Williams v New York City Health & Hosps. Corp.
2023 NY Slip Op 33325(U)
September 22, 2023
Supreme Court, Kings County
Docket Number: Index No. 500065/2018
Judge: Consuelo Mallafre Melendez

At an IAS Term, Part 7 of the Supreme Court of the State of NY, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22nd day of September 2023.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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SHAMEKA WILLIAMS and WOODY AARON DUTON,

Plaintiffs,

-against-

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION and KINGS COUNTY HOSPITAL CENTER,

Defendants.

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DECISION & ORDER

Index No. 500065/2018
Mo. Seq. 4

HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.

Recitation, as required by CPLR §2219 [a], of the papers considered in the review:
NYSCEF #s: 84 – 85, 86 – 105, 106 – 108, 111, 112 – 114, 115, 116, 117 – 118

Defendant NEW YORK CITY HEALTH AND HOSPITALS CORPORATION s/h/a NEW YORK CITY HEALTH AND HOSPITALS CORPORATIONS and KINGS COUNTY HOSPITAL ("NYC Health + Hospitals"), moves for summary judgement, pursuant to CPLR R. 3212, on the grounds that no issue of material fact exists such as would warrant a trial of this matter against them, and dismissing the complaint of, SHAMEKA WILLIAMS and WOODY AARON DUTON ("Plaintiffs").

In reply, Defendant NYC Health + Hospital argues that Plaintiffs fail to provide any evidentiary basis for opposition because they fail to submit an expert affirmation to raise an issue of fact regarding the claimed deviation from medical standards of practice, a requirement for establishing physician liability and proximate cause. In addition, Defendant also claims that plaintiffs fail to comply with 22 NYCRR 202.8-6 in that they did not convert Defendants Statement of Material Facts.

In order to establish the liability of a physician for medical malpractice, a plaintiff must prove that the physician "deviated or departed from accepted community standards of practice, and that such departure was a proximate cause of the plaintiff's injuries." *Hutchinson v. New York City Health and Hosps. Corp.*, 172 AD3d 1037, 1039 [2d Dept. 2019] citing *Stukas v. Streiter*, 83 AD3d 18, 23 [2d Dept. 2011]. "Expert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause." *Navarro v. Ortiz*, 203 AD3d 834, 836 [2d Dept 2022]. Thus, without expert testimony, there is no prima facie evidence for the showing of medical malpractice.

Plaintiffs allege that the care and treatment rendered to Ms. Williams did not meet the necessary standards of medical practice, thus constituting medical malpractice; as such, she claims she was falsely imprisoned at Kings County Hospital's psychiatric unit. Plaintiffs also allege that Kings County failed to properly diagnose and treat Ms. Williams' condition, resulting in further injury and an extended period of medical treatment in Kings County Hospital.

As to Plaintiffs claims that the admission of SHAMEKA WILLIAMS to Kings County Hospital was a false imprisonment, Defendants offered expert testimony of board-certified psychiatry expert Dr. Fayer. Dr. Fayer opined to a reasonable degree of medical certainty that Ms. Williams' emergency admission pursuant to MHL §9.39 and its subsequent conversion to a 2 P.C. admission pursuant to MHL §9.27 were entirely appropriate and in accordance with accepted standards of practice. Per Dr. Fayer's expert opinion, Ms. Williams met the criteria for emergency psychiatric admission under MHL §9.39 because there was reasonable cause to believe that she had a mental illness for which immediate observation, care and treatment in a hospital were warranted when she presented to Kings County Hospital on January 9, 2017. Thus, Defendant provides expert testimony from Dr. Fayer to establish that Plaintiff's admission to Kings County Hospital was lawful. In Dr. Fayer's opinion, Ms. Williams was properly admitted

to Kings County Hospital in compliance with Mental Hygiene Law ("MHL") § 9.39 and that her admission was timely and appropriately converted to a "two physician certify" or "2 P.C." admission under MHL §9.27 because she remained symptomatic. Indeed, the certified medical records submitted in support of the motion demonstrate that she was evaluated by Dr. Paul O'Keefe on January 9, 2017, and by Dr. Quazi Rahman on January 10, 2017. Also contained within the annexed certified medical record is the evaluation and application to convert her emergency status to a two physician certificate involuntary admission pursuant to MHL §9.27 on January 18, 2017, with the certifications from psychiatrists Dr. Anthony Dedousis and Dr. Rahman.

Dr. Fayer also opines that Ms. Williams' condition was properly diagnosed and that medications were necessary and appropriately administered to treat her condition. Per Dr. Fayer's expert testimony, Ms. Williams's emergency psychiatric hospitalization followed MHL §9.39 standards, wherein a person must present as a substantial risk of physical harm to himself or other persons in order to be held for immediate observation, care and treatment. Dr. Fayer opines that Ms. Williams met the criteria for emergency psychiatric admission under MHL §9.39 because there was reasonable cause to believe that Ms. Williams needed emergency psychiatric admission due to symptoms showing severe psychotic and manic episode and unpredictable behavior. Dr. Fayer also opines that Ms. Williams was timely evaluated by at least two psychiatrists within forty-eight hours, per the standards under MHL §9.39. It is Dr. Fayer's expert opinion that Ms. Williams' 9.39 admission was properly converted to a 2 P.C. admission pursuant to MHL §9.27 on January 18, 2017, because she was still symptomatic. Further, his testimony opines that none of Ms. Williams' alleged injuries were the result of any negligent acts or omissions by NYC Health + Hospitals.

Thus, Defendant met the initial burden of establishing the burden of proof. On a motion for summary judgment dismissing a cause of action alleging medical malpractice, the defendant bears the initial burden of establishing that there was no departure from good and accepted medical practice or that any alleged departure did not proximately cause the plaintiff's injuries *Revellino v. Haimovic*, 216 A.D.3d 687 [2d Dept 2023]. If the defendant makes such a showing, the burden shifts to the plaintiff to raise a triable issue of fact as to those elements on which the defendant met its prima facie burden of proof. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986); *Lau v. Wan*, 93 A.D.3d 763 [2d Dept 2012]. However, Plaintiff fails to provide any evidence in opposition and lacks the necessary expert testimony to create a material issue of fact.

Here, Plaintiff fails to raise an issue of fact for medical malpractice claims against Defendant because they do not submit an expert affirmation attesting to the standard of care and opining as to the claimed departures. Expert testimony is necessary to establish liability and causation when the allegations and damages asserted depend upon "professional or scientific knowledge or skill not within the range of ordinary training or intelligence," such as medical malpractice. *Shi Pei Fang v. Heng Sang Realty Corp.*, 38 A.D.3d 520 [2d Dept 2007] [internal citations omitted]. "'Expert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause.'" *McAlwee v. Westchester Health Assoc.,* PLLC, 163 A.D.3d 549, 551 [2d Dept 2018], quoting *Burns v. Goyal*, 145 A.D.3d 952, 954 [2d Dept 2016]. Plaintiff's lack of expert testimony makes for an incomplete showing of an issue of material fact, allowing summary judgement to be granted for Defendant.

Furthermore, as noted above, Plaintiffs arguments about the claimed unprivileged admission is not supported by the evidence and does not raise an issue of fact to defeat defendant's prima facie showing of entitlement to summary judgment as to this issue. As

discussed, defendants, through their submissions and the opinions of their expert, established that proper procedure was followed for Ms. William's admission.

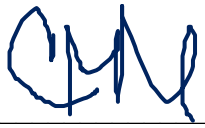
Lastly, plaintiff's dissatisfaction with Judge Mostofsy's Order, which deemed the filing of the 2 P.C. papers proper and timely, was not supported by the proper remedy. The proper remedy would have been to move for leave to appeal or for leave to vacate the order, which was not done here. Notably, plaintiffs also could have made a motion to have Ms. Williams released, as instructed by Judge Mostofsky. Plaintiffs, however, never made such an application before she was discharged on March 10, 2017.

In addition, Plaintiffs claims on loss of consortium is derivative in nature to the claim of medical malpractice. The cause of action does not exist independent of the injured spouse's right to maintain an action for injuries sustained. *Klein v. Metro. Child Servs.*, Inc., 100 A.D.3d 708, 711 [2d Dept 2012]. That is to say, the loss of consortium claim cannot survive the dismissal of the main claim, medical practice. Therefore, this claim is dismissed.

Accordingly, summary judgment is GRANTED as to all claims for medical malpractice and negligence related to New York City Health and Hospitals Corporation. The action against New York City Health and Hospitals Corporation is dismissed in its entirety, with prejudice and the Clerk of the Court is directed to enter judgment in their favor.

This constitutes the decision and order of the court.[1]

ENTER.



Hon. Consuelo Mallafre Melendez
J.S.C.

[1] This decision was drafted with the assistance of intern, Ruby Rose Moscone, Brooklyn Law School.