Meglio v New York City Health & Hosps. Corp.
2024 NY Slip Op 34034(U)
November 14, 2024
Supreme Court, Kings County
Docket Number: Index No. 510483/2018
Judge: Consuelo Mallafre Melendez
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part MMESP - 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 14th day of November 2024.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
----------X
PAUL MEGLIO,

Plaintiff,

-against-

NEW YORK CITY HEALTH & HOSPITALS CORPORATION d/b/a WOODHULL MEDICAL AND MENTAL HEALTH CENTER,

Defendants.
----------X

DECISION & ORDER

Index No. 510483/2018
Mo. Seq. 3

HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.
Recitation, as required by CPLR §2219 [a], of the papers considered in the review:

NYSCEF #s: 64 – 66, 67 – 75, 78 – 79, 80 – 86, 87

Defendant New York City Health and Hospitals Corporation ("NYCHHC") d/b/a Woodhull Medical and Mental Health Center ("Woodhull") moves (Seq. No. 3) for an Order, pursuant to CPLR 3212, granting summary judgment in their favor and dismissing all claims against them, or pursuant to CPLR 3212 (e) and (g), granting partial summary judgment and limitation of the facts for trial against the moving defendants to only the issues of fact raised by Plaintiff. Plaintiff opposes the motion.

Plaintiff commenced this action on May 21, 2018, asserting claims of medical malpractice in connection to treatment and care rendered on July 24, 2017 and July 27, 2017 at Woodhull emergency department.

Plaintiff first presented to Woodhull emergency department ("ED") on July 24, 2017 at approximately 2:50 a.m. He was 47 years old and had a history of drug use, for which he was taking methadone. He complained of worsening back pain since the previous day. Upon evaluation, the ED attending physician, Toluwumi Olafisoye, M.D. ("Dr. Olafisoye"), diagnosed him with muscle spasms. He was administered

Toradol and Valium and discharged around 5:00 a.m. with instructions to follow up with a primary care provider or return if his symptoms worsened or did not improve.

On July 26, 2017, Plaintiff was treated by non-party Care for the Homeless. He was prescribed pain relief medications for his back and neck.

On July 27, 2017 at 5:57 a.m., Plaintiff returned to Woodhull with complaints of continued, "aching" and "burning" but non-radiating back pain. He was examined by P.A. Madhvi Aya ("Aya"), under supervision of the attending physician Hazel Buenavista, M.D. ("Dr. Buenavista"). He denied trauma to the area, chest pain, or shortness of breath, and reported that he was using methadone for narcotics addiction. His pain subjectively improved to 1/10 at 9:00 a.m. after taking Tylenol and Robaxin. At 9:22 a.m., Aya recorded that he "walked out during evaluation" before being reassessed or discharged.

Shortly after leaving the Woodhull ED, Plaintiff fell in a subway station at approximately 10:30 a.m. and reported being unable to move his right leg. He was taken to non-party Mount Sinai Beth Israel by ambulance. At Mount Sinai, he was noted to have three days of diffuse spinal pain, progressive weakness, and inability to move his right-sided extremities. A CT scan revealed an epidural abscess in his cervical spinal canal, resulting in spinal cord displacement and compression. A laminectomy was performed the same day to drain the abscess at C2-C5.

Plaintiff alleges that NYCHHC/Woodhull, though its agents and employees, departed from the standard of care by failing to timely diagnose and treat Plaintiff's epidural abscess on July 24 or July 27. Plaintiff further alleges that this departure proximately caused his condition to worsen, and as a result he continues to have physical limitations in his right arm and leg.

