Mieles v McTeer
2026 NY Slip Op 31821(U)
April 17, 2026
Supreme Court, Kings County
Docket Number: Index No. 508406/2021
Judge: Ellen M. Spodek
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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 17th day of April, 2026.

PRESENT:

HON. ELLEN M. SPODEK,
Justice.

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NATALIE MIELES, AS ADMINISTRATRIX OF THE GOODS, CHATTELS, AND CREDITS OF HENRY CORDOVA, DECEASED,

Plaintiff,

-against-

ARLENE McTEER, M.D., YITZCHAK MOSHENYAT, M.D., EVGENY PINELIS, M.D., NABIL MESIHA, M.D., AND THE BROOKLYN HOSPITAL CENTER.,

Defendants.

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DECISION AND ORDER

Index No. 508406/2021

MS #2

The following e-filed papers read herein:	NYSCEF Doc. Nos.:
Notice of Motion, Affirmation, and Exhibits Annexed	54-68
Affirmation in Opposition and Exhibits Annexed	90-94
Affirmation in Reply and Exhibits Annexed	97-101

Defendants ARLENE McTEER, M.D., NABIL MESIHA, M.D., and THE BROOKLYN HOSPITAL CENTER ("the Brooklyn Hospital Defendants") moved pursuant to CPLR 3212 for an Order granting summary judgment and dismissing this action against them. Plaintiff NATALIE MIELES, AS ADMINSTRATRIX OF THE GOODS, CHATTELS, AND CREDITS OF HENRY CORDOVA, DECEASED opposed the motion. Defendants filed a reply thereto. Prior to the filing of the motion and responsive papers, this action was discontinued against Dr. Pinelis. Prior to oral arguments of this motion, this action was discontinued against Dr. McTeer, Dr. Mesiha, and Dr. Moshenyat, leaving the Brooklyn Hospital Center as the sole remaining defendant.

Henry Cordova was a fifty-five-year-old male for whom an ambulance was called on June 27th, 2019. When EMS arrived on scene at 11:04 PM he was unconscious and being ventilated with an AMBU bag for a respiratory arrest, but he responded to Narcan, several push doses of Epinephrine and IV fluids for persistent hypotension. As per the family, he had a history of marijuana and alcohol abuse.

He arrived at the Brooklyn Hospital Emergency Department at 11:45 p.m. and was triaged. He was still profoundly hypotensive (53/35) and was unresponsive with agonal breathing despite having assisted respirations. He was seen by the Emergency Department provider immediately including by attending Dr. Arlene McTeer. According to his daughter, Cordova had a complicated past medical history significant for peptic ulcer disease, end stage renal disease, diabetes, hypertension, anemia, and alcohol abuse. She reported shortness of breath and generalized weakness for the two days prior but found him unresponsive in a chair at home with no pulse, prompting her to begin CPR. Upon physical exam, Cordova was unresponsive and in respiratory distress with pinpoint pupils.

By 12:12 a.m., Cordova was receiving intravenous infusions of Leveophed, epinephrine, and intravenous fluids but was still hypertensive, prompting Vasopressin to be added which produced a measurable blood pressure (98/39) by 12:18 a.m. The critical care physician was paged at 12:31 a.m., and Cordova was intubated at 12:44 a.m. The placement of an orogastric tube at 12:50 a.m. returned dark blood consistent with a GI bleed prompting immediate consultations with gastroenterology, surgery, and interventional radiology. By 1:00 a.m., multiple units of blood were being transfused with a large bore central catheter inserted and a massive transfusion protocol was initiated. A triple lumen catheter was reportedly also inserted. Cordova was subsequently

evaluated by surgery and gastroenterology physicians and admitted to the intensive care unit at 2:27 a.m.

The initial blood tests indicated significant findings for severe anemia based upon the low hemoglobin of 4.0 (normal: 13.1 g/dl – 15.5 g/dl) and low hematocrit (18%), well below the normal range (39% - 47%). He was also observed to have an extremely high lactate level (>13.4) which was consistent with severe hypoperfusion and strong predictor of mortality.

