Wright-Berry v St. Barnabas Hosp.
2024 NY Slip Op 35715(U)
October 9, 2024
Supreme Court, Bronx County
Docket Number: Index No. 801163/2021E
Judge: Michael A. Frishman
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 34

----------X

DENISE WRIGHT-BERRY,

Index №. 801163/2021E

Plaintiff,

- against -

Hon. MICHAEL A. FRISHMAN
Justice of the Supreme Court

ST, BARNABAS HOSPITAL,

Defendants.

----------X

The following papers numbered 38-52 were read on this Motion for Summary Judgment (Seq. No. 001).

Sequence No. 001	NYSCEF Doc. Nos.
Notice of Motion, Statement of Material Facts, Affirmation in Support – Exhibits and Affirmation Annexed	38-52

The motion of defendant ST. BARNABAS HOSPITAL (hereinafter "SBH" or "defendant") seeking summary judgment dismissing the Complaint against them is granted without opposition.

Plaintiff commenced this malpractice action alleging, generally, that defendants deviated from good and accepted medical practice in their failure to prevent and treat pressure ulcers during her two separate admissions to SBH from January 12, 2020 through March 27, 2020[1] with, *inter alia*, acute hypoxic respiratory failure, bilateral pneumonia, severe sepsis, acute kidney injury, and hypertension; and from May 10, 2020 through on or about May 13, 2020 for g-tube replacement. Plaintiff further asserts a cause of action for negligent hiring, retention, and supervision.[2]

Movant seeks summary judgment dismissing the Complaint against them generally arguing, *inter alia*, that plaintiff's skin and wound care treatment was at all times within the applicable standard of good and acceptable care and nothing SBH staff did or did not do was a proximate case of plaintiff's developing pressure ulcers. Defendants additionally assert that this claim is insufficiently pleaded and, irrespective, plaintiff has produced no evidence that would support such a claim. Defendant's motion is supported, among other things, by the affidavit of Louis A. Kaplan, PA-C, CWS, WCC, physician assistant duly licensed to practice in the State of New York, and Director of Post Acute Services at Kings Harbor

[1] Plaintiff presented to the emergency department on January 11, 2020 with complaints of chest pain and shortness of breath.

[2] This was stated as the third cause of action in plaintiff's Summons and Complaint. However, it is plaintiff's second cause of action.

MultiCare Center in the Bronx as well as Wound Care Consultant at Bayberry Care Center in New Rochelle.

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 demonstrates *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 "via medical evidence attesting that the defendant departed from accepted medical practice and that such departure was a proximate cause of the injuries alleged" (*Ducasse v New York City Health Hosps. Corp.*, 148 AD3d 434, 435 [1st Dept 2017], *citing Anyie B.* at 3). "The plaintiff must rebut defendant's prima facie showing without '[g]eneral allegations of medical malpractice, merely conclusory and unsupported by competent evidence'" (*Henry v Duncan*, 2018 NY Slip Op 30219[U] at *2 [Sup Ct, New York County 2018] [*citing Alvarez v Prospect Hosp.*, 68 NY2d 320, 325 [1986])]; *affd* 169 AD3d 421 [1st Dept 2019]).

"A plaintiff's expert opinion must demonstrate 'the requisite nexus between the malpractice allegedly committed' and the harm suffered" (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 307 [1st Dept 2007] [internal citation omitted]). "With respect to opinion evidence, it is well settled that expert testimony must be based on facts in the record or personally known to the witness, and that an expert cannot reach a conclusion by assuming facts not supported by record evidence" (*Henry*, 2018 NY Slip Op 30219[U] at *2, *affd* 169 AD3d 421 [1st Dept 2019] ["[t]he injury itself cannot be the only basis to conclude that a departure occurred" [internal citations omitted]). If "the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation . . . the opinion should be given no probative force and is insufficient to withstand summary judgment" (*Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 [2002]; *Giampa v Marvin L. Shelton, M.D., P.C.*, 67 AD3d 439 [1st Dept 2009]). Further, the plaintiff's expert must address the specific assertions of the defendant's expert with respect to negligence and causation (*see Foster-Sturrup v Long*, 95 AD3d 726, 728-729 [1st Dept 2012]).

SBH has met their *prima facie* burden as to all claims against them and plaintiff has failed to submit any opposition to rebut defendant's *prima facie* entitlement to summary judgment.

While recognizing that plaintiff's health condition rendered her at risk for skin integrity issues, defendant's expert explains that the applicable standard of care with respect to skin integrity requires daily head-to-toe skin checks; baths; incontinence care; use of appropriate mattress; providing a cushion when sitting; turning and positioning every two hours; drawing a sheet or a mechanical lift to move the patient; limiting friction and shear; positioning off bony prominences; using saline solution to cleanse wounds; moisturizing skin with lotion and implementing the recommendations of wound care consultants. Based upon a review of SBH records, he opines, that although all of these measures were appropriately implemented, it is not always possible to prevent skin breakdown or the progression of pressure ulcers, or to achieve complete healing as skin, like any other organ, can fail due to comorbidities exacerbated by other unavoidable factors such as immobility or one's body type or physical build. Defendant's expert also opines that based upon plaintiff's condition, including multilobar pneumonia; acute respiratory failure; acute microcytic anemia; acute kidney injury; obesity; atherosclerosis; and a pre-existing fungal infection of her skin coupled with plaintiff's intubation, sedation, and dialysis for a significant portion of

her admissions and continued periodic ventilator dependency even after being weaned off sedation, plaintiff's sacral and right buttock pressure ulcers were unavoidable. Defendant's expert further opines plaintiff's discharge to a short-term rehabilitation facility while she still had the sacral pressure ulcer was appropriate as she could continue to receive appropriate wound care at that facility.

In sum, defendant's expert opines that plaintiff's wound care and skin care received during her admission to SBH was at all times within the applicable standard of good and acceptable wound care and nursing care, and that nothing SBH did or did not do was a factor, substantial factor or a proximate cause of plaintiff's developing pressure ulcers and continuing to have one pressure ulcer at the time of her discharge.

Furthermore, plaintiff has set forth no evidence that SBH was negligent in their credentialing of doctors, nurses, and other personnel or knowledge of propensity to cause injury and any such claims must be dismissed.

Consequently, plaintiffs fail to any raise triable issues of fact in opposition to St. Barnabas Hospital's *prima facie* showing. As such, all claims against St. Barnabas Hospital are heretofore dismissed.

Accordingly, it is hereby,

ORDERED that the motion seeking summary judgment is granted to the extent at that any and all claims in the Complaint and Bills of Particulars as against defendant ST. BARNABAS HOSPITAL are dismissed; And it is further

ORDERED that the Clerk of the Court, Bronx County, is directed to enter judgment in favor of ST. BARNABAS HOSPITAL; And it is further

[This section of the decision is intentionally left blank.]

ORDERED that counsel for ST. BARNABAS HOSPITAL shall serve a copy of this Order with Notice of Entry on all parties within thirty (30) days of the entry of this Order.

This constitutes the Decision and Order of the Court.

Dated: 10/9/2024

Hon. Michael A. Frishman, J.S.C.

1. CHECK ONE.....	x CASE DISPOSED IN ITS ENTIRETY	☐ CASE STILL ACTIVE
2. MOTION IS.....	X GRANTED ☐ DENIED	☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE.....	☐ SETTLE ORDER	☐ SUBMIT ORDER