

Prout v NYU Hosps. Ctr.
2021 NY Slip Op 30226(U)
January 21, 2021
Supreme Court, New York County
Docket Number: 805066/2018
Judge: John J. Kelley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART IAS MOTION 56EFM

Justice

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PATRICK PROUT, as administrator of the estate of DANIELLE PROUT, and PATRICK PROUT, individually,

Plaintiff,

- v -

NYU HOSPITALS CENTER, NYU LANGONE MEDICAL CENTER, HOSPITAL FOR JOINT DISEASES, ROBERT ROTHBERG, M.D., JARED BOOKMAN, M.D., MOUNT SINAI BETH ISRAEL MEDICAL CENTER, AMY WIRTNER, M.D., and DUSTIN A DWIGGINS, M.D.,

Defendants.

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The following e-filed documents, listed by NYSCEF document number 29, 30, 31, 32, 33, 34 35, and 36 (Motion 001)

were read on this motion to/for CONSOLIDATION.

In this action to recover damages for medical malpractice, the plaintiff moves pursuant to CPLR 602 to consolidate another action, entitled Prout v NYU Hosp. Ctr., et al., pending in the Supreme Court, New York County, under Index No. 805408/2019 (hereinafter the 2019 action), with this action. No opposition is submitted. The motion to consolidate is granted.

On March 9, 2018, the plaintiff, as attorney-in-fact for his wife, Danielle Prout, commenced this medical malpractice action. In his complaint, the plaintiff alleged that, as of April 23, 2017, his wife was a patient under the care of the defendant hospitals and physicians. He further alleged that the defendants committed medical malpractice by failing to diagnose her conditions of deep vein thrombosis, pulmonary embolism, pulmonary emboli, and/or venous thromboembolism, that their failure properly to examine her allowed a clot to break off within her circulatory system before they properly could treat her condition, and that their failure timely to administer thrombolytics, such as tissue plasminogen activator, caused her to sustain severe injuries, including anoxic brain damage, hypoxic ischemic encephalopathy, quadriplegia, loss of

DECISION AND ORDER

a fetus, dysphagia, and inability to speak, walk, or care for herself. Danielle Prout died on October 28, 2018. On March 5, 2019, the Surrogate's Court, Bergen County, New Jersey, appointed the plaintiff as the administrator of the estate of Danielle Prout. By so-ordered stipulation dated September 16, 2019, the plaintiff, as administrator of his decedent's estate, was substituted as the plaintiff in this action.

On December 13, 2019, the plaintiff commenced the 2019 action, naming all of the same defendants who had been named in the instant action, and asserting causes of action to recover both for his decedent's conscious pain and suffering and for wrongful death. By stipulation dated February 28, 2020, the parties to both this action and the 2019 action stipulated to consolidating the two actions. On or about August 18, 2020, the plaintiff settled his claims against the defendants NYU Hospitals Center, NYU Langone Medical Center, Hospital for Joint Diseases, Robert Rothberg, M.D., and Jared Bookman, M.D., leaving only his claims against the defendants Mount Sinai Beth Israel Medical Center, Amy Wirtner, M.D., and Dustin A. Dwiggin, M.D., to be litigated.

"Consolidation is generally favored in the interest of judicial economy and ease of decision-making where cases present common questions of law and fact, 'unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right'" (*Raboy v McCrory Corp.*, 210 AD2d 145 [1st Dept 1994], quoting *Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213 [1st Dept 1993]). This action and the 2019 action, which both arise from the same treatment rendered to the plaintiff's decedent by the same medical facilities and practitioners, present common questions of law and fact (see CPLR 602; *DeSilva v Plot Realty, LLC*, 85 AD3d 422 [1st Dept 2011]; *Kern v Shandell, Blitz, Blitz & Bookson*, 58 AD3d 487 [1st Dept 2009]). Moreover, the two actions are at similar procedural stages, inasmuch as five of the eight named defendants have settled with the plaintiff, and there is no indication that consolidation will prejudice a substantial right of any party (see *Amcan Holdings, Inc. v Torys LLP*, 32 AD3d 337 [1st Dept 2006]). Indeed, by failing to oppose the motion, the

nonmoving parties essentially concede that consolidation will not prejudice a substantial right of any party (see *Amcan Holdings, Inc. v Torys LLP*, 32 AD3d 337 [1st Dept 2006]; *Gadelov v Shure*, 274 AD2d 375 [2d Dept 2000]).

Accordingly, it is

ORDERED that the plaintiff’s motion is granted, without opposition, and the action entitled *Prout v NYU Hosps. Ctr., et al.*, filed under New York County Index No. Index No. 805408/2019 is fully consolidated into the action entitled *Prout v NYU Hosps. Ctr., et al.*, filed under New York County Index No. 805066/2018, the consolidated action shall proceed under New York County Index No. 805066/2018, and, upon completion of discovery, the plaintiff shall only be required to file one note of issue in connection with the consolidated action; and it is further,

ORDERED that the caption of the consolidated action shall read as follows:

PATRICK PROUT, as administrator of the
estate of DANIELLE PROUT, and
PATRICK PROUT, individually,
Plaintiff, Index No. 805066/2018

v

NYU HOSPITALS CENTER, NYU
LANGONE MEDICAL CENTER, HOSPITAL
FOR JOINT DISEASES, ROBERT ROTHBERG,
M.D., JARED BOOKMAN, M.D., MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, AMY
WIRTNER, M.D., and DUSTIN A. DWIGGINS, M.D.

Defendants.;

and it is further,

ORDERED that the plaintiff shall serve a copy of this order upon the Trial Support Office (60 Centre Street, Room 158, New York, NY 10007), and shall file the notice required by CPLR 8019(c) and a completed Form EF-22, and the Trial Support Office shall thereupon amend the court records accordingly; and it is further,

ORDERED that the plaintiff and the defendants Mount Sinai Beth Israel Medical Center, Amy Wirtner, M.D., and Dustin A. Dwiggins, M.D., shall appear for a remote status conference via Microsoft Teams computer application on March 3, 2021, at 2:30 p.m., with respect to which the court will send out e-mail invitations with the appropriate link.

This constitutes the Decision and Order of the court.

1/21/2021
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE