Estate of Gebert v Huntington Hills Ctr. for Health & Rehabilitation
2024 NY Slip Op 34851(U)
September 4, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 600602/2021
Judge: Linda Kevins

SHORT FORM ORDER

INDEX No. 600602/2021
CAL. No. 202300890MM

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY

P R E S E N T :

Hon. LINDA J. KEVINS
Justice of the Supreme Court

MOTION DATE 11/15/23
ADJ. DATE 4/30/24
Mot. Seq. # 001 MotD

----------X

THE ESTATE OF VIRGINIA GEBERT, by its Executor VIRGINIA MOTSCHENBACHER,

Plaintiff,

- against -

HUNTINGTON HILLS CENTER FOR HEALTH AND REHABILITATION and EAST NORTHPORT RESIDENTIAL HEALTH CARE FACILITY, INC.,

Defendants.

----------X

M[C]ANDREW, CONBOY & PRISCO, LLP
Attorney for Plaintiff
1860 Walt Whitman Road, Suite 800
Melville, New York 11747

LEWIS JOHS AVALLONE AVILES, LLP
Attorney for Defendants
1377 Motor Parkway, Suite 400
Islandia, New York 11749

Upon the following papers read on this motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by defendants, dated October 11, 2023; Answering Affidavits and supporting papers by plaintiff, dated March 2024; Replying Affidavits and supporting papers by defendants, dated April 22, 2024; Other _____; it is

ORDERED that the motion by defendant for summary judgment in its favor is granted to the extent that plaintiff's claims for negligent hiring and supervision are dismissed, and is otherwise denied; and it is further

ORDERED that upon Entry of this Order, the movant is directed to promptly serve a copy of this Order with Notice of Entry upon all parties and to promptly file the affidavits of service with the Clerk of the Court.

This action was commenced by plaintiff Virginia Motschenbacher, as executor of the estate of her mother, Virginia Gerbert, for damages related to personal injuries allegedly sustained by Gerbert while she was a patient at Huntington Hills Center for Health and Rehabilitation. Plaintiff alleges that, on July 27, 2020, Gerbert was allowed to exit her bed unassisted and fell to the floor, sustaining skin tears, an intraventricular hemorrhage, an intracranial hemorrhage, and an intertrochanteric fracture of the

right hip requiring surgery. Plaintiff further alleges that, as a result of the injuries that Gerbert sustained in the fall, her condition continued to worsen, and that she passed away on September 11, 2020. By her complaint, plaintiff alleges causes of action against defendants for medical malpractice, negligence, violations of Public Health Law §§ 2801-d and 2803-c, and wrongful death. Plaintiff claims, inter alia, that defendant failed to properly evaluate Gerbert as a fall risk, failed to create an appropriate fall prevention plan, and failed to utilize the necessary interventions for fall prevention.

Defendant East Northport Residential Health Care Facility, Inc. s/h/a Huntington Hills Center for Health & Rehabilitation and East Northport Residential Health Care Facility, Inc. ("Huntington Hills") moves for summary judgment dismissing plaintiff's complaint. Huntington Hills argues that the care provided to Gerbert was appropriate and did not depart from good and accepted medical and nursing care. Huntington Hills further argues that there was no departure from the relevant standards of care which proximately caused Gerbert's alleged injuries and death. With regard to plaintiff's claims under Public Health Law §§ 2801-d and 2803-c, Huntington Hills argues that such claims should be dismissed because they are duplicative of plaintiff's negligence claims, and because there was no violation of any Public Health Law code or regulation which caused Gerbert's alleged injuries. Huntington Hills further argues that "to the extent the plaintiff pleads a cause of action sounding in negligent hiring, supervision and retention all such claims should be dismissed as a matter of law." Huntington Hills additionally argues that there is no basis for the imposition of punitive damages, as the care rendered to Gerbert did not amount to gross negligence or a reckless disregard for her well-being. Finally, Huntington Hills argues that plaintiff's claims are subject to dismissal under the Emergency or Disaster Treatment Protection Act, N.Y. Pub. Health Law Article 30-D ("EDTPA"), which provides immunity to providers who rendered certain health care services for COVID -19, and under 42 U.S.C.A. § 247d-6d (a) (1), the Public Readiness and Emergency Preparedness Act ("PREP Act"). In support of its motion, defendant submits, inter alia, copies of the pleadings, the parties' deposition testimony, Gerbert's records from Huntington Hills, Plainview Hospital, and Southside Hospital, and plaintiff's death certificate. Defendant also submits an affirmation by Lawrence N. Diamond, M.D., and an affidavit by Sujata Tadepalli.

The undisputed facts of this matter are as follows. Gerbert, who was then 94 years old, suffered a fall at her home on July 10, 2020, and was treated at Plainview Hospital, where a CT scan of her cervical spine showed a fracture of the C1 vertebrae, and a possible nondisplaced fracture of the C2 vertebrae. She was transferred to Southside Hospital for neurosurgical intervention, where she was treated until July 13, 2019, when she was transferred to Huntington Hills for rehabilitation. Gerbert's records from Huntington Hills indicate that she had a past medical history significant for hypertension, dementia, and kidney injury. At Huntington Hills, a Nursing Fall Evaluation was completed for Gerbert, which stated that she was oriented, had a history of falls, needed assistance with elimination, and was at risk for falls. The fall interventions which were implemented included appropriate footwear when ambulating or mobilizing in a wheelchair, and a low bed. Gerbert received physical therapy and occupational therapy at Huntington Hills, and by July 24, 2020 she was able to ambulate 100 feet using a rolling walker. On July 27, 2020 at 3:45 a.m., Gerbert was found lying on the floor next to her bed, complaining of pain to her hip and thigh. She was noted to have skin tears to her right eyebrow, right wrist and left forearm, and she had vomited. An accident report prepared by Angelita Garlitos, RN,

states that Gerbert was unable to recount the fall. Gerbert's assigned CNA, Lorena Lozarte, testified that Gerbert's roommate called her into their room at 3:40 a.m. to ask for something, at which time Gerbert was awake and said that she was okay. Lozarte further testified that she walked out of the room to get something for Gerbert's roommate, and that when she returned, she found Gerbert on the floor. Lozart also testified that Gerbert had a low bed, and that it was in the lowest position, at the time of the fall.

Following her fall on July 27, 2020, Gerbert was transported to Southside Hospital, where a CT scan of her head showed a multifocal acute hemorrhage, and a CT scan of her pelvis showed an acute, comminuted and impacted intertrochanteric fracture of the proximal right femur. Gerbert underwent surgery to her right hip on July 29, 2020. On August 1, 2020, she was discharged back to Huntington Hills. Upon her readmission to Huntington Hills, safety precautions were implemented, including the use of a floor bed, a perimeter mattress, and floor mats. At that time, Gerbert was noted to require maximum assistance for transfers, and to be able to ambulate five feet with a rolling walker and maximum assistance. Gerbert's records from Huntington Hills also indicate that she was moderately impaired, with some forgetfulness and short-term memory deficits, and that her diet was downgraded to thick liquids due to difficulty swallowing. On August 24, 2020, it was noted that Gerbert was not making progress with rehabilitation. Gerbert's family decided to discharge her to her son's home with home health care, and she was discharged from Huntington Hills on September 1, 2020. Gerbert passed away on September 11, 2020.

The affirmation of Lawrence N. Diamond, M.D. ("Dr. Diamond"), states that he is a board-certified physician licensed to practice medicine in the State of New York, and that he practices family medicine and possesses a Certificate of Added Qualifications in geriatric medicine. Based on his experience and training, as well as his review of the pleadings, deposition testimony, and medical records in this matter, Dr. Diamond opines that Huntington Hills complied with the good and accepted standards of medicine and nursing care with regard to the care and treatment which was rendered to Gerbert, and that Huntington Hills did not proximately cause or contribute to the alleged injuries sustained by Gerbert, including her death. Dr. Diamond opines further that Huntington Hills took all reasonable measures to avoid any deprivation of Gerbert's rights under the Public Health Law, and that Gerbert did not suffer any deprivation of rights or injury as a result of any inappropriate or inadequate care on the part of Huntington Hills. Dr. Diamond notes that the staff of Huntington Hills conducted a comprehensive fall risk assessment on July 13, 2020, and that fall interventions were implemented, including the use of non-skid socks and maintaining her bed in its lowest position. He opines that the use of floor mats could have presented a tripping hazard for a patient such as Gerbert, who was able to ambulate using a rolling walker. Dr. Diamond opines further that there was no reason to use a perimeter mattress, because Gerbert did not have a history of rolling out of bed prior to her accident. Dr. Diamond states that Gerbert was also appropriately monitored and supervised at Huntington Hills. He states that bed alarms and motion sensors were unnecessary for a patient with Gerbert's level of cognition, and that the use of restraints was not appropriate or warranted. He also states that one-on-one supervision is not the standard of care for a patient such as Gerbert, and is reserved for circumstances such as where a patient expresses a desire to harm themselves.

