

Shaw v Ahmed

2025 NY Slip Op 33124(U)

August 15, 2025

Supreme Court, Kings County

Docket Number: Index No. 516461/2020

Judge: Consuelo Mallafre Melendez

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At an IAS Term, Part 15 of the Supreme Court of the State of NY, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 15th day of August 2025.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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ARTIE SHAW AND KAREN SHAW,

Plaintiff,

-against-

FARRUQUE AHMED, SAMANTHA JAGGER, M.D., LUVA REEVES, NP, ADVANTAGECARE PHYSICIANS, P.C., and ADVANTAGECARE PHYSICIANS, IPA, LLC,

Defendants.

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HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.

Recitation, as required by CPLR § 2219 [[a], of the papers considered in the review:

NYSCEF #s: Seq. 2: 98 – 99, 100 – 126, 132 – 134, 138 – 139

Seq. 3: 127 – 128, 129 – 130, 135 – 137

Defendant, Luva Reeves, N.P. (“N.P. Reeves”) moves (Seq. No. 2) for an Order, pursuant to CPLR § 3212, granting summary judgment in her favor and dismissing all claims against her. Advantagecare Physicians, P.C. and Advantagecare Physicians, IPA, LLC (“ACP”) move (Seq. No. 3) for an Order, pursuant to CPLR § 3212, granting summary judgment in their favor and dismissing all claims against ACP stemming from the actions of N.P. Reeves. Plaintiffs Artie Shaw (“the patient”) and Karen Shaw oppose both motions.

Plaintiffs commenced this action on September 3, 2020, asserting claims of medical malpractice in connection with care and treatment provided leading up to the patient’s stroke on July 8, 2019. The patient’s spouse also asserts derivative claims for loss of services.

Prior to the events at issue, the patient was first seen at ACP on December 18, 2014 by non-moving co-defendant, Farruque Ahmed, M.D. (“Dr. Ahmed”) as his primary care physician. The patient returned for routine physical examinations and follow-up visits with Dr. Ahmed until September 2016. In September 2016, due to an abnormal EKG, the patient was seen by a cardiologist, Dr. Erika Gehrie, who diagnosed the patient with atrial fibrillation, began aspirin therapy, and CHADS VASc score was noted as 0 or 1. On September 23, 2017, the patient was seen by Dr. Ahmed, reporting that he had seen an eye specialist on August 8, 2017 who recommended an MRI of the brain and orbits. Dr. Ahmed ordered the MRI of the brain and orbits which was performed on October 15, 2017 and was interpreted to reveal a moderate size, left occipital cerebral infarct, age indeterminate. Dr. Ahmed reviewed the MRI results on October 22, 2017 but no diagnosis of prior stroke was included in the patient’s chart. The patient was treated by Dr. Ahmed again on December 26, 2017 for left knee pain, and was referred to orthopedics and a urologist for a blood test. The patient was diagnosed with obesity, history of benign hyperplasia, paroxysmal atrial tachycardia, arthritis of the left knee, and pre-diabetes.

On August 2, 2018, the patient was seen by N.P. Reeves at ACP for an annual physical examination. The patient denied any pains or discomforts, additionally denied chest pains, shortness of breath, and nausea. The patient’s family histories were noted significant for diabetes and hypertension. The patient was diagnosed with obesity class III, BMI 40-49.9. N.P. Reeves discussed lifestyle modifications with the patient. The patient was also diagnosed with mild intermittent asthma, for which he was already taking medications. The patient’s next diagnosis was recorded as “encounter for adult medical examination without abnormal findings.” N.P. also noted he had elevated blood pressure of 165/90. She instructed him to follow up with his primary care physician and to return in two weeks for a blood test. The patient returned for his blood test

on August 17, 2018, and N.P. Reeves was notified that his blood pressure was 140/84 and pulse was irregular. A follow up appointment with a cardiologist was scheduled.

On August 29, 2018, Mr. Shaw was seen by Dr. Ahmed at ACP for a routine physical examination. The patient then saw non-moving co-defendant Dr. Samantha Jagger, a cardiologist, on December 14, 2018. Dr. Jagger noted the patient's atrial fibrillation, for which he took aspirin daily, but noted he was "unaware he has a-fib." Dr. Jagger physically examined the patient, noted previous cardiac history and diagnostic testing, calculated a CHADS VASc score of 0 or 1, and ordered an echocardiogram. Dr. Jagger testified that the October 2017 brain MRI images were not scanned into his record.

On or about July 8, 2019, the patient had an ischemic stroke. Although Dr. Ahmed testified that he informed the patient of his October 2017 MRI results, Plaintiffs testified that they were not aware that his MRI showed a prior stroke.

Plaintiffs allege that N.P. Reeves departed from the standard of care by failing to review the October 2017 MRI results on August 2, 2018, failing to refer the patient to a cardiologist, and failing to prescribe anticoagulant medication. They further allege that these departures were a substantial contributing factor in his July 2019 stroke.

