Chern v Leclerc
2020 NY Slip Op 31052(U)
April 24, 2020
Supreme Court, New York County
Docket Number:150091/2019
Judge: Lucy Billings

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
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RELLY CHERN, Index No. 150091/2019

Plaintiff

- against - DECISION AND ORDER

PAUL LECLERC, JUDITH GINSBURG, and ADAM LECLERC,

Defendants

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APPEARANCES:

For Plaintiff
David H. Gendelman Esq.
49 West 37th Street, New York, NY 10018

For Defendants Paul LeClerc and Judith Ginsburg
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LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiff, an opthalmologist, seeks damages for personal injuries she suffered October 23, 2018, when defendant Adam LeClerc kicked her during an eye examination in his apartment, arranged by his parents, defendants Paul LeClerc and Judith Ginsburg. Defendant parents move for summary judgment dismissing the complaint against them, C.P.L.R. § 3212(b), claiming they owed no duty to plaintiff and were unaware of their adult son's dangerous propensities. Plaintiff claims defendant parents knew

of their son's aberrant and violent behavior, yet failed to warn plaintiff in advance, and thus contributed to her injury.

II. CIRCUMSTANCES UNDER WHICH DEFENDANT PARENTS MAY BE LIABLE FOR THEIR ADULT SON'S CONDUCT

Ordinarily, parents may not be held liable for the conduct of their adult child, even an adult child with disabilities. Rios v. Smith, 95 N.Y.2d 647, 652 (2001); LaTorre v. Genesee Mgt., 90 N.Y.2d 576, 582 (1997); Fox v. Marshall, 88 A.D.3d 131, 140 (2d Dep't 2011). Plaintiff bears a heavy burden to sustain her claim of defendant parents' liability. She must show that defendant parents exercised care or control of their son, even though he was an adult; knew of their adult son's dangerous tendencies; and, through their own conduct, created a particularized foreseeable danger to plaintiff from their son's conduct. Rios v. Smith, 95 N.Y.2d at 652; LaTorre v. Genesee Mgt., 90 N.Y.2d at 584. See Lanzetta v. Madori, 55 A.D.3d 376, 376 (1st Dep't 2008). If defendant parents maintained the ability to control their son's conduct, which exposed plaintiff to harm, defendant parents owed a duty to protect plaintiff from his conduct. Fox v. Marshall, 88 A.D.3d at 136-37.

Defendant parents admit that they scheduled their son's appointment with plaintiff and requested that it take place in his apartment, instead of plaintiff's medical office, evincing their care or control of their son's encounter with plaintiff, and raising the inference that their son's behavior required that

their son remain in a controlled setting. This admission also raises the inference that defendant parents knew of their son's aberrant behavior. In direct contradiction to Ginsburg's affidavit denying her knowledge of her son's dangerous propensities, moreover, plaintiff attests that, during Ginsburg's own prior appointment with plaintiff, Ginsburg admitted her son's behavioral problems and her relief upon having found a caretaker to live with their son in a separate apartment. The mother's knowledge in turn raises the inference that her husband possessed comparable knowledge. It is also undisputed that a nurse, an aide, and a cook assigned by the New York State Office for People with Developmental Disabilities were in Adam LeClerc's apartment, facts of which his parents likely were aware, indicating that they must have known of their son's incapacities, abnormal behavior, and need for supervision.

Finally, by requesting that plaintiff come to Adam LeClerc's apartment to examine and treat him, defendant parents created an encounter where, if their son's behavior was uncontrolled, it posed a particularized foreseeable danger to plaintiff. Rios v. Smith, 95 N.Y.2d at 652; LaTorre v. Genesee Mgt., 90 N.Y.2d at 584; Fox v. Marshall, 88 A.D.3d at 140. See Lanzetta v. Madori, 55 A.D.3d at 376; DeRosa v. Smith, 286 A.D.2d 363, 363 (2d Dep't 2001). Defendant parents were capable of preventing or controlling such an encounter. Rios v. Smith, 95 N.Y.2d at 653;

Fox v. Marshall, 88 A.D.3d at 136-37, 139-40. See Rivers v. Murray, 29 A.D.3d 884, 885 (2d Dep't 2006); Davies v. Incorporated Vil of E. Rockaway, 272 A.D.2d 503, 504 (2d Dep't 2000).

III. THE NEED FOR DISCLOSURE

C.P.L.R. § 3212(f) permits the court to deny summary judgment when "facts essential to justify opposition may exist but cannot then be stated." C.P.L.R. § 3212(f); Jackson v. Hunter Roberts Constr. Group, LLC, 161 A.D.3d 666, 667 (1st Dep't 2018); Figueroa v. City of New York, 126 A.D.3d 438, 439 (1st Dep't 2015). See Baghban v. City of New York, 140 A.D.3d 586, 586 (1st Dep't 2016). Plaintiff must demonstrate that further disclosure may lead to relevant evidence that will defeat the motion and that facts necessary to oppose the motion are exclusively within defendants' knowledge and control. C.P.L.R. § 3212(f); Jackson v. Hunter Roberts Constr. Group, LLC, 161 A.D.3d at 667; Stern v. Starwood Hotels & Resorts Worldwide, Inc., 149 A.D.3d 496, 491 (1st Dep't 2017); Solano v. Skanska USA Civ. Northeast Inc., 148 A.D.3d 619, 620 (1st Dep't 2017).

Plaintiff demonstrates that defendants' motion for summary judgment is premature by identifying relevant disclosure from defendants that remains outstanding and is necessary to oppose defendant parents' motion. Paramount Ins. Co. v. Federal Ins. Co., 174 A.D.3d 476, 477 (1st Dep't 2019); Guzman v. City of New

York, 171 A.D.3d 653, 653 (1st Dep't 2019); Reid v. City of New York, 168 A.D.3d 447, 448 (1st Dep't 2019). To rebut defendant parents' claim that they were unaware of their son's violent tendencies or physical assault on anyone before October 23, 2018, plaintiff needs Adam LeClerc's school, mental health, and medical records; defendants' depositions; a mental examination of Adam LeClerc; and possibly a physical examination of him to identify any lack of motor control. The nurse, aide, and cook in his apartment assigned by the Office for People with Developmental Disabilities may possess relevant knowledge regarding defendant parents' knowledge of their son's incapacities, abnormal behavior, and need for supervision, as well as their care or control of their son. Plaintiff also maintains that production of the lease for the apartment may show that defendant parents rented it for their son and thus invited plaintiff into the parents' apartment that the parents knew was a dangerous environment. Fox v. Marshall, 88 A.D.3d at 140.

Before the court determines defendant parents' motion for summary judgment, plaintiff must be afforded the opportunity, at minimum, to obtain relevant documents and depose defendants and the other witnesses in Adam LeClerc's apartment with personal knowledge of the relevant facts outlined above. The records plaintiff seeks and the deponents' testimony may lead to relevant evidence that would defeat defendants' motion. Guzman v. City of

New York, 171 A.D.3d at 653; Jackson v. Hunter Roberts Constr. Group, LLC, 161 A.D.3d at 667; Solano v. Skanska USA Civ. Northeast Inc., 148 A.D.3d at 620; Burke v. Yankee Stadium, LLC, 146 A.D.3d 720, 721 (1st Dep't 2017).

IV. CONCLUSION

For the reasons explained above, the court denies the motion by defendants Paul LeClerc and Judith Ginsburg for summary judgment. C.P.L.R. § 3212(f). This decision constitutes the court's order.

DATED: April 24, 2020

LUCY BILLINGS, J.S.C.

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