In opposition to Huntington Hills' motion, plaintiff submits an affirmation by Ronald Schwartz, M.D. Dr. Schwartz states that he is board certified in internal medicine, geriatric medicine, and palliative care medicine. Based on his review of, inter alia, the parties' deposition testimony and plaintiff's records from Huntington Hills, Plainview Hospital and Southside Hospital, Dr. Schwartz opines that Huntington Hills deviated from good and accepted practice in the care that it rendered to Gerbert. Specifically, Dr. Schwartz opines, within a reasonable degree of medical certainty, that Huntington Hills was negligent, and deviated from good and accepted practice, by failing to order safety devices for Gerbert, including a floor bed, floor mats, a perimeter mattress, protective clothing such as a hipster, a bed alarm, a chair alarm, and a floor mat alarm, and in failing to place Gerbert in a room close to the nursing station. He also opines that Huntington Hills violated 42 CFR 483.25 and 10 NYCRR Section 415.12 (h), by failing to ensure that Gerbert received assistive devices to prevent accidents.

Dr. Schwartz states that there was a "pervasive lack of care" in the treatment of Gerbert by the Huntington Hills staff. He further states that Gerbert's medical condition, including dementia, muscle weakness and unsteady gait, and her prior history of falls, made her an "extremely high risk for an additional fall," and that "all steps needed to be taken to prevent a further fall," but that the Huntington Hills records demonstrate that its own protocols for fall protection were not followed. Dr. Schwartz notes that, according to a fall evaluation prepared for Gerbert, floor mats were to be placed, but were not supplied prior to her fall. In addition, Dr. Schwartz states that additional safety devices listed in the Huntington Hills protocol for patients at risk of falling were never used for Gerbert, including the use of a floor bed, hipsters, a concave mattress, a perimeter mattress, and one-on-one monitoring. Dr. Schwartz questions the accuracy of the Fall Risk Evaluation prepared at Huntington Hills by Michelle Aragona, including the section wherein it states that Gerbert was "oriented at all times," as Gerbert had a confirmed history of dementia, as well as cognitive communication deficits and short-term memory deficits. Dr. Schwartz also notes that the Care Plan prepared by Aragona incorrectly states that Gerbert had no visual impairment, and that she was not on any narcotics or psychotropic medication, despite the fact that she was taking Celex and Wellbutrin for major depressive disorder. Dr. Schwartz opines that the lack of safety precautions implemented by Huntington Hills was a total disregard for Gerbert's safety, and resulted in Gerbert experiencing the fall of July 27, 2020, in which she sustained significant head trauma with a brain bleed, multiple lacerations to her face and arm, and a fractured hip requiring surgical repair. Dr. Schwartz states that Gerbert "went on a downward spiral as a direct consequence of those injuries resulting in her death, only six weeks later." He also notes that the medical examiner determined that Gerbert's cause of death was due to complications flowing from the hip fracture and subdural hematoma which she sustained in the accident of July 27, 2020.

Huntington Hills' request for dismissal of plaintiff's claims based on purported immunity under the EDTPA is denied. The EDTPA established limitations on health care facilities' and health care professionals' liability during the COVID-19 pandemic (*see* Public Health Law former art 30-D, §§ 3080-3082, repealed by L 2021, ch 96, § 1). In support of its motion, Huntington Hills submitted an affidavit by Sujata Tadepalli, which states that she is a registered nurse employed as the Director of Nursing at Huntington Hills, and that during July and August 2020, her responsibilities included following the infection control polices at Huntington Hills and implementing COVID-19 protocols for the staff and residents of Huntington Hills. Tadepalli also states that Huntington Hills followed all

applicable governmental regulations during the COVID-19 pandemic in an effort to slow the spread of the virus and treat infected patients, and that all of the residents of the facility were impacted, including Gerbert. Notably, Huntington Hills' submissions do not indicate that its alleged negligent conduct in failing to provide the appropriate fall prevention measures and devices to Gerbert were impacted by its response to COVID-19. Accordingly, Huntington Hills has failed to demonstrate that the EDPTA's qualified immunity should attach here (*see* ***Back v Facey***, 78 Misc 3d 426, 183 NYS3d 256 [Sup Ct, St. Lawrence County 2023]).

Similarly, the PREP Act does not provide immunity to Huntington Hills under the circumstances presented herein. "The PREP Act provides broad immunity from suit and liability with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure during a public-health emergency" (***Kluska v Montefiore St. Luke's Cornwall***, 227 AD3d 690, 691-692, 211 NYS3d 422 [2d Dept 2024](internal citations omitted)). As plaintiff's claims are not related to the administration or use of a "covered countermeasure" used to treat, diagnose, cure, prevent , or mitigate COVID-19, Huntington Hills is not entitled to immunity from the instant suit under the PREP Act.

To prove a prima facie case of negligence, a plaintiff must demonstrate the existence of a duty, a breach of that duty, and that the breach of such duty was a proximate cause of his or her injuries (*see* ***Pulka v Edelman***, 40 NY2d 781, 390 NYS2d 393 [1976]; ***Solan v Great Neck Union Free School Dist.***, 43 AD3d 1035, 842 NYS2d 52 [2d Dept 2007]; ***Kipybida v Good Samaritan Hosp.***, 35 AD3d 544, 827 NYS2d 201 [2d Dept 2006]). "A hospital or medical facility has a general duty to exercise reasonable care and diligence in safeguarding a patient, based in part on the capacity of the patient to provide for his or her own safety" (***D'Elia v Menorah Home & Hosp. For the Aged & Infirm***, 51 AD3d 848, 850, 859 NYS2d 224 [2d Dept 2008]).

"In order to establish liability for medical malpractice, a plaintiff must prove that the defendant deviated or departed from accepted community standards of practice, and that such departure was a proximate cause of the plaintiff's injuries" (***Gachette v Leak***, 172 AD3d 1327, 1328, 101 NYS3d 432, 434 [2d Dept 2019]; *see also* ***Bongiovanni v Cavagnuolo***, 138 AD3d 12, 24 NYS3d 689 [2d Dept 2016]; ***Stukas v Streiter***, 83 AD3d 18, 918 NYS2d 176 [2d Dept 2011]; ***Feinberg v Feit***, 23 AD3d 517, 806 NYS2d 661 [2d Dept 2005]). To establish its entitlement to summary judgment in a medical malpractice action, a defendant "must make a prima facie showing either that there was no departure from accepted medical practice, or that any departure was not a proximate cause of the plaintiff's injuries" (***Williams v Bayley Seton Hosp.***, 112 AD3d 917, 918, 977 NYS2d 395 [2d Dept 2013]; *see also* ***Rodriguez v Bursztyn***, 187 AD3d 1230, 131 NYS3d 569 [2d Dept 2020]; ***Bongiovanni v Cavagnuolo***, 138 AD3d 12, 24 NYS3d 689; ***Schmitt v Medford Kidney Ctr.***, 121 AD3d 1088, 996 NYS2d 75 [2d Dept 2014]; ***Mitchell v Grace Plaza of Great Neck, Inc.***, 115 AD3d 819, 982 NYS2d 361 [2d Dept 2014]). Where the defendant has satisfied this burden, the burden then shifts to the plaintiff to submit evidentiary facts or materials to rebut the defendant's prima facie showing (*see* ***Williams v Bayley Seton Hosp.***, 112 AD3d 917, 977 NYS2d 395; ***Makinen v Torelli***, 106 AD3d 782, 965 NYS2d 529 [2d Dept 2013]; ***Contreras v Adeyemi***, 102 AD3d 720, 958 NYS2d 430 [2d Dept 2013]; ***Stukas v Streiter***, 83 AD3d 18, 918 NYS2d 176). Summary judgment is inappropriate in a

medical malpractice action where the parties present conflicting opinions by medical experts (*see* ***Leto v Feld***, 131 AD3d 590, 15 NYS3d 208 [2d Dept 2015]; ***Gressman v Stephen-Johnson***, 122 AD3d 904, 998 NYS2d 104 [2d Dept 2014]; ***Moray v City of Yonkers***, 95 AD3d 968, 944 NYS2d 210 [2d Dept 2012]. However, "general allegations of medical malpractice, which are merely conclusory and unsupported by competent evidence, are insufficient to defeat a motion for summary judgment" (***Gachette v Leak***, 172 AD3d 1327, 1329, 101 NYS3d 432, 435).

Huntington Hills established its prima facie entitlement to summary judgment with respect to plaintiff's claims for negligence and medical malpractice through the affirmation of Dr. Diamond, in which he opines that the care and treatment rendered to Gerbert complied with good and accepted standards of medical and nursing care, and that the treatment provided by its staff was not the proximate cause of the alleged injuries sustained by Gerbert (*see* ***Rodriguez v Isabella Geriatric Ctr. Inc.***, 227 AD3d 485, 211 NYS3d 31 [1st Dept 2024]; ***Rosen v John J. Foley Skilled Nursing Facility***, 45 AD3d 558, 846 NYS2d 208 [2d Dept 2007]). As discussed above, Dr. Diamond noted that a fall risk assessment was performed on July 13, 2020, and he opined that the appropriate fall interventions were thereafter implemented, including the use of non-skid socks and maintaining Gerbert's bed in its lowest position. Dr. Diamond further opined that Gerbert was appropriately monitored and supervised at Huntington Hills.

However, in opposition to defendant's motion, plaintiff raised triable issues of fact as to whether Huntington Hills departed from good and accepted standards of medical and nursing care in failing to implement the necessary precautions to protect Gerbert from a foreseeable risk of falling, and whether any such departure and negligence was a proximate cause of Gerbert's injuries (*see* ***Rodriguez v Isabella Geriatric Ctr. Inc.***, 227 AD3d 485, 211 NYS3d 31; ***Rosado v Rosa Coplon Jewish Home & Infirmary***, 196 AD3d 1124, 151 NYS3d 768 [4th Dept 2021]; ***D'Elia v Menorah Home & Hosp. For the Aged & Infirm***, 51 AD3d 848, 850, 859 NYS2d 224). As discussed above, Dr. Schwartz opined that Gerbert's medical condition, including dementia, muscle weakness and unsteady gait, and her prior history of falls, made her an "extremely high risk for an additional fall," and that Huntington Hills deviated from good and accepted practice by failing to order safety devices for Gerbert, including a floor bed, floor mats, a perimeter mattress, protective clothing such as a hipster, a bed alarm, a chair alarm, and a floor mat alarm, and in failing to place Gerbert in a room close to the nursing station. In addition, Dr. Schwartz opined that the lack of safety precautions resulted in Gerbert's fall of July 27, 2020, in which she sustained injuries including head trauma, lacerations, and a fractured hip requiring surgical repair, resulting in a decline in her condition and her eventual death. As discussed above, summary judgment is inappropriate in a medical malpractice action where the parties present conflicting opinions by medical experts (*see* ***Leto v Feld***, 131 AD3d 590, 15 NYS3d 208; ***Gressman v Stephen-Johnson***, 122 AD3d 904, 998 NYS2d 104; ***Moray v City of Yonkers***, 95 AD3d 968, 944 NYS2d 210). Accordingly, the branches of Huntington Hills' motion for summary judgment dismissing plaintiff's claims for medical malpractice and negligence, and for wrongful death, are denied.

Turning to the branch of Huntington Hills' motion for summary judgment dismissing plaintiff's claims for negligent hiring, supervision and retention, the Court notes that there is no such separate cause of action in plaintiff's complaint. Plaintiff's cause of action for negligence does, however, assert

that Huntington Hills was negligent in "failing to appropriately monitor the quality of care rendered by physicians, therapists and nurses to plaintiff's decedent," and "in failing to adequately hire trained staff and personnel to provide appropriate care to plaintiff's decedent." To the extent that such claims allege a cause of action for negligent hiring and supervision, they are dismissed. "Generally, where an employee is acting within the scope of his or her employment, the employer is liable for the employee's negligence under a theory of respondeat superior and no claim may proceed against the employer for negligent hiring, retention, supervision or training" (***S.W. v Catskill Regional Med. Ctr.***, 211 AD3d 890, 891, 180 NYS3d 561 [2d Dept 2022], citing ***Talavera v Arbit***, 18 AD3d 738, 738, 795 NYS2d 708 [2d Dept 2005]). Huntington Hills' submissions demonstrate its entitlement to summary judgment with respect to plaintiff's claims for negligent hiring and supervision, and plaintiff failed raise a triable issue of fact in opposition (*see* ***S.W. v Catskill Regional Med. Ctr.***, 211 AD3d 890, 180 NYS3d 561).

