

L.K. v Trustees of Columbia Univ. in the City of N.Y.
2014 NY Slip Op 34019(U)
August 21, 2014
Supreme Court, New York County
Docket Number: 805131/2014
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

L.K., E.P. and G.I.

Plaintiffs,

-against-

INDEX NO. 805131/2014
MOTION DATE 08-20-2014
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, COLUMBIA UNIVERSITY COLLEGE PHYSICIANS AND SURGEONS, THE NEW YORK AND PRESBYTERIAN HOSPITAL, PRESBYTERIAN HOSPITAL PHYSICIAN SERVICES ORGANIZATION, INC., COLUMBIA-CORNELL CARE, LLC, COLUMBIA-CORNELL NETWORK PHYSICIANS, INC., ROBERT HADDEN, M.D., JOHN DOES 1-10, JANE DOES 1-10, and ABC CORPORATIONS 1-10,

Defendants.

The following papers, numbered 1 to 9 were read on this Order to Show Cause.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 2,</u>
Answering Affidavits — Exhibits _____	<u>3 - 4, 5 - 6</u>
Replying Affidavits _____	<u>7 - 8, 9</u>

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is Ordered that the motion to proceed anonymously is denied. The cross motion to amend the summons and complaint to reflect plaintiff's legal name is granted.

Plaintiff moves by Order to Show Cause for an order permitting plaintiffs to proceed with this action using the pseudonyms "L.K., E.P., and G.I." claiming the privacy protections afforded victims of sex crimes under New York Civil Rights Law § 50-b. Defendants oppose the motion and cross-move for an order compelling amendment of the summons and complaint to include plaintiffs' legal name and granting anonymity to defendant Dr. Robert Hadden, M.D.

This matter arises from the alleged sexual assault of plaintiffs by Hadden, while they were patients in his gynecologic practice. Plaintiffs allege that as a result of the sexual assault they have experienced shame, embarrassment, and humiliation. Plaintiffs seek to proceed anonymously due to the highly sensitive and private nature of the assault and to avoid the trauma, shame and embarrassment that public disclosure will cause.

Defendants deny that the alleged acts of sexual assault ever took place. They oppose the motion on the ground that plaintiffs have not proven that they were the "victims of a crime" entitled to the protections of Civil Rights Law § 50-b. Defendants also claim that the papers were defectively filed, that plaintiff has not obtained personal jurisdiction over them because the Summons and Complaint do not contain the names of all parties, the order to show cause should contain the full legal names of plaintiffs, and that if the court permits plaintiffs to proceed anonymously, then the court should allow Hadden to proceed anonymously.

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

Pursuant to Civil Rights Law § 50-b “ The identity of any victim of a sex offense, as defined in article one hundred thirty or section 255.25, 255.26, or 255.27 of the penal law, or of an offense involving the alleged transmission of the Human Immunodeficiency Virus, shall be confidential....” However, this statute does not apply to everyone claiming to have been the victim of a sexual assault. The statute was created to spare the victim of a sexual assault the embarrassment of being publicly identified in the news media and to encourage such victims to cooperate in the prosecution of sexual offenses (see New York Bill Jacket, 1999 S.B. 5539, Ch. 643). “The legislative history reveals that the ‘victim of a sex offense’ contemplated by the statute is one whose cooperation is necessary toward the prosecution of a sex crime” (Doe v. Kidd, 19 Misc. 3d 782, 860 N.Y.S.2d 866 [Sup. Ct. N.Y. Co., 2008, Edmead J.]

Courts have afforded victims of sexual offenses protection under Civil Rights Law §50-b where there has either been an arrest and prosecution, or there is an investigation (see People v. McDaniel, 81 N.Y.2d 10, 611 N.E.2d 265, 595 N.Y.S.2d 364 [1993] defendant charged and prosecuted for rape; Matter of Fischetti, 44 A.D.3d 89, 840 N.Y.S.2d 575 [1st. Dept. 2007] defendant charged and prosecuted for sex abuse; Deborah S., v. Diorio, 153 Misc.2d 709, 583 N.Y.S.2d 872 [Civ. Ct. N.Y. 1992] Defendant charged for rape, sodomy and sexual assault). The First Department has held that Civil Rights Law § 50-b was inapplicable where a sex offense charge against a defendant in an underlying criminal case was dismissed (Brown v. New York City Police Department, 264 A.D.2d 558, 694 N.Y.S.2d 385 [1st. Dept. 1999]).

