| **Wilson v VillageCare Rehabilitation & Nursing Ctr.** |
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| 2026 NY Slip Op 30577(U) |
| February 17, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 150197/2022 |
| Judge: Hasa A. Kingo |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. HASA A. KINGO** **PART** **65M**

***Justice***

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RICHARD WILSON,

Plaintiff,

- v -

VILLAGECARE REHABILITATION & NURSING CENTER, VILLAGE CARE HOLDING CORP., VILLAGE CARE PLUS, INC.,VILLAGE CENTER FOR CARE, THE VILLAGE NURSING HOME, INC.,VILLAGE CARE OF NEW YORK, INC.

Defendant.

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**INDEX NO.** 150197/2022

**MOTION DATE** N/A

**MOTION SEQ. NO.** 009

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 009) 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221

were read on this motion for SUMMARY JUDGMENT.

Plaintiff moves, pursuant to CPLR § 3212, for summary judgment on the issue of liability against defendants and for an immediate trial on damages. Defendants oppose and cross-move, pursuant to CPLR § 3212, for summary judgment dismissing the complaint. In addition to contending that plaintiff is not entitled to judgment on liability, defendants argue that the record establishes—through expert proof and the medical and facility records—that defendants' care complied with the applicable standard of care, that plaintiff's right-heel wound was unavoidable and not proximately caused by any act or omission of defendants, and that plaintiff cannot proceed under a *res ipsa loquitur* theory.

## BACKGROUND AND PROCEDURAL HISTORY

This action arises from plaintiff's allegation that, during a subacute rehabilitation admission from approximately November 21, 2019 through December 8, 2019, he developed a serious right-heel wound/pressure ulcer due to negligent nursing/rehabilitative care and departures from accepted standards of practice at defendants' facility. Plaintiff alleges that, upon admission, he had intact skin on the right heel; that he was paraplegic and lacked sensation below the waist; and that he thereafter developed a heel injury during his inpatient stay that later required additional treatment and significantly set back his function. Plaintiff asserts, among other theories, that he was placed in a bed "too short" for his height with a wooden footboard and that prolonged pressure and/or friction against that footboard contributed to the injury. Plaintiff also alleges failures to turn/reposition at appropriate intervals, failures to relieve pressure on the heels, and failures to provide appropriate pressure-relieving devices and bedding.

The action was commenced on January 6, 2022. Defendants joined issue by verified answer on February 16, 2022. Discovery proceeded, including multiple depositions of plaintiff (June 21, 2023; December 19, 2023; and May 16, 2025), a deposition of defendants' witness Velma Haye, R.N. (May 15, 2024), and a deposition of non-party witness Ann Marie Deo (January 22, 2025). Plaintiff filed a note of issue on July 17, 2025, certifying discovery complete. This summary judgment motion practice followed.

**ARGUMENTS**

Plaintiff argues that the record establishes, as a matter of law, that defendants departed from accepted standards of care in their treatment of a paraplegic rehabilitation patient at risk for skin breakdown and that those departures proximately caused the right-heel injury. Plaintiff further argues that, even apart from a medical malpractice theory requiring expert proof, the doctrine of *res ipsa loquitur* applies because (i) the formation of such a heel injury would not ordinarily occur absent negligence, (ii) the relevant instrumentality and plaintiff's care environment were within defendants' exclusive control, and (iii) the injury was not due to any voluntary action or contribution by plaintiff. Plaintiff relies on deposition testimony, facility records, photographs, and an expert submission from a gastroenterologist (Dr. Santa R. Nandi, M.D.).

Defendants oppose plaintiff's motion on the ground that plaintiff has not carried the heavy prima facie burden required for summary judgment on liability in a medical malpractice case. Defendants specifically contend that plaintiff's expert proof is deficient in admissible form and substance, that plaintiff's expert lacks the requisite foundation to opine on pressure-injury prevention and nursing/rehabilitation standards in a skilled nursing/subacute rehabilitation setting, and that the opinions offered are conclusory and speculative. Defendants further argue that *res ipsa loquitur* cannot support plaintiff's request for judgment as a matter of law because pressure injuries may occur absent negligence—particularly in a paraplegic patient with significant comorbidities—because the "instrumentality" was not within defendants' exclusive control given plaintiff's participation in transfers and therapy and the possibility of multiple causal mechanisms, and because plaintiff's own movements could have contributed.

By cross-motion, defendants contend that they are entitled to dismissal. Defendants rely primarily on the affirmation of their geriatric expert, Lawrence N. Diamond, M.D., who opines, to a reasonable degree of medical certainty, that defendants complied with the applicable standard of care in preventing, identifying, and treating the pressure injury; that the wound was "unavoidable" in light of plaintiff's paraplegia and comorbidities; and that there is no record support for plaintiff's claim that the wound resulted from footboard friction. Defendants also argue that plaintiffs' claimed *sequelae* (including certain thromboembolic allegations) are not supported.

