

Leszyk v Guthrie Corning Hosp.

2025 NY Slip Op 31487(U)

April 4, 2025

Supreme Court, New York County

Docket Number: Index No. 805340/2024

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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EMILY LESZYK, as Administratrix of the Estate of KIM M. LESZYK, and EMILY LESZYK, Individually,

Plaintiff,

INDEX NO. 805340/2024

MOTION DATE 01/30/2025

MOTION SEQ. NO. 001

- v -

GUTHRIE CORNING HOSPITAL, GUTHRIE HEALTHCARE SYSTEM, JAMES PERLE, M.D., JOHN OLMSTEAD, M.D., KIMBERLY KAFFENBARGER, M.D., LISA ESOLEN, M.D., LINDSEY HALL, M.D., AMY JONES, RN; BOSCO SSEMANDA, RN, and WATERFRONT OPERATIONS ASSOCIATES, LLC, doing business as ELLICOTT CENTER FOR REHABILITATION AND NURSING,

Defendants.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 30

were read on this motion to/for DISMISS

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, nursing home negligence pursuant to Public Health Law §§ 2801-d and 2803-c, common-law negligence, gross negligence, negligent hiring, training, supervision, and retention of health-care personnel, and wrongful death, the defendants Guthrie Corning Hospital, John Olmstead, M.D., Lisa Esolen, M.D., Lindsay Hall, M.D., and Amy Jones, RN (collectively the movants), move pursuant to CPLR 3211(a)(7) to dismiss "all claims, prayers, and requests for punitive damages from the Complaint, including those stated in paragraphs 15, 65-66, 68, 76-77, 79-80, 85-87, 89, 102, 110-111, 126, and 133-134, for failure to plead sufficient facts or allegations to sustain an award of punitive damages." The plaintiff opposes the motion. The motion is granted and the plaintiff's demands for punitive damages are dismissed.

The complaint essentially makes allegations that all of the defendants committed common-law negligence, medical malpractice, and nursing home negligence in the treatment and care of the plaintiff's decedent at Corning Hospital, sued herein as Guthrie Corning Hospital. The basis for the plaintiff's demand for an award of punitive damages appears to revolve around the conduct of the defendant James Perle, M.D., in the course of his diagnosis and treatment of the decedent. As relevant to the instant motion, the plaintiff alleged in her complaint that,

"[a]t all times mentioned herein, Plaintiff's decedent sought the professional care of JAMES PERLE, M.D. for certain medical complaints from which Plaintiff's decedent was suffering, and JAMES PERLE, M.D. rendered medical care, diagnosis, treatment and services to Plaintiff's decedent.

"Defendants LISA ESOLEN, M.D., FIDSA; JOHN OLMSTEAD, M.D., F.A.C.S; GUTHRIE HEALTHCARE SYSTEM; and CORNING HOSPITAL knew or should have known that Defendant, *JAMES PERLE, M.D. was a danger to others, including Plaintiff's decedent, KIM LESZYK.*

"That on the date and at the location set forth above, Defendants LISA ESOLEN, M.D., FIDSA; JOHN OLMSTEAD, M.D., F.A.C.S; GUTHRIE HEALTHCARE SYSTEM; and CORNING HOSPITAL negligently, carelessly and *recklessly disregarded [their] duty and obligation to protect Plaintiff's decedent from JAMES PERLE, M.D., against foreseeable acts by failing to remove the physician from her care and permitting him to continue treating Plaintiff's decedent.*

"That on the date and at the location set forth above, Defendants GUTHRIE CORNING HOSPITAL, its agents, servants and/or employees; GUTHRIE HEALTHCARE SYSTEM, its agents, servants and/or employees; JAMES PERLE, MD; JOHN OLMSTEAD, MD; KIMBERLY KAFFENBARGER, MD; LISA ESOLEN, MD; LINDSEY HALL, MD; AMY JONES, RN; and BOSCO SSEMANDA, RN and their agents, servants, and/or employees negligently, carelessly and *recklessly* disregarded [their] duty and obligation to protect Plaintiff's decedent, KIM LESZYK, by reason of which Plaintiff's decedent, KIM LESZYK, was caused to suffer severe injuries and other damages herein alleged, including conscious pain and suffering."

