

Dominguez v Friedman

2025 NY Slip Op 32521(U)

July 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 507953/2013

Judge: Genine D. Edwards

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At Part 1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Brooklyn, New York on the 11th day of July 2025.

P R E S E N T :

Hon. Genine D. Edwards, Justice

-----X
JOSEFINA DOMINGUEZ, SPECIAL GUARDIAN OF
MOISES LOPEZ, AN INCAPACITATED PERSON
AND JOSEFINA DOMINGUEZ, INDIVIDUALLY,

Plaintiff,

Index No: 507953/2013
Decision & Order

- against -

RONALD FRIEDMAN, M.D., WYCKOFF HEIGHTS
MEDICAL CENTER AND WYCKOFF EMERGENCY
MEDICINE SERVICES, P.C.,

Defendants.
-----X

The following e-filed paper(s) read herein:

NYSCEF Doc. No.

Notice of Motion, Affirmation in Support,	
Memorandum of Law in Support and Exhibits.....	202-216
Affirmation in Opposition, Memorandum of Law and Exhibits.....	217-219; 226-234
Reply Affirmation.....	221

In this action to recover damages for negligence and violation of a federal statute, after a jury verdict in favor of the plaintiff, Wyckoff Heights Medical Center (“defendant”) renewed its motion for a directed verdict. Alternatively, defendant moved to set aside the jury’s verdict on all issues and for a new trial or to set aside the jury’s verdict with respect to damages, including loss of services and future medical expenses and hold a new trial on those issues, unless plaintiff stipulates to a substantial reduction of the jury’s award. Defendant also requested a collateral

source hearing. Josefina Dominguez, as Special Guardian of Moises Lopez and individually (“plaintiff”), opposed the motion.

Defendant contended that a directed verdict was warranted or the jury’s award should be set aside, and a new trial ordered because the verdict was contrary to the weight of the evidence due to, *inter alia*, plaintiff’s failure to shoulder her burden of proof. In support of its motion, defendant averred that:

- Plaintiff failed to prove that a departure from the standard of care or alcohol withdrawal caused plaintiff’s injuries;
- This Court’s rulings deprived the defendant of a fair trial;
- The jury’s award for loss of society was excessive;
- Elements of the jury’s future medical expenses award was not based on sufficient evidence; and
- Plaintiff’s status as a Medicaid recipient entitled the defendant to a post-verdict collateral source hearing.

It is well established that “[a] motion pursuant to CPLR §4401 or CPLR §4404 may only be granted “where the trial court finds that, upon the evidence presented, there is no rational process by which the fact trier could base a finding in favor of the nonmoving party...” *Chicoine v. Mendola*, 233 A.D.3d 841, 843, 224 N.Y.S.3d 458 (2d Dept. 2024); *McConnell v. County of Nassau*; 228 A.D.3d 649, 213 N.Y.S.3d 356 (2d Dept. 2024). In considering such a motion, the trial court must afford the party opposing the motion every inference which may be drawn from the facts presented, with all facts being considered in a light most favorable to the nonmovant. *Id.* Where a jury’s verdict is set aside, this Court must conclude that “the jury could not have reached the verdict by any fair interpretation of the evidence.” *Id.* at 844.

Applying this standard to the instant matter, the evidence adduced during this three-week trial established that plaintiff presented sufficient medical evidence from which a reasonable person might conclude that it was more probable than not that defendant's departure, *inter alia*, failure to take a sufficiently proper medical history and discharging plaintiff prior to diagnosing and treating him, was a substantial factor in causing plaintiff's injuries. *Stewart v. New York Hospital Queens*, 214 A.D.3d 919, 186 N.Y.S.3d 291 (2d Dept. 2023); *cf. Clark v. Dello Russo*, 238 A.D.3d 978, 2025 WL 1450250 (2d Dept. 2025).

Defendant's contention that it failed to receive a fair trial due to this Court's failure to admit certain documents into evidence is unpersuasive. The applicability of CPLR §4540-a is limited to the original parties and the materials that they created. Here, the New York City Police Department produced the subject documents. Thus, despite defendant's arguments, the Pre-Arrest Screening Correctional Health Services forms did not qualify for the statute's presumption of authenticity. This Court provided defendant the opportunity to authenticate the NYPD records by establishing a foundation during the trial. Defendant's counsel never availed himself of that authentication. Additionally, the defendant failed to proffer any binding or persuasive caselaw in which it was held that NYPD records were automatically deemed admissible without a certification or foundation.

As to this Court charging the loss of chance doctrine, the doctrine is applicable where a doctor-defendant failed to perform either a sufficient physical exam and/or blood test, and "th[ose] departures were substantial factors in depriving [] plaintiff of a substantial chance for an improved outcome." *Daniele v. Pain Mgt. Ctr. Of Long Is.*, 168 A.D.3d 672, 674, 91 N.Y.S.3d 496 (2d Dept. 2019); *Stewart v. New York Hospital Queens*, 214 A.D.3d 919, 186 N.Y.S.3d 291 (2d Dept. 2023). Since Dr. Friedman testified that he could have performed blood tests to rule

out alcohol withdrawal, but failed to do so, the loss of chance charge was warranted. *Wright v. Stephens*, 2025 N.Y. Slip Op.03416, __ A.D.3d __ (4th Dept 2025).

