

**Weinstein v Lanoix**

2013 NY Slip Op 31790(U)

August 1, 2013

Sup Ct, New York County

Docket Number: 101590/06

Judge: Joan B. Lobis

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: LOBIS  
*Justice*

PART 6

MARILYN WEINSTEIN  
- v -

RICHARD LANDOIX, M.D.

INDEX NO. 101590/06  
MOTION DATE 4/23/13  
MOTION SEQ. NO. 1  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 32 were read on this motion to for summary judgment

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
<u>1-19</u>
<u>20-31</u>
<u>32</u>

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

THIS MOTION IS DECIDED IN ACCORDANCE  
WITH THE ACCOMPANYING MEMORANDUM DECISION  
*and Order*

**FILED**

AUG 06 2013

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 8/1/13

JBL  
**JOAN B. LOBIS** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: IAS PART 6**

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MARILYN C. WEINSTEIN, as Administratrix of  
the Estate of SHERIE BETH WEINSTEIN, deceased,

Plaintiff,

Index No. 101590/06

-against-

**Decision and Order**

RICHARD LANOIX, M.D., NIDAL ISBER, M.D.,  
ALI FARD, M.D., EDUARDO GONZALEZ, M.D.,  
JAMES MORGAN, M.D., DMITRY MALKIN, M.D.,  
NINA MCGOWAN, M.D., NAHEED ABBASI, M.D.,  
JOSH TORGOVNICK, M.D., ST. VINCENT'S  
MEDICAL CENTER, ST. LUKE'S ROOSEVELT  
HOSPITAL CENTER, and CARDIOVASCULAR  
LLC,

**FILED**

**AUG 06 2013**

Defendants.

COUNTY CLERK'S OFFICE  
NEW YORK

-----X

**JOAN B. LOBIS, J.S.C.:**

In motion sequence number 1, defendants Richard Lanoix, M.D., and St. Luke's -  
Roosevelt Hospital Center (SLRH) move for summary judgment pursuant to Rule 3212 of the Civil  
Practice Law and Rules. Plaintiff Marilyn C. Weinstein, as Administratrix of the Estate of Sherie  
Beth Weinstein, deceased, opposes the motion. For the following reasons, the motion is denied.

This medical malpractice and wrongful death case involves the treatment rendered  
to decedent Sherie Weinstein by defendants. Plaintiff alleges that defendants failed to diagnose and  
treat Sherie Weinstein's prolonged QT interval,<sup>1</sup> which led to her death on July 23, 2004, at age 27.

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<sup>1</sup> Plaintiff's expert explains that contractions of the heart are controlled by electrical  
impulses. After each heart beat, the heart's electrical system recharges itself in preparation for  
the next heartbeat, in a process known as repolarization. When the heart muscle takes longer  
than normal to recharge between beats, the interval between the beginning of the Q wave and the  
end of the T wave, as measured on an EKG, it is considered "prolonged" or "long." Prolonged

On December 16, 2003, Sherie Weinstein presented to the emergency room at SLRH. The Ambulance Call Report notes that decedent was found at work on the floor screaming and crying. A co-worker reported that Ms. Weinstein asked for a glass of water before falling to the ground. The patient could follow commands but was unable to speak. Upon arrival at SLRH, the patient was seen by a triage nurse. The nurse tested decedent's urine sample and blood glucose levels, to rule out low blood sugar and pregnancy as possible causes. An Electrocardiogram (EKG) test was performed, which documented the patient's QT interval to be 494 milliseconds (ms) and her QTc interval<sup>2</sup> to be 540 ms. The EKG report was described as "Abnormal" and her QT as "Prolonged."

Richard Lanoix, M.D., evaluated the patient and reviewed her test results. During his deposition, Dr. Lanoix admitted that he did not have any independent recollection about his evaluation of Ms. Weinstein, but ascertained from the medical records that he had ordered a neurological examination and additional laboratory work, the results of which were normal. The decedent's urinary analysis, however, indicated that she had a urinary tract infection (UTI). Dr. Lanoix evaluated the patient's potassium, magnesium, and calcium levels, all of which he also determined to be normal. Dr. Lanoix testified that he had ordered a complete blood count to rule out acute Prolonged QT syndrome. When the blood work tests came back within normal range, Dr. Lanoix concluded that the cause of the patient's episode was not Prolonged QT Syndrome. Dr.

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QT interval/Long QT interval can be either induced or congenital and can lead to episodes of syncope (fainting), near syncope, seizures, or sudden cardiac death from arrhythmia or dysrhythmia.

<sup>2</sup> Dr. Lanoix explains that a QTc interval takes into account the patient's heart rate.

Lanoix testified that the decedent exhibited no supporting symptomatology for Prolonged QT Syndrome, since her potassium, magnesium, and calcium levels were normal and since she was not suffering from any congenital conditions or diseases.

The patient's medical history contained prior episodes of syncope. Approximately eleven months earlier, Ms. Weinstein was admitted to the Emergency Department at St. Vincent's Medical Center (SVMC) after falling to the ground at a nail salon. She was seen by a neurologist four days later. At the conclusion of his evaluation on December 16, 2003, Dr. Lanoix directed Ms. Weinstein to follow-up with the neurologist with whom she had previously treated. Dr. Lanoix testified that it is his custom and practice to provide the patient with a copy of the EKG report as well as instruct the patient to follow-up with a cardiologist, but Dr. Lanoix did not recall whether he did so during Ms. Weinstein's visit. While the decedent's discharge sheet indicates a referral to a neurologist, it makes no mention of a referral to a cardiologist. Furthermore, Dr. Lanoix diagnosed the patient as having a "Seizure Disorder" and UTI, and he testified that he did not include Prolonged QT as a diagnosis because he believed it was an incidental finding unrelated to the patient's presentation. The patient was discharged on that same day and was prescribed Ciprofloxacin.

On December 19, 2003, the decedent saw co-defendant Josh Torgovnick, M.D., the neurologist with whom she had previously treated. At this time, Dr. Torgovnick referred the decedent to Ali Fard, M.D., a cardiologist. The patient had five visits with Dr. Fard from December 29, 2003, through March 4, 2004. Dr. Fard undertook a battery of tests, including a cardiac stress

test and a holter monitoring.<sup>3</sup> In the course of Dr. Fard's treatment, he referred the patient to Nidal Isber, M.D., an electro-physiologist, who conducted a tilt table test to rule out neuro-cardiogenic syncope.

On July 14, 2004, after suffering a catatonic episode the patient presented to the Emergency Department at SVMC. She underwent a psychiatric consultation and was released with a provisional diagnosis of migraine and conversion reaction. On July 23, 2004, while working at a performance arts camp in upstate New York, the patient was found positioned over a bed and minimally responsive. She was unable to be resuscitated and died. The autopsy report indicates the immediate cause of her death to be "spontaneous ventricular fibrillation" due to an "undetermined cause."

Plaintiff commenced this case on February 3, 2006, alleging in pertinent part that defendants failed to diagnose and treat Ms. Weinstein's Prolonged QT Syndrome; misdiagnosed her condition as psychological in nature; misdiagnosed her condition as a seizure, urinary tract infection, and syncope; and misinterpreted her medical reports and examinations. Plaintiff additionally alleges that SLRH failed to monitor its staff and failed to order repeat studies or make the necessary referrals.

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<sup>3</sup> A holter monitor is a portable device for continuous monitoring of various electrical activity of the cardiovascular system, which is worn for hours or days at a time. While the defendants refer to this as a "halter" monitor, the Court believes that both sides are referencing similar devices.

Dr. Lanoix and SLRH seek summary judgment on the grounds that no triable issues of fact exist that they comported with the standard of care in treating Sherie Weinstein. Defendants also allege that the patient's subsequent treaters, who exercised their independent medical judgment, constitute superseding or intervening causes that sever the causal nexus between Dr. Lanoix, SLRH, and the patient's injuries.

