Mariani v Hodjati
2015 NY Slip Op 32194(U)
November 13, 2015
Supreme Court, New York County
Docket Number: 805006/13
Judge: Alice Schlesinger

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

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RUTH MARIANI

Index No.805006/13

Plaintiff, Motion Seq. Nos.002 & 003

-against-

RAMIN HODJATI, M.D., and ISABELLA GERIATRIC CENTER,

Defendants.

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SCHLESINGER, J.:

Before this Court are dispositive motions by both defendants, Dr. Ramin Hodjati and Isabella Geriatric Center (the "Center"). The action concerns Ruth Mariani (plaintiff) while she was a resident at the Center and specifically the days of May 19, 2012 (a Saturday) through May 21, 2012 (a Monday). She was transferred to New York Presbyterian Hospital on Tuesday, May 22, 2012, where she suffered a stroke either on that day or the day after, Wednesday, May 23, 2012. The controversy centers around the symptoms she displayed during this period and whether an earlier referral by either defendant to New York Presbyterian (which is a not a defendant) would have made any difference in her condition or outcome.

Dr. Hodjati is a geriatrician who regularly saw residents at the Center. He was the internist assigned to the plaintiff. In 2012, Ms. Mariani had been living at the Center since June of 2006. As regards the weekend in question, Dr. Hodjati was not on call. But he returned on Monday and examined her that day, May 21, 2012. According to counsel for the plaintiff in opposition papers, and consistent with testimony given by Joanne Montanez, Ms. Mariani's daughter, her mother was experiencing symptoms

such as dizziness, light headedness "and throwing up, five days, constantly" (p.62-3 of her EBT), and that these were reported to nurses multiple times over the weekend. But a doctor wasn't called. This recent history was the reason why Dr. Hodjati examined the plaintiff on Monday, the 21st. After this he made the following note:

> Resident was seen today because she had difficulty lifting things with hand including a pillow over the weekend that was resolved on its own. She denies any pain or numbness.

However, he also wrote under his "A&P" (Assessment & Plan)

> 81 year-old female with history of hypertension, diabetes was seen for transient extremity weakness likely TIA (transient ischemic attack) to rule out for metabolic and hematologic causes. 1. Check CBC, CMP, TSH. 2. Neurology Consult.

According to Dr. Hodjati's deposition testimony (but not in or via his notes), he offered the plaintiff and Ms. Mariani's daughter a transfer to the hospital that day, May 21, but they refused. They preferred the alternative, a neurological work up, at the hospital which would be scheduled in the future, because the various diagnostic tools for such a work up were not available at the Center.

On May 22, Dr. Hodjati examined his patient again. This was following up a nurse's note of that day that Ms. Mariani was complaining of muscle weakness in her hands and feet. Her symptoms then, some new, were reported by him in an "Acute Visit" note. He wrote "resident was seen today for f/u of UE ("upper extremity") weakness over the weekend, has more numbness of hands and feet." He also found, pursuant to a neurological exam, that she had a right facial droop, left pronator drift and mild weakness. His A&P stated:

> 81 yo female with hx of DM, HTN (diabetes and hypertension) and CVA Cerebral Vascular Attack) was seen for progressive weakness given her history of CVA likely TIA w/o CVA. Pt and daughter agreed to be assessed in hospital setting. Transfer to CPMC ER [Columbia Presbyterian Medical Center Emergency Room] for MRI of the brain.

Ms. Mariani left the Center at 4:02 p.m. on May 22 and arrived ten minutes later at the New York Presbyterian (the "Hospital"). She was seen shortly thereafter and a 4:21 pm patient log-in noted chief complaint as "left side more weak x3 days." In the Emergency room records, it was observed that:

> "beginning 4 days ago she had weakness in her arm and difficulty walking" and that after seeing her doctor at the nursing home, she "was sent to the ED to work up for a stroke."

Ms. Mariani was admitted to the Hospital around 1:00 a.m. on May 23. During that day, she was given an MRI and MRA which "showed moderate sized acute infarct in the superior right pons (brain stem)." Also in the lengthy "NYP Discharge Summary Note", written on her discharge date back to Isabella on May 25, 2012, the following history was given on page 5:

> The patient presented to NYP ED with four days of left sided weakness, left facial droop and dysarthria from Isabella nursing home. She did not have any nursing home records sent with her [the Center insists they were sent] and per the patient symptoms have been ongoing for several days which put her outside the window for TPA.[1]

The defendants both include affirmations from experts, Dr. Jay M. Coblentz for

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[1]This note does continue but is unnecessary for purpose of these motions.

Dr. Hodjati, and Dr. Stanley Tuhrim for Isabella. Dr. Coblentz is a well credentialed Board Certified Neurologist as is Dr. Tuhrim. Dr. Tuhrim is also the Director of the Mount Sinai Stroke Center and a Professor in both the Neurology and Geriatrics Departments at its Medical School. The opposition affirmation is also from a Board Certified Neurologist. All three doctors agree on the history as given above, including through the plaintiffs short hospital stay with the diagnosis of a moderate cerebral stroke.

Dr. Coblentz's opinion, made with a reasonable degree of medical certainty, is that Dr. Hodjati acted in accordance with good and accepted medical practice and that the actions of this defendant were not a substantial or contributing factor to any of her injuries, particularly to the right pontine infarct, diagnosed on May 23, 2012 at the Hospital. In the following eight pages, Dr. Coblentz elaborates on these opinions.

Dr. Hodjati was not on call the weekend of May 19-20, 2012. He saw the patient on the following two days. On Monday, May 21, he concluded after the neurological parts of his examination that the symptoms reported to him had resolved. His patient denied weakness, pain or numbness on that day. Nonetheless, Dr. Hodjati wanted to rule out a TIA and have Ms. Mariani submit to a full neurological work-up, which, as noted earlier, could not be done at the Center. At this point, he believed there was no emergency. Therefore, since the patient and her daughter refused transfer to a hospital then, the alternative he said he offered them, was acceptable. Dr. Coblentz believes that Dr. Hodjati should not necessarily have anticipated an imminent stroke because her own history together with what neurologists know about strokes and with no neurological signs at his examination "it was highly unlikely that she would then go on to

suffer a stroke and even more unlikely an imminent stroke." (¶6, p3).

However, the picture changed on Tuesday, May 22nd. On that day, when Dr. Hodjati examined Ms. Mariani, he saw subtle signs, a right facial droop, left pronator drift and mild weakness. This convinced the doctor to insist on a transfer to the hospital right then and there. The expert further opines that there was no delay once Dr. Hodjati ordered the transfer. A detailed ambulance record of Senior Care EMS shows that on May 22, patient contact was established at 3:50 p.m., Ms. Mariani left the Center at 4:02 p.m and arrived at New York Presbyterian at 4:15 p.m. According to Dr. Coblentz, the patient's symptoms were still subtle, making a diagnosis difficult. Several hours after admission, a hospital neurologist did document the facial droop and left-sided weakness. A diagnosis of a right medial pontine infarct was arrived at after an MRI/MRA in the early morning hours of May 23, 2012.

After establishing that no departures by Dr. Hodjati occurred, Dr. Coblentz then discusses his second point, which was what was done here did not in any way change the outcome. Based on the patient's presentation on Monday, the defendant had no way of knowing when precisely she first exhibited signs of a TIA. And timing in dealing with the advent of a stroke is critical. Dr. Coblentz says that neurologists agree that doctors must be certain of when symptoms first appear in order to embark on t-PA therapy. This involves the use of a thrombolytic which breaks up blood clots.

Dr. Coblentz also says that beyond the uncertain timing here, this patient was not a candidate for t-PA as she, at 81, was too old for it. He reports that pursuant to standards set by the American Heart Association/American Stroke Association, thrombolytics are not to be administered to anyone over the age of 80. In sum, to Dr.

Coblentz, one, Dr. Hodjati, under these circumstances did not delay in getting his patient to the Hospital and two, t-PA treatment could not and would not have been used in any event.

Finally, Dr. Coblentz discusses his own examination of Ms. Mariani on August 5, 2014. Here, he provides opinions of her recovery from the May 2012 stroke. In reaching these, besides the examination, he reviewed the records of Beth Israel Medical Center ("BIMC") where the plaintiff had been treated in 2006. In the history portion of those records, it appears that Ms. Mariani had suffered an initial stroke in 2002. The expert notes that pursuant to these records and the Center's, Ms. Mariani had left-sided hemiplegia with a slight facial droop before the May 2012 stroke. He then compared her condition with the after effects of the 2002 stroke, reflected in the BIMC records and they showed no worsening from baseline. Her gait also had not been normal since at least her May 2006 admission to BIMC.

Dr. Coblentz points out that her history of prior strokes is important. For example these might have distorted her neuroanatomy. He gives examples of what this might mean in terms of the pontine right stroke which she suffered in May 2012.

In his final two paragraphs, Dr. Coblentz concludes that the outcome for the plaintiff would have been the same if she had gone to the Hospital on May 21 rather than May 22. He states the kind of stroke she suffered would not have been preventable. He also observes that she has made an excellent recovery and that her status now is equivalent to what it was before the events of May 2012. I find that this affirmation by Dr. Coblentz, on behalf of Dr. Hodjati, makes out a prima facie case in favor of this defendant.

The second affirmation from Dr. Tuhrim, on behalf of the Center, limits his opinion to causation. It is his opinion to a reasonable degree of medical certainty that no alleged act or omission by the Center was a proximate cause of the claimed injuries here.

Dr. Tuhrim first points out that Ms. Mariani was already being administered stroke preventive therapy by taking an aspirin a day before May 2012. He further observes that by the symptoms she displayed to Dr. Hodjati on May 21, she had not sustained a stroke, not even an evolving stroke. The worst event she may have suffered was a TIA which would not have warranted anticoagulation therapy. On May 21, her symptoms had resolved on their own. The continuation of the aspirin on May 19, 20 and 21 was absolutely proper and sufficient.

Dr. Tuhrim then discusses at length when t-PA is an appropriate therapy. He remarks first that it is not a benign drug and carries with it certain serious risks, including hemorrhaging in the brain. Therefore, before its use, its benefits must be weighed against its risks. Further he relates that in 2012, indicators for the use of this therapy, issued by the Food and Drug Administration, are that it should only be used within 3 hours of the onset of acute ischemic stroke symptoms. Therefore, if such onset cannot be determined, t-PA will not be given. Additionally before its use, a brain CT scan must be performed to rule out a hemorrhage. He concludes this general discussion with his observation that "t-PA is never given for Transient Ischemic Attack and is generally reserved for cases involving considerable neurologic dysfunction" (¶9, p5-6).

Specifically, Dr. Tuhrim opines that Ms. Mariani did not satisfy the criteria for t-

PA use. This is the case because the onset of signs was unclear and the deficits were very mild. The plaintiff only made one complaint when seeing the doctor on May 21, a weakness in her upper extremities, which occurred over the weekend but had resolved. Therefore Dr. Tuhrim's opinion "with absolute medical certainty" is that this single complaint did not warrant t-PA therapy in weighing its risks and benefits (¶10, p6).

He concludes his affirmation by reemphasizing his point that because t-PA therapy was not the proper protocol, the alleged delay by the Center would not have changed her treatment "regardless of when her condition was diagnosed and regardless of when she was transferred to the hospital" (¶11, p7). On the issue of causation, this court finds that this expert's somewhat repetitious presentation makes out a prima facie case in favor of Isabella Geriatric Center. Since I have found prima facie presentations by both moving defendants, the burden shifted to the plaintiff to sufficiently challenge these opinions so that factual differences are preserved for trial.

