

Prinzivalli v Farley

2014 NY Slip Op 31708(U)

June 18, 2014

Supreme Court, New York County

Docket Number: 114372/09

Judge: Joan A. Madden

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: How Joan B. Milk
Justice

PART 11

Index Number : 114372/2009
PRINZIVALLI JOANN

INDEX NO. _____

vs
FARLEY, THOMAS

MOTION DATE _____

Sequence Number : 007

MOTION SEQ. NO. _____

REARGUMENT/RECONSIDERATION _____

The following papers, numbered 1 to _____, were read on this motion to/for reargument

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed Memorandum Decision & Order

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

FILED
JUL 03 2014
NEW YORK
COUNTY CLERK'S OFFICE

Dated: June 18th 2014

[Signature], J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 11

JOANN MARIE PRINZIVALLI,
PATRICIA HARRINGTON, MARCO
WYLIE, and NAZ SEENAUTH,

Index No.: 114372/09

Petitioners,

- against -

THOMAS FARLEY in his official
capacity as HEALTH COMMISSIONER
OF THE CITY OF NEW YORK,
NEW YORK CITY BUREAU OF VITAL
STATISTICS, NEW YORK CITY OFFICE
OF VITAL RECORDS, NEW YORK CITY
BOARD OF HEALTH, NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL
HYGIENE, and THE CITY OF NEW YORK,

FILED

JUL 03 2014

Respondents.

NEW YORK
COUNTY CLERK'S OFFICE

JOAN A. MADDEN, J.:

Respondents move for an order (1) granting reargument of the court's decision and order dated March 13, 2014 ("the original decision") to the extent it ordered discovery with respect to certain documents demands and interrogatories and, upon reargument, denying such discovery or, in the alternative, (2) granting respondents additional time to respond to such discovery demands and interrogatories. Petitioners oppose the motion.

In this Article 78 proceeding, petitioners, who are transgender individuals, challenge respondents' denial of their applications to amend their birth certificates to change the designated "sex." Petitioners also seek a declaration that the

New York City Board of Health regulation requiring transgender applicants to submit proof of "convertive surgery" in order to obtain an amended birth certificate, and respondents' implementation of the regulation, are arbitrary, capricious, and unlawfully discriminatory.

In this regard, petitioners challenge the validity of section 207.05 (a) (5) of the New York City Health Code (24 RCNY 207.05 [a] [5]), requiring proof of genital surgery, the absence of which was the primary reason for denying petitioners' applications. Specifically, petitioners question whether respondents' reasons for retaining the reassignment surgery prerequisite, and for interpreting that requirement to mean genital surgery, have a rational basis, and whether the regulation and the implementation of it are the result of discriminatory animus against transgender and disabled persons.

At issue on this motion is that part of the original decision granting petitioners' motion to compel respondents to respond to petitioners' document request numbers 1 and 2¹ and

¹Document request no. 1 seeks "[a]ll documents, including all policies, and/or communications concerning the maner in which persons are housed, roomed, classified or otherwise segregated on the basis of sex and/or gender in Correctional Facilities, Hospitals and/or Schools operated by the city, including the implementation and/or enforcement of any determinations and/or classifications."

Document request no. 2 seeks "[a]ll documents concerning the manner in which transgender persons are housed, roomed, classified or otherwise segregated on any basis in any Correctional Facility, Hospital and/or School operated by the

* 4]

proposed interrogatories 1 through 8. The court found that petitioners were entitled to this discovery to the extent the requests sought documents [or information] relating to the policies and practices of the various agencies with respect to the classification system used at City owned correctional facilities, hospitals and schools. In granting this discovery the court noted that "[t]his information is relevant as it is clear from [respondents'] Verified Answer that the classification system at these facilities is related to respondents' asserted rational basis for [reassignment] surgery requirement." The court also indicated in a footnote that "[w]hile respondents argue that [the] documents [sought] are irrelevant as it was too late to address the concerns of the Department of Corrections and other agencies before it withdrew the amendment, the record shows that the agencies objected to the amendment and respondents were aware of the objections."

A motion for reargument is addressed to the discretion of the court, and is intended to give a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts, or misapplied a controlling principle of law. *Foley v Roche*, 68 AD2d 558, 567 (1st Dept 1979). However, "[r]eargument is not designed to afford the unsuccessful party

city, including the implementation and/or enforcement of any such determinations and/or classifications."

successive opportunities to reargue issues previously decided" *William P. Pahl Equipment Corp. v. Kassis*, 182 AD2d 22, appeal denied in part dismissed in part 80 NY2d 1005 [1992].

Respondents assert that the court misapprehended the facts as they did not assert in their Verified Answer that the classification system at these facilities provided a rational basis for the reassignment surgery requirement. However, this argument is belied by a review of the Verified Answer which demonstrates that, at the very least, the subject classification system was, as found by the court, related to respondents' asserted rational basis for the reassignment surgery requirement. For example, the Verified Answer alleges that "among other things [the Department of Health] determined that classifying individuals by gender could have broader societal and legal ramifications than they initially anticipated when proposing the amendment. Specifically, [the Department of Health] found that by classifying by gender, rather than sex, there could be an impact on the institutions relating to housing and other accommodations, including hospitals, schools, workplaces and prisons." Verified Answer, ¶ 418.

Respondents also argue that subject discovery requests were not narrowly tailored and thus the requests should have been vacated. This argument was previously made in the underlying motion, and was considered in connection with the original

decision. Notably, the court required a response only to the extent the requests sought documents relating to the policies and practices of the various agencies with respect to the classification system used at City owned correctional facilities, hospitals and schools. In addition, petitioners have agreed to work with respondents to ascertain search terms and custodians and other similar matters to aid in obtaining the information sought. Accordingly, the motion to reargue is denied.

Respondents also seek additional time to respond to the discovery at issue on this motion and as well as to the other discovery directed to be produced in the original decision. This aspect of the motion is granted to the extent that respondents shall have 45 days from the date of this decision and order to respond to the additional discovery in accordance with the original decision.

In view of the above, it is

ORDERED that the respondents' motion to reargue is denied; and it is further

ORDERED that respondents' time to respond to the petitioners' additional discovery in accordance with the original decision is extended for 45 days from the date of this decision and order.

DATED: June 18, 2014

FILED
JUL 03 2014
NEW YORK
COUNTY CLERK'S OFFICE

[Signature]

 J.S.C.