

Cintron v Montefiore Med. Ctr.

2012 NY Slip Op 01191

Decided on February 16, 2012

Appellate Division, First Department

Published by [New York State Law Reporting Bureau](#) pursuant to Judiciary Law
§ 431.

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Official Reports.

Decided on February 16, 2012

Friedman, J.P., Sweeny, Renwick, DeGrasse, Román, JJ. 6835-

6836 21705/05

[*1]Carmen Cintron, Plaintiff-Appellant,

v

Montefiore Medical Center, Defendant-Respondent.

The Pagan Law Firm, P.C., New York (William Pagan of
counsel), for appellant.

Widowski Law Group, LLP, New York (Esther S. Widowski of
counsel), for respondent.

Order, Supreme Court, Bronx County (Robert E. Torres, J.), entered September 15, 2010, which,
in an action alleging medical malpractice, granted defendant's motion for summary judgment
dismissing the complaint, unanimously affirmed, without costs. Appeal from order, same court
and Justice, entered April 15, 2011, denying plaintiff's motion to reargue, unanimously dismissed,
without costs, as taken from a nonappealable order.

Defendant established its entitlement to summary judgment by showing that the treatment provided to plaintiff comported with good and accepted medical practice (*see e.g. Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Defendant submitted the affirmations of experts who concluded, based on the medical records and the deposition testimony of plaintiff and her treating doctors, that plaintiff's kidney disease was not caused by defendant's failure to discontinue certain medications prescribed to her to treat her rheumatoid arthritis. The experts opined that the low doses of medications did not contribute to the development of plaintiff's kidney disease, and they were timely discontinued to rule them out as potential causes of the disease (*see Tierney v Girardi*, 86 AD3d 447, 448 [2011]).

In opposition, plaintiff failed to raise a triable issue of fact. Plaintiff's expert failed to demonstrate that there was any correlation between the doses of medication prescribed for plaintiff and her kidney disease (*see Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 [2002]). Moreover, plaintiff's affidavit, wherein she stated that she was not adequately advised in a timely manner of the necessity of a renal biopsy, was contradicted by her deposition testimony where she acknowledged that defendant appropriately and timely recommended and discussed with her a biopsy to diagnose the cause of her kidney disease, but she consistently refused the procedure. It is well established that "[a]ffidavit testimony that is obviously prepared in support of litigation that directly contradicts deposition testimony previously given is [*2]insufficient to defeat [a] motion for summary judgment" (*Beahn v New York Yankees Partnership*, 89 AD3d 589, 590 [2011]; *see Phillips v Bronx Lebanon Hosp.*, 268 AD2d 318, 320 [2000]).

We have considered plaintiff's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: FEBRUARY 16, 2012

CLERK