

Williams v DeSoyza
2024 NY Slip Op 35492(U)
October 7, 2024
Supreme Court, Westchester County
Docket Number: Index No. 54596/2021
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

CRYSTAL WILLIAMS as Parent and Natural Guardian of
T.L.S., JR an infant,

Plaintiff(s),

-against-

DECISION & ORDER

Index No.: 54596/2021

NEELANGANI DeSOYZA, M.D., PORTIA GROENING
M.D., and ST. JOHN'S RIVERSIDE HOSPITAL,

Defendant(s).

Defendant St. John's Riverside Hospital (St. John's) moves (**Motion #3**) for
summary judgment.

The following papers were read:

Notice of Motion, Affirmation, Exhibits (19), Statement, and Memo of Law	1-23
Affirmation in Opposition	24
Affirmation in Reply and Exhibit	25-26

By way of background, on January 19, 2012, at 4:10 a.m., plaintiff Crystal Williams (Mr. Williams) was admitted to the labor and delivery unit of defendant St. John's Riverside Hospital. Ms. Williams was 27 weeks pregnant with prematurely ruptured membranes since approximately 1:30 a.m. Defendant Neelangani DeSoyza, M.D. performed an emergency cesarean section at approximately 8:30 a.m. Defendant Portia Groening, M.D. attended to the infant plaintiff at birth, intubating the infant plaintiff as well as providing additional care and treatment. Dr. Groening arranged for the infant plaintiff's transfer to Westchester Medical Center at 1:30 p.m. The infant plaintiff was admitted to the NICU at Westchester Medical Center at 1:33 p.m. This action ensued with claims for medical malpractice and lack of informed consent. Defendants interposed answers and the parties engaged in discovery. Now, St. John's moves 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]). As to a claim for medical malpractice, the movant has the burden of establishing the absence of any departure from the standard of care or that plaintiff was not injured by any such departure (*see Clarke v New York City Health and Hosps.*, 210 AD3d 631, 632-33 [2d Dept 2022]; *Swezey v Montague Rehab & Pain Mgt., P.C.*, 59 AD3d 431, 433 [2d Dept 2009]). As to a claim for lack of informed consent, the movant has the burden of demonstrating that the plaintiff was properly informed about the subject procedure, that a reasonably prudent patient would not have declined the undergo the procedure, or that any lack of informed consent did not proximately cause any injury (*see Zapata v Buitriago*, 107 AD3d 977, 979 [2d Dept 2013]).

In support of the motion, St. John's proffers, among other things, the affirmation of Paul Antonecchia, M.D., who is the Vice-President, Medical Affairs and Chief Medical Officer at St. John's. Dr. Antonecchia indicates, among other things, that Dr. DeSoyza and Dr. Groening were private attending physicians who had privileges at St. John's during the time frame at issue. Dr. Antonecchia also explains that, as private attending physicians, St. John's did not control the manner in which they treat their patients. Based hereon, St. John's contends that it cannot be held vicariously liable for the acts of Dr. DeSoyza or Dr. Groening. In addition, St. John's proffers the expert affirmations, which Dr. DeSoyza and Dr. Groening submitted with their motions for summary judgment.

St. John's also proffers the expert affirmations of Jonathan Lanzkowsky, M.D., who is board certified in obstetrics and gynecology, and Andrew Steele, who is board certified in pediatrics as well as in the subspecialty of neonatal perinatal medicine. Dr. Lanzkowsky and Dr. Steele indicate that they reviewed the pleadings, the applicable medical records, as well as the applicable deposition testimony. Based thereon as well as experience, Dr. Lanzkowsky opines that the staff and employees of St. John's did not depart from accepted medical practice in their care and treatment of Ms. Williams. Based on his review of the aforementioned documents as well as experience, Dr. Steele opines that nothing the employees of the hospital did or did not do was a proximate cause of any injuries to the infant plaintiff.

St. John's has 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 material issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 557 [1980]).

In opposition, plaintiff proffers, among other things, expert affirmations of Bruce L. Halbridge, M.D., who is board certified in obstetrics and gynecology, Maureen Sims, M.D., who is board certified in pediatrics and neonatal perinatal medicine, and Daniel

Adler, M.D. who is board certified in pediatrics, neurology with a special qualification in child neurology, and electrodiagnostic medicine.

