

Costanzo v Rosenband
2025 NY Slip Op 35566(U)
February 10, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 620588/2019
Judge: Linda Kevins
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SHORT FORM ORDER

INDEX No. 620588/2019
CAL. No. 202400285MMSUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY***P R E S E N T :***Hon. LINDA J. KEVINS
Justice of the Supreme CourtMOTION DATE 7/30/24
ADJ. DATE 10/15/24
Mot. Seq. # 002 MG-----X
SHARYN COSTANZO,

Plaintiff,

- against -

MICHAEL E. ROSENBAND, M.D., MICHAEL
E. ROSENBAND, M.D., P.C., ISLAND
CARDIOVASCULAR ASSOCIATES, LLP and
ST. CATHERINE OF SIENA MEDICAL
CENTER,Defendants.
-----XDELL & DEAN, PLLC
Attorney for Plaintiff
1225 Franklin Avenue, Suite 450
Garden City, NY 11530BARBIERO BISCH O'CONNOR &
COMMANDER LLP
Attorney for Defendant St. Catherine of Siena
Medical Center
35 Pinelawn Road, Suite 127
Melville, NY 11747WAGNER, DOMAN, LETO & DILEO, P.C.
Attorney for Defendants Micheal E. Rosenband,
M.D., and Michael E. Rosenband, M.D., P.C.
227 Mineola Boulevard
Mineola, NY 11501

Upon the following papers read on this e-filed motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by St. Catherine Siena filed June 18, 2024; it is

ORDERED that the motion by defendant St. Catherine of Siena Medical Center pursuant to CPLR 3212 for an order granting summary judgment in its favor is granted; and it is further

ORDERED that the Court, on its own motion, amends the caption to remove St. Catherine of Siena Medical Center as defendant (see CPLR 1003); and it is further

ORDERED that upon payment of any required fees, the Suffolk County Clerk is directed to amend the caption as stated herein; and it is further

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ORDERED that the movant is directed to promptly serve upon the Suffolk County Clerk, notice pursuant to CPLR §8019 [c] together with a copy of this Order and payment of any required fees; and it is further

ORDERED that upon Entry of this Order, the movant is directed to promptly serve a copy of this Order with Notice of Entry upon all parties and to promptly file the affidavits of service with the Clerk of the Court; and it is further

Plaintiff commenced this action to recover damages for injuries that she allegedly sustained as a result of the medical malpractice of the defendants. Plaintiff complains that in August 2018 she was a patient at defendant St. Catherine of Siena Medical Center (SCSMC), and that she underwent a surgical procedure that was negligently performed by SCSMC personnel, including defendant Dr. Michael Rosenband. According to plaintiff, she presented to SCSMC with complaints of dizziness, fainting, and tingling to her face, and, after an examination, she was advised that she would require a cardiac catheterization. She alleges that she did not give informed consent for the procedure, and that Dr. Rosenband and staff from SCSMC negligently performed the procedure, causing her various injuries.

SCSMC now moves for summary judgment dismissing the complaint with respect to any allegations of malpractice against SCSMC employees other than Dr. Rosenband. SCSMC also requests dismissal of plaintiff's claims for negligent hiring and training and negligent supervision. It claims that its staff and other medical personnel acted appropriately at all times during the care and treatment of plaintiff and that they did not depart from good and accepted standards of medical care. In support of the motion, SCSMC submits the affidavit of Dr. Luis Gruberg who is board certified in interventional cardiology, among other specialties. Plaintiff does not oppose SCSMC's motion.

The record shows that plaintiff underwent a cardiac catheterization at SCSMC on August 10, 2018, to determine whether she had any obstruction of blood flow to her heart. According to plaintiff, the procedure was performed by Dr. Rosenband, who discussed the procedure with her prior to entering the operating room. Plaintiff testified that Dr. Rosenband informed her that he would first attempt the procedure using her wrist, and that if that was unsuccessful he would attempt it through her groin. Dr. Rosenband ultimately performed the cardiac catheterization through plaintiff's groin, and confirmed that she had no medically significant coronary artery disease. Plaintiff's medical records show that after two attempts, Dr. Rosenband placed an Angio-Seal to close the point of access, and that he used ultrasound to confirm that there were no points of bleeding. Medical notes indicate that plaintiff experienced severe groin pain during the Angio-Seal placement. Dr. Rosenband did not have any other physician assist him with the procedure, and the nurse supporting Dr. Rosenband helped to administer medication, monitor the patient's vital signs, and communicated between the patient and the doctor. In the recovery room after the procedure, plaintiff complained of stomach pain. Nursing staff contacted Dr. Rosenband and vascular surgeon Dr. Awadallah, and after examining plaintiff, the doctors determined that plaintiff had become unstable. Her blood pressure dropped, and she was not responding to commands, possibly as a result of a retroperitoneal bleed. Dr. Awadallah determined that plaintiff was suffering from hemorrhagic shock and impending cardiac arrest, and he obtained consent from plaintiff's husband to perform an emergency procedure to address the bleed. Dr. Awadallah, with the assistance of another

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physician, placed a covered stent in the right external iliac artery to stop the bleeding. Thereafter, plaintiff was monitored and examined by nursing staff and physicians at the hospital to ensure that she maintained appropriate blood flow. Plaintiff was deemed stable for discharge on August 19, 2020, and she was discharged from the hospital with instructions for at home care and to follow up with various specialists.