With respect to the jury awards for loss of society and future medical expenses, “...damages... awarded to [] plaintiff for personal injuries is a question for the jury, and its determination will not be disturbed unless the award deviates materially from what would be reasonable compensation.” *Tarpley v. New York City Transit Authority*, 177 A.D.3d 929, 113 N.Y.S.3d 148 (2d Dept. 2019); *Aguilar v. Graham Terrace, LLC*, 237 A.D.3d 1149, 2025 WL 1242159 (2d Dept. 2025). Reasonable compensation “must be measured against relevant precedent of comparable cases.” *Tarpley*, 177 A.D.3d 929, 932. While there is a dearth of identical cases, a review of Second Department decisions corroborate past and future loss of society awards analogous to the jury’s award to the plaintiff. *See Chicoine v. Mendola*, supra; *Arcos v. Bar-Zvi*, 185 A.D.3d 882, 126 N.Y.S.3d 743 (2d Dept. 2020). However, the jury’s award of future medical expenses exceeded the amount testified to by Dr. Jonas Sokolof, plaintiff’s expert, by \$285,718.00. The award must be reduced. *Petit v. Archer*, 218 A.D.3d 695, 192 N.Y.S.3d 671 (2d Dept. 2023); *Wynter v. Transdev Services, Inc.*, 207 A.D.3d 785, 172 N.Y.S.3d 460 (2d Dept. 2022).

Finally, defendant requested a collateral source hearing regarding plaintiff’s overall healthcare expenses. CPLR §4545 states that to be entitled to a collateral source hearing, defendant must demonstrate that plaintiff’s losses may have been or may be replaced by collateral sources. *Zhou v. Tuxedo Ridge, LLC*, 180 A.D.3d 960, 119 N.Y.S.3d 251 (2d Dept. 2020); *Nunez v. City of New York*, 85 A.D.3d 885, 926 N.Y.S.2d 113 (2d Dept. 2011). Defendant requested this hearing because plaintiff is a Medicaid recipient who may receive medical services at a reduced rate. Defendant argued that the purpose of the hearing is to reduce

the medical expenses awarded by the jury to reflect the rates indicated by Medicaid's statutory fee schedule. Since plaintiff will not be charged the rates as testified to by Dr. Sokoloff, defendant seeks to demonstrate that the statutory reimbursement rates will be levied at a reduced price.

In opposition, plaintiff posited that where there is a statutory right of reimbursement the collateral source doctrine does not apply. Medicaid is a program with a statutory right of reimbursement; thus, it cannot be deemed a collateral source. Plaintiff further argued that the Supplemental Needs Trust (SNT) does not absolve Mr. Lopez from Medicaid's statutory right of reimbursement. Medicaid eligibility requires that the trust indicate that all distributed Medicaid benefits must be repaid from the SNT's assets upon the death of the beneficiary, i.e. Mr. Lopez.

Defendant cited *Liciaga v. New York City Transit Authority*, 231 A.D.3d 250, 257, 218 N.Y.S.3d 359 (2d Dept. 2024), in which the Second Department remanded the case back to the trial court for a collateral source hearing because the defendant established that the plaintiff could reduce his medical expenses by obtaining a *private* insurance policy available to him pursuant to the Patient Protection and Affordable Care Act (ACA). ACA and Medicaid are distinct programs that provide dove-tailing benefits. The ACA requires an individual to obtain private health insurance, which "may constitute a collateral source in relation to a plaintiff's medical expenses." *Id.* at 256. In contrast, Medicaid does not mandate a person to obtain private health insurance. Rather, it is a social welfare program that provides government-funded health insurance to eligible participants. *See Kroll v. New York State Dept. of Health*, 143 A.D.3d 716, 39 N.Y.S.3d 183 (2d Dept. 2016); *Inglese v. Shah, M.D.*, 121 A.D.3d 688, 690, 993 N.Y.S.2d 155 (2d Dept. 2014).

Nonetheless, since there lies the potentiality of awarding plaintiff with duplicative recoveries, namely, the difference in the billing rates under Medicaid's statutory fee schedule, defendant has presented evidence that a collateral source hearing is warranted to review and determine the costs of plaintiff's future medical services. *Redish v. Adler*, 195 A.D.3d 452, 150 N.Y.S.3d 248 (1st Dept. 2021); *Foote v. Albany Medical Center Hosp.*, 71 A.D.3d 25, 892 N.Y.S.2d 203 (3d Dept. 2009).

Accordingly, it is

ORDERED that defendant's motion for a directed verdict is denied, and it is further

ORDERED that defendant's motion for a collateral source hearing is granted, and it is further

ORDERED that defendant's motion to set aside the jury's verdict and ordering a new trial on all issues is granted only to the extent that plaintiff's future medical expenses award is set aside, and a new trial as to those damages shall be held on October 10, 2025, unless the plaintiff files with the Court, within 45 days of the entry of this order, a stipulation agreeing to the reduction of the award for future medical expenses to \$1,003,574.08. Any other requested relief not expressly granted is denied, and it is further

ORDERED that plaintiff is directed to electronically serve a copy of this Decision and Order with notice of entry on counsel for defendant and to electronically file an affidavit of service thereof with the Kings County Clerk.

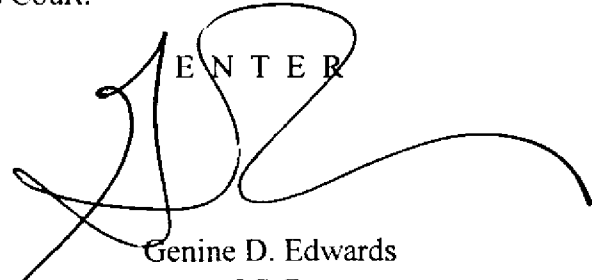
This constitutes the Decision and Order of this Court.

For Clerks use only

MG ___

MD ___

Motion Seq. #: 9

ENTER

Genine D. Edwards
J.S.C.