

Sparks v Flamm

2016 NY Slip Op 30441(U)

February 11, 2016

Supreme Court, Bronx County

Docket Number: 20439/2008

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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KEENYA SPARKS, as Administrator of the Estate
of JUDY SPARKS,

Plaintiff(s),

- against -

INDEX NO: 20439/2008

EUGENE S. FLAMM, M.D., TRANSCARE
CORPORATION AND MONTEFIORE MEDICAL
CENTER,

DECISION/ORDER

Defendant(s).

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HON. DOUGLAS E. MCKEON

Motion by defendant, Transcare Corporation, for an order dismissing plaintiff's complaint and all claims and cross-claims against it and motion by defendant Eugene Flamm, M.D., for Summary Judgment and an order dismissing plaintiff's claims against him are consolidated for disposition and decided as follows:

Transcare argues that the admissible evidence shows that the care and treatment rendered to decedent on October 1, 2006 was performed in accordance with accepted standards of emergency medical care and that there is no proximate cause between any alleged departures and decedent's injuries and death several days later. Similarly, Dr. Flamm argues that he appropriately performed various procedures in an attempt to save decedent's life but that Ms. Sparks nevertheless died due to no actions or omissions by Dr. Flamm.

On the morning of October 1, 2006, the 56 year old decedent was found unresponsive in her bedroom by her domestic partner, Margo Fryer. She was on the bottom of her bed with eyes half open. She had last been seen awake and communicative at 1:45 a.m. that morning by her grandson. At the direction of Ms. Fryer the grandson called 911 at approximately 11:30 a.m. FDNY EMS arrived at 11:37 a.m. and took approximately 30 minutes to prepare her for transport to Montefiore Medical Center.

During transport her heart rate was 65, her respiratory rate 14 breaths per minute and she was placed on a non-rebreather mask with oxygen output. She was transferred to Weiler Hospital at Montefiore. She arrived at approximately 12:35 p.m. unresponsive except to painful stimuli and her body was thrashing about. Her Glasgow coma score was 7 out of 15. An Emergency room nurse noted that she moved and fights to painful stimuli.

At 1:06 p.m. the emergency room attending physician, Dr. Toni Haida, examined Ms. Sparks and noted she was alert, non verbalizing, not following commands and thrashing on the bed. A chest x-ray showed congestive heart failure and a head CT scan at 2:15 p.m. revealed intracranial bleeding. Neurosurgery opined that the CT scan showed a large acute subarachnoid hemorrhage. At 3:00 p.m. Ms. Sparks was intubated due to the bleeding.

At 3:03 p.m. her condition was discussed with attending neurosurgeon David Gordon and it was decided she would be transferred to the Moses campus to

undergo a right craniotomy, blood evacuation and aneurysm clipping. Plaintiff Keenya Sparks was informed that her mother suffered a ruptured aneurysm and was being transferred for surgery.

At 3:29 p.m. approximately 3 hours after her arrival, Transcare was dispatched to transport Ms. Sparks to the neurology department. Weiler Hospital was responsible for choosing the mode of intrafacility transportation. Upon arrival at 3:45 p.m. the transfer crew comprised of paramedic, Juliet Bremner, and EMT, Bulat Khamitov, prepared her for transfer. They had to await paperwork from the Montefiore staff and the directive to commence transport.

During this time, paramedic Bremner observed Ms. Sparks moving and requested that the ER doctor sedate her before transport. The doctor did not, so that Ms. Sparks could be examined neurologically. To secure her in the stretcher, Transcare placed a bed sheet and stretcher straps over her prior to transport. More restrictive measures were not permitted unless ordered by a doctor. No doctor, nurse or respiratory therapist were sent by Weiler along with the Transcare crew.