SCSMC contends that its medical staff did not depart from good and accepted standards of medical care; therefore, the medical malpractice and lack of informed consent claims against it on those grounds must be dismissed. “The essential elements of medical malpractice are (1) a deviation or departure from accepted medical practice, and (2) evidence that such departure was a proximate cause of injury” (*Ciceron v Gulmatico*, 220 AD3d 732, 734, 197 NYS3d 556 [2d Dept 2023]). To make a prima facie showing of entitlement to summary judgment in an action to recover damages for medical malpractice, a defendant must establish an absence of any departure from good and accepted standards of medical care, or that even if there was a departure, the plaintiff was not injured thereby (*Gruen v Brathwaite*, 215 AD3d 927, 928, 187 NYS3d 313 [2d Dept 2023]; *Ciceron v Gulmatico*, 220 AD3d 732, 734, 197 NYS3d 556; *see Castro v New York City Health & Hosps. Corp.*, 74 AD3d 1005, 903 NYS2d 152 [2d Dept 2010]; *Deutsch v Chaglassian*, 71 AD3d 718, 896 NYS2d 431 [2d Dept 2010]). To satisfy this burden, the defendant must present expert opinion testimony that is supported by facts in the record and addresses the essential allegations in the bill of particulars (*Weintroub v Maimonides Med. Ctr.*, 222 AD3d 915, 916, 202 NYS3d 269 [2d Dept 2023]; *Ward v Engel*, 33 AD3d 790, 822 NYS2d 608 [2d Dept 2006]). Once this burden is satisfied, the burden shifts to the plaintiff to raise a triable issue of fact as to whether a departure from good and accepted practice occurred and whether this departure was a proximate cause of his or her injuries (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Dien v Seltzer*, 116 AD3d 910, 984 NYS2d 129 [2d Dept 2014]). “General allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat defendant physician’s summary judgment motion” (*Bowe v Brooklyn United Methodist Church Home*, 150 AD3d 1067, 1067-1068, 56 NYS3d 108 [2d Dept 2017]; *see Corujo v Caputo*, 224 AD3d 729, 730, 205 NYS3d 174 [2d Dept 2024]; *Getselevich v Ornstein*, 219 AD3d 1493, 1494, 196 NYS3d 515 [2d Dept 2023]).

Dr. Gruberg opines within a reasonable degree of medical certainty that the medical staff who provided care to plaintiff during her hospitalization did not depart from the accepted standards of medical care. Dr. Gruberg states that as the treating physician, Dr. Rosenband was solely responsible for obtaining consent for the procedure from plaintiff, and nursing and other staff were not required to be involved in obtaining consent. He further opines that Dr. Rosenband performed the procedure, and that it was within his purview to make determinations on how to perform the same. He opines that plaintiff was continuously monitored during and after the procedure, and that SCSMC staff timely notified Dr. Awadallah about plaintiff’s complaints following the procedure, which were urgently addressed. He states that the SCSMC physicians and staff who provided care to plaintiff while she was a patient at the hospital acted appropriately at all times.

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SCMCS has met its prima facie burden demonstrating its entitlement to judgment as a matter of law dismissing plaintiff's complaint as it relates to medical staff that treated plaintiff, and as to plaintiff's negligent hiring and training and negligent supervision claims. Medical personnel "whose work is supervised by a physician and who does not exercise independent medical judgment cannot be liable for medical malpractice unless the directions from the supervising physician so greatly deviate from normal medical practice that the [medical personnel] should be held liable for failing to intervene, or the [medical personnel] commits an independent act that constitutes a departure from accepted medical practice" (*Yakubov v Jamil*, 121 AD3d 884, 885, 994 NYS2d 190 [2d Dept 2014]; see *Nasima v Dolen*, 149 AD3d 759, 760, 51 NYS3d 189 [2d Dept 2017]; *Bellafigliore v Ricotta*, 83 AD3d 632, 633, 920 NYS2d 373 [2d Dept 2011]; *Soto v Andaz*, 8 AD3d 470, 779 NYS2d 104 [2d Dept 2004]). SCSMC has proffered evidence showing that its nurses and other staff did not commit any independent acts of negligence, and that Dr. Rosenband's instructions were not "so contraindicated by normal practice that [they] should have inquired" into its correctness (*Costello v Kirmani*, 54 AD3d 656, 657, 863 NYS2d 262 [2d Dept 2008]; see *Arocho v D. Kruger, P.A.*, 110 AD3d 749, 973 NYS2d 252 [2d Dept 2013]; *Motto v Beirouti*, 90 AD3d 723, 935 NYS2d 307 [2d Dept 2011]; *Vacarro v St. Vincent Med. Ctr.*, 71 AD3d 1000, 898 NYS2d 163 [2d Dept 2010]).

Inasmuch as plaintiff has failed to raise an issue of fact, defendant St. Catherine of Siena Medical Center's motion for summary judgment dismissing the complaint against them is granted.

In light of the foregoing, the motion is granted. The caption is amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
SHARYN COSTANZO,

Plaintiff,

- against -

MICHAEL E. ROSENBAND, M.D., MICHAEL
E. ROSENBAND, M.D., P.C., ISLAND
CARDIOVASCULAR ASSOCIATES, LLP.

Defendants.
-----X

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Anything not specifically granted herein is hereby denied.

The foregoing constitutes the Decision and **Order** of the Court.

Dated: 2.10.25



LINDA KEVINS, JSC

_____ **FINAL DISPOSITION** **X** **NON -FINAL DISPOSITION**