

Karlsson v Westchester County Health Care Corp.
2019 NY Slip Op 34745(U)
December 19, 2019
Supreme Court, Westchester County
Docket Number: Index No. 50250/2016
Judge: Sam D. Walker
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
PRESENT: HON. SAM D. WALKER, J.S.C.**

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JAMIE-ANN KARLSSON and MICHAEL B. KARLSSON II,

DECISION & ORDER
Index No. 50250/2016
Motion Sequence 8

Plaintiff,

-against-

WESTCHESTER COUNTY HEALTH CARE CORP.,
PUTNAM HOSPITAL CENTER, EOS MEDICAL GROUP,
P.C., STUART ROBERTS, M.D., PUTNAM IMAGING
ASSOCIATES, P.C., MASAHI KAI, M.D., DAVID
SPIELVOGEL, M.D.,

Defendants.
-----X

The following papers were read on the motion for summary judgment dismissing the complaint, pursuant to CPLR 3212:

Notice of Motion/Affirmation/Exhibits A-T

1-21

Factual and Procedural Background

The plaintiffs commenced this medical malpractice action against the defendant, Putnam Hospital Center ("PHC"), alleging that the doctors at PHC misdiagnosed Jamie-Ann Karlsson ("Karlsson") with a type "A" ascending thoracic aneurism, based upon a single pulmonary angio CT scan with IV non-ionic contrast, which had been ordered to rule out a pulmonary embolism and so timed so that contrast material would fill the lungs.

In addition to the misdiagnosis claim, the plaintiffs' verified bill of particulars that PHC failed to recommend correlation with a further diagnostic examination designed to diagnose aortic dissection; failed to recommend repeat CT examination, timed for contrast material to fill the plaintiff's aorta; failed to recommend a transesophageal echocardiography; failed to recommend an MRI, resulting in Karlsson undergoing unnecessary open heart surgery, since she was not actually infirmed with a Stanford type "A" ascending thoracic aortic aneurism or any other type of aortic dissection; failed to heed

Karlsson's demand for further testing and administering morphine to her without her consent.

PHC now files the instant motion for summary judgment to dismiss the complaint and any cross-claims against it, arguing that its physicians did not deviate from the standard of care and there is no evidence to support a deviation; the claim for lack of informed consent does not refer to any physician or surgery at PHC and the subsequent treating cardiothoracic surgeons made their own independent decision that Karlsson had a dissection and therefore, correctly performed the procedure. In support of its motion, PHC relies upon the affirmation of Steven Machnicki, M.D., the affidavit of Lawrence Schek, M.D., the affidavit of Scott G. Luchs, M.D., deposition transcripts, the attorney's affirmation, and copies of the pleadings and other court documents.

Discussion

"[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact," (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when such a showing has been made does the burden shift and the opposing party must set forth evidentiary proof establishing the existence of a material issue of fact (*see e.g. Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The parties' competing contentions are viewed in the light most favorable to the party opposing the motion (*see Marine Midland Bank, N.A. v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 [2d Dept 1990]).

"In order to establish the liability of a physician for medical malpractice, a plaintiff must prove that the physician deviated or departed from accepted community standards of practice and that such departure was a proximate cause of the plaintiff's injuries" (*see Stukas v Streiter*, 83 AD3d 18, 23 [2d Dept 2011]; *see also Aronov v Soukkary*, 104 AD3d 623). "[A] defendant physician seeking summary judgment must make a prima facie showing that there was no departure from good and accepted medical practice or that the plaintiff was not injured thereby" (*Id.*). In opposition, a plaintiff must submit evidentiary facts or materials to rebut the defendant's prima facie showing, so as to demonstrate the existence of a triable issue of fact. (*Id.*) Typically, the moving party's prima facie case is

established by affidavits or affirmations submitted by expert medical professionals and the opposing party can only show genuine issues of material facts by offering their own expert medical testimony countering that of the moving party, (*see Kambat v St. Francis Hosp.*, 89 NY2d 489, 496 [1997]).

Bestowing the benefit of every reasonable inference to the party opposing the motion (*Boyce v. Vasquez*, 249 A.D.2d 724, 726 [3d Dept., 1998]), the Court finds that PHC has met its prima facie burden of establishing its entitlement to summary judgment and demonstrated that its physician did not deviate from good and accepted medical practice in the treatment of Karlsson (*see Dandrea v Hertz*, 23 AD3d 332 [2d Dept 2005]).

All doctors opined that the films at issue were read consistent with the standard of care and that the standard of care required the patient to be transported from a local community hospital to a tertiary care facility to undergo definitive management because time was of the essence, given the high rate of morbidity and mortality with a Type A dissection. With regard to the lack of informed consent, since the surgery was performed at Westchester Medical Center, it was those doctors who were responsible for the informed consent. Further, the testimony shows that the subsequent physicians at Westchester Medical Center also reviewed the films and determined that they were consistent with a diagnosis of an ascending aortic aneurism.

PHC has made out a prima facie case for entitlement to summary judgment. The burden now shifts to the plaintiffs to submit evidentiary facts or materials to rebut the prima facie showing, so as to demonstrate the existence of a triable issue of fact.

The plaintiffs did not oppose the motion, therefore, they have failed to demonstrate the existence of any issues of fact to rebut PHC's prima facie showing.

Accordingly, based on the foregoing, PHC's motion for summary judgment is granted and it is

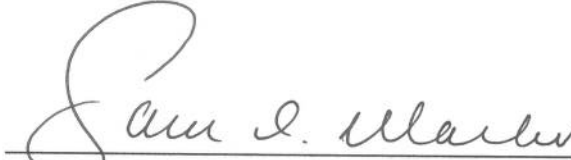
ORDERED that the motion for summary judgment is granted and it is further

ORDERED that the action is dismissed as against Putnam Hospital Center.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York
December 19, 2019

ENTER



HON. SAM D. WALKER, J.S.C.