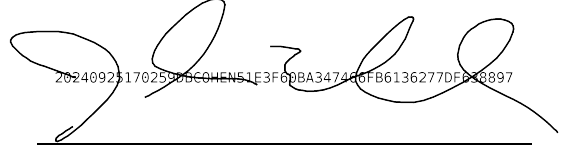
As the parties' experts have similar qualifications and experience and are all apparently qualified to opine on the applicable standard of care for residential health care facilities, their conflicting opinions raise triable issues as to whether Village Care is liable for the deceased's injuries under any applicable cause of action in this case (*Jackson v N. Manhattan Nursing Home, Inc.*, 202 AD3d 439 [1st Dept 2022]).

Village Care's argument that plaintiff's expert is unqualified to opine on the diagnosis and treatment of primarily vascular-based wounds is rebutted by the expert's statement that she regularly treats patients with medical conditions and wounds such as those suffered by the decedent and is experienced working with such wounds and "vascular issues such as those experienced by the decedent." At trial, Village Care will be able to cross-examine the expert as to her experience and familiarity with the decedent's medical conditions, but they are not entitled to dismissal on that basis here (*see e.g., Pichardo v St. Barnabas Nursing Home, Inc.*, 134 AD3d 421 [1st Dept 2015] [both experts found competent to render opinions; one was specialist in geriatrics and had treated injuries of elderly patients, and other specialized in geriatrics and wound care and thus qualified to render opinion on standard of care for skin ulcers]).

Accordingly, it is hereby

ORDERED, that the motion for summary judgment by defendants Village Center for Care, Village Center for Care s/h/a Village Center for Care d/b/a Villageare Rehabilitation and Nursing Center and Village Center for Care s/h/a Villagecare Rehabilitation and Nursing Center is denied; and it is further

ORDERED, that the parties appear for a trial scheduling/settlement conference on  
January 29, 2025, at 9:30 a.m., Part 58, 71 Thomas Street, Room 305, New York, New York.



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9/25/2024  
DATE

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DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE