

Blagrove v Distant

2025 NY Slip Op 34819(U)

December 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 521970/2019

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 11th day of December 2025.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
A.J. BLAGROVE,

Plaintiff,

-against-

DECISION & ORDER

Index No. 521970/2019
Mo. Seq. 5

DALE DISTANT, M.D., FASIKA TEDLA, M.D., and FMA
ACCESS FLATLANDS, P.C.,

Defendants.

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

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

NYSCEF #s: 79 – 81, 82 – 93, 98 – 100, 101

Defendant Fasika Tedla, M.D. (“Dr. Tedla”) moves for an Order, pursuant to CPLR 3212, granting summary judgment in his favor and dismissing Plaintiff’s claims against him (Seq. No. 5). Plaintiff opposes the motion.

Plaintiff commenced this action on October 8, 2019, asserting claims of medical malpractice in connection with an October 3, 2018 balloon probe angioplasty, during which Plaintiff had an allergic reaction to contrast dye.

Plaintiff had been treated for end stage renal disease with a left arm dialysis fistula since September 2016. Due to the dialysis fistula becoming clogged, Plaintiff underwent a balloon probe angioplasty on three occasions (February 14, 2017, February 13, 2018, and May 15, 2018) prior to the events at issue.

On October 3, 2018, Plaintiff was referred from the dialysis center at SUNY Downstate Medical Center to FMA Access Flatlands, P.C. due to suspected stenosis or blood clot causing

insufficient blood flow through the fistula. Dr. Tedla performed an angioplasty using the balloon probe technique, where contrast dye is injected into a balloon rather than directly into the patient's bloodstream. However, Plaintiff experienced an allergic reaction during the procedure with coughing, wheezing, and shortness of breath. Dr. Tedla administered two doses of Epinephrine and additional medications to control Plaintiff's hypertension. Plaintiff was then transferred to Mount Sinai Hospital for further treatment and discharged on October 10. Plaintiff alleges that Dr. Tedla departed from the standard of care in his performance of the October 3 angioplasty, and that said departures proximately caused Plaintiff's allergic reaction and related injuries.

In evaluating a summary judgment motion in a medical malpractice action, the Court applies the burden shifting process 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” (*Rosenzweig v Hadpawat*, 229 AD3d 650, 652 [2d Dept 2024]). “In order to sustain this prima facie burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff's complaint and bill of particulars” (*Martinez v Orange Regional Med. Ctr.*, 203 AD3d 910, 912 [2d Dept 2022]). “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* at 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 order not to be considered speculative or

conclusory, expert opinions in opposition should address specific assertions made by the movant's experts, setting forth an explanation of the reasoning and relying on specifically cited evidence in the record” (*i.d.* at 899).

In support of the motion, Dr. Tedla submits an expert affirmation from Jason C. Hoffman, M.D. (“Dr. Hoffman”), a licensed physician board certified in diagnostic radiology and interventional radiology.

Dr. Hoffman opines that all care and treatment provided by Dr. Tedla on October 3, 2018 was within good and accepted standards of medical practice. Specifically, he notes that Plaintiff had a known contrast dye allergy, and he opines that Dr. Tedla appropriately administered prophylactic medications (SoluCortef, Benadryl, and Pepcid) to decrease her risk of allergic reaction, as had been done in Plaintiff’s prior procedures. He opines that Dr. Tedla appropriately used “an accelerated premedication protocol due to the urgent need for the procedure.”

Dr. Hoffman further opines that a balloon probe technique was the proper method to reduce Plaintiff’s risk of allergic reaction, since it would not introduce contrast directly into the bloodstream. He opines this procedure complied with the standard of care, in light of her “extensive history of hemodialysis with an allergy to contrast.”

Dr. Hoffman opines that Dr. Tedla immediately and properly recognized Plaintiff’s signs of allergic reaction and took “swift and appropriate action” by administering Epinephrine. He further opines that Dr. Tedla properly administered further medications Hydralazine and Labetalol to lower her blood pressure due to her “hypertensive response to Epinephrine.” He then transferred Plaintiff “expeditiously” to Mount Sinai Hospital for further treatment. Dr. Hoffman opines that this response to her allergic reaction was timely and complied with the standard of care.

Additionally, on the issue of proximate causation, Dr. Hoffman opines that the alleged departures from the standard of care by Dr. Tedla did not cause Plaintiff's injuries. The expert opines that despite the use of the balloon probe, which was "intended to prevent an allergic reaction," exposure to contrast dye may still occur in the absence of negligence. He explains that the balloon may become "compromised as it is passed over the metal stents in the patient's vein," or the contrast may enter the bloodstream incidentally when reinserting the catheter. He opines that neither of these circumstances indicate error or negligence on the part of Dr. Tedla.

The movant's expert has established prima facie that Dr. Tedla complied with the standard of care in his performance of the balloon probe angioplasty, as well as his timely recognition and treatment of Plaintiff's allergic reaction. The expert opines that the angioplasty was indicated and necessary on an "urgent" basis, and that it had been performed in the same manner on three prior occasions without complication.

The expert offers a detailed opinion that Dr. Tedla utilized an appropriate method and prophylactic medications to reduce her risk of allergic reaction, but that the procedure still carried a known risk of contrast dye leakage in the absence of malpractice. He therefore established that her reaction was not caused by any acts or omissions on Dr. Tedla's part. Accordingly, the burden shifts to Plaintiff to raise an issue of fact as to the standard of care and proximate causation.

In opposition, Plaintiff submits an expert affirmation from James R. Stone, M.D. ("Dr. Stone"), a licensed physician board certified in diagnostic radiology and vascular and interventional radiology.

Dr. Stone notes that each of Plaintiff's angioplasty procedures, including the one performed by Dr. Tedla on October 3, 2018, utilized a balloon probe technique to prevent or reduce her risk of exposure to contrast dye. He also states that "there is a recognized risk that

microperforations, leakage, or balloon rupture may release dye into the circulation” even when this technique is performed appropriately. The expert states that the allergic reaction experienced by Plaintiff was consistent with “small leaks or microperforations” which may occur despite proper inspection of the balloon.

Plaintiff’s expert opines that the prophylactic regimen of SoluCortef, Benadryl, and Pepcid given to Plaintiff was “inconsistent with the guidelines of the American College of Radiology.” He states that this method is “generally reserved for patients with a prior moderate or severe reaction” and opines that the “preferred approach” is an oral regimen of steroids beginning 12-13 hours before the procedure. He also states that “when imaging is urgent and less preparation time is available, an accelerated intravenous protocol” may be given four hours in advance, and that in “true emergencies . . . a so-called ‘stat’ regimen *may be attempted* with immediate IV steroid and diphenhydramine, but this approach has not been shown to be reliably effective” (emphasis added).

The expert acknowledges that on October 3, Plaintiff was “referred urgently for treatment,” and that she received prophylactic medications at the start of the procedure. He opines, however, that these medications were ineffective or “essentially useless” because they were not given at least five hours before the procedure.

Plaintiff’s expert states that “breakthrough reactions may occur even when prophylaxis is administered correctly,” but that “the risk and severity of the event would have been reduced” if Dr. Tedla had followed the American College of Radiology recommendation of administering prophylaxis “at least five hours before contrast exposure . . . with the optimal timing involving multiple steroid doses administered starting at least 12-13 hours prior.”

The expert further opines that Dr. Tedla failed to “consider or utilize alternative approaches that would have been safer” for a patient with a known allergy, such as “gadolinium to fill balloons or CO2 angiography for vessel mapping.”