Dr. Halbridge indicates that he reviewed, among other things, the pertinent medical records, the deposition transcripts, and the affirmations of the various experts of the moving defendants. Based hereon as well as experience, Dr. Halbridge opines, among other things, that St. John's departed from accepted medical practice (1) by failing to have an attending physician timely appear and attend to Ms. Williams, who was a high-risk patient, and inexplicably delay for several hours before arriving at the hospital; (2) by failing to immediately, or as soon as possible after arrival, administer corticosteroids in order to strengthen the infant plaintiff's lungs and promote the production of natural surfactant; and delay delivery a sufficient amount of time to try to achieve the full benefit of the corticosteroids; (3) by failing to administer magnesium sulfate (MgSO₄) for neuroprotection and to reduce the risk of cerebral palsy; (4) by failing to administer IV antibiotics to support the ability to extend gestation; (5) by failing to immediately place the mother in the Trendelenburg position to take pressure off her partially opened cervix; (6) by failing to attempt to extend gestation so as to reduce the likelihood and severity of any intracranial hemorrhage; (7) by failing to transfer Ms. Williams as soon as possible to a facility with qualified physicians on-site in L&D overnight and a NICU better suited to the care for the infant plaintiff.

Dr. Sims indicates that she reviewed, among other things, the pertinent medical records, the affidavits and deposition testimony submitted in connection with the moving defendants' motions. Based thereon as well as experience, Dr. Sims opines, among other things, that St. John's departed from accepted medical practice (1) by failing to timely transfer Ms. Williams to a hospital with a nursery able to treat such a premature infant; (2) by failing to act immediately to prevent hypothermia through the use of plastic wrapping after the infant plaintiff was born; (3) by failing to immediately place umbilical arterial and venous lines upon arrival in the nursery to, among other things, allow for timely serial arterial gases and blood pressures to treat the infant's low blood pressure; and (4) by failing to administer surfactant upon arrival in the nursery.

Dr. Adler indicates that he conducted a telemedicine neurological examination of the infant plaintiff and reviewed, among other things, the pertinent medical records. Based thereon as well as experience, Dr. Adler opines that the infant plaintiff's neurological injuries and disabilities were consistent with having been caused, or caused to significantly worsen, at and/or shortly after the time of birth, depriving the infant of what would have been a significant likelihood of reasonably normal neurologic function. Dr. Adler also opines that a delay in delivery of this pre-term infant along with the treatment of the mother with corticosteroids and other medications to adequately prepare the infant for extrauterine life along with prompt and efficient care after birth would have limited or eliminated his resulting brain injury.

In reply, St. John's contends, among other things, that Ms. Williams has failed to oppose its motion as to the claim for lack of informed consent as well as other claims.

Generally, a hospital may not be held vicariously liable for the negligence or malpractice of an independent physician, but it "may be held vicariously liable for the acts of independent physicians if the patient enters the hospital through the emergency room and seeks treatment from the hospital, not from a particular physician" (*Goffredo v St. Luke's Cornwall Hospital*, 194 AD3d 699, 700 (2d Dept 2021)). Here, Ms. Williams presented to St. John's for care and treatment not from any particular physician. Thus, at this juncture, St. John's has failed to establish that it may not be held liable for any negligence or malpractice on the part of Dr. DeSoyza or Dr. Groening.

As to the claim of 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 v Dix McBride, LLC*, 63 AD3d 895, 895 [2d Dept 2009]), Ms. Williams has proffered sufficient evidence via, among other things, the expert affirmations of Dr. Halbridge to raise a genuine issue of material fact.

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

ORDERED that **Motion #3**, as to the claim for lack of informed consent, is GRANTED; and it is further

ORDERED that **Motion #3**, as to the claim for medical malpractice, is DENIED as to the departures identified by Dr. Halbridge, Dr. Sims, and Dr. Adler and is otherwise GRANTED.

Dated: October 7, 2024
White Plains, New York



HON. LEWIS J. LUBELL
Justice of the Supreme Court