In opposition to the cross-motion (and in further support of plaintiff's motion), plaintiff argues that defendants' attacks on Dr. Nandi's submission are meritless; that, in any event, defendants' expert does not eliminate triable issues of fact as to preventability and causation; and that existing authority recognizes that the worsening or formation of skin ulcers may not be deemed "unavoidable" as a matter of law where the record supports failures to turn/position and failures to implement an adequate wound-prevention plan. Plaintiff also submits an affirmation from a

nursing expert, Rebecca McCarthy, MSN, BSN, RN, GERO-BC, CDONA, who opines that accepted nursing standards required—given plaintiff's paraplegia and risk profile—scheduled positioning approximately every two hours and proactive heel offloading/elevation via heel lifts or comparable devices; that defendants' care planning and implementation failed to specify and implement an appropriate turning frequency and failed to provide heel lifts until after a blister was recognized; and that these departures caused the heel injury.

## DISCUSSION

Summary judgment is a "drastic remedy" that may be granted only where the movant establishes entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issue of fact (CPLR § 3212[b]; *see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Once the movant makes a prima facie showing, the burden shifts to the opponent to produce evidentiary proof in admissible form sufficient to require a trial of material issues (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993]; *Kosson v Algaze*, 84 NY2d 1019 [1995]). Mere conclusions or unsubstantiated allegations are insufficient to defeat a properly supported motion (*Zuckerman*, 49 NY2d at 562).

### I. Plaintiff's Motion

Because the pleaded theories sound in the care and safeguarding of a patient in a rehabilitation/nursing setting, the court first addresses the analytic framework. Medical malpractice is "but a species of negligence" and no rigid analytical line separates malpractice from ordinary negligence (*Weiner v Lenox Hill Hosp.*, 88 NY2d 784, 787 [1996]). However, where the alleged wrongdoing is "an integral part of the process of rendering medical treatment" and the issues require professional medical judgment, the claim is treated as malpractice (*Scott v Uljanov*, 74 NY2d 673, 675 [1989]; *Coursen v New York Hosp.-Cornell Med. Ctr.*, 114 AD2d 254, 256 [1st Dept 1986]). Nurses and other medical personnel are legally capable of committing malpractice, and acts or omissions by nursing staff that constitute medical treatment or bear a substantial relationship to physician-rendered treatment may be analyzed under malpractice principles (*Bleiler v Bodnar*, 65 NY2d 65, 72 [1985]; *see also Collins v New York Hosp.*, 49 NY2d 965 [1980] [failure to carry out physician's orders may constitute malpractice]). Here, plaintiff's core allegations—risk assessment for skin breakdown, development and implementation of pressure-injury prevention protocols, repositioning/offloading regimens, monitoring/skin checks, and wound recognition and treatment—implicate professional nursing standards and clinical judgment in a healthcare facility setting and are therefore properly evaluated under malpractice standards, requiring competent expert proof on departures and causation (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *McDermott v Manhattan Eye, Ear & Throat Hosp.*, 15 NY2d 20 [1964]).

To prevail on summary judgment on liability in a malpractice action, plaintiff must establish, prima facie and through competent evidence, both (1) a departure from accepted standards of practice and (2) that the departure was a proximate cause of the injury alleged (*Alvarez*, 68 NY2d 320; *McDermott*, 15 NY2d 20). Where the issues are outside ordinary experience, expert opinion is required (*see generally Fiore v Galang*, 64 NY2d 999 [1985]). In addition, when plaintiff seeks summary judgment on liability under *res ipsa loquitur*, plaintiff's

proof must be "so convincing that the inference of negligence arising therefrom is inescapable and unrebutted" (*Thomas v New York Univ. Med. Ctr.*, 283 AD2d 316, 317 [1st Dept 2001]).

On this record, plaintiff has not met the prima facie burden for judgment as a matter of law on liability.

