

Nunez v Long Is. Jewish Med. Ctr.

2025 NY Slip Op 35323(U)

April 4, 2025

Supreme Court, Queens County

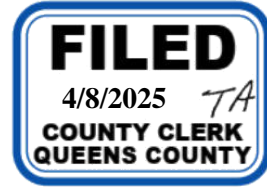
Docket Number: Index No. 704954/2021

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
EMILY NUNEZ as Parent and Natural guardian of
L.P.F. an infant,

Index No. 704954/2021

Plaintiff, Part MDP
Motion Date: March 5, 2025

-against-

Calendar No. 23
Sequence No. 2

LONG ISLAND JEWISH MEDICAL CENTER,
NORTHWELL HEALTH, INC., SANTHA
KAMINENI, MD and QUEENS SURGICAL &
OB/GYN P.C.,

Defendants.

-----X

The following papers numbered EF-62 to EF-236 read on this motion by defendants LONG ISLAND JEWISH MEDICAL CENTER and NORTHWELL HEALTH, INC. for summary judgment and dismissal of plaintiff’s Complaint pursuant to CPLR §3212.

Papers
Numbered

- Notice of Motion, Affirmation, Exhibits.....EF62-EF102
- Affirmation in Opposition, Exhibits.....EF131-EF174, EF219-EF221
- Reply Affirmation.....EF236

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

Defendants Long Island Jewish Medical Center (LIJMC) and Northwell Health, Inc.’s motion for summary judgment and dismissal of plaintiff’s Complaint pursuant to CPLR §3212 is granted as to defendant Northwell Health, Inc. and plaintiff’s claim for lack of informed consent, but denied as to plaintiff’s claim for medical malpractice against defendant LIJMC.

Plaintiff commenced this action for medical malpractice and lack of informed consent against defendants for neonatal care provided at LIJMC between June 24, 2015 and September 26,

2015. Plaintiff filed the Summons and Complaint on March 3, 2021, followed by a Supplemental Summons and Amended Complaint on March 17, 2021. Issue was joined via the filing of moving defendants' Answer on March 29, 2021.

Defendants argue they are entitled to summary judgment and dismissal of plaintiff's Complaint as their staff's care and treatment did not depart from acceptable standards and did not cause any injuries to plaintiff or infant plaintiff. They present the pleadings, plaintiff's Bill of Particulars, plaintiff's medical records, the parties' deposition testimony, affirmation of Avraham Z. Schwartz, Esq. and the expert affirmations of Dr. Robert Berg and Dr. Ivan Hand in support of their motion. Defendants argue Dr. Santha Kamineni and defendants' staff properly cared for and treated plaintiff within the acceptable standard of care. They also properly advised plaintiff of the risks associated with preterm premature rupture of membranes and obtained her informed consent to perform a Cesarean section, though plaintiff ultimately did not have a Cesarean section. Defendants argue they provided appropriate care to plaintiff during her admission at LIJMC and appropriate care to infant plaintiff, who was extremely premature and suffered complications not due to any negligence. They argue they are not vicariously liable for Dr. Kamineni's care and treatment of plaintiff, as she was plaintiff's private attending physician and not defendants' employee. Defendants further argue plaintiff's claims against Northwell Health, Inc. should be dismissed, as it is a corporate entity that does not render medical care and did not have a physician-patient relationship with plaintiff. Defendants present the affirmation of Avraham Schwartz, Vice President of Risk Management from Northwell Health, Inc. to demonstrate it does not provide medical care, nor did it provide medical care to plaintiff and therefore owes no duty to plaintiff.

Defendants present the affirmation of Dr. Robert Berg in support of their motion. Dr. Berg affirmed to be a physician licensed to practice in New York who is board certified in Obstetrics and Gynecology. He affirmed to be fully familiar with the applicable standard of care in 2015 and currently based upon his training and experience. He further reviewed the pleadings, parties' deposition testimony and plaintiff's medical records in rendering opinions in this case. Dr. Berg opined within a reasonable degree of medical certainty that defendants' staff involved in plaintiff's prenatal care at LIJMC and plaintiff's labor and delivery between June 24, 2015 and July 3, 2015, including Dr. Kamineni, comported with the standard of care and did not proximately cause infant plaintiff's injuries. He opined defendants and Dr. Kamineni appropriately advised plaintiff of the risks of preterm premature rupture of membranes (PPROM) and obtained her informed consent to perform a Cesarean section, which ultimately did not occur.

