

Lindsay-Thompson v Montefiore Med. Ctr.
2015 NY Slip Op 31761(U)
August 19, 2015
Supreme Court, Bronx County
Docket Number: 300113/10
Judge: Douglas E. McKeon
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX - PART IA-19A

-----X
RENEE LINDSAY-THOMPSON and ROBERT
THOMPSON,

Plaintiff(s)

- against -

INDEX NO: 300113/10

MONTEFIORE MEDICAL CENTER, BARBARA
SOBEL, M.D., SUSAN EPPS, M.D., and DONNA
TOSCANO, R.N.,

DECISION/ORDER

Defendant(s)

-----X

HON. DOUGLAS E. MCKEON

Defendant's motion for summary judgment is decided as follows.

This is a medical malpractice action for alleged malpractice occurring on November 26, 2008. The plaintiff was an LPN employed by Montefiore at the time. Her records document numerous pre-existing musculoskeletal complaints, joint aches and pains, neck pain, neuropathy, stress, depression and insomnia several years prior to the incident. In this matter, plaintiff claims that she suffered nerve damage in both hands, blurry vision, painful and swollen fingers, chemical burn to her left hand, painful burning sensations in both hands, difficulty sleeping, anxiety disorder, depression etc. as the result of an injection of Phenergen. Movants argue that the medical records clearly contradict this allegation.

In September 2005 plaintiff complained of back, shoulder and right arm pain as a result of a recent motor vehicle accident. The impression was musculoskeletal injury and she was prescribed physical therapy for it. In October she complained to Dr. Goldner, her primary care physician, of insomnia secondary to job stress. In January 2006 she complained to him of stress at work, pain on both sides of her neck, headaches, and left shoulder and ear pain. She was diagnosed with stress and muscle spasms. In June 2007 Dr. Goldner prescribed Ambien for insomnia. In July 2007 she underwent a right mastectomy for breast cancer at Montefiore Medical Center.

In February 2008 she began therapy at Burke Rehabilitation for post mastectomy right arm swelling, pain, numbness and tingling. She also had prior physical therapy history for whiplash to the neck and back. In April plaintiff received physical therapy at Burke for post radiation burns/irritation over the right clavicular area and the right breast extending into the lateral chest wall, and for pain and numbness in her fingers and both feet.

In September 2008 she complained of increased swelling in her right arm and increased pain in her right chest and neck. At this time, September 2008 (two months prior to the allegations in this case), plaintiff was evaluated by neurologist, Dr. Gorin for complaints of numbness in both big toes since chemotherapy from November 2007 through January 2008. She had a multitude of other complaints including numbness in her right thumb, neck pain, back pain, calve and thigh pain,

inability to stand to put on shoes etc. Dr. Gorin's impression was peripheral neuropathy likely due to Taxol taken for her breast cancer.

In October 2008 plaintiff was diagnosed with a nodule in the lower right lobe of her thyroid. She complained of pain, lethargy, cough, joint aches and numbness in her fingers and toes. She also had problems with her right upper arm. It was the problem with plaintiff's right arm that led to the surgery at issue. On November 26, 2008 plaintiff underwent a right breast revision for right arm lymphadenopathy and left breast reduction. Defendant Sobel was the nurse anesthetist assigned to the case and defendant Dr. Epps was the anesthesiologist for the surgery. Defendant Nurse Toscano testified that she did not recall exactly where the first IV line was placed but only that the IV was placed in the left peripheral arm according to the record. She administered 12.5 mgs of Phenergen intravenously due to plaintiff's continued complaints of nausea at approximately 2:40 p.m. Nurse Toscano testified that the Phenergen was diluted in a saline bag, hung with separate tubing and attached to the port of the existing IV line used during surgery. Her note indicated that the IV was up and intact and there were no signs or symptoms of pain, redness, or swelling around the IV site. It also indicated that patient had decreased nausea and was feeling better. Plaintiff was discharged with no problems at approximately 3:40 p.m.

Post operatively, plaintiff saw Dr. Benacquista from November 28, 2008 through April 24, 2009. On November 28th and December 1st she made no

complaints regarding her hand. On December 5, 2008, nine days post administration of the Phenergen, she complained of slight tenderness over the dorsum of her left hand secondary to IV. A physical examination showed minimal tenderness and an area of old ecchymosis. It was neurovascularly intact distally. She was told to take Motrin and place warm soaks on her left hand. She made the same complaint on December 12th. There was no swelling or other clinical findings and the record indicates no hematoma. She made the same complaint on January 9th with no abnormal findings noted. Plaintiff was also still seeing Dr. Goldner for complaints of right upper arm swelling from the procedure.

Nearly two months after the administration of Phenergen, Dr. Goldner referred plaintiff back to Burke for complaints of right arm pain, swelling, numbness, tingling, and pain in the right shoulder with decreased range of motion in the right arm. At this time there were no complaints of left hand pain or any physical evidence of any chemical burns from the alleged extravasation of Phenergen. Throughout her treatments of those complaints at Burke, there were no complaints regarding her left hand and no physical evidence of any chemical burn.

