

**Rosales v McBride**

2025 NY Slip Op 35358(U)

January 23, 2025

Supreme Court, Suffolk County

Docket Number: Index No. 610924/2020

Judge: Maureen T. Liccione

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SHORT FORM ORDER

INDEX No. 610924/2020  
CAL. No. 202300592MM

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 78 - SUFFOLK COUNTY

**PRESENT:**

Hon. MAUREEN T. LICCIONE  
Justice of the Supreme Court

MOTION DATE 11/20/23  
ADJ. DATE 6/12/24  
Mot. Seq. # 004 MG

-----X  
SANDRA ROSALES, as mother and natural  
guardian of D.J.C., infant,

Plaintiff,

- against -

GOLDIEANN MCBRIDE L.M., C.M.,  
HEATHER FINDLETAR, C.N.M., D.N.P.,  
CORINNE BUCKLEY, R.N., AMANDA SINI,  
C.N.M., JOSEPH CHAPPELLE, M.D.,  
NATALIE SEMENYUK, M.D., CECILIA  
AVILA, M.D., and UNIVERSITY  
ASSOCIATES IN OBSTETRICS AND  
GYNECOLOGY, P.C.,

Defendants.  
-----X

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Upon the following papers read on this motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by defendants Joseph Chappelle, M.D., Natalie Semenyuk, M.D., and Cecilia Avila, M.D., dated August 17, 2023; it is

**ORDERED** that the unopposed motion by defendants Joseph Chappelle, M.D., Natalie Semenyuk, M.D., and Cecilia Avila, M.D., for summary judgment dismissing the complaint against them is granted.

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Plaintiff Sandra Roasales, suing on behalf of her child, D.J.C. (hereinafter the infant), commenced this action against, among others, defendants Joseph Chappelle, M.D., Natalie Semenyuk, M.D., and Cecilia Avila, M.D., to recover damages for medical malpractice and lack of informed consent arising out of her prenatal care and subsequent labor and delivery of the infant. As relevant to the instant motion, plaintiff alleges that Dr. Chappelle, Dr. Semenyuk, and Dr. Avila were negligent in, inter alia, failing to diagnose cephalopelvic disproportion, administering Pitocin, and failing to perform a cesarean delivery.

Dr. Chappelle, Dr. Semenyuk, and Dr. Avila now move for summary judgment dismissing the complaint against them. The movants contend that they cannot be held liable for medical malpractice since no physician-patient relationship existed, they did not depart from accepted standards of medical care and practice, and they did not cause the alleged injuries. In addition, the movants argue that they are entitled to summary judgment dismissing the lack of informed consent claim on the grounds that Dr. Avila and Dr. Semenyuk had no involvement in plaintiff's induction and receipt of Pitocin, that Dr. Chappelle had no involvement in administering or ordering Pitocin, and that plaintiff was advised of the risks, benefits, and alternatives to the administration of Pitocin and induction of labor. In support of their motion, the movants submit, among other things, the affirmation of their medical expert, Gil Farkash, M.D., certified hospital records, and the deposition transcripts of the parties. No papers were submitted in opposition to the motion.

“Liability for medical malpractice may not be imposed in the absence of a physician-patient relationship” (*Blau v Benodin*, 190 AD3d 922, 924, 140 NYS3d 576, 579 [2d Dept 2021], quoting *Thomas v Hermoso*, 110 AD3d 984, 985, 973 NYS2d 344, 246 [2d Dept 2013]). A defendant moving for summary judgment dismissing a medical malpractice cause of action bears the initial burden of establishing, prima facie, either the absence of any departure from good and accepted medical practice, or that any alleged departure did not proximately cause the plaintiff's injuries (*see Chillious v Edouard*, \_\_\_ AD3d \_\_\_, 2025 NY Slip Op 00209 [2d Dept 2025]; *Weber v Sharma*, 232 AD3d 930, 222 NYS3d 602 [2d Dept 2024]). Once the defendant makes such a prima facie 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 (*see Rybek v New York City Health & Hosps. Corp.*, 228 AD3d 968, 214 NYS3d 135 [2d Dept 2024]; *Armond v Strangio*, 227 AD3d 758, 210 NYS3d 491 [2d Dept 2024]).

