

NEW YORK LAW JOURNAL

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SUFFOLK COUNTY

MEDICAL MALPRACTICE

Hospital — Medical Malpractice — Lost Chance of Recovery — Medical Malpractice — Negligent Treatment — Medical Malpractice — Prescription and Medication — Medical Malpractice — Radiology — Medical Malpractice — Unnecessary Procedure — Medical Malpractice

Estate: Doctor misdiagnosed condition, caused colectomy

Settlement \$250,000

Case Melissa Davis Wright, as Ancillary Administratrix of the Estate of Loretta Kayton, Deceased, v. Brookhaven Memorial Hospital Medical Center, Inc., Robert N. Prichep, M.D., and Frank T. Sconzo, Jr., M.D., No. 9097/2005

Court Suffolk Supreme

Judge Peter Fox Cohalan

Date 9/21/2015

Plaintiff

Attorney(s)

Frank C. Panetta, Massimo & Panetta, P.C., Mineola, NY

Defense

Attorney(s)

Deborah A. Aviles, Lewis JohnsAvallone Aviles, LLP, Islandia, NY

Facts & Allegations

On October 26, 2002, plaintiff Rosetta Kayton, 74, presented at Brookhaven Memorial Hospital Medical Center (Brookhaven) Emergency Room (ER) in Patchogue, complaining of abdominal pain, constipation and no bowel movement for five days. She was seen by Dr. Beeker, provided a fleet enema and an oil based laxative and sent home. Two days later on October 28, 2002, Kayton returned to the Brookhaven ER where she came under the care of Dr. Alan Nemeth, M.D., an emergency medicine doctor, where she was determined to have had decreased bowel sounds, complaining of 10/10 abdominal pain, a distended abdomen and a left shift of the white blood cells, tenderness in her lower abdominal quadrants. Dr. Nemeth ordered a stat X-ray of Kayton's abdomen. The radiologist who performed the x-ray noted that it revealed a blockage of fecal matter "until proven otherwise." Dr. Nemeth diagnosed Kayton's condition as constipation and prescribed Golytely laxative solution, and discharged Kayton. Kayton returned to Brookhaven on October 30, 2002, and was admitted. Complaining of lower abdominal pain with distention, absent bowel sounds, she was diagnosed with a with perforated viscous, an obstructing mass in the sigmoid and cecal blowout with peritonitis and sepsis. She underwent an emergency sub-total colectomy, including the installation of an ileostomy and colostomy bag. Kayton died of a heart attack in 2005.

Kayton's granddaughter, Mellissa Davis Wright, as the Ancillary Administratrix of the Estate of Loretta Kayton, sued Brookhaven Hospital. Kayton's Estate alleged that Brookhaven, was Dr. Nemeth's employer, and that Dr. Nemeth misdiagnosed Kayton's illness, and departed from the standard of care by prescribing Golytly instead of invasive treatment. Kayton's Estate also sued the surgeons that performed the colectomy, Drs. Robert N. Prichep, M.D., and Frank T. Sconzo, Jr., M.D., but they were let out of the case. The claim was settled before trial.

Kayton's Estate claimed that upon reading the radiologists opinion, and after reviewing the stat x-ray, Dr. Nemeth should have easily identified Kayton's condition as a fecal matter blockage, and not constipation. The Estate further claimed that if Dr. Nemeth correctly diagnosed a blockage and underwent to remove the obstruction, rather than prescribe GoLyteLy, contraindicated when the patient has a blockage, there would have been no sepsis and no need

for a full colectomy on October 30, 2002 and if there were other medical conditions within the intestinal tract, only a portion of the intestines would have required removal.

The Estate's expert emergency medicine doctor, Dr. Kevin Brown opined that Kayton's stat x-ray clearly and showed obvious signs of blockage. The Estate's expert radiologist opined that x-ray showed an obvious blockage, and that the patient was "loaded up with stool" and that Golytly should have never been prescribed. Both experts opined that the prescription of Golytly was a departure from the standard of care.

The defense contended that Kayton suffered from multiple ailments, and that she would have required the colectomy and ileostomy regardless due to her diverticulitis and necrotic tissue in her intestines. The defense further argued that Dr. Nemeth did not misdiagnose Kayton's condition because the x-ray showed free air and no blockage.

Injuries/Damages

Kayton's Estate claimed that the ileostomy port was placed on a scar where the appendix was removed, causing the ileostomy to leak, causing long-term infections and post-surgical complications caused by puss and infection. The Estate further claimed Kayton treated with an ostomy nurse, and was forced to use a colostomy bag for the remainder of her life.

The Estate claimed that the leaking ileostomy and use of a colostomy bag made Kayton reclusive until the time of her death.

The Estate sought recovery of past conscious pain and suffering that Kayton experienced over the last three-plus years of her life.

Result

The sides came to agreement on a settlement. Defendant Brookhaven agreed to pay the plaintiff \$250,000.

Plaintiff(s)

Estate of Loretta Kayton

Demand \$1 Million

Offer \$150,000

Insurer(s)

Self-Insured Brookhaven Memorial Hospital Medical Center, Inc.

Plaintiff

Expert(s)

Kevin R. Brown, M.D., emergency medicine, Carmel, NY (Frank C. Panetta) (did not testify; submitted report)

Allen R. Tantleff, M.D., radiology, Roslyn, NY (Frank C. Panetta) (Did not testify; submitted report)

Defense

Expert(s)

None reported

Post-Trial

None reported

Editor's Note

None reported

Plaintiff(s)

Demographics

Estate of Loretta Kayton

Age: 75 Years

Occupation: retired

Gender: Female

Married: Yes

Children: Yes

Children Description: injured party

Written By –Jack Deming