To evaluate a summary judgment motion in an action of medical malpractice, the Court applies the burden shifting process as summarized by the Second Department: "[A] defendant must make a prima facie showing either that there was no departure from good and accepted medical practice, or that the plaintiff was not injured by any such departure. Once a defendant physician has made such a showing, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of fact, but only as to the elements on which the defendant met the prima facie burden. Summary judgment is not appropriate in a medical malpractice action where the parties

adduce conflicting medical expert opinions.” (*Rosenzweig v. Hadpawat*, 229 AD3d 650, 652 [2d Dept 2024] [internal quotation marks and citations omitted]). However, “expert opinions that are conclusory, speculative, or unsupported by the record are insufficient to raise triable issues of fact” (*Barnaman v. Bishop Hucles Episcopal Nursing Home*, 213 AD3d 896, 898-899 [2d Dept 2023]).

In support of this motion, Defendants submit an expert affirmation by Brian Feingold, M.D. (“Dr. Feingold”), a licensed physician board certified in internal medicine.

Dr. Feingold opines that all care and treatment rendered by N.P. Reeves to the patient complied with the standard of good and accepted practice. Specifically, Dr. Feingold opines that during the August 2, 2018 office visit, N.P. Reeves rendered care properly, including obtaining the reason for the visit as well as the patient’s complaints, relevant histories, allergies, and medications, reviewing systems, physically examining the patient, making reasonable diagnoses, counseling and educating the patient, ordering indicated tests, instructing and directing the patient, screening for anxiety and depression, and instructing the patient to return in two weeks and to follow-up with the patient’s primary care physician.

Regarding the viewing of the MRI results, Dr. Feingold opines that the applicable standard of care required a Nurse Practitioner to review tests that had arrived since the time of the patient’s last visit if those results had not already been addressed. Dr. Feingold expands that the standard of care did not require a Nurse Practitioner to perform a systematic review of the patient’s medical record. Dr. Feingold opines that N.P. Reeve’s speaking with the patient and reviewing the various items in the records that she was required to review comported with the standard of care. Dr. Feingold attributes this to the record indicating that both the October 2017

MRI results and the laboratory results received since the prior visit with Dr. Ahmed on December 26, 2017 had already been addressed by Dr. Ahmed.

Dr. Feingold therefore opines that N.P. Reeves' not reviewing the MRI results on August 2, 2018 was not a departure from the standard of care. Regarding the interpretation of the MRI itself, Dr. Feingold opines that N.P. Reeves' not interpreting that the 2017 MRI revealed a prior stroke was not a departure from the standard of care, since Dr. Ahmed's December 26, 2017 note did not discuss the MRI or its results. Dr. Feingold further notes that a prior stroke was not on the patient's "problem list" and that Dr. Ahmed acknowledges he did not record the stroke diagnosis. In sum, Dr. Feingold opines that "N.P. Reeves not reviewing or otherwise being aware of the subject 2017 MRI and its results" was not due to any negligence or malpractice on her part, and that N.P. Reeves did not fail to diagnose the patient's true condition.

Pertaining to the prescription of anti-coagulation medication and referral to a cardiology consultation, Dr. Feingold opines that the standard of care did not demand N.P. Reeves prescribe medication or refer to a cardiology consultation, because N.P. Reeves was not obligated to review the MRI or its results. Dr. Feingold further opines that had N.P. Reeves been aware of the MRI and its results, her failure to prescribe anti-coagulation medication and failure to refer to cardiology would nonetheless fail to constitute a departure from the standard of care, since a referral to his primary care physician satisfied the standard of care, and she did instruct the patient to follow up with his primary care physician, Dr. Ahmed.

Based on the submissions, movants have established *prima facie* entitlement to summary judgment. They have proffered an expert opinion that N.P. Reeves' review of the medical record was appropriate, and she was not obligated to review the October 2017 MRI and its results during the August 2, 2018 office visit, because they had already been addressed by the primary care physician, Dr. Ahmed. The movants further established that it was within the standard of care for N.P. Reeves to instruct the patient to follow up with his primary care physician and not to prescribe anti-coagulation medication or refer the patient to a cardiologist. The burden therefore shifts to Plaintiffs to raise an issue of fact.

In opposition to this motion, Plaintiffs submit an expert affirmation from Richard Hirschman, M.D. ("Dr. Hirschman") a licensed physician board certified in internal medicine, hematology, and oncology.

Dr. Hirschman disagrees with defendant's expert, Dr. Feingold, in his opinion that N.P. Reeves was only obligated to review test results that had arrived after the patient's last visit to ACP in December 2017, when he saw Dr. Ahmed for knee pain. Dr. Hirschman opines that it is "customary practice at an annual exam" to review all the patient's diagnoses. The expert notes that his chart read "history reviewed: no pertinent medical history," and opines that N.P. Reeves departed from the standard of care by failing to review and discuss the patient's atrial fibrillation diagnosis and failing to review and discuss the MRI results from October 2017, eight months before the annual exam.

