

DelaRosa v St. Catherine of Siena Med. Ctr.

2025 NY Slip Op 34118(U)

June 6, 2025

Supreme Court, Queens County

Docket Number: Index No. 706611/2020

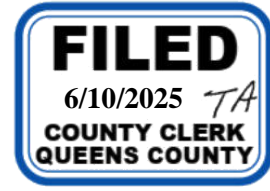
Judge: Tracy Catapano-Fox

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Short Form Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS



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GENEROSA DELAROSA,

Index No. 706611/2020

Plaintiff,

Part MDP

-against-

Motion Date: May 14, 2025

ST. CATHERINE OF SIENA MEDICAL CENTER,
HARITHA VEERAMACHANENI, M.D., JOSEPH
LINDNER, P.A., LONG ISLAND PLASTIC
SURGICAL GROUP, P.C., and JUSTIN MARGOLIS,
M.D,

Calendar No. 9

Sequence No. 1

Defendants.

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The following papers numbered EF-110 to EF-231 read on this motion by defendant JOSEPH LINDNER, P.A. for summary judgment and dismissal of plaintiff’s Complaint pursuant to CPLR §3212.

Papers
Numbered

- Notice of Motion, Affirmation, Exhibits.....EF110-EF148
- Affirmation in Opposition, Exhibits.....EF188-EF197
- Reply Affirmation, Exhibits.....EF227-EF231

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

Defendant Joseph Lindner, P.A.’s motion for summary judgment and dismissal of plaintiff’s Complaint pursuant to CPLR §3212 is granted, as defendant PA Lindner eliminated all triable issues of material fact regarding whether he departed from accepted standards of care or proximately caused plaintiff’s injuries. (*See generally DiLorenzo v. Zaso*, 148 A.D.3d 1111 [2d Dept. 2017].)

Plaintiff commenced this action for medical malpractice and lack of informed consent for care and treatment provided by defendants from July 8, 2019 and August 13, 2019. Plaintiff filed the Summons and Complaint on June 4, 2020, and issue was joined by moving defendant via the filing of his Verified Answer on July 27, 2020.

Defendant PA Lindner argues he is entitled to summary judgment and dismissal of plaintiff's Complaint and presents the pleadings, Bills of Particulars, deposition testimony, the Note of Issue, plaintiff's medical records, and the expert affirmation of William Suggs, M.D. in support of his motion. Defendant argues the evidence shows that he did not depart from accepted standards of care or cause plaintiff's injuries, but rather rendered care and treatment in accord with good and accepted practices. Defendant further argues plaintiff's claim for lack of informed consent cannot be maintained and therefore must be dismissed.

Defendant PA Lindner presents the expert affirmation of Dr. Suggs in support of his motion. Dr. Suggs affirmed to being a board-certified vascular surgeon licensed in New York and familiar with the standard of care as it applies to physician assistants. Dr. Suggs further affirmed to reviewing the pleadings, Bills of Particulars, the deposition testimony, and plaintiff's medical records in rendering his opinions. Dr. Suggs opined within a reasonable degree of medical certainty that defendant PA Lindner did not deviate from accepted standards of medical practice in the care rendered to plaintiff. He further opined within a reasonable degree of medical certainty that any alleged acts or omissions by PA Linder were not the proximate cause of plaintiff's injuries, nor did the treatment worsen plaintiff's condition or deprive plaintiff of an opportunity for a better outcome.

Dr. Suggs reviewed plaintiff's pertinent medical history and noted on August 20, 2018, plaintiff presented to co-defendant Dr. Veeramachaneni for mastectomy reconstruction. Dr. Veeramachaneni performed the reconstruction by way of DIEP (deep inferior epigastric perforator) flap surgery on July 8, 2019 at St. Catherine of Siena Medical Center, after which PA Linder provided post-operative care and treatment to plaintiff. Dr. Suggs opined PA Lindner complied with the standard of care by authoring detailed notes and documenting discussions with both ICU attending physician Dr. Freeman and surgeon Dr. Veeramachaneni. He opined PA Lindner ordered labs requested by Dr. Veeramachaneni as well as CPK and lactic acid to broaden the differential diagnosis as to the etiology of plaintiff's complaints. Dr. Suggs opined the potential diagnosis of compartment syndrome was included in PA Lindner's differential diagnosis although not specifically stated, by virtue of the notation regarding rhabdomyolysis.

Dr. Suggs opined PA Lindner appropriately investigated plaintiff's complaints, by ordering labs, CPK and lactic acid studies and duplex studies of plaintiff's lower extremities to see if there was a blood flow obstruction. He opined PA Lindner appropriately performed neurovascular examinations, and properly recognized, documented and investigated plaintiff's motor and sensory deficits as well as complaints of leg pain, numbness, decreased sensation below the knee and paresthesia following surgery. Dr. Suggs opined PA Lindner properly conveyed this information to the surgical team as well as the ICU attending. He opined PA Lindner properly examined plaintiff's lower extremities and compartments, noting the extremities were warm and well perfused with decreased sensation to light touch below the knees, and noting the compartments

were soft. Dr. Suggs opined PA Lindner performed proper and appropriate examinations of plaintiff's compartments as well as proper and appropriate sensory and perfusion examination and there were no clinical signs of compartment syndrome. He further opined it was not necessary to measure the circumference of plaintiff's calves as plaintiff's compartments were soft on examination. Dr. Suggs also opined it was not necessary to obtain compartment pressures, as plaintiff's compartments were soft at the time of examination, and checking of compartment pressures is not typically done by a critical care physician assistant.

