

Robbins v Wilkins

2016 NY Slip Op 30058(U)

January 13, 2016

Supreme Court, Steuben County

Docket Number: 2015-0827 CV

Judge: Marianne Furfure

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This opinion is uncorrected and not selected for official publication.

Plaintiff moves to quash defendant's application claiming that defendants have failed to prove a specific regulatory exception to the privilege which would grant them access to plaintiff's applications. Further, plaintiff claims that, to apply for public assistance, applicants are not required to list the property for which plaintiff is seeking damages. Therefore, defendants' request for plaintiff's public assistance applications is not relevant and material. The Court reserved decision on this motion.

Initially, defendants claim that plaintiff has no standing to oppose defendants' application because DSS, not plaintiff, is the party from whom the documents are demanded, and therefore, DSS is the only entity who can appear in opposition. Further, defendants contend that plaintiff, by seeking money damages, has put in issue the contents of his public assistance records and cannot, therefore, oppose release of the records. "Plaintiffs having standing to contest subpoenas duces tecum served on non-parties which seek their own personal records" and a motion to quash may be made by a party's attorney (CPLR 3122(a); *McDaid v. Semegran*, 16 Misc3d 1102(a)[Nassau Co. 2007] citing *Velez v. Hunts Point Multi-Serv. Ctr., Inc.*, 29 AD3d 104, 111 [1st Dept. 2006]; *Jamaica Wellness Medical, PC v. USAA Casualty Insurance Company*, 49 Misc3d 926, 930 [Kings Co. 2015]; Patrick M. Connors, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C2304:1). Therefore, plaintiff has standing to oppose defendants' application.

Public assistance records are made confidential to preserve the dignity and self-respect of public assistance recipients (*Rampe v. Giuliani*, 253 AD2d 486 [2nd

Dept. 1998]). However, there is “no inviolable shield to prevent the discovery of what might turn out to be relevant and exculpatory material (*People v. Bush*, 14 AD3d 804 [3rd Dept. 2005], citing *People v. Gissendanner*, 48 NY2d 543, 550 [1979]). Suppression of information should not exceed the purpose of the statute (*Rampe v. Giuliani*, Id.) Even so, the party seeking the information must establish a good faith factual basis that the information sought “will bear fruit and that the quest for its contents is not merely a desperate grasping at straws” (*People v. Gissendanner*, Id.).

Commissioner’s Counsel for the Department of Social Services (Counsel) submitted an affirmation in support of plaintiff’s request to quash the subpoena in which she stated that, while an applicant must disclose certain holdings such as bank accounts, real estate, and vehicles, the applicant need not disclose other specific personal property when he completes an application for public assistance. Counsel submitted a blank public assistance application to illustrate her claim. The application includes a section titled “Resources Information” which requires applicants to disclose several different types of financial assets, such as cash, checking and savings accounts, safe deposit boxes, trusts, annuities, home ownership and a burial plot, but does not require an applicant to disclose specific personal property. Counsel stated that DSS does not have a statement from plaintiff regarding his personal assets.

To date, no discovery has been conducted and defendants have not filed a Demand for a Bill of Particulars requesting a list of the specific property, and value of same, for which plaintiff is claiming damages. Defendants argue that the information they seek is "very specific," as they only want a list of the assets plaintiff claimed he owned when he applied for public assistance. However, Counsel stated that such a list is not required and does not exist. In his Complaint, plaintiff lists personal property of toys, food, clothing, child care items, DVDs, "and other items" for which he seeks damages. However, based on the affirmation of Counsel and the blank public assistance application, there is no basis to conclude that other personal property would be listed in his public assistance application.

At this point, defendants have failed to establish a factual basis to support their claim that the records they seek will bear relevant and material evidence (*People v. Reddick*, 43 AD3d 1334, 1335 [4th Dept. 2007]). Therefore, defendants' application for a subpoena duces tecum seeking plaintiff's public assistance applications is denied subject to their right to renew their application after discovery has been conducted, should discovery disclose that items at issue are requested in the public assistance application.

This constitutes the decision and order of this Court.

Dated: January 13, 2016.

ENTER:



Hon. Marianne Furfure
Acting Supreme Court Justice