

New York State Crime Victims Bd. v Momplaisir

2008 NY Slip Op 32780(U)

October 14, 2008

Supreme Court, Albany County

Docket Number: 6011-08

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

NEW YORK STATE CRIME VICTIMS BOARD, on
the behalf of Vontessa Green, the crime victim, and all
other victims of respondent's crimes,

Petitioner,

DECISION and ORDER

RJI NO.: 01-08-093726

INDEX NO.: 6011-08

-against-

EDDY MOMPLAISIR, Inmate # 08-A-0009,

Respondent.

Albany County Supreme Court All Purpose Term, September 16, 2008
Assigned to Justice Joseph C. Teresi

APPEARANCES:

Hon. Andrew M. Cuomo
Attorney General of New York State
Edward M. Scher, Esq.
Assistant Attorney General, of counsel
The Capitol
Albany, NY 12224

Eddy Momplaisir, # 08-A-0009
Pro Se Respondent
Sing Sing Correctional Facility
354 Hunter Street
Ossining, NY 10562

TERESI, J.:

The respondent was convicted of Rape in the First Degree, Criminal Sexual Act in the First Degree, and Sexual Abuse in the First Degree, and sentenced as a second violent felony offender to a determinate term of fifteen years in state prison on the top count. The New York State Crime Victims Board ("the Board"), upon learning that respondent has more than \$10,000.00 in his inmate account, now moves for a preliminary injunction enjoining the

Respondent from accessing such account, in accord with Executive Law § 632-a(6). Respondent opposes the petition and moves to dismiss, alleging unspecified violations of his Constitutional rights. Because Petitioner has demonstrated its entitlement to a preliminary injunction as a matter of law, their petition is granted and Respondent's motion to dismiss is denied.

For the issuance of a preliminary injunction under Executive Law § 632-a, the Petitioner must show a likelihood of success on the merits, irreparable injury, and that the equities favor injunctive relief. (New York State Crime Victims Bd. v. Majid, 193 Misc.2d 710 [Sup. Ct. Alb. Co. 2002]; Picotte Realty, Inc. v. Gallery of Homes, Inc., 66 AD2d 978 [3d Dept. 1978]).

The crime victim's claim has a likelihood of success on the merits. Respondent was convicted of Penal Law §§ 130.35, 130.50 and 130.65. "A criminal conviction is prima facie evidence . . . of its underlying facts in a subsequent civil action." (S. T. Grand, Inc. v. City of New York, 32 NY2d 300, 303 [1973]; Dona v. Levin, 263 AD2d 602, 603 [3d Dept. 1999]). Because Respondent's criminal acts were proven beyond a reasonable doubt in the criminal case, which the crime victim's civil action will be based upon, the crime victim has a strong likelihood of success.

If a preliminary injunction is not issued then the crime victim will be irreparably injured, as her ability to receive compensation due to the injuries caused by respondent would be diminished. "The victim... of [Respondent's] crimes . . . will be irreparably damaged if the [Respondent] is allowed to spend the funds in his inmate account before a court can determine whether he is required to pay that money over to his victims." (Majid, supra at 715).

The equities clearly favor injunctive relief. The interests of justice require that the crime victim be compensated for all injuries caused by Respondent's violent and damaging crimes

against her. The issuance of a preliminary injunction guarantees the funds now available to this crime victim will remain available to her in the event a judgment is obtained. Additionally, Respondent's basic necessities are provided by DOCS, obviating his current need of these funds. Nor does it appear on this record that the funds are otherwise needed for the support of a third party.

Petitioner has met the requirements necessary to obtain a preliminary injunction and the Petitioner's relief is granted.

Respondent moves to dismiss the petition due to alleged violations of his constitutional rights. However, he has failed to demonstrate his entitlement to dismissal of the petition on any constitutional ground. (see generally, New York State Crime Victims Bd. ex. rel. Anonymous v. Mitchell, 12 AD3d 870 [3 Dept. 2004]).

There was no procedural Due Process violation. On July 16, 2008, the Order to Show Cause herein was issued and a hold was placed on Respondent's inmate account. On July 18, 2008, Respondent received notice of the hold with a copy of the Order to Show Cause and Temporary Restraining Order. There was a delay of only two days between the issuance of the Order to Show Cause and the notice of such to Respondent, which does not amount to a procedural Due Process violation. (Majid, supra at 713).

There is no substantive Due Process violation. There is a "reasonable connection between [Executive Law §632-a(6)] and New York's 'compelling interest in ensuring that victims of crime are compensated by those who harm them.'" (Id. at 714, quoting, Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd., 502 U.S. 105, 118 [1991]).

There is no Equal Protection violation. The Respondent has the same rights under

Executive Law §632-a(6) as the Petitioner in regard to applying for a preliminary injunction. (Id. at 714-15). Respondent has not shown that he is being treated differently than others similarly situated. (Id.).

Respondent set forth no Fourth Amendment violation. Respondent's allegation that an investigator from the Office of the Inspector General went into his cell and took documents does not rise to the level of a Fourth Amendment violation, as an inmate has no expectation of privacy in his prison cell. (Hudson v. Palmer, 468 U.S. 517, 526 [1984]).

As Respondent's constitutional challenges hold no merit, his motion to dismiss is denied.

Respondent also seeks discovery and an extension of time to file his reply papers after obtaining discovery. CPLR § 3102(c) states that "[b]efore an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order." There are no issues of fact on this petition and Respondent does not seek disclosure to "aid in bringing an action, to preserve information or to aid in arbitration." Therefore, Respondent's request for discovery and an extension of time to file reply papers is denied.

Accordingly, the Petition is granted and Respondent's motion to dismiss is denied. Respondent and the New York State Department of Corrections are enjoined from disbursing any funds in respondent's inmate account, in accord with Executive Law § 632-a(6).

All papers, including this Decision and Order, are being returned to the attorney for the Petitioner. 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: October 14, 2008
Albany, New York


JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Order to Show Cause by Hon. John C. Egan, Jr., dated July 16, 2008.
2. Petitioner's Verified Petition, dated July 14, 2008 with Attached Exhibit A-C.
3. Respondent's Affidavit for Counterclaim and Motion for Dismissal, dated August 21, 2008.
4. Respondent's Affidavit in Support of Cross Complaint to Dismiss, dated August 21, 2008.
5. Respondent's Response to Order to Show Cause, dated August 21, 2008.
6. Petitioner's Affidavit in Opposition to Respondents' Motion to Dismiss by Karen Loeb, dated September 12, 2008 with Attached Exhibit A-D.
7. Petitioner's Affidavit in Opposition to Respondents' Motion to Dismiss by Edward Scher, dated September 15, 2008.
8. Petitioner's Affidavit in Opposition to Respondents' Motion to Dismiss by Michael Smith, dated September 12, 2008 with Attached Exhibit A-F.
9. Respondent's Response to Petitioner's Opposition to Respondent's Motion for Dismissal, dated September 20, 2008.