

Kaur v Jamaica Hosp. Med. Ctr.

2022 NY Slip Op 34808(U)

June 7, 2022

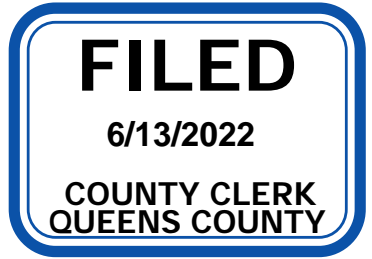
Supreme Court, Queens County

Docket Number: Index No. 707784/2017

Judge: Peter J. O'Donoghue

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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, PETER J. O'DONOGHUE IAS PART MD Justice

RANBIR KAUR,

Index No.: 707784-2017

Plaintiff,

-against-

Motion Date: 01/26/2022

Motion Seq. No.: 6

JAMAICA HOSPITAL MEDICAL CENTER, a/k/a JHMC WOMEN'S HEALTH CENTER and ELAINE L. BROWN, N.P .,

Defendants

The following papers numbered as set forth below and read on this motion by defendants for an Order:

- (a) Pursuant to CPLR Rule 3212, granting summary judgment to, and dismissing the Complaint against, Defendants with prejudice, on the basis that the care and treatment provided by Defendants was neither a proximate cause of, nor a substantial factor in, the alleged injuries and damages sustained by Plaintiff; and/or, (b) Pursuant to CPLR Rule 3212, granting partial summary judgment to, and dismissing certain allegations of negligence against, Defendants with prejudice, on the basis that the care and treatment provided by Defendants conformed with good and accepted medical practice; and/or, (c) Directing the entry of judgment in favor of Defendants; and, (d) For such other and further relief as this Court may deem just and proper; and cross motion by plaintiff for an order (a) pursuant to CPLR Rule 3025 and CPLR RULE 3025(b) permission to amend/supplement the bill of particulars to articulate more specific acts of alleged to be committed by defendants. (b) That the proposed Amended/Supplemental Bill of Particulars be deemed properly served as it was served with the current motion.

PAPERS NUMBERED

N.M.-Affidavits-Exhibits..... 180-191
N.C.M. Papers-Affidavits-Exhibits..... 205-229
Opposition Papers-Affidavits-Exhibits..... 230-253;258-261
Reply Papers-Affidavits-Exhibits..... 262; 271-273

Upon the foregoing papers it is ordered that the within motion by defendant for an Order pursuant to CPLR Rule 3212, granting summary judgment to, and dismissing the Complaint against Defendants with prejudice, on the basis that the care and treatment provided by Defendants was neither a proximate cause of, nor a substantial factor in, the alleged injuries and damages sustained by Plaintiff is granted.

Defendants established their *prima facie* entitlement to summary judgment through the submission of the expert affirmation of ADIEL FLEISCHER, M.D a physician Board Certified in Obstetrics and Gynecology, as well as Maternal-Fetal Medicine. Dr. Fleischer acknowledges that a question of fact exists with respect to the issue of "whether plaintiff informed defendants of the purportedly decreased/infrequent fetal movements, and (2) if so, the advice that defendants purportedly gave to plaintiff regarding same". However, Dr. Fleischer proceeds to opine that there "is the lack of causation between the purported malpractice, and the fetal demise" and that the cause of fetal death, as reflected in the autopsy report, "was a placenta abruption, and/or secondarily, a cord accident" as opposed to any alleged departure.

Plaintiff submits in opposition the affidavit of Gary R. Brickner, M.D, a physician licensed to practice obstetrics and gynecology. Dr. Brickner opines that "defendants' failure to administer the fetal assessment tests in response to decreased fetal movement was a deviation from the accepted standard of care in the relevant medical community ... The defendants' failure to administer these tests was a proximate cause of the fetal demise ... The defendants' failure to administer these tests was a proximate cause of the plaintiff's injuries (unnecessary procedure to remove the fetus, anxiety, stress, and other mental injuries)." Dr. Brickner failed to provide any explanation concerning the cause of the fetal demise as reflected in the hospital records or autopsy report or how the failure to perform unspecified tests was related to the cause of the fetal demise. These conclusory statements are insufficient to raise a question of fact sufficient to defeat the within motion. In addition, Dr. Brickner failed to address the specific assertions raised by Dr. Fleischer (*see Choida v Schirripa*, 188 AD3d 978, 980 [2d Dept 2020]).

Dr. Brickner also opines that defendant Elaine L. Brown, NP failed to immediately have plaintiff evaluated by a Maternal Fetal Medicine Specialist after receiving a value of 6.2 on the hemoglobin Al test; that this failure was a proximate cause of the intrauterine fetal demise (IUFD); and a proximate cause for plaintiff's resulting injuries (unnecessary procedure to remove the fetus, anxiety, stress, and other mental injuries.

Initially, Dr. Brickner failed to set forth the source of his qualifications to render an opinion regarding the plaintiff's alleged psychological injuries. Furthermore, this theory of liability and causation were not pled in the Bill of Particulars and are being improperly raised for the first time in opposition to the motion. (See generally Alvarez v Prospect Hosp., 68 NY2d 320, 327, 501 NE2d 572, 508 NYS2d 923 [1986]; Stukas v Streiter, 83 AD3d 18, 23-24, 918 NYS2d 176 [2011].) . In addition, the plaintiffs' expert failed to address the specific assertions raised by Dr. Fleischer (see Choida v Schirripa, 188 AD3d 978, 980 [2d Dept 2020]).

The cross motion by plaintiff for an order (a) pursuant to CPLR Rule 3025 and CPLR RULE 3025(b) permission to amend/supplement the bill of particulars to articulate more specific acts of alleged to be committed by defendants; (b) That the proposed Amended/Supplemental Bill of Particulars be deemed properly served as it was served with the current motion is denied.

Dated: June 7, 2022

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Peter J.O'Donoghue, J.S.C.

