

Doe v Morris
2021 NY Slip Op 31499(U)
April 22, 2021
Supreme Court, New York County
Docket Number: 950549/2020
Judge: George J. Silver
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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AG1 DOE,

Index №. 950549/2020

Plaintiff,

-against-

GEORGE MORRIS, *et al.*

Defendants

-----X

HON. GEORGE J. SILVER:

With the instant application plaintiff moves, by Order to Show Cause, for permission from this court to proceed in anonymity during this action.

ARGUMENT

Plaintiff 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.

In support of the instant application, plaintiff annexes a detailed personal affidavit. Plaintiff submits that plaintiff is concerned about plaintiff’s identity being revealed to individuals within plaintiff’s community. Plaintiff further submits that plaintiff’s family, friends, and others are unaware of the details of plaintiff’s alleged abuse. Plaintiff also states that publication of plaintiff’s name would take a heavy psychological toll on plaintiff, and potentially inhibit plaintiff’s ability to continue with this lawsuit. In essence, plaintiff argues that that revelation of plaintiff’s name would be tantamount to a re-victimization.

Nevertheless, in opposition defendant GEORGE MORRIS argues that the presumption in favor of open judicial proceedings should outweigh the use of a pseudonym, as this is not an “exceptional” circumstance wherein plaintiff should be afforded the protection of proceeding

pseudonymously. In addition, defendant GEORGE MORRIS states that there is no statutory basis for the relief sought by plaintiff, and underscores the fact that proceeding under a pseudonym is generally the exception, not the rule. As such, defendant GEORGE MORRIS submits that plaintiff's application must be denied in its entirety.

Notably, the remaining defendants reached an agreement with plaintiff regarding the instant Order to Show Cause. That agreement is reflected in the attached stipulation, which has been so-ordered by this court. While the relief herein has been agreed to via stipulation by all defendants except defendant GEORGE MORRIS, the court finds that a decision reflecting its deliberation on the application herein is warranted. Accordingly, the decision and order that follows reflects the court's determination notwithstanding any agreement reached by stipulation.

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 the Civil Rights Law (“CRL”) (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). 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]).

In addition, 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 does not necessarily apply to a pleader’s name (*Cole v. Mandell Food Stores, Inc.*, 93 NY2d 34, 40 [1999][emphasis added]).

The instant case involves alleged acts that will no doubt center on information about plaintiff of a sensitive and highly personal nature. The court recognizes that plaintiff, as the alleged victim of sexual abuse, has arguably suffered great emotional distress. Indeed, plaintiff’s affidavit submitted in connection with the instant application states that plaintiff suffers from the lingering effects of emotional distress and anxiety as a result of the alleged abuse at issue here. Moreover, plaintiff avers that denial of plaintiff’s present application would chill plaintiff, and other alleged victims of child sexual abuse, from coming forward with their claims.

Decidedly, this case has not been brought against a government entity, a factor this court believes would militate in favor of the public’s right to know. Instead, defendants are private entities and individuals, and therefore are not prejudiced at this time. In contrast, as previously alluded to, 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.

Likewise, it is notable here that plaintiff is not relying on CRL §50-b to advance the instant application. Rather, plaintiff submits, based on the proofs annexed to plaintiff’s application, that plaintiff’s health and well-being while litigating this action outweigh the public’s interest in knowing plaintiff’s identity. Moreover, plaintiff states that defendant GEORGE MORRIS has failed to advance any legitimate reason why plaintiff should not be afforded the protection of anonymity in this case. Instead, defendant GEORGE MORRIS emphasizes that he would endure prejudice while investigating this case if plaintiff is afforded the protection of anonymity. However, contrary to defendant GEORGE MORRIS’ argument, no prejudice can be alleged where, as here, defendant GEORGE MORRIS will be provided with plaintiff’s personal identifying information for the purpose of advancing discovery in this matter. Moreover, as recognized by plaintiff, this case differs from cases such as *Doe v. Good Samaritan Hosp.*, 2019 N.Y. Misc. LEXIS 5383, *2-*3 (Sup. Ct. Nassau Cty. 2019), where an application to proceed under a pseudonym was denied because the record consisted of a “bare bones” affirmation of counsel. In contrast, here plaintiff has provided a detailed affidavit. As such, the court has a firm foundation here to support the grant of anonymity in this case.

Moreover, the fact that all defendants except defendant GEORGE MORRIS have consented to the instant relief inures in favor of this court granting plaintiff’s application. In addition, while defendant GEORGE MORRIS contends that revelation of his name and anonymity protection for plaintiff offends due process impinges upon his own expectation of privacy, courts have long recognized that the anonymity protection afforded to a unique subset of plaintiffs does not extend to defendants. Indeed, among the factors considered in permitting the use of a pseudonym are: “whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of a sensitive and highly personal nature” (*James v. Jacobson*, id. at 238; see also *Doe v. Provident Life & Acc. Ins. Co.*, 176 F.R.D. 464, 467-8 [E.D.Pa.1997]). Defendant GEORGE MORRIS’

argument that anonymity offends his entitlement to due process falls within the ambit of the former justification. To be sure, any embarrassment that stems from the publication of defendant GEORGE MORRIS' name is indistinguishable from the embarrassment that is likely to befall any defendant accused of wrongdoing in a civil action. Defendant' GEORGE MORRIS' assumption is that a plaintiff and a defendant stand on an even plain as far as anonymity is concerned. This assumption is a false one under existing precedent.

Finally, 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, for the reasons stated above, it is 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 in accordance with this court's decision and order, the parties are directed to comply with the conditions reflected in the annexed stipulation; and it is further

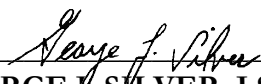
ORDERED that plaintiff provide the defendants with the abovenamed plaintiff's name (including maiden name, if any), date of birth, social security number, parents and/or guardian's names, current address, and address at the time of the alleged abuse; and it is further

ORDERED that in accordance with the parties' unanimous agreement on the return date of the Order to Show Cause, defendants' time within which to file and serve responsive pleadings is extended 30 days from the date of this court's decision and order; and it is further

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

The foregoing constitutes the decision and order of the court.

Dated: April 22, 2021



GEORGE J. SILVER, J.S.C.