Scourakis v Eastern Long Is. Hosp.
2024 NY Slip Op 34915(U)
September 17, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 609815/2015
Judge: Joseph C. Pastoressa
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SHORT FORM ORDER

INDEX No. 609815/2015
CAL. No. 202300451MM

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 34 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH C. PASTORESSA
Justice of the Supreme Court

Mot. Seq. # 004 MG Mot. Seq. # 007 MG
Mot. Seq. # 005 MG Mot. Seq. # 008 MD
Mot. Seq. # 006 MG Mot. Seq. # 009 MG

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STELLA SCOURAKIS, proposed Executrix of the Estate of JOHN A.SCOURAKIS, deceased,

Plaintiff,

- against -

EASTERN LONG ISLAND HOSPITAL, FREDERICK GUTMAN, M.D., JAMES VOSSWINKEL, M.D., DANIEL RUTIGLIANO, M.D., MICHAEL PACCIONE, M.D., STEVEN SANDOVAL, M.D., RANDEEP JAWA, M.D., JERRY RUBANO, M.D., MARC J. SHAPIRO, M.D., "JOHN DOE," M.D. (fictitious name), "JOHN SMITH", M.D. (fictitious name), "JAMES DOE," M.D. (fictitious name), "JAMES SMITH" (fictitious name), "JANE DOE" (fictitious name), "JANE SMITH" (fictitious name), and "JOHN JONES" (fictitious name),

Defendants.

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Upon the following papers read on these e-filed motions for summary judgment: Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 004) by Paccione, filed October 19, 2023; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 005) by Jawa, filed October 19, 2023; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 006) by Shapiro filed October 19, 2023; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 007) by Sandoval, filed October 19, 2023; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 009) by Vosswinkel, filed October 19, 2023; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 008) by Rutigliano, filed October 19, 2023; Answering Affidavits and supporting papers by plaintiff, filed February 12, 2024; Replying Affidavits and supporting papers by Rutigliano, filed March 14, 2024; it is

ORDERED that the motions by defendants Michael Paccione M.D., Randeep Jawa, M.D., Marc Shapiro, M.D., Steven Sandoval, M.D., and James Vosswinkel, M.D., for summary judgment are granted, and it is further

ORDERED that the motion by defendant Daniel Rutigliano, M.D. for summary judgment is denied.

The plaintiff, as the proposed executrix of the estate of decedent John Scourakis, commenced this action to recover damages for injuries that the decedent allegedly sustained as a result of the medical malpractice of the defendants and for the decedent's wrongful death. The plaintiff alleges that the defendants deviated from accepted standards of medical care while the decedent was hospitalized at Stony Brook University Hospital (SBUH) from July 10, 2013 to September 4, 2013. Specific to the moving defendants, the plaintiff alleges that they failed to appreciate the severity of the decedent's condition upon presentation to the hospital, failed to timely treat his symptoms, failed to properly hydrate the decedent, and failed to timely recommend surgical procedures to treat the decedent's subdural hematoma, among other things.

Defendants Dr. James Vosswinkel , Dr. Daniel Rutigliano, Dr. Michael Paccione, Dr. Randeep Jawa, Dr. Marc Shapiro, and Dr. Steven Sandoval now move for summary judgment dismissing the plaintiffs complaint, arguing that they did not depart from good and accepted standards of medical care. The moving defendants submit the affirmation of Dr. Dana Lustbader, a board-certified physician in internal medicine in support of their respective motions.

The record shows that the decedent, who was 77 years old at the time, presented to Eastern Long Island Hospital on July 9, 2013, suffering from head trauma that he sustained from a fall. After undergoing various scans and tests, the decedent was diagnosed with a left side subdural hematoma, and he was transferred to SBUH on July 10 for further treatment. The decedent had several medical conditions predating his fall, including heart disease with atrial fibrillation, hypertension, diverticulosis, and hemtalogical abnormalities. He also had a history of a total abdominal resection. Upon arrival at SBUH, the decedent was assessed by emergency room physicians. Tests showed that he had elevated INR, elevated PT, low platelets, low hemoglobin, elevated glucose and elevated BUN/creatine ratio. He was given medications to address his various ailments, and a transfusion with fresh frozen plasma to address his high INR count (blood clotting time). The decedent was then admitted to the surgical intensive care unit (SICU) for further treatment. A CT scan confirmed the subdural hematoma diagnosis, and the nuerosurgical team of treating doctors determined that no surgical intervention would be pursued at the time. The decedent's condition was monitored by his treating surgical intensivist physicians in the SICU and he remained conscious and alert. He was not permitted food by mouth, and he was given a catheter to handle his urinary output. Initially, the decedent was given oxygen to improve his depleted saturation, but on July 11, he was intubated and placed on a ventilator due to hypoxic respiratory failure, secondary to pulmonary edema. He was given propofol for sedation while on the ventilator, and he was prescribed anti-seizure medication.

Dr. Rutigliano participated in the decedent's treatment on the day that he was admitted to the SICU, and on several days thereafter. Dr. Rutigliano testified that after consultation with the neurological team, the decedent was given fresh frozen plasma to address coagulation, a condition of increased blood clotting time that could worsen his outcome. He testified that the plasma and other IV fluids administered to address coagulation likely contributed to an increase in his fluid volume. Dr. Rutigliano testified that the increase in fluid volume was the likely cause of his worsening respiratory status. The plasma was administered to reverse the effects of Coumadin, an anti-coagulant that the decedent had been taking before he was admitted. The goal was to lower his blood clotting time to an acceptable level. Dr. Rutigliano testified that the decedent's nuerosurgical team made the determination concerning the extent of fresh frozen plasma the decedent received to reduce the coagulopathy. Dr. Rutigliano testified that although the treating team was concerned about the decedent's fluid volume, he could not recall any other method of reversing Coumadin "other than vitamin K and fresh frozen plasma" in 2013. To address the fluid volume, the decedent was given lasix to "diurese his fluid status" and his IV fluids were decreased. Dr. Rutigliano testified that it was a "complex decision as to whether or not . . . to give [the decedent] more fluids versus reverse his coagulopathy." The decisions concerning the decedent's treatment were made jointly between treating specialists and the surgical care physicians.

Between July 11 and July 15, the decedent was continuously monitored, and cultures were ordered to determine whether an infection contributed to his respiratory issues. The treating team continued interventions to correct his INR. On July 12, it was noted that he had acute kidney insufficiency and by July 15, a nephrology assessment demonstrated that the acute kidney injury was resolving. The decedent's condition continued to decline, he became less responsive by July 19, and he showed signs of early cirrhosis of the liver. On July 26, the treating physicians attempted surgery to address the decedent's subdural hematoma, which had expanded; however, the surgery was aborted due to the decedent going "into asystole and loss of pulse." The decedent was resuscitated and returned to the SICU where he continued ventilatory support, among other things. Between July 26 and August 1, the medical staff continued with interventions to help improve the decedent's respiratory function. He had a follow-up CT scan of the head on August 5, and the surgical team determined that no neurosurgical intervention was necessary at the time. The decedent was able to open his eyes and follow commands. His respiratory issues had not improved by August 13, and the pulmonary doctor recommended transfer to the respiratory care unit. While in the respiratory care unit on August 26, the decedent suffered another cardiac arrest due to atrial fibrillation, secondary to congestive heart failure. He was resuscitated and transferred to the intensive care unit. The decedent experienced another episode on August 27 and was resuscitated again. By August 30, the decedent was noted to have poor renal function, among other things, and his prognosis was poor. After consulting with the decedent's family, hemodialysis to address kidney failure was not pursued. The decedent passed away on September 14.

"The essential elements of medical malpractice are (1) a deviation or departure from accepted medical practice, and (2) evidence that such departure was a proximate cause of injury" (***Ciceron v Gulmatico***, 220 AD3d 732, 734). To make a prima facie showing of entitlement to summary judgment in an action to recover damages for medical malpractice, a defendant must establish an absence of any departure from good and accepted standards of medical care, or that even if there was a departure, the plaintiff was not injured thereby (***Gruen v Brathwaite***, 215 AD3d 927, 928; ***Ciceron v Gulmatico***, 220

