Steinberg v Mt. Sinai Med. Ctr., Inc.
2018 NY Slip Op 32250(U)
September 11, 2018
Supreme Court, Kings County
Docket Number: 502430/17
Judge: Wavny Toussaint

At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 11th day of September, 2018.

PRESENT:

HON. WAVNY TOUSSAINT,
Justice.

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MENACHEM STEINBERG,

Plaintiff,

- against -

Index No. 502430/17

THE MT. SINAI MEDICAL CENTER, INC. and HATZOLAH OF WILLIAMSBURG, INC.,

Defendants.

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The following papers numbered 1 to 9 read herein:	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	1-2 3-5
Opposing Affidavits (Affirmations)	6-7 6-7
Reply Affidavits (Affirmations)	8 9

Upon the foregoing papers, defendant Hatzalah of Williamsburg, Inc. s/h/a Hatzolah of Williamsburg, Inc. (Hatzalah) moves for an order, pursuant to CPLR 3212, granting summary judgment dismissing the complaint as against it with prejudice. Defendant The Mount Sinai Medical Center, Inc. and The Mount Sinai Hospital, s/h/a The Mt. Sinai Medical Center, Inc. (Mount Sinai), moves for an

order, pursuant to CPLR 3212, granting summary judgment dismissing the complaint as against it with prejudice.

Background

Plaintiff's complaint contains the following allegations: On September 7, 2010, when plaintiff Menachem Steinberg (Menachem) was 15 years old, his mother and legal guardian, Faigy Steinberg (Faigy), had him committed to Mount Sinai. Faigy had a history of abusing and mistreating Menachem. Menachem and his mother were members of the Jewish Satmar community. In or about 2010, Menachem enrolled himself in Tiferes HaTorah, a Yeshiva high school, located in Brooklyn, New York, in order to as he described it "avoid this abuse and neglect.

In September 2010, when Menachem attended a camp in upstate New York, Faigy reported to law enforcement authorities that Menachem was a runaway. Menachem was confined by New York State troopers, at a police station in Monroe, New York and thereafter, on September 6, 2010, Menachem was released into Faigy's custody.

Faigy, who attested that she was concerned about Menachem's emotional state, contracted with an ambulance operated by Hatzalah to take Menachem to Mount Sinai. Faigy allegedly advised the Hatzalah volunteers that Menachem was suicidal. Faigy then drove Menachem to Manhattan where she intended to deliver him to the waiting Hatzalah ambulance. On September 7, 2010 while in Manhattan, Menachem exited Faigy's moving vehicle, fled from the Hatzalah

ambulance and ran two blocks in traffic on Madison Avenue. A bystander on a bicycle intervened and Menachem stopped running. Shmuel Greenberg and Aron Brach, two Hatzalah volunteers, testified that they too saw Menachem running in traffic. Menachem initially refused to enter the Hatzalah ambulance, advising the Hatzalah volunteers that he did not want to be touched. Menachem then borrowed a cell phone from Greenberg so that he could call the police to the scene. After speaking with an NYPD officer, Menachem agreed to voluntarily enter the Hatzalah ambulance, accompanied by an NYPD officer.

Menachem was transported to Mount Sinai Hospital Emergency Room, at approximately 12:32 AM on September 7, 2010. Faigy executed an application for Minor Voluntary Admission. According to the hospital admission forms, Faigy reported that Menachem had a history of running away from home, threatened to commit suicide and previously attempted to exit a moving vehicle. Faigy requested that Menachem have no contact with his lawyer[1] or anyone, other than her.

Teresa Lim, MD a Psychiatric Emergency Room Physician at Mount Sinai, documented that Menachem was brought to Mount Sinai by his mother and the NYC police after he attempted to jump out of a moving vehicle. The Emergency Room records also note that "patient verbalized experiencing thoughts of wanting to hurt himself/herself or wanting to die . . .." The records further indicate that Menachem

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[1] Rachel Freir (now Hon. Rachel Freir) represented plaintiff in a Family Court proceeding, in which Joseph Wolhendler was appointed his guardian.

claimed his mother abused him and that he had previously filed a report with the New York City Administration for Childrens' Services (ACS). Rebecca Hopkins, MD an attending physician at Mount Sinai, contacted ACS to report Menachem's presentation to the hospital. In response, ACS advised that it had no confirmed report of abuse. Dr. Hopkins expressed her concern to ACS that if Menachem did not require psychiatric admission, Mount Sinai could only discharge Menachem into the custody of a responsible individual.

Dr. Lim noted that Menachem advised that he was in the process of changing his guardianship with the assistance of his lawyer. Consequently Maria Linden, MD an attending psychiatrist, contacted Menachem's lawyer, who confirmed that she was in the process of obtaining a new guardian for Menachem.

According to the notes in the Emergency Room records, the hospital staff was uncertain as to whether Menachem required psychiatric admission; and in the event such services were not needed, there was no safe disposition for him, as he refused to be released into his mother's custody. Specifically, the attending physician noted:

> "in balancing risk/benefit to the patient, I can see significant potential risks in discharging him if depression is present and/or he runs away from his mother. The benefits of admission if illness is present are significant. Discharge carries significant patient risks . . . and risks of unnecessary admissions are more limited. I feel that the potential risks of discharge outweigh those of admission. Thus will defer to mother's request and admit patient as a minor voluntary."

Two days later, Menachem was evaluated and it was determined that he was not suicidal. Based on this clinical evaluation, Mount Sinai was willing to release Menachem into Faigy's custody; however, Menachem refused to be released into his mother's legal custody, citing a long history of neglect and abuse by her. Dr. Hopkins noted that there was a risk that Menachem would run away if he were released into his mother's custody, and thereby endanger himself. Mount Sinai staff then filed a report with ACS.

Menachem was confined at Mount Sinai until legal guardianship could be transferred from his mother. During his admission, Menachem had a private room, was provided with religious books to read, was fed three kosher meals daily and had schooling. During the Jewish holiday of Rosh Hashanah (September 9, 2010-September 10, 2010), Menachem spent time in his room praying. On October 4, 2010, suitable placement was found for Menachem and legal guardianship was transferred from Faigy to Joseph Wolhendler (Wolhendler). Menachem was discharged from Mount Sinai into Wolhendler's custody that evening.

Prior Federal Action

On or about January 5, 2012, Wolhendler commenced an action on Menachem's behalf in the United States District Court for the Eastern District of New York against Mount Sinai, Hatzalah, the City of New York (NYC), ACS and others, asserting violation of Federal civil rights under 42 U.S.C. § 1983 and state law claims of false imprisonment, assault and battery arising out of Menachem's involuntary

commitment at Mount Sinai (Prior Federal Action). After issue was joined in the Prior Federal Action, discovery ensued *and was completed.*

Pursuant to a November 8, 2016 order, Judge Townes granted NYC's motion for summary judgment dismissing Menachem's federal claims as against both NYC and ACS. The federal court declined to exercise supplemental jurisdiction over Menachem's state law claims and dismissed them without prejudice.

The Instant Action

On February 6, 2017, Menachem (as an adult) commenced this state court action by filing a summons and a complaint asserting three causes of action against Mount Sinai and Hatzalah for civil false imprisonment, civil assault and civil battery. Menachem asserted a fourth cause of action against Mount Sinai for negligence.[2] On March 22, 2017, Mount Sinai answered the complaint, wherein it denied the material allegations therein and asserted affirmative defenses. On March 30, 2017, Hatzalah answered the complaint, denied the material allegations therein and asserted affirmative defenses.

In September 2017, Mount Sinai moved for summary judgment, seeking dismissal of the complaint. Mount Sinai's motion was returnable before this court on November 29, 2017, at which time none of the parties appeared for oral argument. Consequently, by a November 29, 2017 short form order, the court denied Mount

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[2] Upon reading the complaint, the Court interprets plaintiff's negligence claim against Mount Sinai as a medical malpractice claim and shall address it as such.