But plaintiff fails to raise a triable issue of fact. What opposing counsel does is, as noted earlier, submit an affirmation from a Board Certified Neurologist who has over 40 years of practice and experience in dealing with TIA or stroke patients. Therefore, he/she is competent to opine as to the issues in this case. He/she agrees with the defendants' experts that t-PA is not appropriate for a TIA, though he believes it is appropriate for an ischemic stroke and that its administration is more efficacious the sooner the better.

This doctor first criticizes the absence of the Dripp records for the weekend in question. These records, kept by the nurses, are organized for each calendar month. They record symptoms complained of by residents and each page refers to a separate

individual. The record, a monthly one, is retained by the Center for three months. Presumably it was this Dripp sheet that informed Dr. Hodjati of Ms. Mariani's reported symptoms in the days before he examined her on Monday, May 21.

The first departure alleged against the Center is the failure to have the plaintiff examined by a neurologically knowledgeable physician over the weekend. That person would have noted stroke like symptoms and arguably taken steps to prevent it. But that we know did not happen. Rather, it was left to Dr. Hodjati to be the first doctor to make note of upper extremity weakness and to further note that if this meant she had suffered a TIA, it had resolved when he saw her, since at that time she had no complaints.

This expert's opinion is that Ms. Mariani should have been transferred to the Hospital on Monday, even though according to Dr. Hodjati, in his deposition, the patient and her daughter refused this. If she had, the doctor continues, she would have been observed there and the onset of her symptoms ascertained. Further, a baseline CT scan could have been done to rule out bleeding in the brain and then, within the 3 hour window, t-PA therapy could have been administered. If all of that had occurred, then he/she opines the plaintiff would have had a more favorable diagnosis. But, a problem here is that this doctor does not define what that outcome would have been. This is particularly significant as Dr. Coblentz, who examined Ms. Mariani in August of 2014, believes she has made an excellent recovery from the 2012 stroke and is now at the same level she was at before the stroke.

But more importantly, the fatal problem with the opposition, as detailed in the two Reply submissions, is that under the facts as we know them, no one could establish when the actual onset of the symptoms occurred. If they were over the weekend, even

a Monday transfer would have been too late. If the onset occurred on Tuesday, the note by Dr. Hodjati indicates no signs on Monday, it is still uncertain when precisely this happened. The signs seem to have been subtle at best. And it wasn't until about 2:00 a.m. on May 23, that a diagnosis was actually made of an infarction and that diagnosis was aided by MRI/MRA testing, rather than somewhat ambiguous symptoms alone. Finally, it should be emphasized here that the Hospital never instituted t-PA therapy. It remains unknown if that was because the onset could not be fixed in time or if, in accordance with Dr. Tuhrim's opinion, it would not have been used here because it is reserved for cases involving considerable neurologic dysfunction, not the situation here (¶9, p5-6).

Further plaintiff's expert's use of ABCD2 criteria to clinically predict the developing stroke here is not convincing because again the "D" part for "duration" is simply not known.

To conclude, the court finds that plaintiff has failed to show that earlier action, either by the Center or Dr. Hodjati would have made any difference in Ms. Mariani's treatment or outcome. As noted she was never administered t-PA therapy and she made an excellent recovery. Plaintiff has failed to show that the plaintiff's presentation on Monday or Tuesday, May 21 and 22, 2012 required an earlier transfer than what occurred. As to the non-availability of the Dripp record, all that may have shown was additional symptoms, such as vomiting over the weekend. But again, by Monday, all symptoms had resolved.

Therefore because I find that Dr. Hodjati has convincingly presented a prima facie case as to both malpractice and causation, and the Center has presented a prima

facie as to causation and that neither presentation has been sufficiently rebutted, the defendants are entitled to have their motions granted. Accordingly, it is hereby

ORDERED that the motions for summary judgment by defendants Ramin Hodjati, M.D. and Isabella Geriatric Center are granted, and the complaint is dismissed in its entirety with prejudice. The Clerk shall enter Judgment in defendants' favor without costs or disbursements. Defendants shall serve a copy of this decision and order with notice of entry within 20 days of entry.

DATED: November 13, 2015

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ALICE SCHLESINGER
J.S.C.