Over the next several hours Mr. Cordova received fourteen units of blood (1:00 AM, 1:35 AM, 2:35 AM, 2:36 AM, 2:40 AM, 2:48 AM, 4:03 AM, 4:19 AM, 4:30 AM, 4:40 AM, 6:23 AM, 6:30 AM, 6:40 AM, 6:45 AM), 10 units of FFP (2:15 AM, 2:20 AM, 2:30 AM, 3:05 AM, 4:10 AM, 4:45 AM, 5:10 AM, 5:15 AM, 6:10 AM, 6:20 AM), 2 units of platelets (2:10 AM, 3:54 AM) and one unit of cryoprecipitate (7:25 AM) in addition to several liters of intravenous fluids. He also started receiving a proton pump inhibitor, Octreotide, in case of bleeding from the veins in his esophagus and empiric antibiotics including Cefepime and Vancomycin for possible sepsis. Repeat blood tests for hemoglobin and hematocrit obtained at 3:29 AM (6.1/20.0) and 6:51 AM (6.2/21) demonstrated persistent anemia despite all the blood products he received. Testing of the coagulation factors (PT/PTT) was also persistently elevated (16.6/104.9) consistent with disseminated intravascular coagulation (DIC). Cordova was continued on maximum doses of three vasopressors throughout the night (Levophed, Epinephrine, Vasopressin).

Cordova was evaluated by the surgical team including resident Dr. Gregory Zielinski and attending Dr. Melanie Howell. The possibility of intestinal perforation was considered but he was considered too unstable to be taken to the operating room for either this condition or the bleeding ulcer.

The first cardiac arrest went from 5:50 AM until his pulse was restored at 6:01 AM. The second cardiac arrest transpired between 7:42 AM and when he was ultimately determined to have expired at 8:11 AM.

Expert Affirmations in Support

Defendants submitted two expert affirmations in support of their motion for summary judgment. The first expert affirmation was furnished by Dr. Gregory Mazarin, a physician who is Board Certified in Emergency Medicine. Among other qualifications, he has served as Chief Resident in the Emergency Department at the Long Island Jewish Medical Center, and currently serves as an attending physician in the Department of Emergency Medicine at the Jack Weiler/Albert Einstein Hospital in the Bronx. Dr. Mazarin also serves as an assistant professor of emergency medicine at the Albert Einstein College of Medicine.

Dr. Mazarin began his affirmation by stating that it is his opinion to a reasonable degree of medical certainty that there were no deviations from accepted medical practice by the Brooklyn Hospital Defendants related to Cordova's admission in June 2019. He believes that the Brooklyn Hospital Defendants always conformed to good and accepted medical practice, and that none of their alleged acts were a proximate cause to Cordova's injuries.

Dr. Mazarin provides that Cordova was in critical condition and possibly coded even prior to the arrival of EMS personnel at his home. The Brooklyn Hospital Emergency Department staff promptly recognized that seriousness of his condition. He was unresponsive, hypotensive, and unable to breathe on his own upon his arrival to the hospital.

The Emergency Department doctors quickly and correctly realized they needed to increase his blood pressure for several reasons, including so Cordova could be intubated as his blood pressure was very low. "Intubation increases pressure in the thoracic cavity which reduces blood

pressure and can cause a patient to experience a sudden cardiac arrest." Several intravenous lines were established, blood tests were obtained, and vasopressors epinephrine, Levophed, and Vasopressin were started to raise his blood pressure. Despite these complexities, Cordova was still intubated at 12:44 a.m. which was only one hour from the time of arrival. Dr. Mazarin opined that "[t]his represented excellent medical care especially considering the set-up time required to complete this procedure/"

Dr. Mazarin then explained that a presentation of shortness of breath and respiratory arrest is not typical at all for a gastrointestinal bleed. Shortness of breath is typically associated with a cardiac or respiratory issue and especially true given the absence of any history from the family describing rectal bleeding, and recognizing that Cordova had several chronic medical conditions which could explain his symptoms. Dr. Mazarin attested that the Brooklyn Hospital Defendants properly and rapidly diagnosed the gastrointestinal bleed when they saw blood coming from the orogastric tube at 12:50 a.m. By 1:00 a.m., just one hour and fifteen minutes post-arrival, blood was being transfused and a central line was inserted for rapid transfusion protocol initiated. Cordova received very large quantities of blood products over the next several hours, and requisite consent was obtained.

Dr. Mazarin provided that all the appropriate consultations were obtained from very early in the course of his care, including critical care, even prior to the intubation , and the gastroenterology, interventional radiology, and surgery specialists immediately after. Due to his unstable condition, it was determined by critical care, gastroenterology, and interventional radiology services that he was not stable enough for any procedures. "In addition to his hemodynamic instability requiring a ventilator and three medications to support his blood pressure, his blood was too acidotic and the hemoglobin and hematocrit was dangerously low as well."

Based on his unstable state, Cordova did not meet the criteria for the doctors to perform an endoscopy, thus it was not necessary for Dr. Moshenyat to come to the Emergency Department. Dr. Moshenyat testified that Cordova's hemoglobin was 4.7g/dl, and that it must be at least 8g/dl if the patient has a cardiac issue. Further, the metabolic acidosis should be at least 7.4.

