

**Rosell v New York Presbyt. Hosp.**

2024 NY Slip Op 34020(U)

November 6, 2024

Supreme Court, New York County

Docket Number: Index No. 805378/2018

Judge: Judith N. McMahon

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDITH N. MCMAHON PART 30M

Justice

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INDEX NO. 805378/2018

MARTIN ROSELL,

MOTION DATE 10/31/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

NEW YORK PRESBYTERIAN HOSPITAL, ANDREW WELLS, MING-MING XU, MICHEL KAHALEH, ELIZABETH PARKS

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88

were read on this motion to/for DISMISS

Upon the foregoing documents, it is ordered that the motion for summary judgment by the defendant, Andrew Wells, R.N., is denied.<sup>1</sup>

This medical malpractice action arises out of an incident occurring on August 7, 2016, while the plaintiff was a patient at NYPH, having been admitted a month earlier for "acute embolism and thrombosis[...] and suffering from EtOH (alcohol related) pancreatitis<sup>2</sup>. Plaintiff was receiving J-tube feeds because his nutrition was inadequate. He claims that the defendant, Nurse Wells, improperly, carelessly, and negligently reversed a red port/gastric tube and yellow jejunal tube, resulting in tube feedings being deposited into his necrotic pancreas, causing severe and debilitating injuries and their sequelae, including two heart attacks that occurred on August 11, 2016, and August 12, 2016.

<sup>1</sup> This action, commenced on November 26, 2018, has been resolved against defendants New York Presbyterian Hospital, Ming-Ming Xu, M.D., Michel Kahaleh, M.D. and Elizabeth Parks, M.D. (see NYSCEF 27, 28, 29 and 59).

<sup>2</sup> Plaintiff's medical history includes binge drinking.

Nurse Wells' shift on August 7<sup>th</sup> was from 7:30 a.m. to 7:30 p.m. Wells has been described as a "traveling nurse" who, on that day, was assigned to the cardiothoracic unit. Nurse Wells testified that he arrived at NYPH at approximately 7:00 a.m. and was told that he would be floating to 14 South. Wells was the only nurse caring for plaintiff during this shift, and recalls that when he first entered plaintiff's room, he found him to be awake, in bed, with his mother (Mrs. Cohen) sitting nearby. Nurse Wells further testified that during his morning assessment of plaintiff, he looked at the pancreatic drainage bag and noticed that there was a substance in it that looked like tube feeds. He checked the tubes and saw that the "G" and "J" tube ports had been reversed. Defendant then went to the computer to double check and confirmed that the tubes were reversed and returned to plaintiff. He went back to his computer to check again, returned to plaintiff, and unplugged the feeding port and G port flushing them both with sterile water. Wells then claims to have **turned off the feeding tube and suction**. He did not know how long he shut the feeds for because he had called the resident and waited for her to call back. When Dr. Parks returned his call, she recommended restarting the tube feeds at a lower rate. Defendant again paged Dr. Parks to inform that "there's more tube feeds in here," and Dr. Parks directed further decrease of the feeds. (Dr. Parks testified that for tube feeds to be stopped, orders would have to be received from the GI team). Wells recalls that he first noticed reversal of the tubes at around 8:15 a.m.

Notably, it was not until over nine hours later, at 5:47 p.m., that Nurse Wells documented the following into plaintiff's chart: "during AM assessment of pt, recognized that the low wall suction and tube feeds were incorrectly attached to their given ports, they were reversed. I flushed the red port (G-tube) with 20 cc of sterile water, and then connected it back to suction. I

then switched the TFs to the appropriate yellow (J-tube) port and paged the patient's provider" (see NYPH record, p. 419).

Plaintiff's mother, Mrs. Cohen, testified that after Nurse Wells introduced himself, plaintiff asked to sit in the bedside chair to watch a film. Wells said he would get an extension to connect to the feeding tube so that plaintiff had enough room to sit upright. Mrs. Cohen then left the room to get breakfast and when she returned approximately a half hour later, she saw plaintiff sitting in the recliner, with fluid resembling a milkshake present in the pancreatic drainage bag.

Wells moves for judgment dismissing the complaint on the grounds that there is no evidence that he reversed the tubes and, moreover, that plaintiff's medical issues could not have been caused by the switching of the tubes because the switch would have caused fluid to be sucked from his stomach and placed into his intestines. Wells alleges that the tubes may have been switched by anyone and must have been switched during the shift or two prior to his assignment.

To prevail on a motion for summary judgment, the proponent must make *prima facie* showing of entitlement to judgment as a matter of law, through admissible evidence demonstrating the absence of any material issue of fact (see *Klein v City of New York*, 89 NY2d 833 [1996]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]; *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]). The only proof offered by the movant is his own deposition testimony which fails to demonstrate the absence of any material issues of fact. Additionally, defendant has failed to furnish any explanation for the inconsistent data in the flow sheets. Accordingly, summary judgment in favor of Andrew Wells, R.N. is denied for failure to his burden of proof on the motion.

This ruling notwithstanding, this Court finds that even if Nurse Wells had met his burden, the plaintiff has succeeded in raising triable issues of fact sufficient to defeat summary judgment. In this regard, the Court is mindful that it is a jury who must determine the credibility of the witnesses, the weight to be accorded expert witnesses, and assess the conflicting evidence (*see Windisch v. Weiman*, M.D., 161 AD2d 433 [1<sup>st</sup> Dept. 1990]).

In opposition to the motion, plaintiff submits the expert affirmation of a gastroenterologist, (*see* NYSCEF Doc. No. 80) who opined that Nurse Wells departed from good and accepted nursing practices by: (1) failing to document that he checked the ports at the time that he started his shift; (2) failing to document when the tube feeds were reduced or stopped prior to 5:00 p.m.; (3) failing to properly follow orders, and (4) failing to immediately recognize the misconnection and **stop the feeds** as soon as he detected the error<sup>3</sup>. Based on the evidence reviewed, plaintiff's expert opines to a reasonable degree of medical certainty that Nurse Wells improperly reversed the ports when he added the extension to the tubes to allow plaintiff to watch TV earlier that morning, and that he failed to check the lines to make sure they were going to their point of origin when he reconnected feeds: "It is a clear violation of good and accepted nursing practices" for Nurse Wells to recognize that the tubes were switched at the start of his shift, and not stop the feeds until 5:05 p.m. 9 hours later (*id.*, para 74) and, moreover "good nursing practices required [Wells] to immediately stop the tube fees and switch the tubes to the correct ports and arrange for a physician to come bedside to establish a plan of treatment. The failure to do so was a substantial contributing factor in Mr. Roselle's injuries" (*id.*). Plaintiff's expert opines that the improper and inadvertent switch of the ports "caused plaintiff to suffer from worsening pancreatitis pain infection and malnutrition and contributed to the development

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<sup>3</sup> The records indicate that the tube feeds were ordered to be discontinued at 5:00 p.m., some nine hours after Nurse Wells observed that they were switched.

of a perforation and enterocutaneous fistula as a result of the tube feeds going into the pancreas and the suctioning of the jejunum.”

Accordingly, it is

ORDERED that defendant’s motion for summary judgment is denied; and it is further

ORDERED that the parties shall appear for a virtual pre-trial conference via Microsoft Teams on February 6, 2025, at 10:00 a.m.

11/6/2024  
DATE

JUDITH N. MCMAHON

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

Hon. Judith N. McMahon  
J.S.C.