

Collaro v Hanson
2025 NY Slip Op 35640(U)
January 22, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 617951/2019
Judge: David T. Reilly
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SHORT FORM ORDER

INDEX No. 617951/2019CAL. No. 202302005DMSUPREME COURT - STATE OF NEW YORK
I.A.S. PART 30 - SUFFOLK COUNTY**P R E S E N T :**Hon. DAVID T. REILLY
Justice of the Supreme CourtMOTION DATE 6/12/24
ADJ. DATE 8/21/24
Mot. Seq. # 008 MotD
Mot. Seq. # 009 MG; CASEDISP-----X
MARIA COLLARO,

Plaintiff,

- against -

ERIC HANSON and TRACI WALSH,

Defendants.
-----XMARIA COLLARO
Pro Se Plaintiff
300 Smithtown Boulevard
Nesconset, New York 11767FUMUSO, KELLY, SEART, FARRELL, POLIN
& CHRISTENSEN, LLP
Attorney for Defendant Eric Hanson
110 Marcus Boulevard
Hauppauge, New York 11788BARTLETT LLP
Attorney for Defendant Traci Walsh
3 Huntington Quadrangle, Suite 304S
Melville, New York 11747

Upon the following papers read on these motions for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by defendant Eric Hanson, filed May 20, 2024; by defendant Traci Walsh, filed May 21, 2024; Notice of Cross-Motion and supporting papers _____; Answering Affidavits and supporting papers by plaintiff, filed August 21, 2024; Replying Affidavits and supporting papers by defendant Eric Hanson, Filed August 19, 2024; Other _____; it is

ORDERED that the motion by defendant Eric Hanson, D.D.S., and the motion by defendant Traci Walsh are consolidated for purposes of this determination; and it is further

ORDERED that the motion by defendant Eric Hanson, D.D.S., for summary judgment dismissing the complaint against him and amending the caption by striking his name is granted to the extent of dismissing the complaint against him, and is otherwise denied; and it is further

ORDERED that the motion by defendant Traci Walsh for summary judgment dismissing the complaint against her is granted.

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This is a dental malpractice action to recover damages for injuries allegedly arising from the treatment of plaintiff Maria Collaro by defendants Eric Hanson, D.D.S., sued herein as Eric Hanson, and Traci Walsh on March 28, 2017 during a dental cleaning. Plaintiff alleges that Dr. Hanson was negligent in, among other things, failing to instruct Ms. Walsh in the proper use and technique of ultrasonic scaling, failing to maintain dental equipment, failing to provide proper dental equipment, failing to assess the condition of plaintiff's gums and teeth, and failing to protect plaintiff's teeth during cleaning. Plaintiff alleges that Ms. Walsh was negligent in, among other things, failing to properly utilize an ultrasonic scaler, using excessive contact pressures, permitting excessive frictional heating between the probe and enamel, and using dental instruments in that she was unqualified, untrained, and unskilled to use.

Dr. Hanson now moves for summary judgment dismissing the complaint against him on the ground that he did not deviate from the accepted standards of dental care, and that his treatment did not cause plaintiff's alleged injuries. Dr. Hanson submits, among other things, copies of the pleadings and the bill of particulars, the transcript of his deposition testimony, the transcript of the deposition testimony of plaintiff and Traci Walsh, dental records, and the expert affirmation of Dimitrios Kilimitzoglous, D.D.S. Traci Walsh also moves for summary judgment dismissing the complaint against her on the ground that she did not deviate from the accepted standards of dental care, and that her treatment did not cause plaintiff's alleged injuries. Ms. Walsh submits, in support of the motion, dental records and the expert affirmation of Jeff Rabinowitz, D.M.D. In opposition to the motions, plaintiff argues that triable issues of fact remain as to whether Dr. Hanson and Ms. Walsh departed from the accepted standards of dental care and whether such treatment caused her injuries. She submits, in support of the motion, her affirmation, photographs, her personal notes and records, and dental records.

The requisite elements of proof in a medical or dental malpractice action are (1) a deviation or departure from accepted standards of medical practice, and (2) evidence that such departure was a proximate cause of the plaintiff's injury or damage (*Toby v Meneshian*, 222 AD3d 1029, 201 NYS3d 673 [2d Dept 2023]; *Many v Lossef*, 190 AD3d 721, 137 NYS3d 128 [2d Dept 2021]; *Kelapire v Kale*, 189 AD3d 1197, 134 NYS3d 255 [2d Dept 2020]; *Nelson v Lighter*, 179 AD3d 933, 116 NYS3d 360 [2d Dept 2020]; *Mathias v Capuano*, 153 AD3d 698, 60 NYS3d 327 [2d Dept 2017]). A defendant moving for summary judgment has the initial burden of establishing that he or she did not depart from good and accepted practice, or that if a departure occurred, that it was not a proximate cause of the plaintiff's injuries (*Toby v Meneshian*, 222 AD3d 1029, 201 NYS3d 673; *Xiao Yan Ye v Din Lam*, 191 AD3d 827, 141 NYS3d 125 [2d Dept 2021]; *Kelapire v Kale*, 189 AD3d 1197, 134 NYS3d 255; *Nelson v Lighter*, 179 AD3d 933, 116 NYS3d 360; *Mathias v Capuano*, 153 AD3d 698, 60 NYS3d 327). In order to sustain this burden, the defendant must address and rebut all specific allegations of malpractice set forth in the plaintiff's bill of particulars (*Toby v Meneshian*, 222 AD3d 1029, 201 NYS3d 673; *Nelson v Lighter*, 179 AD3d 933, 116 NYS3d 360; *Mathias v Capuano*, 153 AD3d 698, 60 NYS3d 327).

After making this prima facie showing, the burden shifts to the plaintiff to submit evidentiary facts or materials that raise a triable issue as to the element of the cause of action that is the subject of the defendant's prima facie showing (*Xiao Yan Ye v Din Lam*, 191 AD3d 827, 141 NYS3d 125; *Many v*

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Lossef, 190 AD3d 721, 137 NYS3d 128; *Kelapire v Kale*, 189 AD3d 1197, 134 NYS3d 255). The plaintiff need only raise a triable issue as to the elements on which the defendant met the prima facie burden (*Toby v Meneshian*, 222 AD3d 1029, 201 NYS3d 673; *Nelson v Lighter*, 179 AD3d 933, 116 NYS3d 360). “However, mere conclusory allegations of malpractice, unsupported by competent evidence tending to establish the elements of the claim at issue, are insufficient to defeat summary judgment” (*Nelson v Lighter*, 179 AD3d 933, 934-935, 116 NYS3d 360; see *Many v Lossef*, 190 AD3d 721, 137 NYS3d 128; *Kelapire v Kale*, 189 AD3d 1197, 134 NYS3d 255). Summary judgment is inappropriate in a dental malpractice action where the parties present conflicting opinions by dental experts (see *Cujcuj v Jayadevan*, 218 AD3d 436, 193 NYS3d 96 [2d Dept 2023]; *Many v Lossef*, 190 AD3d 721, 137 NYS3d 128).

Through the expert affirmation of Dr. Kilimitzoglous, Dr. Hanson established prima facie entitlement to summary judgment dismissing the dental malpractice claim against him by demonstrating that his care complied with accepted standards of dental practice and that such care did not cause plaintiff’s alleged injuries (see *Cujcuj v Jayadevan*, 218 AD3d 436, 193 NYS3d 96; *Xiao Yan Ye v Din Lam*, 191 AD3d 827, 141 NYS3d 125; *Kelapire v Kale*, 189 AD3d 1197, 134 NYS3d 255; *Nelson v Lighter*, 179 AD3d 933, 116 NYS3d 360). In his affirmation, Dr. Kilimitzoglous opines that as plaintiff had not had a dental cleaning in the 13 years prior to her presentation to Dr. Hanson, her teeth had a large amount of plaque and calculus buildup, which would require a thorough cleaning. He states that temporary sensitivity after a dental cleaning is common after the removal of tartar and calculus. He also states that it is also common for a patient to have transient and temporary trauma to the gums, which heals quickly. Dr. Kilimitzoglous opines that there was no indication for Dr. Hanson to perform a panorex of plaintiff at her first appointment on March 28th. He explains that a panorex is indicated when a patient makes complaints related to possible periodontal disease, temporomandibular joint dysfunction (“TMJ”), and wisdom teeth impaction. He states that as plaintiff’s complaints at her presentation to Dr. Hanson included irritation around tooth #17 and tooth pain after biting a nut, there was no need for a panoramic x-ray. He states that the initial x-rays taken on March 28th were proper and within the standard of care.

Dr. Kilimitzoglous opines that plaintiff had small grooves in her teeth prior to the teeth cleaning by Ms. Walsh, as Dr. Hanson’s examination found that plaintiff’s teeth showed signs that she had been vigorously brushing them. He explains that excessive brushing can also put too much pressure on the gums, which can traumatize the gums and cause recession. He also explains that excessive brushing can contribute to teeth sensitivity, and that side-to-side brushing can create notches on the teeth and in the gingival area known as abfractions. Dr. Kilimitzoglous opines that any damage plaintiff saw on her teeth after March 28th was self-inflicted due to her excessive teeth-brushing and poor dental hygiene. He notes that none of the non-party dentists who treated plaintiff after March 28th reported any damage or injury to plaintiff’s teeth beyond normal wear and tear.

Dr. Kilimitzoglous opines that there is “absolutely no possible way” that one teeth cleaning procedure by Ms. Walsh could cause plaintiff to develop trigeminal neuralgia. He explains that trigeminal neuralgia can have many causes, including stress, psychological issues, contract between a blood vessel and the trigeminal nerve, multiple sclerosis, a tumor pressing against the trigeminal nerve, a

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stroke, or an injury of the nerve due to surgery. Dr. Kilimitzoglous further opines there is “no possible way” that one dental cleaning could cause a patient to develop an altered dental bite, especially when there is no evidence that shows an improperly medical instrument was used.