(emphasis added).

As the plaintiff further alleged in her complaint,

"the care and treatment rendered by Defendants GUTHRIE CORNING HOSPITAL, its agents, servants and/or employees; GUTHRIE HEALTHCARE SYSTEM, its agents, servants and/or employees; JAMES PERLE, MD; JOHN

OLMSTEAD, MD; KIMBERLY KAFFENBARGER, MD; LISA ESOLEN, MD; LINDSEY HALL, MD; AMY JONES, RN; and BOSCO SSEMANDA, RN and their agents, servants, and/or employees was improper, negligent, not in accordance with the standard of care, and given in a careless manner.”

She particularized this allegation as follows:

“That Defendants, GUTHRIE CORNING HOSPITAL, its agents, servants and/or employees; GUTHRIE HEALTHCARE SYSTEM, its agents, servants and/or employees; JAMES PERLE, MD; JOHN OLMSTEAD, MD; KIMBERLY KAFFENBARGER, MD; LISA ESOLEN, MD; LINDSEY HALL, MD; AMY JONES, RN; and BOSCO SSEMANDA, RN, were negligent, careless and *reckless* in the following manner: in failing to take reasonable and proper steps to safeguard Plaintiff’s decedent; in failing to follow its own rules and regulations; in failing to follow its own procedures with regard to individuals in need of medical assistance; in failing to promulgate rules and regulations; in failing to adequately supervise medical personnel; in failing to investigate the facility and personnel in light of having notice that, *upon information and belief, they exhibited unethical behavior or a propensity for such behavior*; in depriving decedent of food and water; in limiting decedent’s intake; in failing to obtain objective historical information; in failing to independently evaluate patient’s medical history; in failing to properly evaluate decedent; in failing to provide proper treatment to decedent; in failing to prevent the injuries to decedent, KIM LESZYK; in failing to prevent the *planned death* of Plaintiff’s decedent, KIM LESZYK; in failing to establish and/or abide by standards of care of its employees and subcontractors; in failing to adhere to established medical standards; in failing to follow the rules and regulations for hospitals in the community; in failing to follow well accepted standards for hospital care and treatment in the community; in failing to exercise proper and effective supervisory control over its personnel; in failing to have proper policies to prevent death; in failing to have proper policies to prevent physical injury; in breaching their duty that they owed to Plaintiff’s decedent, KIM LESZYK, which resulted in the injuries and death described herein; in knowing that inaction on the part of their agents could lead to harm to those at and about its hospital and premises, such as Plaintiff’s decedent, KIM LESZYK; and in all manners all Defendants, including Defendant CORNING HOSPITAL was negligent, careless, and reckless with respect to the care, treatment, and supervision that was provided to those persons at and about its facility, including Plaintiff’s decedent, KIM LESZYK.

“That at all times herein mentioned, CORNING HOSPITAL’s personnel and staff and employees assisted JAMES PERLE, M.D. in *his mistreatment* of Plaintiff’s decedent, KIM LESZYK, as opposed to reporting him, stopping him, or intervening in any way to prevent the injuries suffered by Plaintiff’s decedent, KIM LESZYK, including her death.”

(emphasis added).

In her cause of action alleging gross negligence, the plaintiff did not provide any facts in addition to those already asserted in connection with the other causes of action, but instead

repeated and realleged prior allegations, and concluded that the defendants, including Perle, “willfully, and recklessly disregarded [their] duty and obligation to those lawfully upon the hospital, including Plaintiff’s decedent, KIM LESZYK, by reason of which Plaintiff’s decedent was caused to suffer the severe injuries and other damages herein alleged, and was caused to die.” Other than allegations that the particularized conduct enumerated by the plaintiff constituted departures from good and accepted medical practice, violated substantive state regulations and hospital rules, and constituted common-law negligence, the complaint does not assert what specific conduct constituted “unethical behavior” or “mistreatment” of the decedent by Perle or any other defendant, above and beyond medical malpractice, statutory nursing home negligence, or common-law negligence. Neither does it assert facts that flesh out why the conduct complained of was “willful” or “reckless.” Nor does it specify which of Perle’s alleged propensities made it vital that the other defendants protect the decedent from Perle, or why Perle, in particular, posed a specific danger to others, including the decedent.

