

Cisse v City of New York
2011 NY Slip Op 31557(U)
June 6, 2011
Sup Ct, NY County
Docket Number: 112864/10
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK -- NEW YORK COUNTY

PRESENT: JAFFE BARBARA JAFFE J.S.C. Justice

PART 5

Index Number : 112864/2010
CISSE, NYIA A.
VS.
CITY OF NEW YORK
SEQUENCE NUMBER : 001
ORDER OF PROTECTION
CAL # 12

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for protective order

PAPERS NUMBERED

1
2
3

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

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

FILED

JUN 07 2011

NEW YORK COUNTY CLERK'S OFFICE

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

Dated: 6/6/11
JUN 06 2011

[Signature] J.S.C.
BARBARA JAFFE

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

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

-----X
NYIA A. CISSE, INFANT BY MOTHER AND
NATURAL GUARDIAN, KELLIE FOOTE and
KELLIE FOOTE, Individually,

Index No. 112864/10
Motion Date: 3/29/11
Motion Seq. No.: 001

Plaintiffs,

- against -

DECISION AND ORDER

CITY OF NEW YORK and NEW YORK CITY
HOUSING AUTHORITY,

FILED

JUN 07 2011

Defendants.

NEW YORK
COUNTY CLERK'S OFFICE

-----X
BARBARA JAFFE, JSC:

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For NYCHA:
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Newman Myers *et al.*
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For City:
Anthony Bila, ACC
Michael A. Cardozo
Corporation Counsel
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By notice of motion dated January 5, 2011, plaintiffs move pursuant to CPLR 3013(a) for an order granting them a protective order and striking defendant New York City Housing Authority's (NYCHA) demand for authorizations or, in the alternative, compelling NYCHA to serve a more appropriate demand. Defendants oppose the motion.

On August 13, 2009, infant plaintiff tripped and fell on the sidewalk at the corner of 142nd Street and Adam Clayton Powell Jr. Boulevard in Manhattan, sustaining a broken ankle. Plaintiffs' counsel denies that she sustained any other injuries. (Affirmation of Thomas P. Markovits, Esq., dated Jan. 5, 2011).

On or about November 8, 2010, NYCHA served on plaintiff a demand for various

authorizations. (*Id.*).

Plaintiffs object to providing the following authorizations: (1) for Harlem Children's Zone, where infant plaintiff allegedly attended summer camp from 2008 to the present, on the ground that any records from before the accident are irrelevant and it is not alleged that plaintiff missed or would miss any time at this entity as a result of this accident; (2) for records and reports from any school that infant plaintiff may have attended for two years prior to the accident on the ground that the demand is vague, overbroad, and burdensome; (3) for Sears Department Store where infant plaintiff may have received optometry treatment in 2008 on the ground that the records are irrelevant absent any indication that her vision contributed to the accident; (4) for Columbia Presbyterian Hospital as the authorization was already provided on or about December 6, 2006; and (5) for any healthcare providers who treated infant plaintiff on the ground that the records sought should be limited to those from the accident date to the present as evidence of prior treatment is irrelevant and constitutes a fishing expedition. (*Id.*).

NYCHA argues that the requested authorizations relate to testimony given by infant plaintiff at a 50-h hearing, that plaintiffs' motion is defective absent an affirmation of good faith, and that plaintiffs failed to annex any documents to establish the nature of their claims and the alleged injuries. It contends that its demands for authorizations for any other medical treatment are already limited to those records from the date of the accident to the present, that infant plaintiff testified that she needed to wear glasses for distance but was not wearing them at the time of her accident and thus placed her vision in issue, that its demand for Harlem Children's Zone records is relevant as it is entitled to discover what activities infant plaintiff performed prior to the accident as compared to what she currently does, and that its demand for school

records is limited to a specific school and records from two years prior to the accident are relevant to determine whether infant plaintiff's grades and life were affected by the accident. (Affirmation of Abraham A. Friedman, Esq., dated Jan. 24, 2011, Exh. A).

Defendant City also objects to a protective order, maintaining that in her notice of claim, plaintiff alleged a variety of personal injuries, not just an ankle fracture, that demands for school and summer camp records are relevant to whether infant plaintiff sustained any prior injuries to the same parts of the body at issue here, and that infant plaintiff's vision is in issue. (Affirmation of Anthony Bila, ACC, dated Jan. 24, 2011, Exh. A).

Absent a bill of particulars or any indication, other than counsel's affirmation, that plaintiffs are claiming only that infant plaintiff broke her ankle, defendants are entitled to authorizations for records relating to any medical treatment rendered to infant plaintiff since the injury. Moreover, as infant plaintiff testified that she needed to wear glasses but did not do so at the time of her accident, records related to her vision are relevant. (*See Palma v Harnick*, 31 AD3d 406 [2d Dept 2006] [as defendant testified she had limited vision in eye, she placed eye condition in controversy and as she testified as to condition without objection, she waived any privileged associated thereto]; *Keleman v Quinton Fitness Equip., Inc.*, 24 AD3d 185 [1st Dept 2005] [plaintiff's vision problems relevant to issue of causation]).

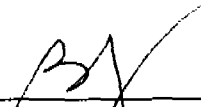
However, absent any testimony or evidence that infant plaintiff sustained any similar injuries prior to the accident or that plaintiff's school or summer camp activities have been limited due to the accident, defendants have not established that these records may lead to relevant evidence.

Accordingly, it is hereby

ORDERED, that plaintiffs' motion for a protective order is granted to the extent that plaintiffs need not provide authorizations for records from the Harlem Children's Zone or infant plaintiff's school(s), but must provide, within 30 days of the date of this order, the remaining authorizations requested by NYCHA in its November 2010 demand for authorizations; and it is further

ORDERED, that the parties appear for a preliminary conference on July 19, 2011 at 2 p.m. in room 103 at 80 Centre Street, New York, New York.

ENTER:



Barbara Jaffe, JSC

BARBARA JAFFE
J.S.C.

DATED: June 6, 2011
New York, New York

JUN 06 2011

FILED

JUN 07 2011

NEW YORK
COUNTY CLERK'S OFFICE