

Lynch v New York City Health & Hosps. Corp.

2024 NY Slip Op 35191(U)

February 20, 2024

Supreme Court, Bronx County

Docket Number: Index No. 20302/2016E

Judge: Alicia Gerez

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19A

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AIDAN LYNCH, by his proposed guardian, DENISE
FERGUSON,

Plaintiff(s),

DECISION and ORDER
Index No. 20302/2016E

- against -

NEW YORK CITY HEALTH & HOSPITALS
CORPORATION d/b/a JACOBI MEDICAL CENTER,

Defendant(s).

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HON. ALICIA GEREZ

Upon the foregoing papers, defendant NEW YORK CITY HEALTH & HOSPITALS CORPORATION D/B/A JACOBI MEDICAL CENTER (“Jacobi”) moves for an Order pursuant to CPLR § 3212 granting summary judgment and dismissing plaintiff’s complaint against them. After review of the papers, together with the opposition submitted thereto; review of the Court file; and upon due deliberation, the motion is decided as follows.

This medical malpractice action was commenced on August 12, 2020, with the filing of the Summons and Complaint seeking damages for alleged negligence in the care and treatment provided by defendant Jacobi from December 30, 2018, until April 8, 2019. Specifically, plaintiff alleges that defendant failed to prevent skin breakdown, failed to document plaintiff’s ulcer, failed to implement a pressure relieving device, and failed to rotate plaintiff’s body every two hours, among other claims.

Factual Background

On December 30, 2018, AIDAN LYNCH (hereinafter “plaintiff”), was taken by ambulance to defendant Jacobi after falling from a height of 20 feet. Plaintiff, approximately 36 years old at the time of admission, suffered from a depressed skull fracture among other injuries. In the emergency department plaintiff was intubated and placed on a ventilator. A care plan for plaintiff included skin assessments, keeping the skin clean and moisturized, turning and positioning every two hours,

keeping plaintiff's heels elevated, using pillows between his knees, and protective ointment for skin exposed to urine or stool, etc. While in the ICU plaintiff was on an air distribution mattress called a Clinitron bed. Plaintiff did not have a significant prior medical history.

A CT scan was performed which revealed a crushing injury of the frontal and right temporal calvariums with severe fragmentation and depression of the fracture elements. A bifrontal craniotomy and placement of an external ventricular drain was performed along with other necessary medical interventions. On December 31, 2018, at 1:00 am plaintiff was noted to be in a coma with no reflexes, and by 4:00 am plaintiff was only responding to pain and considered to be in a semi-coma. Plaintiff remained paralyzed on a ventilator.

By January 4, 2019, plaintiff was receiving nutrition by a feeding tube and completely immobile. Throughout January plaintiff remained in the ICU and on January 23, 2019, plaintiff had a tracheostomy and percutaneous endoscopic gastrostomy ("PEG") tube placed. On the same day plaintiff was noted to be off sedation without a change in his mental status.

On February 12, 2019, the medical records note a pressure ulcer for the first time (not at issue in the present motion), on plaintiff's occipital area, or the bottom of the back portion of the skull. Plaintiff was transferred to the step-down unit from the ICU on February 22, 2019. By approximately February 27 or 28, 2019, two small excoriations were noted on plaintiff's sacrum. On March 1, 2019, a Clinitron bed was ordered to the step down unit. There is no mention of a sacral pressure ulcer in the records until March 2, 2019. Throughout March there are conflicting records detailing the sacral pressure ulcer as both healed and then as a stage 2 ulcer.

Wound care continued throughout March and April until plaintiff was transferred to non-party Helen Hayes Hospital on April 8, 2019, for continued care. At admission to Helen Hayes Hospital, plaintiff remained immobile but able to wiggle his toes. A trach collar and PEG tube remained in

place. The sacral ulcer was deemed unstageable and measured 3 cm x 1.5 cm x 1 cm with 1 cm of tunneling. While admitted to Helen Hayes, plaintiff's sacral pressure ulcer ultimately healed.

