

Antonelli v Village Care Rehabilitation & Nursing Ctr.
2025 NY Slip Op 35610(U)
January 15, 2025
Supreme Court, Nassau County
Docket Number: Index No. 606859/2022
Judge: Erica L. Prager
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT: ERICA L. PRAGER, J.S.C.

-----x
VINCENT T. ANTONELLI,

Plaintiff,

-against-

**VILLAGE CARE REHABILITATION AND
NURSING CENTER,**

Defendant.
-----x

IAS/TRIAL PART 15

Motion Seq.: 001

Submission Date: 10/29/24

Index No.: 606859/22

DECISION AND ORDER

Papers Considered:

NYSCEF Doc. No.

Supporting Papers.....	17-29
Opposition Papers.....	32-38
Reply Papers.....	39

Upon the foregoing papers, the motion (seq. 001) of Defendant VILLAGE CARE REHABILITATION AND NURSING CENTER ("VCRN") for an Order pursuant to CPLR § 3212 granting summary judgment dismissing Plaintiff's complaint is determined as set forth herein.

Background

This is an action to recover damages for personal injuries allegedly sustained by Plaintiff VINCENT T. ANTONELLI ("Plaintiff") during a transfer from bed to wheelchair. The underlying facts are taken from the parties' submissions, and are undisputed, except where otherwise noted.

Plaintiff was originally admitted to NYU Tisch Hospital for a foot infection which ultimately required a below the knee amputation of his left leg, due to complications from diabetes, hypertension and other conditions (NYSCEF Doc. # 32, ¶2). Following the amputation, Plaintiff underwent physical therapy at RUSK Rehabilitation at NYU from July 21, 2021 to August 5, 2021. Thereafter, Plaintiff was discharged to VCRN for rehabilitation (NYSCEF Doc. # 32, ¶2).

On August 10, 2021, at approximately 11:30 a.m. CNA¹ Marsha Allen ("Ms. Allen") was transferring Plaintiff from his bed to his wheelchair. During the transfer, Plaintiff's right leg got

¹ Certified Nursing Assistant

ANTONELLI v. VILLAGE CARE REHABILITATION AND NURSING CENTER
Index No.: 606859/22

caught with the lock extension on the wheelchair causing a laceration to his right shin (NYSCEF Doc # 25 and 26). Ms. Allen notified a nurse who in turn notified the medical team. A wound care consult was obtained, and it was recommended that Plaintiff be transferred to the Emergency Room for wound closure (NYSCEF Doc. # 25 and 26). According to the incident report, Plaintiff stated "I got out from the bed to the wheelchair with the help of my CNA and upon doing so my right leg got caught up with the wheelchair lock ..." (NYSCEF Doc. # 26, p. 1).

Plaintiff was transferred to the Emergency Room at Lenox Hill Greenwich Village (NYSCEF Doc. # 27). His records indicate that he hit his right knee while trying to get into his wheelchair at VCRN and he sustained a laceration (NYSCEF Doc. # 27). The laceration was sutured closed, Plaintiff received a tetanus shot, and he was discharged back to VCRN with wound care instructions (NYSCEF Doc. # 27). The wound healed over the following month (NYSCEF Doc. # 25).

The instant action was commenced on commenced on May 25, 2022. As set forth in the Complaint and the Bill of Particulars (NYSCEF Doc. # 21), Plaintiff alleges, *inter alia*, that VCRN failed to adequately provide and employ safe and competent procedures for transporting Plaintiff from his bed to a wheelchair or other assistive device, utilized improper, unsafe and dangerous procedures for transferring Plaintiff, and failed to employ the requisite number of people to properly and safely transport Plaintiff from bed to wheelchair. In particular, Plaintiff complains of the failure to use a two person assist in transferring him from bed to wheelchair. Plaintiff also alleges that VCRN failed to properly observe, care for, and supervise Plaintiff, and that VCRN failed to ensure that its equipment (the wheelchair) was safe and fit for its intended purpose. The Complaint asserts causes of action sounding in medical malpractice, negligence and *res ipsa loquitur* (NYSCEF Doc. # 1).

