Giyasov v Voronova
2026 NY Slip Op 31373(U)
March 27, 2026
Supreme Court, Kings County
Docket Number: Index No. 503761/2023
Judge: Ellen M. Spodek

At an IAS Term, Part 63 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 27th day of March 2026.

P R E S E N T:

HON. ELLEN M. SPODEK, Justice

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ROMAN GIYASOV and YULIYA GIYASOV,

Plaintiffs,

-against-

YELENA VORONOVA, D.P.M. and #1 WISE PODIATRY CARE, P.C.,

Defendants.

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DECISION AND ORDER

Index No. 503761/2023

MS #2

The following e-filed papers read herein: NYSCEF Doc. Nos.:

Notice of Motion, Affirmation, and Exhibits Annexed	41-49
Affirmation in Opposition and Exhibits Annexed	70-73
Notice of Rejection, Reply Affirmation	74-80

Plaintiffs ROMAN GIYASOV ("Roman") and YULIYA GIYASOV ("Yuliya"), move pursuant to CPLR 3212 for an order granting summary judgment on the issue of liability. Defendants, YELENA VORONOVA, D.P.M. ("Dr. Voronova") and #1 WISE PODIATRY CARE, P.C. ("Wise"), oppose the motion.

Summary

This medical malpractice action concerns Roman, who presented to Wise, Dr. Voronova's solo practice, on April 2, 2021 with a non-healing wound on his left big toe. The wound, as per

Dr. Voronova's April 2, 2021 notes, caused Roman a pain that was a nine (9) out of ten (10) and was "horrible, infected, radiating, sharp, shooting, and tingling." The results of a vascular test performed by Dr. Voronova on April 5, 2021 revealed that Roman had severe vascular compromise due to the wound. To treat Roman's wound, Dr. Voronova performed a debridement and prescribed the antibiotic Augmentin. Dr. Voronova would continue to prescribe Augmentin and perform debridements throughout her nearly five-month treatment of Roman. Despite a total of twenty-nine (29) visits to Dr. Voronova between April 2, 2021, and August 27, 2021, the condition of the wound on Roman's left big toe failed to improve. (Plt. Aff. in Support at 2-3, NYSCEF Doc. 42.)

On September 15, 2021, Roman presented to Maimonides Medical Center to seek treatment for his still-infected wound. At Maimonides, Roman was diagnosed with significant peripheral vascular disease and gangrene in his left big toe and informed of the possibility of an amputation. Upon return for further treatment on September 17, 2021, Roman was diagnosed with osteomyelitis. The osteomyelitis diagnosis prompted Roman's admission to the hospital, where he remained until October 1, 2021. On September 20, 2021, the first ray of Roman's left foot was amputated, followed by an excisional debridement of the bone and tissue of Roman's left foot for gangrene and osteomyelitis on September 27, 2021. On September 29, 2021, Roman's left foot was partially amputated via a midfoot trans-metatarsal amputation due to gangrene and necrotizing fasciitis. Roman had several more hospital admissions between October 2021 and January 2022 related to the wound, gangrene, and osteomyelitis, and on January 11, 2022 his left forefoot and midfoot were removed via a Chopart amputation. *Id.* at 3.

Plaintiffs submitted an expert affirmation from Dr. John E. Mancuso, D.P.M., a board-certified podiatrist and foot surgeon licensed to practice in New York. Dr. Mancuso opined that Dr. Voronova's care of Giyasov grossly deviated from accepted practice in the field of podiatry and

podiatric medicine and ultimately caused Roman's Chopart amputation. Dr. Mancuso highlighted the following departures by Dr. Voronova: (1) failure to record an independent assessment of the condition of Roman's foot for each visit; (2) failure to treat Roman's vascular compromise; (3) failure to take a culture and sensitivity test of the wound to determine the appropriate antibiotic to prescribe, especially when it became evident that Augmentin was ineffective; (4) failure to send the tissue she collected during the debridements to a pathology lab; (5) failure to assess the bone in Roman's foot via x-ray; (6) failure to order a blood test to monitor the "infectious process"; (7) failure to refer Roman to an infectious disease specialist and a vascular specialist; (8) failure to perform further vascular testing after a first test revealed "numerous and significant abnormalities including abnormal PVR waveforms which is an indication of reduced circulation and/or vascular blockages"; and (9) failure to prescribe shoe gear that would allow for off-loading of the left big toe. (Plt. Expert Aff., NYSCEF Doc. 45.)

