

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH A. DE MARO

Justice

----- TRIAL/IAS, PART 3
NASSAU COUNTY

JOANNE BLANEY,

Plaintiff,

MOTION DATE:

July 27, 2007

INDEX No. 013256/05

-against-

SEQUENCE No. 1

NEW YORK BLOOD CENTER, INC.
D/B/A LONG ISLAND BLOOD
SERVICES AND MARY SCHNEIDER,

Defendant.

The following papers read on this motion:

Notice of Motion and Supporting Papers
Affirmation in Opposition
Reply Affirmation
Affidavit of Randy Levine, M.D.
Memorandum of Law in Support
Memorandum of Law in Opposition
Memorandum of Law in Further Support

This is a summary judgment motion by defendants asking this Court to dismiss this cause based on negligence, recklessness, and lack of informed consent contained in plaintiff's amended complaint dated March 16, 2007.

There is little factual dispute as to the asserted "negligent" conduct of defendant.

Defendant, New York Blood Center, Inc. (NYBC), collects blood from volunteer donors; defendant, Mary Schneider is a Registered Nurse, phlebotomist, employee of defendant, NYBC.

Plaintiff, Joanne Blaney, was a volunteer blood donor, a member of the NYBC "gallon club", who has donated blood on approximately twenty to thirty occasions since 1993.

Plaintiff claims a disabling nerve injury to her left arm, however, there is no medical testimony as to the cause of plaintiff's "condition", other than hearsay statements in plaintiff's deposition. Her injury allegedly occurred due to a blood donation made on May 22, 2004. Plaintiff claims the blood pressure cuff used to distend her veins for the drawing of blood was too tight, causing her to lose feeling in her arm, below the cuff, during the phlebotomy procedure. She asserts that the loss of sensation, numbness, tingling and aching which occurred after the cuff was deflated continued to get worse over a period of days. Plaintiff made no complaint to the phlebotomist who drew the blood, Mary Schneider, RN, or anyone else at NYBC on the date of donation. Plaintiff testified there was no swelling or discoloration at the site when the procedure was complete (defendant's Exhibit C, plaintiff's EBT pages 47-48).

The only medical documentation plaintiff provides is an affidavit of an expert in phlebotomy procedures, Karen Gordon, containing her attendant findings. Her stated listing of breaches in the proper standard of care are all speculative and not based on actual fact nor supported by an affidavit from any person with

actual knowledge what specifically occurred during the May 22, 2004, procedure. Karen Gordon's proffered proof was based upon her ultimate conclusions which were both speculative and conclusory, and if offered alone at trial, would not support a verdict in plaintiff's favor (see, Roman v Stanley, 90 NY 2d 444). No negligent act or omission can be discerned. Plaintiff and the Court are left solely with subsequent symptoms but no factual causation or affidavit from a medical doctor specifically stating what plaintiff suffers from nor its path of causation.

Defendant properly submitted the affidavit of its medical expert, Dr. Randy Levine, in support of their motion for summary judgment. There is no evidence of intentional or willful failure to disclose said expert's identity prior to the filing of plaintiff's note of issue and there has been no showing of prejudice to plaintiff (see, Rowan v Cross County Ski and Skate, Inc., et al., 2007 WL 2189357 (N.Y. A.D.2nd Dept.); Hernandez-Vega, et al. v Zwanger-Pesiri Radiology Group, et al., 39 AD3d 710). Dr. Levine opines and substantiates her findings with various medical literature as well as the relevant records (EBT transcripts, etc.), that the fact of an injury itself, standing alone, proves nothing and there is no evidence of negligence by defendants.

As to plaintiff's claim of lack of informed consent, as affirmed by defendant's expert, one person in 1.5 million donors will likely suffer a permanent, disabling injury (affidavit of Dr. Randy Levine, paragraph 19). Peripheral nerve injuries can, albeit rarely, follow routine venipuncture (same affidavit, paragraph 17).

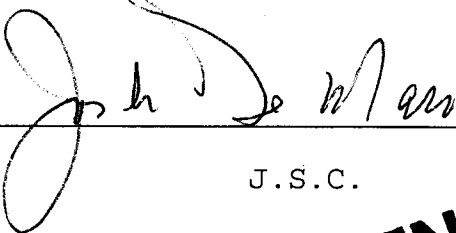
Plaintiff, on her registration/health form, indicated she read and understood the educational materials provided her prior to her donation. Although in 2004, the "form" did not specify the risk of nerve injury (the 2007 form has been revised to reflect such risk, among others), it did refer to the educational materials. The policies and procedures that were in place for NYBC employees in 2004 were approved by the U.S. Food and Drug Administration and according to Dr. Levine and not refuted by plaintiff's expert, Karen Gordon, they conformed with all national standards in place in 2004. There is an assertion by defendants and their expert, Dr. Randy Levine, that an injury of the nature plaintiff complains, is an extraordinarily rare event. This statement is not refuted by plaintiff or her expert, with probative evidence to the contrary (see, George v NYC Health and Hospitals, Corp. et al, 14 AD3d 427). Further, as there is no medical documentation submitted to substantiate what plaintiff in fact suffers from, there is no specific injury plaintiff should have been notified was a potential consequence of giving blood.

Plaintiff's lengthy history of voluntarily donating blood is commendable. Although retrospectively plaintiff states she felt discomfort during the procedure of May 22, 2004, she did not mention this on the date in question so that the phlebotomist could address it. She testified the "draw" took about ten minutes (the log sheet reflects eight minutes, which difference of two minutes, is negligible). According to Dr. Levine, the eight minutes of bleed time reflects quick and consistent flow of blood due to

proper placement of the needle and nerve injury due to improper phlebotomy technique, would cause pain to the donor. Plaintiff testified that she didn't feel any pain when the needle was inserted into her arm or anytime during the blood draw and she thought the phlebotomist must be really good because it didn't hurt (defendant's Exhibit C, plaintiff's EBT pages 41-42). There was no "red flag" to call the attention of the phlebotomist to any problem with the donation procedure.

Based upon the hearsay testimony of plaintiff in her EBT transcript, of the medical history she has endured subsequent to May 22, 2004, the Court is sympathetic to her situation but must, based upon the law and plaintiff's lack of substantiation of her claims, grant defendant summary judgment dismissing plaintiff's amended complaint pursuant to CPLR § 3212.

This constitutes the decision and order of the Court.



J.S.C.

Dated: August 28, 2007

ENTERED

AUG 31 2007

NASSAU COUNTY
COUNTY CLERK'S OFFICE