On a disability claim dated December 23, 2008 signed by Dr. Goldner, plaintiff indicated her last day of work as 10/30/08 with the disability beginning on 11/3/08 (prior to this claim). Although there were many complaints listed for her disability there was no mention of any problem with the left hand, a chemical burn to the left hand or any issue with the left arm. Strangely, that same day Dr. Goldner filled out

a form for plaintiff's physical examination for the Orange County Community College Clinical Participation where plaintiff enrolled for an RN degree which she obtained on May 16, 2009. The form indicates that plaintiff had no physical disabilities, no impairment, no injuries and no other medical conditions. On December 8, 2008 when plaintiff saw Dr. Gorin she made no mention of the left hand and there was no documentation of a chemical burn from the extravasation of Phenergen.

For the first time, on March 24th plaintiff reported to Dr. Gorin her neurologist that an IV on her left hand had infiltrated causing aching in the left hand. On examination, Dr. Gorin noted a small thrombosed vein on the dorsum of the left wrist. She was advised that she might have RSD and treated her for suspected RSD. When she was seen by an expert in RSD November, 2009 the impression was tendinitis. She was seen by Dr. Saberski on November 18, 2009. Dr. Saberski is an expert in RSD and he performed a thorough evaluation and assessed plaintiff as not having RSD with medical certainty. She referred to plaintiff's pain as a well defined localized circle of pain in the dorsum of her left hand with wide spread diffuse pain elsewhere without any neurological or observed objective finding. One month later, plaintiff was seen by an endocrinologist who diagnosed her as having fibromyalgia.

Any claim by plaintiff that defendant violated their own policies set forth in the Patient Care Manual regarding the administration of Phenergen is dismissed because there is nothing in the manual regarding the administration of Phenergen.

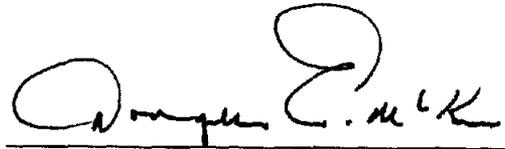
Furthermore, movants have provided the Court with an expert affidavit of John DiCapua, M.D., who states that the standard of care for the administration of a particular drug is the manufacturer's label. Plaintiffs claim that the Phenergen was injected directly into her hand or wrist vein is completely contradicted by the record and testimony. The medical records are devoid of any proof that there was any extravasation of Phenergen during the IV administration of it on November 26, 2008. Plaintiff had no complaints during the administration of it and the post-operative complaint plaintiff had prior to her discharge from the hospital was nausea. According to the expert, Dr. DiCapua, if there was an extravasation of Phenergen the plaintiff would feel severe burning pain during the administration of the medication. Nine days later, plaintiff made a complaint of some tenderness in her left hand around the IV site. This is the only complaint regarding her left hand in the post-operative visits to the surgeon through April 2009. Again, no physical findings consistent with extravasation are documented. Dr. DiCapua stated that the administration of Phenergen in this case was appropriate and that the standard of care for administration of it via the manufacturer's instructions were followed.

Movant has demonstrated a *prima facie* case of entitlement to summary judgment and the motion is granted. Plaintiff's medical expert fails to set forth any evidence regarding the standard of care for the intravenous administration of Phenergen and does not attempt to refute defendant's expert affidavit submitted by John DiCapua, M.D. This doctor states that the manufacturer's label NFDA

establishes the standard of care for the administration of the drug. Plaintiff's medical expert does not set forth any departures from the standard of care against any defendant. Plaintiff submits an expert affidavit from a nurse to address departures from the accepted standard of care in this case. This nurse expert's affidavit does not contain any facts or any records that establishes the extravasation of Phenergen or a chemical burn at the IV insertion site. There is no evidence of extravasation of Phenergen in the medical records and no evidence of inadvertent intra-arterial administration of Phenergen. Plaintiff's opposition to the motion has failed to provide the Court with any evidence about the standard of care for the administration of Phenergen, that the manner in which it was administered in this case was a departure from the standard of care or that there was any extravasation of Phenergen in this case at all. There is also a failure to raise any issue of fact regarding a claim for informed consent or negligent hiring. Plaintiff has failed to raise a question of fact as to the medical proof submitted by defendants that establish that the alleged injuries suffered by plaintiff existed prior to the administration of Phenergen. Plaintiff has failed to establish that there was extravasation or that plaintiff suffers from RSD or Fibromyalgia as a result of any extravasation of Phenergen. As plaintiff has failed to demonstrate a question of fact sufficient to defeat defendant's motion for summary judgment, it is granted.

So ordered.

Dated: 8/19/15

A handwritten signature in black ink, appearing to read "Douglas E. McKeon", written over a horizontal line.

Douglas E. McKeon, J.S.C.