Sibrizzi v Strickland

2025 NY Slip Op 35544(U)

February 10, 2025

Supreme Court, Westchester County

Docket Number: Index No. 56383/2020

Judge: Nancy Quinn Koba

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This opinion is uncorrected and not selected for official publication.

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
----------x
ROSEMARIE SIBRIZZI, As Administratrix of the Estate of Michael Sibrizzi, Deceased and ROSEMARIE SIBRIZZI, Individually,

Plaintiff(s),

-against-

DECISION & ORDER
Index No. 56383/2020
Mot. Seq. No. 2

JOHN STRICKLAND, P.A., PEEKSKILL URGENT CARE, P.C., and NEW YORK PRESBYTERIAN HUDSON VALLEY CENTER,

Defendants.
----------x
QUINN KOBA, J.

The following documents were considered on the opposed motion of defendant, NEW YORK PRESBYTERIAN HUDSON VALLEY CENTER (the "Hospital")[1] for an order: (a) pursuant to CPLR 3212, granting summary judgment dismissing the complaint as asserted against it with prejudice; (b) directing the entry of judgment dismissing all causes of actions asserted against it with prejudice; or in the alternative; (c)pursuant to CPLR 3212 (3) and (g), granting partial summary judgment as to any claim or theory of liability as to which this Court finds that plaintiff has failed to raise a triable issue of fact; and (d) for such other and further relief this Court may deems just and proper:

PAPER	NYSCEF Doc. No.
Notice of Motion, Affirmation in support, Exhibits A-L, Statement of material facts	56-70
Affirmation in opposition, Exhibits 1 and 2	74-76
Reply Affirmation	77

[1]References to the "Hospital" is deemed to include "through its agents, servants, and employees."

Upon consideration of the foregoing, the motion is determined as follows:

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On or about June 22, 2020, plaintiff, Rosemarie Sibrizzi, as Administratrix of the Estate of Michael Sibrizzi, Deceased and Individually commenced this medical malpractice and wrongful death action by filing a summons and verified complaint. On or about June 23, 2020, plaintiffs filed an amended complaint alleging negligence, medical malpractice, and wrongful death claims against defendants. On July 27, 2020, issue was joined as to the Hospital when it filed an amended answer. As is relevant here, plaintiff alleges, *inter alia*, that the Hospital departed from the standard of care in the evaluation, assessment, analysis, and treatment of plaintiff's decedent on July 12, 2018, and that such departure was the proximate cause of his death.

In support of the motion, the Hospital submitted, *inter alia*, copies of the transcripts from the depositions of plaintiff, Dr. Robert Parks ("Parks"), Vincent David Zayas M.D. ("Zayas"), and Tresa Anthony ("Anthony"), copies of decedent's medical records from defendant, Peekskill Urgent Care ("PUC"), and the Hospital, and the expert affirmations of Ian H. Newmark, M.D. ("Newmark"), dated July 19, 2024 (the "Newmark Affirmation"), Alan A. Pollock, M.D. ("Pollock"), dated July 19, 2024 (the "Pollock Affirmation"), and Robert McNamara, M.D. ("McNamara"), dated July 16, 2024 (the "McNamara Affirmation").

The following is a summary of plaintiff's deposition testimony (Ex. I). She was the wife of decedent, who died on July 13, 2018. Her husband went to PUC on July 11, 2018 for trouble breathing, noisy breathing at night, which was becoming progressively worse, and because he was feeling unwell and had not been feeling well for the past four to five days. She did not accompany him to PUC. He told plaintiff the facility did not give him any prescriptions or conduct any diagnostic testing.

Her husband returned to PUC on July 12, 2018 because his noisy breathing was worsening and now occurring during the day. She went with him and was present during his examination. They informed staff at PUC that decedent's noisy breathing was getting worse. An x-ray of his i's lungs showed that his lungs were clear. He was prescribed an inhaler.