First, plaintiff's showing of a specific, articulated departure from accepted standards of pressure-injury prevention and causation is insufficient for summary judgment. Plaintiff's moving papers rely heavily on Dr. Nandi. While plaintiff correctly notes that an expert need not be a specialist in the precise discipline at issue so long as the expert possesses the requisite knowledge to opine reliably on the relevant standards (*Joswick v Lenox Hill Hosp.*, 161 AD2d 352, 354–355 [1st Dept 1990]; *Matott v Ward*, 48 NY2d 455 [1979]), the expert must still lay a foundation demonstrating familiarity with the specific standards being applied (*see, e.g., Vargas v St. Barnabas Hosp.*, 168 AD3d 596, 597 [1st Dept 2019] [plaintiffs' expert failed to establish appropriate qualifications to opine on formation of pressure ulcers]; *Fortich v Ky-Miyasaka*, 102 AD3d 610, 610 [1st Dept 2013]). Here, the content of Dr. Nandi's submission—by its own description—arises from her clinical experience in gastroenterology and her retention to address the relationship between the heel injury and plaintiff's gastrointestinal issues. While that topic may bear on claimed damages, plaintiff's motion requires an expert analysis of nursing and rehabilitation preventive protocols for heel pressure injuries in a paraplegic patient in a subacute rehabilitation facility, including what the accepted standard required (e.g., turning schedules, heel offloading, mattress selection, monitoring frequency), how defendants deviated, and how that deviation caused the heel wound. The moving submission does not present a sufficiently detailed, discipline-appropriate standard-of-care and causation analysis to eliminate factual dispute as to what preventive and monitoring measures were required, whether they were implemented, and whether a preventable mechanism—as opposed to unavoidable complications or other friction/pressure sources—caused the injury. A plaintiff is not entitled to summary judgment on liability where the expert proof is conclusory or does not connect specific alleged departures to the injury mechanism at issue (*Cabrera v Golden*, 231 AD3d 149, 155 [1st Dept 2024]; *Wong v Goldbaum*, 23 AD3d 277 [1st Dept 2005]).

Second, plaintiff's *res ipsa loquitur* theory does not establish entitlement to judgment as a matter of law. *Res ipsa* is a "common-sense appraisal of the probative value of circumstantial evidence" (*Foltis, Inc. v City of New York*, 287 NY 108, 115 [1941]). The Court of Appeals has articulated three elements: (1) the event must be of a kind that ordinarily does not occur in the absence of negligence, (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant, and (3) it must not have been due to any voluntary action or contribution on the part of the plaintiff (*States v Lourdes Hosp.*, 100 NY2d 208, 212 [2003]; *James v Wormuth*, 21 NY3d 540, 546 [2013]; *see also Kambat v St. Francis Hosp.*, 89 NY2d 489, 494 [1997]). Where the first element is not within common knowledge, expert proof may be needed to "bridge the gap" (*States*, 100 NY2d at 212).

Here, plaintiff has not demonstrated—at least not to the stringent summary judgment level required by *Thomas*—that heel pressure injuries in a paraplegic rehabilitation patient do not ordinarily occur absent negligence. Defendants submit expert proof opining that pressure wounds

may be "unavoidable" even with appropriate preventive care and that plaintiff's comorbidities and rehabilitation-related movement could account for the injury mechanism.

Even if plaintiff ultimately may persuade a factfinder that the injury was avoidable and caused by substandard prevention, that inference is not "inescapable and unrebutted" on this record (*Thomas*, 283 AD2d at 316). Moreover, the "exclusive control" prong is not satisfied as a matter of law where the record supports multiple potential causal mechanisms—including transfers, therapy-related movement, and other friction/pressure sources—beyond any single instrumentality solely controlled by defendants (*see Dermatossian v New York City Tr. Auth*., 67 NY2d 219 [1986] [exclusive control is a flexible concept aimed at the probability that defendant's negligence caused the event]; *see also Corcoran v Banner Super Mkt., Inc*., 19 NY2d 425 [1967]). Finally, on this record—which includes competing accounts of plaintiff's functional capacity and mobility during the admission—plaintiff has not eliminated debate as a matter of law as to whether plaintiff's own movement or participation in transfers and therapy could have contributed, at least in part, to the injury mechanism.

In sum, plaintiff has not met the prima facie burden to warrant judgment as a matter of law on liability under either a malpractice theory requiring expert proof of departures and causation or a *res ipsa* theory requiring an inescapable inference of negligence. Accordingly, plaintiff's motion is denied.

## II. Defendants' Cross-Motion

Next, the court considers defendants' cross-motion. Defendants acknowledge an argument that the cross-motion may be untimely under an earlier so-ordered stipulation, but they also contend it is timely under CPLR § 3212(a) measured from the note of issue and that, in any event, it may be considered to the extent it raises the same issues as plaintiff's timely motion. Under *Brill v City of New York*, an untimely summary judgment motion ordinarily requires a showing of "good cause" for the delay (2 NY3d 648 [2004]). However, an "untimely but correctly labeled cross-motion may be considered at least as to the issues that are the same in both it and the motion" (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75, 87 [1st Dept 2013]). Separately, CPLR § 3212(b) permits the court to search the record and grant summary judgment to a non-moving party where warranted. Here, the cross-motion is considered, at minimum, to the extent it addresses the same liability issues raised by plaintiff's motion and the court's authority to search the record.

