

Jacobson v Gaffney
2021 NY Slip Op 33305(U)
January 21, 2021
Supreme Court, Tompkins County
Docket Number: Index No. EF2017-0046
Judge: Joseph Cassidy
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF TOMPKINS

ROBERT and MARY JACOBSON

Plaintiffs

vs.

DECISION

- (1) JAMES GAFFNEY;
- (2) CAYUGA MEDICAL ASSOCIATES, P.C., d/b/a CAYUGA NEUROLOGIC SERVICES OF CMA;
- (3) CAYUGA NEUROLOGIC SERVICES, LLP;
- (4) MARC L. JOUANDET, M.D.;
- (5) RADIOLOGY ASSOCIATES OF ITHACA, P.C.;
- (6) ANDREIA P. DE LIMA, M.D.;
- (7) CAYUGA MEDICAL ASSOCIATES, P.C. d/b/a HOSPITAL MEDICINE SPECIALISTS OF CMA;
- (8) DIRK H. DUGAN, M.D.;
- (9) CAYUGA MEDICAL ASSOCIATES, P.C., d/b/a ORTHOPEDIC SERVICES OF CMA;
- (10) JOSEPH K. BYLEBYL, M.D.;
- (11) CAYUGA ANESTHESIA ASSOCIATES, PLLC;
- (12) BRETT H. YOUNG, M.D.,
- (13) CAYUGA MEDICAL ASSOCIATES, P.C.,
- (14) CAYUGA MEDICAL CENTER AT ITHACA, INC., d/b/a CAYUGA MEDICAL CENTER;
- (15) WILLIAM A. KLEPACK, M.D.;
- (16) MASON M. SOPCHAK, D.O.; and
- (17) DRYDEN FAMILY MEDICINE, PLLC.

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Defendants

Procedural History

The lawsuit was commenced with the filing of Summons and Complaints with the Dutchess County Clerk's Office in the late summer of 2016. Defendants moved for a change in venue and that motion was granted. Plaintiffs sought to reargue their position, but that argument failed. The plaintiffs filed an appeal with the Supreme Court, Appellate Division, Second Department, and the Appellate Division affirmed the change of venue. Remarkably, the plaintiffs sought leave to appeal to the New York Court of Appeals. Leave was denied on June 17, 2020. A simultaneous motion to reargue was denied the same day.

In August 2020, the following defendants filed Motions for Summary Judgment, seeking to have the Complaints dismissed: Marc Jouandet MD, Dirk Dugan MD, Brett Young MD, William Klepak MD, Mason Sopchak DO, Radiology Associates of Ithaca PC, and Dryden Family Medicine PLLC.

The plaintiff does not oppose the Motions for Summary Judgment filed by the following defendants: Dirk Dugan MD, Brett Young MD, William Klepak MD, Mason Sopchak DO, and Dryden Family Medicine PLLC. Those Motions are granted.

The plaintiff does not oppose those parts of the Motions for Summary Judgment filed by Marc Jouandet MD and Radiology Associates of Ithaca which seek dismissal of the cause of action related to lack of informed consent. That relief is granted.

The plaintiff does not oppose that part of the Motion for Summary Judgment filed by Radiology Associates of Ithaca which seeks to dismiss the cause of action related to an alleged failure to properly train and educate their employees, agents, etc., to diagnose medical conditions requiring immediate attention. That relief is granted.

What remains are the Motions for Summary Judgment filed by defendants Jouandet MD, and Radiology Associates of Ithaca wherein they seek the dismissal of the plaintiffs' remaining claims of malpractice.

Background

In October 2013, the plaintiff William Jacobson saw Dirk Dugan MD for ongoing pain in his hip, upper leg and knee. According to the Complaint, the plaintiff described the pain as unbearable in February 2014. He sought hip replacement surgery. The plaintiff William Jacobson was seventy-one years old at that time, according to medical records attached to the pleadings.

In the early Spring of 2014, the various doctors working with the plaintiff recommended, performed and assessed two electrocardiograms and a chemical

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nuclear stress test for the plaintiff. The results indicated he had normal heart functioning with no restriction of blood flow (ischaemia.) The hip surgery was scheduled for May 13, 2014.

On April 29, 2014, the plaintiff appeared at his primary care physician complaining now of back pain in addition to his hip pain. An MRI was ordered, and subsequently conducted on the plaintiff's lumbar spine a few days later, May 2, 2014.

The plaintiff asserts that: on May 6, 2014, at approximately 5:00pm, the plaintiff's wife (co-plaintiff) called for an ambulance for the plaintiff. The plaintiff allegedly said at that time he had felt fatigued and was having trouble getting words out. The plaintiff's staff reported to his wife that he appeared confused that afternoon and was speaking oddly. His wife reported those same symptoms, and some facial drooping, to the emergency responders. The ambulance took the plaintiff to the hospital, where he had a CT scan of his brain. He was discharged the next day and went through with his hip surgery on May 13, 2014. The plaintiff alleges he had a stroke as a result of the defendants' negligence; the plaintiff alleges a failure by the various defendants to communicate with one another, a failure to advise, a failure to properly assess and analyze, and generally a failure by the defendants to meet a minimum standard of care in treating the plaintiff.

The defendants Marc Jouandet, MD and Radiology Associates of Ithaca argue that Dr. Jouandet provided treatment which met the appropriate and required standard of care, and they have provided an affidavit from an additional expert. Thomas Gudas, MD, a neuroradiologist with expertise in interpreting imaging studies such as CT scans and MRIs, to prove this assertion. Dr. Gudas opines that Dr. Jouandet's work with regard to this case (his observations, his interpretations of the imaging studies, and his narrative descriptions were all complete, accurate and excellent, and "completely within the standard of care for a neuroradiologist."

The plaintiff has, in turn, provided the affidavit of an expert in diagnostic radiology, who disagrees with Dr. Gudas, opining that Dr. Jouandet misread or

misinterpreted the May 6, 2014 CT scan and MRI of the plaintiff, which constituted a departure from acceptable medical practice.

Law and Decision

A motion for summary judgment may only be granted if no genuine triable issue of fact is found to exist. In a motion for summary judgment, the moving party must establish that no issue of fact exists and that as a matter of law the moving party is entitled to a favorable judgment (*Cugini v. System Lumber Co., Inc.*, 111 AD2d 114 [1985]). The role of the court is not to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial" (*Anderson v. Liberty Lobby, Inc.*, 477 US 242, 249 [1986]). The key on a motion for summary judgment is "issue finding, rather than issue determination" (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]).

The defendant has made a prima facie showing of entitlement to summary judgment through the sworn written testimony of Dr. Jouandet, Dr. Gudas, and the evidence attached to the pleadings.

To rebut defendants' prima facie showing of entitlement to summary judgment dismissing the medical malpractice claim, the plaintiffs must come forward with proof that could establish a deviation from accepted medical practice and that such alleged deviation was the proximate cause of the plaintiff's injuries, so as to demonstrate the existence of a triable issue of fact. *Yerich v Bassett Healthcare Network*, 176 AD3d 1359, 1361 [3d Dept 2019].

Here there is a triable issue of fact. Dr. Jouandet found no evidence of an acute ischemic lesion in the plaintiff's May 6, 2014 imaging studies. The defendant's expert agrees with that observation and interpretation. The plaintiff's expert, in a sworn statement, asserts there was evidence consistent with "edema and ischemia (i.e. an acute early infarct)," and that Dr. Jouandet departed from the minimum standard of care when he interpreted the CT scan of the plaintiff's head as showing no evidence of acute ischemic lesion. Further, plaintiff's expert testifies the alleged departure from the

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standard of care by Dr. Jouandet was a proximate cause of the plaintiff's injuries (his May 13, 2014 stroke).

Conclusion

There is a triable dispute of fact over whether the defendants' behavior conformed to accepted standards of care.

The Motions for Summary Judgment are granted in part and denied in part:

The Motions for Summary Judgment filed by the following defendants: Dirk Dugan MD, Brett Young MD, William Klepak MD, Mason Sopchak DO, and Dryden Family Medicine PLLC, are granted.

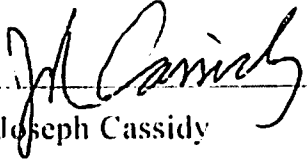
The Motions for Summary Judgment filed by Marc Jouandet MD and Radiology Associates of Ithaca which seeks dismissal of *the cause of action related to lack of informed consent* is granted.

The Motion for Summary Judgment filed by Radiology Associates of Ithaca which seeks to dismiss *the cause of action related to an alleged failure to properly train and educate their employees, agents, etc., to diagnose medical conditions requiring immediate attention* is granted.

The Motion for Summary Judgment filed by defendants Jouandet MD, and Radiology Associates of Ithaca wherein they seek the dismissal of the plaintiffs' claim that the defendants departed from the standard of care is denied.

This is the Decision of the Court. Parties seeking an Order as a result of this decision should submit a proposed Order.

January 21, 2021
Ithaca, New York


Joseph Cassidy
Acting Tompkins County Supreme Court Judge

Entered 01/21/2021