There has been no proof that plaintiffs are part of the criminal charges against Hadden. The use of fictitious names has been noted to run afoul of the public’s common law right of access to judicial proceedings. When balancing the plaintiffs’ claimed right to privacy against the presumption of openness in judicial proceedings, the scale tips in favor of disclosure; anonymity is warranted where there is a substantial privacy right which outweighs the customary and constitutionally embedded presumption of openness in judicial proceedings (see J. Doe No. 1 v. CBS Broadcasting, Inc., 24 A.D.3d 215, 806 N.Y.S.2d 38 [1st. Dept. 2005]). Plaintiffs’ allegations are insufficient to support anonymity. They have not made a showing of how they would be harmed by disclosure of their identity beyond vague allegations of embarrassment, as such her motion to proceed anonymously is denied. (Matter of Doe v. New York City Police Department, 39 Misc.3d 1229(A), 972 N.Y.S.2d 143 [N.Y. Sup. 2013]).

Plaintiffs’ moving papers did not follow the proper procedure under the Rules of the Supreme Court, Civil Branch, New York County to commence an action with an anonymous caption. The New York State Supreme Court website states, in part:

Anonymous Caption: If a party wishes to proceed using an anonymous caption, he or she should bring on an order to show cause, with the real parties named in the caption, seeking an anonymous caption and a sealing order since presumably the applicant will not want to obtain an anonymous caption and yet leave the file open to public access. The OSC should include a TRO providing a directive that the County Clerk issue an index number under an anonymous caption and seal the file pending the return date on the order to show cause or decision thereon.

Here, plaintiffs commenced an action by summons and complaint and moved by order to show cause for an order permitting plaintiffs to proceed anonymously. Plaintiffs’ moving papers are procedurally defective.

Pursuant to CPLR § 2101[c] “... in a summons, a complaint or a judgment the title shall include the names of all parties....” Plaintiff filed a summons and complaint together with an order to show cause, with a Temporary Restraining Order (TRO), seeking leave to proceed

anonymously. The Temporary Restraining Order granted plaintiffs the interim relief of proceeding under the Pseudonyms "L.K., E.P., and G.I." pending resolution of the motion. Since this motion has been decided against plaintiffs, they shall now proceed in their full legal names.

Accordingly, it is ORDERED, that plaintiffs' motion to proceed anonymously under the pseudonyms "L.K., E.P., and G.I." is denied, and it is further,

ORDERED, that defendants' cross motion compelling plaintiffs to amend their summons and complaint to reflect their legal names is granted, and it is further,

ORDERED, that within 20 days from the date of service of a copy of this order with notice of entry plaintiffs shall amend the summons and complaint to reflect their legal names, and it is further,

ORDERED, that the amended complaint containing the plaintiff's legal name shall be deemed to have been served upon service on defendants' attorneys of a copy of the amended complaint together with a copy of this order with notice of entry, and it is further,

ORDERED, that defendants shall serve and file an answer to the amended complaint or otherwise respond thereto within 20 days of said service, and it is further,

ORDERED, that the balance of the cross motions is denied, and it is further

ORDERED that within 30 days from the date of this order, counsel for plaintiff shall serve a copy of this order with notice of entry, together with a copy of the amended summons and complaint, upon the county clerk (Room 141B) and the general clerk's office (Room 158) who are directed to mark the court's records to reflect the amendment, and it is further,

ORDERED, that the parties shall appear for a Preliminary Conference at IAS Part 13 located at 71 Thomas St., Room 210, New York, New York on November 5, 2014 at 9:30AM.

MANUEL J. MENDEZ
J.S.C.

ENTER:

Dated: August 21, 2014



MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE