

YMCA of the Capital Dist. v Felton

2007 NY Slip Op 33816(U)

November 27, 2007

Supreme Court, Albany County

Docket Number: 0074542/0071

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

YMCA OF THE CAPITAL DISTRICT,
Petitioner,

-against-

DECISION and ORDER
INDEX NO. 7454-07

PRESTON L. FELTON, Interim Superintendent, New York
State Police

Respondent.

Supreme Court Albany County Special Term, October 19, 2007
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Petitioner (“YMCA of the Capital District”) seeks judgment pursuant to CPLR Article 78 and CPLR §2307 against Respondent (“NYS Police”), directing the New York State Police and Investigator James Ayling to produce the entire file pertaining to the questioning of individuals regarding the inspection and/or investigation of the YMCA Gardner Dickinson After School Program (“Y Time Program”) conducted during 2003. Petitioner further moves pursuant

to CPLR §3101 (a) and 3101(6), seeking a So Ordered subpoena directing Investigator Ayling to appear for a deposition and give testimony regarding the investigation of YMCA After School Program. Respondent makes a cross motion to dismiss petition pursuant to CPLR §7804 (f).

Petitioner is the Defendant in a negligence action whereby Plaintiffs are seeking damages for personal injuries and/or emotional injuries allegedly arising out of sexual abuse by a fellow student which occurred at the “Y Time Program” at the Gardner Dickinson School. The New York State Police investigated the allegations and filed, as part of public records of the State Police Department, detective reports, investigation notes, and reports relating to the allegations made by Plaintiffs.

Petitioner argues that the police records should be available pursuant to CPLR 3101 (a)(4), as they are crucial to the defense of the action and the disclosure of such records would not hamper any future investigations. Additionally, Petitioner notes that the identity of the victim has already been released in connection with the civil action. Alternatively, Petitioner argues that the records may be obtained through the Freedom of Information Law (FOIL).

Respondent contends that the petition must be dismissed as time barred by Public Officers Law §89 (5)(d). In addition, Respondent argues that the petition for both a subpoena duces tecum and subpoena ad testificandum should be denied because the police records sought by Petitioner are protected from disclosure under the Family Court Act §§375.1 and 381.3. Finally, Respondent argues that any further efforts to obtain disclosure should be referred to the Rensselaer County Family Court. Respondent also notes that Civil Rights Law 50-b does not apply here, because it is not the identity of the victim that is sought to be protected, but rather the identity of the accused.

Initially, this Court agrees with Respondent's argument that the petition regarding the FOIL request is time barred pursuant to Public Officers Law §89 (5)(d). Under that defense alone, this Court denies the petition. However, even if this Court were not to consider this petition as time barred, the petition is still denied based on the following reasoning.

“All government records are presumptively open for public inspection unless specifically exempted from disclosure as provided in the Public Officers Law.” Fappiano v. New York City Police Dep't., 95 N.Y. 2d 738 (2001). Although an agency is permitted to restrict access to those documents that fall under an exemption, the language is permissive rather than mandatory” and it is within the agency's discretion to disclose such records, with or without identifying details, if it so chooses.” Capital Newspapers Div. of Hearst Corp. v Burns, 67 N.Y.2d 562, 567 (1986). “Exemptions are to be narrowly construed to provide maximum access, and the agency seeking to prevent disclosure carries the burden of demonstrating that the requested material falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access.” Beyah v. Goord, 309 A.D.2d 1049 (3d Dep't. 2003)(quoting Capital Newspapers Div. of Hearst Corp. v Burns, 67 N.Y.2d 562 (1986)).

Family Court Act Article 3, §375.1 provides that where charges against an infant accused of a crime do not result in any conviction, the records relating to the file are sealed from disclosure. Section 381.3 (1) further provides that “[a]ll police records relating to the arrest and disposition of any person under this article shall be kept in files separate and apart from the arrests of adults and shall be withheld from public inspection.” There are two very limited exceptions to access to records, namely access for inspection by the person accused or to a judge of the convicting court if the accused is later convicted of a crime. Family Court Act §381.3 (2).

New York Courts have consistently prohibited access to sealed juvenile records. *See* Alonzo M. v. New York City Dept. of Probation, 72 N.Y.2d 662 (1988). “[S]ealing should occur where a case has been dismissed in favor of an accused even though a future proceeding may arise involving the same defendant.” Matter of Steven R., 121 Misc. 2d 245, 247 (N.Y. Fam. Ct. 1983). “[Sealing provisions] are violated when a public agency, privy to and maintaining records and information concerning cases terminated in the juvenile's favor, divulges information resurrected from otherwise sealed records.” Alonzo M. v. New York City Dept. of Probation, 72 N.Y.2d 662 (1988). The words of the Family Court Act are unambiguous and the exceptions are narrow, therefore courts should construe the statute to give effect to its plain meaning. *See id.*

In the case at hand, the accused are infants and no conviction resulted from the police investigation. These records are sealed pursuant to the Family Court Act and Petitioner does not fit into either of the two narrow exceptions provided for in the statute. Therefore, the police records requested are protected from disclosure, and to hold otherwise would be violative of the Family Court Act. Since these records are specifically exempted from disclosure by the Family Court Act, they cannot alternatively be obtained under FOIL. *See* Public Officers Law §87 (2)(a). Additionally, Civil Rights Law §50-b is not applicable in this situation. The legislative intent of this provision is to protect the identity of victims of sex crimes, whereas here the protection to be afforded is that of the infants *accused* of the crime. Therefore, the argument that the victim's identity has already been released is unavailing.

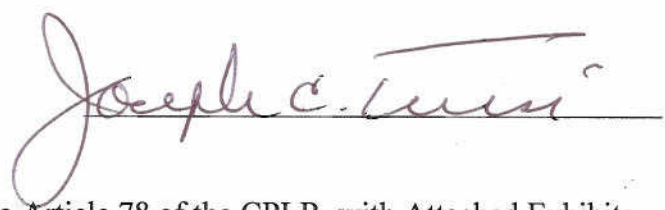
After full review of the record, this Court will deny petition to compel disclosure of police records. This Court will also deny petition for subpoena duces tecum and subpoena ad

testificandum. The records are exempt from disclosure as sealed under the Family Court Act.

All papers, including this Decision and Order, are being returned to the attorney for the Respondent. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

SO ORDERED

Dated: November 27, 2007
Albany, New York



PAPERS CONSIDERED:

1. Notice of Petition For judgment Pursuant to Article 78 of the CPLR, with Attached Exhibits A-H, dated September 17, 2007.
2. Respondent's Affidavit of Laurie M. Wagner in Support of Motion to Dismiss Petition Pursuant to CPLR §7804 (f), dated October 11, 2007.
3. Respondent's Notice of Motion to Dismiss Petition Pursuant to CPLR §7804(f), dated October 15, 2007.
4. Reply Affirmation of Shawn T. Nash in Support of Petition, dated October 18, 2007.