

Murphy v Metrikin

2019 NY Slip Op 33084(U)

October 16, 2019

Supreme Court, New York County

Docket Number: 805387/18

Judge: Martin Shulman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

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ANNABELLA MURPHY, as Administrator of the
Estate of Charles Murphy, a/k/a Charles William
Murphy,

Plaintiff,

Index No.: 805387/18

-against-

DECISION/ORDER

AARON METRIKIN, M.D.,

Defendant.
-----X

Defendant Aaron Metrikin, M.D. ("Dr. Metrikin" or "defendant") moves to compel plaintiff to provide discovery demanded in his Second, Third and Fourth Notices to Produce (collectively, the "demands"). Plaintiff opposes the motion.

Plaintiff alleges causes of action for wrongful death and medical malpractice arising from her late husband, Charles Murphy's ("decedent" or "Mr. Murphy"), tragic suicide at the age of 55. Dr. Metrikin, a psychiatrist, treated Mr. Murphy from July 13, 2016 until his death on March 27, 2017. Plaintiff alleges defendant failed to prevent her late husband's suicide by properly medicating or hospitalizing him, despite knowing he had suicidal ideations and had attempted suicide.

Discussion

CPLR § 3101 (a), which sets forth the scope of discovery under New York law, "broadly mandates full disclosure of all matter material and necessary in the prosecution or defense of an action" (*Freni v Eastbridge Landing Assoc. LP*, 309 AD2d 700, 702 [1st Dept 2003] [citation, emphasis, and internal quotations omitted]). It is well

settled that this court is vested with broad discretion in its control and supervision of discovery. *MSCI Inc. v Jacob*, 120 AD3d 1072 (1st Dept 2014).

Here, plaintiff has objected, in some instances flippantly, to virtually all of defendant's demands. With respect to the Second Notice to Produce which seeks 23 items, plaintiff objected to all but three, and as to those, she does not dispute that she has still failed to respond. Plaintiff similarly objected to the Third and Fourth Notices to Produce, which contain one demand and two demands, respectively.

Dr. Metrikin's records indicate that he and Mr. Murphy discussed various aspects of his life at his therapy sessions, including his relationship with his wife and concerns about his employment and finances¹ (Motion at Exh. C). Defendant's records describe the decedent as feeling sad, anxious and hopeless. The records further reflect the decedent's anxiety about financial downturns he had suffered² and his ability to continue to maintain his family's lavish lifestyle.³ This is corroborated by news articles reporting Mr. Murphy's suicide, which also refer to his anxiety in the months leading to it (see generally, Motion at Exhibits G through J).⁴

¹ Mr. Murphy was a successful hedge fund executive with significant assets.

² His interests were adversely impacted by the Madoff Ponzi scheme scandal of 2008 as well as subsequent events.

³ The decedent confided in Dr. Metrikin that he feared losing his job and becoming bankrupt. One recurring worry was his inability to sell certain real property in order to avoid perceived potential financial ruin.

⁴ Despite his perceived financial setbacks, one article cites those who knew the decedent personally as stating that his financial worries were "all in his mind." *Id.* at Exhibit G.

Dr. Metrikin argues that the decedent's emotions and his perception of various aspects of his life are relevant to his ability to defend against plaintiff's claims. Specifically, he claims that the discovery sought is relevant to establishing that he was not the sole proximate cause of the decedent's suicide. Defendant contends that each demand relates to Mr. Murphy's mental state and/or to plaintiff's claims for loss of income⁵ and loss of society. He further claims that plaintiff waived the spousal privilege by bringing this action.⁶

This court agrees that Dr. Metrikin is entitled to documentation which may establish what drove the decedent to take his own life. Defendant states that it appears Mr. Murphy left no suicide note, and with respect to his treatment records, they reflect only what the decedent chose to reveal. Dr. Metrikin also urges that the discovery he seeks cannot be obtained by other means such as witness depositions since witnesses may have inaccurate or incomplete recollection due to the passage of time, and may be motivated to be untruthful or less than forthcoming.

Defendant cites compelling case law in support of his claim that he is entitled to the discovery he seeks. The moving affirmation also cites and quotes an article and medical literature on the topic of "psychological autopsies" and their use in determining proximate cause in suicide cases. These materials allegedly⁷ confirm that the discovery

⁵ Defendant notes that "[p]laintiff is asserting an extraordinarily large lost wage claim and pecuniary injuries of \$50 million dollars. . . ."

⁶ In the event the spousal privilege is applicable, Dr. Metrikin notes that plaintiff has failed to provide a privilege log.

⁷ Although defense counsel states that copies of these materials are attached as exhibits, no copies were provided to the court or electronically filed.

sought here, particularly computer hard drives, is needed in suicide malpractice cases to garner evidence sufficient to permit experts to assess a decedent's psychological state.

Dr. Metrikin correctly notes that, by commencing this wrongful death action plaintiff waived the spousal privilege. See *Prink v Rockefeller Ctr., Inc.*, 48 NY2d 309, 315-316 (1979); *Abdur-Rahman v Pollari*, 107 AD3d 452, 454 (1st Dept 2013); *Freeman v Corbin Ave. Bus Co.*, 60 AD2d 824, 825 (1st Dept 1978); *Janecka v Casey*, 121 AD2d 28, 30-33 (1st Dept 1986). Defendant also cites compelling case law justifying certain of his demands for plaintiff and the decedent's financial records, as such information is relevant to both plaintiff's damages claim and the decedent's anxiety over finances. See *Maglaras v Mt. Sinai Hosp.*, 107 AD2d 605, 606 (1st Dept 1985)(allowing discovery of decedent's bank records, tax returns and employment records).

In opposition, plaintiff does not address the foregoing case law or defendant's detailed explanation as to how each demand is warranted. Nor does plaintiff address spousal privilege, notwithstanding her written objections to certain demands on such grounds. The court is not persuaded that defendant should be limited at this juncture, as plaintiff's counsel suggests, to simply deposing plaintiff with respect to information sought in certain of the demands, notwithstanding counsel's assurance that she is willing to be produced for a second session if needed.⁸

⁸ Also unavailing and completely irrelevant is plaintiff's repeated observation that Dr. Metrikin never requested the documentation he now seeks while he was treating the decedent.

Notwithstanding plaintiff's inarticulate objections (see below), sparse opposition and this court's observation that documentation tending to establish the decedent's motives for suicide is relevant to the defense, many of the demands are, as plaintiff argues, overbroad and unduly burdensome. Although it is not the court's obligation to "prune" the improper demands (see *Kimmel v Paul, Weiss, Rifkind, Wharton & Garrison*, 214 AD2d 453, 453-454 (1st Dept 1995), in the interest of ensuring that discovery commences and is completed as expeditiously as possible, the court makes the following rulings:

Second Notice to Produce

At the outset, the court makes the following general observations as to the overbroad and/or unduly burdensome nature of many of the demands:

- The majority of the demands seek "communications in whatever form"⁹ for a period of six years prior to Mr. Murphy's death. This time period is too broad and, in the instances below where this court directs plaintiff to respond to specific demands, the time period is to be limited to approximately one year prior to the date of death (i.e., March 2016 through March 2017), unless otherwise specified. For those demands which require more narrow tailoring, any revised demands should be limited to the same time period; and

⁹ "Communications, in whatever form" is defined as "any correspondence or communication, whether analog, electronic in the form of email, text message or similar means, and communications via social media including but not limited to FaceBook and Twitter, including metadata." Plaintiff does not object to this definition, though he does cite case law pertaining to discovery of social media accounts.

- Presumably the majority of responsive communications will be in the form of emails and text messages. Compiling these two forms of communications is an onerous and potentially expensive task, even with the applicable time period reduced to one year. Accordingly, certain rulings below suggest that the demands be more narrowly tailored.

The Demands

1. All communications, in whatever form, between Charles Murphy and any employer for a period of six years prior to his death:

Objection: "intended to harass"

This demand is stricken in its entirety as overbroad. The demand does not specify the type and nature of documents sought and would likely require production of irrelevant, confidential and/or potentially proprietary materials. In any event, plaintiff's bill of particulars (Motion at Exh. D) indicates that she provided an authorization for defendant to obtain the decedent's employment records from his last employer, which likely will be responsive to this demand.

2. All communications, in whatever form, between Charles Murphy and Annabella Murphy, for a period of six years prior to his death:

Objection: "intended to harass"

This demand is stricken as overbroad and unduly burdensome. Although there is a legitimate basis to seek communications between plaintiff and the decedent,¹⁰ the demand should be limited to communications pertaining to topics discussed during Mr. Murphy's sessions and relevant to Dr. Metrikin's defense. The demand also must be tailored to account for "sensitive or embarrassing materials of marginal relevance". See *Forman v Henkin*, 30 NY3d 656, 665 (2018).

3. All communications, in whatever form, between Charles Murphy and his children, for a period of six years prior to his death:

Objection: "intended to harass"

¹⁰ Dr. Metrikin's records reflect that Mr. Murphy confided that he was concerned because he thought that plaintiff was angry at him as a result of his financial setbacks.

This demand is stricken in its entirety. Although the decedent expressed anxiety regarding his ability to continue to provide for his family, the demand is of questionable relevance in that the decedent's children are only mentioned in defendant's records in this context.

4. All communications, in whatever form, between Charles Murphy and his colleagues at work, for a period of six years prior to his death:

Objection: "intended to harass"

This demand is stricken in its entirety as overbroad. The term "colleagues at work" is vague and potentially implicates numerous individuals. This demand also fails to specify the type and nature of documents sought and would likely require production of irrelevant, confidential and/or potentially proprietary materials.

5. All communications, in whatever form, between Charles Murphy and his accountant, for a period of six years prior to his death:

Objection: "intended to harass"

Plaintiff is directed to respond to this demand, limited to the one year time period, in accordance with the directives below.

6. All communications, in whatever form, between Charles Murphy and any financial advisor, for a period of six years prior to his death:

Objection: "intended to harass"

Plaintiff is directed to respond to this demand, limited to the one year time period, in accordance with the directives below.

7. All applications for life insurance signed by Charles Murphy for a period of six years prior to his death: plaintiff does not object to this demand and is directed to respond to it in accordance with the directives below.

8. All federal, state and local income tax returns signed by Charles Murphy for the period of six years prior to his death:

Objection: "objected to" without asserting any grounds therefor

This demand is stricken solely to the extent that plaintiff is directed to produce income tax returns for the period of 3 years prior to Mr. Murphy's death. These tax returns are relevant to plaintiff's claimed damages.

9. All Federal and State Estate Tax returns filed by Charles Murphy:

Objection: "objected to" without asserting any grounds therefor

Plaintiff is directed to produce estate tax returns for Mr. Murphy's estate that have been filed to date. These tax returns are relevant to plaintiff's claimed damages.

10. All Federal and State Gift Tax returns signed by Charles Murphy for a period of six years prior to the date of his death:

Objection: "objected to" without asserting any grounds therefor

This demand is stricken solely to the extent that plaintiff is directed to produce such tax returns for the period of 3 years prior to Mr. Murphy's death. These tax returns are relevant to plaintiff's claimed damages.

11. All communications, in whatever form, between Charles Murphy or Annabella Murphy and any real agent and any other person relating to the Murphy's house in South Hampton (sic):

Objection: "intended to harass" and "violates spousal privilege"

Plaintiff is directed to respond to this demand in accordance with the directives below. The request is relevant because defendant's treatment records indicate that the decedent's inability to sell his Southampton home caused him anxiety and appears to be a source of contention between himself and plaintiff.

12. All communications, in whatever form, between Charles Murphy and any person or entity, concerning prospective employment, for a period of six years prior to his death:

Objection: "intended to harass"

This demand is stricken in its entirety. Communications with past prospective employers is irrelevant to Mr. Murphy's fear that he would be unable to find future employment.

13. All photos or videos taken during the six years prior to his death:

Objection: "intended to harass and irrelevant"

This demand is stricken in its entirety. Defendant fails to establish that photos and videos of the decedent are relevant to his defense.

14. All communications, in whatever form, between Charles Murphy and John Paulsen for a period of six years to his death:

Objection: "intended to harass and irrelevant"

Communications with Mr. Murphy's supervisor are relevant inasmuch as the record indicates he confided to Mr. Paulsen about his financial anxieties. However, this demand is stricken as overbroad because it does not specify the type and nature of documents sought and would likely require production of irrelevant, confidential and/or potentially proprietary materials.

15. All communications, in whatever form, between Charles Murphy and Belen Hormaeche for a period of six years prior to his death:

Objection: "vague, non-specific and irrelevant"

Communications with Mr. Murphy's close friend are relevant inasmuch as the record indicates he confided to Mr. Hormaeche about his financial anxieties. However, this demand is stricken as overbroad in that it is not restricted to topics discussed during Mr. Murphy's sessions and relevant to Dr. Metrikin's defense.