Plaintiff drove her husband to the Hospital during the evening of July 12, 2018 because his condition was worsening; he was struggling to breathe and making gasping sounds. Plaintiff observed hospital staff checking her husband's blood pressure. The staff gave him steroids to open up his air passageways. His condition worsened within two hours thereafter. Park, an ENT doctor, scoped her husband and reported seeing scar tissue which he believed had resulted from years of tics and acid reflux. Plaintiff told him that her husband had never complained of heartburn. Park told them that speech therapy would be the only fix and that there was nothing they could do for him.

The Hospital's ER doctor then told the Sibrizzis that her husband could be discharged or admitted for observation. Plaintiff opted for the latter as her husband was now incoherent and confused. A staff member then told plaintiff they were trying to locate a CPAP machine to see if it would help her husband. While waiting for a CPAP machine, his oxygen levels dropped to 77. The ER doctor discussed intubating him. Plaintiff accompanied him to the ICU. She spoke to a female respiratory doctor and then her husband was intubated. He was not conscious or moving when the staff intubated him. Plaintiff observed a nurse pull something from the tube inside his mouth. His body then convulsed, he "crashed," and alarms went off. Medical staff entered the room, and plaintiff and the other family members in the room were sent to the waiting room. After approximately 45 minutes, plaintiff returned to her husband's room and observed staff performing CPR on him. She was told that he was dying and asked if anyone else should be there to see him. Plaintiff and some family members, including their daughter, went into his room to say goodbye to him. CPR was being administered up to that point.

Decedent was a smoker until his death; he smoked a pack of cigarettes every few days. He had a naturally deep, raspy voice and Tourette's Syndrome. Prior to, and up to his death, he took Trileptal and Lamictal which were prescribed by his health care provider for a mood disorder diagnosis. He also took vitamins for low Vitamin B levels.

The following is a summary of Park's deposition testimony (Ex. J). Park is a physician licensed to practice medicine in New York and is board certified in otolaryngology. Park had privileges at the Hospital at all relevant times. On July 12, 2018, Park was on call for the Hospital's ER. Dr. Cohen ("Cohen") was decedent's ER doctor and requested that Park perform an otolaryngologic consult. Park did not have an independent recollection of his encounter with decedent. A review of his consult notes showed that Park saw him in the Hospital's ER. Park examined decedent's vocal chords with a laryngoscope and diagnosed him with paradoxical vocal fold motion and stridor. Paradoxical vocal fold is the abnormal movement of the larynx, or closure of the larynx, which causes stridor. Stridor is a high or low pitch sound "in breath taking." Park suggested outpatient speech therapy, which is the major treatment for paradoxical vocal fold motion. Decedent complained of heartburn and reflux during the week prior to July 12, 2018.

Zayas' deposition testimony, (Ex. K), is summarized as follows. Zayas is currently licensed to practice medicine in New York and is employed by Envision, which provides ER doctors to the Hospital. Zayas was on duty at the Hospital's ER on July 12, 2018. Zayas' only involvement with decedent was to intubate him in the ICU. There were no complications with the intubation. Proper tube placement was confirmed by a chest x-ray taken after its placement.

The following is a summary of Anthony's deposition testimony (Ex. L). Anthony is a certified nurse practitioner at the Hospital. Nurse practitioners provide comprehensive care to patients above that which is performed by a nurse, including diagnosing, treating, assessing, and

admitting patients, but below the care provided by a physician. Anthony is also a nurse practitioner hospitalist at the Hospital. Hospitalists cover inpatients at hospitals, which includes admitting, diagnosing, acute problem assessing, renewing medications for, overall treating condition(s) of, and discharging, patients. A hospitalist works with a collaborating physician. During the relevant period, the Hospital required the collaborating physician to be on site when a nurse practitioner served in the capacity of a hospitalist.

