Hunlock v New York City Tr. Auth.
2020 NY Slip Op 32111(U)
June 29, 2020
Supreme Court, New York County
Docket Number: 153113/2017
Judge: Lisa A. Sokoloff
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SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: TRANSIT PART 21
X

BRIANNE HUNLOCK,

Plaintiff,

- against -

NEW YORK CITY TRANSIT AUTHORITY,

Defendant.
X

DECISION AND ORDER

Index # 153113/2017

Mot. Seq. 2

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered	NYCEF #
Defendant Order to Show Cause / Affirmation	1	21-38
Plaintiff's Affirmation in Opposition	2	40-44

LISA A. SOKOLOFF, J.

In this personal injury action, Defendant New York City Transit Authority ("Transit") moves by Order to Show Cause for an Order, pursuant to CPLR § 3124, compelling discovery of Plaintiff Brianne Hunlock's medical, mental health, and substance abuse treatment records, from 2008 to date. For the reasons discussed below, Defendant's motion to compel is denied.

Plaintiff was injured on June 16, 2016, at approximately 10:25 p.m., when, for reasons she cannot explain or recall, she fell on the track bed on the southbound 2/3 subway line at the 14th Street and 7th Avenue subway station in Manhattan, was struck by the number 3 train and sustained bilateral below the knee amputations. Plaintiff claims that she "blacked out" and fell unconscious on the tracks. She woke up several days later in Bellevue Hospital with no memory of the accident.

Plaintiff testified that, on the morning of the accident, she took her prescribed Ativan before leaving her residence in Brooklyn. Later than morning, she attended her regular methadone maintenance program in the East Village, where she received her

prescribed dosage. After leaving the program, she spent the remainder of the day with her partner, Anthony Costello. They ate lunch at a bakery and then walked around the Union Square area. At approximately 9:30 p.m., they walked towards the subway station with the intention of returning to Brooklyn. They entered the station together, and then parted ways at the turnstiles, as they were going to be taking different trains.

Transit, NYPD and FDNY personnel responded to the scene. A "Train Incident Report," generated by Transit reveals a notation at 23:12 that a witness had reported that Plaintiff "seemed to be intoxicated standing next to edge of the platform on unsteady legs; lost her balance and fell to roadbed."

Plaintiff was removed via ambulance to Bellevue Hospital where she remained until August 3, 2018. A toxicology screening performed shortly after Plaintiff's admission to Bellevue revealed that she tested positive for methadone and benzodiazepines. According to the Bellevue Hospital records, Plaintiff had a history of abusing heroin, cocaine, marijuana, alcohol and prescription medications including opioids and benzodiazepines. She also had a significant mental health history of depression, anxiety and obsessive-compulsive disorder. Her medical history was significant for pancreatitis and diabetes. At the time of the accident, Plaintiff was reportedly on a methadone maintenance program and under the care of one or more psychiatrists for pharmacological treatment of her mental health and substance abuse disorders.

A post-accident Bellevue psychiatric consult note dated June 20, 2016 reported that although Plaintiff's psychiatrist had discontinued Plaintiff's prescription for Ativan more than one month prior to the accident she nonetheless tested positive for benzodiazepine at the time of the accident. The psychiatric consult concluded that the benzodiazepine could well have contributed to Plaintiff's fall.

Although Plaintiff claimed to be in remission for her substance abuse problems for two years before the accident, the Bellevue records indicate that just four months earlier, in February 2016, Plaintiff was found "down on the ground by EMS, thought to be due to a methadone overdose. Defendant argues that while Plaintiff described her pre-accident health as good, she had been hospitalized for acute pancreatitis in 2012, upon her discharge had entered an eight-month rehab program and in 2013, entered a court-ordered drug treatment facility.

Based upon the affidavit of Dr. Steven Billick, a forensic psychiatrist and professor at NYU, defendant argues that plaintiff's medical records are needed because her Ativan use might have caused the accident, there might be a possible third-party action against the physicians who prescribed the Ativan, to properly determine her diminished life expectancy and to assess her loss of enjoyment of life.

In opposition, Plaintiff argues that Defendant already knows what substances were in Plaintiff's system at the time of the accident because she testified that she took Ativan that morning and then attended her regular methadone maintenance program. The toxicology results from the hospital corroborate her testimony as they reflect she had benzodiazepine (the class of drugs that includes Ativan) and methadone in her system, and nothing else. Plaintiff has also already provided Defendant with an authorization to obtain her methadone program records from the month before the accident which would reflect her prescribed dosage. Thus, Defendant already has all the records necessary to assess the role her medication use at the time of the accident might have played, if any, in causing her to faint.

Plaintiff further argues that Defendant has failed to demonstrate that the records at issue meet the heightened standard for discoverability established by the Mental Hygiene Law or are even material as the records are temporally and conceptually remote from the

accident. Plaintiff also claims that Defendant's expert's affirmation offers no reasoned explanation for needing eight years' worth of Plaintiff's medical, mental health and substance abuse records, including for substances unrelated to those in her system on the day of the accident. Finally, Plaintiff maintains that Defendant has failed to demonstrate that the interests of justice significantly outweigh plaintiff's privacy interests in her protected health information which should be disclosed only to the limited extent necessary to an action.

