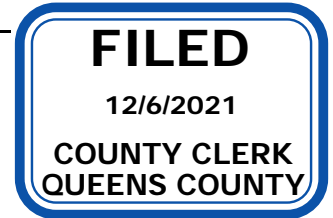


Robinson v Northwell Health, Inc.
2021 NY Slip Op 33147(U)
December 6, 2021
Supreme Court, Queens County
Docket Number: Index No. 717964 2018
Judge: Peter J. O'Donoghue
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PETER J. O'DONOGHUE
Justice

IA Part MD



THERESA ROBINSON and DEREK ROBINSON,

x Index

Plaintiffs,

Number 717964 2018

-against-

Motion

Date August 25, 2021

NORTHWELL HEALTH, INC.,

Defendants.

Motion Seq. No. 5

X

The following papers read on this motion by defendants Northwell Health Inc. and Long Island Jewish Medical Center (LIJMC)) move for an order dismissing all of plaintiffs' allegations relating to the April 12, 2016 admission and delivery on the grounds of statute of limitations; dismissing all allegations against Northwell Health Inc; granting summary judgment dismissing the complaint; and amending the caption to delete Northwell Health Inc. and LIJMC as defendants in this action and severing them from this action; and permitting Northwell Health Inc. and LIJMC to enter a judgment with the Clerk of the Court against plaintiff with statutory costs and disbursements.

Papers
Numbered

Notice of Motion-Statement of Material Facts-Affirmations-Exhibits..	EF 120-147
Opposing Affirmations-Exhibits.....	EF 156-158
Reply Affirmation.....	EF 165

Upon the foregoing papers this motion is determined as follows:

Theresa Robinson initially received pre-natal care at LIJMC Women for Women Obstetrics & Gynecology. On December 8, 2015, her pre-natal care was transferred to Deepak Nanda M.D., P.C., who then maintained an office solely in Rego Park, New York.

Ms. Robinson was examined by Dr. Deepak Nanda at said private practice, and was also seen at said private practice by Dr. Emmanuel M. Pafos, an employee of Deepak Nanda, M.D., P.C. Dr. Nanda had previously delivered Ms. Robinson's first child in 2009, via an emergency cesarian section due to fetal distress.

Dr. Nanda and Dr. Pafos testified at their depositions that in 2016, they were employed by LIJMC and by Deepak Nanda, M.D., P.C.. Ms. Robinson testified at her deposition that she transferred to Dr. Nanda's office where she received the remainder of her pre-natal care. On April 12, 2016, Ms. Robinson was admitted to LIJMC, at approximately 2:00 a.m., at which time there was rupture of membranes. LIJMC staff members discussed her plan of care with Dr. Nanda. Dr. Nanda testified that Ms. Robinson was admitted to the service of his private practice, and that he monitored her labor until Dr. Pafos took over later that evening. Dr. Nanda and Dr. Pafos both testified that when Pafos took over for Nanda on the evening of April 12, 2016, he was working for the private practice. Following a trial of labor after a cesarian, fetal tachycardia was noted and Dr. Pafos performed an emergency cesarian section on April 13, 2016, that began at approximately 12:30 a.m. Ms. Robinson gave birth to a healthy girl. During the cesarian section procedure, a uterine rupture and bladder injury were observed and Dr. Pafos and the resident under his supervision performed a uterine repair and Dr. Omid Rofeim, a urologist, repaired the bladder. A Foley catheter was placed along with JP drains which was monitored by urology. Ms. Robinson was discharged from the hospital on April 17, 2016, with the catheter in place. On April 25, 2016, a CT performed at LIJMC, showed an intact bladder repair and Dr. Rofeim removed the Foley catheter on the same day. Ms. Robinson did not thereafter return to LIJMC or to Dr. Rofeim regarding the repair to the uterus or bladder. She had two follow-up visits with Dr. Pafos for postpartum care at the Rego Park office of Deepak Nanda, M.D. P.C. on April 28, 2016 and May 23, 2016.

Plaintiffs commenced the within action on November 22, 2018, and allege causes of action against defendants Northwell Health, Inc., LIJMC, Deepak Nanda, M.D. P.C., Deepak Nanda, M.D., and Emmanuel M. Pafos, M.D., for medical malpractice, lack of informed consent, and a derivative cause of action for loss of services. Plaintiffs also assert a cause of action against LIJMC for negligent credentialing and the negligent failure to adequately proctor and monitor its medical staff, including the co-defendants. In their verified complaint plaintiffs allege that defendants' negligent acts and omissions occurred on April 13, 2016 through May 23, 2016. With respect to LIJMC and Northwell Health Inc., plaintiffs in their bill of particulars allege that the negligent acts and omissions occurred from April 12, 2016 to April 17, 2016.

Defendants Northwell Health Inc. and LIJMC have each served an answer and interposed affirmative defenses, including statute of limitations. Said defendants now move

for summary judgment dismissing the complaint in its entirety on the grounds of statute of limitations and other grounds.

At the outset, defendant Northwell Health Inc. has established, prima facie its entitlement to summary judgment dismissing the complaint in its entirety. In support of the motion, defendants have submitted an affirmation from Avraham Z. Schwartz, an attorney employed by Northwell Health Inc., as the Vice-President of the Medical Malpractice Program, Corporate Risk Management. Mr. Schwartz states that he is familiar with the corporate status of Northwell Health Inc. and its corporate relationship to LIJMC, as well as applicable liability insurance coverage relative to this action; that Northwell Health Inc. is a not-for-profit corporation and is the corporate parent of LIJMC; that Northwell Health Inc. does not render and has never rendered medical care; that LIJMC maintains professional liability insurance through Northwell Health Inc., and that said insurance is not affected by whether Northwell Health Inc. is named a party in this action and that no additional insurance coverage is available by virtue of naming Northwell Health Inc. as a party to this action.

Plaintiffs' in opposition has failed to present any evidence that defendant Northwell Health Inc. provided any medical services to Ms. Robinson. Plaintiffs' claims against Northwell Health Inc. for medical malpractice, lack of informed consent and loss of consortium therefore, are dismissed.

Plaintiffs' claims against LIJMC for medical malpractice, whether alleged directly or based upon vicariously liability, and for lack of informed consent are governed by a two and a half year statute of limitations (CPLR 214-a; *see also Bleiler v Bodnar*, 65 NY2d 65 [1985]; (*Murriello v Crapotta*, 51 AD2d 381 [2d Dept 1976]). "To dismiss a cause of action pursuant to CPLR 3211(a)(5) on the ground that it is barred by the applicable statute of limitations, a defendant bears the initial burden of demonstrating, prima facie, that the time within which to commence the action has expired" (*Campane v Panos*, 142 AD3d 1126, 1127 [2d Dept 2016], quoting *Stewart v GDC Tower at Greystone*, 138 AD3d 729, 729 [2d Dept 2016]; *see Geotech Enters., Inc. v 181 Edgewater, LLC*, 137 A.D.3d 1213, 1214 [2d Dept 2016]; *Vissichelli v Glen-Haven Residential Health Care Facility, Inc.*, 136 AD3d 1021, 1022 [2d Dept 2016]; *Barry v Cadman Towers, Inc.*, 136 AD3d 951, 952 [2d Dept 2016]). "If the defendant satisfies this burden, the burden shifts to the plaintiff to raise a question of fact as to whether the statute of limitations was tolled or otherwise inapplicable, or whether the plaintiff actually commenced the action within the applicable limitations period" (*Campane v Panos*, 142 AD3d at 1127, quoting *Barry v Cadman Towers, Inc.*, 136 AD3d at 951; *see Stewart v GDC Tower at Greystone*, 138 AD3d at 730; *Geotech Enters., Inc. v 181 Edgewater, LLC*, 137 AD3d at 1214; *Vissichelli v Glen-Haven Residential Health Care Facility, Inc.*, 136 AD3d at 1022).

Here, the evidence presented establishes that on April 12, 2016, plaintiff Theresa Robinson was admitted to LIJMC as a patient of Dr. Nanda, in his capacity as a private attending physician and not as an employee of LIJMC. Ms. Robinson's labor was initially monitored by Dr. Nanda, who was at her bedside several times on April 12, 2016, until Dr. Pafos took over at approximately 5:00 p.m. on April 12, 2016, and later that night first saw her at her bedside at approximately 10:55 p.m. On April 13, 2016, following a trial of labor, fetal tachycardia was noted and Dr. Pafos performed an emergency cesarian section, and Ms. Robinson gave birth to a healthy daughter. During the cesarian section procedure, a uterine rupture and bladder injury were observed. Dr. Pafos and a resident under his supervision performed a uterine repair and Dr. Omid Rofeim, a urologist, repaired the bladder. A Foley catheter was placed along with JP drains which was monitored by urology. Ms. Robinson was discharged from the hospital on April 17, 2016, with the catheter in place. On April 25, 2016, a CT performed at LIJMC, showed an intact bladder repair and Dr. Rofein removed the Foley catheter on the same day. Ms. Robinson did not thereafter return to LIJMC regarding the repair to her uterus, and did not return to LIJMC or to Dr. Rofein regarding the repair to her bladder. She had two follow-up visits with Dr. Pafos for postpartum care at the Rego Park office of Deepak Nanda, M.D. P.C. on April 28, 2016 and May 23, 2016. Dr. Pafos found nothing remarkable on both visits and on May 23, 2016, determined that no further follow-up was necessary. Ms. Robinson did not return to said private practice after May 23, 2016.

