

**Nodar v Pascaretti**

2019 NY Slip Op 34651(U)

June 5, 2019

Supreme Court, Westchester County

Docket Number: Index No. 59861/15

Judge: Linda S. Jamieson

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NYSCEF DOC. NO. 152

To commence the statutory time period for appeals as of right (CPLR § 5513 [d]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp \_\_\_ Dec\_x\_\_\_ Seq.No.\_3\_\_\_ Type\_SJ\_\_\_

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**PRESENT: HON. LINDA S. JAMIESON**

-----X  
JOHN NODAR and FRANCES NODAR,

Index No. 59861/15

Plaintiffs,

DECISION AND ORDER

-against-

CYNTHIA PASCARETTI, N.P., DANIEL HAFNER, M.D., WESTCHESTER COUNTY HEALTH CARE CORPORATION, MID-HUDSON MEDICAL GROUP, MOUNT KISCO MEDICAL GROUP, P.C., ANDREW GROSE, M.D., MITCHELL WEISER, M.D., BRIAN LYNCH, M.D., GEORGE STORER, M.D., SAMUEL BARST, M.D., and BOEU CHON, M.D.,

Defendants.

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The following papers numbered 1 to 3 were read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affirmation and Exhibits	1
Affirmation and Exhibits in Opposition <sup>1</sup>	2
Reply Affirmation	3

The remaining defendants, Pascaretti, Hafner, Mid-Hudson Medical Group and Mount Kisco Medical Group, P.C. ("movants") bring their motion for summary judgment in this action for medical malpractice. The facts are as follows: plaintiff John Nodar was a patient of both Dr. Hafner and Nurse Practitioner

<sup>1</sup>Exhibits must be tabbed. Counsel is directed to review the Part Rules.

[\* 1]

Pascaretti. He often saw just Pascaretti, who operated independently, with oversight by Hafner. For several years, plaintiff had been on antidepressants. He was also on a medication for insomnia, and occasionally took a third medication for exacerbated anxiety. Although the medications largely stayed the same, the dosages changed over time. Plaintiff never reported any adverse side effects from these medications. The last time that plaintiff saw Hafner was in January 2014. Plaintiff told him that he was doing well. Hafner sought to follow up with plaintiff in six months. The last time that plaintiff saw Pascaretti was on June 27, 2014. Plaintiff reported that he was sleeping poorly, and had increased anxiety. Pascaretti changed plaintiff's insomnia medication, kept the general anxiety medication the same, and told him to take the third medication if he felt extreme anxiety. Pascaretti noted down that plaintiff denied suicidal thoughts, sense of danger, depression and thoughts of violence.

On July 11, 2014, plaintiff made a follow up appointment for July 14<sup>th</sup>. However, on July 13<sup>th</sup>, plaintiff either fell or jumped off the roof at his home, suffering injuries.<sup>2</sup> Plaintiffs claim that movants were negligent for "failing to perform a careful and complete suicide risk assessment;" "in their negligent

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<sup>2</sup>Although there is evidence that this was a suicide attempt, there is also some evidence that it was an accident that occurred when plaintiff was on the roof trying to remove a beehive. For purposes of this motion, the Court presumes that it was a suicide attempt.

monitoring, prescribing, and adjustment of psychiatric medications;" "in negligently failing to closely monitor" him; and "in negligently failing to schedule a timely follow-up visit in light of his worsened anxiety and depression and change in medication."

Movants' expert, Dr. Jeremy Colley, a board-certified psychiatrist and neurologist, states in his affirmation that the medications prescribed to plaintiff "did not cause or contribute to his fall from the roof" because "they are perfectly safe alone and in combination in the doses prescribed." He further states that it was consistent with the standard of care for Pascaretti to have changed plaintiff's insomnia medication, and that "the literature actually supports a reduced risk ["of suicidality"] in patients in Mr. Nodar's age group." Dr. Colley also states that prescribing the medication to use in case of extreme anxiety "was appropriate, could prove to be life-saving, and was certainly not a deviation from the standard of care." Dr. Colley states that during the entire time that plaintiff treated with movants, he "did not exhibit any signs or symptoms that referral to a psychiatrist was necessary," and that movants properly assessed plaintiff for suicide, and appropriately found no evidence of suicidal ideation; indeed, he posits that by making a followup appointment for the day after the suicide attempt, plaintiff demonstrated a lack of suicidal ideation.

