

Klein v Alliano

2007 NY Slip Op 33098(U)

September 25, 2007

Supreme Court, Richmond County

Docket Number: 0012734/2003

Judge: Philip G. Minardo

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: JCP8

By: Philip G. Minardo, J.S.C.

Date: September 25, 2007

ALEX KLEIN,

Plaintiff,

DECISION/ORDER

vs.

Index. No: 12734/03

CLARISSA N. ALLIANO, ANDREA BEATRIZ
REVOLORIO and CHASE MANHATTAN AUTO
FINANCE CORP.,

Defendants.

ANDREA BEATRIZ REVOLORIO,

Plaintiff,

vs.

CLARISSA N. ALLIANO,

Defendant.

The following papers numbered 1-7 used on this motion this 20th day of August, 2007.

	Papers Numbered
Notice of Motion by Plaintiff (003)	1
Opposition by Defendant Chase Manhattan Auto Finance Corp.	2
Cross Motion by Defendant Alliano (004)	3
Cross Motion by Defendant Chase Manhattan Auto Finance Corp. (005)	4
Cross Motion by Defendant Revolorio (006)	5
Cross Motion by Defendant Revolorio (007)	6
Reply by Plaintiff	7

Plaintiff moves for various relief, a portion of same was resolved by Interim Court Order dated July 23, 2007. The remaining issue is plaintiff's request to seal all records of plaintiff's gender

change and prior identity as a female known as Allison Klein. The defendants strenuously oppose this relief and demand plaintiff's psychiatric records in light of plaintiff's alleged past and future lost earnings claims totaling \$16.9 million dollars. The defendants allege plaintiff's gender change operation, with its physical and psychiatric implications, are inextricably intertwined with plaintiff's claims concerning past and future working disabilities and, therefore, impacts on the amount of past and future loss of earnings.

The physical operations themselves would render plaintiff unable to work for that specific time frame. Further, in reliance on their experts, defendants allege psychological and/or hormone treatments may also impair plaintiff's ability to work and contribute to his lost earnings. In support of the defendants' request for discovery of plaintiff's transgender medical and psychiatric records, defendant Alliano submits the affirmation of Marc Siegel, M.D., a Board Certified Internist, who states he is familiar with the treatment and care related to female to male gender change. Specifically, Dr. Siegel states that transgender issues, especially from female to male, are always associated with psychiatric trauma that will require its own treatment. Dr. Siegel further states the stress and anxiety of transgender identification and subsequent treatments not only interfere with wound healing, they also interfere with the perception of healing and the recuperative process as a patient attempts to return to normal function. In addition, testosterone-like drugs clearly and irrefutably can cause personality changes, rendering the patient more aggressive, belligerent, antagonistic, hostile, irritable and potentially combative.

"It is well settled that a party waives the physician-patient privilege by affirmatively placing his or her physical or mental condition in issue" (Carboni v New York Medical College, 290 AD2d 473 [2nd Dept. 2002]). "However, a party does not waive the privilege with respect to unrelated

illnesses or treatments (*id.*). In Carboni the defendants were denied plaintiff's psychiatric records because plaintiff did not seek to recover costs of any medical care, custodial care, rehabilitation services or loss of earnings or other economic loss. In the instant matter the plaintiff is seeking substantial past and future loss of earnings, as well as medical, hospital and other necessary expenses.

This court had previously ordered plaintiff to execute authorizations for medical treatments relative to his gender change, with the exception of any psychological and/or psychiatric treatment records. Plaintiff had agreed to waive any claim for psychological injuries. However, after further review of the motion papers, this court now finds that plaintiff's psychological and/or psychiatric treatment records, if any, would be relevant on the issue of plaintiff's capacity to work and reflect on the amount of damages for past and future lost earnings.

Accordingly, the plaintiff is hereby ordered to execute authorizations for all psychological and/or psychiatric, and related pharmaceutical regimen and treatment rendered, as well as employment per diem records, solicitations and tax returns within twenty (20) days of this order, or plaintiff's claim for past and future lost earnings will be precluded at trial. The issue of a further examination before trial and IME on plaintiff's psychological and/or psychiatric treatment is reserved until after said records are obtained by defendants.

Plaintiff's motion to seal plaintiff's records of gender change and preclude disclosure of plaintiff's prior identity as a female known as Allison Klein is denied at this time with leave to renew after completion of all discovery.

This shall constitute the decision and order of the court.

ENTER,

S/ Philip G. Minardo
J. S. C.

Clerk to notify all parties.