

**Callen v Baer**

2025 NY Slip Op 34002(U)

February 4, 2025

Supreme Court, Queens County

Docket Number: Index No. 715323/2019

Judge: Tracy Catapano-Fox

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This opinion is uncorrected and not selected for official publication.

Short Form Order  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
MICHELLE CALLEN and WILLIAM CALLEN,

Index No. 715323/2019

Plaintiffs,

Part MDP

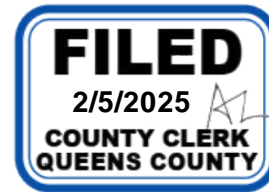
Motion Date: January 8, 2025

-against-

Calendar No. 7

Sequence No. 5

ASHER BAER, M.D., MICHAEL SHERMAN, M.D.,  
ATIF H. FAROOQI, D.O., SHANNON LANCASTER,  
M.D., HANNA CZARKOWSKA, M.D., EBONY  
BROMFIELD, P.A., CHRISTOPHER CARLEO, M.D.,  
FADI Z. EL-BABA, M.D., VLADIMIR STAMORAN,  
M.D., TEHMINA HAQUE, M.D., BRIAN WRIGHT,  
M.D., RISHI MEHTA, M.D., and LAMAH  
MASSASATI, M.D.,



Defendants.

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The following papers numbered EF-234 to EF-278 read on this motion by defendant HANNA CZARKOWSKA, M.D. for summary judgment and dismissal of plaintiffs' Complaint pursuant to CPLR §3212.

Papers  
Numbered

- Notice of Motion, Affirmation, Exhibits.....EF234-EF249
- Affirmation in Opposition, Exhibits.....EF263-EF266
- Reply Affirmation.....EF278

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Defendant Hanna Czarkowska, M.D.'s motion for summary judgment and dismissal of plaintiffs' Complaint pursuant to CPLR §3212 is granted. (*See generally Mendoza v. Maimonides Med. Ctr.*, 203 A.D.3d 715 [2d Dept. 2022].)

Plaintiffs commenced this medical malpractice action arising out of plaintiff Michelle

Callen's admission to the emergency room of Stony Brook University Hospital (hereinafter referred to as "SBUH") on March 9, 2017, and subsequent admission from March 10, 2017 through March 17, 2017. Plaintiffs filed the Summons and Complaint on September 5, 2019 and issue was joined by moving defendant via the filing of her Answer.

Defendant argues she is entitled to summary judgment and present the pleadings, plaintiff Michelle Callen's medical records, the parties' deposition testimony, and the expert affirmation of David M. Kaufman, M.D. in support of her motion. Defendant Dr. Czarkowska argues she had one neurology consultation with plaintiff Michelle Callen on March 10, 2017 while in the emergency room, during which she rendered treatment within the standard of care. She further argued she appropriately evaluated plaintiff Michelle Callen to rule out a stroke or other neurologic cause of her symptoms as requested by the emergency team. Defendant further argues none of her acts or omissions were the proximate cause of plaintiff Michelle Callen's injuries, including blindness.

Defendant Dr. Czarkowska presents the affirmation of Dr. David M. Kaufman in support of her motion. Dr. Kaufman affirmed to be a licensed physician in New York who is board certified in internal medicine and neurology. He affirmed he is fully familiar with the applicable standard of care for neurologists in 2017 based upon his professional education, training and experience. Dr. Kaufman reviewed the pleadings, plaintiff Michelle Callen's medical records, and the parties' deposition testimony in rendering opinions.

Defendant Dr. Kaufman opined within a reasonable degree of medical certainty that Dr. Czarkowska's care and treatment of plaintiff Michelle Callen during the emergency room consultation at all times comported with good and accepted standards of neurologic practice, and none of Dr. Czarkowska's care and treatment caused or contributed to plaintiff's injuries, including blindness. He opined Dr. Czarkowska, in conjunction with resident Dr. Shannon Lancaster, properly performed a consultation at the emergency staff's request, to rule out cerebrovascular accidents (CVA) in the context of monocular vision loss. Dr. Kaufman opined plaintiff Michelle Callen's neurologic exam was negative and Dr. Czarkowska properly and correctly ruled out a CVA and other primary neurologic maladies for plaintiff Michelle Callen's symptoms. He further opined Dr. Czarkowska successfully performed her role as a consulting neurologist by informing the emergency room physicians that plaintiff Michelle Callen was in need of an ophthalmologic consultation. Dr. Kaufman further opined Dr. Czarkowska had no further role in plaintiff Michelle Callen's care and treatment, as her symptoms were not neurologic and further diagnosis and treatment was outside of Dr. Czarkowska's specialty. He further agreed with Dr. Czarkowska's testimony and opined none of plaintiff Michelle Callen's abnormal blood test findings were relevant for a neurology consult, and had no bearing on the neurologic workup. Dr. Kaufman opined within a reasonable degree of neurologic certitude that Dr. Czarkowska's care and treatment of plaintiff Michelle Callen did not deviate from accepted standards, she rendered more than

appropriate care and ruled out a stroke as requested, determined there was no need for a further neurologic consult, and recommended plaintiff return to the emergency room for an ophthalmologic workup. Based upon the above, defendant Dr. Czarkowska argues summary judgment is warranted.

Plaintiffs oppose defendant's motion, arguing there are issues of fact in dispute that demonstrate defendants' common departures from accepted medical practice by failing to treat plaintiff Michelle Callen's sudden loss of vision as an ophthalmologic emergency. They rely on the exhibits attached to defendants' motion and submit expert affirmations in support of their opposition. Plaintiffs' expert affirmed to be a licensed physician in New York, who is board certified in Ophthalmology. The expert reviewed plaintiff Michelle Callen's medical records and defendants' summary motion with expert affirmation in rendering opinions in this case. Plaintiffs' expert noted plaintiff Michelle Callen woke on March 9, 2017 at 9:30pm with a visual change in her left eye, a new and first time occurrence for the 54 year old woman. The expert noted she presented to the SBUH emergency room at 10:42pm, and was treated by various emergency room staff. Plaintiffs' expert noted resident Dr. Shannon Lancaster performed a neurologic consult with Dr. Czarkowska, the on-call attending neurologist. The expert noted these doctors determined plaintiff Michelle Callen's imaging was normal and her deficit was monocular so no further neurologic workup was needed at that time, and recommended ophthalmologic evaluation.

Plaintiffs also presented an expert licensed to practice medicine in New York who is board certified in internal medicine. The expert reviewed the pleadings, parties' deposition testimony and plaintiff Michelle Callen's medical records and rendered opinions based upon training, experience and professional education. Plaintiffs' expert opined Dr. Czarkowska was responsible for Dr. Lancaster, who did not correctly rule out other acute neurologic events causing plaintiff Michelle Callen's vision complaints. The expert opined Dr. Czarkowska and Dr. Lancaster failed to recognize or appreciate plaintiff Michelle Callen's primary ophthalmologic problem involved the optic nerve and demanded immediate attention by an ophthalmologist. The expert disagreed with Dr. Kaufman's opinion that the neurologic consult was properly performed and opined Dr. Czarkowska departed from the standard of care by failing to recognize and appreciate the ophthalmologic emergency. Plaintiffs' expert opined it was a departure from accepted medical practice for Dr. Czarkowska to review the blood values and not recognize plaintiff Michelle Callen was severely anemic and remain unaware of the rectal bleeding episode. The expert argued Dr. Czarkowska abandoned common sense and departed from the standard of care in rendering care and treatment to plaintiff Michelle Callen and the departure was a substantial factor in causing plaintiff's loss of chance for restoration of left eye vision, and vision loss in both eyes. Based upon the above, plaintiffs argue summary judgment is not warranted.

