

**Hamilton v Adams**

2009 NY Slip Op 30754(U)

March 27, 2009

Supreme Court, Nassau County

Docket Number: 21451/08

Judge: William R. LaMarca

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**DECISION AND JUDGMENT**

**SUPREME COURT - STATE OF NEW YORK  
COUNTY OF NASSAU - PART 15**

**Present: HON. WILLIAM R. LaMARCA  
Justice**

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**WILLIAM HAMILTON,**

**Petitioner,**

**-against-**

**HON. THOMAS A. ADAMS, PATRICIA  
BANNON, ESQ., SHARON T. RICHARD,**

**Respondents.**

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**Motion Sequence #1, #2  
Submitted January 30, 2009  
XXX**

**INDEX NO: 21451/08**

**The follow papers were read on these motions:**

<b>HAMILTON Notice of Petition and Verified Petition.....</b>	<b>1</b>
<b>ADAMS and BANNON Notice of Cross-Motion.....</b>	<b>2</b>
<b>Affidavit in Opposition to Cross-Motion.....</b>	<b>3</b>
<b>Reply Affirmation in Support of Cross-Motion.....</b>	<b>4</b>
<b>Sur-Reply Affidavit.....</b>	<b>5</b>

Petitioner, WILLIAM HAMILTON, *pro se*, moves for an order and judgment, pursuant to CPLR Article 78, determining whether respondent, Hon. THOMAS A. ADAMS, has failed to perform a duty enjoined upon him by law, whether he proceeded in excess of his jurisdiction and whether his *sua sponte* dismissal of a cause of action in defamation against respondent, SHARON T. RICHARD, who did not appear in the action, was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious. Respondents, Hon. THOMAS A. ADAMS and PATRICIA BANNON, ESQ.,

cross-move to dismiss the petition. The petition and cross-motion are determined as follows:

*Pro se* petitioner, WILLIAM HAMILTON, filed a *pro se* summons and complaint in this Court against Support Magistrate PATRICIA BANNON and SHARON T. RICHARD, alleging that petitioner was defamed during a child support proceeding in the Family Court. On granting BANNON's motion to dismiss, on the grounds that she was cloaked with absolute immunity, the Court (Adams, J.) *sua sponte* also dismissed the action against SHARON T. RICHARD, who defaulted in appearance.

The determinations of a Court of law are not subject to a CPLR Article 78 proceeding to review their correctness. CPLR Article 78, which governs certiorari, mandamus and prohibition, states that a proceeding under this Article shall not be used to challenge a determination

1. which is not final or can be adequately reviewed by appeal to a court
2. which was made in a civil action or criminal matter unless it is an order summarily punishing a contempt committed in the presence of the court

(CPLR §7801). "Mandamus to review is the modern name for judicial review of administrative determinations involving the exercise of discretion" (*Bursac v Suozzi*, 22 Misc.3d 328, 868 NYS2d 470 [Supreme Nassau Co. 2008]). No administrative determinations are involved here. Mandamus to compel may "not be used as a subterfuge for collateral review of a judge's discretionary determination" (Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, Civil Practice Law & Rules, § 7801, C7801:3 p 32; see, e.g., *Crain Communications v Hughes*, 74 NY2d 626, 541 NYS2d 971, 539 NE2d 1099 [C.A. 1989] [mandamus to compel will not be awarded to

compel "an act in respect to which the officer may exercise judgment or discretion"). Accordingly neither CPLR §7803 (1) or (3) is available here.

However, an Article 78 proceeding may be invoked to review judicial rather than administrative action when a judicial officer is acting without or in excess of jurisdiction (CPLR §7803 [2]). Prohibition, however is "never available merely to correct or prevent trial errors of substantive law or procedure, however grievous" (*LaRocca v Lane*, 37 NY2d 575, 376 NYS2d 93, 338 NE2d 606 [C.A. 1975], *cert. denied* 424 US 968 [1976]). Because of its "extraordinary nature", prohibition is available "only where there is a clear legal right, and then only when a court -- in cases where judicial authority is challenged -- acts or threatens to act either without jurisdiction or in excess of its authorized powers" (*Uzamere v Sunshine*, 56 AD3d 787, 868 NYS2d 139 [2d Dept 2008], quoting *Matter of Holtzman v Goldman*, 71 NY2d 564, 528 NYS2d 21, 523 NE2d 297 [C.A.1988]). Insofar as petitioner seeks review of Justice ADAMS dismissal against Support Magistrate PATRICIA BANNON, said dismissal is not reviewable by a Article 78 proceeding. Petitioner's remedy is an appeal.

Moreover, were the dismissal reviewable, the Court notes that BANNON, as a support magistrate, is cloaked with absolute immunity and not subject to a lawsuit for the acts performed in her judicial capacity. The Supreme Court has emphasized that the scope of a judge's jurisdiction, including that of a hearing examiner or support magistrate, must be construed broadly where the issue is immunity. The Federal District Court has stated that even when a judicial act is erroneous or injurious:

the doctrine of judicial immunity is so expansive that it is overcome only when (1) the action is nonjudicial, i.e., not taken in the judge's judicial capacity; or (2) the action, although judicial in nature, is performed in

the complete absence of all jurisdiction  
\* \* \*

Immunity extends not only to judges but to other persons engaged in a judicial function, which is defined as the “performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights” \* \* \* Hearing examiners are deemed to be the functional equivalent of judges for purposes of absolute immunity.