Cordova was seen and evaluated by Dr. Evangelos Tsipotis, a gastroenterology fellow. Dr. Tsipotis noted discussing the case with attending Dr. Moshenyat, and drafted a "very extensive note," which included Cordova's medical history, vital signs, a comprehensive physical exam, medications ordered, laboratory values, radiology review, a notation of the prior endoscopy, impression, and recommendations.

Dr. Mazarin explained that it was unnecessary for the Brooklyn Hospital Defendants to order an abdominal sonogram or a CT scan as they already knew there was a gastrointestinal bleed which required immediate treatment. Such studies would not have provided any new information for diagnosis or treatment. Additionally, Dr. Mazarin noted that based upon the "very serious" laboratory values, Cordova was not stable enough for a CT scan.

Despite what Dr. Mazarin referred to as "heroic efforts" by the Brooklyn Hospital Defendants, including intubation, placement of several intravenous access lines including central venous catheters, and transfusion of extensive blood products, "it was not surprising" that Cordova eventually coded almost six hours later at 5:50 a.m. Considering low initial hemoglobin/hematocrit blood count (4.0/18), profound lactic acidosis (lactate > 13), and evidence of disseminated intravascular coagulation with persistent hypotension, despite three vasopressors at maximum doses in a patient who was near death upon arrival, "Cordova had no chance of survival." His body was not receiving nearly enough oxygen and was producing too much lactate acid.

Dr. Mazarin concluded his affirmation by attesting that it is his opinion to a reasonable degree of medical certainty that there were no departures by the Brooklyn Hospital Defendants in their treatment of Cordova. All specialists were immediately contacted by the Emergency Department and their advice was implemented. Cordova was constantly monitored by doctors trying to improve his hematological status and keep him hemodynamically stable. The correct medications were always appropriately and timely administered. The standard of care was always maintained during his treatment, his care was always appropriately documented, and the applicable consent was obtained. Specifically as to Dr. Mesiha, Dr. Mazarin provided that he had just started his shift and his only involvement with Cordova was during the second code after he had already experienced cardiac arrest. Finally, Dr. Mazarin asserted that nothing the Brooklyn Hospital Defendants did or did not do contributed to the injuries alleged, and that they timely and appropriately reported their findings to the attending physicians who were always aware of the findings and recommendations.

The Brooklyn Hospital Defendants submitted a second expert affirmation in support of their motion from Dr. Ira Wagner, a physician who is Board Certified in Internal Medicine and who serves as Chief of the Surgical Care Intensive Unit at Lenox Hill Hospital. Dr. Wagner's affirmation was reviewed and considered by this Court, however as it primarily provides further support to Dr. Mazarin's affirmation, the Court will not resuscitate the arguments presented in the interest of brevity.

Discussion

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2005]; *see also Andre v Pomeroy*, 35 NY2d 361,

364 [1974]). However, a motion for summary judgment will be granted if, upon all the 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 (CPLR 3212 [b]; *Gilbert Frank Corp. v Federal Ins. Co.*, 70 NY2d 966, 967 [1988]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), and the party opposing the motion for summary judgment fails to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986], citing *Zuckerman*, 49 NY2d at 562).

"The proponent of a motion 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" (*Manicone v City of New York*, 75 AD3d 535, 537 [2010], quoting *Alvarez*, 68 NY2d at 324; *see also Zuckerman*, 49 NY2d at 562; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). 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 the action" (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [1989]).

The court must evaluate whether the issues of fact alleged by the opposing party are genuine or unsubstantiated (*Gervasio v Di Napoli*, 134 AD2d 235, 236 [1987]; *Assing v United Rubber Supply Co.*, 126 AD2d 590 [1987]; *Columbus Trust Co. v Campolo*, 110 AD2d 616 [1985], *affd* 66 NY2d 701 [1985]). Mere conclusory statements, expressions of hope, or unsubstantiated allegations are insufficient to defeat a motion for summary judgment (*Gilbert Frank Corp. v Federal Ins. Co.*, 70 NY2d 966, 967 [1988]; *Spodek v Park Prop. Dev. Assoc.*, 263 AD2d 478 [1999]). "[A]verments merely stating conclusions, of fact or of law, are insufficient to defeat

summary judgment" (*Banco Popular N. Am. v Victory Taxi Mgt.*, 1 NY3d 381, 383-384 [2004], quoting *Mallad Constr. Corp. v County Fed. Sav. & Loan Assn.*, 32 NY2d 285, 290 [1973]). If there is no genuine issue of fact, the case should be summarily determined (*Andre*, 35 NY2d at 364).

Here, the Court finds that the Defendant met his burden in making a prima facie showing of an entitlement to judgment. The burden now shifts to the plaintiff to successfully produce evidence in an admissible form establishing that material issues of fact exist.

Plaintiff submitted two unnamed expert affirmations in opposition to the motion for summary judgment. The first affirmation was submitted by a physician who is Board Certified in Emergency Medicine and serves as an attending physician and medical director in both hospital-based and prehospital emergency systems.

Plaintiff's Emergency Medicine Expert's primary refutation of Dr. Mazarin's affirmation pertains to the hospital's failure to provide critical laboratory results within the timeframe required for the management of a patient in shock. "In the modern emergency department, rapid laboratory data are as essential to resuscitation as intravenous access or cardiac monitoring. A stat complete blood count and lactate level are expected to be processed and communicated in a matter of minutes, not hours. Under ordinary hospital conditions, a stat complete blood count can be resulted within approximately twenty minutes, and even in a busy emergency department it should rarely exceed forty-five minutes. The lactate, as a standard test of tissue perfusion, should be available in a similar period." When treating Cordova, the critical values that confirmed the severity of anemia and tissue hypoxia were not reported until approximately one hour and fifty-five minutes after they were ordered. Plaintiff's Emergency Medicine Expert opined that a nearly two hour delay in returning values that are central to diagnosis and management proves that the Brooklyn

Hospital failed to meet it's standard of care. Specifically, they provide that "had the information been available within the expected twenty to forty-five minutes, it would have directed transfusion and escalation of care substantially sooner.

Even if this Court were to take the time standards provided by Plaintiff's Emergency Medicine Expert at face value, this argument is insufficient in defeating a motion for summary judgment given the medical record in this case. As noted in their reply affirmation, the Brooklyn Hospital Defendants did not wait for lab results to make the appropriate diagnosis and begin treatment. The diagnosis of the gastrointestinal bleed was made at 12:50, an hour and thirty minutes prior to their receipt of the lab results, and a massive blood transfusion was immediately started. Plaintiff's Emergency Medicine Expert contended that the results were not available until 2:20 a.m., an hour and fifty-five minutes after they were ordered. If such tests were ordered at 12:25 a.m. and the standards described by Plaintiff's expert suggest that the results should have been received twenty to forty-five minutes, it follows that it is his contention that the results should have been received and acted upon between 12:45 and 1:10 a.m. As the Brooklyn Hospital Defendants began treating for a gastrointestinal bleed with massive blood transfusion at 12:50 a.m., squarely within the 12:45 to 1:10 a.m. timeframe, this Court cannot find that the purported departure from the standard of care proximately caused any harm to Cordova. As the treatment rendered was the same as it would have been had they received the test results in a timely manner, arguments claiming that a delay in the test results resulted in a delay in treatment are unavailing.

Plaintiff's second expert affirmation was submitted by a physician who is Board Certified in Gastroenterologist and Internal Medicine. This expert affirmation suffers a similar flaw as the affirmation furnished by Plaintiff's Emergency Medicine Expert in that it relies on the belief that a delay in diagnosis negatively impacted Cordova's outcome. Here, the expert opined that surgical

intervention could have been effective, however such intervention was not possible as Cordova was unstable. The expert contends that a delay in diagnosis hindered the ability of the Brooklyn Hospital Defendants to stabilize the patient for surgical intervention. This argument is equally unconvincing to this Court, as, per the above examination of the timing of the diagnosis and treatment, treatment was not delayed. Given the condition Cordova presented in, even timely treatment was not sufficient in stabilizing him, therefore surgical intervention was not possible. As such, this Court cannot find that the treatment rendered to Cordova by the Brooklyn Hospital Defendants proximately caused the alleged injuries.

Accordingly, it is

ORDERED Defendant's motion for summary judgment is granted in its entirety; and it is further

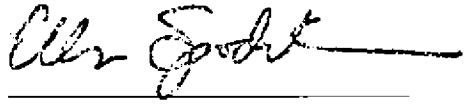
ORDERED that this action is dismissed with prejudice against the sole remaining Defendant, the Brooklyn Hospital Center; and it is further

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

ORDERED that counsel for defendant is directed to electronically serve a copy of this Decision, Order, and Judgment with notice of entry on Plaintiff's counsel and to electronically file an affidavit of said service with the Kings County Clerk.

This Constitutes a decision and order of the court.

ENTER,



Hon. Ellen M. Spodek