Pursuant to CPLR §3212, a motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to

warrant the court as a matter of law in directing judgment in favor of any party.” (*Smith v. City of New York*, 210 A.D.3d 53, 68 [2d Dept. 2022].) The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. (*Morejon v. New York City Tr. Auth.*, 216 A.D.3d 134, 136 [2d Dept. 2023].) If there is any doubt as to the existence of a triable issue of fact, the motion must be denied. (*Id.*) The failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposition papers. (*Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 [1985]; *see also Antonyuk v. Brightwater Towers Condo Homeowners’ Assn., Inc.*, 147 A.D.3d 711, 712 [2d Dept. 2017].) In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party. (*Matter of New York City Asbestos Litig.*, 33 N.Y.3d 20, 25 [2019].) Additionally, the court’s function in determining a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist. (*Reyes v. S. Nicolina & Sons Realty Corp.*, 212 A.D.3d 851, 852-853 [2d Dept. 2023].) Once the moving party has demonstrated a prima facie entitlement to summary judgment, the burden then shifts to the non-moving party to demonstrate the existence of material issues of fact. (*See generally Coscia v. Mosca*, 203 A.D.3d 695 [2d Dept. 2022].)

In moving for summary judgment in a medical malpractice action, the defendant must establish a prima facie case that there was no departure from good and accepted medical practice or that the plaintiff was not injured thereby, and the plaintiff in opposition must submit evidentiary facts or materials to demonstrate the existence of a triable issue of fact. (*Stukas v. Streiter*, 83 A.D.3d 18, 24 [2d Dept. 2011].) In presenting opposition to raise a triable issue of fact, the plaintiff is required to provide an affidavit of merit by a medical expert, and the failure to submit an affidavit by a medical expert competent to attest to the meritorious nature of the plaintiff’s claims requires dismissal of the Complaint. (*Id.* at 28.) Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions. (*Buch v. Tenner*, 204 A.D.3d 635, 638 [2d Dept. 2022].) In general, a hospital may be vicariously liable for the negligence or malpractice of its employees acting within the scope of employment under the doctrine of *respondeat superior*. (*Valerio v. Liberty Behavioral Mgt. Corp.*, 188 A.D.3d 948, 949 [2d Dept. 2020].)

Defendant Dr. Czarkowska established a prima facie entitlement to summary judgment through the production of the documentary evidence and affirmation of Dr. Kaufman that she rendered care and treatment within the standard of care and did not proximately cause plaintiff Michelle Callen’s injuries. (*See Ortiz v. Wyckoff Hgts. Med. Ctr.*, 149 A.D.3d 1093 [2d Dept. 2017].) Dr. Kaufman demonstrated Dr. Czarkowska properly performed a neurologic consult with Dr. Lancaster, and acted within the standard of care in determining plaintiff Michelle Callen did not sustain a stroke or need further neurologic treatment. Dr. Czarkowska further demonstrated

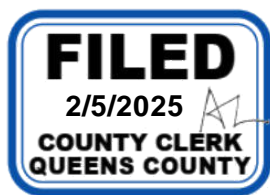
none of her acts or inactions were the proximate cause of plaintiff Michelle Callen's injuries, as her involvement was limited to a neurologic evaluation, and she appropriately recommended further ophthalmologic evaluation for plaintiff Michelle Callen's symptoms.

Plaintiff failed to raise a triable issue of fact in dispute, as one expert failed to assert specific departures by Dr. Czarkowska in the affirmation, and the other expert's opinions were conclusory and vague. (*See Pettway v. Vorobyeva*, 202 A.D.3d 1116 [2d Dept. 2022].) Plaintiffs' expert did not opine Dr. Czarkowska improperly performed a neurologic evaluation, but merely opined she should have recognized the immediacy of plaintiff Michelle Callen's ophthalmologic emergency and done more. However, plaintiffs' expert opinion was conclusory, failed to articulate the standard of care for a neurologic consult, and how Dr. Czarkowska violated it. As plaintiffs' expert opinions were unsupported by the medical evidence, there are no issues of fact in dispute with regard to Dr. Czarkowska's care and treatment.

Accordingly, defendant Hannah Czarkowska, M.D.'s motion for summary judgment and dismissal of plaintiffs' Complaint pursuant to CPLR §3212 is granted, and plaintiffs' Complaint is dismissed as to defendant Dr. Czarkowska.

This constitutes the decision and Order of the Court.

Dated: February 4, 2025



  
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Hon. Tracy Catapano-Fox, J.S.C.