

Carafello v Ruvo

2021 NY Slip Op 33251(U)

February 11, 2021

Supreme Court, Orange County

Docket Number: Index No. EF009179/2017

Judge: Maria S. Vazquez-Doles

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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.

At a term of the IAS Part of the Supreme Court of the State of New York,
held in and for the County of Orange, at 285 Main Street,
Goshen, New York 10924 on the 11th day of February, 2021.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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, on all parties.

DANA CARAFELLO,

PLAINTIFFS,

-AGAINST-

ANTHONY RUVO, D.O.,
ST. ANTHONY COMMUNITY HOSPITAL and
JOHN DOES 1-10,

DECISION & ORDER
INDEX #EF009179/2017
Motion date: 9/21/20
Motion Seq.# 1

DEFENDANTS.

VAZQUEZ-DOLES, J.S.C.

The following papers numbered 1 - 8 were read on the summary judgment motion by Defendant, **Anthony Ruvo, D.O.** (hereinafter the "Dr. Ruvo") to dismiss the Complaint as against him:

Notice of Motion, Affirmation (McElrath), Exhibits A-W, Memorandum of Law... 1- 4
Affirmation in Opposition (Abramson), Exhibits A - C, Memorandum of Law..... 5- 7
Reply Affirmation (McElrath)..... 8

In this medical malpractice action, plaintiff seeks redress for injuries allegedly suffered as a result of Ruvo's negligence while providing emergency room care at St. Anthony's Community Hospital (hereinafter "SACH") for complaints associated with plaintiff's finger laceration on April 23, 2016. It should be noted that a Stipulation of Discontinuance has been filed dated May 22, 2020 and So Ordered on July 28, 2020 discontinuing the action with prejudice as against SACH.

The action was commenced by the filing of a summons and verified complaint on

November 9, 2017. [Exhibit B] Thereafter, issue was joined on behalf of Ruvo by service of a verified answer dated December 19, 2017. [Exhibit C] The deadline to file motions for summary judgment was extended from July 7, 2020, to August 7, 2020. This motion was filed July 24, 2020.

Plaintiff sought treatment at SACH on April 23, 2016 after she fell and lacerated her right ring finger. The glass she was holding broke and cut her finger. [Exhibit G at p. 58] According to the pleadings, plaintiff alleges that Dr. Ruvo failed to examine, identify, treat and refer Ms. Carafalo to appropriate medical care with relevant expertise relevant to the allegation that her "flexor digitorum profundus tendon was completely transected..." [Exhibit E at par. 3]

Dr. Ruvo's emergency medical care of the plaintiff began around 11:00 pm when plaintiff arrived at the emergency room. Dr. Ruvo immediately evaluated the plaintiff's finger for any active bleeding or hemorrhaging that could be life threatening. [Exhibit I at p. 63] His examination notes indicated that the plaintiff experienced a "laceration to the right fourth digit on broken glass. Denies numbness/tingling." [Id. at p. 61.] Dr. Ruvo undertook a "physical examination" that included "the fourth ventral aspect of the finger" and observations "for profusion [perfusion] and capillary refill." [Id., p.67] Dr. Ruvo further undertook range of motion (R.O.M.) testing through both "passive" and "active" means (Id. at p.89 - 91) as well as x-ray/ imaging testing (Id. at p.95 - 96) "to evaluate injury and function of the finger..." and "to see if there is any structures that are involved or any other structures that would be injured that would need to be repaired..." [Id. at pp.68,73,89.]

According to Dr. Ruvo, his observations during the course of care revealed: "There was a 1.5 - centimeter superficial laceration to the right ventral fourth digit pistol to the PIP Joint. That

stands for Proximal Interphalangeal Joint. There is no vascular or tendon involvement. And that would be evaluated given that this was a superficial laceration by testing range of motion at the MCP joint..." [Id. at p.68] Upon completion of triage, he performed an examination of the wound, obtained plaintiff's medical history and performed wound closure by stitches. Finally, as explained by Dr. Ruvo: "Wound care instructions are also given by the nurse prior to discharge and there is also a paper copy that's also given to the patient for their records as well." [Id. at p.102.]

In a medical malpractice action, it is the plaintiff's burden to establish both a deviation from accepted practice and that the deviation was the proximate cause of the injury (*see Zito v Jastremski*, 84 AD3d 1069 [2d Dept. 2011]). Consequently, a defendant seeking summary judgment dismissing a complaint alleging medical malpractice "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" (*Stukas v. Streiter*, 83 A.D.3d 18, 24 [2d Dept 2011]; *see Jagenburg v. Chen-Stiebel*, 165 A.D.3d 1239, 1239 [2d Dept 2018]; *Kelly v. Rosca*, 164 A.D.3d 888, 891 [2d Dept 2018]; *Williams v. Bayley Seton Hosp.*, 112 A.D.3d 917, 918 [2d Dept 2013]). Where the defendant satisfies that burden, a plaintiff must then "submit evidentiary facts or materials to rebut the defendant's prima facie showing" (*Stukas v. Streiter*, 83 A.D.3d at 30; *see Jagenburg v. Chen-Stiebel*, 165 A.D.3d at 1239-1240; *Kelly v. Rosca*, 164 A.D.3d at 891; *Williams v. Bayley Seton Hosp.*, 112 A.D.3d at 918). General allegations of medical malpractice, which are merely conclusory and unsupported by competent evidence, are insufficient to defeat a motion for summary judgment (*see Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 325 [1986]).

"The *prima facie* burden is met only where the defendant addresses and rebuts any

specific allegations of malpractice set forth in the plaintiff's bill of particulars" through expert opinion testimony (*Bongiovanni v Cavagnuolo*, 138 AD3d 12, 16-17 [2d Dept 2016]; *Seiden v Sonstein*, 127 AD3d 1158, 1160 [2d Dept 2015]; *Koi Hou Chan v Sammi Yeung*, 66 AD3d 642,642 [2d Dept 2009]). Where the defendant makes such a *prima facie* showing, the burden then shifts to the plaintiff to rebut the defendant's showing through the submission of evidence raising a triable issue of fact, but only as to the elements on which the defendant met the *prima facie* burden (*Barrocales v New York Methodist Hosp.*, 122 AD3d 648 [2d Dept 2014]; *Contreras v Adeyemi*, 102 AD3d 720 [2d Dept 2013]; *Stukas v Streiter*, 83 AD3d 18 [2d Dept 2011]; *Swezey v Montague Rehab & Pain Mgt., P.C.*, 59 AD3d 431 [2d Dept 2009]; *Myers v Ferrara*, 56 AD3d 78 [2d Dept 2008]). Thus, upon a defendant's *prima facie* showing, plaintiff must submit an expert affidavit in which the expert opines that the defendant departed from accepted medical practice and that the departure proximately caused the alleged injuries (*Roques v Noble*, 73 AD3d 204, 207 [1st Dept 2010]; *Holton v Sprain Brook Manor Nursing Home*, 253 AD2d 852 [2d Dept 1998], *lv denied* 92 NY2d 818 [1999]).¹

Moreover, it is well settled that "[s]ummary judgment is not appropriate in a medical malpractice action where the parties present conflicting medical expert opinions. Such conflicting expert opinions raise issues of credibility to be resolved by a jury" (*Shehebar v Boro Park Obstetrics & Gynecology, P.C.*, 106 AD3d 715, 716 [2d Dept 2013]; *Feinberg v Feit*, 23 AD3d 517 [2d Dept 2005]). It is also well settled that "[p]hysicians offering opinions in medical, dental, podiatric, or other specialty malpractice actions must establish their credentials in order

¹ Except as to matters within the ordinary experience and knowledge of laymen, expert medical opinion is necessary to prove a deviation or departure from accepted standards of medical care and that such departure was a proximate cause of the plaintiff's injury (*Fiore v Galang*, 64 NY2d 999 [1985]; *Lyons v McCauley*, 252 AD2d 516 [2d Dept 1998], *lv denied* 92 NY2d 814 [1998]; *Bloom v City of New York*, 202 AD2d 465 [2d Dept 1994]).

for their expert opinions to be considered by courts. They do so by being specialists in the field that is the subject of the action, or if not specialists in the same field, then by possessing the requisite skill, training, education, knowledge or experience from which it can be assumed that the opinion rendered is reliable” (*Bongiovanni, supra*, 138 AD3d at 18).

Plaintiff’s claims against Dr. Ruvo sound in principles of medical malpractice arising out of the emergency room care he provided over a short period of time while the plaintiff was at SACH. According to the pleadings and the medical records, the period of time during which the alleged malpractice occurred corresponds with the time plaintiff was treated by Dr. Ruvo in the emergency department from 11:05 pm on April 23, 2016 until her discharge on April 24, 2016 at 12:32 am. Plaintiff broadly alleges against the defendants in the first cause of action that they failed to utilize requisite skill required for the care of plaintiff in that they failed to properly treat plaintiff’s finger laceration; failed to “employ proper steps, procedures, and practices for the health, welfare and safety of the plaintiff and to avoid injury to her.” (Exhibit B at ¶12) The essence of the plaintiff’s recited theories of liability are based on misdiagnosis and improper care. Specifically, as set forth within the Bill of Particulars, Dr. Ruvo “failed to perform a proper physical examination of plaintiff’s right hand; he failed to recognize that plaintiff’s flexor digitorum profundus tendon was completely transected; and, he failed to consult with a hand surgeon for immediate tendon repair. Dr. Ruvo failed to advise plaintiff to consult with a hand surgeon. Dr. Ruvo’s treatment of the plaintiff was negligent and in violation of the applicable standard of care. (Exhibit E at ¶7[b])

Here, defendant has demonstrated her prima facie entitlement to judgment as a matter of law by submitting an affidavit of Kevin Brown, M.D., an expert in emergency medicine, who

opines, with a reasonable degree of medical certainty, that Dr. Ruvo's care conformed with good and accepted standards with regard to his evaluation and diagnosis of the patient's condition and he acted within the emergency medicine standard of care in all aspects of emergency department practice and his determinations and instructions were timely and appropriate. Dr. Brown further opines that, in any event, any departure was not a proximate cause of the alleged injuries (*Graziano v Cooling*, 76 AD3d [2d Dept 2010]).

Dr. Ruvo also proffered the affirmation of Doron I. Ilan, MD, an orthopedic surgeon, specializing in hand surgery. Dr. Ilan opines with a reasonable degree of medical certainty that Dr. Ruvo's examination, testing and diagnosis of the plaintiff were timely and appropriate and comported with all applicable good and accepted standards of medical care. Regarding plaintiff's claim that Dr. Ruvo failed to recognize her tendon injury, Dr. Ilan opines that it is not the role of an ER doctor to definitively diagnose a tendon injury but that appropriate treatment is to care for the wound and recommend follow up, which is exactly what Dr. Ruvo did. Dr. Ilan also opines that Dr. Ruvo's limited involvement was not a proximate cause of the alleged injuries.

In opposition, plaintiff fails to raise a triable issue of fact. The expert affirmation of Carrie Z. Paston, M.D. is conclusory and speculative and fails to address the specific assertions of the defendant's experts (See, *Barlia v Comprehensive Pain Care of Long Island*, 44 AD3d 806 [2d Dept 2007]). Dr. Paston concedes that Dr. Ruvo's physical exam of plaintiff, as is indicated in the medical notes and as described by him during his deposition complies with the standard of care. Dr. Paston's opinion is based solely upon her belief that Dr. Ruvo is lying, that if he did perform the examination as described, he could not have found plaintiff to have full range of

motion and able to flex her finger due to the transected tendon. However, Dr. Paston fails to cite any entries in SACH records to support such an assumption. The only explanation Dr. Paston gives as to how, with an examination revealing full range of motion, Dr. Ruvo was expected to diagnose the tendon injury is that he did not perform a proper range of motion examination although the record indicates that he did. Dr. Paston also concedes that Dr. Ruvo's instruction to follow up with her doctor in one week was appropriate. Dr. Paston fails to discuss the fact that plaintiff did not follow up with her doctor until four weeks later and that she removed the stitches on her own despite having increased swelling, pain and was unable to move the finger. Dr. Paston fails to discuss whether plaintiff's failure to follow-up was a proximate cause of her injury.

Another expert affirmation proffered by plaintiff is that of Charles A. Loguda, M.D. who opines that Dr. Ruvo deviated from accepted standards of practice by failing to diagnose plaintiff's tendon injury at the time she presented to the emergency room on April 23, 2016. He bases this opinion on the fact that plaintiff underwent surgery on May 26, 2016 to repair the transected tendon. Had Dr. Ruvo correctly performed his physical examination, he would have noted limited range of motion, instead he failed to make the correct diagnosis leading to delay in treatment which directly resulted in a shortening and parring down of the tendon, decreased range of motion, a more difficult surgery to repair the tendon, and a significantly worse prognosis. Dr. Loguda assumes that Dr. Ruvo's examination was not correctly performed despite what is written in the medical records as well as Dr. Ruvo's own testimony. Dr. Loguda also fails to address plaintiff's delay in follow-up treatment despite having continued pain, increased swelling and limited motion as a proximate cause of her injury.

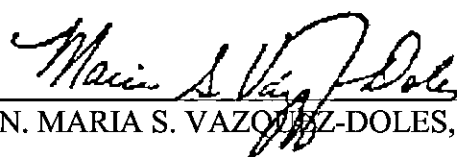
Accordingly, it is hereby

ORDERED that the summary judgment motion of Defendant, Anthony Ruvo, MD,
is granted and the complaint is dismissed as against said defendant.

This decision constitutes the order of this court.

Dated: February 11, 2021
Goshen, New York

ENTER:



HON. MARIA S. VAZQUEZ-DOLES, J.S.C.

To: Counsel of Record via NYSCEF