

Jane Doe v Ball

2023 NY Slip Op 30411(U)

February 3, 2023

Supreme Court, New York County

Docket Number: Index No. 950698/2020

Judge: Alexander Tisch

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH PART 18

Justice

JANE DOE, Plaintiff, INDEX NO. 950698/2020
MOTION DATE 02/16/2021
MOTION SEQ. NO. 002

- v -

DAVID BALL, Defendant. DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 28, 29, 30, 31, 74, 78

were read on this motion to/for SEAL

Upon the foregoing documents, defendant moves for leave to proceed anonymously and to seal the entire file.1

Plaintiff commenced the instant action under the Child Victims Act (CVA) alleging the defendant, plaintiff's biological uncle, sexually abused plaintiff beginning around the summer of 1979, when plaintiff was a minor (approximately 15 years old) through 1984. The complaint asserts claims for assault, battery, and intentional infliction of emotional distress (see NYSCEF Doc No 4).

Anonymity

In support of that branch of the motion to proceed anonymously, defendant argues that the Court granted plaintiff's application so defendant should be equally protected. Defendant also argues that "in our current 'cancel culture' and 'Me Too' world" the allegations against the defendant "can and probably will cause irreparable harm and prejudice to defendant" (NYSCEF Doc No. 24, Genis affirmation at ¶ 9). Defendant's affidavit states that, if he is unable to proceed anonymously, that he

1 Defendant previously moved for the same relief as a cross motion to plaintiff's motion to proceed anonymously (motion sequence no. 1) (see NYSCEF Doc No 18). Plaintiff's motion was granted and, in the decision, the Court noted that defendant "submitted no responsive pleadings opposing" plaintiff's application (NYSCEF Doc No 22) (Silver, J.). Indeed, the papers submitted in connection with defendant's cross motion did not oppose plaintiff's application but instead conceded that the Court should grant plaintiff's application to proceed anonymously (see NYSCEF Doc No 19, affirmation of defense counsel at ¶ 2). The Court granted plaintiff's motion and did not mention defendant's cross motion, which was then, presumably denied. The Court does not address the propriety of this motion as neither side raises the issue.

would be fearful of his safety and it would adversely affect his reputation, business, and his and his wife's social lives (NYSCEF Doc No 25). Specifically, he fears that his publishers will stop publishing his books; that CLE (continuing legal education) providers will stop publishing his materials and drop him as a speaker; and lawyers and law firms will not hire him as a trial consultant (*id.*). Defendant's affidavit also makes vague allegations of alleged harm to his wife (*id.*). In opposition, plaintiff argues that defendant cites no legal authority for a defendant in this type of action to proceed anonymously (see, e.g., *Doe v Doe*, 189 AD3d 406, 406-07 [1st Dept 2020]). In reply, defendant cites, inter alia, CPLR 3101(a), which is not applicable here, but expands upon the contention that "dozens and dozens of famous and not-so-famous people" "have been ruined by publicity of a mere unproven claim or allegation," and goes on to list names (NYSCEF Doc No 29 at ¶ 13-14). Essentially, defendant contends that the mere allegations, without a final adjudication of the truth, can cause financial ruin and reputational harm.

At the outset, the Court notes that anonymity cannot be granted on a basis grounded in Civil Rights Law (CRL) § 50-b, or as it relates to the sexual offenses alleged in the complaint in any similar vein. While the statute may "operate[] to keep the identity of any victim of a sex offense confidential [, the] exception does not protect the identity of the alleged *perpetrator* of a sexual offense" (*Doe v Doe*, 189 AD3d 406, 406-07 [1st Dept 2020] [emphasis in original]).

"There is also a separate common-law exception that empowers a court to 'use its discretion'" (*id.*, quoting *Anonymous v Lerner*, 124 AD3d 487, 487-88 [1st Dept 2015]) "to limit the public nature of judicial proceedings," but courts should do so "'sparingly' and 'then, only when unusual circumstances necessitate it'" (*Anonymous v Anonymous*, 27 AD3d 356, 361 [1st Dept 2006]).

"The determination of whether to allow a [defendant] to proceed anonymously requires the court to 'use its discretion in balancing [defendant's] privacy interest against the presumption in favor of open trials and against any potential prejudice to [plaintiff]'" (*Anonymous v Lerner*, 124 AD3d 487, 487-88

[1st Dept 2015], quoting Stevens v Brown, 2012 NY Slip Op 31823 [U], 2012 WL 2951181, *9 [Sup Ct, NY County 2012]). Factors for the Court to consider as to whether the privacy interest involved is substantial, so as to overcome the presumption of openness that attends judicial proceedings includes “[w]hether the justification asserted ... 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”; the movant’s motives; “whether identification poses a risk of mental or physical harm, harassment, ridicule, or personal embarrassment”; “whether the case involves information of the utmost intimacy”; “whether the action is against a governmental or private entity,” among others (Doe v Spencer Cox Clinic, 59 Misc 3d 1210[A], 2018 NY Slip Op 50461[U], 2018 WL 1722418 [Sup Ct, New York County 2018] [Reed, J.]).

Although this case does not involve a government entity (when a broader transparency of proceedings may be warranted) and the case involves allegations of a sexual nature, which may arguably be intimate, the Court finds that there is no risk of physical or mental harm, and defendant’s stated justification is “merely to avoid the annoyance and criticism” that comes with allegations of wrongdoing. The Court further finds that the bulk of what defendant fears constitutes economic loss, which is not a valid privacy interest (see Doe v Diocese Corp., 43 Conn Supp 152, 163, 647 A2d 1067, 1073 [Conn Super Ct 1994] [“fear of economic damage has not been considered by the courts as a reason to grant party anonymity”]).

Defendant’s claim of “social stigmatization” is unsupported by any case law in favor of anonymity for an alleged perpetrator of abuse as opposed to the alleged victim (but see Doe v Vajpayee 2021 WL 4776232 [Sup Ct NY County October 13, 2021 [Hom, J.]

What defendant fails to acknowledge is the very nature of this type of action, brought under the Child Victims Act, which “was enacted with the protections codified under CRL § 50-b in mind. To be sure, the legislature wanted to avoid exposing alleged victims to the lasting scars of broadcasted

exposure while ‘help[ing] the public identify hidden child predators through civil litigation discovery, and shift the significant and lasting costs of child sexual abuse to the responsible parties’” (ARK88 Doe v Archdiocese of New York, 2019 NY Slip Op 33352[U], *3 [Sup Ct, New York County 2019] [Silver, J.]). Thus, any “assumption” “that a plaintiff and a defendant [should] stand on an even plain as far as anonymity is concerned . . . [is] false” (*id.*; see also Doe v Doe, 189 AD3d 406, 406-07 [1st Dept 2020] [finding the common-law discretion of a court to grant anonymity “is not properly applied here”]).

[C]ourts have long recognized that the anonymity protection afforded to a unique subset of plaintiffs oftentimes 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.” Defendant’s request falls within the ambit of the former justification. To be sure, any embarrassment that stems from the publication of defendant’s name is indistinguishable from the embarrassment that is likely to befall any defendant accused of wrongdoing in a civil action (ARK88 Doe, 2019 NY Slip Op 33352[U], *3, quoting, *inter alia*, James v Jacobson, 6 F3d 233, 238 [4th Cir 1993]).

This Court similarly finds that defendant’s claims in his affidavit amount to potential reputational harm and mere embarrassment. Accordingly, that branch of the motion permitting defendant to proceed anonymously is denied (see also Doe v Diocese Corp., 43 Conn Supp 152, 162-68, 647 A2d 1067, 1072-75 [Conn Super Ct 1994] [denying defendant clergyman’s motion to proceed anonymously]).

Seal File

“Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (Mosallem v Berenson, 76 AD3d 345, 348 [1st Dept 2010; see Danco Labs. v Chemical Works of Gedeon Richter, 274 AD2d 1, 7-8 [1st Dept 2000]). Courts may, under limited circumstances, restrict such rights and direct that certain records be sealed only upon “upon a written finding of good cause, which shall specify the grounds thereof” (22 NYCRR 216.1[a]). “In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties” (*id.*) and “make an independent determination of whether to seal court records in whole or in part for ‘good cause’” (Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 502

[2d Dept 2007]). “A finding of ‘good cause’ presupposes that public access to the documents at issue will likely result in harm to a compelling interest of the movant, and that no alternative to sealing can adequately protect the threatened interest” (id. [internal citation omitted]).

There are no additional arguments as to why the matter should be sealed, other than the claims defendant raised above. Even though the two forms of relief are different (see, e.g., Doe v Doe, 189 AD3d 406, 406-07 [1st Dept 2020], citing Doe v Szul Jewelry, Inc., 2008 NY Slip Op 31382[U], *13 [Sup Ct, NY County 2008] [noting that “a grant of anonymity impacts far less on the public’s right to open proceedings than does the closing of a courtroom or the sealing of records”]), the Court finds that, largely for the same reasons outlined above, defendant failed to present compelling circumstances justifying a restriction of access to the entire file.

Accordingly, it is hereby ORDERED that the motion is denied.

This constitutes the decision and order of the Court.



ALEXANDER TISCH, J.S.C.

2/3/2023

DATE

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