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Onwudinjo v. Boffard

August 11, 2008

PATRICIA ONWUDINJO, EXECUTRIX OF THE ESTATE OF JULIE IJEOMA ONWUDINJO-HAYNES, PLAINTIFF-APPELLANT,

v.

DARYL BOFFARD, M.D., ISAAC VICTOR, M.D., DEFENDANTS, AND SAINT BARNABAS MEDICAL CENTER, DEFENDANT-RESPONDENT.

On appeal from Superior Court of New Jersey, Law Division, Essex County, L-10033-02.

Per curiam.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

Argued April 2, 2008

Before Judges Payne, Sapp-Peterson and Messano.

Decedent, Julia Haynes, died on October 25, 2000 of a pulmonary embolism occurring after unsuccessful gynecological surgery. A medical malpractice suit was filed. After settlement with the surgeon, defendant Daryl Boffard, M.D., and dismissal of the other named physician, defendant Isaac Victor, M.D., who demonstrated his lack of involvement in decedent's care, trial focused on the liability of defendant St. Barnabas Medical Center, which, it was alleged, either failed to place Flowtron pressure devices designed to prevent blood clots on decedent's legs in the period after her surgery and prior to her death, or failed to ensure that such devices were operating properly. Both of decedent's sisters testified at deposition and at trial that they had observed no Flowtron devices on decedent's legs while visiting decedent in her hospital room, and if such devices had been present, they would have seen them when a nurse inspected decedent's legs following her complaints of pain in that location.

Prior to institution of litigation, plaintiff had received a copy of decedent's medical records from the hospital. In response to discovery, plaintiff was furnished with a second copy of the records. Neither contained evidence that the Flowtron devices had been employed while decedent was in her hospital room.

During the deposition of Dr. Boffard, counsel for the hospital noted to the other attorneys present that her own records contained a document that demonstrated that Flowtron devices were purportedly in use on October 25, 2000 while decedent was in her hospital room. After being informed that none of the other attorneys possessed the document, on November 3, 2004, the single, undated and untitled page, with no patient or room reference, was produced. The

document, signed by registered nurse Yvonne Cort, contained entries commencing at 7:30 a.m. and concluding at 2:15 p.m. following death. The 7:30 a.m. notation stated, among other things, "Flowtron wrap intact bilaterally."

Plaintiff's attorney forwarded the document to plaintiff's expert, Pius U. Chikezie, M.D., who in a supplemental report dated November 16, 2004, served after the close of discovery*fn1 with the court's permission, described Dr. Boffard's deviations, and then stated in respect to the hospital:

St. Barnabas Medical Center, its staff and employees failed to maintain a flowtron device on the person of Ms. Julia Haynes, as ordered by Dr. Boffard, for a dangerously prolonged period of time.

On December 1, 2004, on the first day of Dr. Chikezie's deposition, counsel for the hospital produced by facsimile a second page of handwritten notes, also undated and untitled, but purportedly relating to decedent's care on October 24, 2000, indicating in the entry for 9:15 p.m. that plaintiff had been transferred and that "flowtron wraps on/functioning." The transmittal letter stated:

Please allow this to further confirm, as we had indicated at the time of Dr. Boffard's deposition, the existence of handwritten nurse's notes from October 24, 2000 which were inadvertently never Xeroxed with the hospital chart due to the folded nature of the original chart. As we have previously advised, you are welcome to arrange a convenient time to meet counsel at the hospital to examine the original chart.

We now amend defendant's interrogatories to specifically identify a copy of hand written nurse's notes covering the period from 9:15 p.m. on October 24, 2000 through 6:30 a.m. on October 25, 2000.

Defendant further amends interrogatories to again*fn2 identify as trial witnesses Nurses Regina Cardona, Geraldine McQuade and Yvonne Cort, each of whom will testify in accordance with their contemporaneous records from October 24-25, 2000. Those contemporaneous records confirm that at all relevant times, flowtron devices/wraps/PAS stockings were applied, maintained and intact bilaterally on plaintiff's decedent, which devices were in place and intact throughout the entire period which forms the basis of plaintiff's Complaint.

On November 18, 2004, the court entertained a motion, filed by plaintiff prior to receipt of the additional hospital records, to compel production of any peer reviews conducted with respect to ...

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