Dr. Suggs opined PA Lindner properly and timely communicated his findings on examination, as he properly discussed plaintiff's condition with Dr. Freeman and relayed to Dr. Veeramachaneni that plaintiff was having lower extremity paresthesia and was in severe pain. He opined PA Lindner had the right to rely on the medical diagnosis of treating physicians, and properly relied on Dr. Veeramachaneni's assessment of neuropraxia based upon their conversation. Dr. Suggs opined PA Lindner properly and appropriately requested vascular surgery consultation and contacted Dr. Veeramachaneni after noting a change in examination. He opined an earlier vascular surgery consultation would not have made a difference, as Dr. Margolis examined the patient on July 9, 2019 at 6:46pm and determined she was not suffering from compartment syndrome and surgery was not warranted. Dr. Suggs further opined PA Lindner was not permitted to perform surgery independently, and the fasciotomy needed to release compartment pressure needed to be performed by a physician and not a physician assistant. He further opined PA Lindner's treatment did not require informed consent, as he did not render any surgical treatment or render treatment that involved an invasion or disruption of the integrity of plaintiff's body. Dr. Suggs opined PA Lindner performed proper and appropriate examinations of plaintiff, properly documented and communicated his findings to appropriate physicians upon whom he had the right to rely as a physician assistant. He further opined PA Lindner did not depart from the standard of care in treatment plaintiff nor did his acts or omissions proximately cause plaintiff's injuries. Based upon the foregoing, defendant argues that he is entitled to summary judgment.

Plaintiff opposes the motion and argues defendant PA Lindner failed to eliminate all triable issues of fact regarding whether he departed from accepted standards of care or proximately caused her injuries. Plaintiff presented the expert affirmation of a physician licensed in New Jersey and Pennsylvania and board-certified in general and vascular surgery in support of her position. Plaintiff's expert affirmed to being familiar with compartment syndrome, fasciotomies, and the applicable standard of care. Plaintiff's expert further affirmed to reviewing the motion papers, Dr. Suggs' affirmation, the deposition testimony, and plaintiff's medical records in rendering opinions. Based upon the foregoing materials and a review of plaintiff's treatment, plaintiff's expert opined to a reasonable degree of medical certainty that PA Lindner departed from accepted standards of care and proximately caused plaintiff's injuries including the severity of her compartment syndrome, nerve damage, muscle damage, bilateral drop foot, severe pain, scarring, and difficulty and pain with walking.

Plaintiff's expert explained compartment syndrome occurs when there is a build up of pressure in an extremity that causes ischemic injury to the muscles and nerves, depriving the extremity of blood flow. Plaintiff's expert opined as soon as plaintiff woke up from surgery, she had unexplained bilateral leg pain described as a 10/10 and the worst pain ever, and based upon the standard of care this should have immediately triggered a differential diagnosis of compartment syndrome. Plaintiff's expert further opined the length of her surgery, intraoperative positioning, sequential compression device placement intraoperatively and postoperatively, anticoagulation, and obesity were risk factors for acute compartment syndrome. Plaintiff's expert further opined elevated CK is indicative of muscle necrosis which is a hallmark of compartment syndrome. Plaintiff's expert also explained sometimes the classic signs of compartment syndrome are late findings, and their absence should not dissuade a doctor from including it in the differential diagnosis. Plaintiff's expert further opined if compartment syndrome is suspected, the clinician should obtain compartment pressure measurements via a simple procedure of inserting a Stryker needle manometer into the compartment to determine if there is a buildup of pressure. Plaintiff's expert opined that in plaintiff's case, obtaining compartment pressures was of great importance and compartment syndrome should have been immediately and appropriately investigated as soon as she woke up from her surgery complaining of extreme bilateral leg pain.

Plaintiff's expert opined PA Lindner departed from accepted standards of care by failing to rule out compartment syndrome, failing to communicate that it was on his differential diagnosis to Dr. Veeramachaneni, failing to document it on his differential diagnosis, and failing to obtain a surgical consult. Plaintiff's expert opined pursuant to the standard of care, if compartment syndrome is suspected, it must be expeditiously worked up, which includes requesting a surgical consultation and measurement of the compartment pressures. Plaintiff's expert opined time is of the essence because a delay in diagnosis results in progression of the compartment syndrome and resulting worsening injuries. Based upon the foregoing, plaintiff's expert opined PA Lindner's departures were a substantial factor in the delay in diagnosis and plaintiff's resulting injuries.

Pursuant to CPLR §3212, “[a] motion [for summary judgment] shall be granted if . . . the cause of action . . . [is] established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” (CPLR 3212 [b]; *Rodriguez v. City of New York*, 31 N.Y.3d 312 [2018].) The motion for summary judgment must also “show that there is no defense to the cause of action.” (*Id.*). The party moving for summary judgment must make a prima facie showing that it is entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact and it can be decided as a matter of law. (CPLR § 3212 [b]; *see Jacobsen v New York City Health and Hosps. Corp.*, 22 N.Y.3d 824 [2014]; *Brill v City of New York*, 2 N.Y.3d 648 [2004].) In deciding a summary judgment motion, the court does not make credibility determinations or findings of fact. Its function is to identify issues of fact, not to decide them. (*Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 [2012].) Once a prima facie showing has been made, however, the burden shifts to the non-moving party to prove that material issues of

fact exist that must be resolved at trial. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980].)

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 [2d Dept. 2020].)

To establish a cause of action to recover damages based upon lack of informed consent, a plaintiff must prove “(1) that the person providing the professional treatment failed to disclose alternatives thereto and failed to inform the patient of reasonably foreseeable risks associated with the treatment, and the alternatives, that a reasonable medical practitioner would have disclosed in the same circumstances, (2) that a reasonably prudent patient in the same position would not have undergone the treatment if he or she had been fully informed, and (3) that the lack of informed consent is a proximate cause of the injury.” (*Gilmore v. Mihail*, 174 A.D.3d 686, 688 [2d Dept. 2019].)

Defendant PA Lindner established a prima facie entitlement to summary judgment, as he demonstrated through the documentary evidence and expert affirmation that he did not depart from accepted standards of care or proximately cause plaintiff's injuries. Defendant PA Lindner demonstrated through the deposition testimony, medical records, and Dr. Suggs' affirmation that he appropriately evaluated plaintiff, performed appropriate examinations based upon her symptoms, appropriately included compartment syndrome in his differential diagnosis, and appropriately and timely communicated his findings and opinions to Dr. Veeramachaneni and Dr. Freeman. Dr. Suggs' affirmation demonstrated that despite the literal language of compartment syndrome, it is clear PA Lindner included compartment syndrome in his differential diagnosis that he communicated to the attending physicians. PA Lindner demonstrated he noted plaintiff's extreme pain and elevated CK as rhabdomyolysis, which is a hallmark of compartment syndrome, and conveyed this to Dr. Veeramachaneni when he spoke with him. PA Lindner also demonstrated through Dr. Suggs' affirmation that an earlier vascular surgery consultation would not have made a difference because when Dr. Margolis examined plaintiff and determined compartment syndrome was not present. PA Lindner further demonstrated through Dr. Suggs' affirmation that

compartment syndrome is a progressive condition and therefore if it was not detected at that time, it would not have been detectable earlier. PA Lindner also demonstrated he did not render any care or treatment to plaintiff that warranted her informed consent, and none of his actions or inactions proximately caused plaintiff's injuries. Based upon the foregoing, defendant PA Lindner established a prima facie entitlement to summary judgment.

Plaintiff failed to raise a triable issue of material fact in dispute, as plaintiff's expert affirmation failed to sufficiently rebut Dr. Suggs' findings and opinions regarding PA Lindner's care and treatment of plaintiff. Plaintiff's expert's opinions regarding PA Lindner were conclusory and unsupported by the medical evidence or the standard of care applicable for a physician assistant. (*See Mendoza v. Maimonides Med. Ctr.*, 203 A.D.3d 715, 716 [2d Dept. 2022][“General and conclusory allegations of medical malpractice, however, unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat a defendant physician's summary judgment motion.”]; *see also Lowell v. Flom*, 195 A.D.3d 801, 803 [2d Dept. 2021][holding that an expert opinion that is contradicted by the record or relies upon facts that are not supported by the record is speculative, conclusory, and insufficient to defeat summary judgment].) Plaintiff's expert failed to address Dr. Suggs' opinion that compartment syndrome was on the differential diagnosis and conveyed to Dr. Veeramachaneni by way of rhabdomyolysis. Additionally, while plaintiff's expert opined it was generally a departure to not take compartment pressures, plaintiff's expert failed to articulate the standard of care required PA Lindner to perform pressures as the physician assistant. Plaintiff's expert failed to address Dr. Suggs' opinion that even had PA Lindner obtained an immediate surgical consult, it would not have made a difference in any respect because when Dr. Margolis performed his vascular surgery evaluation, he determined plaintiff did not have compartment syndrome.

Plaintiff also failed to raise a triable issue of material fact in dispute with respect to her claim for lack of informed consent, as she failed to sufficiently rebut that portion of defendant PA Lindner's motion with competent, admissible evidence. *See Keun Young Kim v. Lenox Hill Hosp.*, 156 A.D.3d 774, 775 [2d Dept. 2017].) As plaintiff's expert presented no opinions with regard to the lack of informed consent claim against defendant PA Lindner, there are no triable issues of fact in dispute. Based upon the foregoing, plaintiff failed to rebut defendant PA Lindner's prima facie case and failed to demonstrate dismissal is not warranted.

Accordingly, defendant Joseph Lindner, P.A.'s motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 is granted. This constitutes the decision and Order of the Court.

Dated: June 6, 2025



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