All of these showings suffice to establish movants' prima facie burden that they did not commit medical malpractice in any way. *Zamboli v. Dilos-Rogu*, 157 A.D.3d 594, 594, 67 N.Y.S.3d 631 (1<sup>st</sup> Dept. 2018) ("Defendant established prima facie, through an affirmation by an expert surgeon, that he did not deviate from the accepted standard of medical practice.").

"Where a defendant makes a prima facie case of entitlement to summary judgment dismissing a medical malpractice action by submitting an affirmation from a medical expert establishing that the treatment provided to the injured plaintiff comported with good and accepted practice, the burden shifts to the plaintiff to present evidence in admissible form that demonstrates the existence of a triable issue of fact." *Bartolacci-Meir v. Sassoon*, 149 A.D.3d 567, 570, 50 N.Y.S.3d 395, 399 (1<sup>st</sup> Dept. 2017). In response to these prima facie showings, plaintiffs had to rebut this showing. Plaintiffs failed to do so.

Plaintiff submits to the Court the affirmation of a doctor who is board certified in Internal Medicine. This doctor is not certified in psychiatry. Instead, all the doctor states is that the doctor "is knowledgeable as to the standard of care" because of the doctor's "work in Internal Medicine and treating patients suffering from psychiatric conditions including anxiety and depression, and prescribing psychiatric medications." The doctor

further states that the doctor has provided care and treatment for patients with psychiatric conditions, knows "the standards

[\* 4]

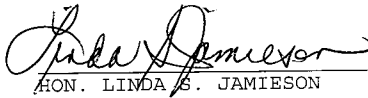
for management and treatment of patients suffering from anxiety and depression and those taking antianxiety and antidepressant medications," and had reviewed "the prevailing literature then and there in the community pertaining to management, care, and treatment of patients suffering from anxiety and depression and those taking antianxiety and antidepressant medications." The doctor does not in any way explain these various experiences; detail what the experiences were; tell when the experiences were; or otherwise give the Court any information to indicate that this doctor is qualified to opine on an area outside the doctor's board certification. See *Nguyen v. Dorce*, 125 A.D.3d 571, 572, 5 N.Y.S.3d 30, 32 (1<sup>st</sup> Dept. 2015) ("In opposition, plaintiff failed to raise an issue of fact by submitting a non-conclusory opinion by a qualified expert. Plaintiff's expert, a pathologist, failed to profess personal knowledge of the standard of care in the field of emergency medicine, whether acquired through his practice or studies or in some other way. As plaintiff points out, a physician may qualify as an expert by study of the subject alone. However, the nature of that study must be identified."). Nor does the doctor state that he or she is familiar with any of the specific medications that movants had prescribed to plaintiff; knows how those medications interact; knows the safety records of those medications; or is familiar with the current literature on these medications. As plaintiffs' purported

"expert failed to lay the requisite foundation for his asserted familiarity with the applicable standards of care, his affidavit was of no probative value." *Mustello v. Berg*, 44 A.D.3d 1018, 1019, 845 N.Y.S.2d 86 (2d Dept. 2007). For this reason alone, the Court must grant the motion for summary judgment.

The Court must also grant the motion for summary judgment because plaintiffs' expert fails to establish causation, or, in fact, any link between the alleged negligence of movants and plaintiff's suicide attempt. The motion is granted, and the action is dismissed in its entirety.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York  
June 5, 2019

  
HON. LINDA S. JAMIESON  
Justice of the Supreme Court

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