

Pratt v Neurology Group

2025 NY Slip Op 31290(U)

April 7, 2025

Supreme Court, Kings County

Docket Number: Index No. 21489/11

Judge: Ellen M. Spodek

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At an IAS Term, Part 63 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 7th day of April 2025

P R E S E N T: HON. ELLEN M. SPODEK, Justice

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FRANCINE PRATT,

Plaintiff,

-against-

DECISION AND ORDER

Index No. 21489/11

MS # 6 of 7

NEUROLOGY GROUP and VLADIMIR ZLATNIK, M.D.

Defendants

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Defendants NEUROLOGY GROUP and VLADIMIR ZLATNIK, M.D. move for an order pursuant to CPLR 1021 to dismiss the action for failure of the Administratrix, Pamela Pratt or other persons interested in the Estate of Francine Pratt, to make a timely substitution as the named plaintiff on behalf of the Estate of Francine Pratt or in the alternative, to reverse the administrative dismissal dated June 15, 2023, restore the case to the active calendar and dismiss the matter with prejudice. Plaintiff filed a cross motion pursuant to CPLR 1021 to substitute Pamela Pratt as the administrator of the Estate of Francine Pratt, deceased, to amend the caption to reflect the substitution of

Pamela Pratt as the Administrator of the Estate of Francine Pratt, and to lift the stay and restore the case to the active calendar.

Plaintiff commenced the lawsuit on September 22, 2011, alleging medical malpractice after an epidural on May 25, 2009. Discovery was completed and the note of issue was filed on March 14, 2016. Plaintiff's counsel brought an order to show cause to be relieved as counsel, which was granted on October 31, 2017. On February 2, 2018, plaintiff appeared with new counsel (current proposed plaintiff's counsel). The case was assigned to this court part for trial, with jury selection to commence on January 6, 2020. On January 6, 2020, when jury selection was to commence, plaintiff counsel notified the court and defendants' counsel that the plaintiff had passed away. As a result of the death of the plaintiff, the case was stayed. Pamela Pratt received Letters of Administration as the Administrator of the Estate of Francine Pratt dated January 6, 2022. On June 15, 2023, a status conference was held with the court, and plaintiff failed to appear. As a result of the failure to appear, the case was administratively dismissed.

Defendants move to dismiss the case pursuant to CPLR 1021 for plaintiff's failure to timely substitute the Administrator as the plaintiff. Defendants argue that it was almost three years since the Letters of Administration were issued to Pamela Pratt to be the Administrator of the Estate of Francine Pratt, and the motion to substitute the Administrator as the Plaintiff was only made as a cross motion to this motion to dismiss. Defendants argue that the proposed plaintiff failed to act with any diligence in making the motion to substitute, and did not provide any excuse as to why the motion was not made earlier. Defendants argue that there was never any contact or communication

between proposed plaintiff's counsel and defendants' counsel with regard to the delay in moving to substitute, nor was any response received from proposed plaintiff's counsel in response to defendants' counsel's phone calls and letter to proposed plaintiff's counsel. In addition, defendants' state that there were never any settlement discussions between counsel during this time despite proposed plaintiff stating that there were such discussions, as defendants consider the case to be one of "no pay".

Defendants also argue that they will be extremely prejudiced if the case is not dismissed, as they were ready and prepared on January 6, 2020 to proceed to trial, only to find out that day from plaintiff's counsel that her client had passed away seven months earlier. As it is now more than five years since there was any activity in this matter, and the alleged actions at issue occurred in 2009, the memories of the lay and expert witnesses have faded even more, which would mean that any defense to this action being reconstituted is questionable.

Proposed Plaintiff argues that she is ready, willing and able to proceed with the action, and that she was diligent in moving to substitute the administrator. She argues that the delay in bringing a Surrogate's Court proceeding was due to the grieving of her mother's passing. As to the delay in moving for substitution of the administrator, she argues it was not lengthy, stating it was slightly more than two years, and she did not have any intention to abandon the action, as demonstrated by the continued contact with the Administrator and the distributees regarding information to commence the Surrogate's Court proceeding. Ms. Pamela Pratt, the proposed plaintiff, in her affidavit, states that starting in 2022 to present, she "periodically checked in with my attorney and it is my understanding that she has contacted the defense counsel in efforts of settling

the case instead of going to trial.” Cross Mot. Exh A. Proposed plaintiff also argues that the defendants alleged prejudice, namely the fading memories of witnesses, are natural consequences of any medical malpractice action, and defendants had ample opportunity to protect their rights through depositions.

CPLR 1021 provides that “[i]f the event requiring substitution occurs before final judgment and substitution is not made within a reasonable time, the action may be dismissed as to the party for whom substitution should have been made, however, such dismissal shall not be on the merits unless the court shall so indicate.” The statute “requires a motion for substitution to be ‘made within a reasonable time.’” *Borruso v. New York Methodist Hosp.*, 84 AD 3d 1293,1294 (2d. Dept. 2011). “The determination of reasonableness requires consideration of several factors, including the diligence of the party seeking substitution, prejudice to the other parties, and whether the party to be substituted has shown that the action or the defense has merit.” *Id.*

The Court finds that the proposed plaintiff was not diligent in moving to be substituted as the plaintiff in this case. She waited almost three years to make the motion to substitute, and only as a cross motion in response to the motion to dismiss. There was no explanation given for the delay between the Letters of Administration being issued in January 2022 and the cross motion being made on November 15, 2024, an almost three year delay. There was no proof provided by the proposed plaintiff’s counsel of attempts to reach out to defendants’ counsel or any responses she made to the attempts by defendants’ counsel to reach out to her to find out the status of the Surrogate’s Court proceeding. Simply stating that it was “a slightly more than two year delay” is disingenuous. The delay was longer, as it does not cover the fact that

plaintiff's counsel waited until the date of the commencement of the trial on January 6, 2020 to notify anyone that the plaintiff had passed away seven months prior. The delay in proceeding with this case was almost five years at the time that the cross motion was made, and almost three years after the Letters of Administration were issued to the Administrator. No explanation was provided for this three year delay. There was clearly a lack of diligence in timely moving to substitute the plaintiff. In addition, plaintiff never discussed the failure to appear at the Court's status conference on June 15, 2023 which led to the case being administratively dismissed.

Defendants would be extremely prejudiced to have to proceed with a case five years after they were ready for trial. Plaintiff waited until the day of trial to notify opposing counsel and the Court that the plaintiff had passed away seven months earlier. Defendants were ready for trial on January 6, 2020, having expended time and money preparing, including retaining witnesses. This was extremely prejudicial to the defendants and to expect them to be able to move forward five years later with the same witnesses' memories of the events which allegedly occurred in 2009, is prejudicial.

The proposed plaintiff has failed to provide any proof that the underlying case has merit. There was no discussion of the facts of the case at all in the cross motion. There is no discussion of how the case has merit, and without being able to show such merit, there is no reason to say that the motion to dismiss should be denied and the cross motion to substitute the plaintiff should be granted.

The Court finds that the proposed plaintiff has failed to sustain her burden to oppose the motion to dismiss for failing to timely substitute the plaintiff. Based on the foregoing, it is hereby

ORDERED, the motion to dismiss is granted and the cross motion is denied. The administrative dismissal dated June 15, 2023 is reversed, the matter is restored to the calendar, and the complaint is dismissed in its entirety against the defendants with prejudice and without costs or disbursements, and it is further

ORDERED, that defendants' counsel is directed to electronically serve a copy of the decision and order with notice of entry on plaintiff's counsel and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the decision and order of the Court.

ENTER,



JSC HON. ELLEN M. SPODEK

KINGS COUNTY CLERK
FILED
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