The branch of Huntington Hills' motion for summary judgment dismissing the cause of action for deprivation of rights pursuant to Public Health Law §§ 2801-d and 2803-c is denied. Public Health Law § 2801-d provides, in relevant part, that "[a]ny residential health care facility that deprives any patient of said facility of any right or benefit, as hereinafter defined, shall be liable to said patient for injuries suffered as a result of said deprivation." A "right or benefit" of a patient is defined as "any right or benefit created or established for the well-being of the patient by the terms of any contract, by any state statute, code, rule or regulation or by any applicable federal statute, code, rule or regulation . . ." (Public Health Law § 2801-d [1]). The statute further provides that "[n]o person who pleads and proves, as an affirmative defense, that the facility exercised all care reasonably necessary to prevent and limit the deprivation and injury for which liability is asserted shall be liable under this section" (Public Health Law § 2801-d [1]). Significantly, the statutory basis for liability under Public Health Law § 2801-d is not a deviation from accepted standards of medical practice or a breach of a duty of care. Rather, the statute "contemplates injury to the patient caused by the deprivation of a right conferred by contract, statute, regulation, code or rule" (***Zeides v Hebrew Home for Aged at Riverdale***, 300 AD3d 178, 179, 753 NYS2d 450 [1st Dept 2002]). The statute further provides, "where the deprivation of any such right or benefit is found to have been willful or in reckless disregard of the lawful rights of the patient, punitive damages may be assessed" (Public Health Law § 2801-d [2]).

Here, plaintiff alleges violations under Public Health Law § 2801-d and Public Health Law § 2803-c ("Rights of patients in certain medical facilities"), predicated on an alleged violation of 10 NYCRR 415.12 (h) (2), which states, "The facility shall ensure that: . . . each resident receives adequate supervision and assistive devices to prevent accidents," and the analogous federal provision, 42 CFR 483.25. A defendant may establish its prima facie entitlement to summary judgment dismissing a claim for deprivation of rights under Public Health Law § 2801-d by submitting evidence that the plaintiff's decedent's injuries did not arise through any action or negligence of its employees (*see* ***Moore v St. James Health Care Ctr., LLC***, 141 AD3d 701, 35 NYS3d 464 [2d Dept 2016]). Huntington Hills, through the affirmation of Dr. Diamond, established its prima facie entitlement to dismissal of plaintiff's claims under Public Health Law § 2801-d. However, plaintiff raised a triable issue of fact in opposition, through the affirmation of Dr. Schwartz, who opined that Huntington Hills violated 42 CFR 483.25 and 10 NYCRR 415.12 (h), by failing to ensure that Gerbert received the appropriate assistive devices to prevent accidents. In light of the issues of fact regarding whether there was a deprivation of rights under

10 NYCRR 415.12 and 42 CFR 483.25, the branch of Huntington Hills' motion to dismiss plaintiff's claims under Public Health Law §§ 2801-d and 2803-c is denied (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]). Similarly, the issue of whether Huntington Hills willfully deprived Gerbert of any such right, or acted in reckless disregard of her rights, sufficient to warrant punitive damages under Public Health Law § 2801-d (2), must be determined by the trier of fact (*see* ***Peters v Nesconset Center for Nursing and Rehabilitation***, 47 Misc 3d 1211[A], 15 NYS3d 714 [Sup Ct, Queens County 2015]).

Accordingly, Huntington Hills' motion for summary judgment is granted to the extent that plaintiff's claims for negligent hiring and supervision are dismissed, and is otherwise denied. To the extent not explicitly referenced herein, the Court has reviewed the parties' remaining contentions and determined them to be unavailing.

Anything not specifically granted herein is hereby denied.

The foregoing constitutes the Decision and **Order** of the Court.

Dated: 9.4.24

LINDA KEVINS, JSC

_____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**