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| Manswell v Montefiore Med. Ctr. |
| 2014 NY Slip Op 33407(U) |
| December 24, 2014 |
| Supreme Court, Bronx County |
| Docket Number: 308301/08 |
| Judge: Douglas E. McKeon |
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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX - PART IA-19A

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DEXTER MANSWELL, as Administrator of the
Estate of JOANNA HAMILTON MANSWELL
and DEXTER MANSWELL, Individually,

Plaintiff(s)

- against -

INDEX NO: 308201/08

MONTEFIORE MEDICAL CENTER,

DECISION/ORDER

Defendant(s)

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HON. DOUGLAS E. MCKEON

Motion by defendant Montefiore Medical Center for an order dismissing plaintiff's complaint pursuant to CPLR § 3212 is decided as follows.

This is a Medical Malpractice and Wrongful Death Action wherein plaintiff alleges that defendant's negligence caused decedent, Joanna Manswell, complications following a transsphenoidal surgery to remove a pituitary tumor.

On October 4, 2007 decedent was admitted to Montefiore for a surgical transsphenoidal resection of a pituitary tumor. After the surgery she was moved to the Surgical Intensive Care Unit (SICU) at Montefiore. While there, decedent was monitored to check her heart, blood oxygen levels, and blood pressure in addition to other vital signs. The SICU had twelve beds for twelve patients and each nurse worked a twelve hour shift caring for a maximum of two patients per shift. While in

SICU decedent would have a nurse check on her approximately every two hours with additional visits for feeding and medication. There was also one Critical Care attending physician on every twelve hours along with physician assistants and fellows. The attending would examine decedent at the beginning and sometimes at the end of the shift as well as be called in to respond to any codes. Additionally, decedent was examined daily by a doctor from neurosurgery and almost daily by doctors from endocrinology, pulmonology, orthopedics, and renal specialties. Finally, a respiratory specialist would work on decedent's blood oxygen levels.

On October 5, 2007 decedent was extubated from a breathing tube she had since the surgery. Although she was deemed stable and alert she was in a compromised medical condition and taking various medications including insulin, Albuterol, blood pressure medication, Protonix, pain medications and antibiotics. The following morning, October 6th, she still required blood pressure control, extensive medications, glucose control and control due to compromised kidney function. Her respiratory function was stable. Nurse Geraldine Andrada was on the day shift that day and noted that decedent was able to tolerate sitting in a chair and a regular diet. Computerized records from Montefiore that day indicate that during the day on October 6th decedent's vitals were normal and she was alert and stable. At 5:00 p.m. Nurse Andrada checked decedent's vital signs which were normal and her blood oxygen level was 97 percent. At 5:37 p.m. a respiratory specialist examined decedent and noted no distress. At 6:00 p.m. Nurse Andrada went to check on her

and to administer medications. At that time decedent was found sitting in a chair but non-responsive except to pain, her heart rate was lower than earlier and she was cold and clammy. Decedent was transferred to the bed and critical care attending was alerted. Dr. Said was the critical care attending who responded to the alert at approximately 6:30. Physician Assistant Lace assisted Dr. Said. Dr. Said intubated decedent and noted that there was normal but decreased breathing sounds bilaterally. Decedent's extremities were warm with positive pulse. Her oxygen levels were at 66 percent. Gastric fluid was noted around the vocal cords and the tube was sealed in place and fluid suctioned out. Dr. Said testified that noting some fluid around the vocal cords is an indicator of aspiration but does not indicate if any fluid is in the lungs. Once the intubation was complete Dr. Said noticed good bilateral breath sounds. Records indicate that after the intubation decedent's blood oxygen levels were normal. On October 7th the Critical Care attending noted that decedent's renal function was worsening. Her lungs were clear and she remained intubated. On October 8th decedent had septic shock and was put on Pressors to alleviate the infection. On October 9th records indicate decedent was critical but improving. On October 11th decedent underwent a tracheotomy. On October 12th decedent was still experiencing problems with renal and lung function. At 9:55 a.m. she went into cardiac arrest and doctors used life saving procedures. She arrested a few more times and ultimately passed away at 11:05 a.m. An autopsy done by the New York City Medical Examiner on October 13, 2007 states the cause of death as

Hypertensive Cardiac Disease specifically Marked Hypertrophy of the Heart. The Court notes the autopsy report does not mention any sign of infections in the lungs.

Plaintiffs' claim that defendant Montefiore negligently monitored and treated decedent after the surgical procedure on October 4, 2007 and that the doctors and medical staff were negligent in monitoring and timely treating her when she became non-responsive on October 6th, two days after the surgery. They further allege that decedent was not properly intubated after she was found unresponsive and that this caused an infection of the lungs which led to her death.

