

Nunez v Long Is. Jewish Med. Ctr.

2025 NY Slip Op 35329(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

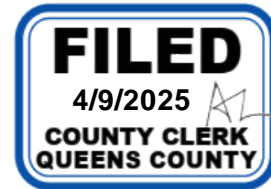
Plaintiff, Part MDP
Motion Date: March 5, 2025

-against-

Calendar No. 24
Sequence No. 3

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-104 to EF-235 read on this motion by defendants SANTHA KAMINENI, MD and QUEENS SURGICAL & OB/GYN P.C. for summary judgment and dismissal of plaintiff’s Complaint pursuant to CPLR §3212.

Papers
Numbered

- Notice of Motion, Affirmation, Exhibits.....EF104-EF123
- Affirmation in Opposition, Exhibits.....EF175-EF218, EF222-EF224
- Reply Affirmation.....EF235

Upon the foregoing papers, and after oral argument, it is ordered that this motion is determined as follows:

Defendants Santha Kamineni, MD and Queens Surgical & OB/GYN P.C.’s motion for summary judgment and dismissal of plaintiff’s Complaint pursuant to CPLR §3212 is granted.

Plaintiff commenced this action for medical malpractice and lack of informed consent against defendants for prenatal care by Dr. Kamineni between March 31, 2015 and July 5, 2015, including labor and delivery of infant plaintiff. 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 April 9, 2021.

Defendants argue they are entitled to summary judgment and dismissal of plaintiff's Complaint as Dr. Kamineni 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, and expert affirmation of Dr. Michael F. Cabbad in support of their motion. Defendants argue Dr. Kamineni properly cared for and treated plaintiff within the acceptable standard of care, as he appropriately evaluated and monitored plaintiff's prenatal care and properly performed labor and delivery of infant plaintiff. They further argue plaintiff's claim for lack of informed consent must be dismissed, as Dr. Kamineni did not invade plaintiff's bodily integrity or perform a procedure for which he would be required to inform plaintiff of the risks, benefits and alternatives.

Defendants present the affirmation of Dr. Michael F. Cabbad in support of their motion. Dr. Cabbad affirmed to be a physician licensed in New York who is board certified in Obstetrics & Gynecology. He affirmed to be familiar with accepted standards of practice in 2015 and currently based upon his experience, training and education. Dr. Cabbad reviewed the pleadings, parties' deposition testimony and plaintiff's medical records in support of his opinions.

Dr. Cabbad opined within a reasonable degree of medical certainty that Dr. Kamineni adhered to accepted standards of care and none of his actions or omissions proximately caused plaintiff's injuries. Plaintiff's medical records and Bill of Particulars show Dr. Kamineni provided medical care to plaintiff from March 31, 2015 through July 5, 2015, including infant plaintiff's delivery on July 3, 2015. Dr. Cabbad noted plaintiff first presented to Dr. Kamineni on April 21, 2010 and later on November 17, 2014, when she reported complaints of itching of vulva, and was prescribed Fluconazole for vulvovaginitis candida albicans. He opined Dr. Kamineni's diagnosis and treatment was appropriate and within the standard of care, and there is no correlation between plaintiff's vulvovaginitis candida albicans and her subsequent preterm labor and delivery.

Dr. Cabbad noted plaintiff attended prenatal visits with Dr. Kamineni on March 31, 2015, April 25, 2015, and May 23, 2015, and opined within a reasonable degree of medical certainty that Dr. Kamineni's care and treatment was conducted at appropriate intervals and all prenatal care was appropriate and within accepted standards of care. He further opined Dr. Kamineni's physical exams at these visits revealed no findings consistent with vulvovaginitis candida albicans. Dr. Cabbad opined Dr. Kamineni appropriately examined and evaluated plaintiff on her first prenatal visit on March 31, 2015, where he ordered various labs and genetic studies and referred plaintiff to a maternal-fetal medicine specialist for an ultrasound and additional screening. Dr. Cabbad further opined Dr. Kamineni appropriately cared for plaintiff on April 25, 2015 and May 23, 2015, and the medical records from these visits noted no abnormalities nor provided any indication

plaintiff might go into preterm labor.

Dr. Cabbad opined Dr. Kamineni appropriately referred plaintiff to maternal-fetal medicine specialist Dr. Nanda and he was entitled to rely on Dr. Nanda's report, which provided no indication plaintiff might go into preterm labor. He reviewed the medical records and plaintiff's deposition testimony, where she stated on the night of June 23, 2015, she had intercourse and later woke up to go to the bathroom and found leakage of clear vaginal fluid and blood on the toilet paper.

Dr. Cabbad opined Dr. Kamineni's treatment of plaintiff during her admission at LIJMC from June 24, 2015 through July 5, 2015 was appropriate and in accordance with the standard of care. He opined Dr. Kamineni appropriately examined plaintiff and appropriately ordered magnesium sulfate for neuroprotection and to prevent contractions, as well as afford time to administer betamethasone. Dr. Cabbad opined Dr. Kamineni appropriately ordered maternal-fetal medicine and neonatal consults, and appropriately discussed with plaintiff the risks and complications associated with preterm delivery and the possible need for a Cesarean section delivery. He opined Dr. Kamineni appropriately deferred to the maternal-fetal medicine specialists with respect to care for plaintiff preterm premature rupture of membranes (PPROM) and advice on when to deliver infant plaintiff.