In lieu of an expert affirmation, Dr. Voronova submitted an affirmation for herself in opposition to plaintiffs' summary judgment motion. In her affirmation, Dr. Voronova argued that the "multiple fluoroscopic studies" she took of Giyasov's wound were as sufficient as an x-ray in detecting infections in the foot's deep tissue and bones, and that his continued visits to her practice serve as evidence of an improvement of his condition. Further, she contends that it was not necessary to take a culture and sensitivity test of the wound where there is "demonstrable wound improvement." Finally, Dr. Voronova asserted that, in light of the disagreements in these questions of fact, Plaintiff's motion for summary judgment on the issue of liability should be denied. (Def. Aff. in Opp., NYSCEF Doc. 71.)

In a separate affirmation, defendants' counsel argued that plaintiffs' motion should be denied due to procedural defects. The alleged defects cited were that (1) the motion was not

accompanied by a copy of Roman's deposition testimony; (2) plaintiffs' affirmations in support of the motion were translated into English by their daughter, an "interested party"; and (3) the "premature filing" of the Note of Issue deprived the defense of the opportunity to complete plaintiffs' depositions and "fully address the issues of whether [Roman] followed prescribed wound care instructions . . . ." (Def. Aff. in Opp., NYSCEF Doc. 70.)

Discussion

Summary judgment is "a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed where there is no doubt as to the absence of triable issues.'" *Kolivas v. Kirchoff*, 14 A.D.3d 493, 493 (2d Dep't 2005) (quoting *Andre v. Pomeroy*, 35 N.Y.2d 361, 364 (1974)). However, a motion for summary judgment shall be granted, if, upon all papers and proof submitted, the cause of action or defense is established sufficiently to warrant directing judgment in favor of any party as a matter of law, and the party opposing the motion fails to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact, *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986).

A party moving for summary judgment "must make a prima facie showing of entitlement to judgment, as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." *Id* at 324. If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of action." *Garnhman & Han Real Estate Brokers v. Oppenheimer*, 148 A.D.2d 493, 494 (1989). It is incumbent upon the court to then "evaluate whether the issues of fact alleged by the opposing party are genuine or unsubstantiated." *Gervasio v. Di Napoli*, 134 A.D.2d 235, 236 (2d Dep't 1987) (quoting *Assing v. United Rubber Supply Co.*, 126 A.D.2d 590, 590 (2d

Dep't 1987)). If it is determined that "there is no genuine issue to be resolved at trial, the case should be summarily decided . . . ." *Andre*, 35 N.Y.2d at 364.

To prevail in a medical malpractice action, the plaintiff must show that the defendant deviated from accepted standards of medical practice and that this deviation proximately caused plaintiff's injuries. *E.K. v. Tovar*, 185 A.D.3d 803, 805 (2d Dep't 2020) (quoting *Raucci v. Shinbrot*, 127 A.D.3d 839, 841 (2d Dep't 2015)).

Following oral argument and a review of the papers, this Court finds that plaintiffs sustained their burden of showing that defendants departed from good and accepted medical standards of podiatry and that this departure proximately caused Roman's injuries. The burden then shifted to defendants to provide evidence to the court that they did not in fact deviate from accepted standards of podiatry, raising a triable issue of fact. The Court finds that defendants did not sustain their burden. In lieu of an expert opinion, defendants submitted an affirmation from Dr. Voronova, who is a party in this matter and thus cannot present a reliably objective opinion on her treatment of Roman. As defendants did not submit an expert opinion, they failed to demonstrate that there was a question of fact as to whether Dr. Voronova departed from good and accepted standards of podiatry while treating Roman.

Assuming arguendo that Dr. Voronova's affirmation could be considered an expert opinion, it is still insufficient to raise a triable issue of fact. First, Dr. Voronova fails to sufficiently qualify herself as an expert. *See Bongiovanni v. Cavagnuolo*, 138 A.D.3d 12, 18 (2d Dep't 2016) ("Physicians offering opinions in medical, dental, podiatric, chiropractic, or other specialty malpractice actions must establish their credentials in order for their expert opinions to be considered by the court."). Dr. Voronova merely states that she has "over 25 years of experience in podiatry as well as foot surgery" without providing any specific information as to her training,

board certifications, or experience. Additionally, Dr. Voronova's affirmation failed to rebut the following expert opinions of Dr. Mancuso that Dr. Voronova: (1) failed to treat Giyasov's vascular compromise; (2) failed to send the tissue she collected during the numerous debridements she performed to a pathology lab; (3) failed to order a blood test to monitor the "infectious process"; (4) failed to refer Roman to an infectious disease specialist and a vascular specialist; (5) failed to perform further vascular testing after a first test revealed "numerous and significant abnormalities"; and (6) failed to prescribe Giyasov shoe gear that would allow for the off-loading of his left big toe.

