

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

760

CA 22-01459

PRESENT: WHALEN, P.J., CURRAN, BANNISTER, OGDEN, AND DELCONTE, JJ.

LG 47 DOE, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

ROCHESTER CITY SCHOOL DISTRICT, ROCHESTER CITY
SCHOOL DISTRICT BOARD OF EDUCATION, AND TIMOTHY
BLANDING, DEFENDANTS-RESPONDENTS.

LIPSITZ GREEN SCIME CAMBRIA LLP, BUFFALO (JOHN A. COLLINS OF COUNSEL),
FOR PLAINTIFF-APPELLANT.

Appeal from an order of the Supreme Court, Monroe County (Deborah A. Chimes, J.), entered August 8, 2022. The order, insofar as appealed from, denied that part of the motion of plaintiff seeking a damages assessment against defendant Timothy Blanding.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action pursuant to the Child Victims Act seeking damages for personal injuries sustained by plaintiff as a result of sexual abuse allegedly perpetrated in 1982 through 1983 by defendant Timothy Blanding who, at the time, was employed by defendant Rochester City School District. Plaintiff thereafter moved, pursuant to CPLR 3215 (a), for an order determining that Blanding was in default and directing a determination of damages against Blanding. There was no opposition to plaintiff's motion. Supreme Court granted that part of the motion seeking a determination that Blanding was in default, but denied the motion to the extent that plaintiff sought an assessment of damages, thereby staying entry of the default judgment until the time of trial or other disposition of the case against the non-defaulting defendants. Plaintiff appeals from the order insofar as it partially denied the motion.

"[W]here . . . a court has before it a motion for a judgment against one defaulting defendant and other non-defaulting defendants, the court is afforded discretion to decide whether the determination of damages against the defaulting defendant should await the disposition of the matter against the non-defaulting defendants" (*Doe v Jasinski*, 195 AD3d 1399, 1402 [4th Dept 2021]). We conclude that the court did not abuse its discretion inasmuch as, prior to denying that part of the motion seeking a determination of damages, the court carefully balanced the interest of judicial economy against the potential prejudice to plaintiff, noting that the latter would be

mitigated by the court's ability to monitor discovery in the litigation against the non-defaulting defendants. Further, contrary to the cases on which plaintiff relies, we find no facts in the present record that would warrant the substitution of our own discretion (*cf. LG 46 Doe v Jackson*, 199 AD3d 1464, 1466-1467 [4th Dept 2021]; *Jasinski*, 195 AD3d at 1402-1403; *Doe v Friel*, 195 AD3d 1409, 1409 [4th Dept 2021]).

Entered: November 17, 2023

Ann Dillon Flynn
Clerk of the Court