Dr. Hirschman further opines that N.P. Reeves failed to prescribe anti-coagulant medication and make an “expedited” referral to a cardiologist, which was within her authority as a nurse practitioner. He opines that not doing so was a departure from the standard of care, in light of his a-fib diagnosis and the MRI findings of a prior stroke. He notes that in N.P. Reeves’ own testimony, she admitted that if she had reviewed MRI results, she would have prescribed such medication and referred him to the cardiologist. He further opines that under the points-based CHADS VASc score system, anticoagulant medication should be prescribed to a male patient with a score of 2 or above, and a prior stroke alone equates to 2 points.

Based on evaluation of these submissions, Plaintiffs’ expert has sufficiently raised an issue of fact as to whether N.P. Reeves departed from the standard of care by failing to review test results that had arrived after the patient’s last visit to ACP in December 2017, including the October 2017 MRI results at his annual exam on August 2, 2018, and that she further departed from the standard of care by not prescribing anti-coagulant medication and referring him to a cardiologist to address those findings.

As to proximate causation, the movant’s expert Dr. Feingold opines that N.P. Reeves’ care and treatment of the patient did not cause or contribute to the patient’s alleged injuries. Dr. Feingold reiterates his opinion that all care and treatment rendered by N.P. Reeves complied with the standard of care and thus there was no negligent act from which the alleged injuries would stem. Additionally, Dr. Feingold opines that following his visit with N.P. Reeves, the patient saw the appropriate physicians for his conditions: his primary care physician, Dr. Ahmed, and a cardiologist, Dr. Jagger. Dr. Feingold opines that Dr. Ahmed and Dr. Jagger had independent

obligations to their patients which were not dependent upon the treatment rendered by N.P. Reeves. Therefore, Dr. Feingold opines that N.P. Reeves “in no way caused or contributed” to the patient’s alleged injuries.

In contrast, Plaintiffs’ expert Dr. Hirschman opines that atrial fibrillation is an irregular, rapid heart rate which increases the risk of ischemic stroke, especially in patients with a prior infarct. He opines that the failure of N.P. Reeves to review the MRI results, prescribe anti-coagulant medication, and refer the patient to a cardiologist based on evidence of a prior stroke was a substantial contributing factor in the stroke he ultimately suffered in July 2019

The Court finds that there remain issues of fact as to whether the alleged departures of N.P. Reeves were a proximate cause of the patient’s July 2019 stroke. Regardless of the fact the patient saw his primary care physician two weeks later and visited cardiologist Dr. Jagger in December 2018, there can be more than one proximate cause of an injury, and the experts and testimony raise issues of fact as to what information, if any, on the patient’s prior stroke was available to the cardiologist from N.P. Reeves’ encounter. Further, there are questions of fact as to whether the alleged departures on the part of N.P. Reeves deprived Plaintiff of anticoagulation therapy. For these reasons, the motion for summary judgment on behalf of N.P. Reeves is denied.

As to Defendant ACP’s motion for summary judgment, ACP do not dispute that they are vicariously liable for the alleged acts and omissions of N.P. Reeves, but they argue that if there are no issues of fact as to N.P. Reeve’s liability, the vicarious liability claims must be dismissed as a matter of law. “A claim of vicarious liability cannot stand when ‘there is no primary liability

upon which such a claim of vicarious liability might rest” (*Wijesinghe v Buena Vida Corp.*, 210 AD3d 824, 826 [2d Dept 2022], quoting *Karaduman v Newsday, Inc.*, 51 NY2d 531 [1980]). As the Court has found issues of fact as to the primary liability claims against N.P. Reeves, summary judgment must be denied to the facility as to the vicarious liability claims.

Accordingly, it is hereby:

ORDERED that Defendant N.P. Reeves’ motion (Seq. No. 2) for an Order, pursuant to CPLR § 3212, granting summary judgment in her favor and dismissing Plaintiffs’ complaint against her, is **DENIED**; and it is further

ORDERED that Defendant ACP’s motion (Seq. No. 3) for an Order, pursuant to CPLR § 3212, granting summary judgment in their favor and dismissing all of Plaintiffs’ vicarious liability claims against them stemming from the actions of N.P. Reeves is **DENIED**; and it is further

ORDERED that the parties shall appear for a virtual Settlement Conference on September 22, 2025, at 11:30 a.m. A link will be provided.

This constitutes the decision and order of this Court.¹

ENTER.



**Hon. Consuelo Mallafre Melendez
J.S.C.**

¹ This decision was drafted with the assistance of legal intern Jack Rowe, Brooklyn Law School.