Sinai's summary judgment motion "as there was no appearance by defendants or plaintiffs." According to defense counsel, all of the parties agreed and stipulated to adjourn Mount Sinai's summary judgment motion, however, plaintiff's counsel inexplicably failed to file the parties' fully executed stipulation with the court on the return date of the motion. Counsel agreed that all arguments as to the making of the prior motion are withdrawn.[3]

Hatzalah's Instant Summary Judgment Motion

On November 28, 2017, Hatzalah filed a motion for summary judgment dismissing the complaint on the ground that there are no genuine issues of material fact requiring a trial. Hatzalah contends that, as a voluntary ambulance service, it is immune from liability, pursuant to Public Health Law § 3013. Hatzalah asserts that "[l]iability may only attach in cases where it is established that the injury alleged was caused by gross negligence on the part of the voluntary responder." Hatzalah argues that it acted appropriately "[a]fter witnessing the then infant plaintiff jump out of a moving car and run against traffic on Madison Avenue in New York, combined with plaintiff's mother's complaints . . ."

Hatzalah further contends that plaintiff cannot prove the requisite elements of false imprisonment because "[i]t is uncontroverted that at no time, did the moving defendants restrain the plaintiff . . ." and "[t]here is no proof that the confinement

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[3] In the interest of justice, the November 29, 2017 order denying Mount Sinai's summary judgment motion is hereby vacated.

was involuntary . . ." According to Hatzalah, "[t]he plaintiff's initial refusal to enter into the ambulance does not raise any questions of fact, as he clearly went *willingly* after the police were called" (emphasis added).

With regard to the assault and battery claims, Hatzalah relies on Menachem's deposition testimony in the Prior Federal Action, in which he attested that he walked into the Hatzalah ambulance without anybody touching him. Hatzalah thus argues that it has established a prima facie entitlement to summary judgment because "[t]here is no evidence that the HATZALAH volunteers had ever engaged on an offensive bodily touching of plaintiff at the time of the incident."

Menachem, in opposition, submitted an affirmation in which he contends that Hatzalah and Mount Sinai were part of a "conspiracy" to have him "locked up." In addition, contrary to his deposition testimony in the Prior Federal Action, Menachem now affirms that "two of the EMTs from Defendant Hatzolah of Williamsburg . . . chased me down grabbing my shoulders . . ."

Mount Sinai's Instant Summary Judgment Motion

In support of its summary judgment motion, Mount Sinai submits an expert affirmation from Dr. Alan Ravitz, who is Board Certified in General Psychiatry, Child and Adolescent Psychiatry and Forensic Psychiatry. Dr. Ravitz opines, to a reasonable degree of medical certainty, that "Mount Sinai provided appropriate care to Menachem Steinberg, that the hospital did everything it could to assess him psychologically, to comply with the law, and to protect his best interests and keep

him safe." Dr. Ravitz further opines that Menachem "was voluntarily admitted in accordance with the New York Mental Hygiene Law," "[h]e remained in the hospital until a safe and legal post-discharge disposition could be arranged" and that "[t]he hospital worked expeditiously to do so in as timely a manner as could be accomplished given the circumstances with which they were dealing."

Menachem, in opposition, submits an attorney affirmation that Mount Sinai "failed to meet [its] burden because the motion did not even address the majority of the plaintiff's claims, including but not limited to the assault, battery [and] deprivation of religious rights claims." Although Menachem's complaint does not assert any claim for deprivation of religious rights, Menachem submits an affirmation describing how Mount Sinai allegedly prevented him from practicing his religion. Menachem's counsel further contends that defendants' summary judgment motions are premature because "there is simply too much discovery within defendants' exclusive control that has not yet been conducted . . ."