16. All documents related to any debt owed by Charles Murphy in the six years prior to his death:

Objection: "vague, non-specific and irrelevant"

This demand is stricken as vague and overbroad because it does not specify the type and nature of documents sought.

17. All communications, in whatever form, between Annabella Murphy and Dr. Aaron Metrikin: plaintiff does not object to this demand and is directed to respond to it in accordance with the directives below.
18. All communications, in whatever form, between Charles Murphy and Dr. Aaron Metrikin: plaintiff does not object to this demand and is directed to respond to it in accordance with the directives below.
19. All communications, in whatever form, between Annabella Murphy and any other person concerning the subject of Charles Murphy's ability to function and his psychiatric or emotional condition:

Objection: "vague, non-specific and probably privileged"

This demand is stricken as overbroad and unduly burdensome. Defendant may depose plaintiff to ascertain if she communicated with any other person on this subject.

20. All communications, in whatever form, between Charles Murphy and any other person concerning the subject of Charles Murphy's ability to function and his psychiatric or emotional condition:

Objection: "vague and non-specific"

This demand is stricken as overbroad and unduly burdensome. Defendant may depose plaintiff to ascertain if she is aware of any other person with whom the decedent may have communicated on this subject.

21. All communications, in whatever form, between Charles Murphy and any other person concerning the subject of suicide:

Objection: "so vague and non-specific as to border on the absurd"

This demand is stricken as overbroad. No time period is specified and defendant may depose plaintiff to ascertain if she is aware of any other person with whom the decedent may have communicated on this subject.

22. All communications, in whatever form, between Annabella Murphy and any other person concerning the subject of suicide:

Objection: "so vague and non-specific as to border on the absurd"

This demand is stricken as overbroad. No time period is specified and defendant can depose plaintiff regarding any communications she may have had with others on the subject of suicide.

23. All communications, in whatever form, between Charles Murphy and Annabella Murphy for the period from January 1, 2016 to the date of Charles Murphy's death:

Objection: "spousal privilege"

This demand is encompassed within demand number 2.

Third Notice to Produce

1. All credit card statements issued to Charles Murphy reflecting charges made by Charles Murphy for the period from . . . July 1, 2016 to March 27, 2017:

Objection: the demand is "an abuse of discovery, too broad, and simply a fishing expedition without even a hook. There is no reason for this request other than to harass and create a reason for delay."

Plaintiff is directed to respond to this demand, limited to the one year time period, in accordance with the directives below. The demand is relevant to plaintiff's claim for damages as well as to Mr. Murphy's financial concerns.

Fourth Notice to Produce

1. That Plaintiff produce for physical inspection and forensic imaging any mobile phone or personal computer owned or used by decedent, Charles Murphy, during the period from July 1, 2016 to March 27, 2017:

Objection: "objected to"; plaintiff refuses "to permit the defendant to rummage through ever (sic) area of the decedent's life"

2. That Plaintiff produce for physical inspection and forensic imaging any mobile phone or personal computer owned or used by plaintiff, Annabella Murphy, during the period from July 1, 2016 to March 27, 2017 with such inspection and forensic imaging to be limited to communications with or concerning decedent, Charles Murphy:

Objection: "With respect to Annabella Murphy, the period is too broad." If the demand is limited "to something reasonable" plaintiff "will attempt to have someone identify communications, provided they are not privileged."

These demands are stricken as overbroad and unduly burdensome. Any forensic analysis should be limited to searches related to the topics discussed during Mr. Murphy's sessions and relevant to Dr. Metrikin's defense. The demand also must be tailored to account for "sensitive or embarrassing materials of marginal relevance".

See *Forman v Henkin, supra*.

Parenthetically, with respect to the demands in the Second Notice to Produce to which this court has directed plaintiff to respond,¹¹ plaintiff has the option of submitting her and the decedent's mobile phones and personal computers for forensic analysis

¹¹ It appears that forensic imaging would only be applicable to demands 5, 6, 11, 17 and 18.

rather than producing hard copies of communications responsive to the remaining demands.

For the foregoing reasons, it is

ORDERED that defendant's motion is granted in part as delineated herein; and it is further

ORDERED that plaintiff shall respond to the demands indicated herein within 30 days of the electronic filing of this decision and order.

Counsel for the parties are directed to appear for a preliminary conference on November 26, 2019 at 9:30 a.m., at Part 1MMSP, 60 Centre St., New York, NY.

Dated: New York, NY
October 16, 2019



Hon. Martin Shulman, J.S.C.