Discussion

VCRN moves for summary judgment dismissing Plaintiff's complaint. In support of its motion, VCRN submits, *inter alia*, deposition testimony, medical records and the Expert Affirmation of Dr. Lawrence Diamond, board certified in Family Medicine and Geriatric Medicine.

Based upon his review of Plaintiff's Bills of Particulars, Plaintiff's medical records from VCRN and Lenox Hill Greenwich Village, the 8/10/21 VCRN Incident Report, the VCRN Policy for resident transfers, the transcripts from the depositions of plaintiff, plaintiff's daughter, and VCRN nursing aide Marsha Allen, and Defendant's Statement of Undisputed Material Facts, Dr. Diamond opines that Plaintiff's physical therapy, occupational therapy and rehab medicine

ANTONELLI v. VILLAGE CARE REHABILITATION AND NURSING CENTER
Index No.: 606859/22

assessments while at VCRN were consistent with Plaintiff requiring only one person to assist for transfers. Additionally, Dr. Diamond opines that the discharge and transfer materials from Rusk Rehabilitation provided to VCRN were consistent with Plaintiff requiring one person to assist with transfers. Dr. Diamond notes that for five days at VCRN prior to the accident, Plaintiff had received one person assistance with transfers from bed to wheelchair, without incident. Dr. Diamond opines that Ms. Allen, more likely than not, transferred Plaintiff from the bed to wheelchair appropriately and consistent with VCRN's policy for lifting and transferring patients. Dr. Diamond summarized each step Ms. Allen took and opined that the procedure she followed was appropriate and consistent with good medical care.

Dr. Diamond opined that it was more likely than not that the laceration was sustained during the transfer, and that Plaintiff did not fall, as he had claimed at his deposition. Dr. Diamond notes the absence of any documentation of a fall in the VCRN chart, the VCRN incident report, or the Lenox Hill Greenwich Village records. Moreover, neither Plaintiff, Ms. Allen, the nurse on duty, nor any other practitioner involved in Plaintiff's care reported a fall. There were no objective symptoms associated with a fall, such as bruising and swelling, and no x-rays were taken.

Dr. Diamond concludes: "It is my opinion that Mr. Antonelli's right shin laceration was not the result of inadequate or insufficient assistance, that is, the failure to employ two persons during transfer from bed to wheelchair. Further, it is my opinion to reasonable degree of medical certainty that the failure to utilize a two person assist during transfer on 8/10/21 did not cause or contribute to the right shin laceration at issue."

Based upon the foregoing, VCRN argues that there is no basis for Plaintiff's malpractice claim. There is no basis for the contention Plaintiff required two people to assist him in transferring him from his bed to wheelchair on August 10, 2021, or that plaintiff sustained injury in a fall. VCRN contends that Plaintiff suffered an accidental right shin laceration during the transfer. The wound was properly treated, and the circumstances of the incident were properly investigated and documented.

In opposition, Plaintiff submits, *inter alia*, both his own deposition testimony and that of Ms. Allen. Plaintiff testified during his deposition that from the time of his admission to VCRN up to the date of the incident, each time he was transferred from his bed to wheelchair, the transfer was performed with the assistance of two people (NYSCEF Doc # 22, p. 31). Plaintiff also testified that during the transfer with Ms. Allen, his leg must have hit something on the wheelchair and they both fell to the floor (NYSCEF Doc # 22, p. 31). Ms. Allen testified at her deposition, that, generally, a two-person assist is required when a patient is not able to do much for himself, including when a

ANTONELLI v. VILLAGE CARE REHABILITATION AND NURSING CENTER
Index No.: 606859/22

patient is unable to stand on his own or get off the bed on his own (NYSCEF Doc 35, pp. 37-38). Plaintiff asserts that the VCRN record shows that Plaintiff was unable to stand or remove himself from his bed on his own on August 10, 2021. Plaintiff argues that Ms. Allen's deposition testimony, training and experience demonstrate that Plaintiff required a two person assist on August 10, 2021. As a result, Plaintiff maintains there is a question of fact as to whether VCRN breached its own transfer protocol resulting in Plaintiff's laceration.

