

Saucedo v Stone

2022 NY Slip Op 30853(U)

March 15, 2022

Supreme Court, New York County

Docket Number: Index No. 159157/2021

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. FRANK NERVO PART 04

Justice

-----X

PATSY ALCANTAR SAUCEDO

Plaintiff,

- v -

MICHAEL STONE,

Defendant.

-----X

INDEX NO. 159157/2021

MOTION DATE 10/06/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11 were read on this motion to/for ENFORCEMENT.

Petitioner seeks enforcement of a subpoena for the testimony of Michael H. Stone, M.D pursuant to CPLR § 3119. The petition is unopposed.

It appears, on the limited record before this Court in this special proceeding, that petitioner’s Florida counsel issued a subpoena seeking the testimony of Dr. Stone related to an action currently pending in the family courts of Florida. Such deposition was to take place in New York where Dr. Stone’s office is located; however, Dr. Stone did not comply with that out-of-state subpoena. Thereafter, petitioner retained New York counsel for the purposes of issuing a New York subpoena seeking the same testimony. Similarly, the New York subpoena has gone unheeded. Notably, neither Dr.

Stone nor the father, as a party in the underlying Florida action, have moved to quash the subpoena.

CPLR § 3119 codifies New York's adoption of the Uniform Interstate Depositions and Discovery Act, and provides an expedited procedure for the issuance of a New York subpoena upon the filing of an out-of-state subpoena with the county clerk. However, the out-of-state subpoena must be issued by a court or under authority of a court to enjoy the expedited procedures of CPLR § 3119 (CPLR § 3119(a)(1); *Hyatt v. State of Cal. Franchise Tax Bd.*, 105 AD3d 186 [2d Dept 2013]).

However, CPLR § 3012(e) provides, effectively, the same relief as CPLR § 3119, notwithstanding that CPLR § 3102(e) requires a court order to effectuate such relief while CPLR § 3119 provides an expediated process via the county clerk. Notably, under CPLR § 3012(e), the out-of-state subpoena need not be issued by a court or under authority of a court. As relevant here, CPLR § 3012(e) provides:

[w]henver upon notice or agreement, it is required to take the testimony of a witness in the state, he or she may be compelled to appear and testify in the same manner and by the same process as may be employed for the purpose of taking testimony in

actions pending in the state. The supreme court or a county court shall make any appropriate order in aid of taking such a deposition.

Here, the out-of-state subpoena is not issued by, or under the authority of, a court. Furthermore, the subpoena seeks testimony related to an action pending before the Circuit Court of Florida for a family law matter involving parenting plans for minor children (hereinafter the “underlying action” or “out-of-state action”). Accordingly, relief under CPLR § 3119 is unavailable and the Court deems the instant motion one seeking relief under § 3012(e).

The father in the out-of-state action has, apparently, hired Dr. Stone as both a treating psychiatrist and as an expert witness in the underlying action; Dr. Stone’s report has been filed in the underlying action. (While the use of quotation marks by petitioner around “expert witness”, “report”, and “filed” implies petitioner takes umbrage with the father’s use of these terms, it is not relevant to this special proceeding). As relevant here, Florida Family Law Rules of Procedure allow a party to depose an opposing party’s testifying expert (“[t]he testimony of an expert or skilled witness may be taken at any time before the trial” Fla. Fam. L.R.P. Rule 12.390[b]).


Accordingly, it is

ORDERED that the petition is granted; and it is further

ORDERED that Dr. Stone shall appear for a deposition on April 14, 2022, beginning at 10:00am and continuing without interruption until its completion, and otherwise in accordance with the Uniform Rules § 202; and it is further

ORDERED that failure to comply with this order shall result in sanctions, including but not limited to a finding of contempt, in the Court's discretion upon further application.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

<u>3/15/2022</u> DATE		 HON. FRANK P. NERVO, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED <input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE