

**Yi Mei Wang v Nyein**

2014 NY Slip Op 30416(U)

February 18, 2014

Supreme Court, New York County

Docket Number: 106054/09

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER

PART **A** PART 16

Justice

Index Number : 106054/2009  
ESTATE OF YI MEI WANG  
vs.  
NYEIN, RONALD M.D.  
SEQUENCE NUMBER : 005  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s) \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s) \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s) \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is granted in accordance with the accompanying memorandum decision, and the Clerk is directed to enter judgment in favor of defendant Dr. Nyein dismissing the action with prejudice.

**FILED**

FEB 21 2014

COUNTY CLERK'S OFFICE  
NEW YORK

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

Dated: FEB 18 2014

  
ALICE SCHLESINGER, J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

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

-----X  
The Estate of YI MEI WANG, deceased, by HUI GAO,  
Administrator and HUI GAO, Individually,

Plaintiffs,

Index No. 106054/09  
Mot. Seq. Nos. 005 & 006

-against-

ROLAND NYEIN, M.D., KEVIA TAYLOR, M.D.,  
DAVID HOM, M.D. and THE NEW YORK  
DOWNTOWN HOSPITAL,

Defendants.

FILED

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-----X  
SCHLESINGER, J.:

COUNTY CLERK'S OFFICE  
NEW YORK

Before the Court in this medical malpractice action are motions for summary judgment by all the defendants dismissing the claims against them. The predicate for the action is plaintiff's claim that the decedent, a 29 year old woman, died as a result of massive hemorrhaging during a Cesarean section performed by defendant Dr. Roland Nyein on March 28, 2008 at the facility of defendant New York Downtown Hospital. Co-defendant Dr. Kevia Taylor, now discontinued from the action by Stipulation, was the resident who assisted during the Cesarean section. Defendant Dr. David Hom is the urologist called in by Dr. Nyein to repair a bladder laceration that occurred during the Cesarean section.

All the defendants note that it was determined upon an autopsy of the decedent that the cause of death was Segmental Mediolytic Arteriopathy, a rare disease of unknown cause that can result in sudden, severe intra-abdominal bleeding (see Exh I to Nyein motion). Additionally, and quite significantly, each defendant offers an expert affidavit in support of the motion attesting that the defendant did not depart from accepted standards of care or proximately cause the decedent any injury.

In support of his motion (seq 005), Dr. Nyein offers the affirmation of Dr. Mary D'Alton, a board certified obstetrician-gynecologist. Dr. D'Alton notes that the decedent suffered from a vascular type of Ehlers-Danlos Syndrome, an inherited connective tissue disorder that renders the blood vessels and organs fragile and prone to tearing or rupture. In particular, the blood vessel fragility causes a high risk of fatal complications, including arterial rupture (§ 40). Dr. D'Alton opines with a reasonable degree of medical certainty that Dr. Nyein could not have suspected that the decedent had this condition, and even if he had, the mother would have suffered the same hemorrhage and the same result (§ 37-40).

Before rendering her opinion, Dr. D'Alton discusses the various medical records and the testimony of the parties given at examinations before trial. She discusses in particular the bladder laceration, explaining that it is not malpractice but a known risk of the procedure. Further, since Dr. Nyein noted the laceration and had a urologist promptly repair it, the laceration itself did not cause or contribute to the bleeding problem and certainly did not cause the hemorrhage, particularly since the vena cava that was bleeding was nowhere near the site of the Cesarean section, as proven by the fact that an additional incision needed to be made to complete the vascular repair (§ 46). In sum, Dr. D'Alton opines that the patient's death was the result of the unforeseen and untreatable genetic collagen disease, and not as a result of any malpractice by Dr. Nyein (§ 53).

The motion by the defendant urologist Dr. David Hom is supported by the affirmation of Dr. Elizabeth Kavalier, a board certified urological surgeon. Based on a review of the medical records and deposition testimony, Dr. Kavalier describes how Dr. Hom approached the bladder repair surgery. She notes that when Dr. Hom was suturing the inner layer of the bladder, the patient became hypotensive and tachycardic. The expert opines with a

reasonable degree of medical certainty that it was appropriate for Dr. Hom at that time to hold off on the bladder repair so that other physicians could identify the source of the bleeding and the instability in the patient's vital signs (§ 23). At no point did Dr. Hom depart from good and accepted standards of urological care.

Dr. Kavalier further opines that it is highly improbable that Dr. Hom created the vena cava defect that ultimately caused the patient's death because the doctor was not working anywhere near the vena cava when he attempted the bladder repair (§ 24). Like the expert for Dr. Nyein, this expert opines that the vena cava tear and resultant bleeding likely occurred as a result of the patient's latent medical condition, which was not apparent until the autopsy; Dr. Hom's care and treatment did not proximately cause injury (§ 26-27).

The final motion is the cross-motion by defendant New York Downtown Hospital. It is undisputed that the decedent was the private patient of Dr. Nyein. When the patient appeared at the Hospital's Emergency Room, Dr. Nyein was promptly called in. According to Dr. Nyein's testimony before trial, he was in charge of the patient's care and treatment, and the hospital staff followed his orders during the Cesarean section. It was the decision of Dr. Nyein to call in Dr. Hom, the urologist on call at the Hospital, to address the bladder laceration.

In support of its motion, the Hospital offers affirmations from the following three experts: Dr. Stephen M. Factor, a board certified pathologist (Exh E); Dr. Peter S. Bernstein, a board certified obstetrician/gynecologist specializing in Maternal-Fetal Medicine (Exh F); and Dr. Larry A. Scher, who is board certified in vascular surgery. All three physicians have reviewed the relevant records and testimony and opine with a reasonable degree of medical certainty.

