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APPENDIX A

State of New York
Court of Appeals

Decided and Entered on the seventh day of October, 2021

Present, Hon. Janet DiFiore, *Chief Judge, **presiding.***

SSD 59
Binbing Xie,
Appellant,
v.
Yan Fang Chen, Physician, P.C.,
Respondent.

Appellant having appealed to the Court of Appeals in the above title;

Upon the papers filed and due deliberation, it is

ORDERED, that the appeal is dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

John P. Asiello
Clerk of the Court

APPENDIX B

At an IAS Term, Part 15 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 18th day of September 2020.

P R E S E N T:

HON. MARSHA L. STEINHARDT,
Justice

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BINBING XIE,

Plaintiffs,

DECISION AND ORDER
Index No. 6319/2016

-against-

YAN FANG CHEN, PHYSICIAN, P.C.,

Defendants.

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The following papers numbered 1 to 3 read herein:	Papers Numbered
Notice of Motion	1
Affirmation in Opposition	2

This is a motion brought on by Defendant for an Order granting summary judgment as to it. Plaintiff submits opposition.

Upon the foregoing papers and after oral argument, Defendant's motion is GRANTED and the above captioned matter is DISMISSED.

This is an action sounding in medical malpractice. Plaintiff alleges that Defendant and, in particular, Nurse Wu failed to timely diagnose acute myeloid leukemia, which resulted in the necessity for additional cancer treatment.

Action was commenced on or about November 7, 2016 and issue was joined in March of the following year. An amended complaint, a Bill of Particulars, and an Amended Bill of Particulars followed. Plaintiff claims that, on May 9, 2014, Defendant, Yan Feng Chen, Physician, P.C., negligently utilized Nurse Wu, who misrepresented herself as a medical doctor in treating the Plaintiff, and who was unqualified to perform the duties of a medical doctor; failed to conduct blood pressure and pulse exams; failed to be aware of the dangerousness of her high pulse rate; failed to perform a complete blood test (CBC); negligently diagnosed her with a cold/flu, rather than acute myeloid leukemia (AML); and failed to conduct the proper tests to make a diagnosis of AML. Plaintiff also asserts a claim of vicarious liability against Nurse Wu and Dr. Yan Feng Chen (neither of whom are parties to this action), but not against defendant Yan Feng Chen, Physician, P.C. (Exhibit "E". 7). As a result of these allegations, Plaintiff claims that she suffered a miscarriage the following day, on May 10, 2014; did not receive the proper treatment for AML; failed to go into remission after the initial induction chemotherapy; required a high dose of re-induction chemotherapy and many strong consolidation chemotherapies; suffered unbearable pains, nausea, vomiting, starvation; had prolonged neutropenia and pancytopenia; suffered many life-threatening infections; was hospitalized very frequently; needed a bone marrow transplant after which she became infertile; and suffered from acute and chronic Graft Versus Host Disease, which required immunosuppressant medications for three years and caused fatigue, back pain, joint pain, stiffness, decreased range of motion, tightness in fingers, wrists, elbows, ankles, and knees. Plaintiff also claims that she is currently generally weak; has a compromised immune system; is at higher risk for injury, bleeding, and infection; suffers from hearing loss and ringing; compromised vision; brain nerve damage; neurological problems; headaches; dizziness; eye dryness; severe fatigue; and is unable to go to work.

In sum and substance, it is Plaintiff's allegation that Defendant, and in particular, Nurse Wu, did not diagnose leukemia. That said illness was diagnosed five days later and that the delay in diagnoses caused the various damages outlined above. The Court notes that Plaintiff did not have an easy course but has been cancer free for six years.

In support of its application, Defendant submits the affirmation of Mark Fialk, M.D., a physician board certified in internal medicine, medical oncology and hematology. It is the expert's opinion that a five-day delay had no impact on Plaintiff's treatment or the outcome of her illness. (Which, the Court notes, fortunately, is good.). The normal treatment for AML is clearly set forth by Dr. Fialk. The treatment rendered to Plaintiff at Bellevue Hospital is the standard treatment for the disease. That Plaintiff has been cancer free since 2015, and this fact, by itself, indicates that the diagnosis and treatment were not delayed. That Plaintiff received the appropriate chemotherapy treatment and was not deprived of treatment options.

Defendant also submits the affidavit of Alexa Schneider, PhD, RN, FNP in support of the motion. Nurse Schneider clearly opines that the treatment rendered to Plaintiff by Nurse Wu was at all times within good and accepted standards of care. Furthermore, at all times relevant to this discussion, Nurse Wu was competent to render said treatment. The appropriate questions were asked and vital signs, all within normal limits, were taken. That based on Plaintiff's presenting complaints, no further examination, testing, or medical referral was necessary. The appropriate medication was dispensed, and Plaintiff was told to return in one week. That Plaintiff's symptoms were not consistent with ALM, a rare disorder, and that Nurse Wu at no time departed from the standard of care by not making said illness a part of her differential diagnosis.

In opposition, Plaintiff submits an affirmation drafted by herself, and some exhibits. There are no medical affirmations attached.

APPENDIX F

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M277270
E/sl

WILLIAM F. MASTRO, J.P.
LEONARD B. AUSTIN
SYLVIA O. HINDS-RADIX
FRANCESCA E. CONNOLLY, JJ.

2020-09581 DECISION & ORDER ON MOTION

Binbing Xie, appellant,
v Yan Fang Chen, Physician, P.C., respondent.

(Index No. 6319/2016)

Appeal from an order of the Supreme Court, Kings County, dated September 18, 2020. Motion by the respondent to dismiss the appeal as untimely taken. Motion by the appellant pro se, in effect, for summary reversal, or, in the alternative, for leave to prosecute the appeal as a poor person. Separate motion by the appellant pro se for leave to prosecute the appeal as a poor person and for the assignment of counsel.

Upon the papers filed in support of the motions and the papers filed in opposition thereto, it is

ORDERED that the respondent's motion is granted and the appeal is dismissed, without costs or disbursements (*see* CPLR 5513); and it is further,

ORDERED that the appellant's motions are denied as academic.

MASTRO, J.P., AUSTIN, HINDS-RADIX and CONNOLLY, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court

June 7, 2021

Additional material from this filing is available in the Clerk's Office.