Abrams v New Vanderbilt Rehabilitation & Care Ctr.
2021 NY Slip Op 33599(U)
January 24, 2021
Supreme Court, Richmond County
Docket Number: Index No. 100717/2016
Judge: Charles M. Troia
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
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Gary Abrams, as the Executor of the Estate of
Clinton Abrams, Deceased,

Plaintiff,

-against-

New Vanderbilt Rehabilitation and Care Center,
and Staten Island University Hospital,

Defendants.

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DCM Part 1

Present:
Hon. Charles M. Troia

DECISION AND ORDER

Index No.: 100717/2016

The following papers numbered 1 to 3 were fully submitted on the 12th day of November, 2021. Argument by counsel was heard on the 19th day of November, 2021.

Defendant Staten Island University Hospital's Motion for Summary Judgment with Supporting Papers and Exhibits.
(Filed on July 12, 2021) 1

Plaintiff's Opposition with Supporting Papers and Exhibit.
(Filed on October 1, 2021) 2

Defendant Staten Island University Hospital's Reply Affirmation.
(Filed on November 12, 2021) 3

Upon the foregoing papers, the motion of defendant Staten Island University Hospital (SIUH) for summary judgment, dismissing the complaint against them, is granted.[1]

Plaintiff/executor (plaintiff) brought this action to recover damages for injury and wrongful death allegedly caused by defendant SIUH's deviation from good and accepted standards of

[1] Defendant New Vanderbilt Rehabilitation and Care Center's motion for summary judgment was granted by the Court without opposition on November 19, 2021.

medical care in treating the now deceased Clinton Abrams (Patient). Plaintiff alleges that Patient's pressure ulcer development and worsening were avoidable if SIUH had provided appropriate care and treatment while he was in SIUH's care. SIUH now moves for summary judgment dismissing the complaint.

In its motion, SIUH asserts that any ulcers developed by Patient during the SIUH admissions were unavoidable due to Patient's advanced age and compromised health, including multiple comorbidities, which made Patient susceptible to skin breakdown along with impairment of healing. Defendant maintains that the wound treatment Patient received was proper and thorough, none of the acts or omissions of SIUH were the proximate cause of decubitus ulcers, bacteria found in Patient's blood were not present in the decubitus ulcers, there is no evidence that Patient had a systemic infection at the time of death, and Patient's death was not caused by an infection linked to the decubitus ulcers. In support of its motion, SIUH submitts two expert affidavits. Plaintiff opposes the motion, and submits an expert affidavit.

Patient was 90 years old when he was taken by ambulance to the emergency room at SIUH on June 17, 2015. He was admitted for treatment of pneumonia, suffered from a syncopal episode, and had a stage I ulcer on his buttock. The emergency department assessed that Patient was at a high risk for developing ulcers because he had slightly limited sensory perception, very moist skin, was chairfast, and had limited mobility. On June 17, 2015, it was noted that Patient had a stage II ulcer on his sacrun/coccyx. According to the hospital records, Patient was repositioned at various scheduled time intervals. On June 18, 2015, he was intubated and placed on mechanical ventilation. Wound care directives were fulfilled at SIUH until July 13, 2015, when Patient was discharged to New Vanderbilt Rehabilitation and Care Center (New Vanderbilt). At the time Patient was discharged to New Vanderbilt, he had been diagnosed with altered mental status, ventilator dependence, acute respiratory failure secondary to community-acquired pneumonia, and skin impairments including an abrasion on his left elbow, a fungal rash in the groin area, and an unstageable sacral decubitus ulcer.

On July 26, 2015, Patient was transferred back to SIUH from New Vanderbilt for low hemoglobin and hematocrit. Patient needed a blood transfusion, was ventilator dependent with a tracheostomy, and needed total assistance for ordinary needs. He was non-verbal and mostly unresponsive. On July 27, 2015, it was noted that Patient had an unstageable ulcer on his right

heel, and unstageable ulcer on his left heel, an unstageable ulcer on his sacrum/coccyx, and two stage II ulcers on his right elbow. The records indicate that Patient was repositioned at various time intervals, and wound care directives were fulfilled. Patient expired on August 12, 2015.

SIUH submits two expert affidavits (by Dr. Greene and Dr. Brem) in support of its motion. Dr. Greene opined to a reasonable degree of medical certainty that there is no merit to the claim that Patient's death was related to an infection of his sacral decubitus ulcer, and that the staff at SIUH at all times treated Patient within accepted standards of good medical practice. Dr. Greene found no evidence in the medical records that Patient was septic or experiencing a systemic infection at the time of his death. Dr. Greene noted that a blood culture performed during Patient's admission on July 26, 2015, showed no growth of any bacteria after five days, Patient was afebrile throughout his hospital admission, and that his white blood cell count was normal four days prior to his death.

Dr. Brem's affidavit is consistent with Dr. Greene's opinion. Dr. Brem opined SIUH at all times acted in accordance with accepted standards of good medical practice. Dr. Brem noted that Patient had been suffering with multiple co-morbidities, and he was unable to breathe or eat on his own. Dr. Brem pointed to records that indicated that ulcer prevention protocols were implemented during the SIUH admissions, including but not limited to the use of heal offloading devices, positioning supports, a pressure redistributing mattress, and turning and re-positioning Patient every two hours.

Plaintiff submitted an expert affidavit in opposition to defendant's motion, and states in conclusory terms, that within a reasonable degree of medical certainty the reduction devices were not properly used, Patient's heels were not timely and properly off the bed, Patient's sheets should have been cleaned more often, and Patient's skin was not cleansed at an appropriate rate. Plaintiff's expert did not specify the proper time intervals for those procedures as compared with the care Patient received. This expert does not set forth the standard of care. The most elaboration plaintiff's expert delineated of inappropriate care was that SIUH did not turn and reposition Patient at appropriate intervals, which he says should have been every two hours. However, plaintiff's expert does set forth how SIUH's protocols were not within good and accepted medical practice. Plaintiff's expert's opinion lacks specificity and does not raise a triable issue of fact.

SUMMARY JUDGMENT IN A MEDICAL MALPRACTICE ACTION

A hospital may be held vicariously liable for the negligence or malpractice of medical professionals who are employees or act as its agents (*see Hill v St. Clare's Hosp.*, 67 NY2d 72, 79 [1986], *citing Bing v Thunig*, 2 NY2d 656 [1957]). In order to establish liability of a hospital for medical malpractice, a plaintiff must prove that the hospital staff deviated or departed from accepted community standards of practice, and that such departure was a proximate cause of plaintiff's injuries (*see Spilbor v Styles*, 191 AD3d 722, 722 [2d Dept 2021], *quoting Stukas v Streiter*, 83 NY3d 18, 23 [2011]).

In moving for summary judgment, a defendant must establish, prima facie, either that there was no departure or that any departure from accepted community standards of practice was not a proximate cause of plaintiff's injuries (*see Spilbor v Styles*, 191 AD3d at 722). Once a defendant has made such a showing, the burden shifts to plaintiff to submit evidentiary facts or materials to rebut the prima facie showing by the defendant (*id.*).

"Summary judgment is a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues" (*Stukas v Streiter*, 83 NY3d 18, 23). "The function of the court on a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist" (*Kolivas v Kirchoff*, 14 AD3d 493, 493 [2d Dept 2005], *cited by Stukas v Streiter*, 83 NY3d at 23]). "To defeat summary judgment, the nonmoving party need only raise a triable issue of fact with respect to the element of the cause of action or theory of nonliability that is the subject of the moving party's prima facie showing" (*Silveri v Glaser*, 166 AD3d 1044, 1047 [2d Dept 2018]).

In the case at hand, defendant established, prima facie, that there was no departure from accepted community standards of practice, and that if there were a departure it was not a proximate cause of plaintiff's injuries. Although defendant has made such a showing, plaintiff has not met his burden of submitting evidentiary facts or materials to rebut the prima facie showing by the defendant.

CONCLUSION

Accordingly, it is hereby,

ORDERED, defendant New Vanderbilt's motion dismissing the claims was unopposed, and is granted; and it is further,

ORDERED, that defendant SIUH's motion dismissing claims of medical malpractice is granted.

This constitutes the decision and order of the court.

ENTER,

Dated: January 24, 2021

A.J.S.C.

Hon. Charles M. Troia
Acting Supreme Court Justice