Dr. Voronova addressed the remainder of Dr. Mancuso's expert opinions with nothing more than unsupported assertions. *See Diaz v. N.Y. Downtown Hosp.*, 99 N.Y.2d 542, 544 (2002) ("Where the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment."). For example, Dr. Voronova states that fluoroscopy is just as proper a tool as an x-ray in "monitoring the presence of infection in deep tissue in bone, in monitoring [the] progress of wound healing, [and] in guiding the debridement procedures . . . ." However, Dr. Voronova fails to offer any concrete evidence to support this assertion. Furthermore, Dr. Voronova's contention that Roman's continued visits to Wise indicate that his wound was improving is patently false given the documented deterioration of the wound's condition and, ultimately, the Chopart amputation of his left foot. Therefore, Dr. Voronova's affirmation cannot be considered to raise any triable issues of fact and sufficiently oppose plaintiff's motion.

Defendants also argue that several procedural issues bar the granting of plaintiffs' summary judgment motion. This Court finds these arguments unavailing.

First, defendants claim that plaintiffs' summary judgment motion is "procedurally deficient" per CPLR 3212(b) as it is not accompanied by a copy of Roman's deposition transcript. CPLR 3212(b) requires that "[a] motion for summary judgment . . . be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions." However, the language of CPLR 3212(b) does not mandate that a motion for summary judgment must include deposition transcripts; rather, deposition transcripts are deemed to be "other available proof" that may be provided in support of a summary judgment motion. Thus, defendants' argument in this regard fails.

Second, defendants contend that plaintiffs' summary judgment motion should be denied as their affirmations were translated from Russian into English by their daughter, "an interested witness in this case." However, the relevant statute, CPLR 2101(b), does not require a translator to be a "neutral party"; rather, it mandates only that an affidavit written in a foreign language "be accompanied by an English translation and an affidavit by the translator stating his qualifications and that the translation is accurate." Here, these requirements have been satisfied by the English translation of plaintiffs' affirmations and their daughter's sworn affirmation stating that she is fluent in reading, writing, and speaking both English and Russian and that she accurately and completely translated her parents' affirmations. Thus, defendants' argument in this regard fails.

Finally, defendants state that plaintiffs' filing of the Note of Issue was premature as "significant discovery remain[s] outstanding . . . ." It was defendants' burden to demonstrate "that discovery might lead to relevant evidence or the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant." *Cajas-Romero v. Ward*, 106 A.D.3d 850, 852 (2d Dep't 2013). Defendants argue that "continued depositions" as well as an examination of "additional medical records" would "shed light on whether [Roman's] wound was

in fact getting better, or whether other providers referred plaintiff for blood tests or cultures, [and] on whether [Roman] followed the instructions given to him by other providers." However, "a plaintiff is not required to establish his or her freedom from comparative negligence to be entitled to summary judgment on the issue of liability . . . ." *Diamond v. Comins*, 194 A.D.3d 784, 785 (2d Dep't 2021); *see also Bristow v. Zhong Ying Li*, 240 A.D.3d 652, 653 (2d Dep't 2025). Furthermore, the actions of other providers are irrelevant to the question of Dr. Voronova's liability for deviating from the good and accepted practices of podiatry while treating Roman. Thus, defendants' argument in this regard fails.

As defendants failed to sustain their burden that there is a question of fact as to whether Dr. Voronova departed from good and accepted practices of podiatry while treating Giyasov, plaintiffs' motion for summary judgment on the issue of liability must be granted.

Accordingly, it is

ORDERED that in Motion Sequence 2, plaintiff's motion for summary judgment as to the issue of liability granted; and it is further

ORDERED that the clerk is directed to enter judgment in favor of plaintiffs and against defendants; and it is further

ORDERED that parties are to appear for an ADR Conference on April 29, 2026.

This constitutes the decision and order of the Court.

ENTER,

Hon. Ellen Spodek

HON. ELLEN M. SPODEK

2026 APR -6 A 10:01
KINGS COUNTY CLERK
FILED