

Enz v Escamilla

2024 NY Slip Op 34899(U)

September 30, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 620784/2016

Judge: Vincent J. Martorana

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SHORT FORM ORDER

INDEX No. 620784/2016
CAL. No. 202301570MM

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 23 - SUFFOLK COUNTY

PRESENT:

Hon. VINCENT J. MARTORANA
Justice of the Supreme Court

MOTION DATE 1/17/24
ADJ. DATE 6/13/24
Mot. Seq. # 003 MotD

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DENISE ENZ and STEPHEN R. ENZ, JR.,
Plaintiffs,

- against -

GLORIA MERCEDES ESCAMILLA, M.D.,
BRIAN MCKENNA, M.D., JOYCE D. RUBIN,
M.D., VANESSA MARIE SOVIERO, M.D.,
BARBARA PRINCIPIO, RNP, NORTHWELL
HEALTH CONTEMPORARY WOMEN'S
CARE, NORTHWELL HEALTH SOUTHSIDE
HOSPITAL and NORTHWELL HEALTH INC.,
Defendants.

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Upon the following papers read on this motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by defendants, filed December 14, 2023; Notice of Cross-Motion and supporting papers ____; Answering Affidavits and supporting papers by plaintiffs, filed May 17, 2024; Replying Affidavits and supporting papers by defendants, filed June 12, 2024; Other ____; it is

ORDERED that the motion by defendants for summary judgment dismissing the complaint is granted to the extent of dismissing the cause of action for lack of informed consent, and is otherwise denied.

This is a medical malpractice action brought to recover damages for injuries allegedly arising from the treatment of plaintiff Denise Enz by defendants Gloria Mercedes Escamilla, M.D., Brian McKenna, M.D., Joyce D. Rubin, M.D., Vanessa Marie Soviero, M.D., Barbara Principio, RNP, North Shore-LIJ OB-GYN, P.C., doing business as Contemporary Women's Care, sued herein as Northwell

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Health Contemporary Women's Care, Southside Hospital, sued herein as Northwell Health Southside Hospital, and Northwell Health, Inc., from June 23, 2014 to June 29, 2014. Plaintiff alleges that defendants were negligent in, among other things, failing to appreciate the significance of her prior obstetrical history and complications in her third trimester; failing to identify postpartum complications; failing to monitor, manage, and treat pre-eclampsia and postpartum pre-eclampsia; failing to timely and appropriately treat her with an anti-seizure medication; failing to stabilize her blood pressure; and prematurely discharging plaintiff with an inadequately treated postpartum complication. Plaintiff also alleges a cause of action for lack of informed consent. Stephen R. Enz, Jr., plaintiff's husband, sues derivatively for loss of services.

The facts of this case, subject to some dispute, can be summarized as follows: On November 11, 2013, plaintiff presented to Barbara Principio, RNP, for her annual gynecological examination after she had a positive home pregnancy test. On November 25, 2013, plaintiff presented to Dr. Rubin and her blood pressure was 122/70. On June 18, 2014, Dr. Escamilla was advised of plaintiff's complaints of tightening and clear watery discharge, and advised plaintiff to present to the hospital. On June 23, 2014, plaintiff presented to Dr. Soviero and her blood pressure was 140/80. Dr. Soviero referred her to the labor and delivery unit at Southside Hospital. At the hospital, prior to delivery, plaintiff's blood pressure was 162/99 and 169/96. Dr. Rubin delivered plaintiff's baby via c-section at 5:25 p.m. On June 28, 2014, plaintiff was discharged from the hospital. On June 29, 2014, plaintiff returned to Southside Hospital with complaints of headache and blurry vision, and later had a seizure. She was diagnosed with eclampsia and posterior reversible encephalopathy syndrome ("PRES").

Defendants now move for summary judgment dismissing the complaint on the ground that they did not deviate from the standard of care, that their treatment did not cause plaintiff's alleged injuries, and that plaintiff's informed consent was not required. They submit, in support of the motion, the medical records of Southside Hospital and Contemporary Women's Care, P.C.; the transcripts of the deposition testimony of plaintiff, Dr. Escamilla, Dr. McKenna, Dr. Rubin, and Dr. Soviero; a photograph of a Facebook post; and the affirmation of Peter Bernstein, M.D. In opposition, plaintiffs argue that triable issues of fact remain as to whether defendants departed from the accepted standards of care and whether their treatment caused plaintiff's injuries. They submit, in opposition, the medical records of Southside Hospital, Northwell Health Physician Partners, OBGYN of Islandia, and Stony Brook University Hospital; the transcripts of the deposition testimony of plaintiffs, Dr. Rubin, Dr. McKenna, and Dr. Escamilla; photographs of plaintiff; and a redacted expert affirmation.

To establish a claim for medical malpractice based on lack of informed consent, a plaintiff must prove (1) that the person providing the professional treatment failed to disclose alternatives to such treatment, and failed to inform the plaintiff of the reasonably foreseeable risks of such treatment, and the alternatives, that a reasonable medical practitioner would have disclosed in the same circumstances; (2) that a reasonably prudent patient in the same situation would not have undergone the treatment had he or she been fully informed of the risks; and (3) that the lack of informed consent was a proximate cause of the plaintiff's injuries (*see* Public Health Law § 2805-d [1]; *Fairchild v Lerner*, 229 AD3d 506, 214 NYS3d 757 [2d Dept 2024]; *Roy v Lent*, 219 AD3d 525, 193 NYS3d 283 [2d Dept 2023]; *Mirshah v Obedian*, 200 AD3d 868, 158 NYS3d 226 [2d Dept 2021]). To establish the proximate cause element, a

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plaintiff must show that the operation, treatment or procedure for which there was no informed consent was a substantial cause of the injury (*Rich v Donnenfeld*, 191 AD3d 909, 138 NYS3d 381 [2d Dept 2021]; *Thompson v Orner*, 36 AD3d 791, 828 NYS2d 509 [2d Dept 2007]; *Trabal v Queens Surgi-Center*, 8 AD3d 555, 779 NYS2d 504 [2d Dept 2004]). A defendant can establish entitlement to summary judgment by demonstrating (1) that the plaintiff signed a detailed consent form after being advised of alternatives and foreseeable risks, (2) that a reasonably prudent person in the plaintiff's position would not have declined to undergo the procedure, or (3) that the actual procedure for which there was no informed consent was not a proximate cause of the alleged injury (*Pirri-Logan v Pearl*, 192 AD3d 1149, 145 NYS3d 545 [2d Dept 2021]).

Defendants established a prima facie case of entitlement to summary judgment dismissing the cause of action for lack of informed consent (*see S.W. v Catskill Regional Med. Ctr.*, 211 AD3d 890, 180 NYS3d 561 [2d Dept 2022]). Lack of informed consent is not applicable where, as in this case, the alleged injuries resulted from a failure to diagnose or undertake a procedure (*see S.W. v Catskill Regional Med. Ctr.*, 211 AD3d 890, 180 NYS3d 561; *Samer v Desai*, 179 AD3d 860, 116 NYS3d 377 [2d Dept 2020]; *Bueno v Allam*, 170 AD3d 939, 96 NYS3d 623 [2d Dept 2019]; *Thomas v Farrago*, 154 AD3d 896, 62 NYS3d 478 [2d Dept 2017]; *Ellis v Eng*, 70 AD3d 887, 895 NYS2d 462 [2d Dept 2010]). In opposition, plaintiffs failed to substantively oppose defendants' prima facie showing as to the cause of action for lack of informed consent. Therefore, such cause of action is deemed abandoned and is dismissed (*see Kronick v L.P. Thebault Co., Inc.*, 70 AD3d 648, 892 NYS2d 895 [2d Dept 2010]).

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]). 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 (*Santiago v Abramovici*, 226 AD3d 720, 208 NYS3d 289 [2d Dept 2024]; *Sunshine v Berger*, 214 AD3d 1020, 186 NYS3d 326 [2d Dept 2023]; *Mirshah v Obedian*, 200 AD3d 868, 158 NYS3d 226). 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 [2d Dept 2021]). 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 [2d Dept 2019]; *Williams v Bayley Seton Hosp.*, 112 AD3d 917, 977 NYS2d 395 [2d Dept 2013]). The plaintiff need only raise a triable issue as to the elements on which the defendant met the prima facie burden

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(*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]). Summary judgment is inappropriate in a medical malpractice action where the parties present conflicting opinions by medical experts (*Santiago v Abramovici*, 226 AD3d 720, 208 NYS3d 289; *Clarke v New York City Health and Hosps.*, 210 AD3d 631, 177 NYS3d 681 [2d Dept 2022]).

Defendants' failed to establish a prima facie case of entitlement to summary judgment dismissing the medical malpractice claims against them, as the expert affirmation of Dr. Bernstein failed to address all the specific allegations set forth in the bill of particulars (see *Hiegel v Orange Regional Med. Ctr.*, 219 AD3d 901, 195 NYS3d 720 [2d Dept 2023]; *Martinez v Orange Regional Med. Ctr.*, 203 AD3d 910, 165 NYS3d 573 [2d Dept 2022]; *Huichun Feng v Accord Physicians, PLLC*, 194 AD3d 795, 148 NYS3d 234 [2d Dept 2021]). Having determined that defendants failed to meet their prima facie burden on the medical malpractice cause of action, it is unnecessary to consider whether plaintiffs' 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 [1985]).

Accordingly, the motion is granted to the extent of dismissing the cause of action for lack of informed consent, and is otherwise denied.

Dated: September 30, 2024
Riverhead, New York



VINCENT J. MARTORANA, J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION