

**Maigah v City of New York**

2008 NY Slip Op 32257(U)

August 1, 2008

Supreme Court, New York County

Docket Number: 0105459/2008

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

**EILEEN A. RAKOWER**

PRESENT: \_\_\_\_\_ **J.S.C.**  
*Justice*

PART 5

Index Number : 105459/2008

**MAIGAH, HAMIDU JAMAL**

VS.

**CITY OF NEW YORK**

SEQUENCE NUMBER : 002

RENEWAL

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED	
_____	1
_____	2
_____	3

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  **NO**

**UNFILED JUDGMENT**

*This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 475).*

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_ FOR THE FOLLOWING REASON(S):

Dated: August 1, 2008  
*[Signature]*

*[Signature]*  
**EILEEN A. RAKOWER** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 5

-----X  
HAMIDU JAMAL MAIGAH, an infant by his father and  
natural guardian, Hamidu Bawa, and HAMIDU BAWA,  
individually,

Index No.  
105459/08

-against-  
CITY OF NEW YORK and NEW YORK CITY POLICE  
DEPARTMENT,

DECISION  
and ORDER

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk  
and notice of entry cannot be served based hereon. See  
V.R.C.P. 141(b). Counsel or authorized representative must  
appear in person at the Judgment Clerk's Desk (Room  
141B).

-----X  
HON. EILEEN A. RAKOWER:

On April 18, 2007, Sonia Taylor, (Taylor) her companion and a home health care worker were murdered by Taylor's twenty year old son, Jimmy<sup>1</sup> Dawkins,(Dawkins) who killed himself after the murders. Petitioner Hamidu Maigah is the decedent Taylor's seven year old son and sole heir, who was not present at the murder. Petitioner Hamidu Bawa is Maigah's father who was recently appointed administrator for the decedent's estate.

In May, 2008, petitioners moved for leave of the court to file a late notice of claim alleging, *inter alia*, wrongful death, infliction of emotional distress, negligent supervision and gross negligence on behalf of the New York City Police Department (NYPD). The City of New York (City) opposed the petition as it pertains to all causes of action other than the wrongful death claim. In that motion, City conceded that petitioner was still within the proscribed time period to file a notice of claim on the wrongful death claim.

By order dated May 20, 2008, the court denied petitioner's motion as it pertained to all causes of action other than the wrongful death claim, because on that claim the time to file was tolled while Hamidu Bawa sought letters of administration from the Surrogate's Court. The court found that, with respect to the other proposed causes of action, petitioner failed to establish that a "special relationship" existed between the decedent and the police department which would permit the latter to be held liable to the former "for the negligent exercise of a governmental function such as providing police protection . . . ." (*Kircher v. City of Jamestown*, 74 NY2d

<sup>1</sup>The decedent's son is referred to throughout the papers as both "Jimmy" and "Jimmie."

251[1989]). The court relied upon *Sorichetti by Sorichetti v. City of New York*, (65 NY2d 461[1985]) where the Court of Appeals found “a special duty of protection” existed which “arose . . . upon presentment of the order of protection to the police along with the allegation that it had been violated.” (*Id.* at 468). In *Sorichetti, supra*, the Court further stated that such a duty exists in “extraordinary circumstances” (*Id.*)

Petitioners now file a motion to renew the application to file a late notice of claim “on behalf of the Infant Claimant Hamidu Jamal Maigah.” Petitioners submit to the court new evidence, specifically documents from the police department obtained pursuant to the Freedom Of Information Law (FOIL.) Petitioners’ argue that these documents demonstrate “clear supervisory negligence and negligence -per se - of the *Domestic Violence Prevention Act* - imputing liability to the Respondents and breaching the duty of care to the late Sonia Taylor and her infant claimant son Hamidu Jamal Maigah.” City opposes. Petitioners’ motion for leave to renew is granted.

Petitioners’ April 2, 2008, FOIL request sought information pertaining to “[t]he April 18, 2007: Jimmy Lee Dawkins murder suicide Cambria Heights Queens and the associated deaths of four people more particularly Sonia Taylor. Location of incident: 116-31 225<sup>th</sup> Street in Cambria Heights, County of Queens and State of New York.”(Sic.) The letter requested , *inter alia*, “any complaint reports made to the Cambria Heights precinct where the murder suicide occurred. All information of prior complaints to the NYPD or the Internal Affairs with the NYPD that were made by Sonia Taylor regarding her son Jimmy Dawkins.” Petitioners also sought all police documents, photographs and 911 calls associated with the murders.

