Brown v NY Presbyt. Hosp.

2025 NY Slip Op 33604(U)

September 26, 2025

Supreme Court, New York County

Docket Number: Index No. 100189/2025

Judge: John J. Kelley

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOHN J. KELLEY** **PART** **56M**

Justice

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DALE BROWN,

Plaintiff,

- v -

NY PRESBYTERIAN HOSPITAL,

Defendant.

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INDEX NO. 100189/2025

MOTION DATE 06/30/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11

were read on this motion to/for DISMISSAL.

In this action to recover damages, in effect, for medical malpractice, the defendant moves pursuant to CPLR 3211(a) to dismiss the complaint as time-barred (CPLR 3211[a][5]), as barred by the doctrine of res judicata (*id.*), and for failure to state a cause of action (CPLR 3211[a][7]). The plaintiff does not oppose the motion. The motion is granted, and the complaint is dismissed on all three of those grounds.

On January 18, 2024, the plaintiff commenced an action against the defendant, NY Presbyterian Hospital (NYPH), in the Supreme Court, New York County, entitled *Brown v NY Presbyterian Hosp.*, under Index No. 100043/2024. In his complaint therein, he alleged that he presented to NYPH, complaining of pain radiating from his waist downward, that NYPH failed to diagnose any particular condition, and that NYPH's healthcare personnel "claimed that because of the pain I am stress[ed], and now leads [sic] me having very severe mental health [sic]." The plaintiff did not assert that any purported failure to diagnose an orthopedic or neurological condition caused or contributed to any injuries. Rather, he asserted that NYPH personnel uploaded his medical information to the internet, leading to embarrassment, as well as his failure to obtain employment and his inability to secure an appointment with a dentist, which

were the only items of damages that he alleged. In an order dated December 10, 2024, the court (King, J.) granted NYPH's motion to dismiss the complaint in that action on the ground that it failed to state a cause of action to recover for medical malpractice.

On February 13, 2025, the plaintiff commenced the instant action against NYPH, making virtually identical allegations against it, but specifying that his encounter with NYPH healthcare personnel occurred in 2020, and adding that he was unable to obtain employment with Flatiron Catering Company in 2021 because of his mental health, and that questions were purportedly posed to him about his mental health during a 2023 encounter with Mosholu Montefiore Community Center in the course of filling out a federal W2 tax form.

"Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action" (*Parker v Blauvelt Volunteer Fire Co*., 93 NY2d 343, 347 [1999]; *see Matter of Reilly v Reid*, 45 NY2d 24 [1978[]). As a general rule, "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy" (*O'Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]). "The rule applies not only to claims actually litigated but also to claims that could have been raised in the prior litigation. The rationale underlying this principle is that a party who has been given a full and fair opportunity to litigate a claim should not be allowed to do so again" (*Matter of Hunter*, 4 NY3d 260, 269 [2005]). Justice King's December 10, 2024 order in the plaintiff's prior action against NYPH fully resolved the claims asserted by the plaintiff against NYPH in this action, inasmuch as she determined that, even under the most liberal construction of the complaint filed in that action, which was virtually identical to the complaint filed in this action, and affording the plaintiff "the benefit of every possible favorable inference" (*id*. at 152; *see Romanello v Intesa Sanpaolo, S.p.A.*, 22 NY3d 881, 884 [2013]; *Simkin v Blank*, 19 NY3d 46, 52 [2012]), the facts, as alleged, did not 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, 20 [2010]; *Leon v*

Martinez, 84 NY2d 83, 87 [1994]; *Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc*., 10 AD3d 267, 270-271 [1st Dept 2004]; CPLR 3026).

"To sustain a cause of action for medical malpractice, a plaintiff must prove two essential elements: (1) a deviation or departure from accepted practice, and (2) evidence that such departure was a proximate cause of plaintiff's injury" (*Frye v Montefiore Med. Ctr*., 70 AD3d 15, 24 [1st Dept 2009]; *see Foster-Sturrup v Long,* 95 AD3d 726, 727 [1st Dept 2012]; *Roques v Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Elias v Bash*, 54 AD3d 354, 357 [2d Dept 2008]; *DeFilippo v New York Downtown Hosp*., 10 AD3d 521, 522 [1st Dept 2004]). Such a cause of action may be premised upon a claim that those departures allowed a patient's condition to worsen, and thus deprived him or her of an opportunity for a cure or a better outcome (*see Mortensen v Memorial Hosp.*, 105 AD2d 151, 156, 159 [1st Dept 1984]; *Kallenberg v Beth Israel Hosp.*, 45 AD2d 177, 178 [1st Dept 1974], *affd no op.* 37 NY2d 719 [1975]). Moreover, where a physician fails properly to diagnose a patient's condition, thus providing less than optimal treatment or delaying appropriate treatment, and the insufficiency of or delay in treatment proximately causes injury, he or she will be deemed to have departed from good and accepted medical practice (*see Perez v Fitzgerald,* 115 AD3d 177, 178 [1st Dept 2014]; *Perlin v King*, 36 AD3d 495, 495 [1st Dept 2007]; *see generally Zabary v North Shore Hosp. in Plainview,* 190 AD3d 790, 795 [2d Dept 2021]; *Lewis v Rutkovsky*, 153 AD3d 450, 451 [1st Dept 2017]; *Monzon v Chiaramonte*, 140 AD3d 1126, 1128 [2d Dept 2016] ["(c)ases . . . which allege medical malpractice for failure to diagnose a condition . . . pertain to the level or standard of care expected of a physician in the community"]; *O'Sullivan v Presbyterian Hosp. at Columbia Presbyterian Med. Ctr.*, 217 AD2d 98, 101 [1st Dept 1995]).