Dr. Berg opined within a reasonable degree of medical certainty that defendants' staff properly evaluated plaintiff upon her arrival at LIJMC on June 24, 2015, properly diagnosed PPRM and implemented a treatment plan. He defined PPRM as membrane rupture that occurs prior to labor and prior to 37 weeks gestation, noting in most cases the cause is unknown, but could be caused by an infection to the reproductive system. He further opined a membrane rupture is

irreversible and requires delivery of the fetus. Dr. Berg opined due to the risks of mortality and morbidity associated with premature delivery, the standard of care requires evaluating maternal and fetal status by fetal heartrate and uterine activity monitoring when PPRM occurs to determine whether a vaginal or Cesarian delivery is medically warranted. Dr. Berg opined defendants' staff properly evaluated plaintiff and determined the membrane had ruptured, and properly admitted and monitored her under Dr. Kamenini's care. He opined defendants' staff comported with the standard of care by ordering a CBC and vaginal cultures after confirming PPRM, and both tests revealed signs consistent with an infection. Dr. Berg further opined defendants' staff properly administered antibiotics due to suspicion of infection raised by PPRM, even though plaintiff did not test positive for GBS until two days later.

Dr. Berg opined defendants' staff properly evaluated infant plaintiff and devised an appropriate plan to monitor her condition and delay her delivery as long as possible. He opined it was appropriate pursuant to the standard of care to attempt to delay delivery as long as possible while ensuring the fetus was not compromised. He noted infant plaintiff had a normal presentation with no fetal abnormalities and defendants' staff continuously monitored infant plaintiff's fetal heartrate from admission through delivery. Dr. Berg opined the standard of care requires hospital staff review the readings from the monitor and contact the attending obstetrician and/or maternal fetal medicine (MFM) specialist if there are deviations from normal. Dr. Berg further opined defendants and Dr. Kamenini appropriately determined infant plaintiff's testing was reassuring, conservative management was warranted and a Cesarean delivery was not warranted.

Dr. Berg opined defendants' staff appropriately administered plaintiff tocolytics to delay delivery and steroid medication to minimize some risks associated with extreme prematurity. He further opined defendants' staff and Dr. Kamenini properly implemented their care plan to treat plaintiff in light of PPRM, including monitoring infant plaintiff's heartrate and obtaining MFM consultations and biophysical profiles. Dr. Berg opined defendants' staff appropriately monitored infant plaintiff's fetal heartrate and correctly interpreted and documented the tracings, noting they remained generally stable and any decelerations were either self-limited or appropriately resuscitated.

Dr. Berg opined defendants' staff appropriately evaluated infant plaintiff's condition by obtaining repeat biophysical profiles and MFM consults. Dr. Berg opined the standard of care requires defendants to obtain a MFM consult for a patient with PPRM and coordinate the patient's plan with MRM. He noted defendants' staff consulted with MFM Dr. Adiel Fleischer on June 25, 2015 and June 30, 2015, and Dr. Natalie Meirowitz on July 3, 2015, and agreed with the plan to proceed with infant plaintiff's delivery. Dr. Berg opined the prenatal care given to plaintiff at LIJMC by defendants' staff between June 24, 2015 through July 3, 2015 was appropriate and comported with the applicable standard of care and plaintiff's allegations of negligence are without merit. He further opined defendants' staff and Dr. Kamenini properly advised plaintiff of the risks

associated with PPRM and obtained her informed consent to perform a Cesarean section even though it ultimately was not performed. Dr. Berg noted Dr. Kamenini obtained a written consent to perform a Cesarean section from plaintiff, and opined it was an appropriate exercise of medical judgment for Dr. Kamenini and defendants' staff to deliver infant plaintiff vaginally even after obtaining plaintiff's informed consent to perform a Cesarean section, and did not proximately cause plaintiff's injuries.

