

Leszyk v Guthrie Corning Hosp.

2025 NY Slip Op 33651(U)

September 25, 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 06/20/2025

MOTION SEQ. NO. 007

- 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 007) 98, 99, 100, 101, 102, 118, 128, 129, 130, 131, 132

were read on this motion to/for DISMISSAL.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, common-law negligence, gross negligence, negligent hiring, training, supervision, and retention of health-care personnel, and wrongful death, and pursuant to Public Health Law § 2801-d for purported violations of statutes and regulations governing nursing homes, and the defendant James Perle, M.D., moves pursuant to CPLR 3211(a)(7) to dismiss the claim for punitive damages insofar as asserted against him, as set forth in paragraphs 76, 85, 86, 87, 110, 126 and 134 of the complaint. The plaintiff opposes the motion. The motion is denied.

In an order dated April 4, 2025, this court granted the motion of the defendants Guthrie Corning Hospital, John Olmstead, M.D., Lisa Esolen, M.D., Lindsay Hall, M.D., and Amy Jones, RN (collectively the Guthrie defendants), to dismiss the claim for punitive damages insofar as asserted against them (MOT SEQ 001). The court concluded that, at least in connection with

the allegations that the Guthrie 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, those allegations were not set forth in the complaint, and the plaintiff's attorney had no personal knowledge that this conduct occurred. The court further noted that, in any event, at least as to the allegations against the Guthrie defendants, the denial of a patient's request for food and water did not, on its face, suggest willful, tortious conduct on their behalf, as, at least in their estimation, it may have been medically necessary.

Perle now argues that the law of the case doctrine requires the court to dismiss the punitive damages claim against him as well. The court rejects that contention. "The law of the case doctrine is a rule of comity and convenience which states that ordinarily a court of coordinate jurisdiction should not disregard an earlier decision on the same question in the same case" (*Abe v New York Univ.*, 139 AD3d 416, 416 [1st Dept 2016], quoting *Tenzer, Greenblatt, Fallon & Kaplan v Capri Jewelry*, 128 AD2d 467, 469 [1st Dept 1987]). The doctrine "applies only to issues decided, directly or by implication, at an earlier stage of the action" (*Metropolitan Package Store Assn. v Koch*, 89 AD2d 317, 321-322 [3d Dept 1982]). In disposing of Motion Sequence 001, however, the court based its determination on the facts that all of the extensive allegations of willful and intentional conduct set forth in the complaint were essentially directed solely at Perle, and not at the Guthrie defendants, and the fact that no sworn statement of the plaintiff was before it alleging that Perle himself denied the requests of the plaintiff's decedent for food and water, and that he himself directed hospital staff to turn off the water in the decedent's room so that she would not be tempted or able to drink it. In opposition to Perle's motion, however, the plaintiff submitted her bill of particulars as to him, which she personally verified, and in which she asserted that Perle committed the acts described above with the intention of allowing her decedent to die.

As the court explained it in its April 4, 2025 order,

“[p]unitive 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])”

(*Leszyk v Guthrie Corning Hosp.*, 2025 NY Slip Op 31487[U], *5-6, 2025 NY Misc LEXIS 3390, *9-10 [Sup Ct, N.Y. County, Apr. 4, 2025] [Kelley, J.]). In light of the differences between the conduct in which Perle allegedly engaged in his individual capacity, and the conduct in which the Guthrie defendants allegedly engaged while implementing Perle’s directives, as well as the difference in the nature of the plaintiff’s evidence that she submitted in opposition to the prior motion and that which she submitted in opposition to the instant motion, the law of the case doctrine does not require the court to dismiss the punitive damages claim or the gross negligence cause of action insofar as asserted against Perle at this juncture.

Accordingly, it is,

ORDERED that the motion is denied.

This constitutes the Decision and Order of the court.

9/25/2025
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