Cadichon v Facelle
2015 NY Slip Op 31889(U)
September 4, 2015
Supreme Court, Bronx County
Docket Number: 16878/03
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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JULIETTE DeJOIE CADICHON and JEAN PHILIPPE CADICHON,

Plaintiff(s)

- against -

INDEX NO: 16878/03

THOMAS FACELLE, M.D., GOOD SAMARITAN HOSPITAL, MONTEFIORE MEDICAL CENTER and LOUIS MAY, M.D.,

DECISION/ORDER

Defendant(s)

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HON. DOUGLAS E. MCKEON

Motion by defendant, Louis May, M.D., for summary judgment is decided as follows.

This is a medical malpractice action arising from the ambulatory laproscopic cholecystectomy undergone by plaintiff Ms. Cadichon due to chronic cholelithiasis. Three days later Ms. Cadichon presented to Good Samaritan Hospital Emergency Room reporting she had not had a bowel movement in five days and had abdominal pain. X-rays revealed a distended colon. She was advised to see Dr. Facelle. On July 21, 2002 she saw Dr. Facelle with complaints of abdominal pain and left shoulder pain. Dr. Facelle sent Ms. Cadichon to Good Samaritan Hospital where she underwent an abdominal and pelvic CT scan and was admitted. The films

revealed fluid around the liver and increased fluid in the lower abdomen and pelvis. Dr. Facelle requested a gastroenterology consult. Dr. Kram, a doctor in Dr. May's practice group saw plaintiff on July 25th. His impression was post surgical leak and retained or passed stone. Dr May testified that following Dr. Kram's examination of plaintiff on July 25th Dr. Kram reviewed the patient's biliary scan with Dr. Tash and another radiologist and all concluded that there was a biliary leak and that an ESCP, and endoscopic retrograde cholangiopancreatography was needed. Dr. May testified that it was his differential diagnosis that the leak was due to surgical trauma relative to the procedure she had undergone six days earlier. Dr. May performed the ESCP on July 25th and documented an obstruction of uncertain ideology. Dr. May was unable to perform the surgery satisfactorily and called Dr. Facelle for urgent consultation. Dr. Facelle asked Dr. May to place the guidewire to the clips into the peritoneal cavity which he was able to do. The guidewire was advanced to the area of the clips and into the peritonial cavity. This was confirmed by injection of contrast through the catheter and the catheter and scope were removed leaving the guidewire in place. All manipulations were discussed with surgical consultation. Dr. May testified that after he catheterized the bile duct the contrast did not proceed proximally more than about two and a half inches above the ampulla of vater because of what he opines was an obstruction caused by the surgical clip. He advanced the catheter up the bile duct proximally to assist him in possibly having contrast go beyond the point of obstruction to provide further information but this was

unsuccessful. Based on the florocity study it was evident that there was extravasation and that clips were on the duct. Given the trauma to the duct with extravasation with clips to the duct he called Dr. Facelle as he believed the patient required surgery to repair the bile leak and he needed Dr. Facelle to analyze the scan and assess the patient. Dr. May testified that Dr. Facelle said the patient had a surgical injury that he had never encountered before. When Dr. May showed Dr. Facelle biliary scans Dr. Facelle acknowledged that it looked like the surgical clips were placed across the common bile duct. Dr. May suggested to Dr. Facelle that the patient be transferred to a liver surgery/ transplant center as Good Samaritan Hospital did not specialize in the type of surgery that might be required but was told that Dr. Facelle was the surgeon and that he could perform the surgery. Dr. May testified he had no further contact with or involvement in plaintiff's care or treatment.

Dr. Facelle performed an emergent exploratory laparoscopy on July 25, 2002. Two liters of bile were suctioned out of the peritonial cavity. The anterior wall of the common bile duct was missing and Dr. Facelle attempted to probe what he thought was the proximal duct and place a catheter into the hepatic duct a T-tube into distal common bile duct and a Jackson-Pratt drain in the sub hepatic space. On July 27th plaintiff was transferred to Montefiore Medical Center with a diagnosis of transected common hepatic duct/liver necrosis and a chief complaint of liver failure. She remained there until August 28, 2002.

In support of the motion, movant has provided the Court with the expert affirmation of John Poneros, M.D., an expert in gastroenterology. Dr. Poneros reviewed plaintiff's medical records and the deposition transcript and opines, within a reasonable degree of medical certainty, that there is no evidence of any departure from the standard of care by Dr. May, that Dr. May's actions were in accordance with good and accepted medical standards of care and that the care and treatment rendered plaintiff by Dr. May was not the cause of any of plaintiff's alleged injuries. Among other things, Dr. Poneros opines that the perforation of the common bile duct occurred before Dr. May performed the ERCP on July 25th based on plaintiff's complaint of abdominal pain and tenderness, jaundice and shoulder pain days before the ERCP was performed, the fluid seen on the CT scan of July 23, 2002 and the fact that extravasation of contrast was evident before any instruments were introduced during the July 25th ERCP. A second expert, Jeffrey H. Newhouse, M.D., an expert in the field of radiology who also reviewed plaintiff's films and deposition transcripts states that within a reasonable degree of medical certainty there was no evidence of any departure from the standard of care by Dr. May. Dr. Newhouse affirms that a review of the fluoroscopic spot films taken during the July 25th ERCP procedure demonstrated extravasation of contrast on initial injection of the bile duct even before the guidewire and catheter were introduced. Therefore, he opines that within a reasonable degree of medical certainty plaintiff sustained a leak before Dr. May's ERCP and that the ERCP performed by Dr. May was not the cause of

plaintiff's injury. Dr. May's testimony and the hospital chart demonstrate that he had no further involvement with the care and treatment rendered to plaintiff following the July 25,2002 ERCP and had no communication from either plaintiff following that date. Movant argues that he is entitled to summary judgment because the allegations against him are that he performed the July 19th surgery improperly, failed to admit plaintiff to the emergency room on July 22nd and performed the July 25th surgery improperly. There is no evidence that Dr. May had any involvement in the July 19th surgery or the exploratory laparotomy and he did not see or treat plaintiff in the emergency room. Furthermore, the records reveal that plaintiff had pain complaints consistent with a bile leak and demonstrated chemical evidence of a bile leak days prior to his initial contact with plaintiff and that the radiographic films performed prior to Dr. May's ERCP on July 25th demonstrated evidence of a bile leak.

The medical records and expert affirmations of Dr. Poneros and Dr. Newhouse make a *prima facie* showing entitling movant to summary judgment. The three defendants herein all oppose Dr. May's motion.

In opposition to Dr. May's motion plaintiff has submitted the expert affidavit of a doctor board certified in internal medicine and gastroenterology. This expert details what he views as departures from the standards of good and accepted care committed by the defendant May. Among other things this expert opines that even if defendant Facelle requested that Dr. May advance the catheter further up the duct

it was a departure from the standards of good and accepted practice for Dr. May to follow that request and advance the catheter in this patient who was at high risk for duct injury. Plaintiff's expert further opines that separate and apart from the issue of whether a bile leak existed prior to defendant May's actions there is evidence that May caused significant destruction and injury to the bile duct and that his actions were a substantial factor in causing the injuries suffered by the plaintiff. Dr. Newhouse affirmed that Dr. May, Dr. Kram, Dr. Tash and another radiologist upon reviewing the July 24th biliary scan before Dr. May performed the July 25th ERCP concluded that plaintiff had a biliary leak. Furthermore, Dr. Newhouse affirms that the fluoroscopic spot films taken during the July 25th ERCP demonstrated extravasation of contrast on initial injection of the bile duct prior to the introduction of the guidewire and catheter. Plaintiff's expert does not address the findings of the biliary scan or the fluoroscopy spot films nor does he or she address Dr. Newhouse's opinions in any way. Dr. Newhouse opines, with a reasonable degree of medical certainty, that the common bile duct perforation occurred before Dr. May performed the July 25th ERCP and that the ERCP did not cause plaintiff's injuries. Plaintiff fails to explain how the performance of the ERCP was a substantial factor in causing injury to the bile duct when the bile duct was already injured.

The Court finds that plaintiff has failed to defeat Dr. May's *prima facie* showing of entitlement to summary judgment in this matter. Plaintiff's expert does not address the expert affirmation submitted by defendant . Plaintiff's expert's

statement that Dr. May should not have followed Dr. Facelle's request conflicts with the reliance placed on Dr. Facelle's version of events as the suggestion is that Dr. Facelle departed from the standard of good and accepted care by requesting Dr. May to advance the catheter up the duct. A further expert affirmation by Dr. John Poneros addresses the shortcomings in plaintiff's expert's affirmation in that this expert failed to address the complaints that plaintiff experienced immediately following the July 19th procedure performed by Dr. Facelle but prior to the July 25th ERCP performed by Dr. May including abdominal pain, distended abdomen, and ability to have a bowel movement, etc. Dr. Poneros discusses the fact that plaintiff's expert fails to address the possibility that these complaints were caused by a bile leak and that the expert fails to address the patient's July 24th biliary scan which revealed a biliary leak and required an urgent ERCP and the July 25th fluoroscopy study which revealed extravasation occurring prior to the ERCP. Dr. Poneros states that plaintiff's expert reaches generalized conclusions as to the cause of the bile duct injury which the expert attributes to Dr. May's performance of the ERCP while ignoring evidence that demonstrates the bile duct was injured before the ERCP performed by Dr. May.

The Court finds that defendants have made a *prima facie* showing entitling him to summary judgment and that plaintiff's complaint should be dismissed against him. The opposition to the motion is insufficient to defeat the showing that no negligent treatment was rendered by defendant May and that plaintiff's alleged

injuries were not caused by Dr. May.

So ordered.

Dated: September 14, 2015

Douglas E. McKeon, J.S.C.