"In determining a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party" (*Stukas v Streiter*, 83 AD3d 18, 22 [2d Dept 2011]). In evaluating a summary judgment motion in a medical malpractice case, the Court applies the burden shifting process as summarized by the Second Department:

"The elements of a medical malpractice cause of action are a deviation or departure from accepted

community standards of practice, and that such departure was a proximate cause of the plaintiff's injuries. When moving for summary judgment, a defendant provider has the burden of establishing the absence of any departure from good and accepted medical practice or that the plaintiff was not injured thereby. In order to sustain this burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff's bill of particulars. In opposition, the plaintiff must demonstrate the existence of a triable issue of fact as to the elements on which the defendant has met his or her initial burden. General allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat a defendant's summary judgment motion. Although summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions, expert opinions that are conclusory, speculative, or unsupported by the record are insufficient to raise triable issues of fact" (*Barnaman v Bishop Hucles Episcopal Nursing Home*, 213 AD3d 896, 898-899 [2d Dept 2023] [internal quotation marks and citations omitted].

In support of their motion, NYCHHC submit an expert affirmation from Andrew Sama, M.D. ("Dr. Sama"), a licensed physician certified in internal medicine, critical care medicine, and emergency medicine. Dr. Sama affirms that he has experience as a physician and chief of hospital emergency departments and is familiar with the standard of care for diagnosing and treating patients in that context, and therefore he has laid a foundation to opine on the issues in this case. The movants also submit relevant medical records and deposition transcripts.

Based on the record and his relevant expertise, Dr. Sama opines that all treatment and care rendered to Plaintiff by Woodhull physicians and staff was in accordance with the standard of care. Dr. Sama notes that the primary function of a hospital emergency department is to assess whether the patient "presents with complaints that are serious enough to warrant further investigation and, when indicated, hospital admission," and that discharge from an ED is appropriate when "the patient is at low risk for requiring immediate treatment and their immediate symptoms are under control."

Dr. Sama opines that on July 24, Dr. Olafisoye properly evaluated the patient based on his symptoms and presentation. According to the hospital chart, Dr. Olafisoye examined the patient and found "tenderness on

palpation of right mid scapula," but no tenderness of the cervical, thoracic, or lumbar spine, and he was able to move all his extremities. She also noted Plaintiff had no fever or abnormal vital signs. The expert opines that the clinical findings that would indicate a spinal epidural abscess include fever and pain upon palpation of the spine, which Plaintiff did not exhibit on July 24. Therefore, the expert opines that a muscle spasm was "the most likely diagnosis" based on his ED presentation, and the standard of care was to administer pain medications and "monitor the plaintiff for change or improvement." Dr. Olafisoye reassessed Plaintiff at 4:47 a.m., and his pain appeared to be adequately controlled with the prescribed pain medications. Dr. Sama notes that Plaintiff was "walking with a steady gait" and able to leave the ED on his own. The expert opines that Dr. Olafisoye did not depart from the standard of care by discharging Plaintiff at that time, and that he was given appropriate instructions to follow up with a primary care provider and return to the ED if his symptoms worsened.

Dr. Sama also notes that a definitive diagnosis of an epidural abscess generally requires an MRI. He opines that there was no indication based on Plaintiff's July 24 symptoms to order an MRI, blood test, or other diagnostic testing under the standard of care, because his vital signs were normal, there was no evidence of neurological deficits, and there was no apparent trauma or fracture.

Dr. Sama opines that the Woodhull physicians "took an appropriate history" from Plaintiff within the standard of care. He notes that Plaintiff did not report taking medications on July 24, but on his second visit on July 27 he reported taking methadone. The expert opines that it was not required under the standard of care to question a patient specifically on whether he is taking methadone, but rather to ask broadly about medications being taken at home. The expert also opines that even if he was known to be taking methadone on July 24, that alone is not an indication for an MRI or blood work in the absence of other symptoms such as fever and neurological deficits.

With respect to Plaintiff's July 27 return to the ED, the expert opines that again he was evaluated and treated in accordance with the standard of care. He reported aching and burning pain, rated 6/10, and denied trauma to the area. He had no fever and was alert and oriented. He denied trauma to the area and reported that

he was using methadone for narcotics addiction. The expert notes that the P.A. Madhvi Aya examined him and recorded no tenderness to palpation in the spine, full range of motion in all extremities, and normal motor and sensory function. The expert opines that examination by a physician's assistant, in consultation with the attending physician who could speak with them about the examination and/or review the chart, is within the standard of care for ED assessment. The expert also opines that no symptoms from this examination warranted a direct reexamination by the attending physician.

