

Francois v Garner

2023 NY Slip Op 34039(U)

November 14, 2023

Supreme Court, New York County

Docket Number: Index No. 160344/2023

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

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FRITZ FRANCOIS, MD, MSC, FACG, EXECUTIVE VICE
PRESIDENT AND VICE DEAN, CHIEF OF HOSPITAL
OPERATIONS, NYU LANGONE HOSPITALS,

Plaintiff,

- v -

ZABER GARNER,

Defendant.

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INDEX NO. 160344/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION, ORDER +
JUDGMENT ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 7, 8, 9, 10, 11, 12
were read on this motion to/for DISCHARGE

Petitioner NYU Langone Hospitals (the "Hospital"), filed the instant petition by order to show cause on October 23, 2023, seeking a judgment pursuant to Public Health Law §2801-c requiring Respondent—a patient at one of Petitioner’s hospitals—to discharge herself from the Hospital. Petitioner also requested that the court’s records of this special proceeding be sealed, pursuant to 22 NYCRR §216.1.

A virtual hearing was held on November 13, 2023, with appearances by: petitioner; counsel for petitioner, Tammy R. Lawlor, Esq; and Respondent’s court-appointed counsel Kenneth Barocas, Esq.. Respondent declined to speak with Mr. Barocas in advance of the hearing and at the scheduled hearing refused to testify or otherwise participate in the hearing.

At the hearing, testimony was given by Dr. Rogelio Cruz. Dr. Cruz detailed the care received by the respondent through her course of admission at the Hospital and represented that the Hospital’s medical staff had determined that inpatient care was no longer medically necessary

for respondent. Dr. Cruz further testified that respondent's presence in the Hospital bed at the hospital had deprived other patients with acute medical needs of such a bed. Dr. Cruz testified to the service of two discharge notices, dated September 27, 2023 and September 29, 2023, upon respondents (See NYSCEF Doc. Nos. 2 and 3).

DISCUSSION

The Petition is granted. Pursuant to 10 NYCRR §405.9(f)(7)(ii), once a patient is medically discharged from a hospital, she must leave that hospital. Under Public Health Law §2801-c, this Court has the authority to enjoin a violation of 10 NYCRR §405.9(f)(7)(ii) (See Matter of United Health Services Hosps., Inc. v J.W., 47 Misc 3d 1202(A) [Sup Ct, Broome County 2013]; New York Methodist Hospital v. EH, 25 Misc 3d 648 [Sup Ct, Kings County, 2009]; Wyckoff Heights Medical Center v Rodriguez, et al, 191 Misc 2d 207 [Sup Ct, Kings County, 2002]).

In this case, petitioner has established that respondent does not require acute hospital care and that the predicates to her discharge set forth in 10 NYCRR §405.9(7) (i.e., that respondent's discharge was based on her medical assessment by the hospital and that respondent received proper written notice of her discharge and was afforded the opportunity to appeal the discharge determination) have been satisfied. Finally, petitioner has established that respondent refuses to cooperate with her discharge plan and that this refusal "deprives the public and other needy patients of a bed at petitioner's hospital to meet their acute medical needs" (New York Methodist Hospital v. EH, 25 Misc 3d 648 [Sup Ct, Kings County, 2009]). Accordingly, the Court concludes that the mandatory injunction sought by petitioner is warranted (Id.; see also Wyckoff Heights Medical Center v Rodriguez, et al, 191 Misc 2d 207 [Sup Ct, Kings County, 2002]).

In light of the foregoing, it is

ORDERED and **ADJUDGED** that the Petition is granted; and it is further

ORDERED that pursuant to Public Health Law Section 2801-C, Zader Garner is directed to voluntarily discharge herself forthwith from NYU Langone Hospital within twenty-four (24) hours from the signing of this decision and order and to accept placement in any appropriate sub-acute rehabilitation facility that offers a bed for admission, including but not limited to Hempstead Park Nursing Home, located at 800 Front Street, Hempstead, New York 11550, pending insurance approval, or Mayfair Care Center, located at 100 Baldwin Road, Hempstead, New York 11550, pending insurance approval; and it is further

ORDERED that if Zader Garner refuses to comply with this decision and order, a warrant of eviction shall be issued to remove her from NYU Langone Hospital; and it is further

ORDERED that upon execution of the warrant of eviction, if Zader Garner then chooses to be placed in an appropriate sub-acute rehabilitation facility, as set forth above and recommended by the Petitioner, then she may voluntarily transfer herself to said facility; if Zader Garner continues to refuse to voluntarily transfer herself to an appropriate sub-acute rehabilitation facility, then the New York County Sheriff shall remove Zader Garner from NYU Langone Hospital by reasonable and necessary force; and it is further

ORDERED that counsel for petitioner is directed to serve a copy of this decision, judgment, and order on respondent and respondent's counsel on or before November 15, 2023; and it is further

ORDERED that counsel for petitioner is further directed to serve a copy of this decision, judgment, and order, with notice of entry, on the Clerk of the Court (60 Centre St., Room 141B)

and the Clerk of the General Clerk's Office (60 Centre St., Rm. 119), within ten days of the date of this decision, judgment and order; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that, upon such service, the Clerk of the Court is directed to seal this order and the papers upon which it is based except to the parties, their attorneys of record, and authorized court personnel; and it is further

ORDERED that petitioner shall pay the agreed upon sum of \$1,000.00 to Kenneth Barocas, Esq. as Court Appointed Counsel for Zader Garner in this proceeding.

This constitutes the decision and order of the Court.

11/14/2023
DATE


HON. JUDY H. KIM, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE	<input type="checkbox"/>	