Although the plaintiff alleged that NYPH personnel failed to diagnose him with any particular orthopedic or neurological condition to explain his lower body pain, he did not allege that this purported failure caused him to sustain any damages. Rather, the only damages that he identified in his complaint allegedly arose from NYPH's purported uploading of documents

concerning his mental health onto the internet, which is not within the ambit of a medical malpractice cause of action. Rather, at most, such conduct would constitute a violation of the federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 [1996], codified, as amended, in scattered sections of 18, 26, 29 and 42 USC), but the "[t]he Health Insurance Portability and Accountability Act and its regulations do not create a private right of action" (*Romanello v Intesa Sanpaolo S.p.A.*, 97 AD3d 449, 455 [1st Dept 2012], *affd as mod*, 22 NY3d 881 [2013]; *see Abdale v N. Shore Long Is. Jewish Health Sys., Inc.*, 49 Misc 3d 1027, 1038 [Sup Ct, Queens County 2015]). Moreover, New York does not recognize a common-law right of privacy that may be vindicated pursuant to a civil action to recover damages (*see Thomas v Northeast Theatre Corp.*, 51 AD3d 588, 589 [1st Dept 2008]). Consequently, the complaint filed by the plaintiff in the instant action not only must be dismissed as barred by the doctrine of res judicata, but for failure to state a cause of action as well.

In addition, the action is time-barred. The limitations period applicable to the commencement of a medical malpractice action against private medical providers, such as the defendant here, is two years and six months from the date that the malpractice was committed, or two years and six months from the date of last treatment, where there was continuous treatment for the same illness, injury, or condition that gave rise to the alleged wrongful act, omission, or failure (*see* CPLR 214-a). The failure to commence an action within the applicable limitations period bars the plaintiff from seeking a remedy (*see Tanges v Heidelberg N. Am., Inc.*, 93 NY2d 48 [1999]; *Paver & Wildfoerster v Catholic High Sch. Assn*, 38 NY2d 669 [1976]). It is well settled that a court may not extend a statute of limitations (*see* CPLR 201; *McCoy v Feinman*, 99 NY2d 295 [2002]), even by a single day (*see Bacalokonstantis v Nichols,* 141 AD2d 482 [2d Dept 1988]). In connection with a motion to dismiss a complaint as time-barred, "a defendant must establish, prima facie, that the time within which to sue has expired. Once that showing has been made," the burden shifts to the plaintiff to raise an issue of fact as to "whether the statute of limitations has been tolled, an exception to the limitations period is

applicable, or the plaintiff actually commenced the action within the applicable limitations period" (*Flintlock Constr. Servs., LLC v Rubin, Fiorella & Friedman, LLP*, 188 AD3d 530, 531 [1st Dept 2020], quoting *Quinn v McCabe, Collins, McGeough & Fowler, LLP,* 138 AD3d 1085, 1085-1086 [2d Dept 2016]; *see MLB Sub I, LLC v Clark,* 201 AD3d 925, 927 [2d Dept 2022]; *Murray v Charap*, 150 AD3d 752 [2d Dept 2017]; *Precision Window Sys., Inc. v EMB Contr. Corp*., 149 AD3d 883, 884 [2d Dept 2017]; *Guzy v New York City*, 129 AD3d 614, 615 [1st Dept 2015]; *Williams v New York City Health & Hosps. Corp*., 84 AD3d 1358 [2d Dept 2011]; *Rakusin v Miano*, 84 AD3d 1051 [2d Dept 2011]).

The plaintiff alleged only that NYPH examined and treated him in 2020. Regardless of when in 2020 the examination occurred, and regardless of whether the limitations period was tolled between March 20, 2020 and November 3, 2020 by virtue of Executive Law § 29-a, and Executive Orders 202.8 and 202.67 (*see Brash v Richards*, 195 AD3d 582 [2d Dept 2021]), NYPH established that the limitations period applicable to any claim of malpractice against it expired long before the plaintiff commenced this action on February 13, 2025.

Accordingly, it is,

ORDERED that the motion is granted, without opposition, and the complaint is dismissed; and it is further,

ORDERED that the Clerk of the court shall enter judgment dismissing the complaint, with prejudice, against NY Presbyterian Hospital.

This constitutes the Decision and Order of the court.

9/26/2025
DATE

JOHN J. KELLEY, J.S.C.

CHECK ONE:	X	**CASE DISPOSED**			**NON-FINAL DISPOSITION**		
	X	**GRANTED**		**DENIED**	**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**