Finally, Dr. Kilimitzoglous opines that the appropriate level of supervision is up to the individual dentist and depends on the circumstances of a given situation. He states that Dr. Hanson was present at his practice when the subject dental cleaning took place and that he expressly authorized Ms. Walsh to perform the dental cleaning. He also states that Dr. Hanson examined plaintiff’s mouth after the dental cleaning was performed. Dr. Kilimitzoglous concluded that Dr. Hanson properly supervised Ms. Walsh.

Through the expert affirmation of Dr. Rabinowitz, Ms. Walsh established prima facie entitlement to summary judgment dismissing the dental malpractice claim against her by demonstrating that her care complied with accepted standards of dental practice and that such care did not cause plaintiff’s alleged injuries (*see Cujcuj v Jayadevan*, 218 AD3d 436, 193 NYS3d 96; *Xiao Yan Ye v Din Lam*, 191 AD3d 827, 141 NYS3d 125; *Kelapire v Kale*, 189 AD3d 1197, 134 NYS3d 255; *Nelson v Lighter*, 179 AD3d 933, 116 NYS3d 360). Dr. Rabinowitz opines that the March 28th visit was normal and unremarkable. He explains that a dental hygienist would never use or even have access to a dental drill, as they are used for treatment well beyond the scope of a hygienist’s permitted practice. He also explains that an ultrasonic scaler is a high frequency instrument that is used to remove stain and hard structures, like calculus or tarter, from dental surfaces. He states that an ultrasonic scaler is the standard instrument for a hygienist, in addition to hand scaling instruments, to clean and debride dental structures in the oral cavity. Dr. Rabinowitz opines that if a hygienists used instrumentation incorrectly or inappropriate, as opposed to not using it enough, a patient would perceive it immediately through pain. He states that using an ultrasonic scaler aggressively, with too little or zero irrigation, or with the wrong tip, would generate appreciable heat and cause pain. Dr. Rabinowitz opines that if Ms. Walsh used a drill or ultrasonic scaler without water, the condition of her teeth and gums would be far different than her accounts. He opines that improper use of an ultrasonic scaler would create structural damage on a macroscopic level. Dr. Rabinowitz states that if a drill were used, it would have removed tooth structure grossly. He states that if not grossly, then, at minimum, the shaping, disfigurement, and modification of the subject tooth structure would be readily apparent. It could also displace restorations such as fillings and chip enamel. He states that plaintiff’s photographs and x-rays show no evidence of such conditions.

Dr. Rabinowitz opines that the well-documented condition of plaintiff’s teeth and gums is in direction conflict with her allegations. He states that the photographs of plaintiff’s teeth reflect no dental trauma that could have been caused by the inappropriate dental instrumentation that plaintiff alleges. He further states that other than some minor wear or attrition, likely related to use of her teeth in function and in occlusion, and to toothbrush technique, he does not see any of the claimed injuries or damages in the photographs of plaintiff. Dr. Rabinowitz opines that the erosion of enamel seen by Dr. Hanson could not have been caused by a single dental cleaning, especially because Ms. Walsh appropriately chose and utilized the instrumentation. He states that plaintiff was subsequently seen by “highly-regarded [dental] practitioners” who questioned whether plaintiff might have been suffering from TMJ. He states that subsequent oral surgeons diagnosed plaintiff with a problem with a lower wisdom tooth, but nothing that

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could be related to the type of negligent hygiene mistreatment that plaintiff alleges. He states that subsequent periodontal practitioners saw nothing of periodontal significance, other than some gingivitis.

Dr. Hanson and Ms. Walsh having met their initial burden on the motions, the burden shifted to plaintiff to submit admissible evidence raising triable issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]). In opposition to the motions, plaintiff failed to submit an affirmation from a dental expert demonstrating a deviation from the accepted standards of dental practice and proximate cause. Therefore, plaintiff failed to raise a triable issue of fact (*see Cujcuj v Jayadevan*, 218 AD3d 436, 193 NYS3d 96; *Scally v Weintraub*, 295 AD2d 334, 742 NYS2d 912 [2d Dept 2022]; *Schaefer v Marchiano*, 193 AD2d 664, 597 NYS2d 470 [2d Dept 1993]; *compare Turetsky v Shumantov*, 222 AD3d 906, 201 NYS3d 510 [2d Dept 2023]). The Court notes that the portion of Dr. Hanson's motion for an order striking his name from the caption is denied, as moot.

Accordingly, Dr. Hanson's motion is granted to the extent of dismissing the complaint against him and is otherwise denied, and Ms. Walsh's motion is granted.

Dated: January 22, 2025

A blue ink signature of David T. Reilly, J.S.C. is written over a horizontal line. The signature is stylized and cursive.

David T. Reilly, J.S.C.

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