State of New York Court of Appeals

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To be argued Tuesday, January 2, 2018

No. 1 Forman v Henkin

Kelly Forman brought this lawsuit against Mark Henkin to recover for injuries she allegedly suffered when she fell from one of his horses while riding in South Haven State Park on Long Island in June 2011. She said the leather strap attaching a stirrup to the saddle broke, causing her to fall; and she alleged that Henkin was negligent in failing to properly equip the horse for riding and failing to maintain the saddle and tack. Among other injuries, she claimed that she suffered traumatic brain damage that caused cognitive deficits, memory loss, inability to concentrate, difficulty in communicating, and social isolation. Forman said she had been an active Facebook user prior to the accident, posting photographs and messages, but she deactivated her Facebook account about a year after her fall. In discovery, Henkin moved for an order compelling Forman to give him unrestricted access to her Facebook account, arguing the records were necessary to evaluate her alleged injuries and her credibility.

Supreme Court granted the motion, in part, and directed Forman to produce some records from the non-public portion of her Facebook account, including all photographs of herself that she privately posted after the accident, except those involving nudity or romantic encounters, and also the timing and length, but not the content, of her private Facebook messages.

The Appellate Division, First Department modified in a 3-2 decision and vacated those portions of the order requiring Forman to disclose any information about her private Facebook messages or any photographs that she did not intend to use at trial. Henkin's "speculation that the requested information might be relevant to rebut plaintiff's claims of injury or disability is not a proper basis for requiring access to plaintiff's Facebook account...," it said. "The discovery standard we have applied in the social media context is the same as in all other situations -- a party must be able to demonstrate that the information sought is likely to result in the disclosure of relevant information bearing on the claims.... This threshold factual predicate ... stands as a check against parties conducting 'fishing expeditions' based on mere speculation...."

The dissenters argued the Appellate Division has placed an unnecessarily high burden on litigants seeking disclosure of social media records, saying, "The case law that has emerged in this state in the last few years ... holds that a defendant will be permitted to seek discovery of the nonpublic information a plaintiff posted on social media, if, and only if, the defendant can first unearth some item from the plaintiff's publicly available social media postings that tends to conflict with or contradict the plaintiff's claims." They said the "material and necessary" standard in the discovery statute, CPLR 3101(a), "only requires a reasoned basis for asserting that the requested category of items 'bear[s] on the controversy'..., or a showing that it is likely to produce relevant evidence.... There is no reason why the traditional discovery process cannot be used equally well where a defendant wants disclosure of information in digital form and under the plaintiff's control, posted on a social networking site."

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No. 2 Matter of Kelly v DiNapoli
No. 3 Matter of Sica v DiNapoli

The petitioners applied for accidental disability retirement (ADR) under Retirement and Social Security Law § 363, which provides enhanced pension benefits for police officers and firefighters who are "physically or mentally incapacitated for performance of duty as the natural and proximate result of an accident" while on duty. The Office of State Comptroller denied both applications on the ground that their injuries were not the result of an "accident" within the meaning of the statute.

Orangetown Police Officer James J. Kelly injured his neck and shoulder in October 2012, as he worked to rescue a family trapped in its collapsing home during Hurricane Sandy. A falling tree had partially destroyed the house, two walls and half of the roof had fallen in, one resident was dead, and downed trees and power lines were delaying the arrival of trained rescue crews. Kelly was hurt as he threw debris off the injured residents and deflected a falling rafter.

The Appellate Division, Third Department confirmed the denial of ADR benefits on a 3-2 vote, saying "the threat that compelled [Kelly's] response as a police officer and first responder -- the dangerous condition in the home -- was the same threat that ultimately caused [his] injuries. Given this substantial evidence that petitioner's injury resulted from foreseeable risks inherent to being a police officer whose duty it was to assist injured persons, we will not disturb [the] determination...." The dissenters said Kelly was not trained for such rescue work and the risks were not foreseeable. "[T]he circumstances of petitioner's injury were of an extraordinary, urgent, and wholly unanticipated nature, and the resulting risks to him were beyond the scope of his anticipated duties, even given the potentially dangerous nature of his work as a police officer.... He was providing urgent emergency services in the midst of a Hurricane."

Yonkers Firefighter Pat Sica was exposed to carbon monoxide and cyanogen chloride, colorless and odorless gases, when he responded to a medical emergency at a supermarket in September 2001. He performed cardiopulmonary resuscitation for about 30 minutes on a store employee who collapsed and stopped breathing in a walk-in freezer, then assisted another worker who had fallen unconscious outside the freezer. As a result of his exposure to the toxic gases, Sica developed dilated cardiomyopathy, which impairs heart function.

The Appellate Division, Third Department annulled the denial of ADR benefits on a 3-2 vote, finding the incident was an accident. While the court had previously held that "exposure to toxic fumes while fighting fires is an inherent risk of a firefighter's regular duties," it said Sica "was not responding to a fire that presented the inherent and foreseeable risk of inhaling toxic gases.... The record evidence further reflects that petitioner was neither aware that the air within the supermarket contained toxic chemical gases..., nor did he have any information that could reasonably have led him to anticipate, expect or foresee the precise hazard when responding to the medical emergency...." The dissenters said Sica "was injured by the same dangerous condition that gave rise to the need for his emergency medical assistance, exposure to chemical gases. Moreover, petitioner was on notice that his duties included exposing himself to such dangerous conditions by his job description, his training and his actual professional experiences. Given this record evidence, a reasonable mind could conclude that petitioner suffered injuries that were the result of the risks inherent in his regular professional duties as a firefighter and emergency medical assistance provider explicitly tasked with risking chemical exposure and specifically trained for that risk...."

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No. 4 People v Jude Francis *(papers sealed)*

Jude Francis was found guilty of raping and robbing a woman at gunpoint in Brooklyn in April 2003, when he was 19 years old. Near the end of his 13-year prison term, the Board of Examiners of Sex Offenders reviewed his risk of reoffending under the Sex Offender Registration Act (SORA), Correction Law article 6-C. Among other factors, the Board assessed Francis 25 points based on his prior criminal history, which consisted solely of his adjudication as a youthful offender in 2001, when he was 17 years old, after he pled guilty to third-degree possession of stolen property and received a conditional discharge. The Board's guidelines provide that prior juvenile delinquency and youthful offender adjudications are part of a sex offender's criminal history, but courts have held that juvenile delinquency adjudications may not be considered in determining an offender's risk of reoffense. Francis' total score of 115 points made him a presumptive level three (high risk) offender. Without the 25 points assessed for his youthful offender adjudication, he would have been a level two (moderate risk) offender.

At his SORA hearing in Supreme Court, Francis argued that he should not have been assessed points for his youthful offender adjudication, which is not a criminal conviction under the Criminal Procedure Law. CPL 720.35(1) provides that a "youthful offender adjudication is not a judgment of conviction for a crime or any other offense," and the statute requires that the records be sealed. He also argued that, like juvenile delinquency, youthful offender adjudications should not be considered in SORA proceedings The court found all of the risk factor points were properly assessed and designated Francis a level three sexually violent offender.

The Appellate Division, Second Department affirmed in a 3-1 decision. It said juvenile delinquency cases are civil proceedings in Family Court involving "individuals who are too young to be held criminally responsible for their conduct," while "youthful offender adjudications can only follow a criminal conviction" and, under CPL 720.35(2), sealed youthful offender records may be disclosed "if there is specific statutory or judicial authorization to do so." It found that authorization in CPL 720.35(2), which makes youthful offender records available to the Department of Corrections and Community Supervision (DOCCS), and in Correction Law §§ 168-1 and 168-n(3), which requires that Board members be employees of DOCCS, makes them responsible for assessing the future threat posed by sex offenders, and requires a SORA court to review "any materials submitted" by the Board. It said these provisions "provide the requisite statutory authorization to permit both the Board and courts to consider sealed youthful offender adjudications in conformity with CPL 720.35(2)."

The dissenter argued the youthful offender statutes were meant to allow "an individual to avoid the stigma and practical consequences that accompany a criminal conviction" resulting from impulsive and immature behavior, and "the Board exceeded its authority in adopting guidelines which include youthful offender adjudications" in the assessment of an offender's risk level. "There is no indication that the legislature intended to specifically authorize the Board to utilize youthful offender adjudications in determining a sex offender's criminal history when it amended Correction Law § 168-1(1) in 2011," amendments that were "simply intended to effectuate the merger of the Department of Correctional Services and the Division of Parole into DOCCS." She said, "[T]he majority's decision has the effect of treating the defendant's youthful offender adjudication as if it were a criminal conviction, contrary to the laudable purpose of the youthful offender statutes."

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