Dr. Berg opined within a reasonable degree of medical certainty that defendants' staff comported with the applicable standard of care in treating plaintiff during her labor and delivery on July 3, 2015. He opined pursuant to the standard of care, the decision to perform a Cesarean section is a medical judgment based upon a review of the fetal heartrate and totality of circumstances. Dr. Berg opined defendants' staff and Dr. Kamenini properly decided to perform a vaginal delivery instead of a Cesarean section, as a C-section was not indicated prior to delivery and infant plaintiff's heartrate tracings were reassuring. He opined it was appropriate pursuant to the standard of care to weigh the risk of chorioamnionitis against the complications associated with extreme prematurity, noting plaintiff had been administered antibiotics since her admission at LIJMC. Dr. Berg opined it was appropriate to proceed with a vaginal delivery on July 3, 2015 given the risks associated with suspected chorioamnionitis and category 2 fetal heartrate tracings rather than attempt to delay delivery longer. He opined defendants' staff and Dr. Kamenini appropriately performed the vaginal delivery and none of their actions or inactions proximately caused infant plaintiff's injuries. Dr. Berg opined due to infant plaintiff's extreme prematurity, she was at serious risk for sustaining a brain injury even in the absence of negligence, and the medical records show infant plaintiff was not impacted by infection affecting plaintiff prior to delivery. Dr. Berg also opined infant plaintiff did not suffer a hypoxic ischemic encephalopathy or hypoxic ischemic event prior to or during delivery, as infant plaintiff had a normal cord pH and Apgar score after delivery.

Defendants also present the affirmation of Dr. Ivan Hand in support of their motion. Dr. Hand affirmed to be a physician licensed in New York who is board certified in pediatrics and neonatal-perinatal medicine. He affirmed to be fully familiar with the applicable standard of care in 2015 in the field of neonatology, and reviewed the pleadings, parties' deposition testimony and plaintiff's medical records in support of his opinions. Dr. Hand opined within a reasonable degree of medical certainty that defendants' staff comported with the standard of care in treating infant plaintiff from July 3, 2015 through September 26, 2015, and none of their actions or inactions proximately caused infant plaintiff's injuries.

Dr. Hand opined infant plaintiff experienced complications following her premature delivery on July 3, 2015, including RDS, pulmonary hemorrhage and IVH, which are unfortunate but typical complications associated with extreme prematurity and can occur even in the absence of negligence. He opined an earlier Cesarean section delivery would not have changed infant

plaintiff's outcome, as there was no evidence a hypoxic ischemic event occurred and the above risks existed regardless of method of delivery. Dr. Hand opined infant plaintiff was in good condition upon delivery despite being born at a gestational age of 26 weeks, as she had no cord abnormalities, normal blood gases, and her Apgar scores were normal and not indicative of neonatal depression. He further opined infant plaintiff's relatively good condition upon delivery suggests no evidence of a hypoxic ischemic event either during plaintiff's pregnancy or labor and delivery.

Dr. Hand opined plaintiff's claim that umbilical venous catheter was improperly placed or inserted is without merit. He noted the medical records showed infant plaintiff was having difficulty breathing upon delivery and a chest x-ray revealed findings suggestive of RDS and the presence of an enteric catheter. However, he opined there was no indication the catheter was in an improper position or outside the normal range, and no indication the umbilical catheters caused injury to infant plaintiff. Dr. Hand opined defendants' staff and attending neonatologist Dr. Shahana Perveen appropriately chose to treat infant plaintiff's RDS with NIMV upon arriving at the NICU, as intubation and administration of surfactant were not indicated. He further opined defendants' staff appropriately treated infant plaintiff while in the NICU by appropriately monitoring her condition and rendering appropriate treatment. Dr. Hand opined the standard of care for treating an infant born at 26 weeks gestation is to stabilize her condition and permit the infant to grow and gain weight until the infant can live outside a hospital setting.