Based upon the foregoing, defendant LIJMC has established, prima facie, that the within action against it was untimely commenced. Plaintiffs do not assert any claims against LIJMC based upon the bladder repair performed by Dr. Rofein, or the CT scan and the removal of the Foley catheter on April 25, 2016. However, even if the statute of limitations accrued, at the latest on April 25, 2016, the date the catheter was removed, it expired no later than October 26, 2018, which was well before the commencement of the within action against LIJMC on November 22, 2018.

Plaintiffs, in opposition, have failed to raise a question of fact as to whether the statute of limitations was tolled pursuant to the continuous treatment doctrine (*see Curcio v Ippolito*, 63 NY2d 967, 969 [1984]; *McDermott v Torre*, 56 NY2d 399 [1982]; *see also Campone v Panos*, 142 AD3d 1126, 1127 [2d Dept 2016]). The evidence presented establishes that as of December 8, 2015, Ms. Robinson became a patient of Deepak Nanda, M.D. P.C., and that from that date onward the medical care and treatment Dr. Nanda and Dr. Pafos provided Ms. Robinson was solely in their capacities as employees of said professional corporation. There is no evidence that either Dr. Nanda or Dr. Pafos acted as employees of LIJMC during Ms. Robinson's labor and delivery, or during the follow-up postpartum office visits on April 28, 2016 and May 23, 2016.

Plaintiffs' reliance upon CPLR 203(b) is misplaced. CPLR 203(b) by its terms, only applies where a plaintiff seeks to name an additional defendant after the expiration of the statute of limitations. As the within action was commenced against all of the defendants on November 22, 2018, the united in interest and relation-back doctrines are inapplicable here.

Mr. Robinson's claim for loss of consortium is governed by a three year statute of limitations (*see* CPLR 214; *Chambers v Mirkinson*, 68 AD3d 702 [2d Dept 2009]; *Schrank v Lederman*, 52 AD3d 494,497[2d Dept 2008]), and was timely commenced against LIJMC. However, as the loss of consortium claim against LIJMC is based upon the untimely causes of action for medical malpractice and lack of informed consent, this derivative claim must also be dismissed as against said defendant (*see generally Liff v Schildkrout*, 49 NY2d 622 [1980]; *Wright v Morning Star Ambulette Services Inc.*, 170 AD3d 1249 [2d Dept 2019]; *Wittrock v Maimonides Medical Center-Maimonides Hosp.*, 119 AD2d 748 [2d Dept 1986]).

Plaintiffs' claim of negligent hiring and negligent credentialing against LIJMC is governed by a three year statute of limitations (*see* CPLR 214; *Schrank v Lederman*, 52 AD3d at 497), and the within action was timely commenced as to this cause of action. As defendant LIJMC does not address this claim in its moving papers, summary judgment is not appropriate at this juncture.

Accordingly, that branch of defendants' motion which seeks to dismiss the complaint in its entirety as to Northwell Health Inc. is granted and the request to delete the movants from the caption is granted solely as to Northwell Health Inc. The new caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

.....X
THERESA ROBINSON and DEREK ROBINSON

Plaintiffs

-against-

Index No. 717964 2018

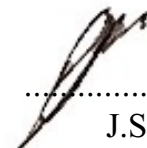
LONG ISLAND JEWISH MEDICAL CENTER,
DEEPAK NANDA M.D.,P.C., and EMMANUEL PAFOS, M.D.

Defendants.

.....X

That branch of defendants' motion which seeks summary judgment dismissing the complaint against LIJMC on the grounds of statute of limitations is granted as to the causes of action for medical malpractice, lack of informed consent and loss of consortium. To the extent that defendants also seek summary judgment dismissing the cause of action against LIJMC for negligent hiring and negligent credentialing, that branch of the motion is denied. That branch of defendants' motion which seeks a bill of costs and disbursements, is granted solely as to Northwell Health Inc. The Clerk of the Court is directed to enter a judgment accordingly.

Dated: December 6, 2021


.....
J.S.C.