The expert notes that the P.A. and attending physician Dr. Buenavista's plan of care was to administer Tylenol and Robaxin and reassess him afterwards, which the expert opines was appropriate and within the standard of care. Said medication was administered around 7:30 a.m., and a nursing progress note from 9:00 a.m. reflected his pain had improved to 1/10. Plaintiff testified that he was "discharged" at this time, but the chart states Plaintiff "walked out during evaluation" and was not reassessed or formally discharged. Regardless of whether he was formally discharged, expert Dr. Sama opines that the fact his pain had significantly improved, along with the absence of other symptoms, would have been sufficient reason to discharge him from the ED. Dr. Sama opines there was "no reason to suspect anything other than muscle spasm or cramping" at that time. In the expert's opinion, the standard of care for clinical findings of back pain without spinal tenderness, numbness, or other symptoms of epidural abscess – even with the knowledge of his methadone use – did not require further testing such as blood work or MRI.

Dr. Sama further opines that the care rendered to Plaintiff in the ED on both dates was not a proximate cause of his subsequent injuries. Dr. Sama opines that "an epidural abscess progresses rapidly," and this explains why Plaintiff's additional clinical symptoms and neurological deficits (e.g., extremity numbness) did not manifest until after he left the Woodhull ED. The expert notes that Plaintiff was able to leave the hospital on foot and take a subway into Manhattan "before his symptoms suddenly worsened" one hour later. The expert states that if Plaintiff had not walked out and his symptoms had progressed while he was at Woodhull, he may have been given further testing including an MRI to identify the epidural abscess. Notwithstanding, the expert opines that when he was last examined at Woodhull, his symptoms did not indicate that any further testing or

hospitalization was necessary, and the expert notes that he reported new and different symptoms that led to his subsequent diagnosis and treatment of the abscess at Mount Sinai.

The movants have established prima facie entitlement to summary judgment, based on their expert's opinion that Woodhull's ED physicians and staff did not depart from the standard of care on July 24 or July 27, 2017, and that on both presentations Plaintiff was appropriately examined and did not present with complaints or clinical symptoms that indicated other diagnostic testing or hospital admission was required. Thus, the movants establish that they complied with the standard of care, and hindsight reasoning alone does not support the claim that additional testing should have been performed (*see Ortiz v Wyckoff Heights Medical Center*, 149 AD3d 1093, 1095 [2d Dept 2017]). The movants also establish that the alleged departures did not proximately cause his subsequent injuries, as the expert opines that his abscess advanced rapidly after his discharge or walk-out and he was treated shortly thereafter. The burden therefore shifts to Plaintiff to raise an issue of fact.

In opposition, Plaintiff submits an expert affirmation from David Mayer, M.D. ("Dr. Mayer"), a licensed physician certified in surgery. Plaintiff's expert has laid a proper foundation to opine on the issues of this case, affirming that he has extensive experience in "evaluating, diagnosing, and treating emergency room patients," including diagnosing and operating on spinal epidural abscesses after emergency department presentation.

Dr. Mayer opines that on both July 24, 2017 and July 27, 2017, Plaintiff presented with severe back pain with "no injury or physical trauma associated with said back pain." He opines that the standard of care requires a differential diagnosis to investigate whether an epidural abscess or other non-traumatic cause is the source of the patient's pain. Dr. Mayer opines that on both July 24 and July 27, a complete blood count, which is "routinely performed in ED settings," should have been performed in the patient's case to rule out infection. He notes that when a complete blood count was ultimately performed at Mount Sinai on July 27, it revealed elevated white blood cells and neutrophils. He opines these findings would also have been present if he had been tested at Woodhull, given the timing and clinical symptoms of an epidural abscess. Thus, the expert opines that if appropriate blood work had been taken, it would "firmly establish the presence of epidural abscess," at which time a CT scan or MRI could have definitively diagnosed the abscess.

Dr. Mayer counters the opinion of the movant's expert Dr. Sama, who stated that the patient's physical examination showing no spinal tenderness led to a reasonable assumption that his back pain was caused by muscle spasm. Dr. Mayer notes that Plaintiff's disputed this physical exam in his testimony. Regardless, Dr. Mayer opines this physical examination was inadequate, and further objective testing was needed to rule out the possibility of a more serious condition. He opines that while both Dr. Olafisoye on July 24 and Dr. Buenavista on July 27 "could have legitimately considered spasm as the diagnosis, this consideration does not obviate their obligation to investigate epidural abscess." Further, Dr. Mayer opines that the fact Plaintiff's pain improved after pain relief medication was administered was irrelevant to whether he had a muscle spasm or infection.

Dr. Mayer further opines that Plaintiff was at higher risk for epidural abscess due to his methadone use, as it is associated with increased vulnerability to infection and inflammation. Because of this risk factor, the expert opines that on July 24, Dr. Olafisoye departed from the standard of care by failing to "obtain this relevant history." Dr. Mayer also opines that Dr. Buenavista failed to "appreciate the significance of that history" when it was reported on July 27, and this was another reason the standard of care required further testing, i.e., blood work and/or MRI, to rule out an epidural abscess.

Finally, Dr. Mayer opines that any dispute over whether Plaintiff was discharged or "walked out" on July 27 is "largely irrelevant" to his treatment on that date, because there was no plan or intention to perform further testing, and the movant's expert opined that discharge at that time would have been appropriate. Dr. Mayer disagrees with the movant's expert, opining that blood work and a differential diagnosis should have been undertaken in the time between Plaintiff's 5:56 a.m. appearance at the Woodhull ED and his alleged walk-out shortly after 9:00 a.m.

On the issue of proximate causation, Plaintiff opines that Woodhull's departures caused a delay in the patient's diagnosis and the worsening of his injuries. In the expert's opinion, the fact he was not given a complete blood count and/or diagnostic imaging on either date deprived him of the chance to timely diagnose the abscess, and it could have been treated with a less invasive drainage procedure before his condition worsened. The expert opines that by the time he was treated at Mount Sinai, "the abscess progressed to the point

of spinal cord impingement severe enough to cause restriction of movement," and the patient "lost the opportunity to fully preserve right leg and arm function" as a result of Woodhull's departures.

Based on the submissions, Plaintiff's expert has raised issues of fact as to the standard of care for ED physicians' assessment and diagnosis. "When experts offer conflicting opinions, a credibility question is presented requiring a jury's resolution" (*Stewart v. North Shore University Hospital at Syosset*, 204 AD3d 858, 860 [2d Dept 2022], citing *Russell v. Garafalo*, 189 AD3d 1100, 1102 [2d Dept 2020]). The Court notes that there is some dispute in the parties' testimony as to the thoroughness of Plaintiff's physical exams and whether he walked out prior to discharge on July 27. Even notwithstanding these issues, however, the experts present conflicting opinions as to whether the ED physicians deviated from the standard of care by not performing additional blood work and testing on July 24 and July 27 to rule out an epidural abscess, based on the patient's complaints and history.

Additionally, Plaintiff has raised an issue of fact as to whether the alleged departures from Woodhull were a proximate cause of his claimed injuries, allowing the epidural abscess to progress to more significant effects on his spinal cord and extremities. These conflicting expert opinions present issues of fact that must be resolved by a jury, and therefore summary judgment is precluded as a matter of law.

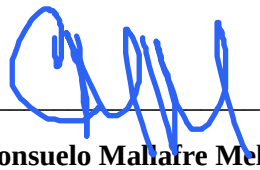
Accordingly, it is hereby:

ORDERED that NYCHHC's motion (Seq. No. 3) for an Order, pursuant to CPLR 3212, granting summary judgment in their favor and dismissing all claims against them, is **DENIED**; and it is further

ORDERED that the parties appear for a Settlement Conference with the undersigned at 10:00AM on November 26, 2024, virtually over Microsoft Teams. A link will be provided.

This constitutes the decision and order of this Court.

ENTER.



Hon. Consuelo Mallafre Melendez

J.S.C.