

Anonymous v Graham Sch. Found., Inc.

2020 NY Slip Op 33047(U)

September 15, 2020

Supreme Court, Queens County

Docket Number: 508380/2020

Judge: George J. Silver

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

-----X

ANONYMOUS,

Index №. 508380/2020

Plaintiff,

-against-

**THE GRAHAM SCHOOL FOUNDATION, INC.
and GRAHAM WINDHAM**

Defendants

-----X

HON. GEORGE J. SILVER:

With the instant application plaintiff ANOYMOUS (“plaintiff”) moves, by Order to Show Cause, for permission from this court to proceed in anonymity during the course of this action. Defendant GRAHAM WINDHAM (“defendant”) opposes the application.

In support of the instant application to proceed anonymously, plaintiff cites Civil Rights Law §50-b (“CRL §50-b) and argues that allowing plaintiff to proceed under a pseudonym would spare plaintiff from the stigmatization and potential embarrassment that may arise as the result of the adjudication of this matter in a public forum. Plaintiff, like other similarly situated plaintiffs, is especially concerned about renewed scrutiny that may ensue due to New York State’s enactment of the Child Victims Act (L. 2019 c.11) (“CVA”) which, *inter alia*, (1) extends the statute of limitations on criminal cases involving certain sex offenses against children under 18 (*see* CPL §30.10 [f]); (2) extends the time which civil actions based upon such criminal conduct may be brought until the child victim reaches 55 years old (*see* CPLR §208[b]); and (3) opens a one-year window reviving civil actions for which the statute of limitations has already run (even in cases that were litigated and dismissed on limitations grounds), commencing six months after the effective date of the measure, i.e. August 14, 2019 (*see* CPLR §214-g). Indeed, plaintiff maintains that this case is likely to draw attention from the media, and if plaintiff is not allowed to proceed under a pseudonym, increased media attention may lead to a chilling effect that may inhibit plaintiff, and other alleged victims of abuse, from coming forward. Plaintiff further highlights that the protection of anonymity is uniquely afforded to victims of sexual assault rather than to their alleged perpetrators.

In opposition, defendant argues that CRL §50-b does not apply to cases where no criminal charges have been advanced. Consequently, defendant notes that since there is no active criminal case that parallels the instant civil proceeding, the protections of CRL §50-b do not extend to plaintiff, since the statute was narrowly enacted to protect the identity of victims of sex crimes to ensure those victims’ cooperation in ongoing criminal investigations or prosecutions. Far from showing that criminal charges have been contemplated, here defendant argues that there has been

no showing of any criminal charges ever being formally lodged against it. Because plaintiff has anchored the present Order to Show Cause to the applicability of CRL §50-b, and because CRL §50-b is squarely inapplicable to the circumstances presented here, defendant contends that plaintiff's application for anonymity should be denied.

DISCUSSION

In general, “[t]he determination of whether to allow a plaintiff to proceed anonymously requires the court to use its discretion in balancing plaintiff's privacy interest against the presumption in favor of open trials and against any prejudice to defendant” (*Anonymous v. Lerner*, 124 AD3d 487, 487 [1st Dept 2015] [internal quotation marks and citations omitted]; see *J. Doe No. 1 v. CBS Broadcasting, Inc.*, 24 AD3d 215 [1st Dept 2005]; see also *Doe v. Szul Jewelry, Inc.*, 2008 NY Slip Op 31382 [U] [Sup Ct, NY County 2008]). Among the recognized values of open access to civil proceedings is that “the bright light cast upon the judicial process by public observation diminishes the possibilities for injustice, incompetence, perjury, and fraud” (*Danco Labs. v. Chemical Works of Gedeon Richter*, 274 AD2d 1, 7 [1st Dept 2000]). Likewise, the very openness of the process should provide the public “with a more complete understanding of the judicial system and a better perception of its fairness” and serves to “ensure that the proceedings are conducted efficiently, honestly and fairly” (*Danco*, 274 AD2d at 7, *supra*).

However, the right of the public, and the press, to access judicial proceedings is not absolute or unfettered, and involves judicial discretion (*Lerner*, 124 AD3d at 487, *supra*). Moreover, access may still be respected in keeping with constitutional requirements while sensitive information is restricted in keeping with “the State's legitimate concern for the well-being” of an individual (*Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 606 [1982]).

A plaintiff's privacy interests, although not recognized under New York State's common law, are found in CRL §50-b (see *Stephano v. News Group Publications, Inc.*, 64 NY2d 174, 182 [1984]; *Arrington v. New York Times Co.*, 55 NY2d 433, 440 [1982]). Indeed, pursuant to CRL §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. Rather, the statute was enacted to spare victims of 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). As such, courts have afforded victims of sexual offenses protection under CRL §50-b where there has either been an arrest and prosecution, or there is an investigation (see *People v. McDaniel*, 81 NY2d 10 [1993] [defendant charged and prosecuted for rape]; *Matter of Fischetti*, 44 AD3d 89 [1st Dept. 2007][defendant charged and prosecuted for sex abuse]; *Deborah S., v. Diorio*, 153 Misc.2d 709 [Civ. Ct. N.Y. 1992][Defendant charged for rape, sodomy and sexual assault]). Moreover, the Appellate Division, First Department, has held that CRL § 50-b is inapplicable where a sex offense charge against a defendant in an underlying criminal case was dismissed (*Brown v. New York City Police Department*, 264 AD2d 558 [1st Dept. 1999]).

In addition, CRL §50-b was arguably enacted to protect the disclosure of the identity of a victim of sex crimes to ensure the victim's cooperation in criminal investigations or prosecutions (see *Doe v. Kidd*, 19 Misc. 3d 782, 786-87 [Sup Ct, NY County 2008]; *People v. McDaniel*, 81 NY2d 10 [1993]). Consequently, in general, CRL §50-b applies where “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 at 787, *supra*).

Here, while it is argued that no criminal prosecution has ever been brought against defendant based on the alleged sexual misconduct at issue in this civil suit, the mere existence of the CVA, a claim revival statute, presupposes that a criminal investigation could still be initiated against defendant. To be sure, numerous criminal and civil prosecutions predicated upon otherwise time-barred claims have been advanced since the enactment of the CVA. Moreover, defendant fails to annex any supporting proofs corroborating defendant’s claim that there is no active criminal investigation against it. Still, one could just as easily argue that defendant is not required to prove a negative, and that plaintiff’s inability to cite to a pending criminal investigation presupposes that no such investigation exists. In the absence of affirmative proof that plaintiff is part of criminal charges contemplated against plaintiff, it is arguable that the applicability of CRL §50-b is questionable. Nevertheless, as in other cases litigated under the CVA, CRL §50-b is not the only precedent that guides this court’s analysis.

When balancing a plaintiff’s claimed right to privacy against the presumption of openness in judicial proceedings, the scale can tip in favor of concealment where there is a substantial privacy right that outweighs the customary and constitutionally embedded presumption of openness in judicial proceedings (see *J. Doe No. 1 v. CBS Broadcasting, Inc.*, 24 AD3d 215 [1st Dept. 2005]). Here, plaintiff’s allegations, which are supported by plaintiff’s submission of an affidavit in connection with the instant application, persuasively support a grant of anonymity. Indeed, plaintiff’s affidavit cites concrete harms likely to befall plaintiff, plaintiff’s family, and plaintiff’s livelihood by disclosure of plaintiff’s identity beyond vague allegations of mere embarrassment (*Matter of Doe v. New York City Police Department*, 39 Misc.3d 1229[A] [Sup Ct, NY County 2008]).

In addition, longstanding precedent supports the proposition that while “[i]t is elementary that the primary function of a pleading is to apprise an adverse party of the pleader's claim” the same principle does not necessarily apply to a pleader's name (*Cole v. Mandell Food Stores, Inc.*, 93 NY2d 34, 40 [1999]). Here, plaintiff has provided defendant with adequate information regarding the timeframe and location of plaintiff’s alleged abuse. Moreover, plaintiff will provide defendant with additional identifying information, including plaintiff’s name, that defendant can use to defend this lawsuit without plaintiff’s name being divulged openly. As such, any perceived prejudice that could befall defendant is blunted by information that plaintiff has volunteered to provide to defendant.

Moreover, this case is not being brought against a government entity, a factor this court believes might militate in favor of the public's right to know. Instead, defendant is an institution, and therefore is not prejudiced at this time. In contrast, the prejudice likely to engulf plaintiff is substantial, as this case involves alleged acts that will no doubt center on information concerning

plaintiff of a sensitive and highly personal nature. The court recognizes that it is plausible that plaintiff, as the alleged child victim of sexual abuse, has suffered emotional distress. Indeed, plaintiff's affidavit attests to multiple purported harms that have befallen plaintiff and are likely to continue during the pendency of this lawsuit. Considering that reality, revelation of plaintiff's name could unsettle plaintiff and perhaps deter plaintiff from litigating this matter. Such an outcome would undoubtedly undermine the very purpose for which the CVA was enacted. To be sure, revelation of plaintiff's identity would undermine the litigation by denying a portion of the relief ultimately requested in the action. Hence, plaintiff's instant request embodies a substantial privacy interest that outweighs the opposition leveled by defendant.

Considering the foregoing, it is axiomatic that plaintiff be afforded the protection of anonymity. Notably, a grant of anonymity by this court impacts far less on the public's right to open proceedings than does the actual closing of a courtroom or the sealing of records – issues that are presently not before this court. In this court's view the public ultimately has an interest in seeing this case determined on its merits, after the parties have had an opportunity to fully and properly litigate the issues presented. Anonymity, at this juncture, will preserve the integrity of that stated objective. Accordingly, plaintiff's application seeking anonymity is granted.

Accordingly, it is, for the reasons stated above, hereby

ORDERED that plaintiff's motion to file a complaint and proceed herein under a pseudonym, rather than in plaintiff's legal name, and to proceed throughout this action under such pseudonym, rather than in plaintiff's own name, is granted; and it is further

ORDERED that plaintiff serve a copy of this decision, with notice of entry, upon defendants within 20 days of this court's decision and order; and it is further

ORDERED that plaintiff personally serve defendants with the complaint within 20 days of this court's decision and order; and it is further

ORDERED that plaintiff provide defendants with the abovenamed plaintiff's name (including maiden name, if any), date of birth, social security number, parents and/or guardian's names, current address, and address at the time of the alleged abuse; and it is further

ORDERED that said information shall only be shared between the parties to this litigation notwithstanding any consent to share agreed to by plaintiff; and it is further

ORDERED that the court shall issue a separate notice to the parties regarding a future appearance in this matter.

Dated: September 15, 2020



GEORGE J. SILVER, J.S.C.