As Transcare began to transport her to the ambulance Ms. Sparks began moving her arms, causing her to disturb the endotracheal tube. Paramedic Bremner quickly reconnected the cap and determined that it was not safe to transport her without chemical sedation. They returned to the emergency room and requested sedation to ensure patient safety and prevent disturbance of the endotracheal tube. At 4:30 p.m., at the direction of the Weiler emergency room attending physician,

nurse Rios administered Ativan to Ms. Sparks who she was still responsive to pain but unresponsive to verbal stimuli. She was transported to the Moses campus and at 4:43 p.m. the crew took her vital signs in the ambulance.

At 4:48 p.m. they arrived at Moses and her oxygen saturation at that time was 100%. The crew manually ventilated her via a ambu bag during transport because she was resisting the ventilator and clamping down on the tubing with her mouth. The ambulance arrived at the Moses campus and Ms. Sparks was admitted as an emergency patient at 4:55 p.m. The emergency doctor examined her and noted that she was able to move all her extremities and had a Glasgow score of 8, a higher level of consciousness than before she left Weiler. Co-defendant Dr. Flamm was the admitting doctor.

She was taken from the emergency room at 6:00 p.m. and given an angiogram at 7:30 p.m. After the angiogram was completed at 8:20 p.m. an emergency head CT was performed due to a change of her condition which showed that the hemorrhage had increased in size. As such, Ms. Sparks was taken to the operating room. At 10:40 pm. Dr. Flamm performed a surgical clipping of Ms. Sparks' aneurysm with evacuation of the herniation and placement of a drain. She was admitted to the Surgical Intensive Care Unit. Two days later, Ms. Sparks underwent a change in status. Her pupils were non-responsive, she developed a fever and a ventricular drain was placed to drain cerebrospinal fluid. Her prognosis was downgraded and she continued to deteriorate over the following days. On

October 8, 2006 she developed a brainstem herniation and was declared brain dead. She died the following day.

Transcare had provided the Court with an expert affidavit of Steven James Sugrue a registered nurse board certified in emergency nursing, who opines, based on a reasonable degree of medical certainty, that Transcare did not depart from good and accepted medical practice and did not commit or omit any acts that were a substantial factor in causing the plaintiff's injuries. The expert opines that Transcare timely and properly assessed, treated and transported the decedent and that no delay in treatment or transportation caused her alleged injuries and ultimate death. The expert further opines that it was within the standards of care to remove Ms. Sparks from the ventilator and perform manual ventilation while en route to the campus as they observed she was unable to tolerate the endotracheal tube. Furthermore, her respiratory condition did not change during transport as her respiration remained at 18 breaths per minute with stable vital sign and blood pressure. Furthermore, she was fully oxygenated when her oxygen level was tested 2 minutes prior to arrival at Moses. The Moses campus emergency record states that when she arrived she was able to move her extremities and had a score of 8 on the Glasgow coma scale showing that her condition did not deteriorate between her discharge from Weiler and her arrival at Moses. David Gordon, M.D., the attending neurosurgeon at Moses testified, based on his review of the records, that Ms. Sparks experienced a clinical change around the time of her angiogram and not at the time

of her transport.

The Court finds that Transcare has established that it did not depart from good and accepted emergency medical practice and the Court received no opposition to the motion. As such, the motion is granted in it's entirely.

Dr. Flamm has provided the Court with an expert affidavit of Charles Prestigiacomio, M.D., FAANS, FACS. He is an expert in the field of neurosurgery. This expert opines that Ms. Sparks sustained devastating and extensive brain injuries which caused irreversible damage before she even arrived at Weiler. Despite that her prognosis for any survival of meaningful recovery was dim, Dr. Flamm appropriately performed a craniotomy, hematoma evacuation and aneurysm clipping. She was in emergency neurosurgery within 40 minutes of the CT which demonstrated that change in her condition. Although Dr. Flamm rendered appropriate and timely intervention, Ms. Sparks nevertheless died as a direct result of her brain injuries and not as a result of any act or omission by Dr. Flamm.

Once again, there is no opposition in the Court file to this motion. As such, the Court finds that movants have demonstrated their entitlement to Summary Judgment and the motions are both granted.

So ordered.

Dated: *February 11, 2016*



Douglas E. McKeon, J.S.C.