

Amiramov v Always Home Care Agency, Inc.

2024 NY Slip Op 33757(U)

October 15, 2024

Supreme Court, Kings County

Docket Number: Index No. 531535/21

Judge: Ellen M. Spodek

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 63 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 15th day of October, 2024.

P R E S E N T:

HON. ELLEN M. SPODEK,

Justice,

-----X

IOSIF AMIRAMOV, as Administrator of the Estate of
MARISHKEN AMIKAMOVA, and IOSIF AMIRAMOV,
Individually,

Plaintiffs,

-against-

ALWAYS HOME CARE AGENCY, INC.,

Defendant.
-----X

DECISION/ORDER/JUDGMENT

Index No. 531535/21

Mot. Seq. No. 1

The following e-filed papers read herein:

NYSCEF Doc Nos.:

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In this action to recover damages for negligence, medical malpractice, and wrongful death, the motion of defendant Always Home Care Agency, Inc. (“defendant”) moves for an order, pursuant to CPLR 3212, granting it summary judgment dismissing the complaint of Iosif Amiramov (“plaintiff”), individually and as the administrator of the estate of his deceased grandmother, Marishken Amikamova (collectively, “decedent”), is granted, the complaint is dismissed in its entirety with prejudice and without costs and disbursements, and the clerk is directed to enter a judgment accordingly.

“The existence and extent of a duty is a question of law” for the court (*Alnashmi v Certified Analytical Group, Inc.*, 89 AD3d 10, 13 [2d Dept 2011]) and is “not an appropriate subject for expert opinion.” *Burtman v Brown*, 97 AD3d 156, 161 (1st Dept

2012). Here, defendant has established, prima facie, that the duty of its home care aides (“HCAs”) was limited to rendering assistance and support with decedent’s non-medical daily needs, such as feeding, hygiene, medication reminders (but not the administration of medications), turning and positioning, and general oversight. Further, defendant has established that its HCAs had no responsibility (and lacked training) either to direct or provide wound care for any pressure ulcers which decedent developed. Rather, all wound care to decedent was provided by nonparty Girling Healthcare of NY, Inc. (“Girling”) three times per week from November 22, 2019 through the morning of December 6, 2019, at the direction of decedent’s primary care physician nonparty Mark Azbel, M.D. (“Dr. Azbel”). *See* Girling’s records, pages 000008 to 000073. In addition to prescribing wound care, Dr. Azbel managed decedent’s hypertension (among several of her other comorbidities) with diuretic Lasix 40 mg twice daily which contributed to her dehydration, as well as to her profuse sweating with the ensuing frequent linen changes. *See* Girling’s records, page 000010 (Girling’s Home Health Certification and Plan of Care cosigned by Dr. Azbel) and page 000015 (Girling’s Outcome and Assessment Information Set Items for Skilled Nursing, Start and Resumption of Care, page 4 of 21). In November 2019, Dr. Azbel was also treating decedent’s then-developed pneumonia with the at-home, intramuscular administration of an antibiotic. *See* Methodist’s records (as referenced below), page 000031.

The records of nonparty New York-Presbyterian Brooklyn Methodist Hospital (“Methodist”) reflect that decedent was hospitalized (after her family’s consultation with Dr. Azbel) on the afternoon of December 6, 2019 with acute respiratory failure, sepsis,

and pneumonia. *See* Methodist's records, page 000098. A DNR order was placed by decedent's family on December 7, 2019. *See* Methodist's records, page 000027. She passed away from a hypotensive episode on December 14, 2019 at the age of 83. *See* Methodist's records, page 000039.

Defendant, as an HCA agency, has established that it had no duty to provide decedent with wound, pulmonary, or other medical care, and that, in any event, any alleged breach of such duty was not a proximate cause of her injuries and death. *See Withopf v R.T. Servs., Inc.*, 210 AD3d 827, 829 (2d Dept 2022); *Tanzman v Ghislaine*, 205 AD3d 837, 837-838 (2d Dept 2022); *Garcia v All Metro Health Care*, 108 AD3d 742, 743 (2d Dept 2013).

In opposition, plaintiff has failed to raise a triable issue of fact as to whether defendant breached a duty to decedent and whether the alleged acts/omissions of its HCAs proximately caused her injuries and death. *See Withopf*, 210 AD3d at 829; *Tanzman*, 205 AD3d at 838; *Garcia*, 108 AD3d at 743. The affirmation of plaintiff's expert was conclusory, lacking in foundation, and failed to identify any specific standard applicable to the HCA agencies on which the affiant relied in concluding that defendant (again, in its limited capacity as an HCA agency) was required to provide (and was negligent in providing) her with medical care.¹ *See Russell v River Manor Corp.*, 216 AD3d 827, 830 (2d Dept 2023); *Carradice v Jamaica Hosp. Med. Ctr.*, 198 AD3d

¹ Plaintiff's counsel did not depose anyone from defendant. Nor did plaintiff's counsel depose Dr. Azbel or any representative from Girling or Methodist.

863, 865 (2d Dept 2021); *Lowe v Japal*, 170 AD3d 701, 703 (2d Dept 2019); *Simpson v Heart to Heart Home Care*, 2024 NY Slip Op 32897(U), *3-4 (Sup Ct, Kings County, Aug. 15, 2024).

Plaintiff’s contention that defendant’s motion must be denied for failure to submit a statement of facts with its motion in accordance with 22 NYCRR 202.8-g, is unavailing. “[T]he court [is] not required to deny the defendant[’s] motion because of [its] failure to submit a statement of material facts.” *Taveras v Incorporated Vil. of Freeport*, 225 AD3d 822, 823 (2d Dept 2024).

The Court reviewed plaintiff’s remaining contentions and found them unavailing or moot in light of its determination.

Accordingly, the Court hereby grants defendant’s motion for summary judgment in its entirety, dismissing all causes of action against it by plaintiff, and dismissing the complaint in its entirety with prejudice and without costs or disbursements.

The foregoing constitutes the Decision/Order/Judgment of the Court.

ENTER,



J.S.C.
HON. ELLEN M. SPODEK

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KINGS COUNTY CLERK
FILED