Plaintiff argues further that even assuming a one-person assist was not a departure from the applicable standard of care, it was ordinary negligence that caused Plaintiff's leg to come into contact with the wheelchair extender lock causing injury. In his supporting Affirmation, counsel cites Plaintiff's testimony that the brakes on the wheelchair were not engaged, and suggests that Ms. Allen's failure to move or remove the wheelchair lock extender or to reposition the wheelchair to a safe position prior to the transfer was negligent. Counsel notes that VCRN's motion focuses solely on the malpractice cause of action, and is silent regarding the causes of action sounding in ordinary negligence and *res ipsa loquitur*. Thus, counsel argues, even if the malpractice cause of action is dismissed, the action should not be dismissed in its entirety.

Analysis

"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. ... In order to sustain this *prima facie* burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff's complaint and bill of particulars. 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. ... To rebut the defendant's *prima facie* showing, a plaintiff must submit an expert opinion that specifically addresses the defense expert's allegations. ... General and conclusory allegations of medical malpractice, however, unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat a defendant [provider's] summary judgment motion." *Mattocks v. Ellant*, 231 A.D.3d 813, 815-16 (2d Dept. 2024) (internal citations and quotation marks omitted).

Here, VCRN has demonstrated its *prima facie* entitlement to summary judgment dismissing the medical malpractice cause of action through the submission of the Expert Affirmation of Dr. Lawrence Diamond, which refutes the specific allegations of malpractice set forth in Plaintiff's pleadings. See *Mattocks v. Ellant*, 231 AD3d at 815-816.

ANTONELLI v. VILLAGE CARE REHABILITATION AND NURSING CENTER
Index No.: 606859/22

In opposition, Plaintiff fails to meet its evidentiary burden. Plaintiff provides no expert opinion, let alone one that specifically addresses the allegations of Dr. Diamond. See *id.* The testimony of Ms. Allen is no adequate substitute. Plaintiff does not establish Ms. Allen's expertise or qualifications to evaluate Plaintiff's physical status and assistance requirements. Ms. Allen herself testified that she, as a nurse's aide, is not responsible for determining whether a patient required a one person assist or a two person assist (NYSCEF Doc 35, pp. 36-37). Second, Ms. Allen does not specifically address the allegations of Dr. Diamond. Accordingly, her testimony fails to rebut the expert affirmation of Dr. Diamond or to raise a material issue of fact warranting a trial. The Court thus finds that VCRN has established its right to judgment as a matter of law on the medical malpractice cause of action.

As to the remaining causes of action, the Court finds that VCRN fails to address the ordinary negligence and *res ipsa loquitur* claims in its supporting papers, and thus fails to meet its *prima facie* burden on such claims. The arguments seeking their dismissal are raised for the first time in reply. Accordingly, such arguments are not properly considered. See *Sherman v. Zampella*, 214 A.D.3d 545, 546 (1st Dept. 2023).

Conclusion

The Court has considered the remaining contentions of the parties and finds that they do not require discussion or alter the determination herein. Based upon the foregoing, it is

ORDERED that the motion by VILLAGE CARE REHABILITATION AND NURSING CENTER for summary judgment dismissing the Complaint is ***granted in part***, solely with respect to the medical malpractice cause of action; in all other respects, it is ***denied***; and it is further

Any requests for relief not specifically addressed herein are ***denied***.

This constitutes the Decision and Order of this Court.

Dated: January 15, 2025
Mineola, NY, 11501

ENTER:



HON. ERICA L. PRAGER, J.S.C.

ENTERED

Jan 27 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE