

Sprung v NYU Hosps. Ctr.
2011 NY Slip Op 30063(U)
January 5, 2011
Supreme Court, New York County
Docket Number: 112845/08
Judge: Joan B. Lobis
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Lobis
Justice

PART 6

Sprung, David

- v -

NYU Hospital

INDEX NO.

112845/68

MOTION DATE

10/12/10

MOTION SEQ. NO.

81

MOTION CAL. NO.

The following papers, numbered 1 to 20 were read on this motion to/for Dismiss

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

PAPERS NUMBERED

1-15

16-17

18-20

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

MOTION DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION AND ORDER

FILED

JAN 11 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/5/11

JBK

J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X
DAVID SPRUNG, and SYLVIA SPRUNG, individually,
and as Co-Administrators of the Estate of SHELDON
SPRUNG, deceased

Plaintiffs,

-against-

NYU HOSPITALS CENTER

FILED

Defendant: JAN 11 2011

Index No. 112845/08

Decision and Order

-----X
JOAN B. LOBIS, J.S.C.:

NEW YORK
COUNTY CLERK'S OFFICE

Defendant NYU Hospitals Center ("NYU") moves, pursuant to C.P.L.R. Rule 3212, for an order granting it summary judgment and dismissing this matter in its entirety. For the reasons discussed below, the motion is denied.

This action, sounding in medical malpractice, arises out of treatment that NYU rendered to Sheldon Sprung from November 10, 2007 until his death on December 5, 2007 at the age of 83. Mr. Sprung presented to NYU's emergency room complaining of an inability to urinate for a significant period of time. Mr. Sprung had a history of increased cholesterol, high blood pressure, vascular disease (which resulted in the amputation of a leg), non-healing ulcers on his remaining leg, cardiac disease, kidney disease, colon cancer, and prostate surgery. He had a pacemaker and took a variety of medicines, including Flomax, Avapro, Lipitor, Paxil, Norvasc, and Toprol. Mr. Sprung also took Plavix, a medication that inhibits blood clotting in order to prevent heart attack or stroke.

Upon admission to the emergency room, Mr. Sprung's vital signs were normal and staff drew his blood for testing. That night, around midnight, Mr. Sprung passed a "black stool" and his blood pressure dropped precipitously low. His blood tests results revealed an abnormal hemoglobin level. Based on these symptoms, NYU staff diagnosed Mr. Sprung with a gastrointestinal bleed and hemorrhagic shock. NYU staff immediately began administering saline fluids and packed red blood cells, but the exact timing of the administration, as well as the amount of fluids and blood, provided is unclear. The Fluid Balance Sheet in Mr. Sprung's medical records indicates that he received 250 cc of red packed blood cells once an hour from 1:00 a.m. until 5:00 a.m.; however the Blood Administration Records indicate that Mr. Sprung received 250 cc of blood at 1:15 a.m., 1:35 a.m., 1:57 a.m., 2:15 a.m., and 5:36 a.m. Around 4:00 a.m., NYU physicians performed an upper gastrointestinal endoscopy, which revealed no active bleeding. Mr. Sprung was eventually admitted to the intensive care unit, intubated, and placed on a ventilator. He died on December 5, 2007.

Plaintiffs commenced this action on or about September 19, 2008 by the filing of a summons and verified complaint. In their bill of particulars, they assert, inter alia, that NYU failed to appropriately monitor Mr. Sprung's vital signs and administered "high volumes of blood products and other fluids in a very short time frame," causing a pulmonary edema and death.

A defendant moving for summary judgment in a medical malpractice action must make a prima facie showing of entitlement to judgment as a matter of law by showing "that in treating the plaintiff there was no departure from good and accepted medical practice or that any

departure was not the proximate cause of the injuries alleged.” Roques v. Nobel, 73 A.D.3d 204, 206 (1st Dep’t 2010) (citations omitted). To satisfy the burden, a defendant in a medical malpractice action must present expert opinion testimony that is supported by the facts in the record and addresses the essential allegations in the bill of particulars. Id. If the movant makes a prima facie showing, the burden shifts to the party opposing the motion “to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986) (citation omitted).

Specifically, in a medical malpractice action, a plaintiff opposing a summary judgment motion

must demonstrate that the defendant did in fact commit malpractice and that the malpractice was the proximate cause of the plaintiff’s injuries. . . . In order to meet the required burden, the plaintiff must submit an affidavit from a physician attesting that the defendant departed from accepted medical practice and that the departure was the proximate cause of the injuries alleged.

Roques, 73 A.D.3d at 207 (internal citations omitted).

In support of the motion, NYU relies on the affirmation of Mark Silberman, M.D., a physician board certified in emergency medicine, internal medicine, pulmonary medicine, and critical care. Dr. Silberman points out that after midnight on November 11, Mr. Sprung suffered a sudden change in his condition, marked by bleeding and shock, and was in need of aggressive resuscitation. Dr. Silberman asserts that, given the amount of blood loss, the amount of fluid given was necessary to restore normal blood pressure and perfuse blood to Mr. Sprung’s vital organs. Dr. Silberman further asserts that the administration of platelets was necessary to slow the internal bleeding and promote clotting, especially since clotting was compromised by Mr. Sprung’s Plavix

medication. Dr. Silberman sets forth that pulmonary edema is a well known, expected consequence of the resuscitation, and that the pulmonary edema did not cause Mr. Sprung's death. Rather, Mr. Sprung's death was a result of the gastrointestinal bleed which was complicated by his age and "multiple underlying medical conditions."

In opposition, plaintiffs rely on the affidavit of Paul Genecin, M.D., who is board certified in internal medicine and licensed to practice in Connecticut. Dr. Genecin opines that NYU should have put Mr. Sprung on a continuous heart and blood pressure monitor and that its failure to do so was a departure from the standard of care. Dr. Genecin further sets forth that the manner in which the saline, packed red blood cells, and fresh frozen plasma were administered, as reflected by either the Blood Administration Records or the Fluid Balance Sheet, was a deviation from the standard of care. He asserts that the substances were provided too rapidly and in too high a volume without sufficient pulmonary and cardiac monitoring, causing Mr. Sprung's respiratory distress, pulmonary edema, and, ultimately his death.

In reply, NYU argues that Dr. Genecin's affidavit is conclusory and fails to raise issues of fact. NYU also includes an affirmation for a registered nurse from NYU, who asserts that it is NYU's customary practice to continuously monitor a patient's blood pressure, heart rate, and saturation. NYU further argues that these readings were recorded in the Blood Administration Record.

Defendant has met its prima facie burden. Its expert has demonstrated that Mr. Sprung was appropriately treated given his medical history and the gastrointestinal bleed, and that his death was not caused by an oversaturation of fluids, but rather the gastrointestinal bleed. Nevertheless, the affirmation of plaintiffs' expert adequately disputes this opinion by contending that Mr. Sprung was oversaturated with fluids, which caused a fatal pulmonary edema. In light of the conflicting expert opinions, summary judgment is unwarranted. See Boston v. Weissbart, 62 A.D.3d 517, 518 (1st Dep't 2009); Cruz v. St. Barnabas Hosp., 50 A.D.3d 382 (1st Dep't 2008). Accordingly, it is

ORDERED that defendant's motion seeking summary judgment is denied.

Dated: January 5, 2011



JOAN B. LOBIS, J.S.C.

FILED

JAN 11 2011

NEW YORK
COUNTY CLERK'S OFFICE