Ericsen v Benton
2017 NY Slip Op 32927(U)
December 4, 2017
Supreme Court, Albany County
Docket Number: 2235-11
Judge: Kimberly A. O'Connor
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

DAVID ERICSEN as the Administrator of the Estate of LEONA A. ERICSEN (Deceased), and ANTHONY ERICSEN,

Plaintiffs,

-against-

DECISION AND ORDER
Index No. 2235-11
RJI No. 01-11-105099

ROBERT E. BENTON, M.D.; CAPITAL CARDIOLOGY ASSOCIATES, P.C.; JOSEPH FAROOQ, M.D.; PULMONARY & CRITICAL CARE SERVICES, P.C.; PULMONARY AND CRITICAL CARE SERVICES, P.C.; JAMES P. ARAM, M.D.; BRUNSWICK FAMILY MEDICAL PRACTICE, PLLC; JOHN J. O'BRYAN, M.D.; TROY FAMILY PHYSICIANS, P.C.; and SAMARITAN HOSPITAL OF TROY, NEW YORK,

Defendants.

(Supreme Court, Albany County, All Purpose Term)

(Justice Kimberly A. O'Connor, Presiding)

APPEARANCES: CONWAY & KIRBY, PLLC
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O'CONNOR, J.:

In this action to recover damages for medical practice and lack of informed consent, plaintiffs David Ericsen, as the Administrator of the Estate of Leona A. Ericsen (Deceased), and Anthony Ericsen (collectively "plaintiffs"), have moved, pursuant to CPLR § 603, for an order: (1) severing the first, second, tenth, and eleventh causes of action as well as part of the fifteenth and seventeenth causes of action as against defendants Robert E. Benton M.D. ("Dr. Benton"), Capital Cardiology Associates, PC ("CCA"), James P. Aram, MD ("Dr. Aram"), and Brunswick Family Medical Practice, PLLC ("BFMP") from the other named defendants; and (2) upon severance, directing that the trial against those defendants proceed first. Defendant Samaritan Hospital of Troy, New York supports the application, and only defendants Joseph Farooq, M.D., Pulmonary & Critical Care Services, P.C., and Pulmonary and Critical Care Services, P.C. opposed the motion.

Generally, severance is employed by the courts to promote convenience or to avoid prejudice (*see* CPLR § 603; *see Miller v. Howard*, 137 A.D.3d 1698, 1699 [4th Dep't 2016]). Although the determination to grant or deny a severance is a matter of judicial discretion, "[that] discretion should be exercised sparingly" (*Shanley v. Callanan Indus.*, 54 N.Y.2d 52, 57 [1981]; *Miller v. Howard*, 137 A.D.3d at 1699; Utica Mut. Ins. Co. v. American Re-Insurance Co., 132 A.D.3d 1405, 1405 [4th Dep't 2015]); *State Farm Fire and Cas. Co. v. Dayco Products, Inc.*, 19 A.D.3d 923, 924-925 [3d Dep't 2005]; *Finning v. Niagara Mohawk Power Corp.*, 281 A.D.2d 844, 844 [3d Dep't 2001]). All matters being equal, severance increases litigation and places an extra burden on court facilities by requiring two separate trials instead of one. This is especially true in cases in which complex issues are intertwined. In those cases, the better course is to deny severance or separate trials and to instead facilitate one complete and comprehensive hearing that determines all the issues between the parties at the same time (*see Shanley v. Callanan Indus.*, 54 N.Y.2d at 57 [1981]; *State Farm Fire and Cas.*

Co. v. Dayco Products, Inc., 19 A.D.3d at 925).

Upon review, the Court is not persuaded that severance is appropriate here. Plaintiffs argue that the causes of action against Dr. Benton, CCA, Dr. Aram, and BFMP should be severed and tried separately from the causes of action against the other defendants because those causes of action for medical malpractice are separate and distinct from the causes of action based on lack of informed consent and arise out of two, separate hospital admissions. Plaintiffs submit that given the extremely complex medical issues presented in this case, trying all the claims together will likely cause jury confusion and result in unnecessary prejudice. The Court disagrees, and finds that the complexity of issues in this case and the likelihood of inconsistent verdicts favor a single trial (*see Shanley v. Callanan Indus.*, *supra*). Furthermore, any claim of prejudice based on juror confusion "is speculative at best" (*State Farm Fire and Cas. Co. v. Dayco Products, Inc.*, *supra*). Therefore, the Court, in the exercise of its discretion, denies the motion.

Any remaining arguments have been considered and found to be lacking merit, or need not be considered in light of the foregoing determination.

Accordingly, it is hereby

ORDERED, that plaintiffs' motion is denied for the reasons stated herein; and it is further

ORDERED, that the trial of all defendants will proceed as scheduled on January 8, 2018.

This memorandum constitutes the Decision and Order of the Court. The original Decision and Order is being forwarded to the attorneys for defendants Joseph Farooq, M.D., Pulmonary & Critical Care Services, P.C., Pulmonary and Critical Care Services, P.C. A copy of this Decision and Order together with all papers are being forwarded to the Office of the Albany County Clerk for filing. The signing of this Decision and Order and delivery of a copy of the same to the County Clerk shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the

applicable provisions of that rule relating to filing, entry, and notice of entry of the original Decision and Order.

SO ORDERED.

ENTER.

Dated: December 4, 2017
Albany, New York

Kimberly A. O'Connor

HON. KIMBERLY A. O'CONNOR
Acting Supreme Court Justice

12/12/17 AB

Papers Considered:

1. Notice of Motion, dated August 31, 2017; Attorney Affidavit (Michelle A. Storm, Esq.), undated, with Exhibit A annexed; Memorandum of Law, dated August 29, 2017;
2. Affidavit in Opposition (Christine M. Napierski, Esq.), sworn to September 14, 2017;
3. Affidavit in Support of Plaintiff's Motion for Severance (Alicia M. Dodge, Esq.), sworn to September 18, 2017, with Exhibit A annexed; *and*
4. Reply Attorney Affirmation (Michelle A. Storm, Esq.), sworn to September 27, 2017, with Exhibit A annexed.