Discussion

Summary judgment is a drastic remedy and should be granted only when it is clear that no triable issues of fact exist (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). The moving party bears the burden of prima facie showing its entitlement to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of any material issue of fact (*see* CPLR 3212 [b]; *Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]). Failing to make that

showing requires denying the motion, regardless of the adequacy of the opposing papers (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 502 [2012]; *Ayotte v Gervasio*, 81 NY2d 1062 [1993]). Making a prima facie showing then shifts the burden to the opposing party to produce sufficient evidentiary proof to establish the existence of material factual issues (*see Alvarez*, 68 NY2d at 324; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Accordingly, issue-finding rather than issue-determination is the key in deciding a summary judgment motion (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404, [1957], *rearg denied* 3 NY2d 941 [1957]). "The court's function on a motion for summary judgment is to determine whether material factual issues exist, not resolve such issues" (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2010] [internal quotation marks omitted]).

Hatzalah's Summary Judgment Motion

"Pursuant to Public Health Law § 3013 . . . voluntary emergency medical technicians [can] be held liable *only* if they were grossly negligent in rendering emergency medical assistance" (*Estate of Klinger v Corona Cmty. Ambulance Corps., Inc.*, 301 AD2d 495, 496 [2d Dept 2003] [emphasis added]; *see also O'Leary v. Greenport Fire Dept*, 276 AD2d 539, 539 [2d Dept 2000] [holding that "(p)ursuant to Public Health Law § 3013 (1), the respondents could be held liable only if their emergency medical technicians were grossly negligent in rendering emergency medical assistance to the plaintiffs' decedent"]; *Rider v Gaslight Tavern*

Corp., 125 AD2d 144, 147 [3d Dept 1987] [same]). Hatzalah has demonstrated its prima facie entitlement to summary judgment.

Menachem failed to submit expert testimony with any persuasive evidence to support the claim of gross negligence (*see Amsler v Verrilli,* 119 AD2d 786, 787 [2d Dept 1986] [holding that "(t)he failure to submit an affidavit by a medical expert competent to attest to the meritorious nature of the plaintiffs' claim requires dismissal of the complaint"]). Moreover, Menachem failed to plead gross negligence against Hatzalah in his complaint, and never sought leave to amend his complaint to add that claim (*see Lotito v Lund,* 129 AD2d 776, 777 [2d Dept 1987] [holding that "as the pleading did not contain the necessary allegations of wilful negligence or malfeasance to avoid the exemption from civil liability conferred by General Municipal Law § 205–b . . . the pleading failed to state a cause of action"]). Accordingly, Hatzalah's summary judgment motion is granted and the complaint is dismissed as against Hatzalah.

Mount Sinai's Summary Judgment Motion

Mount Sinai also demonstrated its prima facie entitlement to summary judgment dismissing the complaint by submitting the unopposed expert affirmation of Dr. Ravitz, who opined that Mount Sinai acted within acceptable standards of psychiatric and medical care from the time of Menachem's admission until his discharge. Dr. Ravitz concluded that Mount Sinai acted properly – and in

Menachem's best interest – by confining Menachem until he could be discharged into the custody of his new legal guardian, Wolhendler.

Menachem, in opposition, failed to submit any expert testimony to counter Dr. Ravitz's expert opinion, and thus, failed to establish that Mount Sinai deviated from accepted standards of care (*see Prete v Rafla-Demetrious*, 224 AD2d 674, 675-676 [2d Dept 1996] [holding that "(e)xpert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause, unless the matter is one which is within the experience and observation of the ordinary juror"]). In addition, Menachem failed to raise factual issues for trial that would preclude summary judgment in favor of Mount Sinai. Accordingly, it is

ORDERED that this court's November 29, 2017 order denying Mount Sinai's summary judgment motion is hereby vacated; and it is further

ORDERED that Hatzalah's motion for summary judgment dismissing the complaint with prejudice is granted; and is further

ORDERED that Mount Sinai's motion for summary judgment dismissing the complaint with prejudice is granted.

This constitutes the decision, judgment and order of the court.

E N T E R,

J. S. C.

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HON. WAVNY TOUSSAINT
J. S. C.