AD3d 732, 734; *see* ***Castro v New York City Health & Hosps. Corp.***, 74 AD3d 1005; ***Deutsch v Chaglassian***, 71 AD3d 718). To satisfy this burden, the defendant must present expert opinion testimony that is supported by facts in the record and addresses the essential allegations in the bill of particulars (***Weintroub v Maimonides Med. Ctr.***, 222 AD3d 915, 916; ***Ward v Engel***, 33 AD3d 790). Once this burden is satisfied, the burden shifts to the plaintiff to raise a triable issue of fact as to whether a departure from good and accepted practice occurred and whether this departure was a proximate cause of his or her injuries (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320; ***Dien v Seltzer***, 116 AD3d 910). "General allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat defendant physician's summary judgment motion" (***Bowe v Brooklyn United Methodist Church Home***, 150 AD3d 1067, 1067-1068; *see* ***Corujo v Caputo***, 224 AD3d 729, 730; ***Getselevich v Ornstein***, 219 AD3d 1493, 1494).

The plaintiff's allegations against each of the physician defendants are the same. She alleges that each of the treating physicians failed to timely order consults, to properly diagnose the decedent, to maintain healthy fluid balance and hormonal balance, and to provide adequate respiration and hydration. The plaintiff further alleges that each doctor failed to timely treat the decedent's subdural hematoma, failed to treat his high blood pressure, failed to properly monitor his respiratory issues, and improperly used propofol in his treatment protocol. She asserts that the defendants' failures were a substantial factor in causing the decedent's death. Testimony revealed that the moving defendants were part of SBUH's division of general surgery trauma and critical care. They shared the responsibility of caring for patients admitted to the SICU, and worked as a team to treat the patients in the unit on a rotating basis. Because the doctors worked as a team, there was not a particular physician who was primarily responsible for the decedent's care. The moving defendants and the decedent's neurosurgical team of doctors jointly treated him throughout his hospitalization.

In her affirmation in support of each of the moving defendants' motions, Dr. Lustbader opines that the doctors did not depart from good and accepted standards of medical care while providing care to the decedent during his hospitalization. Specific to Dr. Paccione, the physician who examined the decedent in the emergency room on July 10, and participated in his care on August 12, 13, and 14, Dr. Lusbader opines that his initial evaluation was "in line with the workup and care initiated at the transferring institution." She states that Dr. Paccione ensured that the decedent was admitted to the SICU and that the proper consultations were secured on his behalf, and commenced appropriate interventions and medications to address the decedent's coagulopathy issues. She opines that Dr. Paccione's actions were proper given the decedent's condition.

As for Dr. Jawa, Dr. Lustbader opines that he did not provide care to the decedent while the decedent was a patient at SBUH. She states that Dr. Jawa started treating patients at the hospital after the decedent's death.

With respect to Dr. Shapiro, Dr. Lustbader states that he had contact with the decedent between July 22 and July 27, 2013. When Dr. Shapiro first examined the decedent, he had been in the SICU for twelve days. According to Dr. Lustbader, Dr. Shapiro was aware of the decedent's subdural hematoma,

respiratory compromise, cirrhosis of the liver, and his other ailments. During the time that Dr. Shapiro treated the decedent, his respiratory settings were adjusted, insulin was being administered, vitamin K was given to address his coagulopathy, and he was continuously tested and monitored. Dr. Shapiro opines that Dr. Shapiro's involvement in the decedent's care did not depart from good and accepted standards of medical care.

Dr. Lustbader also opines that Dr. Sandoval, who treated the decedent between July 15 and July 21, 2013, did not depart from the standard of care. She states that in his first encounter with the decedent, Dr. Sandoval evaluated the decedent's blood pressure, treated his coagulopathy appropriately with fresh frozen plasma and vitamin K, and continued the decedent's treatment with a broad spectrum antibiotic to address his respiratory failure. The decedent was examined by various consultants, including nephrology and neurosurgical consultations during that time. Dr. Sandoval also appropriately planed for chest physiotherapy to promote the decedent's respiratory function.

In reference to Dr. Vosswinkel, another surgical critical care intensivist, Dr. Lustbader opines that he did not depart from the standard of care. Dr. Vosswinkel saw the decedent between August 5 and August 11, 2013, almost one month after he was admitted to the hospital. After examining the decedent on August 5, Dr. Vosswinkel wrote an assessment confirming the decedent's history and the actions taken to address his condition. Dr. Vosswinkel noted that the decedent continued to suffer from multiple ailments, and that consulting physicians continued to monitor his condition. He further noted that the decedent's family elected not to proceed with dialysis to address his hematological issues. Dr. Lustbader opines that none of Dr. Vosswinkel's actions caused harm to the decedent or contributed to his death.