The following testimony is based on Anthony's review of decedent's Hospital medical chart. On July 12, 2018, Anthony was the hospitalist assigned to decedent. Dr. Mannava ("Mannava") was the collaborating physician. Anthony only provided care to decedent in the Hospital's ER. Anthony and Mannava were decedent's primary care providers in the Hospital's ER. He had been on an antibiotic prior to coming to the Hospital ER for evaluation of "stridulous breathing" and "difficulty breathing with stridor." The Sibrizzis reported to her that decedent had been experiencing shortness of breath, which was worsening, and breathing difficulties for the past five days. He was seen by Park before Anthony saw him. Anthony examined him, listened to his lungs and detected stridor. His blood pressure was high. Supplemental oxygen was given to him which helped reduce his shortness of breath. Anthony did not know why "severe sepsis" or "septic shock" appears in decedent's Hospital records because his vital signs did not support an indication of sepsis. The Hospital's system did not alert Anthony to the sepsis condition. If it had, then Anthony would have investigated why the condition was appearing in decedent's records, which would have included speaking to the coordinating physician. Anthony's ER discharge showed a recommendation for decedent to go to the progressive care unit (PCU). However, he went to the ICU instead. Anthony did not believe he was in a life-threatening situation at that time. Anthony did not attend to him in the ICU. Anthony went to the ICU in response to the "code."

Anthony also testified that decedent's Hospital records showed there were two entries made prior to Anthony's examination. One entry was: "Order: Possible SIRS." The other entry was: "sepsis alert." A "SIRS" alert refers to a systemic infection, "like a septic alert." Hospital staff did not inform Anthony about the sepsis alert. Decedent's Hospital medical chart showed that he had met three of the criteria for a sepsis diagnosis.

The Newmark Affirmation, (Ex. A), indicates that Newmark is a physician licensed to practice medicine in New York and board certified in internal medicine, with sub-certifications in critical care and pulmonary disease. The Pollock Affirmation, (Ex. B), indicates that Pollock is licensed to practice medicine in New York and is board certified in internal medicine and infectious diseases. He has practiced in these fields for over 40 years. The McNamara Affirmation, (Ex. C), indicates McNamara is a physician licensed to practice medicine in Connecticut and is board certified in internal medicine and echocardiography. He has taught and practiced in the field of cardiology for over 27 years. Each affirmation was detailed and contained a reliable

basis for their respective opinions. Moreover, each of them reviewed the relevant medical records of decedent and deposition transcripts, and the verified bill of particulars. Based upon the foregoing and their experience in their respective practice areas, the Hospital's expert physicians opined, within a reasonable degree of medical certainty, that there were no departures or deviations from the standard of care[2] by the Hospital in its evaluation, analysis, diagnosis, and treatment of decedent, that the Hospital's care and treatment of him was not the proximate cause of his cardiac arrest, large left infiltrate, or death, and that the Hospital's examination, evaluation, analysis, diagnoses, and treatment of him were proper in all respects. No departures from the standard of care by the Hospital were the proximate cause of his condition or death. Nor was the care and treatment the proximate cause of decedent's conditions(s) or death. The Hospital's expert physicians further opined that, to a reasonable degree of certainty, there were no acts or omissions by the Hospital which significantly contributed to his death.

In opposition, plaintiff submitted, *inter alia*, a redacted expert affirmation, dated October 7, 2024 (the "Plaintiff's Expert Affirmation" [Ex. 1]). The following is a summary of the Plaintiff's Expert Affirmation. The plaintiff's expert is a physician licensed to practice medicine in the State of New York and is board certified in internal medicine with a Cardiovascular Disease Subspecialty. The plaintiff's expert reviewed the medical and hospital records, depositions taken in this action, and expert affirmations submitted by the Hospital on the motion. Upon review of the foregoing, the plaintiff's expert opined, within a reasonable degree of medical certainty, that the Hospital departed from good and accepted medical, nursing, and hospital standards and that these departures were each a substantial contributing factor to decedent's suffering and death. The plaintiff's expert stated that the large left infiltrate was a sign of severe bacterial infection. Decedent's lab test results and vital signs showed that he was septic and was suffering from a hypertensive crisis. The failure to identify the need for early intubation was a departure from good and accepted medical, nursing, and hospital standards and these departures were each a substantial contributing factor to decedent's suffering and death. The "Sepsis Alert" was correct based on his markedly, and then extremely, elevated blood pressure, extremely elevated respiration at 32 br/mn, and very high heart rate of 115 bpm. In addition, an x-ray showed the large left infiltrate which was further evidence he was on the "cusp of, and eventually went into, hypercarbic respiratory failure" (Plf. Expert Aff. at par. 13). The Hospital ignored the signs and symptoms as set forth in the Plaintiff's Expert Affirmation, which, in his opinion, constituted a departure from good and accepted medical, hospital, and nursing practice, and which departure caused and contributed to his pain and suffering, and death.