Dr. Cabbad opined within a reasonable degree of medical certainty that plaintiff did not exhibit signs and symptoms consistent with a diagnosis of clinical chorioamnionitis, as she was noted to be afebrile with stable vital signs. He opined plaintiff's purulent discharge noted during admission to LIJMC was likely seminal fluid, vaginal secretions or a portion of the mucous plug, as plaintiff stated she had intercourse prior to admission. Dr. Cabbad opined plaintiff did not display maternal tachycardia, her heartrate was generally consistent and white blood cell count was under 15,000, and therefore a diagnosis of clinical chorioamnionitis warranting delivery of infant plaintiff was not indicated. He further opined infant plaintiff's fetal heartrate was appropriately monitored and tracings did not indicate an immediate Cesarean section delivery was indicated due to fetal distress.

Dr. Cabbad opined plaintiff's white blood count of 18,300 on July 3, 2025 was not, standing alone, an indication that an immediate delivery was necessary. He further opined plaintiff remained afebrile, her heart rate was not indicative of maternal tachycardia and the fetal heart rate baseline remained, and plaintiff's white blood count change was appropriately acknowledged and timely and appropriate interventions were put in place. Dr. Cabbad opined amnioinfusion was administered in a timely and appropriate manner and was a reasonable intervention.

Dr. Cabbad opined Dr. Kamineni timely and properly delivered infant plaintiff and it was appropriate medical care to attempt to prolong the pregnancy in an effort to prevent the adverse

impact of preterm delivery as opposed to performing a Cesarean section delivery that was not indicated. He opined infant plaintiff's injuries were not due to any acts or omissions by Dr. Kamineni and were not the cause of plaintiff's preterm labor and infant plaintiff's premature birth. Dr. Cabbad opined infant plaintiff's injuries were due to prematurity and the risks associated with the transition of a preterm infant from the intrauterine environment into the extrauterine environment. He opined when Dr. Kamineni last cared for plaintiff, infant plaintiff was in stable condition, and normal Apgar scores, and was transitioning well. 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 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 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 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 Dr. Kamineni's 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's medical records indicated a continued active infection that was first diagnosed from a culture taken at her Texas doctor on February 4, 2015 which was positive for enterococcus bacteria.

Dr. Halbridge noted plaintiff had an active infection when 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 Dr. Kamineni 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 during Dr. Kamineni's examinations and this failure was a departure from good and accepted standards of care. Dr. Halbridge opined Dr. Kamineni's failure to diagnose and treat maternal infections led to infant plaintiff's premature birth and left her vulnerable to subsequent injuries. Based upon the above, plaintiff argues there are conflicting expert opinions that warrant denial of the motion.

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 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].)

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 entitlement to summary judgment as to plaintiff’s claim for lack of informed consent, as Dr. Kamineni 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 opinion of Dr. Cabbad that Dr. Kamineni 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, who properly referred her to a maternal-fetal medicine specialist and performed appropriate testing and imaging. Dr. Cabbad established plaintiff did not have an active infection during her pregnancy, and her prior vulvovaginitis candida albicans had no correlation to her subsequent preterm labor and infant plaintiff’s injuries. Defendants also established plaintiff was appropriately evaluated upon admission to LIJMC and Dr. Kamineni 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 demonstrated Dr. Kamineni continually and properly monitored plaintiff during the days of admission to delay delivery and permit infant plaintiff an opportunity to grow and develop without causing harm to infant plaintiff. They further demonstrated Dr. Kamineni obtained plaintiff’s informed consent for a Cesarean delivery, which ultimately was not performed. They further demonstrated Dr. Kamineni properly performed the labor and delivery, and infant plaintiff was monitored and evaluated appropriately and within the standard of care. They further demonstrated through the evidence and Dr. Cabbad’s affirmation that infant plaintiff had normal Apgar scores and upon Dr. Kamineni’s last visit with plaintiff, was in a relatively stable neurological condition. Defendants further demonstrated none of Dr. Kamineni’s actions or inactions proximately caused

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].)

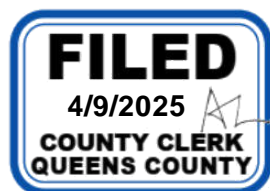
Plaintiff failed to raise triable issues of fact with her prenatal care by Dr. Kamineni and the care and treatment provided before and during labor and delivery. (*See Stiso v. Berlin*, 176 A.D.3d 888 [2d Dept. 2019].) Plaintiff's experts failed to rebut defendant's expert opinions with evidence based 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 Dr. Kamineni that caused plaintiff's injuries from admission to delivery of infant plaintiff.

Plaintiff also failed to raise issues of fact whether Dr. Kamineni departed from the standard of care in failing to administer antibiotics during plaintiff's pregnancy. Plaintiff's expert failed to rebut Dr. Cabbad's opinion that plaintiff's prior vulvovaginitis candida albicans was unrelated to the preterm labor and infant plaintiff's injuries. Plaintiff's expert relied upon medical records that repeated the prior infection but failed to consider plaintiff's deposition testimony and medical evidence that plaintiff did not have an active infection or require antibiotics during her pregnancy and at admission. Plaintiff's expert erred in arguing plaintiff continued to have an active infection through her pregnancy merely because it was listed in the medical reports, but was inconsistent with lab cultures and plaintiff's deposition testimony. As plaintiff's expert opinions with regard to Dr. Kamineni's departures are premised upon a mistake in medical records, and is unsupported by the record, there are no issues of fact in dispute.

Accordingly, defendants Santha Kamineni, MD and Queens Surgical & OB/GYN P.C.'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: April 4, 2025





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