Defendants submit the expert affirmation of Thomas Kwiatkowski, M.D., a physician licensed to practice in New York and board certified in Emergency Medicine. After reviewing all the relevant medical records and pretrial deposition transcripts, Dr. Kwiatkowski opines to a reasonable degree of medical certainty that the care rendered by Dr. Lanoix and the staff at SLRH on December 16, 2003, was appropriate and did not proximately cause the patient's death. The expert outlines the treatment rendered by defendants and states that the triage nurse appropriately undertook an initial assessment and noted that the patient's vital signs were normal. Dr. Kwiatkowski also opines that, after reviewing the patient's history and the triage nurse's assessment, Dr. Lanoix appropriately assessed the patient and ordered the necessary tests. The expert adds that Dr. Lanoix properly regarded the patient's case to be a classic anxiety disorder situation, and that Dr. Lanoix correctly evaluated the patient's EKG levels after the patient's neurological and physical exams results were normal. The expert sets forth that Dr. Lanoix interpreted the patient's EKG as having normal sinus rhythm and a Prolonged QT, but that Dr. Lanoix was also accurate in concluding that the patient was not in acute distress and, based upon the blood work and the lack of supporting symptomatology, was not suffering from Prolonged QT Syndrome. Dr. Kwiatkowski states that it was appropriate for Dr. Lanoix to have believed that Prolonged QT syndrome was not the

cause of the patient's episode, since the patient was "otherwise stable [and] did not require further action or request for consult by Dr. Lanoix [or SLRH.]" The expert states that, during discharge, Dr. Lanoix properly instructed the patient to follow up with her treating neurologist and to consult a cardiologist. Dr. Kwiatkowski further adds that the patient's subsequent treaters performed multiple tests and evaluations and found her QT wave to be normal, which further supports Dr. Lanoix's and SLRH's proper care, and which constitute superseding events.

In opposition, the plaintiff argues that summary judgment should be denied as there exist questions of fact. The plaintiff submits the expert affirmation of a physician, who is licensed to practice in New York and board certified in Internal Medicine and Critical Care Medicine. The expert states that the expert is familiar with the standards of medicine and emergency medicine as well as the medical literature during the time period involved in this case. In relevant part, the expert believes that the patient's diagnosis on December 16, 2003, should have been "Prolonged QT Syndrome," due to her history, which included three prior similar episodes, her gender, her age, her Prolonged QT interval of 494 and Prolonged QTc interval of 540. The expert states that Dr. Lanoix departed from accepted medical practice by misdiagnosing the patient as having experienced a seizure. The expert avers that patients who have Prolonged QT will not always exhibit the syndrome on an EKG, and the QT interval may revert to normal range for periods of time. As such, the expert believes that it was imperative for Dr. Lanoix and the SLRH staff to document the finding of Prolonged QT and include it in the diagnosis entered for the patient. Additionally, since SLRH was equipped with holter monitoring, electrophysiologic testing, and cardiologists, the expert contends that Dr. Lanoix should have ordered an evaluation by a cardiologist, who would have been able to



put in an automatic defibrillator to treat the patient's Prolonged QT syndrome. The expert suggests that the defendants' departures proximately caused the patient's injuries, notwithstanding the involvement of her subsequent treaters or their evaluation results. The expert states that because there was no Prolonged QT diagnosis on the decedent's discharge sheet and because she was not provided a copy of her EKG report to present to her subsequent treaters, the subsequent treaters were deprived of the pertinent prior EKG that showed Prolonged QT. Thus, in the expert's view, the patient was deprived of a better chance of diagnosis and cure.

In reply, Dr. Lanoix and SLRH reiterate their argument that decedent's subsequent treaters acted independently and that their treatments constitute superseding and intervening events, which sever the causal nexus between Dr. Lanoix and SLRH. Defendants also argue that plaintiff's expert's opinion is speculative.

In considering a motion for summary judgment, this Court reviews the record in the light most favorable to the non-moving party. E.g., Dallas-Stephenson v. Waisman, 39 A.D.3d 303, 308 (1st Dep't 2007). A movant must support the motion by affidavit, a copy of the pleadings, and other available proof, including depositions and admissions. C.P.L.R. Rule 3212(b). The affidavit must recite all material facts and show, where a defendant is the movant, that the cause of action has no merit. Id. This Court may grant the motion if, upon all the papers and proof submitted, it is established that the Court is warranted as a matter of law in directing judgment. Id. It must be denied where facts are shown "sufficient to require a trial of any issue of fact." Id.

In a medical malpractice case, to establish entitlement to summary judgment, a physician must demonstrate that he did not depart from accepted standards of practice or that, even if he did, he did not proximately cause injury to the patient. Roques v. Noble, 73 A.D.3d 204, 206 (1st Dep't 2010). In claiming treatment did not depart from accepted standards, the movant must provide an expert opinion that is detailed, specific and factual in nature. E.g., Joyner-Pack v. Sykes, 54 A.D.3d 727, 729 (2d Dep't 2008). Expert opinion must be based on the facts in the record or those personally known to the expert. Roques, 73 A.D.3d at 206. The expert cannot make conclusions by assuming material facts not supported by record evidence. Id. Defense expert opinion should specify "in what way" a patient's treatment was proper and "elucidate the standard of care." Ocasio-Gary v. Lawrence Hosp., 69 A.D.3d 403, 404 (1st Dep't 2010). A defendant's expert opinion must "explain 'what defendant did and why.'" Id. (quoting Wasserman v. Carella, 307 A.D.2d 225, 226 (1st Dep't 2003)). Conclusory medical affirmations or expert opinions that fail to address a plaintiff's essential factual allegations are insufficient to establish prima facie entitlement to summary judgment. 73 A.D.3d at 206. Once a defendant establishes a prima facie case, a plaintiff must then rebut that showing by submitting an affidavit from a medical doctor attesting that the defendant departed from accepted medical practice and that the departure proximately caused the alleged injuries. Id. at 207.

After considering the affirmations of defendant's counsel and Dr. Kwiatkowski, as well as the exhibits submitted, this Court concludes that defendants have made out a prima facie case that the treatment rendered to Sherie Weinstein on December 16, 2003, did not depart from the standard of care. In sufficient detail, the papers recite that the treatment given was appropriate in

light of her presenting symptoms and the test results obtained. Dr. Kwiatkowski opines that although the EKG did report an abnormal Prolonged QT interval, that finding in an otherwise stable patient did not require any further action by Dr. Lanoix or by SLRH's staff. He concludes that the instructions requiring the patient to follow up with her prior treating neurologist was proper. Defendants further argue that the patient's visit to her neurologist three days after her discharge from SLRH, the neurologist's referral to a cardiologist who saw her numerous times, and the electrophysiologist's tests on her are superseding and intervening acts that sever any causal nexus between that treatment at SLRH in December 2003 and Ms. Weinstein's untimely death in July 2004. Because of the subsequent treatments, movants argue that as a matter of law their actions did not proximately cause injury to Ms. Weinstein.

Plaintiff's opposition disputes the opinion that the treatment given to Ms. Weinstein was within the standard of care. The expert disagrees with the defendants' assessment that the QT wave abnormality was benign. The medical expert's affirmation sets forth a number of treatment options that the expert asserts should have been pursued by Dr. Lanoix and SLRH's staff, including a referral to a cardiologist before discharging the patient and the administration of further testing. The failure to diagnose her with a Prolonged QT Syndrome/Long QT Syndrome was a substantial factor in her death. The expert opines that the misinterpretation of the importance of the abnormal EKG report and the misdiagnosis deprived subsequent treaters of necessary information that prevented Sherie Weinstein from getting proper care.

The law is well settled that when competing experts present adequately supported but

differing opinions on the propriety of the medical care, summary judgment is not proper. Such is the case here. See Rojas v. Palese, 94 A.D.3d 557 (1st Dep't 2012). But, the analysis must be taken further. Because of the patient's subsequent treatment by a neurologist, a cardiologist, and an electro-physiologist, all of whom did not diagnose Ms. Weinstein as suffering from a QT Wave disorder, movants argue that any causal connection between their actions and Ms. Weinstein's death has been severed. As a matter of law, they argue, no proximate cause can be established, and they must be granted summary judgment. Derdiarian v. Felix Contr. Corp., 51 N.Y.2d 308 (1980). The issue of proximate cause is usually a question of fact for the jury unless the acts of the intervening party are independent or so far removed that they "do not flow from the original negligence." Id. at 315. While this case presents facts that may persuade a jury to make such a finding, it has not been established that there are no genuine issues of disputed facts regarding proximate cause and that defendants are entitled to summary judgment on that issue as a matter of law. If a jury finds malpractice by Dr. Lanoix and SLRH, it is in the jury's province to consider proximate cause. Accordingly, it is

ORDERED that the motion is denied; and it is further

ORDERED that the parties shall appear for a pretrial conference on Tuesday, August 27, 2013, at 9:30 a.m.

**FILED**

Dated: *Aug. 1*, 2013

AUG 06 2013

COUNTY CLERK'S OFFICE  
NEW YORK

ENTER:

  
JOAN B. LOBIS, J.S.C.