Dr. Hand opined defendants' staff appropriately started infant plaintiff on antibiotics pending blood culture results, as plaintiff had GBS and the presence of chorioamnionitis raised a concern infant plaintiff may have a possible infection. He also opined it was appropriate to continue NIMV and caffeine, monitor for apnea of prematurity, continue IV antibiotic therapy for seven days due to an increase in infant plaintiff's white blood count and maternal chorioamnionitis, begin trophic feeds, and continue phototherapy and monitoring bilirubin secondary to jaundice. Dr. Hand noted infant plaintiff suffered a pulmonary hemorrhage on July 5, 2015, and defendants acted promptly and appropriately to revive infant plaintiff and treat her through intubation and ventilation. He further opined it was appropriate for defendants not to administer surfactant as it was unnecessary and less effective after forty-eight hours of life. Dr. Hand further opined defendants' staff care and treatment of infant plaintiff from July 5, 2015 through her discharge on September 26, 2015 was appropriate and comported with the applicable standard of care.

Dr. Hand opined defendants' staff did not proximately cause infant plaintiff's injuries, as her RDS, pulmonary hemorrhage, intraventricular hemorrhage (IVH) and their sequelae were unfortunate but unavoidable complications of her extreme prematurity. He opined infant plaintiff went into shock during her pulmonary hemorrhage, causing a lack of blood flow to the brain, and when defendants' staff resuscitated and intubated her, perfusion increased and caused infant plaintiff's blood vessels to bleed resulting in IVH. Dr. Hand further opined there is no specific

treatment for IVH and no way to prevent it from occurring, and therefore defendants' staff could not prevent infant plaintiff's bleeding and worsening during the period from July 6, 2015 through July 13, 2015. Dr. Hand opined infant plaintiff's RDS, pulmonary hemorrhage and IVH were not caused by defendants' alleged negligence but are complications that can occur in the absence of negligence as a result of extreme prematurity, and therefore defendants' staff's actions or inactions did not proximately cause infant plaintiff's injuries. Based upon the above, defendants argue summary judgment is warranted.

Plaintiff opposed defendants' motion, arguing there are issues of fact in dispute, and present the medical records and affirmations of Dr. Maureen Ellen Sims, Dr. John Kirkwood, and Dr. Bruce Halbridge in support of the opposition. Plaintiff did not oppose defendant Northwell Health, Inc.'s portion of the summary judgment motion. Plaintiff argues defendant LIJMC is vicariously liable for all care and treatment rendered during plaintiff's labor and delivery, and infant plaintiff's care, which resulted in severe and permanent injuries. She further argues there are conflicting expert opinions that warrant denial of the motion.

Plaintiff presented the affirmation of Dr. Maureen Ellen Sims in support of the opposition. Dr. Sims affirmed to be a physician licensed in California who is board certified in Pediatrics and Neonatal Perinatal-Medicine. She affirmed to be fully familiar with the national standards in 2015 for neonatal care, which were applicable in New York, and reviewed the pleadings, parties' deposition testimony, plaintiff's medical records and defendants' moving papers in rendering opinions. Dr. Sims opined defendants departed from good and accepted standards of care and these departures proximately caused infant plaintiff's injuries. She opined defendants departed from the standard of care in negligently positioning the umbilical venous catheter (UVC), failing to recognize the improper positioning of the catheter, and failing to properly resuscitate infant plaintiff after the code to prevent or ameliorate severe brain injury.

Dr. Sims disagreed with defendants' expert Dr. Hand, and opined infant plaintiff's prematurity did not directly cause her injuries, but made infant plaintiff vulnerable to these complications. Rather, Dr. Sims opined it was not infant plaintiff's prematurity but defendants' departures from good and accepted standards of care that caused her injuries. Dr. Sims referred to plaintiff's expert Dr. Halbridge and opined infant plaintiff's premature delivery was occasioned by defendants' negligent failure to properly treat a maternal infection. She further disagreed with Dr. Hand, and opined defendants' improperly placed the umbilical venous catheter in the right atrium, as seen in the imaging. Dr. Sims opined the improperly placed catheter caused the accumulation of fluid in the pericardial sac leading to cardiac tamponade and pulmonary hemorrhage, lack of blood flow and oxygen to infant plaintiff's brain.

Dr. Sims opined defendants departed from good and accepted standards in failing to remedy the negligent placement of the UVC after it migrated upward, and this failure resulted in

infant plaintiff's permanent injuries. She further opined defendants departed from good and accepted standards of care in negligently failing to appreciate the development of signs of compromised cardiac function such as decreased oxygen and increased acidosis. She disagreed that infant plaintiff's complications were typical of prematurity, and opined they do not occur in the absence of a seminal event, here being the decreased cardiac output that caused bradycardia secondary to the buildup of fluid in the pericardial space. Dr. Sims opined infant plaintiff's prematurity made her vulnerable because she needed the UVC, but it was the improper placement of the UVC that caused her hypoxic ischemic event, and opined infant plaintiff had a normal neurological examination before the code. Dr. Sims opined good and accepted standards of care required an earlier administration of dopamine and fluid bolus, and the delay in treating infant plaintiff allowed her to have a dangerously low blood pressure resulting in ischemia and deprivation of oxygen to her brain during the period immediately following the code.

Plaintiff also presented the affirmation Dr. John Robert Kirkwood in support of the opposition. Dr. Kirkwood affirmed to be a physician licensed in Massachusetts who is board certified in radiology and neuroradiology. He affirmed to be familiar with the applicable standard of care in New York, which is the same as national standards of care. Dr. Kirkwood reviewed the pleadings, medical records and moving papers and rendered opinions based upon his training and experience. Dr. Kirkwood opined within a reasonable degree of medical certainty that infant plaintiff suffered brain injuries as a result of a hypoxic ischemic insult caused by improper placement of the UVC into the right atrium. He noted there was no indication in the record that the tip of the umbilical catheter was removed from the atrium any time prior to the code.

Dr. Kirkwood opined within a reasonable degree of medical certainty that the UVC was negligently positioned in the right atrium of infant plaintiff's heart and allowed the hypersmolar fluid to cross the right atrial wall, depriving her of fluids, causing excessive fluid to build up in the pericardial sac, causing pressure on the heart, leading to decreased contractility and causing a severe hypoxic ischemic insult to the brain as a result of the lack of oxygen. He further opined the timing of the injury as a result of the code event is correlated to infant plaintiff's profoundly acidotic blood gasses worsening after the code, which rules out prematurity as an explanation.

Plaintiff also presented the affirmation of Dr. Bruce L. Halbridge in support of the opposition. Dr. Halbridge affirmed to be a physician licensed to practice in Texas, New York and California who is board certified in Obstetrics and Gynecology. He affirmed to be fully familiar with the applicable standards of care based upon his training and experience, and noted New York has the same standards as national standards. Dr. Halbridge also reviewed the pleadings, plaintiff's medical records, the parties' deposition testimony and defendants' moving papers in rendering opinions. Dr. Halbridge opined within a reasonable degree of medical certainty that defendants' staff and Dr. Kamineni departed from good and accepted standards of care and resulted in injuries to infant plaintiff due to a preterm delivery at 26 weeks, which led to a series of neonatal

complications secondary to the mal-positioning of the UVC. He further opined infant plaintiff's premature birth would have been avoided but for defendants' departures, including failure to timely diagnose and treat infection, failure to treat infection to cure, and failure to verify cure by culture and sensitivity training.

Dr. Halbridge noted plaintiff had an active infection since she began prenatal care with Dr. Kamineni, and opined the existence of an active vaginal infection placed her at a greatly increased risk for preterm labor and premature rupture of the membranes. He opined defendants departed from the standard of care because plaintiff was only given a single administration of Fluconazole, an antifungal medicine, and no treatment for a bacterial infection, and the standard of care required the infection be treated until it is cured. Dr. Halbridge opined no cultures were drawn to determine the nature of plaintiff's infection and was a departure from good and accepted standards of care.

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. Nicolia & 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 with 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].) However, a hospital may not generally be held vicariously liable for the malpractice of a private attending physician who is not an employee, such as an independent contractor. (*Dupree v. Westchester County Health Care Corp.*, 164 A.D.3d 1211, 1213 [2d Dept. 2018].)

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].)

Defendants established a prima facie case of entitlement to dismissal as to defendant Northwell Health, Inc. They demonstrated through the affirmation of Avram Schwartz that Northwell Health, Inc. is a corporate entity that did not provide medical care or treatment to plaintiff. As plaintiff did not oppose this portion of the motion, defendants' motion is granted as to Northwell Health, Inc.

