

Springman v Klein

2025 NY Slip Op 35377(U)

January 13, 2025

Supreme Court, Westchester County

Docket Number: Index No. 60824/2019

Judge: Lewis J. Lubell

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This opinion is uncorrected and not selected for official publication.

\SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

P R E S E N T:

HON. LEWIS J. LUBELL
JUSTICE OF THE SUPREME COURT

CAROL SPRINGMAN, Individually and as Administratrix
of the Estate of JOHN G. SPRINGMAN, deceased,

Plaintiff(s),

-against-

DECISION & ORDER

Index No.: 60824/2019

RICHARD S. KLEIN, M.D., RICHARD S. KLEIN, M.D.,
P.C., GLENN GANDELMAN, M.D., KENNETH A.
GOLDSTEIN, M.D., NORTSHORE-LIJ MEDICAL, P.C.,
ANTHONY BRUZZESE, M.D., NORTHERN
WESTCHESTER INTERNAL MEDICINE, P.C., GINO C.
BOTTINO, M.D., HUDSON VALLEY HEMATOLOGY-
ONCOLOGY ASSOCIATES R.L.L.P., PETER KHOURI,
M.D., HARLAN R. WEINBERG, M.D., HARLAN R.
WEINBERG, M.D., P.C., NORTHERN WESTCHESTER
HOSPITAL ASSOCIATION d/b/a NORTHERN
WESTCHESTER HOSPITAL, PAUL MCGUIRE, M.D.,
PETER WAXMAN, M.D., MARK GLICKLICH, M.D.,
NORTHEAST RADIOLOGY, P.C., NORTHEAST
RADIOLOGYASSOCIATES, PLLC, MIODRAG
VELICKOVIC, M.D., MIODRAG VELIKOVIC M.D., P.C.,
VASSAR BROTHERS HOSPITAL a/k/a VASSAR
BROTHERS MEDICAL CENTER and HEALTH QUEST
SYSTEMS, INC.,

Defendant(s).

Plaintiff moves (**Motion #12**) for leave to reargue the motion (Motion #11) for
defendants Miodrag Velickovic, M.D. and Miodrag Velickovic, M.D., P.C. for summary
judgment.

Defendants Miodrag Velickovic, M.D. and Miodrag Velickovic, M.D., P.C. cross-move (**Motion #13**) resettling the Court's decision and order, dated July 3, 2024, to provide clarification of the allegations that survived summary judgment.

The following papers were read:

Notice of Motion (#12), Affirmation, and Exhibits (5)	1-7
Affirmation in Opposition	8
Notice of Cross-Motion (#13) and Affirmation	9-10
Affirmation in Opposition and Reply and Exhibit	11-12
Affirmation in Reply	13

By way of background, plaintiff commenced this action to recover damages for personal injuries allegedly sustained as a result of the care and treatment of defendants. In particular, plaintiff alleges that the decedent John D. Springman (Mr. Springman) was under the care and treatment of Dr. Velickovic from July 6, 2017 until July 21, 2017. On July 21, 2017, Mr. Springman suffered a stroke from which he ultimately died. Defendants interposed answers and the parties engaged in discovery. On November 9, 2023, plaintiffs filed the note of issue. Subsequently, defendants Miodrag Velickovic, M.D. and Miodrag Velickovic, M.D., P.C. (Dr. Velickovic) moved for summary judgment. On July 3, 2024, the Court denied the Motion #11 in part. Now, plaintiff moves (Motion #12) to reargue and Dr. Velickovic moves (Motion #13) to clarify what departures remain at issue.

In support of Motion #12, plaintiff asserts that she only opposed Motion #11 as to the departures raised in Dr. Velickovic's motion. As such, plaintiff contends, among other things, that the Court improperly narrowed the scope of the departures at issue to the ones addressed by plaintiff's expert. Plaintiff also contends she was constrained by the word limitation.

In opposition, Dr. Velickovic asserts that it painstakingly went through the 100 pages of plaintiff's bills of particulars and supplemental bills of particulars and amassed a list of allegations and Dr. Velickovic's expert, Joseph Schindler, M.D., addressed them all. As such, Dr. Velickovic contends that the Court correctly determined that he had made a *prima facie* showing and correctly granted partial summary judgment for the movants. Dr. Velickovic notes that, although plaintiff asserts that Dr. Velickovic did not address all of the allegations, plaintiff fails to identify the allegations that should have survived the motion.

In support of Motion #13, Dr. Velickovic contends that plaintiff has avoided directly asserting the theories of liability against Dr. Velickovic throughout this litigation. Rather, Dr. Velickovic notes that the parties have been at odds over the appropriateness of plaintiff's bills of particulars throughout this litigation. As such, Dr. Velickovic requests that the Court clarify which departures remain at issue in order to avoid further dispute.

In opposition, plaintiff contends, among other things, that if Dr. Velickovic does not know what allegations are at issue in this case, that issue should have been raised prior to the filing of the note of issue. Regardless, plaintiff contends that such a complaint is without merit.

CPLR 2221 provides that a motion to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion” (*see* CPLR 2221 [d] [2]).

In support of Motion #11, Dr. Velickovic proffered, among other things, Dr. Schindler’s expert affirmation. Dr. Schindler indicates that he reviewed the pleadings, the pertinent medical records, and the testimonial evidence in this action. Based thereon as well as experience, Dr. Schindler opined, among other things, that the care provided by Dr. Velickovic was at all times consistent with the standard of care and that no act or omission by Dr. Velickovic caused or contributed to the damages in this case. Dr. Schindler went through the various care and treatment provided to Mr. Springman and how said care and treatment comported with accepted medical practice. In opposition, plaintiff proffered, among other things, the expert affirmation of a physician, who is board certified in internal medicine, critical care, pulmonary disease, and sleep medicine (Plaintiff’s Expert). Plaintiff did not assert that Dr. Velickovic has only addressed some of the alleged departures. Rather, plaintiff indicated that Plaintiff’s Expert outlined “the departures from good and accepted medical practice that were a substantial factor in causing injury to plaintiff’s decedent, and further addresses/contradicts the claims of moving defendant’s Expert” (Pl’s Memo of Law at p. 5). In its decision and order, the Court then denied Motion #11 “as to the departures identified by Plaintiffs Expert” and otherwise granted the motion. Thus, if, as plaintiff indicated, Plaintiff’s Expert did, in fact, address all of the departures from accepted medical practice, then all of plaintiff’s allegations, as set forth in the various bills of particulars would be preserved. However, as the present motions make plain, the parties disagree as to whether such is the case. Unfortunately, plaintiff does not indicate what departures were not addressed by Dr. Schindler or otherwise indicate what departures were improperly eliminated from this litigation by the Court’s prior decision and order.

The affirmation of Plaintiff’s Expert is not a paragon of clarity. However, viewing said affirmation in the light most favorable to plaintiff, as the non-moving party on a motion for summary judgment, the Court finds that Plaintiff’s Expert identified the following departures by Dr. Velickovic:

Dr. Velickovic departed from accepted medical practice by making “the medically unsupported diagnosis of JOHN’S symptoms being ‘most likely’ due to

‘dehydration and a drop of blood pressure’ ” despite [having access to certain information]” (¶¶ 8 and 26)¹ and ;

Dr. Velickovic departed from accepted medical practice by failing to apprise himself of all of Mr. Springman’s symptoms on July 6, 2017 and of the reason why Mr. Springman was referred to his office on that day (¶ 10);

Dr. Velickovic departed from accepted medical practice by “only get[ting] the most recent blood test result and not the Chart, or at a minimum KLEIN’s Progress Note documenting -why KLEIN’s office referred JOHN to him, if he did not know the reason for the referral himself especially given the focal neurological findings reported in Dr. Klein’s office on July 6,2017” (¶ 13);

Dr. Velickovic departed from accepted medical practice by making the “decision is to give his opinion without speaking to either KLEIN/BOTTINO or to get their Charts, or Hospital Chart, before making a serious and life-threatening written opinion/decision in his report, that would/could be relied upon by other medical providers” (¶ 24);

Dr. Velickovic departed from accepted medical practice by failing “to consider JOHN’S risk factors for a stroke: JOHN was over-weight and had hypertension (elevated blood pressure), hyperlipidemia (severely elevated and untreated cholesterol), ‘carotid insufficiency’ as repeatedly documented by KLEIN, high D-Dimer, history of smoking for 25 years, age, artery disease of the legs and abdomen, etc.” (¶ 30);

Dr. Velickovic departed from accepted medical practice by failing “to understand, know and/or appreciate that JOHN had arterial disease in his arteries and failed to urgently investigate those arteries from the heart to the brain, which includes the Carotid Arteries. VELICKOVIC knew, but disregarded, or failed to know, that JOHN had a ‘hypercoagulable’ state (‘thickened blood’ and potentially prone to forming a clot), in addition to very high cholesterol, as well as hemochromatosis (iron overload), which are risk factors for a Stroke; he failed to treat JOHN properly and failed to prevent JOHN’S Stroke” (¶ 31);

Dr. Velickovic departed from accepted medical practice by failing to timely communicate with Mr. Springman regarding certain test results (such as the MRI, which were reported on July 10, 2017, his cholesterol level and rheumatoid arthritis) and to inform him of the signs and symptoms of stroke/TIA or to refer him to an emergency department for evaluation (¶ 37);

¹ Citations to the affirmation of Plaintiff’s Expert’s are for reference and not intended to reference the only place in the affirmation that Plaintiff’s Expert discusses the referenced departure.

Dr. Velickovic departed from accepted medical practice by failing to timely order any follow up tests or consultations after the MRA results, which were reported on July 14, 2017 (¶¶ 42 and 44);

Dr. Velickovic departed from accepted medical practice by treating Mr. Springman remotely while he was in Spain (¶ 59);

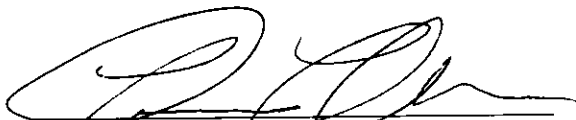
These are the only remaining departures as against Dr. Velickovic. To the extent not specifically addressed herein, the Court finds the remaining arguments of the parties to be without merit. Based on the foregoing, it is hereby

ORDERED that plaintiff's motion (**Motion #12**) for leave to reargue is granted and upon reargument, the Court adheres to its prior determination; and it is further

ORDERED that **Motion #13** is GRANTED TO THE EXTENT THAT the first ordering paragraph of the Court's Decision and Order, dated July 3, 2024 (NYSCEF Doc. No. 390) is amended to read as follows:

“ORDERED that **Motion #11**, as to the claim for medical malpractice, is DENIED as to the departures identified by Plaintiff's Expert as clarified in the Court's Decision and Order in connection with Motion #13 and is otherwise GRANTED; and it is further”

Dated: January 13, 2025
White Plains, New York



HON. LEWIS J. LUBELL
Justice of the Supreme Court