

Destefano v Goyal
2025 NY Slip Op 35545(U)
February 10, 2025
Supreme Court, Westchester County
Docket Number: Index No. 58541/2020
Judge: Lewis J. Lubell
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - MDPM PART

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

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URSULA DESTEFANO a/k/a URSULA CARUSO, as the
Administratrix of the ESTATE OF WILLIAM M. CARUSO
a/k/a WILLIAM MARTIN CARUSO, deceased, and URSULA
DESTEFANO a/k/a URSULA CARUSO, Individually,

DECISION & ORDER

Plaintiff,

-against-

Index No. 58541/2020
Seq. No. 2

ARUN GOYAL, M.D., SATEESH BABU, M.D.,
ROMEO MATEO, M.D., FRANCIS CARROLL, M.D.,
WESTCHESTER MEDICAL CENTER ADVANCED
PHYSICIAN SERVICES, P.C., WESTCHESTER MEDICAL
CENTER HEALTH HEART AND VASCULAR INSTITUTE,
JASON PLANSKY, M.D., EMERGENCY MEDICAL
ASSOCIATION OF NEW YORK, P.C., ENVISION
PHYSICIAN SERVICES, LLC, ENVISION
HEALTHCARE CORPORATION, WESTCHESTER
MEDICAL CENTER, WESTCHESTER COUNTY
HEALTH CARE CORPORATION, LAURA J. FIL, D.O.,
LAURA J. FIL, D.O., PLLC, VASSAR BROTHERS
HOSPITAL a/k/a VASSAR BROTHERS MEDICAL
CENTER, HEALTH QUEST SYSTEMS, INC.,
NUVANCE HEALTH, NUVANCE HEALTH
MEDICAL PRACTICE, P.C., TEAM HEALTH, LLC
d/b/a TEAMHEALTH, and EMERGENCY PHYSICIAN
SERVICES OF NEW YORK, P.C.,

Defendants.

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LUBELL, J.

The following papers were considered on this motion by the plaintiff for an order, *inter alia*, (1) pursuant to CPLR 2221 to reargue the decision and order of this Court, entered on June 2, 2023, (2) pursuant to CPLR 3101 (a) and 3124 compelling the defendants Arun Goyal, M.D., Sateesh Babu, M.D., Romeo Mateo, M.D., Westchester Medical Center Advanced Physician Services, P.C., Westchester Medical Center Health Heart and Vascular Institute, Westchester Medical

Center and Westchester County Health Care Corporation (the “moving defendants” or the “WMC defendants”) to produce, inter alia, the identity of the physicians who developed, wrote, approved, adopted and implemented specific practice guidelines in effect during the decedent’s period of treatment, and (3) for such other and further relief as this court may deem to be just and proper.

Notice of Motion

Affirmation in Support of Anthony Pirrotti, Jr., Esq.

Exhibits A through L

Affirmation in Opposition of Leilani Rodriguez, Esq.

Affirmation in Reply of Anthony Pirrotti, Jr., Esq.

NYSCEF File

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

By way of background, this action was commenced on or about August 14, 2020, when the plaintiff filed her summons and complaint seeking to recover damages against the defendants as a result of allegations of medical malpractice. The plaintiff claims that the decedent’s death was a result of sepsis and an untreated lung infection while he was admitted at defendant WMC. The WMC defendants served and filed their verified answer on or about October 8, 2020. By decision and order of this court, entered on May 2, 2023, the plaintiff’s prior motion seeking, inter alia, to compel the WMC defendants to identify the physicians who authored the “Critical Practice Guideline, Sepsis Screening and Initial Treatment” (the “Sepsis Guidelines” or the “Guidelines”) in effect at the time of decedent’s admission was denied by this court. Plaintiff now moves to reargue.

A motion for leave 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” (CPLR 2221 [d] [2]). “Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law of for some [other] reason mistakenly arrived at its earlier decision” (*Weiss v Bretton Woods Condominium II*, 151 AD3d 905 [2d Dept 2017] quoting *Mudgett v Long Island Rail Rd.*, 81 AD3d 614, 614 [2d Dept 2011] [internal quotation marks omitted]).

Here, the plaintiff fails to demonstrate that this court overlooked or misapprehended matters of fact or law in determining its prior motion (CPLR 2221 [d][2]; see *Matter of Carter v Carter*, 81 AD3d 819 [2d Dept 2011]). In fact, the plaintiff raises many of the same arguments raised in support of the prior motion. A motion to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided (see *Anthony J. Carter, DDS, P.C. v Carter*, 81 AD3d 819, 820 [2d Dept 2011]; *McGill v Goldman*, 261 AD2d 593 [2d Dept 1999]). This court considered all arguments raised by all the parties on the plaintiff’s prior motion and rendered the Decision and Order entered therein.