Defendants also established a prima facie entitlement to summary judgment as to plaintiff's claim for lack of informed consent, as they discussed the risks, benefits and alternatives to a Cesarean section delivery with plaintiff, who signed a consent form, even though it was ultimately not performed. As plaintiff's experts failed to present opinions with regard to this claim, there are no issues of fact in dispute and dismissal is warranted.

Defendants established a prima facie entitlement to summary judgment through the documentary evidence and expert opinions of Dr. Berg and Dr. Hand that they did not depart from good and accepted standards of care and did not proximately cause or contribute to plaintiff's injuries. (*See Wally G. v. New York City Health & Hosps. Corp. (Metro Hosp.)*, 120 A.D.3d 1082 [1st Dept. 2014].) They demonstrated plaintiff was appropriately examined and monitored during her prenatal care with Dr. Kamineni, and was appropriately evaluated upon admission to LIJMC. Defendants further demonstrated their staff appropriately monitored plaintiff and infant plaintiff,

including the use of fetal monitors and routine charting and consulting with MDM to delay premature delivery. Defendants also properly diagnosed plaintiff with premature rupture of membranes and properly monitored and obtained her informed consent for a Cesarean delivery, which ultimately was not performed. They further demonstrated they properly performed the labor and delivery, and infant plaintiff was monitored and evaluated appropriately and within the standard of care. Defendants demonstrated they properly cared for and treated infant plaintiff in the NICU and her pulmonary hemorrhage was not the result of defendants' negligence, but a result of the complications of a premature delivery. They further demonstrated through the expert affirmations that the UVC was not placed improperly, and none of their actions or inactions proximately cause infant plaintiff's pulmonary hemorrhage or sequelae. Based upon the records and expert opinions, defendants established entitlement to summary judgment. (*See Furey v. Kraft*, 27 A.D.3d 416 [2d Dept.2006].)

Plaintiff failed to raise triable issues of fact with her prenatal care by Dr. Kamenini and the care and treatment provided before and during labor and delivery. (*See Stiso v. Berlin*, 176 A.D.3d 888 [2d Dept. 2019].) Plaintiff's expert failed to rebut defendants' experts with evidence based upon the record, and instead the experts gave conclusory and vague opinions regarding departures that occurred during prenatal care that were insufficient to raise a triable issue of fact. Plaintiff's expert opinions failed to articulate the standard of care, and failed to articulate any departures by defendants' staff or Dr. Kamenini that caused plaintiff's injuries from admission to delivery of infant plaintiff.

However, plaintiff raised triable issues of fact with regard to defendants' care of infant plaintiff from admission to the NICU through her pulmonary event. Specifically, plaintiff's expert affirmations demonstrated issues of fact as to whether defendants departed from the standard of care in the placement of the catheter, failure to recognize the improperly placed catheter, and failure to properly resuscitate infant plaintiff after the code, and whether these departures proximately caused infant plaintiff's injuries. Plaintiff's expert affirmations raised issues of fact whether the imaging showed the UVC was improperly placed, causing the accumulation of fluid in the pericardial sac leading to cardiac tamponade and pulmonary hemorrhage, lack of blood flow and oxygen to infant plaintiff's brain. Plaintiff's expert affirmations also raised issues of fact whether defendants failed to review imaging that showed the improper placement of the UVC and failed to recognize and reposition the UVC, thereby causing infant plaintiff's injuries. They further demonstrated issues of fact whether defendants delayed in treating infant plaintiff and allowed her to have a dangerously low blood pressure, resulting in ischemia and deprivation of oxygen to her brain during the period immediately following the code. As the parties presented conflicting medical expert opinions that can only be resolved by a jury, summary judgment is not warranted with regard to the above departures. (*See Cummings v. Brooklyn Hosp. Ctr.*, 147 A.D.3d 902 [2d Dept. 2017].)

Accordingly, defendants Long Island Jewish Medical Center (LIJMC) and Northwell Health, Inc.'s motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 is granted as to defendant Northwell Health, Inc. and plaintiff's claim for lack of informed consent, but denied as to plaintiff's claim for medical malpractice against defendant LIJMC. The parties are directed to appear for a pretrial conference on Wednesday, April 9, 2025 at 9:30am in Courtroom 48.

This constitutes the decision and Order of the Court.

Dated: April 4, 2025

Tracy Catapano-Fox

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