When assessing the adequacy of a pleading in the context of a motion to dismiss pursuant to CPLR 3211(a)(7), the court’s role is “to determine whether [the] pleadings state a cause of action” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151-152 [2002]). To determine whether a claim adequately states a cause of action, the court must “liberally construe” it, accept the facts alleged in it as true, accord it “the benefit of every possible favorable inference” (*id.* at 152; *see Romanello v Intesa Sanpaolo, S.p.A.*, 22 NY3d 881 [2013]; *Simkin v Blank*, 19 NY3d 46 [2012]), and determine only whether the facts, as alleged, fit within any cognizable legal theory (*see Taxi Tours, Inc. v Go New York Tours, Inc.*, 41 NY3d 991, 993 [2024]; *Hurrell-Harring v State of New York*, 15 NY3d 8 [2010]; *Leon v Martinez*, 84 NY2d 83 [1994]; *Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267 [1st Dept 2004]; CPLR 3026). “The motion must be denied if from the pleading’s four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d

at 152 [internal quotation marks omitted]; see *Leon v Martinez*, 84 NY2d at 87-88; *Guggenheimer v Ginzburg*, 43 NY2d 268 [1977]).

Where, however, the court considers evidentiary material beyond the complaint, the criterion becomes “whether the proponent of the pleading has a cause of action, not whether he [or she] has stated one” (*Guggenheimer v Ginzburg*, 43 NY2d at 275), but dismissal will not eventuate unless it is “shown that a material fact as claimed by the pleader to be one is not a fact at all” and that “no significant dispute exists regarding it” (*id.*). Nonetheless, “conclusory allegations—claims consisting of bare legal conclusions with no factual specificity—are insufficient to survive a motion to dismiss” (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]).

Inasmuch as the movants, in support of the instant motion, submitted only the complaint, a memorandum of law, and an attorney’s affirmation recounting the procedural history of the case and summarizing the movants’ argument, they have not asked to court to consider evidentiary material beyond the complaint. Nor has the plaintiff, in opposition, submitted anything beyond an attorney’s affirmation that addresses the legal arguments raised by the movants. Although New York does not recognize an independent cause of action to recover punitive damages (see *Fiur Co. v Ataka & Co.*, 71 AD2d 370, 375-376 [1st Dept 1979]), punitive damages are recoverable in connection with other cognizable causes of action. Hence, the standard to be applied by the court in assessing the adequacy of the demand for punitive damages is whether the complaint “states” a cause of action that would support an award of punitive damages.

“Punitive damages generally are reserved for rare cases exhibiting malice, fraud, oppression, insult, wantonness, or other aggravated circumstances which effect a public interest” (*DeJesus v DeJesus*, 2017 NYLJ LEXIS 2998, *8 [Civ Ct, Kings County, Oct. 23, 2017], quoting *Laurie Marie M. v Jeffrey T. M.*, 159 AD2d 52, 58 [2d Dept 1990]). Moreover, punitive damages are appropriate where the defendant’s conduct was intentional and deliberate, and has the character of outrage frequently associated with crime (see *Launders v*

Steinberg, 39 AD3d 57, 68 [1st Dept 2007]). Finally, punitive damages are meant to punish and deter the defendant and others similarly situated from engaging in the same conduct in the future (see *Seymour v Hovnanian*, 2020 NY Slip Op 33719[U], *13, 2020 NY Misc LEXIS 9639 [Sup Ct, N.Y. County, Nov. 9, 2020]).