The plaintiff’s contention that this court incorrectly applied the burden of proof on a summary judgment motion to determine her motion to compel appears to be premised on a misreading of the court’s prior decision. Contrary to the plaintiff’s contention, the court did not apply “summary judgment standards” to a discovery motion. This court referenced the elements of proof for

establishing a prima facie case of medical malpractice to demonstrate that the information sought by the plaintiff was not relevant to establishing her claims as set forth in her verified complaint and not, as the plaintiff argues, to establish the plaintiff's burden of proof on a motion to compel. In fact, notably, plaintiff's counsel made the same argument and relied upon the same case law on the prior motion in support of his contention that the discovery sought was relevant (Glatt Reply Affirmation, at ¶7 [NYSCEF Doc. No. 110]). Consideration of the elements of the underlying causes of action pled is the necessary measure of a determination of relevance. Here, this court held that the plaintiff had not demonstrated that the identity of the physicians who authored and implemented the Sepsis Guidelines was material and necessary to the prosecution of her claims insofar as the identity of these individuals was not relevant to establishing a deviation or causation, which as acknowledge by the plaintiff are "the requisite elements of proof in a medical malpractice action" (Glatt Reply Affirmation, at ¶7 [NYSCEF Doc. No. 110]). The plaintiff was not entitled to the discovery merely because she was demanding it and deemed it to be relevant. A plaintiff does not have the right to "uncontrolled and unfettered disclosure" (*Merkos L'Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). It was within this court's purview as gatekeeper in the supervision of disclosure in this action to determine whether the discovery sought was, in fact, relevant to establishing the requisite elements of proof in a medical malpractice action in the prosecution of the plaintiff's causes of action (see *Ligoure v City of New York*, 128 AD3d 1027 [2d Dept 2015]).

Further, a motion for reargument is not "designed to offer a party an opportunity to argue a new theory of law not previously advanced by it" (*Frisenda v X Large Enterprises Inc.*, 280 AD2d 514 [2d Dept 2001]; see *Rochester v Quincy Mut. Fire Ins. Co.*, 10 AD3d 417 [2d Dept 2004]; *Ruddock v Boland Rentals, Inc.*, 5 AD3d 368 [2d Dept 2004]). On this motion, plaintiff argues

Plaintiff wants to know who is on the Sepsis Task Force for purposes of Cross Examination of defendant, MATEO, and other WMC defendants. Everyone will agree that if WMC adopts and provides a Sepsis Critical Care Guideline to all doctors at WMC, whoever is on this "Task Force" and wrote it must know and be accurate in what they are writing/telling everyone, or WMC would not adopt it as a Guideline at its Medical Center.

It is material and relevant to know if the doctors on this WMC Task Force, which adopted the Sepsis Guideline and provided it all doctors at WMC, are also the Chairman/Chief of Infectious Disease, Chairman/Chief of Critical Care, Chairman/Chief of Emergency Medicine and/or the head of other Departments at WMC, or Nationally recognized Medical Experts, *as it goes towards the witnesses (defendant MATEO's) credibility of his sworn testimony that they are "only Guidelines" (i.e. he doesn't need to follow them, and he knows better, despite being a Vascular Surgeon).*

(Pirrotti Affirmation in Support, at ¶¶13, 14 [NYSCEF Doc. No. 125] [emphasis in original]).

To any extent that the plaintiff appears to now argue that the identity of the original authors of the Sepsis Guidelines is relevant to determine their intentions in the drafting or implementation of the guidelines as “only Guidelines”, this argument is improperly advanced for the first time on this motion and cannot be considered. Further, to any extent that the plaintiff now argues that she needs the identity of these individuals to challenge the credibility of the defendants, the motion must be denied. Generally, “a party may not introduce extrinsic evidence on a collateral matter solely to impeach credibility” (*People v Alvino*, 71 NY2d 233, 247-248 [1987]; *Halloran v Virginia Chemicals Inc.*, 41 NY2d 386 [1977]). Where the purported purpose for the discovery sought would be as extrinsic evidence to contradict or refute any false or evasive testimony, discovery is precluded (*see Mullen v Wishner*, 178 AD3d 830, 832 [2d Dept 2019]; *see also Coopersmith v Gold*, 223 AD2d 572, 573 [2d Dept 1996]; *Matter of Brandon*, 55 NY2d 206, 210-211 [1982]). Accordingly, for all of these reasons, the plaintiff’s motion seeking leave to reargue is denied in all respects.

All other arguments raised on this motion and evidence submitted by the parties in connection therewith have been considered by this court, notwithstanding the specific absence of reference thereto.

Accordingly, it is hereby

ORDERED that the plaintiff’s motion is denied in its entirety; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon all parties within five (5) days of entry; and it is further

ORDERED that all parties are directed to appear for an in-person compliance conference on March 13, 2025, at 9:30 AM.

The foregoing constitutes the decision and order of this court.

Dated: White Plains, New York

February 10, 2025



HON. LEWIS J. LUBELL
JUSTICE OF THE SUPREME COURT