

Springman v Klein
2024 NY Slip Op 35348(U)
July 3, 2024
Supreme Court, Westchester County
Docket Number: Index No. 60824/2019
Judge: Lewis J. Lubell
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

To commence the statutory time
period for appeals as of right
(CPLR 5513[a]), you are
advised to serve a copy of
this order, with notice of
entry, upon all parties.

P R E S E N T:

HON. LEWIS J. LUBELL
JUSTICE OF THE SUPREME COURT

CAROL SPRINGMAN, Individually and as Administratrix
of the Estate of JOHN G. SPRINGMAN, deceased,

Plaintiff(s),

-against-

DECISION & ORDER

Index No.: 60824/2019

RICHARD S. KLEIN, M.D., RICHARD S. KLEIN, M.D.,
P.C., GLENN GANDELMAN, M.D., KENNETH A.
GOLDSTEIN, M.D., NORTHSHORE-LIJ MEDICAL, P.C.,
ANTHONY BRUZZESE, M.D., NORTHERN
WESTCHESTER INTERNAL MEDICINE, P.C., GINO C.
BOTTINO, M.D., HUDSON VALLEY HEMATOLOGY-
ONCOLOGY ASSOCIATES R.L.L.P., PETER KHOURI,
M.D., HARLAN R. WEINBERG, M.D., HARLAN R.
WEINBERG, M.D., P.C., NORTHERN WESTCHESTER
HOSPITAL ASSOCIATION d/b/a NORTHERN
WESTCHESTER HOSPITAL, PAUL MCGUIRE, M.D.,
PETER WAXMAN, M.D., MARK GLICKLICH, M.D.,
NORTHEAST RADIOLOGY, P.C., NORTHEAST
RADIOLOGY ASSOCIATES, PLLC, MIODRAG
VELICKOVIC, M.D., MIODRAG VELIKOVIC M.D., P.C.,
VASSAR BROTHERS HOSPITAL a/k/a VASSAR
BROTHERS MEDICAL CENTER and HEALTH QUEST
SYSTEMS, INC.,

Defendant(s).

Defendants Miodrag Velickovic, M.D. and Miodrag Velickovic, M.D., P.C. move
(**Motion #11**) for summary judgment.

The following papers were read:

Notice of Motion, Affirmation, Exhibits (17), Statement, and Memo of Law	1-21
Affirmation in Opposition, Affidavit, Exhibits (11), Statement, Memo of Law	22-36

Affirmation in Reply

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By way of background, plaintiff commenced this action to recover damages for personal injuries allegedly sustained as a result of the care and treatment of defendants. In particular, plaintiff alleges that the decedent, John D. Springman, was under the care and treatment of Dr. Velickovic from July 6, 2017 until July 21, 2017. On July 21, 2017, Mr. Springman suffered a stroke from which he ultimately died. Defendants interposed answers and the parties engaged in discovery. On November 9, 2023, plaintiffs filed the note of issue. Now, defendants Miodrag Velickovic, M.D. and Miodrag Velickovic, M.D., P.C. move for summary judgment

On a motion for summary judgment, the Court is to determine whether genuine issues of material fact exist or whether judgment can be granted to a party on the proof submitted as a matter of law (*see Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The movant makes a *prima facie* showing of entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any genuine issue of material fact (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

In support of the motion, the movants proffer, among other things, the expert affirmation of Joseph Schindler, M.D., who is board certified in neurology and holds a sub certification in vascular neurology. Dr. Schindler indicates that he reviewed the pleadings, the pertinent medical records, and the testimonial evidence in this action. Dr. Schindler asserts that, in general, plaintiff alleges that Dr. Velickovic failed to recognize that Mr. Springman had a stroke in February 2017 and that he had symptoms of stroke in early July 2017 that warranted immediate intervention. Based on review of the aforementioned documents as well as experience,

The movants have made a *prima facie* showing and, as such, the burden of going forward shifts to the opponent of the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a genuine issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

In opposition, plaintiff proffers, among other things, the expert affirmation of a physician, who is board certified in internal medicine, critical care, pulmonary disease, and sleep medicine (Plaintiff's Expert). Plaintiff's Expert states that s/he is an attending physician and has privileges at a hospital that has about 860 beds and 85 ICU beds, that s/he treats patients in the emergency department, rounds on patients in the hospital, teaches residents and fellows, and sees patients at a short- and long-term rehabilitation center. Plaintiff's Expert also states that s/he sees and treats patients over 90% of her/his working time, which involves, among other things, diagnosing and treating patients for transient ischemic attacks and strokes. Plaintiff's Expert indicates that s/he reviewed the deposition testimony of the parties, the pertinent medical records/reports, the amended bills of particulars, and Dr. Schindler's expert affirmation. Based thereon as well as experience,

Plaintiff's Expert opines, among other things, that Dr. Velickovic failed to know of the proper history of the patient, the risk factors, and to timely work up the patient. In particular, Plaintiff's Expert opines that Dr. Velickovic departed from accepted medical practice by failing to order a CTA (stat) between July 6, 2017 and July 20, 2017. Plaintiff's Expert also opines that, had Dr. Velickovic timely ordered a CTA, Mr. Springman would have been diagnosed in a timely fashion and afforded the opportunity for definitive surgical management of the symptomatic carotid stenosis and would be alive today.

In reply, the movants make several arguments. First, the movants assert that plaintiff's response to the statement of undisputed facts is procedurally defective. Second, the movants assert that Plaintiff's Expert is not qualified to render an opinion as to the standard of care for neurologists treating patients in an outpatient setting. Third, the movants assert that Plaintiff's Expert overlooks specific evidence and misstates the standard of care in certain instances.

The Uniform Rules for Trial Courts (22 NYCRR) § 202.8-g (a) provides the statement of material facts as a "short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried." Here, neither the movants' statement nor plaintiff's response is short or concise. As a result, the Court has disregarded both.

It is well settled that an expert witness "should be possessed of the requisite skill, training, education, knowledge or experience from which it can be assumed that the information imparted or the opinion rendered is reliable" (*Matott v Ward*, 48 NY2d 455, 459 [1979]). If an expert witness opines on a topic outside of her or his relevant field, the expert must lay a foundation to support the reliability of that opinion (*see Gullo v Bellhaven Ctr. for Geriatric and Rehab. Care, Inc.*, 157 AD3d 773, 774 [2d Dept 2018]). Here, although Plaintiff's Expert is not a radiologist, s/he has stated a familiarity with diagnosing and treating patients for TIAs and strokes, which is what ultimately felled Mr. Springman. Plaintiff's Expert's opinions mostly center on the proper diagnosis and treatment of the same. Thus, at this juncture, viewing this evidence in the light most favorable to plaintiff (*see Pearson v Dix McBride, LLC*, 63 AD3d 895, 895 [2d Dept 2009]), Plaintiff's Expert has laid a sufficient foundation to opine on Dr. Velickovic's care and treatment of Mr. Springman.

As to the claim for medical malpractice, it is well settled that where conflicting affidavits and other contradictory evidence is submitted, summary judgment is not appropriate (*see Webar, Inc. v Capra*, 212 AD2d 594, 596 [2d Dept 1995]). The reasoning is that it is not within the purview of the Court to resolve issues of credibility on a motion for summary judgment (*see Halkias v Otolaryngology-Facial Plastic Surgery Associates, P.C.*, 282 AD2d 650, 651 [2d Dept 2001] ["Resolution of issues of credibility of both expert and lay witnesses and the accuracy of their testimony are matters within the province of the jury."]). Here, viewing the evidence in the light most favorable to the non-moving

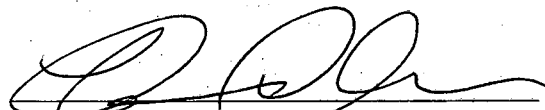
party (*see Pearson*, 63 AD3d at 895), plaintiff has proffered sufficient evidence via the affirmation of Plaintiff's Expert to raise a genuine issue of material fact.

To the extent not specifically addressed herein, the Court finds the remaining arguments of the parties to be without merit. Based on the foregoing, it is hereby

ORDERED that **Motion #11**, as to the claim for medical malpractice, is DENIED as to the departures identified by Plaintiff's Expert and is otherwise GRANTED; and it is further

ORDERED that **Motion #11**, as to the claim for lack of informed consent, is GRANTED.

Dated: July 3, 2024
White Plains, New York



HON. LEWIS J. LUBELL
Justice of the Supreme Court