On the merits, defendants have made a prima facie showing of entitlement to summary judgment through Dr. Diamond's detailed affirmation opining that the care comported with accepted standards, that appropriate pressure-injury prevention and monitoring were implemented, that diagnosis and treatment were timely, and that the wound was an unavoidable complication not caused by negligence.

That showing shifts the burden to plaintiff to raise triable issues through competent evidence (*Ayotte*, 81 NY2d at 1063; *Kosson*, 84 NY2d 1019). Plaintiff meets that burden. Plaintiff submits the nursing expert affirmation of Rebecca McCarthy, who sets forth specific nursing standards for a paraplegic patient at risk of pressure injuries—most notably, scheduled repositioning approximately every two hours and proactive heel offloading/elevation through heel

lifts or comparable devices—and opines that defendants departed from those standards by failing to implement a specific turning schedule, failing to provide heel lifts until after a blister was noticed, and failing to structure/implement an individualized plan adequate for plaintiff's condition and inability to reposition independently. She further opines that these departures caused the heel injury.

This expert proof is not a mere conclusory assertion; it identifies the asserted standard, the claimed departure in care planning and implementation, and a causative link to the development of a heel pressure injury. Such competing expert views as to the required turning/offloading regimen, preventability, and causation create classic issues for a factfinder and preclude summary judgment. Indeed, the Appellate Division, First Department, has held that "it cannot be said that formation and worsening of skin ulcers was unavoidable as a matter of law" even where comorbidities were significant, where the record supports failures to timely turn and position the resident and failures to adhere to the wound-care plan (*Pichardo v St. Barnabas Nursing Home, Inc*., 134 AD3d 421, 424–425 [1st Dept 2015]). *Pichardo* does not establish that defendants were negligent here; rather, it underscores that "unavoidable" ulcer formation is not resolved as a matter of law where there is competent evidence of departures in turning/positioning and preventive care.

Additionally, the parties' submissions reflect material factual disputes that bear directly on both deviation and causation, including: (1) plaintiff's functional ability to reposition independently versus the extent to which repositioning required staff assistance and proactive scheduling; (2) whether defendants' care plan specified and staff implemented an appropriate turning/offloading frequency tailored to plaintiff's paraplegia risk; (3) when heel elevation/offloading devices were actually provided (from admission versus only after skin breakdown was observed); (4) the timing and adequacy of skin assessments and whether a blister/incipient injury should have been detected earlier; and (5) the likely mechanism of injury—whether from prolonged pressure/friction at the heel related to inadequate offloading and repositioning, as plaintiff's nursing expert contends, or from unavoidable friction/pressure during necessary movement and rehabilitation combined with comorbidities, as defendants' expert contends.

Because these disputes are supported by competing expert opinions grounded in the record and because credibility determinations and weight of expert testimony are not resolved on summary judgment (*see Zuckerman*, 49 NY2d 557; *Cabrera*, 231 AD3d at 155), defendants are not entitled to dismissal as a matter of law.

Accordingly, it is:

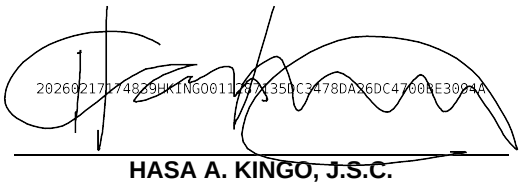
ORDERED that plaintiff's motion for summary judgment on the issue of liability is denied; and it is further

ORDERED that defendants' cross-motion for summary judgment dismissing the complaint is denied; and it is further

ORDERED that the action shall proceed to trial on liability and damages; and it is further

ORDERED that the parties shall appear for an in-person settlement conference on Wednesday, April 22, 2026, 10:00 a.m., in Room 308 of the courthouse located at 80 Centre Street, New York, New York.

This constitutes the decision and order the court.



**2/17/2026**
**DATE**

**HASA A. KINGO, J.S.C.**

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|---|---|---|---|---|---|---|---|
| **CHECK ONE:** | | **CASE DISPOSED** | | [X] | **NON-FINAL DISPOSITION** | | |
| | [ ] | **GRANTED** | [X] **DENIED** | [ ] | **GRANTED IN PART** | [ ] | **OTHER** |
| **APPLICATION:** | [ ] | **SETTLE ORDER** | | [ ] | **SUBMIT ORDER** | | |
| **CHECK IF APPROPRIATE:** | [ ] | **INCLUDES TRANSFER/REASSIGN** | | [ ] | **FIDUCIARY APPOINTMENT** | [ ] | **REFERENCE** |