

Vinal v Mango
2024 NY Slip Op 35687(U)
November 29, 2024
Supreme Court, Onondaga County
Docket Number: Index No. 005828/2023
Judge: Joseph E. Lamendola
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STATE OF NEW YORK
SUPREME COURT ONONDAGA COUNTY

RICHARD & DENISE VINAL,

Plaintiffs,

v.

**CHARLES MANGO, M.D., and
CNY RETINAL ASSOC., P.C.,**

Defendants.

DECISION AND ORDER

Motion #1

Index No: 005828/2023

Before: Hon. Joseph E. Lamendola, J.S.C.

Plaintiffs commenced this malpractice action for damages sustained as the result of the Defendants' alleged deviation from the applicable standard of care in providing medical care and treatment of Plaintiff Richard Vinal. The summons and complaint were filed on June 7, 2023, and issue was joined with the filing of answers on June 30, 2023.

By way of background, Plaintiff Richard Vinal (hereinafter "Plaintiff") presented to Defendant Charles Mango, M.D. (hereinafter "Dr. Mango") at the Defendant CNY Retinal Associates, P.C. office on May 24, 2022, pursuant to a referral from optometrist Dale Paynter, D.O. Dr. Mango performed an examination and diagnosed Plaintiff with posterior vitreous detachment, concluding there was no retinal detachment or tears, and scheduled Plaintiff for a follow-up appointment in one month. Plaintiff thereafter presented to Defendants on June 29, 2022, he advised that he was experiencing loss of vision in his left eye, whereupon Dr. Mango confirmed two horseshoe tears and retinal detachment in the left eye. Dr. Mango referred Plaintiff to Dr. Breazzano at Retina-Vitreous Surgeons of CNY for surgery. Dr. Breazzano confirmed Dr. Mango's diagnosis when he saw Plaintiff on June 30, 2024, and performed surgery on July 5, 2024.

Plaintiff alleges that Dr. Mango's misdiagnosis and/or delayed diagnosis prevented him from starting a timely course of treatment resulting in serious complications and adversely impacted Plaintiff's chance of recovery. Defendants deny misdiagnosing Plaintiff's condition and/or delaying timely treatment and assert that their care and treatment of Plaintiff complied with the standard of care.

Presently before the Court is a motion for summary judgment brought by Defendants seeking dismissal of Plaintiffs' complaint. "[T]o meet [their] initial burden on [their] summary judgment motion in this malpractice action, defendant[s] [were] required to 'present factual proof, generally consisting of affidavits, deposition testimony and medical records, to rebut the claim of malpractice by establishing that [they] complied with the accepted standard of care or did not cause any injury to the patient' " (*Webb v Scanlon*, 133 AD3d 1385, 1386 [4th Dept 2015]; see *Cole v Champlain Val. Physicians' Hosp. Med. Ctr.*, 116 AD3d 1283, 1285 [3d Dept 2014]). Affidavits submitted in support of such a motion must be "detailed, specific and factual in nature and [must] not assert in simple conclusory form that the physician acted within the accepted standards of medical care" (*Toomey v Adirondack Surgical Assoc.*, 280 AD2d 754, 755 [3d Dept 2001]). In addition, the expert affidavit must "address each of the specific factual claims of negligence raised in [the] plaintiff[s'] bill of particulars" (*Larsen v Banwar*, 70 AD3d 1337, 1338 [4th Dept 2010]; see *James v Wormuth*, 74 AD3d 1895, 1895 [4th Dept 2010]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Defendants submitted the expert affirmation of Stella Douros, M.D., in support of their motion for summary judgment and dismissal of the complaint. Dr. Douros is a duly licensed physician, board-certified in Ophthalmology since 1998. Dr. Douros provided a comprehensive summary of the treatment rendered by Defendants to Plaintiff, which included several conclusions and opinions, e.g.,

- **When Plaintiff was seen by Dr. Mango on May 24, 2022, there was no evidence of retinal detachment at that time;**
- **The retinal imaging shows the retina on both occasions in side by side imaging and demonstrates that the retina is attached in the initial imaging while the detachment is shown with a significant change in the retina on the June 30, 2022 follow-up imaging;**
- **There was no blood present in the vitreous of the eye that obscured Dr. Mango's ability to completely visualize the retina, nor any indication requiring him to order or obtain any other studies on May 24, 2022;**
- **All steps taken by Dr. Mango complied with the standard of care which required he perform an examination with an indirect ophthalmoscope, obtain optical coherence tomography of the macula and performed photography with a retinal camera to determine the existence of retinal tears and retinal detachment;**
- **The follow-up appointment was appropriately scheduled and Plaintiff was appropriately advised to contact Defendants immediately of any vision changes;**
- **Upon discovery of the two horseshoe tears and retinal detachment on June 30, 2022, Plaintiff promptly referred Plaintiff to an ophthalmology surgeon and personally called Dr. Breazzano to ensure he was seen the same day, which complied with the standard of care;**
- **Upon referral to Dr. Breazzano, the standard of care did not require Dr. Mango to dictate if, how, and/or when the surgical procedure was performed.**

Based on the entirety of her submission, Dr. Douros opined, to a reasonable degree of medical certainty that Defendants did not deviate from the applicable

standard of care and that no deviation from the standard of care caused or contributed to any injuries allegedly sustained by the Plaintiff.

In this Court's view, having considered the affidavit of Dr. Douros together with the medical records and deposition testimony submitted in support of their motion, the defendants met their initial burden with respect to the issues of whether they complied with the accepted standard of care and whether they caused any injury, (*see Isensee v Upstate Orthopedics, LLP*, 174 AD3d 1520, 1521-1522 [4th Dept 2019]).

The burden then shifted to the Plaintiffs to set forth evidence to raise a genuine, material question of fact. The Plaintiffs raised a triable issue of fact through the expert affidavit of David P. Montesanti, M.D., board certified in Ophthalmology and who has been in private practice since 2004. Dr. Montesanti raised a triable issue of fact as to whether Defendants departed from the standard of care resulting in injury to the Plaintiff. Dr. Montesanti rendered the following conclusions and opinions, e.g.,

- **The standard of care required Dr. Mango to perform the necessary tests to properly assess Plaintiff for tears and/or detachment which he failed to do upon initial presentation;**
- **The standard of care required Dr. Mango to act in a timely manner if an adverse effect was suspected;**
- **The standard of care required Defendants to promptly address any reported change in Plaintiff's symptoms;**
- **Defendants failed to perform a timely follow-up exam which should have included a repeat dilated fundus examination with or without B-scan and scleral depression immediately after Plaintiff's call to the office to report worsening symptoms;**
- **Defendants failed to timely develop and implement a treatment plan to prevent vision loss for the Plaintiff, including the failure to re-examine Plaintiff when he called on two separate occasions reporting worsening symptoms;**

- Had timely treatment been rendered, it is likely that the patient would not have suffered the injuries Plaintiff did and would not have lost the level of vision in his left eye;

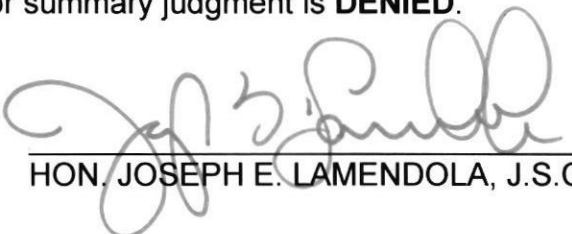
Based on the evidence submitted, including medical records, deposition transcripts, and expert affidavit of Dr. Montesanti, Plaintiffs established triable issues of fact to be resolved by the finder of facts. Conflicting affidavits by expert witnesses, with sufficient underlying evidence, create "a classic conflict between experts" precluding summary judgment. (*Santiago v. Brandeis*, 309 AD2d 621, 622 [1st Dept. 2003], *Page v. Niagara Falls Mem. Med. Ctr.*, 174 AD3d 1318, 1320 [4th Dept. 2019]).

The Court has considered the remaining arguments set forth by Defendants and finds them to be unavailing.

Accordingly, it is hereby

ORDERED, that Defendants' motion for summary judgment is **DENIED**.

DATED: November 29, 2024
Syracuse, New York


HON. JOSEPH E. LAMENDOLA, J.S.C.

PAPERS CONSIDERED:

- 1) Notice of Motion, filed on September 13, 2024 (NYSCEF #18)
- 2) Attorney Affirmation in Support together with Exhibits A through H, filed on September 13, 2024 (NYSCEF #19, 21-28)
- 3) Expert Affidavit in Support, filed on September 13, 2024 (NYSCEF #20)
- 4) Expert Affirmation (Dr. Montesanti) with Exhibit, filed on October 24, 2024 (NYSCEF #31-2)
- 5) Plaintiff's Affirmation, filed on October 24, 2024 (NYSCEF #33)
- 6) Attorney Affidavit in Reply with Exhibit, filed on October 30, 2024 (NYSCEF #34-5)