

Patane v Deitch
2024 NY Slip Op 35325(U)
April 5, 2024
Supreme Court, Richmond County
Docket Number: Index No. 150884/2021
Judge: Judith N. McMahon
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

-----X IAS Part 6
PAUL PATANE and JOYCE PATANE,

Plaintiffs,

-against-

**JONATHAN DEITCH, M.D., VIJAYA TANJAVUR,
M.D., ASAF GAVE, M.D., HANEEN ALI, M.D.,
NEVILLE MOBARAKAI, M.D., RENATA ZINK,
N.P.¹, NORTHWELL HEALTH PHYSICIAN
PARTNERS VASCULAR SURGERY AT SEAVIEW
AVENUE, STATEN ISLAND UNIVERSITY
HOSPITAL and NORTHWELL HEALTH, INC.,**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 115 through 152 were read on this motion for SUMMARY JUDGMENT

The motion for summary judgment by the defendants Jonathan Deitch, M.D., Vijaya Tanjavur, M.D., Asaf Gave, M.D., Northwell Health Physician Partners s/h/a Northwell Physician Partners Vascular Surgery at Seaview Avenue, Staten Island University Hospital, and Northwell Health Inc. (Motion Seq. No. 001), is granted to the extent that the complaint is severed and dismissed against the defendants Vijaya Tanjavur, M.D., Asaf Gave, M.D. and Northwell Health, Inc., as unopposed, together with plaintiffs' "Second Cause of Action" for lack of informed consent. The balance of the motion is denied.

To prevail on a motion for summary judgment, the proponent must make *prima facie* showing of entitlement to judgment as a matter of law, through admissible evidence demonstrating

¹ Plaintiffs have discontinued this action against the defendants Haneen Ali, M.D. (*see* NYSCEF Doc. No. 67), Neville Mobarakai, M.D. (*see* NYSCEF Doc. No. 79) and Renata Zink, N.P. (*see* NYSCEF Doc. No. 81).

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the absence of any material issue of fact (*see Klein v. City of New York*, 89 NY2d 833 [1996]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]; *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]).

“The requisite elements of proof in a medical malpractice action are a deviation or departure from accepted community standards of practice, and evidence that such deviation or departure was a proximate cause of injury or damage” (*Castro v. New York City Health & Hosps. Corp.*, 74 AD3d 1005 [2d Dept. 2010]).

A defendant seeking summary judgment in a medical malpractice action must establish, *prima facie*, that he or she did not depart from accepted standards of medical care of that his or her acts were not a proximate cause of any injury to the plaintiff (*see Tsitrin v. New York Community Hosp.*, 154 AD3d 994, 995 [2d Dept. 2017]; *Stukas v. Streiter*, 83 AD3d 18, 24 [2d Dept. 2011]). “In response, it is the plaintiff’s burden to raise a triable issue of fact ‘regarding the element or elements on which the defendant has made *prima facie* showing’” (*Tsitrin v. New York Community Hosp.*, 154 AD3d at 995, *quoting Feuer v. Ng*, 136 AD3d 704, 706 [2d Dept. 2016]).

In support of their motion defendants submit, *inter alia*, the expert affirmation of vascular surgeon, Todd L. Berland, M.D. (*see* NYSCEF Doc. No. 119), which demonstrates *prima facie* entitlement to judgment as a matter of law (*see Lefkowitz v. Kelly*, 170 AD3d 1148 [2d Dept. 2019]).

In opposition to that branch of the summary judgment motion made by defendants Jonathan Deitch, M.D., Northwell Health Physician Partners s/h/a Northwell Health Physician Partners Vascular Surgery at Seaview Avenue, and Staten Island University Hospital, plaintiff submits the unredacted expert affirmation of a vascular and general surgeon (*see* NYSCEF Doc. No. 149). “In opposition, the plaintiffs have raised a triable issue of fact by submitting an expert affirmation from a physician who opined within a reasonable degree of medical certainty that the defendants

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departed from the accepted standard of care” (*Cummings v. Brooklyn Hosp. Ctr.*, 147 AD3d 902, 903 [2d Dept. 2017]).

“Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions” (*Rosario v. Our Lady of Consolation Nursing & Rehabilitation Care Ctr.*, 186 AD3d 1426, 1427 [2d Dept. 2020]). As such, the motions for summary judgment by the defendants Dr. Deitch, Northwell Health Physician Partners s/h/a Northwell Health Physician Partners Vascular Surgery at Seaview Avenue, and Staten Island University Hospital must be denied (*see Macancela v. Wyckoff Hgts. Med. Ctr.*, 176 AD3d 795 [2d Dept. 2019]).

Accordingly, it is

ORDERED that the motion for summary judgment is granted as against the defendants Dr. Tanjavur, Dr. Gave, and Northwell Health, Inc.; and it is further

ORDERED that plaintiffs’ Second Cause of Action for lack of informed consent is severed and dismissed; and it is further

ORDERED that all of plaintiffs’ claims relating to the stopping of Coumadin and anticoagulant therapy are severed and dismissed; and it is further

ORDERED that the balance of the motion is denied; and it is further

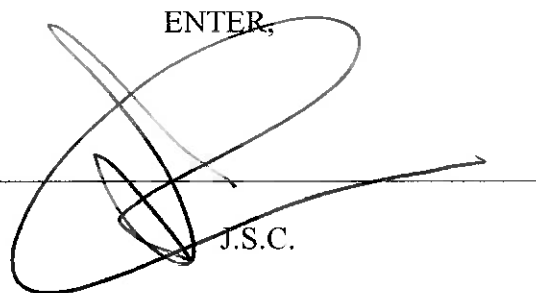
ORDERED that the only surviving claims against remaining defendants - Dr. Dietch, Northwell Health Physician Partners s/h/a Northwell Physician Partners Vascular Surgery at Seaview Avenue, and Staten Island University Hospital - are for alleged: (1) failure to administer a fluid bolus on March 20, 2019 in light of plaintiff’s low urine output; (2) negligent reinsertion of a foley catheter on March 21, 2019, and (3) failure to timely and properly treat plaintiff’s urinary tract infection with the appropriate antibiotics on April 2, 2019; and it is further

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ORDERED that the Clerk is directed to enter judgment in favor of defendants Dr. Tanjavur, Dr. Gave, and Northwell Health Inc., dismissing plaintiffs' complaint; and it is further

ORDERED that the parties are directed to appear for a pre-trial conference via Microsoft Teams on **July 2, 2024, at 10:00 a.m.**

Dated: April 5, 2024

ENTER,

J.S.C.

**Hon. Judith N. McMahon
J.S.C.**