Legal Standard & Analysis

A defendant in a medical malpractice action establishes *prima facie* entitlement to summary judgment by showing that in treating the plaintiff, he or she did not depart from good and accepted medical practice, or that any such departure was not a proximate cause of the plaintiff's alleged injuries (*Anyie B. v Bronx Lebanon Hosp*, 128 AD3d 1, 2 [1st Dept 2015]). If a defendant in a medical malpractice action establishes *prima facie* entitlement to summary judgment, by a showing either that he or she did not depart from good and accepted medical practice or that any departure did not proximately cause the plaintiff's injuries, plaintiff is required to rebut defendant's *prima facie* showing "with medical evidence that defendant departed from accepted medical practice and that such departure was a proximate cause of the injuries alleged" (*Pullman v Silverman*, 125 AD3d 562, 562 [1st Dept 2015], *aff'd* 28 NY3d 1060 [2016]). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]). The burden on the movant is a heavy one, and the facts must be viewed in the light most favorable to the non-moving party (*Jacobsen v New York City Health & Hosps Corp*, 22 NY3d 824 [2014]).

Here, defendants met their *prima facie* burden with the expert affirmation of Lawrence Diamond, M.D. ("Dr. Diamond"), a physician familiar with the accepted standards of care and practice in the fields of Family Medicine and Wound Care. Dr. Diamond opines that plaintiff's sacral excoriations were noticed quickly and documented appropriately. The expert found that by March 10, 2019, the ulcer had healed and despite appropriate intervention, reopened on March 11, 2019, becoming unstageable by March 15. Dr. Diamond found that notwithstanding appropriate treatment and care, plaintiff's development of the sacral ulcer was inevitable and unavoidable as all necessary

preventative measures were taken. Additionally, the expert notes that plaintiff's complicated surgical condition negatively affected his ability to heal.

In opposition, plaintiff proffers the expert affirmation of Karim J. Khimani, M.D. ("Dr. Khimani"), board certified in Internal Medicine, with a sub-certification in Geriatrics. Dr. Khimani opines that Jacobi was negligent in their care and treatment of plaintiff which caused plaintiff to sustain a significant sacral pressure ulcer. Specifically, the expert found that had proper nursing care been provided, the sacral ulcer could have been avoided as the medical records indicate failures to provide proper and timely care of same.

Dr. Khimani further concludes that the nursing staff at the defendant facility did not properly turn and position the plaintiff because they relied on the Clinitron bed to reposition plaintiff instead of manually moving him. At discharge from the ICU to the step down unit on February 22, 2019, plaintiff was no longer on a Clinitron bed until one was ordered again on March 1, 2019. The expert concludes that during this critical period, there are no specific notations regarding turning and positioning. Additionally, the expert found that when there were turning and positioning logs or "clocks" in the record they were inconsistent. Further, he correlates the lack of consistency of turning and positioning to be the cause of plaintiff's sacral ulcer. Dr. Khimani points to a lack of timely skin assessments as further evidence that proper turning and positioning did not take place. The expert finds that plaintiff's occipital ulcer was not noticed until he was brought in for surgery and it was found by the anesthesia team. The expert posits, as there are no notes regarding this ulcer previously, skin assessments and monitoring were lacking. Similarly, plaintiff's expert points to inconsistencies in the documentation of the sacral excoriations – detailing a lack of notation regarding care for the area with any consistency over a period of days.

Here, plaintiff has identified issues of fact that foreclose summary judgment. As the experts proffer conflicting opinions regarding whether the sacral ulcers developed due to the negligence of

defendants, “a credibility question is presented requiring a jury’s resolution” (*see Russell v. Garafalo*, 189 AD3d 1102 [2nd Dept 2020]). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1978]).

The remaining arguments were considered and found to be without merit.

As such, it is hereby,

ORDERED that the motion is DENIED; and it is further

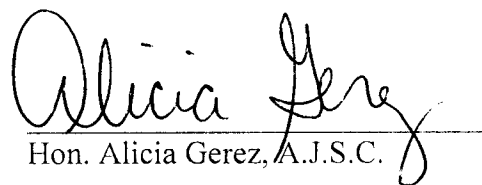
ORDERED that all parties are directed to appear for a final settlement conference on March 28, 2024, at 2:15 pm in Courtroom 600, and it is further,

ORDERED that the Clerk of the Court is to enter judgment accordingly.

This is the Decision and Order of the Court.

Dated: 2/20/24

ENTER


Hon. Alicia Gerez, A.J.S.C.