[2]References in the respective affirmations to "the standard of care" are references to "the standard of good and accepted medical practice generally."

The Hospital submitted a reply affirmation.

ANALYSIS

"'[T]he 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 (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 501 N.E.2d 572, 508 N.Y.S.2d 923; *see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 476 N.E.2d 642, 487 N.Y.S.2d 316). 'It is not the function of a court . . . to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)' (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 965 N.E.2d 240, 942 N.Y.S.2d 13). Moreover, summary judgment must be denied '[w]here different inferences may be drawn from facts that are undisputed' (*Sodexho Mgt., Inc. v Nassau Health Care Corp.*, 23 AD3d 370, 371, 805 N.Y.S.2d 551; *see Sadowski v Long Is. R.R. Co.*, 292 NY 448, 454-455, 55 N.E.2d 497; *Shea v Johnson*, 101 AD2d 1018, 1019, 476 N.Y.S.2d 706)" (*Mapfre Ins. Co. of N.Y. v Ferrall*, 214 AD3d 635,638 [2d Dept 2023]).

"In moving for summary judgment dismissing a cause of action alleging medical malpractice, a defendant must establish, prima facie, that there was no departure or deviation from the accepted standard of care or that such departure or deviation was not a proximate cause of any injury to the plaintiff (internal quotation marks and citation omitted). Once the defendant makes its prima facie showing, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of fact as to the elements on which the defendant met the prima facie burden (internal quotation marks and citations omitted)). To rebut the defendant's prima facie showing, a plaintiff must submit an expert opinion that specifically addresses the defense expert's allegations (internal quotation marks and citation omitted). Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions (*see Lopresti v Alzoobaee*, 217 AD3d 759, 761, 191 N.Y.S.3d 171 [2023]; *Feinberg v Feit*, 23 AD3d 517, 519, 806 N.Y.S.2d 661 [2005])" (*Gardiola v Sung Chui Park*, 229 AD3d 602,603 [2d Dept 2024]).

Here, the Hospital tendered sufficient evidence establishing its entitlement to judgment as a matter of law dismissing the complaint as asserted against it through the three expert physician affirmations. In opposition, the Plaintiff's Expert Affirmation failed to raise triable issues of material facts in so far as the same was improperly sworn rendering it inadmissible hearsay evidence because it failed to contain the form language required by CPLR 2106 in effect at the time. Nor can this Court deem the same to be an affidavit because it lacks any notarization.

Even if the Plaintiff's Expert Affirmation had been properly sworn to or affirmed, the Court would not consider it because plaintiff failed to explain why she was not naming her expert, and there is no proof on this record that she submitted signed and unredacted affirmations to the

Court for an in camera review. Accordingly, the Plaintiff's Expert Affirmation is insufficient to raise a triable issue of fact, as a party cannot rely on a redacted expert affirmation or affidavit when the party fails to explain its failure to identify the expert and by name (*see Richter v Menocal*, 216 Ad3d 823 [2d 2023]).

All other arguments raised by the parties on the motion, and evidence submitted in connection therewith, have been considered by this Court notwithstanding the specific absence of reference thereto, and said are rendered moot by the above holding or are without merit.

Accordingly, it is hereby

ORDERED that defendant, NEW YORK PRESBYTERIAN HUDSON VALLEY CENTER'S motion, pursuant to CPLR 3212, dismissing the complaint as asserted against it, with prejudice, is GRANTED; and it is further

ORDERED that the complaint as asserted against defendant, NEW YORK PRESBYTERIAN HUDSON VALLEY CENTER, is dismissed and severed from the remaining claims in the complaint, which shall continue.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York
February 10, 2025

ENTER:

HON. NANCY QUINN KOBA, J.S.C.

To All Counsel Via NYSCEF