

Matter of Weeks v Carpinello

2008 NY Slip Op 32536(U)

August 14, 2008

Supreme Court, Albany County

Docket Number: 0045708/2008

Judge: Jr., George B. Ceresia

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publication.

The petitioner, an inmate at Sullivan Correctional Facility, has commenced the instant CPLR Article 78 proceeding to review a determination of respondents to deny petitioner's request for access to the clinical records of one Marshall Taylor.

In July 1993, Marshall Taylor (hereinafter "Mr. Taylor" or "decedent") made a statement while in police custody in which he implicated the petitioner in a shooting and identified two eyewitnesses to the crime, one of whom was his mother, Carmela Taylor. The petitioner was later arrested and subsequently convicted for murder in the second degree, assault in the first degree, and criminal possession of a weapon in the first degree (see People v Weeks, 236 AD2d 432 [2nd Dept., 1997], lv denied 90 NY2d 865 [1997]). Mr. Taylor committed suicide prior to petitioner's criminal trial.

On September 9, 2007, the petitioner submitted a letter to respondent Central New York Psychiatric Center ("CNYPC") (a facility of respondent New York State Office of Mental Health ["OMH"]) requesting Mr. Taylor's clinical records. Respondents issued a written reply, dated September 19, 2007, stating that in order to access Mr. Taylor's records, petitioner would need to submit either proof that he was the executor of the decedent's estate, or a court order granting petitioner access to the records. On October 7, 2007, petitioner wrote to OMH purporting to "appeal" respondents' denial of his request. Respondents issued a second letter, dated October 26, 2007, reiterating the requirements that petitioner would have to meet in order for him to access Mr. Taylor's clinical records.

Petitioner's primary contention in the instant application is that he is entitled to access to Mr. Taylor's clinical records because the physician-patient privilege was waived on the

decedent's behalf when his mother, Carmela Taylor, testified at petitioner's criminal trial. In the alternative, petitioner maintains that even absent a waiver, he is entitled to information regarding the "facts and incidents" of Mr. Taylor's treatment that are not shielded by the physician-patient privilege. Respondents contend that their denial of petitioner's request was consistent with the Mental Hygiene Law.

In general, the clinical records of the facilities operated by the Office of Mental Hygiene are confidential and not subject to disclosure (see Mental Hygiene law § 33.13 [c]). There are a total of thirteen enumerated exceptions to the foregoing (see id.), two of which are relevant to discussion here: (1) where records are disclosed "pursuant to an order of a court of record . . . upon a finding by the court that the interests of justice significantly outweigh the need for confidentiality" (Mental Hygiene Law § 33.13 [c] [1])¹; and (2) where records are requested by "a qualified person pursuant to [Mental Hygiene Law § 33.16] (Mental Hygiene Law § 33.13 [c] [11]).

Addressing Mental Hygiene Law § 33.13 (c) (11) first, the respondents correctly argue that the petitioner is not a "qualified person" entitled to access Mr. Taylor's clinical records pursuant to Mental Hygiene Law § 33.16 (see Mental Hygiene Law [c] [11]). Mental Hygiene Law § 33.16 (a) (6) defines a qualified person as "any properly identified patient or client, guardian of a mentally retarded or developmentally disabled person . . . or a parent of

¹Although not expressly mentioned by the petitioner, the Court deems it appropriate to address whether the petitioner would be entitled to "an order of a court of record . . . upon a finding by the court that the interests of justice significantly outweigh the need for confidentiality" (Mental Hygiene Law 33.13 [c] [1]).

an infant, or a . . . legally appointed guardian of an infant . . . or a parent, spouse, or adult child of an adult patient or client” (Mental Hygiene Law § 33.16 [a] [6]). Petitioner has failed to allege or offer any proof that he is a “qualified person” with respect to Mr. Taylor’s records; thus he lacks standing to commence the instant proceeding under this section. Moreover, and apart from the foregoing, petitioner’s failure to comply with the administrative appeals procedure outlined in Mental Hygiene Law § 33.16 (c) (4), (5) leads the Court to find that the instant matter is not yet ripe for judicial review with respect to this particular section (see Mental Hygiene Law § 33.16 [c] [4], [5]; Davis v Henderson, 156 AD2d 943 [4th Dept., 1989]).

Turning to Mental Hygiene Law § 33.13 (c) (1), as noted, a large portion of petitioner’s argument focuses on the alleged waiver of the physician-patient privilege by the decedent’s mother. The record before the Court includes only a few pages of the transcript of petitioner’s criminal trial. It appears that Carmela Taylor, testifying as a witness in an action to which neither she, nor the decedent, nor the decedent’s estate were a party, mentioned that the decedent told her that he had been “hitting his head against the bars in his cell” at some unspecified time after giving his statement to the police (Transcript at 145-147, People v Weeks, Sup. Ct., Kings County, Mar. 20, 1995, Kriendler, J., Indictment No. 8501/93 [Petition, Exhibit 7 (including only cited-to pages)]). This statement at most constituted the disclosure of a mere fact or incident of the decedent’s mental history, which did constitute a waiver of the confidentiality of Mr. Taylor’s clinical records (see Wepy v

Shen, 175 AD2d 124 [2nd Dept., 1991])².