Dr. Factor begins by confirming that he has reviewed the pathology slides from the Office of the Medical Examiner and the autopsy report which noted that the cause of death was Ms. Wang's connective tissue disorder. He then discusses Ms. Wang's rare condition called Ehlers-Danlos Syndrome, explaining (¶ 3) that it can "disrupt the creation and impair the functioning of collagen, of which connective tissue is made. ... The type of Ehlers-Danlos suffered by Ms. Wang causes the blood vessels to become extremely friable so that they can tear and break down either spontaneously or with relatively slight and reasonable pressure or manipulation." He adds (at ¶ 4) that the pathology slides revealed "an extremely friable blood vessel tissue that would not hold sutures," and concludes "with a reasonable degree of medical certainty, that Ms. Wang died from uncontrollable bleeding secondary to her Ehlers-Danlos Syndrome, and once the tears in the patient's blood vessels occurred, including a tear of the inferior vena cava, there was nothing the vascular surgeon could do to stop the bleeding, despite his reasonable attempt to do so."

The ob/gyn Dr. Bernstein opines with a reasonable degree of medical certainty (at ¶ 2) that the "Hospital staff and employees provided reasonable and acceptable care to the patient, Ms. Wang, and did not depart from accepted medical or obstetrical practice, and did not cause or contribute to any injury or the death of Ms. Wang." He explains that Ms. Wang was a private patient and, as a result, the Hospital staff was required to assist Dr. Nyein by following his orders. He adds (¶ 4), based on his review of the medical records and deposition testimony, that Dr. Nyein "made all the incisions and performed the actual delivery" and remained in charge of the patient's care and treatment, with Hospital personnel simply providing support as needed.

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Like Dr. Factor, Dr. Scher, the vascular surgeon, discusses the Ehlers-Danlos Syndrome in detail. With a reasonable degree of medical certainty, Dr. Scher opines (§ 4) that the Hospital staff “acted in a timely and reasonable manner in their overall treatment of Ms. Wang and specifically in the treatment of the vascular problem that arose at the time of delivery. He describes specifically the work of the anesthetist, the surgical team, the blood transfusion team, and the urologist Dr. Hom. With respect to the vascular surgeon Dr. Friedman, he adds that the doctor “did all he could reasonably have done to attempt to control the hemorrhage by repairing the disrupted and friable vessels, and the fact that, ultimately, he could not is in no sense a reflection on his judgment or technique. Dr. Friedman absolutely followed good and accepted vascular surgical practice and principle in his care of Ms. Wang.” He agrees that the cause of Ms. Wang’s death was secondary to complications of her Ehlers-Danlos Syndrome and not any negligence by any treating physician or hospital staff member.

By means of these detailed affirmations from highly credentialed and experienced physicians, each of the defendants has made a *prima facie* showing of entitlement to summary judgment as a matter of law. *Winegrad v New York University Medical Center*, 64 NY2d 851 (1985). The burden then shifts to the plaintiff opposing the motion to produce evidentiary proof in admissible form sufficient to create a triable issue of fact. *Zuckerman v City of New York*, 49 NY2d 557 (1980).

The only opposition submitted by the plaintiff is an affirmation from counsel. He begins by noting (§ 5) that the recitation of the facts by the defense is “essentially correct.” He also agrees that a “key piece of information” was derived by the Medical Examiner at

the autopsy; that is, that Ms. Wang suffered from a very rare connective tissue disorder. Further, he confirms that expert review conducted at the commencement of the case indicated some departures from the standard of care.

However, at the completion of discovery, the situation changed. According to counsel (¶ 10-11):

While it was and remains the position of the plaintiff that defendants departed from accepted standards of care in the treatment they rendered to the plaintiff's decedent, unfortunately, your affirmant has been advised by his expert, that he cannot testify, with a reasonable degree of medical certainty, that the decedent's death was caused as a result of any suspected departure from acceptable standards of care. Very simply, this expert is unable to make a causal link between the decedent's death and any actions of the defendants, as opposed to being caused by the Connective Tissue Disorder, Segmental Mediolytic Arteriopathy, or similar disorder, itself. As such, your affirmant is unable to provide a substantial affidavit from said expert to defeat the within motions. Nevertheless, as this court is unaware (*sic*), medical malpractice cases do not generally lend themselves to motions for summary judgement and plaintiff still believes that issues of fact exist by which this court should deny defendants motions herein.

This response is wholly inadequate, as the opinion of counsel has no evidentiary value. As defendants assert in reply, without submitting an affirmation or affidavit from a qualified medical expert opining as to departures from accepted standards of care based on the medical records and testimony in this case, plaintiff has failed to create an issue of fact to defeat the motions for summary judgment. See *Alvarez v Prospect Hosp.*, 68 NY2d 320 (1986). Accordingly, it is hereby

ORDERED that the motion for summary judgment by defendant Roland Nyein, M.D. (Seq 005), and the motion for summary judgment by defendant David Hom, M.D., and the



[\* 8]  
cross-motion by defendant The New York Downtown Hospital (seq 006) are all granted in their entirety, and the complaint is dismissed as to all the defendants; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: February 18, 2014

FEB 18 2014

  
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J.S.C.  
ALICE SCHLESINGER

FILED

FEB 18 2014

COUNTY CLERK'S OFFICE  
NEW YORK