Gross negligence consists of “conduct that evinces a reckless disregard for the rights of others or ‘smacks’ of intentional wrongdoing” (*Colnaghi, U.S.A. v Jewelers Protection Servs.*, 81 NY2d 821, 823-824 [1993]; *Ambac Assur. UK Ltd. v J.P. Morgan Inv. Mgt., Inc.*, 88 AD3d 1, 8 [1st Dept 2011]). Gross negligence thus is “different in kind as well as degree” from ordinary negligence (*Sutton Park Dev. Corp. Trading Co. v. Guerin & Guerin Agency*, 297 AD2d 430, 431 [3d Dept 2002]; *Green v Holmes Protection of N.Y.*, 216 AD2d 178, 178-179 [1st Dept 1995]). The element of culpability is, in gross negligence, magnified to a high degree as compared with that present in ordinary negligence (see *Sharick v Marvin*, 1 AD2d 284, 286-287 [3d Dept 1956]). Gross negligence thus can be defined as conduct of an aggravated character that discloses a failure to exercise any diligence whatsoever (see *Civil Service Employees Assn, Inc. v Public Employment Relations Bd.*, 132 AD2d 430, 435 [3d Dept 1987]). A finding of gross negligence may support an award of punitive damages (see *Randi A. J. v Long Is. Surgi-Center*, 46 AD3d 74, 82-83 [2d Dept 2007] [release by surgical center of patient’s confidential information concerning an abortion, coupled with lack of plan for protection of that information, constituted reckless behavior supporting gross negligence cause of action and concomitant award of punitive damages]).

Conclusory allegations of gross negligence, however, are insufficient to state a cause of action or survive a motion to dismiss pursuant to CPLR 3211(a)(7) (see *Mancuso v Rubin*, 52 AD3d 580, 583 [2d Dept 2008]; *Porter v Forest Hills Care Center, LLC*, 2018 NY Slip Op 33439[U], 2018 WL 6976728 [Sup Ct, Queens County, Nov. 28, 2018]). Where, as here, a plaintiff fails to allege any facts whatsoever describing any type of behavior beyond ordinary malpractice, common-law negligence, or violation of regulations addressed to a medical

provider's duty of care to a patient, the plaintiff cannot be said to have fulfilled the pleading requirements applicable to claims of gross negligence (*see Mancuso v Rubin*, 52 AD3d at 583; *see also Gold v Park Ave. Extended Care Ctr. Corp.*, 90 AD3d 833, 834 [2d Dept 2011]; *Aykac v City of New York*, 2022 NY Slip Op 33639[U], *14, 2022 NY Misc LEXIS 10629, *20 [Sup Ct, N.Y. County, Oct. 20, 2022] [Kelley, J.], *mod. other grounds* 221 AD3d 494 [1st Dept 2023]; *Baker v Andover Assoc. Mgt. Corp.*, 2009 NY Slip Op 52788[U], *26, 30 Misc 3d 1218[A] [Sup Ct, Westchester County, Nov. 3, 2009] [Scheinkman, J.]). Since the only cause of action that would support a demand for punitive damages here is the gross negligence cause of action, the plaintiff's demand for punitive damages must fail, and that demand must be dismissed.

Although, in opposition to the motion, the plaintiff's attorney made allegations that the defendants denied food and water to the plaintiff's decedent in the hospital even when she requested it, and that the hospital's maintenance staff was ordered to turn off the water in the decedent's room so that she would not be tempted or able to drink it, these allegations were not set forth in the complaint, and the attorney has no personal knowledge that this conduct occurred. In any event, denying a patient's request for food and water does not, on its face, suggest willful, tortious conduct, as it may have been medically necessary.

Although the court is dismissing the demands for punitive damages, it declines to strike any allegations in the paragraphs of the complaint identified by the movants.

Accordingly, it is,

ORDERED that the motion of the defendants Guthrie Corning Hospital, John Olmstead, M.D., Lisa Esolen, M.D., Lindsay Hall, M.D., and Amy Jones, RN, is granted, and the demands for punitive damages set forth in the complaint are dismissed.

This constitutes the Decision and Order of the court.

4/4/2025
DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE