

Dale v Paciuc

2024 NY Slip Op 34036(U)

September 7, 2024

Supreme Court, Kings County

Docket Number: Index No. 516905/2018

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

At Part 80 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Brooklyn, New York, on the 7th day of September 2024.

P R E S E N T :

Hon. Genine D. Edwards, Justice

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BRENILDA DALE,

Plaintiff,

Index No. 516905/2018

-against-

JOHN PACIUC, M.D., MIDTOWN HEALTH CENTER,
and KONSTANTIN ZAKASHANSKY, M.D.,
Defendants.

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The following e-filed papers read herein:

NYSCEF Nos.:

| | |
|---|---------|
| Notice of Motion, Affirmation, and Exhibits..... | 147-161 |
| Affirmation in Partial Opposition and Exhibits..... | 183-184 |
| Affirmation in Reply | 185-186 |

In this action for medical malpractice, negligence, and lack of informed consent, defendant John Paciuc M.D. (“Dr. Paciuc”) moved pursuant to CPLR §3211 (a)(5), seeking dismissal of allegations of negligence against him regarding treatment provided on and prior to July 9, 2015, on the grounds that plaintiff’s claims are barred by the expiration of the statute of limitations. Brenilda Dale (“plaintiff”) partially opposed defendant’s motion.

FACTS

Dr. Paciuc was plaintiff’s gynecologist from December 2008 through September 2016. In April 2011, Dr. Paciuc performed a supracervical hysterectomy and bilateral salpingo-oophorectomy on plaintiff, resulting in the removal of plaintiff’s uterus, fallopian tubes, and

ovaries. Plaintiff saw Dr. Paciuc in May and June of 2011 for post-operative evaluations. Plaintiff's next visit occurred in June 2012, for an annual physical examination. Plaintiff continued to see Dr. Paciuc for her annual gynecological examinations.

In 2015, plaintiff expressed concern regarding her health as her older sister was recently diagnosed with Stage IV ovarian cancer. Dr. Paciuc referred plaintiff for BRCA genetic testing and for a pelvic sonogram due to complaints of left-sided pelvic discomfort. Dr. Paciuc testified that the BRCA test results were negative, and he recommended against removal of plaintiff's ovaries. However, plaintiff testified that the BRCA test was positive. Dr. Paciuc testified that despite these results and his recommendation, he wanted a second opinion from a gynecological oncologist and referred plaintiff to Konstantin Zakashansky, M.D. ("Dr. Zakashansky"). Dr. Paciuc also testified that his operative report for the 2011 surgery was not available to him when he made the referral. At first, Dr. Paciuc testified that he did not recall why he referred plaintiff to Dr. Zakashansky or why he could not perform the surgery himself. Dr. Paciuc subsequently testified that he referred plaintiff to Dr. Zakashansky for a final determination regarding removal of plaintiff's ovaries and fallopian tubes.

Plaintiff and Dr. Zakashansky both testified that Dr. Paciuc informed them that plaintiff's ovaries and fallopian tubes were not removed during her 2011 surgery. Plaintiff testified that she was not encouraged to seek a second opinion, that she had no desire to seek a second opinion, and that Dr. Paciuc would make the final determination regarding performance of the surgery. According to plaintiff, Dr. Zakashansky was supposed to perform the surgery, and she was not supposed to discuss whether she was going forward with the surgery with him. Following a discussion with Dr. Paciuc, and in reliance on the history he provided, Dr. Zakashansky performed surgery to remove plaintiff's ovaries and fallopian tubes on December 9, 2016. A diagnostic

laparoscopy and lysis of adhesions was performed. During this procedure it was discovered that plaintiff's ovaries, fallopian tubes, and uterus were absent.

ANALYSIS

Dr. Paciuc contended that he is entitled to dismissal of the allegations of malpractice regarding the treatment provided on and prior to July 9, 2015, since the statute of limitations expired. The statute of limitations for a medical malpractice claim is two and a half years from the date of the alleged malpractice. CPLR §214-a. This instant action was commenced in August of 2018. While Dr. Paciuc treated plaintiff annually, he argued that the continuous treatment doctrine tolling the statute of limitations does not apply since plaintiff was not seeking treatment for a specific medical condition, but rather sought isolated examinations merely continuing the relationship between physician and patient. *Proano v. Gutman*, 211 A.D.3d 978, 180 N.Y.S.3d 279 (2d Dept. 2022).

Plaintiff did not oppose the specific limited relief sought by Dr. Paciuc. Plaintiff's partial opposition papers merely requested clarification regarding the scope of the specific relief sought by Dr. Paciuc, and to specify that Dr. Paciuc's summary of the allegations was not a complete list of the allegations contained in plaintiff's Bill of Particulars and Amended Bill of Particulars.

Accordingly, it is

ORDERED that Dr. Paciuc's motion seeking dismissal of the allegations of malpractice regarding treatment provided on and prior to July 9, 2015 is granted, and it is further

ORDERED that Dr. Paciuc's counsel is directed to electronically serve a copy of this decision/order with notice of entry upon all counsel and to electronically file an affidavit of service with the Kings County Clerk, and it is further

ORDERED that the parties shall appear for an Alternative Dispute Resolution conference on December 5, 2024, at 11AM.

This constitutes the Decision and Order of this Court.

For Clerks use only

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MD__

Motion Seq.#: 5

ENTER
J.S.C.
HON. GENINE D. EDWARDS