By letter dated April 22, 2008, the Police Department legal bureau responded to the FOIL request, denying it as “too broad in nature” and stating that the request “does not describe a specific document.” Petitioners appealed the original decision and, by letter dated May 23, 2008, the Police Department denied petitioners’ appeal stating again that their request was too broad and that the request “failed to reasonably describe a record in a manner that can lead to its retrieval . . . .”

Also on April 22, 2008, petitioners received correspondence from the Queens County District Attorney’s Office stating that, upon proper payment, it would disclose twenty four pages which pertain to their FOIL request, eight of which were newspaper clippings, averring that the other information sought by petitioners is exempt from FOIL for a variety of reasons.

Petitioners submit as support for their application here four police domestic incident reports (DIRs), obtained through FOIL, which document the decedent Sonia Taylor's disputes with her son Jimmie Dawkins before he murdered her.

One DIR reveals that the police responded to a radio run at 116-31 225 Street, Queens, on May 30, 2006. The form poses a series of questions for the police and the complainant and/or victim to answer. The form's spaces for the complaining victim's name and other identifying information are blank, as are the spaces for the offender's information. The portions of the form that are filled out state, *inter alia*, that upon their arrival, the victim refused to make a statement to the police, the incident was not a "verbal dispute only," there was no order of protection in force and a copy of the DIR was not issued to the complainant because it was refused.

Another DIR shows that the police responded to 116-31 225 Street, Queens, on October 25, 2006. There is no identifying information for the complaining victim, the incident was not a "verbal dispute only" but, again, no order of protection was in force. The officer's narrative of the incident reads, "REFUSED AT T/P/O SUSPECT IS AN EDP AND THREATENED TO HURT HIMSELF. REFUSED AND UNCOOPERATIVE." (Sic.)

The DIR dated November 5, 2006, states that the complainant at 116-31 225 Street, Queens, was Sonia Taylor and the offender was her son Jimmie Dawkins. The narrative portion of the form states "MY SON AND I HAD A VERBAL DISPUTE OVER TURNING THE PHONE OFF AND TAKING MY COMPUTER." The DIR shows that the incident was only a verbal dispute, involving "verbal abuse," there was no order of protection in force, a DIR receipt was issued to Taylor and the "non-arrest reason" is listed as "NO OFFENSE COMMITTED."

The DIR dated April 16, 2007, two days before the homicides/suicide, shows that the police were again at the home of Sonia Taylor and her son Jimmie Hawkins, 116-31 225 Street, Queens. The narrative states that "at TPO C/V states that she became involved in a verbal dispute with son over his actions." The "Statement of Allegations/Supporting Deposition," written and signed by Sonia Taylor states

I have a verbal dispute with my son which escalated to him restelling me for my phone. He threatened that if I call the police I will see what will happen. (Sic.)

The DIR further reflects “prior DV history,” “prior DV police report,” “victim fearful,” threats to “injure/kill persons,” and that an arrest was not made because the harassment was “violation level not in police presence.” The DIR further reflects that there was no order of protection in force, no “stay away order” nor “any prior orders” in effect.

The police report of April 18, 2007, the day of the murders/ suicide states that uniformed officers responded to the location, pursuant to a radio run regarding a verbal family dispute. Upon their arrival, they discovered four dead bodies. The report further states

DIR HISTORY. THREE INCIDENTS OVER THE PAST YEAR,  
NONE OF A CRIMINAL NATURE. RADIO RUNS. NINE  
INCIDENTS OVER THE PAST 365 DAYS, THREE RELATED TO  
DOMESTIC (Sic.)

In order for liability to attach to a municipality for “the negligent exercise of a governmental function,” the existence of a “special relationship” must be established between the claimant and the municipality beyond the relationship with government that all citizens share in common. (*Kircher v. City of Jamestown*, 74 NY2d 251 [1989]; *Cuffy v. City of New York*, 69 NY2d 255 [1987]). The elements of this “special relationship” are: (1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipality's agents that inaction could lead to harm; (3) some form of direct contact between the municipality's agents and the injured party; and (4) that party's justifiable reliance on the municipality's affirmative undertaking. (*Cuffy v. City of New York, supra*).

Petitioners argue that either “in fact this special relationship existed” or, in the alternative, that the NYPD “should have [had] or failed to establish a special relationship with Sonia Taylor.” The thrust of petitioners’ argument is that the demands of the *Domestic Violence Prevention Act* and NYPD protocols require officers to establish a relationship with victims of domestic violence in a manner that was not established between the NYPD and the decedent.

Petitioners also offer the affidavit of retired NYPD Inspector Walter Signorelli who states that the NYPD patrol guide mandates that the Domestic Violence Officers,

a number of whom reviewed the DIRs filed here, were required to “arrange protective measure[s]” and “establish a special relationship” with victims such as Sonia Taylor.

City argues that petitioners’ motion should be denied because the “new” documentary evidence and expert affidavit do not warrant reversal of the Court’s original decision. It states that this evidence does not establish a “special relationship” because it demonstrates that there was no order of protection issued to Sonia Taylor. City argues that petitioners’ failure to timely request FOIL materials now presented to the court does not constitute “new” evidence that could not have been obtained for petitioners first motion. It argues that, regardless of the infancy of the child, nothing in this motion demonstrates that his father was prevented from serving a timely notice of claim.

In *Sorichetti, supra*, the court was faced with the question of whether a special relationship existed between the claimant and the municipality by virtue of 1) the order of protection that was in effect at the time of the assaults and 2) the police department’s knowledge of the assailant’s history of assaultive and abusive conduct coupled with his threats to harm his infant daughter and her mother’s pleas to the police for assistance. At the trial of the matter, the jury was instructed that apart from the order of protection, they were to determine “whether the City breached a duty of care in failing to protect the [Sorichetti] infant plaintiff in light of its knowledge of [the assailant’s] history and prior conduct.”

While the court decision in *Sorichetti* focused on the violation of the order of protection in combination with the assailant’s previous “violent propensity,” it must be noted that the *Sorichetti* decision dates from an era when police officers were permitted greater latitude in judgment in domestic violence cases, when there was no “Domestic Violence Officer” title in the police department or corresponding protocols in the police department patrol guide which mandate certain responses to domestic violence incidents.

Here, while there was no order of protection in effect, petitioners are unable at this time to demonstrate the existence of other “extraordinary circumstances” without access to evidence that the police department has refused to furnish because it states that a FOIL request for information pertaining to “[t]he April 18, 2007: Jimmy Lee Dawkins murder suicide Cambria Heights Queens and the associated deaths of four people more particularly Sonia Taylor. Location of incident: 116-31 225<sup>th</sup> Street in Cambria Heights, County of Queens and State of New York” is not specific enough

to permit the NYPD to respond. Petitioner notes that the Queens County District Attorney's Office provided limited documentation of four domestic incidents prior to the date of the murders, the police report from the date of the murder states that there were a total of nine incidents, "three related to domestic."

The court, upon review of this new evidence, in reviewing this motion to renew petitioners application for leave of the court to file a late notice of claim "on behalf of the Infant Claimant Hamidu Jamal Maigah," must consider: whether the petitioner has demonstrated a reasonable excuse for failing to file a timely notice of claim; whether the public corporation acquired actual notice of the essential facts within 90 days after the claim arose or within a reasonable time thereafter; and whether the delay would substantially prejudice the municipality in defending on the merits. No one of these factors is determinative. (*Nieves v. New York Health and Hospitals Corp*, 34 AD3d 336 [1<sup>st</sup> Dept. 2006]). The infancy of plaintiff Maigah is another factor to be considered. (*Lisandro v. New York City Health and Hospitals Corporation, et al.*, 50 AD3d 304 [1<sup>st</sup> Dept. 2008]). The burden to prove lack of prejudice rests with petitioner. (*Williams v. Nassau County Medical Center*, 6 NY3d 531 [2006]).

Although petitioners have failed to demonstrate the causal nexus between petitioner's infancy and the delay, they have shown that the public corporation had actual knowledge of the essential facts of the claim within a reasonable time of the incident and the municipality will not be prejudiced by these additional causes of action as all evidence of petitioners' claims is within the exclusive control of the City. The court notes that this is not a finding of a "special relationship" between the decedent and City but an acknowledgment that such relationship or "extraordinary circumstances" cannot be established by the infant petitioner absent discovery which may include *in camera* inspection of evidence that is exempt from a FOIL request. Wherefore, it is hereby

ORDERED that petitioners' motion to renew the application for an order from the court granting the infant petitioner permission to file a late notice of claim is granted; and it is further

ORDERED that upon renewal, the infant petitioner's application for an order from the court granting the infant petitioner permission to file a late notice of claim is granted; and it is further

ORDERED that the notice of claim in the proposed form annexed to the moving papers is deemed timely served upon service of a copy of this judgment, with notice of entry.

This constitutes the judgment of the court.

All other relief requested is denied.

Dated: August 1, 2008

  
EILEEN A. RAKOWER, J.S.C.

**UNFILED JUDGMENT**  
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