(*Cogswell v Rodriguez*, 304 F.Supp.2d 350, 356 [E.D.N.Y. 2004]). “The rule of absolute judicial immunity is necessary because ‘principled and fearless decision-making’ will be compromised if a judge ‘fears that unsatisfied litigants may hound him with litigation charging malice or corruption’” (*Cogswell v Rodriguez, supra*). Here, Hamilton’s claims against BANNON stem from her actions while presiding over a child support proceeding in Family Court, and nothing in the record suggests that BANNON was not acting within her judicial capacity with appropriate jurisdiction over the proceeding. Indeed the minutes of an adjudicatory hearing were offered as evidence in support of petitioner’s claim for defamation.

With respect to respondent SHARON T. RICHARD, petitioner claims that Justice ADAMS exceeded his authorized powers when he *sua sponte* dismissed the complaint against her. RICHARD, who was in default, did not move for the relief granted by the Court. The argument is rejected.

CPLR §3211(7) authorizes dismissal of a complaint where “the pleading fails to state a cause of action”. CPLR §3215(f) requires that a cause of action be proven upon a default, and “where a valid cause of action is not stated . . . the moving party cannot presume entitlement to the requested relief, even on default” (*Rivera v Laporte*, 120 Misc2d 733, 466 NYS2d 606 [Supreme New York Co. 1983]). The Court has the authority to *sua sponte* dismiss a pleading which fails to state a cause of action, as the First

Department held in *Wehringer v Brannigan*, as follows: “*Sua sponte* dismissal of this claim . . . is well within our prerogative” (*Wehringer v Brannigan*, 232 AD2d 206, 674 NYS2d 770 [1<sup>st</sup> Dept 1996], *app dsmd* 89 NY2d 980 [C.A. 1997], cited favorably in *Caiola v Allcity Ins. Co.*, 7 AD3d 557, 776 NYS2d 504 [2d Dept 2004]). The Court in *Jones v Maples* has also held that a *sua sponte* dismissal of plaintiff’s complaint “was a proper exercise of discretion” (*Jones v Maples*, 286 AD2d 639, 731 NYS2d 356 [1<sup>st</sup> Dept 2001], *lv app dsmd* 97 NY2d 716 [C.A. 2002]). Accordingly, the Court finds that the dismissal as against RICHARD was not beyond the power of the Court or in excess of its jurisdiction.

Petitioner also contends that he was prevented from making out his case against RICHARD by the submission of evidence and that the Court was overly strict in interpreting his pleadings. The Court acknowledges that petitioner’s *pro se* pleadings are held to “less stringent standards than formal pleadings drafted by lawyers” (*Haines v Kerner*, 404 US 519, 520 [1972]); *cf. Stoves & Stones Ltd. v Rubens*, 237 AD2d 280, 655 NYS2d 385 [2<sup>nd</sup> Dept. 1997]). However, pleading skill is not the issue. Petitioner cannot make out a cause of action in defamation as the statements of which he complains took place in the context of a judicial proceeding, and were relevant to the proceeding. Nor was lack of evidence the source of HAMILTON’s dismissal. Were he to prove every allegation, he could still not prevail over a defense of absolute privilege. Any relevant statement made by a litigant during a legal proceeding is subject to an absolute privilege which means that the statements “cannot be made the basis of a lawsuit against those proffering the statements in a judicial proceeding” (*Sexter & Warmflash, P.C. v Margrabe*, 38 AD3d 163, 828 NYS2d 315 [1<sup>st</sup> Dept 2007]). Public policy endeavors to promote and to permit “persons involved in a judicial proceeding to write and speak about it freely among themselves . . . in the


course of such proceedings . . ." (*Sexter & Warmflash, P.C. v Margrabe, supra*) and thus an "absolute privilege" immunizes a litigant from liability in defamation (*Rosenberg v MetLife*, 8 NY3d 359, 834 NYS2d 494, 866 NE2d 439 [C.A. 2007]). Respondent RICHARD's statements made in the course of a legal proceeding thus cannot be the basis of a defamation claim, and the complaint and the minutes of the hearing before Support Magistrate BANNON evidence the fatal defect. HAMILTON simply cannot meet his burden of proof under CPLR §3215(f) to prove a cause of action sounding in defamation by reference to statements made in a legal proceeding. The Court finds that the *sua sponte* dismissal against RICHARD's was appropriate. Based on the foregoing, it is hereby

**ORDERED**, that the cross-motion to dismiss the petition is granted and the petition is dismissed.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: March 27, 2009

  
 WILLIAM R. LaMARCA, J.S.C.

TO: William Hamilton  
 Petitioner Pro Se  
 714 Rifton Street  
 Elmont, NY 11003

Andrew M. Cuomo, Esq.  
 Attorney General of the State of New York  
 Attorney for Respondents Hon. Thomas A. Adams and Patricia Bannon, Esq.  
 200 Old Country Road, Suite 460  
 Mineola, NY 11501

**ENTERED**  
 APR 01 2009  
 NASSAU COUNTY  
 COUNTY CLERK'S OFFICE