Apart from all of the foregoing, the Court is unable to conclude that “the interests of justice significantly outweigh the need for the confidentiality” of Mr. Taylor’s clinical records so as to justify disclosing them to petitioner (see Mental Hygiene Law § 33.13 [c] [1]). The petitioner has failed to offer any explanation with regard to the purposes for which he is making the request³. The Court finds that the petitioner has failed to identify any issue that requires the revelation of protected material for its resolution or otherwise demonstrate that the interests of justice would be furthered by “invading the confidentiality attached to [Mr. Taylor’s records]” (Matter of State of N.Y. - Off. Of Mental Retardation & Dev. Disabilities v Mastracci, 77 AD2d 473, 477). The petitioner failed to satisfy his burden of proof with respect to Mental Hygiene Law § 33.13 (c) (1).

To the extent that the instant proceeding might be deemed commenced pursuant to FOIL⁴, Mr. Taylor’s clinical records would still be exempt from disclosure under the Mental Hygiene Law. “It is well settled that ‘[d]ocuments in the possession of public agencies are

²In addition the Court observes that Carmela Taylor was a witness for the prosecution and the alleged “waiver” was elicited by petitioner’s attorney during cross-examination. On these facts, the Court is of the view that any such alleged waiver was involuntary.

³The Court recognizes that the underlying purpose for seeking the production of records is not relevant to a discussion of an application for the production of documents under the Freedom of Information Law (“FOIL”) (see Public Officers law Article 6; Matter of Citizens For Alternatives To Animal Labs, Inc. v Board of Trustees of the State University of New York, 92 NY2d 357 [1998]) . However such reasons are extremely relevant to a determination with regard to whether the “interests of justice” weigh in favor of disclosing the records pursuant to Mental Hygiene Law § 33.13 (c) (1).

⁴The petition fails to mention any provision of the Public Officers Law or FOIL.

presumptively discoverable under FOIL, unless the agency can point to a specific statutory exemption” (Matter of Hassig v New York State Dept. of Health, 294 AD2d 781, 782 [3rd Dept., 2002], quoting Matter of Mantica v New York State Dept. of Health, 94 NY2d 58, 61 [1999]). One such exemption is set forth in Public Officers Law § 87 (2) (a), which provides that an agency may deny access to records or any portion thereof if such records are specifically exempted from disclosure by state or federal statute (see Public Officers Law § 87 [2] [a]). In denying petitioner’s request, respondents relied upon the Mental Hygiene Law. The records sought by the petitioner were accorded confidentiality as “clinical records” under the Mental Hygiene Law (see Mental Hygiene Law § 33.13 [a], [c]), thus “bringing them squarely within the exception of section 87 (subd 2, par [a]) of the Public Officers Law” (Matter of Short v Board of Mgrs. of Nassau County Med. Ctr., 57 NY2d 399, 405-406 [1982], involving medical records protected from disclosure under sections 2803-c and 2805-g of the Public Health Law and § 369 of the Social Services Law). As previously discussed, neither of the two potentially relevant exceptions to the Mental Hygiene Law are ultimately applicable to petitioner’s request in the instant proceeding (see Mental Hygiene Law § 33.13 [c] [1], [11]). Accordingly, the Court finds that petitioner would not be entitled to access Mr. Taylor’s records pursuant to FOIL.

The Court has reviewed and considered petitioner’s remaining arguments and contentions and finds them to be without merit.

The Court finds that the determination was not made in violation of lawful procedure, is not affected by an error of law, and is not irrational, arbitrary and capricious, or an abuse

of discretion. The Court concludes that the petition must be dismissed.

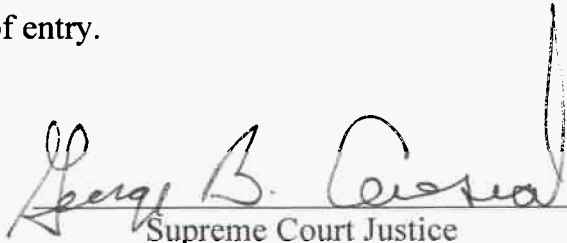
Accordingly it is

ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. All papers are returned to the attorney for the Respondent who is directed to enter this Decision/Order/Judgment without notice and to serve petitioner with a copy of this Decision/Order/Judgment with notice of entry.

ENTER

Dated: August 14, 2008
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

1. Order To Show Cause dated January 31, 2008, Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated May 2, 2008, Supporting Papers and Exhibits
3. Affirmation of Assistant Attorney General of Counsel Shoshanah V. Asnis dated May 2, 2008