Where a medical malpractice plaintiff also alleges a cause of action for lack of informed consent, the plaintiff must demonstrate “(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” (*Mattocks v Ellant*, 231 AD3d 813, 817, 219 NYS3d 715, 720 [2d Dept 2024], quoting *Pirri-Logan v Pearl*, 192 AD3d 1149, 1151, 145 NYS3d 545, 549 [2d Dept 2021]).

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The movants demonstrated their prima facie entitlement to summary judgment dismissing the medical malpractice claims against them through the submission of, among other things, the affirmation of Dr. Farkash, which indicates that no physician-patient relationship existed between the movants and plaintiff (*see Ingber v Kandler*, 128 AD2d 591, 513 NYS2d 11 [2d Dept 1987]; *cf. Ellis v Mollette*, 226 AD3d 868, 209 NYS3d 493 [2d Dept 2024]; *Liquori v Dolkart*, 204 AD3d 1099, 166 NYS3d 352 [3d Dept 2022]), that the movants acted within the standards of good and accepted medical practice, and that they did not cause the alleged injuries (*see Ramsay v Good Samaritan Hosp.*, 24 AD3d 645, 808 NYS2d 374 [2d Dept 2005]; *see also Kelly v Ahn*, 224 AD3d 673, 205 NYS3d 137 [2d Dept 2024]). Dr. Farkash, who is board-certified in obstetrics and gynecology, supplies an affirmation on behalf of the movants, in which he expresses his opinions within a reasonable degree of medical certainty based on, among other things, his review of the pleadings, the bills of particulars, the parties' deposition transcripts, and medical records. Dr. Farkash explains that plaintiff's care and treatment was managed by midwives, and that the standard of care does not require midwives to be under the supervision of physicians. The expert explains that if the midwives "felt" that the care and treatment required elevation to the level of intervention by an obstetrician, that request could have been made.

Dr. Farkash states that Dr. Avila had no involvement in the care and treatment of plaintiff and/or the delivery of the infant. The expert also explains that Dr. Semenyuk's involvement here was limited to an informal discussion with defendant Heather Findletar, C.N.M., D.N.P, regarding blood pressure management, which does not establish a physician-patient relationship. In a similar vein, Dr Farkash recounts that Dr. Chappelle never examined plaintiff, and that defendant Goldieann McBride, L.M., C.M.'s spoke to Dr. Chappelle regarding her plan to place an intrauterine pressure catheter and to increase the plaintiff's Oxytocin. The expert opines that even if he Dr. Chappelle agreed with McBride's anticipated plan for plaintiff, no physician-patient relationship formed therefrom.

Dr. Farkash also avers that it was appropriate and reasonable for a midwife to advise plaintiff, who was not in active labor, to walk around the hospital after her presentation to Stony Brook University Hospital on April 16, 2012, and to return later that day for reevaluation. Dr. Farkash explains that the following day, plaintiff exhibited a few high blood pressure readings at the hospital. The expert opines that given her high blood pressure readings, it was reasonable to continue to monitor her and to repeat labs and start magnesium sulfate if her blood pressure remained elevated. Dr. Farkash also explains that the subsequent increase of Pitocin was reasonable, and that the placement of an intrauterine pressure catheter was within the accepted standard of medical practice.

The movants' submissions are also sufficient to establish their prima facie entitlement to summary judgment dismissing the lack of informed consent claim against them (*see Mattocks v Ellant*, 231 AD3d 813, 219 NYS3d 715 [2d Dept 2024]; *Mitchell v Lograno*, 108 AD3d 689, 970 NYS2d 58 [2d Dept 2013]). As previously indicated, Dr. Farkash affirms that Dr. Avila had no involvement in plaintiff's care and treatment and/or the delivery of the infant, and that Dr. Semenyuk's involvement was limited to an informal discussion regarding blood pressure management. Moreover, in his affirmation, Dr. Farkash avers that plaintiff's informed consent with respect to the administration of Pitocin and vaginal delivery were properly obtained. The expert explains that the evidence indicates that the risks,

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benefits, and alternatives to the procedure were reviewed with plaintiff in the presence of a translator. Further, Dr. Farkash elaborates that plaintiff already had consented to the administration of Pitocin and was administered Pitocin before any discussion between McBride and Dr. Chappelle occurred.

As the motion is unopposed, there are no triable issues of fact. Accordingly, the movants' motion is granted.

Dated: 01/23/2025

  
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J.S.C.

\_\_\_\_ FINAL DISPOSITION     X  NON-FINAL DISPOSITION