Movant argues that at all relevant time it treated plaintiff in accordance with appropriate standards of medical care. In support of the motion, movant has provided the Court with the opinion of Dr. Ira Wagner. Dr. Wagner, a physician Board Certified in Internal Medicine and Critical Care, opines that at the time of the surgery decedent had multiple organ related problems due to diabetes, hypertension, obesity, reduced lung function and a history of congestive heart related issues. The surgery was necessary to reduce the symptoms and aid in alleviating some of her medical conditions. It is Dr. Wagner's opinion that although decedent required intubation on October 6, 2007 the cause of her becoming unresponsive and the result of the intubation was not the cause of decedent's death. He claims that decedent's multiple medical issues made treating her extremely difficult and even with good medical judgment and treatment by Montefiore physicians her body was unable to sustain itself. Dr. Wagner opines that decedent's

complicated medical issues required the October 4th surgery or she would have died. He also opines that the Montefiore staff provided excellent medical care within the standard of care after the surgery in maintaining her health and trying to save her life. Finally, Dr. Wagner opines that the care and treatment by the doctors and medical staff did not cause decedent's death. Dr. Wagner discusses plaintiff's medical condition in great specificity opines that the sepsis, hypoxia and renal problems were not caused by anything related to decedent's intubation on October 6th or by any alleged departure by doctors or staff. He opines that there was a multi organ failure from a combination of medical factors such as Cushings, hypertension, diabetes, history of congestive heart failure and reduced lung function in decedent and that this combination weakened decedent and the efforts made to help her improve. The doctor opines that all the procedures performed upon decedent including the initial Cushings surgery, the intubation and the tracheotomy were performed within appropriate standards of care, that the doctors and medical staff properly and timely gave medication, checked on her, and used excellent medical judgment in treating the multiple serious medical problems that occurred simultaneously. He further opines that none of the treatment rendered was the cause of decedent's death.

In opposition, plaintiffs focus on the events starting at 6:00 p.m. on October 6, 2007. Plaintiffs argue that when decedent's condition worsened while in SCIU there was a significant delay by the staff of between 45 and 60 minutes in contacting

a critical care doctor to intubate and stabilize her. They claim that this delay permitted a hypoxic state to go untreated leading to aspiration of gastric contents into her airways and to a steady decline in her respiratory status, sepsis, multiple organ failure and death. When Nurse Andrada found plaintiff at 6:00 p.m. she was unresponsive, arousable only to deep pain, with abnormal blood pressure and low oxygen level. Plaintiffs argue that the delay in intubating plaintiff was negligent. Nurse Andrada stated that from the time she found decedent it would be within normal and accepted range on this medical unit for the intubation to occur at 7:15 p.m.

Plaintiffs have provided the Court with the expert affirmation of Dr. Roh. Dr. Roh is a physician Board Certified in Anatomic Pathology, Clinical Pathology and Forensic Pathology. Dr. Roh opines that 45 to 60 minutes was too much time to wait when the patient is hypoxic and unresponsive, had a low blood oxygen level and whose medical profile includes so many issues. Plaintiff argues that whether it took three quarters of an hour, an hour, or an hour and a quarter, given decedent's condition, it was an unacceptable delay in treating her and constituted a departure from good and accepted practice.

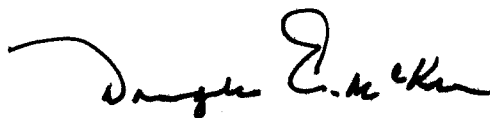
The Court finds that there are issues of fact surrounding the care rendered to decedent on the evening of October 6th sufficient to defeat the instant motion for summary judgment. Plaintiff has shown that it took at least forty-five minutes for the on call attending to treat Ms. Manswell after being called by Nurse Andrada.

Although movants argue that this is an acceptable length of time plaintiff's expert says it is a departure from the standard of care. The Court further finds that whether this departure was a proximate cause of decedent's death is an issue of disagreement among the experts and is sufficient to defeat the motion for summary judgment. Plaintiff's expert explains that the departure of delaying the call or for the attending to arrive to attend to this patient who had a complicated medical profile led to serious adverse medical events including hypoxia, aspiration, respiratory arrest, sepsis and ultimately death. Movant's expert has not addressed plaintiff's expert's opinion on harm done to decedent by the delay in notifying the on call attending in the SICU treating decedent. Because the Court finds questions of fact sufficient to defeat the motion, it is denied.

So ordered.

Dated:

December 24, 2014



Douglas E. McKeon, J.S.C.