Dr. Lustbader states that Dr. Rutigliano and other surgical intensivists addressed the decedent's breathing and oxygenation, nutrition, and vital signs, and they relied on the direction of the specialist consultants to administer treatments when warranted. Dr. Rutigliano noted that the decedent was seen by the nuerosurgical consult when he was admitted, and he was treated by the physicians to address the subdural hematoma. Dr. Lustbader states that the decedent's blood coagulability and blood pressure were the primary focus of the treating team, and specialists were properly secured to address those issues. To address his cardiovascular issues, the decedent was given a cardene drip, and to address his caogulability issues, he was given fresh frozen plasma and vitamin K. Dr. Rutigliano saw the decedent again on July 14, July 29 through August 4, and on August 6. According to Dr. Lustbader, the decedent's neurological team was responsible for all care related to his subdural hematoma, while Dr. Rutigliano and other intensivists sought to address his medical status in "regard to breathing and oxygenation; nutrition, vital signs, [and] bloodwork." The decedent's coagulability level placed him at a greater risk of bleeding, and this concern was addressed by providing fresh frozen plasma and vitamin K. Dr. Lustbader opines that Dr. Rutigliano appropriately sought the input of specialists to address the decedent's condition, and that during the times that Dr. Rutigliano treated the decedent, he did not depart from accepted standards of care.

Each of the moving defendants have established his entitlement to judgment as a matter of law dismissing the plaintiff's complaint. Through the affirmation of Dr. Lustbader, the physicians who provided care to the decedent have demonstrated that they did not depart from good and accepted

standards of care (***Tardio v Saleh***, 193 AD3d 901). The plaintiff must now raise an issue of fact to defeat the summary judgment motions.

The plaintiff has not opposed the motions of Dr. Paccione, Dr. Jawa, Dr. Shapiro, Dr. Sandoval, and Dr. Vosswinkel. Thus, the motions are granted and the claims against those defendant physicians are dismissed.

With respect to Dr. Rutigliano, the plaintiff submits the affirmation of a board-certified physician in internal medicine. The expert physician states that when the decedent presented to SBUH on July 10, his condition was "essentially normal and stable." He was alert and oriented with "only a slight elevated systolic blood pressure and adequate urine output." However, on July 11, the decedent was "mumbling inappropriately, and [] experienced a sharp mental decline." The expert states that decedent was intubated for hypoxic respiratory failure, secondary to pulmonary edema, and that the decedent's pulmonary edema was caused by fluid overload. According to the expert, the decedent received excessive amounts of fluid while he was in the SICU under Dr. Rutigliano's care, and that fluid overload, which was known to cause pulmonary edema, organ dysfunction, and cognitive decline, was a substantial factor in causing the decedent's "pain, suffering, physical decline and death." The expert opines that there was no need for the "aggressive" fluid therapy that was administered to the decedent, inasmuch as he was not dehydrated, and inasmuch as it was not needed to resuscitate him or to prevent shock because of low blood pressure.

Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions (*see* ***Henry v Sunrise Manor Center for Nursing and Rehab***., 147 AD3d 739; ***Fink v DeAngelis***, 117 AD3d 894; ***Feinberg v Feit***, 23 AD3d 517; ***Dandrea v Hertz***, 23 AD3d 332; ***Shields v Baktidy***, 11 AD3d 671). Such credibility issues can only be resolved by a jury (*see* ***Loaiza v Lam***, 107 AD3d 951; ***Fink v DeAngelis***, *supra*; ***Feinberg v Feit***, *supra;* ***Dandrea v Hertz***, *supra)*. In this case, the conflicting opinions of the parties' experts raise triable issues of fact as to whether Dr. Rutigliano deviated from good and accepted practice in his treatment of the decedent. Accordingly, the motion for summary judgment by Dr. Rutigliano is denied.

Dated: September 17, 2024

HON. JOSEPH C. PASTORESSA, J.S.C.

____ FINAL DISPOSITION _X___ NON-FINAL DISPOSITION