Disclosure in civil actions is generally governed by CPLR § 3101(a), which states that "all matter material and necessary in the prosecution or defense of an action" should be fully disclosed (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403 [1968]; *James v 1620 Westchester Avenue LLC*, 147 AD3d 575 [1st Dept 2017]). The Court of Appeals has interpreted the words, "material and necessary" liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v Crowell-Collier Publ. Co.* at 406). Evidence is material if sought in good faith for possible use as evidence-in-chief or rebuttal or for cross-examination (*Keith v Forest Laboratories, Inc.*, 72 AD3d 519 [1st Dept 2010). Notwithstanding this liberal construction, a party is not entitled to unlimited, uncontrolled and unfettered disclosure (*Quinones v 9 East 69th Street, LLC*, 132 A.D.3d 750 [2nd Dept 2015]), and the trial courts have broad discretion to regulate discovery to prevent abuse (*MSCI Inc. v Jacob*, 120 AD3d 1072 [1st Dept 2014]).

Under the liberal discovery provisions of the CPLR, a party must provide duly executed and acknowledged written authorizations for the release of pertinent medical records when that party has waived the physician-patient privilege by affirmatively putting

his or her physical or mental condition in issue (*Cynthia B. v New Rochelle Hosp. Medical Center*, 60 NY2d 452 [1983]). Even when the plaintiff has affirmatively placed her condition at issue, the statute requires that the disclosure be limited only to the information actually necessary to the litigation.

A party seeking to compel production of mental health, alcohol abuse or substance abuse records has the burden of showing that "the interests of justice significantly outweigh the need for confidentiality" (Mental Hygiene Law §§ 33.13[c][1], 22.05 [b]; *James v 1620 Westchester Avenue LLC*, 147 AD3d 575 [1st Dept 2017]). "As a general matter, disclosure is warranted where records of a sensitive and confidential nature relate to the injury sued upon" (*Del Terzo v Hospital for Special Surgery*, 95 AD3d 551 [1st Dept 2012] citing *Napoleoni v Union Hosp. of Bronx*, 207 AD2d 660, 662 [1994]).

In *Napoleoni*, a medical malpractice action based on negligence in prenatal care, labor and the delivery of a baby, the First Department found that the interests of justice outweighed the need for confidentiality and allowed discovery of treatment records pertaining to the mother's substance abuse *during her pregnancy*. In *Del Terzo*, however, the court found that the interests of justice standard had not been met where defendants sought disclosure of confidential records "on the basis of nothing more than a generalized assertion that substance abuse and mental illness can affect a person's level of stress, ability to work and life expectancy" (*Del Terzo v Hospital for Special Surgery*, 95 AD3d 551, 553 [1st Dept 2012]).

Here, Defendant submits the affirmation of a forensic psychiatrist, Dr. Stephen Bates Billick, as support for its broad disclosure request. However, Dr. Billick fails to explain how Plaintiff's substance abuse and mental health treatment records going back to 2008 will help him assess whether Plaintiff's use of and/or withdrawal from drugs

contributed to her fall or would help defendants determine whether there is a viable third-party action. However, the evidence of the prior fainting incident is sufficient to require more discovery than Plaintiff has provided. Plaintiff is directed to provide authorizations for all medical and psychological treatment including those of Dr. Reyes, for a period of January 2016 through June 16, 2016. Those records should be sufficient to assist defense experts to evaluate causation and potential third-party practice.

Regarding Plaintiff's purported decreased life expectancy, Defendant is aware of Plaintiff's documented history of substance abuse, diabetes and pancreatitis and has not shown how expanded treatment records from eight prior years are necessary to assess her diminished life expectancy in light of all the information it possesses. Without a reasoned explanation for the necessity of these records, the court is "presented with nothing other than hypothetical speculations calculated to justify a fishing expedition" (*Budano v Gurdon*, 97 AD3d 497 [1st Dept 2012]) (internal quotations omitted).

Plaintiff alleges loss of enjoyment of life. Defendant argues that her allegation is a clever way to put emotional issues before the jury without having to disclose mental health and substance abuse records. As an initial matter, it must be noted that a claim for loss of enjoyment of life is not a separate line for recovery of damages but rather a factor in assessing pain and suffering. *Brito v Gomez*, 168 AD3d 1,6 [1st Dept 2018] *reversed on other grounds* 33 NY3d 1126. The First Department has consistently held that a Plaintiff does not open up her entire medical history by alleging loss of enjoyment of life. Id. At 8; *James v 1620 Westchester Ave.*, 147 AD3d 575 [1st Dept 2017]; *see also Morillo v 623-631 West 207th Street, LLC*, 2020 WL 2095737. The Second Department takes a contrary view: that the defense should be entitled to review the nature and severity of plaintiff's prior medical and mental conditions to the extent they might impact loss of enjoyment of

life. *Kakharov v Archer*, 166 AD3d 746[2nd Dept 2018]. As Plaintiff has carefully crafted her allegations to avoid putting her emotional or psychological condition at issue, she has not opened up her treatment history sufficient to obtain treatment records in this Department.

Accordingly, it is

ORDERED that Defendant New York City Transit Authority's application for an order pursuant to CPLR § 3124 compelling discovery of Plaintiff Brianne Hunlock's medical records, mental health, and substance abuse treatment records, from 2008 to date, is granted only to the extent that Plaintiff provide authorizations from January 2016 to the date of the subject accident for all of her medical and psychological records, including those of Dr. Reyes, to permit Defendant's expert evaluate causation and potential third-party actions.

Dated: June 29, 2020
New York, New York

ENTER:

Lisa A. Sokoloff, A.J.C.C.

CHECK ONE:	☐ CASE DISPOSED		☒ NON-FINAL DISPOSITION			
	☐ GRANTED	☐ DENIED	☒ GRANTED IN PART		☐ OTHER	
APPLICATION:	☐ SETTLE ORDER		☐ SUBMIT ORDER			
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN		☐ FIDUCIARY APPOINTMENT		☐ REFERENCE	