

Reaves v New York City Dept. of Educ.

2022 NY Slip Op 34714(U)

August 12, 2022

Supreme Court, Queens County

Docket Number: Index No. 707928/2019

Judge: Tracy Catapano-Fox

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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CHRISTINE REAVES and MAYA FRISCIC-
GEIGER, on behalf of themselves and all other
Similarly situated persons,

Index No. 707928/2019

Part 6

Motion Date: June 13, 2022

Plaintiffs,

Calendar No. 23

-against-

Sequence No. 6



THE NEW YORK CITY DEPARTMENT OF
EDUCATION and P.S. 60 PRINCIPAL
FRANK DESARIO,

Defendants.

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The following papers numbered 1 to 13 read on this motion by plaintiffs for leave to depose Meredith Peterson and Victoria Simone, for a protective order for plaintiffs’ medical, employment, and personnel records, and to deem plaintiffs’ medical records Attorneys’ Eyes-Only material.

Papers
Numbered

- Notice of Motion, Affirmation, Memorandum, Exhibits....1-5
- Memorandum in Opposition, Affirmation, Exhibits.....6-9
- Memorandum in Reply, Affirmation, Exhibits.....10-13

Plaintiffs’ motion for leave to depose Meredith Peterson and Victoria Simone is granted without opposition, as defendants consented to their depositions. Plaintiffs’ motion for a protective order for plaintiffs’ medical, employment, and personnel records is also granted without opposition, as defendants consented to deem the records confidential and be subject to a protective order. Plaintiffs’ motion to deem plaintiffs’ medical records Attorneys’ Eyes-Only material is granted, as plaintiffs demonstrated good cause to limit disclosure solely to defendant DeSario’s counsel.

Plaintiffs commenced this action for discrimination, hostile work environment, retaliation, and intentional infliction of emotional distress while they were working as teachers at P.S. 60 in Queens, New York. Plaintiffs filed the Summons and Complaint on May 6, 2019, and issue was

joined by defendants' Verified Answer on September 17, 2020.

Plaintiffs' motion for leave to depose Meredith Peterson and Victoria Simone is granted without opposition, as defendants consented to their depositions. Plaintiffs' motion for a protective order for plaintiffs' medical, employment, and personnel records is also granted without opposition, as defendants consented to deem the records confidential and be subject to a protective order. The sole issue in dispute in this motion is whether plaintiffs' medical records shall be deemed Attorneys' Eyes-Only material remains at issue.

Plaintiffs argue their medical records shall be deemed Attorneys' Eyes-Only material because disclosure to anyone else can lead to even more emotional harm than plaintiffs have already suffered. They argue defendant DeSario has demonstrated a willingness to use personal information to verbally abuse people and brag to others. Specifically, plaintiffs allege he used information about plaintiff Friscic-Geiger's personal life to verbally degrade her and make romantic propositions. Plaintiffs argue these types of medical records contain very intimate details of an incredibly sensitive nature, that should therefore be kept private. Plaintiffs further argue the instant action has been the subject of media attention, and disclosure of plaintiffs' medical records could undermine their roles as teachers and damage their careers and reputations. Plaintiffs further argue defendant DeSario's defense would not be inhibited given the records would be disclosed to his counsel and can utilize them in defending the action without revealing them to DeSario.

Defendants argue plaintiffs' medical records shall not be deemed Attorney's Eyes-Only material because the records being subject to a protective order is sufficient to protect plaintiffs' privacy interests. They articulated that based on defendants' proposed protective order they would not be able to disseminate the medical records and could only use the records for the instant litigation, thus satisfying plaintiffs' concerns. Defendants further argue plaintiffs failed to demonstrate why protection of their medical history outweighs defendant DeSario's due process rights to participate in his defense, and plaintiffs' arguments are grounded solely in their own fears. Defendants further argue the Attorneys' Eyes-Only classification is intended to protect trade secrets from competitors seeking an advantage, and in the context of medical records intended to protect non-parties or unrelated medical documents. Defendants further argue plaintiff's request to file the medical records under seal is premature and such determination should be made after an *in camera* inspection of the records by the Court.

Pursuant to CPLR §3101(a), there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action. CPLR §3101(b) provides that upon objection by a person entitled to assert the privilege, privileged matter shall not be obtainable, and subsection (c) provides that attorney work product shall not be obtainable. Determining whether the requested records support plaintiff's causes of action shall be weighed within the scope of CPLR §3101. The test for whether something is material and necessary to the action is "usefulness and reason...It is

incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims, and unsubstantiated bare allegations of relevancy are insufficient to establish the factual predicate regarding relevancy.” (*Rrengo v. New York City Tr. Auth.*, 204 A.D.3d 1049, 1050 [2d Dept. 4/27/2022].) The supervision of discovery and the setting of reasonable terms and conditions for disclosure are within the sound discretion of the trial court. (*Id.*)

Pursuant to CPLR §3103(a), a court may issue a protective order denying, limiting, conditioning, or regulating the use of any disclosure device, in order to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts. (*Kim & Bae, P.C. v. Lee*, 173 A.D.3d 990, 993 [2d Dept. 2019].) The supervision of disclosure and the setting of reasonable terms and conditions rests within the sound discretion of the trial court and, absent an improvident exercise of discretion, its determination will not be disturbed. (*Id.*)

An individual’s medical records should be held to the utmost privacy and are protected by federal and state law from improper release. However, when a plaintiff commences an action for personal injuries, that plaintiff affirmatively puts the medical history into issue. (*See O’Brien v. Village of Babylon*, 153 A.D.3d 547 [2d Dept. 2017]; *Abdalla v. Mazl Taxi, Inc.*, 66 A.D.3d 803 [2d Dept. 2009].) To resolve these competing interests, the court must engage in a balancing act of ensuring the protection of a plaintiff’s medical history while allowing defendants to obtain material and relevant discovery to defend themselves in litigation.

Plaintiffs demonstrated good cause to seal the medical records and direct Attorney’s Eyes-Only disclosure for defendants’ counsel. Plaintiffs are not seeking to withhold their medical records in the instant action but rather, seek to limit disclosure of those records solely to defendants’ counsel. Plaintiffs demonstrated protection of their medical records outweighs disclosure to defendant DeSario individually, because plaintiffs have demonstrated that defendant DeSario has previously used personal information about plaintiffs to inflict emotional harm against them. Defendants’ argument that plaintiffs’ claim is rooted in a non-specific general allegation is without merit. Plaintiffs articulated with particularity that defendant DeSario previously used personal information he knew about plaintiff Friscic-Geiger to make inappropriate, degrading comments and romantic advances towards her. Further, plaintiffs demonstrated that the Attorney’s Eyes-Only disclosure does not inhibit defendant DeSario’s counsel from fostering a defense, as counsel will have full access to utilize the records to present the defense.

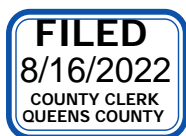
Defendants failed to present good cause to permit disclosure of plaintiffs’ medical records to defendant DeSario. Defendants’ argument that a protective order is sufficient to protect plaintiffs’ privacy interests is belied by the fact that the protective order does not preclude

disclosure of plaintiffs' medical records specifically to defendant DeSario, who may use the records for non-litigation purposes. The essence of plaintiffs' argument is *not* based on disclosure of the medical records, but rather disclosure *specifically* to defendant DeSario himself. As discussed *infra*, plaintiffs demonstrated non-disclosure of their medical records to defendant DeSario is critical in protecting plaintiffs' privacy interests. Further, although defendants repeatedly argued defendant DeSario has a right to participate in his own defense, defendants failed to demonstrate that deeming plaintiffs' medical records Attorneys' Eyes-Only material would inhibit defendant DeSario from participating in his defense. Similarly, although defendants argue Attorneys' Eyes-Only material is used to prevent disclosure of trade secrets, defendants failed to demonstrate that is the sole purpose and context in which Attorneys' Eyes-Only provisions may be used in a protective order.

Accordingly, plaintiffs' motion for leave to depose Meredith Peterson and Victoria Simone is granted without opposition. Plaintiffs' motion for a protective order for plaintiffs' medical, employment, and personnel records is also granted without opposition. Plaintiffs' motion to deem plaintiffs' medical records Attorneys' Eyes-Only material is granted. The parties are directed to enter into a confidentiality agreement with an Attorneys' Eyes-Only provision regarding plaintiffs' medical records within thirty (30) days of this Order with Notice of Entry. Plaintiffs are directed to provide the medical records within thirty (30) days of entering into the protective order agreement with defendants. Depositions of Meredith Peterson and Victoria Simone shall take place within sixty (60) days of this Order with Notice of Entry. The parties are further directed to appear for a virtual conference via Microsoft Teams on Thursday November 3, 2022, at 2 pm.

This constitutes the decision and Order of the Court.

Dated: August 12, 2022



Tracy Catapano-Fox

Hon. Tracy Catapano-Fox, J.S.C.