Courtien v Lindenhurst Public Schools
2007 NY Slip Op 34164(U)
December 19, 2007
Supreme Court, Suffolk County
Docket Number: 0004194/2005
Judge: Joseph Farneti
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[* 1]

SHORT FORM ORDER

INDEX NO. 4194/2005

SUPREME COURT - STATE OF NEW YORK

I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI
Acting Justice Supreme Court

MARY CLARE COURTIEN,

Plaintiff,

-against-

LINDENHURST PUBLIC SCHOOLS a/k/a LINDENHURST UNION FREE SCHOOL DISTRICT, BOARD OF EDUCATION OF LINDENHURST PUBLIC SCHOOL, "JANE CANESTRARO", Administratrix and/or Executrix of the Estate of JOHN CANESTRARO, Deceased, SUSAN J. DUMOULIN, and "JOHN" PECCORELLI, first name being fictitious and presently unknown, and CHILDREN'S LEISURE AFTER SCHOOL PROGRAM OF LINDENHURST, LTD.,

Defendants.

ORIG. RETURN DATE: JULY 31, 2007
FINAL SUBMISSION DATE: AUGUST 30, 2007
MTN. SEQ. #: 004
MOTION: MD

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Upon the following papers numbered 1 to 6 read on this motion TO UNSEAL RECORDS. Notice of Motion and supporting papers 1-3; Affidavit in Opposition and supporting papers 4; Affirmation in Support and supporting papers 5; Reply Affirmation and supporting papers 6; it is,

ORDERED that this motion by plaintiff for an Order unsealing all the records of the plaintiff currently held by the Suffolk County District Attorney's office, is hereby **DENIED** for the reasons stated hereinafter. The Court has received an affidavit of ANNE E. OH, Assistant District Attorney, in opposition to the instant application, and an affirmation in support from counsel for defendants LINDENHURST PUBLIC SCHOOLS a/k/a LINDENHURST UNION FREE SCHOOL DISTRICT and BOARD OF EDUCATION OF LINDENHURST PUBLIC SCHOOL ("LINDENHURST").

This action, commenced on or about February 10, 2005, stems from an incident that occurred on December 12, 1991. On that date, plaintiff, who was then a minor, was participating in an after school program run by defendant CHILDREN'S LEISURE AFTER SCHOOL PROGRAM OF LINDENHURST, LTD. ("CLASP"), located at South Allegheny Lindenhurst Public School, in Lindenhurst, New York. Plaintiff alleges that she was caused to be touched, abused and verbally harassed in a lewd and sexual manner by defendant JOHN CANESTRARO, who is now deceased. As a result, a criminal proceeding was instigated against Mr. Canestraro. Plaintiff alerts the Court that a Grand Jury was convened, an indictment was handed down, and the records of the criminal proceeding were sealed following the termination of the matter. Plaintiff further alerts the Court that the District Attorney created and maintains a file which includes, among other things, the results of a physical examination conducted by DR. MILTON GORDON, who plaintiff alleges is no longer in practice and cannot be located; the records of NAN RUBIN, CSW, who provided counseling to plaintiff; and plaintiff's testimony before the Grand Jury conducted via videotape due to her young age at the time.

Plaintiff alleges that she previously sought the police reports and Grand Jury minutes through Freedom of Information requests directed to the Suffolk County District Attorney and the Suffolk County Police Department, which were both denied. Thereafter, plaintiff filed a motion in the County Court of Suffolk County to unseal the Grand Jury minutes. The motion was denied by Order dated March 1, 2006 (Doyle, J.). Plaintiff subsequently moved to renew her application in the County Court, which was denied by Order dated July 6, 2006 (Doyle, J.). Plaintiff then sought an Order from the Supreme Court to unseal the Grand Jury minutes, as well as to obtain a copy of all records of the plaintiff held by the District Attorney, including medical records of the rape examination, videotaped testimony, and psychological records. By Order dated

October 23, 2006 (Werner, J.), the Court denied the motion, holding that the Orders in the County Court denying her application to unseal the Grand Jury minutes were *res judicata*. However, the Court denied plaintiff's application for unsealing pursuant to CPL 160.50 without prejudice to renew on notice to the Suffolk County District Attorney.

Plaintiff has now filed the instant application seeking only the records of the plaintiff currently held by the Suffolk County District Attorney's office regarding the underlying incident, including the aforementioned medical records of rape examination, videotaped testimony, and psychological records. Plaintiff argues that the records are material and necessary in the prosecution of the instant action (CPLR 3101[a]), and cannot be obtained through other sources. Defendant LINDENHURST has submitted an affirmation in support of plaintiff's application, arguing that the records sought are material and necessary in LINDENHURST's defense of this action.

The Suffolk County District Attorney opposes the application. The District Attorney alleges that his file contains only three of the documents requested, to wit: (1) Dr. Gordon's records relative to the forensic pediatric examination; (2) a videotape of plaintiff's testimony prepared for the Grand Jury; and (3) a letter from Ms. Rubin to the prosecutor dated July 22, 1992. The District Attorney argues that plaintiff is not entitled to the videotape in light of the two Orders in County Court and the Order of the Supreme Court denying plaintiff's applications to unseal the Grand Jury minutes, as well as the protections afforded by CPL 190.25 and Judiciary Law § 325. Further, the District Attorney argues that plaintiff is not entitled to the remaining documents as plaintiff does not fall within the persons or agencies that may have access to the sealed records pursuant to CPL 160.50(1)(d).

In a civil action, CPLR 3101(a) provides for disclosure of "all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof" (CPLR 3101[a]). Although CPLR 3101 and 3121 favors liberal disclosure, such disclosure must be material and necessary to the prosecution or defense of the action (CPLR 3101; *Gill v Mancino*, 8 AD3d 340 [2004]; *DeStrange v Lind*, 277 AD2d 344 [2000]). What is material and necessary is in the "sound discretion" of the trial court and includes "any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason"

(*Andon ex rel. Andon v 302-304 Mott Street Assocs.*, 94 NY2d 740 [2000], quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403 [1968]).

However, CPL 160.50 provides that after official records and papers of a criminal action or proceeding are sealed, the records may only be made available to certain defined persons and entities, and it is undisputed that plaintiff does not fall within any of the statutorily defined exceptions (CPL 160.50[1][d]). Plaintiff argues that the materials sought herein are not official records as contemplated by CPL 160.50(1)(c), citing *Hynes v Karassik*, 47 NY2d 659 (1979). However, in *Hynes*, the Court of Appeals merely noted that the appeal from the portion of the First Department's holding which found "that two tape recordings introduced into evidence at the criminal trial were not within the definition of 'official records and papers' protected by the sealing statute," was dismissed on the ground that the respondent was neither a party aggrieved nor able to appeal from an asserted error in the opinion rather than the order of the court (*Hynes v Karassik*, 47 NY2d 659, 661, n 2). In any event, this Court finds that the tape recordings in *Hynes* are distinguishable from the videotape at bar, in that the tapes in *Hynes* were utilized during the course of a public criminal trial, not during the course of secret Grand Jury proceedings. Moreover, in *In re Dondi*, 63 NY2d 331 (1984), the Court held that certain "testimonial evidence" consisting of an incriminatory tape recording constituted an official record subject to CPL 160.50(1)(c).

In the recent case of *Katherine B. v Cataldo*, 5 NY3d 196 (2005), the Court found that the six statutory exceptions of CPL 160.50 are precisely drawn, and that the statute's provisions strongly suggest that its primary focus is the unsealing of records for investigatory purposes. In addition, the Court of Appeals has held that a finding of an "inherent power" basis for an unsealing order would subvert the plain intendment of the statutory scheme in CPL 160.50 to establish, in unequivocal mandatory language, a general proscription against releasing sealed records and materials, subject only to a few narrow exceptions (*In re Joseph M.*, 82 NY2d 128 [1993]).

In view of the foregoing, this Court is bound by the specific, narrowly-defined exceptions for unsealing found in CPL 160.50, none of which apply to plaintiff. As discussed, the Court of Appeals has held that the provisions of CPL 160.50 suggest that records should be unsealed only for investigatory purposes, which is not a purpose of the case at bar. Accordingly, this application to unseal

the records of the plaintiff currently held by the Suffolk County District Attorney's office is **DENIED**.

The foregoing constitutes the decision and Order of the Court.

Dated: December 19, 2007

HON. JOSEPH FARNETI
Acting Justice Supreme Court