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NY Hospital, Doctors Escape Patient's Post-Op Stroke Suit

By **Rachel O'Brien**

Law360 (March 18, 2021, 5:00 PM EDT) -- A New York appeals court Wednesday affirmed a lower court's decision to let a New York hospital system and its doctors off the hook from a suit that alleged they irresponsibly cleared a woman for colon surgery and caused her to have a stroke.

Supreme Court Judge Robert A. Bruno was right to grant three summary judgment motions for the defendants, because Ella Javich didn't prove that the doctors and hospital staff at North Shore-Long Island Jewish Health System deviated from accepted standards of care and that the treatment they provided was the cause of her alleged injuries, the four-judge appeals panel said Wednesday.

Dr. James D. Sullivan performed Javich's colon resection surgery at North Shore University Hospital on July 12, 2012, assisted by Dr. Raza M. Zaidi and Dr. Sophia Lyubarskaya, an anesthesiologist, according to court records. She later suffered a stroke.

Javich sued Sullivan, Zaidi, Lyubarskaya, physician's assistant Crystal Cooper and North Shore-Long Island Jewish Health System, known as Northwell Health, on Nov. 24, 2014, alleging medical malpractice, negligence, lack of informed consent and loss of services.

Javich claims the hospital and medical professionals were negligent when they permitted her to have the surgery despite having high blood pressure, which caused her to have a stroke, and then failed to diagnose and treat the stroke in a timely manner, causing further injuries.

The defendants submitted expert testimony from four doctors specializing in internal medicine, cardiovascular disease, neurology, surgery and surgical critical care, and anesthesiology, all arguing the medical staff and hospital didn't deviate from accepted standards of care in either their preoperative and post-operative treatment of Javich, and that the treatment they provided was not the cause of her alleged injuries.

Javich submitted her own — redacted — expert testimony from a doctor of internal medicine and cardiovascular disease that said the defendants proceeded with surgery after Javich's elevated blood pressure dropped.

Javich's second redacted testimony from an anesthesiologist said that Lyubarskaya shouldn't have proceeded with the surgery with only the medical clearance from an internist/cardiologist and that if the surgery was delayed to manage Javich's blood pressure, the stroke wouldn't have happened.

On Aug. 1, 2017, the lower court granted the three motions for summary judgment in favor of the medical professionals and hospital because they demonstrated that any alleged deviation from accepted standards of care wasn't a proximate cause of Javich's alleged injuries.

Javich appealed, and on Wednesday, the appellate panel agreed with the lower court.

While Javich's expert said nonparty Aaron Gindea, an internal medicine/cardiology specialist at North Shore, cleared Javich for surgery before her hypertension was under control, the expert didn't establish a causal connection between her preoperative hypertension or her drop in blood pressure after anesthesia was administered and her stroke, the appeals court said.

"Accordingly, the Supreme Court properly granted that branch of the hospital defendants' motion which was for summary judgment dismissing the complaint insofar as asserted against North Shore," the panel said.

Similarly, Javich didn't raise a triable issue of fact on whether the alleged deviations by Sullivan and Zaidi caused her injuries, the court said.

"Although the plaintiffs' expert opined that Sullivan and Zaidi deviated from the accepted standard of care by proceeding with surgery after Javich's blood pressure dropped, the plaintiffs' expert failed to establish a causal connection between Javich's pre-operative hypertension or her drop in blood pressure and the ischemic stroke she subsequently suffered," the appeals panel said.

Likewise, Javich again failed to raise a triable issue of fact on whether Lyubarskaya's alleged deviations caused her injuries, the court said.

Javich's expert anesthesiologist didn't establish a causal connection between Javich's pre-operative hypertension or her drop in blood pressure, and the stroke she suffered, the court said.

"Accordingly, the Supreme Court properly granted Lyubarskaya's motion for summary judgment dismissing the complaint insofar as asserted against her," the appeals panel said.

Counsel for Sullivan and Zaidi and counsel for North Shore and Cooper declined to comment.

Counsel for the other parties didn't immediately respond to requests for comment Thursday.

Judges Leonard D. Austin, Betsy Barros, Francesca E. Connolly and Angela G. Iannacci sat on the panel.

Javich is represented by Alexander J. Wulwick of Mark M. Basichas & Associates PC.

Sullivan and Zaidi are represented by Robert A. Lifson of Lewis Johns Avallone Aviles LLP.

North Shore Long Island Jewish Medical Center and Cooper are represented by Christopher Simone and Nicholas Tam of Shaub Ahmuty Citrin & Spratt, LLP.

Lyubarskaya is represented by Lauren B. Bristol of Kerley Walsh Matera & Cinquemani PC.

The appellate court case is Ella Javich et al. v James Dennis Sullivan et al., case number 2017-09299, in the Supreme Court of the State of New York, Appellate Division, Second Judicial Department.

The trial court case is Ella Javich et al. v. James Dennis Sullivan et al., case number 11213/14, in the Supreme Court of New York State, Nassau County.

--Editing by Bruce Goldman.