

Starre v Dean

2020 NY Slip Op 33064(U)

September 16, 2020

Supreme Court, Kings County

Docket Number: 8394/15

Judge: Marsha L. Steinhardt

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At an IAS Term, Part 15 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 16th day of September, 2020.

P R E S E N T:

HON. MARSHA L. STEINHARDT,
Justice

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WALINDA ODRICK STARRE, as Administrator of
the Estate of WELDON STARRE, and
WALINDA ODRICK STARRE, Individually,

Plaintiff,

-against-

Index No. 8394/15
(Converted to e-Filing)

DEBORAH DEAN, M.D.,
VALENTINA PODD, P.A.,
JACK BRAHA, M.D.,
ELLIOTT GOODMAN, M.D.,
and MT. SINAI BROOKLYN,

Defendants.

Mot. Seq. No. 6

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The following e-filed papers read herein:

NYSCEF #

Notice of Motion, Affirmation, Memorandum of Law, and Exhibits Annexed _____	<u>2-25</u>
Affirmations in Opposition and Exhibits Annexed _____	<u>27-48,</u>
	<u>49-54</u>
Reply Affirmation _____	<u>55</u>

Plaintiff Walinda Odrick Starre, as the administrator of the estate of Weldon Starre (Starre), and Walinda Odrick Starre, individually (collectively, plaintiff), moves for leave, pursuant to CPLR 2221 (d), to reargue (1) the joint motion of defendants Deborah Dean, M.D. (Dr. Dean), Valentina Podd, P.A. (P.A. Podd), Elliott Goodman, M.D. (Dr. Goodman), and Mt. Sinai Brooklyn (collectively, the Mount Sinai defendants), and (2) the separate motion of defendant Jack Braha, D.O., incorrectly sued herein as Jack Braha, M.D. (Dr. Braha), in each

instance, for summary judgment dismissing the complaint as against them/him (collectively, the prior motions), which prior motions were granted by decision, order, and judgment, dated Oct. 21, 2019 (NYSCEF #5) (the prior order); and, upon reargument, denying both prior motions and vacating the prior order *insofar as* it dismissed the medical malpractice and wrongful death claims as against Dr. Dean, P.A. Podd, Mt. Sinai Brooklyn, and Dr. Braha (collectively, defendants). Plaintiff is not challenging the dismissal of all claims as against Dr. Goodman. Nor does she challenge the dismissal of the claims grounded on lack of informed consent and loss of services as against defendants.

Upon the foregoing papers and after oral argument and due deliberation had thereon, leave to reargue is granted and, upon reargument and a de novo review of the prior motions and plaintiff's opposition thereto, the Court adheres to its original determination.

The dismissal of plaintiff's medical malpractice claim (and her ancillary claim for wrongful death) was proper in light of her failure to rebut the prima facie showing made by the Mount Sinai defendants jointly, and by Dr. Braha separately, based on lack of proximate cause. Although the *immediate* cause of Starre's death was a cardiac arrest (actually, the fatal arrest in a series of cardiac arrests), the *proximate* cause of his death was an acute hemorrhagic pancreatitis with pre-existing comorbidities as documented (and not disputed by plaintiff) at the next day's post-mortem examination performed by the Chief Medical Examiner's Office. Plaintiff's experts, by referring to Starre's "chance of survival" and "a better outcome," have narrowed their opinion on the subject of proximate cause to his *cardiac* condition. In doing so, plaintiff's experts avoided addressing the key opinions of the defense experts on the subject of

proximate cause; namely, that Starre’s *entire* medical condition, on presentation to Mt. Sinai Brooklyn, was “more likely than not terminal” and “carried an extremely high mortality.” The failure of plaintiff’s experts, in her opposition to the prior motions, to address the opinions of the defense experts regarding Starre’s acute hemorrhagic pancreatitis with pre-existing comorbidities was troublesome, to say the least. The controlling standard of proximate cause required the Court to consider the overall severity of Starre’s entire medical condition on the morning of (and throughout) the day of his death – his acute hemorrhagic pancreatitis with pre-existing comorbidities – rather than myopically focus, at plaintiff’s invitation, on the final series of events preceding his death – his progressive cardiomyopathy.

The facts of this case encompassing Starre’s overall medical condition, as reflected in the record and chronicled in the prior order, as well as the proximate cause of his death as documented by the Chief Medical Examiner’s Office, are a “far cry” from those cases concerning individuals with a primary cardiac condition where a defendant’s failure to timely and properly administer aid proximately caused death from that cardiac condition (*see e.g. King v St. Barnabas Hosp.*, 87 AD3d 238 [1st Dept 2011] [negligent resuscitation efforts by a team of first responders]; *Goldberg v Horowitz*, 73 AD3d 691 [2d Dept 2010] [failure to recognize ischemia at rest and to direct the decedent to a hospital emergency room]; *Wong v Tang*, 2 AD3d 840 [2d Dept 2003] [failure to call for an ambulance to transport the decedent to a hospital, despite diagnosing him with a myocardial infarction]).

Whereas a brief and selective presentation of the record as recited in plaintiff’s Memorandum of Law in Support of Motion to Reargue (NYSCEF #3) could give an unformed

reader the false impression that a triable issue of material fact exists as to whether one or more of defendants proximately caused Starre's death, such impression could be reached only through speculation and hindsight reasoning. Perhaps the best illustration of the weaknesses in plaintiff's proximate cause analysis is her contention that the claims against P.A. Podd were improperly dismissed. In opposing the Mount Sinai defendants' prior motion, plaintiff, while not objecting to the dismissal of all claims against P.A. Podd's superior – attending surgeon Dr. Goodman – took issue with P.A. Podd's failure to communicate her findings of an acute abdomen to Dr. Goodman. According to plaintiff, *if* P.A. Podd had informed Dr. Goodman about her findings earlier than she did, then: (1) he “should have recognized [Starre's] needs and condition almost [two] hours earlier than [other attending physicians]”; (2) “[t]he longer [Starre] was left without his condition being adequately addressed . . . , the more damage was done to him and the lower his chance of successful resuscitation”; and (3) “[t]he more time this situation persisted the lower the chances [Starre] had of a better outcome” (Plaintiff's Memorandum of Law, at 23 [internal quotation marks omitted]). To accept plaintiff's argument would require the Court to engage in a multi-level series of speculations consisting of the following inferential leaps:

(1) *if* P.A. Podd had informed Dr. Goodman of her findings, then Dr. Goodman would have volunteered to become involved with Starre's care, even though – by plaintiff's own concession – Starre was not a surgical candidate and thus fell outside the scope of that surgeon's practice; (2) *if* Dr. Goodman, upon receipt of P.A. Podd's findings, had become involved with Starre's non-surgical care, then he immediately would have taken (or, simply by virtue of his status as an

attending physician, had others immediately take) earlier measures to mitigate harm to Starre; and (3) Dr. Goodman's earlier measures would have protected Starre – hypothetically, of course – from experiencing “the lower[ed] . . . chances . . . of a better outcome.” The Court properly declined to indulge in speculations with no support in the record.

Plaintiff's remaining contentions have been considered and are found to be without merit.

Accordingly, it is

ORDERED that leave to reargue the prior motions is granted and, upon reargument, the Court adheres to its original determination; and it is further

ORDERED that defendants' respective counsel shall electronically serve a copy of this decision and order on plaintiff's counsel and shall electronically file affidavits of said service with the Kings County Clerk.

This constitutes the decision and order of the Court.

E N T E R,



J. S. C.