Ahedor v Cornell Univ.
2021 NY Slip Op 33770(U)
May 11, 2021
Supreme Court, Tompkins County
Docket Number: Index No. EF2020-0395
Judge: Joseph Cassidy

STATE OF NEW YORK
SUPREME COURT

COUNTY OF TOMPKINS

Michael AHEDOR, Adjoa AHEDOR
John AHEDOR

vs.

CORNELL UNIVERSITY

DECISION and ORDER
Motion (Summary Judgment)

EF 2020-0395

Background Facts and Proceedings

The following facts are undisputed: the plaintiff Michael Ahedor is a young person who began attending Cornell University as an undergraduate engineering student in 2017. In 2019, he agreed to serve as a student assistant (SA) at Cornell University. He agreed to undergo training for this position at Cornell beginning August 13, 2019. Michael left his home in Norman, Oklahoma on August 11, 2019 and traveled by plane to Ithaca, New York. Upon arrival at the airport in Syracuse, New York, he found that his luggage was missing. Michael arrived in Ithaca on August 12, 2019. Upon arrival in Ithaca, New York, Michael was sleep-deprived and thoroughly exhausted. On August 13, 2019, Michael reported for the SA training.[1] The supervisor for Michael's SA training was an Assistant Dean, Amanda Carreiro. The training consisted of teambuilding exercises among the students, some physical, some intentionally silly.

Michael Ahedor asserts that, as a result of being sleep-deprived and fatigued from his travel and the complications of losing his luggage, he started to feel a loss of energy and enthusiasm for the physical challenges of the SA training. On August 15, 2019, Ms. Carreiro talked to Michael on the side and suggested to

[1] Michael asserts he "was the only black male in the group of SA trainees." This allegation was relevant to the initial *unlawful discrimination* cause of action (now withdrawn,) and is perhaps relevant to the continuing *negligence* claim. Michael also asserts he was part of a group of nine students in SA training, "being four males and five females." The assertion and assumption of the racial and gender identification of the *other* students is without any foundation and appears irrelevant to any cause of action.

him that he speak to a counselor at Cornell's Health Center. Michael accepted Ms. Carreiro's suggestion, and they walked together to Cornell Health.

At Cornell Health, Michael was not examined by any physician or nurse practitioner. He says he was attended to by a social worker, Lisa Berki. He was taken by ambulance to the behavioral unit of Cayuga Medical Center, a hospital in Ithaca, New York, near Cornell.

Michael Ahedor asserts that he agreed to be evaluated there for a sleep disorder evaluation, not for other mental health issues.

Plaintiffs (Michael Ahedor and his parents, Adjoa and John Ahedor) commenced this action on August 12, 2020. Initially, they brought four causes of action against the university, as follows:

(1) A claim for *medical malpractice* made against the university by student Michael Ahedor and his parents, Adjoa and John Ahedor.

(2) A claim of *false imprisonment* made against the university by student Michael Ahedor and his parents, Adjoa and John Ahedor.

(3) A claim of *tortious interference* made against the university by student Michael Ahedor and his parents, Adjoa and John Ahedor.

(4) A claim of *unlawful discrimination* made against the university by student Michael Ahedor and his parents, Adjoa and John Ahedor.

The Defendant filed a Motion to Dismiss on September 9, 2020, asserting and arguing as follows:

(1) The claim of *medical malpractice* should be dismissed because the plaintiff failed to include the required certificate of merit. With regard to the parent-plaintiffs, there was no alleged malpractice upon them, so their only potential claim would be for unpaid medical expenses of an adult child for medical care that occurred prior to the child's twenty-first birthday (and the complaint did not allege these facts.)

(2) The claim *false imprisonment* should be dismissed because, first, the pleading of that cause of action was insufficient, vague and confusing: "the actions of Cornell" led to the false imprisonment of Michael Ahedor during his transportation to the hospital, and to his being held against his will by the hospital. (The plaintiff Michael Ahedor admits he consented to go the hospital for a sleep evaluation. The hospital is not a defendant, nor is it part of Cornell University.) Second, defendant argues Michael Ahedor never articulated, nor does the complaint describe a necessary element of the tort *false imprisonment*, to wit, the victim's consciousness of confinement. *Broughton v. State of New York*, 37 N.Y. 2d 451, 456 (1975).

(3) The claim of *tortious interference* should be dismissed because the contract in question was between the plaintiff Michael and the defendant university. Tortious interference is when some third party (not a party to the contract) knowingly interferes with a contract between others, causing a breach and damages. *White Plains Coat & Apron Company vs. Cintas Group*, 8 N.Y. 2d 530, 532 (2007).

(4) The claim of *unlawful discrimination* must be dismissed under New York State *Executive Law* § 297, since the plaintiff Michael Ahedor filed a claim under New York State Human Rights Law, precluding the commencement of that cause of action in Supreme Court. The Division of Human Rights made a finding of *No Probable Cause* just prior to the filing of the first Summons and Complaint.

The Court scheduled a motion return date for oral argument on October 2, 2020. The plaintiffs did not file any pleadings in response to the motion pursuant to CPLR or the court's rules, and then failed to appear for oral argument that day. The Court granted the motion to dismiss.

The Court soon received correspondence from the plaintiff apologizing for failing to respond or appear, and asking for a conference. The defendant agreed to a conference without any formal motion. At the conference held October 15, 2020, the Court agreed to place the matter back on the calendar on November 13, 2020. Thereafter, plaintiff (1) made an application to extend the filing date to respond to the defendant's motion to dismiss in order to reopen the case, (2) filed an Amended Complaint with additional supporting evidence, (3) opposed the defendant's motion to dismiss, and (4) filed a cross-motion to add new defendants.

In the new complaint, the plaintiffs name the following causes of action: (1) Medical malpractice by defendant Cornell; (2) False Imprisonment by defendant Cornell; (3)Tortious interference by defendant Amanda Carreira; and (4) Negligence by defendant Cornell.

The plaintiffs continued to accuse the university of *medical malpractice*. The defendant Cornell acknowledged that the certificate of merit was filed. The plaintiffs appear to have considered suing an individual, Lisa Berki, licensed social worker and an employee of the university, for medical malpractice as well. But they do not ever allege any wrongdoing by Lisa Berki in the complaint, nor is she listed in the "As and For a First Cause of Action" section of the complaint, where only Cornell University is alleged to have engaged in actions constituting *medical malpractice*. The only allegations of medical malpractice described are that once Michael Ahedor was brought to the university's health center, he never saw a physician or a nurse practitioner, and on the recommendation of a person unknown to him was errantly sent to the hospital for observation.

The plaintiffs maintained their claim of *false imprisonment* against Cornell University alone in their second cause of action.[2]

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[2] The plaintiffs, in their Memorandum of Law in Support of the Amended Complaint and Cross Motion, imply they considered bringing a claim of unlawful imprisonment and tortious interference against both Berki and Carreiro. Nowhere in the complaint do the plaintiffs make allegations of unlawful imprisonment against either, nor do they name either in that cause of action. They do not name Berki in any cause of action, nor do they make any allegations of tortious interference by Berki in the Complaint.

Plaintiffs withdrew their claim for *tortious interference* against Cornell acknowledging there was no basis in fact or law to have ever made that allegation. Instead, they sought to sue an individual employee, Amanda Carreiro, for *tortious interference* by adding her as a defendant individually.

The plaintiffs also withdrew their claim of unlawful discrimination, recognizing the statutory prohibition on that cause of action in this case. However, they alleged *negligence* by the Cornell University, citing the same behaviors by the university they earlier described (in the original Complaint) as unlawful discrimination.

The defendants maintained their motion to dismiss on the modified causes of action and opposed the motion for permission to add new defendants to the case.

Law and Discussion

I Plaintiffs' untimely application to extend the filing date to respond to the defendant's motion to dismiss (and to reopen the case)

This application is granted.

II Plaintiffs' application to file an Amended Complaint with additional supporting evidence

This application in granted.

III Plaintiff's Cross Motion for Joinder

In their Memorandum of Law in Support of the Amended Complaint and Cross Motion, the plaintiffs state:

> Plaintiffs also seek to add Amanda Carreira and Lisa Berki as a [sic] parties to the action. Their negligent actions, among others, directly led to Michael's unlawful imprisonment, and constructive termination from employment. Complaint [16 -25.] Amanda Carreiro tortiously interfered with Michael's contract of employment. Lisa Berki, the Social Worker at

Cornell Health who attended to Michael was negligent in her treatment of Michael. As a courtesy, Plaintiffs had originally opted to not name them individually. However, in light of Cornell's position that Cornell cannot interfere in its own contract, the pleading has been amended to add two individuals in the employ of Cornell who were directly negligent toward Michael and whose actions led to, among other things, the end of his employment as a Student Assistant.

With regard to Lisa Berki, she is not named as a defendant who has committed medical malpractice in the Amended Complaint. She is not accused in the complaint of any wrongdoing at all. The only mention of her is that she "attended to" the plaintiff Michael Ahedor. Given the conclusory statement in the memorandum above, perhaps it was the intention of the plaintiffs to name Lisa Berki in the "And As For a Fourth Cause of Action" negligence section of the complaint, but they failed to do that, despite the granting of a substantial extension of time for the plaintiffs to respond to and amend pleadings. While the plaintiffs argue that Lisa Berki's (and Amanda Carreira's) negligent actions, among others, directly led to Michael's unlawful imprisonment and his constructive termination from employment, it is unclear who is alleged to have committed the unlawful imprisonment, constructive termination, etc.

The Cross Motion to Join Lisa Berki as a Defendant is denied.

With regard to Amanda Carreira, she is only named as a defendant in the "And As For a Third Cause of Action" Tortious Interference section of the Complaint. But the plaintiffs must allege an intentional procurement of the breach of contract by a third party, and "plaintiffs must show that the defendant's intent was 'solely malicious.'" *Williams Oil Co., Inc. v. Randy Luce E-Z Mart One, LLC.*, 302 A.D.2d 736, 739, 757 N.Y.S.2d 341, 344 (3d Dep't 2003). "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142, 59 N.Y.S.3d 598, 601 (2017). The

plaintiffs have not asserted facts in support of this element of tortious interference. The facts asserted in the plaintiffs' complaint would tend to support the far likelier finding that Amanda Carreira was concerned for Michael Ahedor's mental and emotional state and that she was trying to help him, not maliciously attempting to interfere with his contract.

The Cross Motion to Join Amanda Carreira as a defendant is denied. The claim of *tortious interference* is dismissed.

Medical Malpractice

A claim sounds in medical malpractice when the gravamen of the complaint is "negligence in furnishing medical treatment to a patient." *Bleiler v. Bodnar*, 65 N.Y.2d 65, 73, 489 N.Y.S.2d 885, 479 N.E.2d 230 [1985]. "Conduct may be deemed malpractice, rather than negligence, when it 'constitutes medical treatment or bears a substantial relationship to the rendition of medical treatment by a licensed physician'." *Scott v. Uljanov*, 74 N.Y.2d 673, 674–675, 543 N.Y.S.2d 369, 541 N.E.2d 398 [1989].

Compare the allegations here to those in *Martuscello*, a Third Department case in which the plaintiff alleged she had been a patient for many years of the defendant doctor, the doctor knew of her many chronic illnesses, knew she was at an increased risk of falling, and had specifically provided her with "fall prevention counseling" in the past. During an appointment, she fell from an examination table, unsecured and unsupervised by any staff. The Court, reviewing whether the claim sounded in malpractice or negligence found, "the issue devolves to whether medical judgment is required or not; where the underlying claim arises from the failure to follow a medical order previously made or to apply standards of ordinary care, then it is negligence, without regard to whether expert testimony is deemed helpful to the resolution. However, where the conduct involves a standard established by means of the exercise of medical judgment, then it is malpractice." *Martuscello v Jensen*, 134 AD3d 4, 11 [3d Dept 2015].

The Plaintiff has made general factual allegations regarding the conduct of non-physician, non-nurse university staff as they reacted to his own admitted physical, emotional, and mental unease. But the incompetence alleged in this case is not of a specialized medical nature, deriving from the physician-patient relationship; the allegations do not describe any defendant's conduct related to medical diagnosis. Therefore, the action it gives rise to is one of negligence, not malpractice. See *Spatafora v. St. John's Episcopal Hosp.*, 209 A.D.2d 608 [1994].

False Imprisonment

The plaintiff did not cure the defect that existed in the original Complaint; to wit, he continues to fail to state an element of the cause of action. The tort of *false imprisonment* requires that the unlawfully or falsely imprisoned person be aware of the imprisonment. The plaintiff, Michael Ahedor, admits he agreed to go to the hospital, though he says he agreed to a sleep evaluation only. Nonetheless, even in the Amended Complaint, he did not state he was aware of being falsely imprisoned, or aware that his movements were being limited involuntarily. This cause of action is dismissed.

Negligence

The Court has construed the pleadings liberally, assumed the plaintiffs' factual statements are true, and has afforded the plaintiffs favorable inferences. However, only this cause of action survives the defendant's Motion to Dismiss. The plaintiffs have alleged that the university, through staff, failed to meet a standard of care in working with a student. The allegations in the complaint and the plaintiffs' supporting papers allege that university staff attempted to assess, but misconstrued, the nature of Michael's suffering, or the degree to which Michael was a danger to himself or others, and that he suffered damages from their assessment and/or their actions. His parents maintain their claim for the unpaid medical expenses of their child (who was younger than twenty-one at that time.)

"New York has affirmatively rejected the doctrine of in loco parentis at the college level and colleges in general have no legal duty to shield their students from the dangerous activity of other students." *Eiseman v. State of New York*, 70 N.Y.2d at 190, 518 N.Y.S.2d 608, 511 N.E.2d 1128 [1987]. A duty, however, may be imposed upon a college where it has encouraged its students to participate in an activity and taken affirmative steps to supervise and control the activity. *Pasquaretto v Long Is. Univ.*, 106 AD3d 794, 795-96 [2d Dept 2013]. Under the circumstances alleged by the plaintiff Michael Ahedor, the Court denies the Motion to Dismiss the *negligence* cause of action. The plaintiff-parents may continue to seek unpaid medical expenses.

Conclusion

This is the decision of the Court. Paper discovery should be completed within ninety days. Discovery should be completed in one-hundred and twenty days. The defendant may submit an Order in accordance with this decision, dismissing three of the four causes of action. The parties may seek a pre-trial conference.

Ithaca, New York
May 11, 2021

Joseph Cassidy, Judge
(Acting) Tompkins County
Supreme Court

Entered 05/13/2021