Based on evaluation of these submissions, the Court finds Plaintiff’s expert affirmation is insufficient to raise a triable issue of fact. The expert acknowledges that the balloon probe technique used by Dr. Tedla (and by Plaintiff’s other providers on three prior occasions) is a standard method for reducing the risk of contrast dye exposure. He concedes that Plaintiff’s allergic reaction is “consistent” with a leak or microperforation despite proper performance of the procedure. He does not raise any issues of fact as to whether the procedure was indicated or performed correctly, and his suggestion that Dr. Tedla could have used “alternative approaches” is equivocal and fails to articulate a departure from the standard of care. Though he briefly mentions that gadolinium and CO2 angiography can be used as “recognized alternatives” for patients with iodine contrast allergies, he does not counter the movant’s expert that balloon-probing complied with accepted medical standards and had been successfully used on this patient before October 3. The expert also does not raise any issues of fact as to Dr. Tedla’s intraoperative treatment of the allergic reaction.

Instead, the expert’s opinions are focused on the administration of prophylactic medications, which he opines should have been administered at least five hours before the procedure or “optimally” 12-13 hours before to have the intended benefit. However, these opinions are conclusory, speculative, unsupported by the record, and fail to articulate the applicable standard of care for a patient in Plaintiff’s position. The expert relies on a “preferred” protocol recommended by the American College of Radiology, but he does not opine as to whether not following this regimen was a deviation from good and accepted medical practice, particularly due to the emergent nature of her angioplasty.

Plaintiff's expert does not dispute the movant's expert opinion that Plaintiff's procedure was done on an "urgent" basis. In fact, Plaintiff's expert admits that in emergent circumstances, physicians may administer accelerated or "stat" IV prophylaxis. The expert fails to address in any detail the timing of Plaintiff's angioplasty and whether it was feasible to delay the procedure to allow the medications to take "optimal" effect. Thus, he does not raise a genuine issue of fact that Dr. Tedla departed from the standard of care by not administering prophylactic medications on a 5-hour or 13-hour schedule in this case.

Plaintiff's expert also fails to raise an issue of fact as to proximate causation. The expert merely states in a conclusory manner that Dr. Tedla's alleged departures "materially contributed" to her injuries. As the expert's opinions are conclusory, speculative, and improperly rely on hindsight reasoning, they are insufficient to raise an issue of fact.

On the issue of informed consent, the movant establishes prima facie that Plaintiff was informed of the risks, benefits, and alternatives to the procedure. Although Plaintiff argues in opposition that there is no signed consent form for the October 3 procedure in the record, the movant submitted three detailed consent forms for her prior balloon probe angioplasty procedures – two of which occurred in February and May of the same year – demonstrating that she was aware of the risks, including contrast dye reaction.

Additionally, Dr. Tedla testified that "we took consent" prior to the emergency procedure, and Plaintiff has presented no testimony or evidence raising an issue of fact on this claim. Significantly, Plaintiff's expert affirmation sets forth that "she was brought into the procedure room, consented, and prepared for angioplasty" on October 3. Thus, Plaintiff has not raised any triable issue of fact as to the informed consent claim.

For these reasons, Dr. Tedla's motion for summary judgment is granted in its entirety, and the claims against him are dismissed.

The Court notes that Plaintiff's claims against co-defendant Dale Distant, M.D. were discontinued by so-ordered stipulation on November 12, 2025 (NYSCEF Doc. 102), and his motion for summary judgment was withdrawn. As acknowledged during oral argument, Plaintiff's only remaining claims against co-defendant FMA Access Flatlands, P.C. arise from vicarious liability for Dr. Tedla. "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]). Accordingly, the vicarious liability claims against FMA Access Flatlands, P.C. with respect to Dr. Tedla are dismissed as a matter of law, and this action is dismissed in its entirety.

It is hereby:

ORDERED that Dr. Tedla's motion (Seq. No. 5) for summary judgment is **granted**; and it is further

ORDERED that any vicarious liability claims against FMA Access Flatlands, P.C. on behalf of Dr. Tedla are dismissed, and this action is disposed in its entirety.

The Clerk shall enter judgment in favor of FASIKA TEDLA, M.D. and FMA ACCESS FLATLANDS, P.C.

This constitutes the decision and order of this Court.

ENTER.



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