

Acosta v City of New York

2023 NY Slip Op 30788(U)

March 15, 2023

Supreme Court, New York County

Docket Number: Index No. 156239/2016

Judge: J. Machelle Sweeting

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. J. MACHELLE SWEETING

PART

62

Justice

RUBEN ACOSTA,
Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF CORRECTIONS
Defendants.

Table with 2 columns: INDEX NO., MOTION DATE, MOTION SEQ. NO. and corresponding values: 156239/2016, 02/01/2022, 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for

JUDGMENT - SUMMARY

In this wrongful imprisonment action, plaintiff, Ruben Acosta, alleges that due to the negligence of the defendants, The City of New York and The New York City Department of Corrections ("DOC") (collectively, "defendants"), he was deprived of his liberty for five days, from February 18, 2016 to February 23, 2016, when he was held at the Manhattan Detention Complex ("MDC") located at 125 White Street, New York New York. Acosta had been held at MDC since January 7, 2016, on contempt charges related to a \$28,000.00 judgment he owed his ex-wife. On February 18, 2016, his judgment was paid by a family member and the Honorable Judge Ellen Gesmer issued a release order ("Order"). However, Acosta was not released for another five days.

Defendants now move to dismiss the complaint pursuant to CPLR 3211 and 3212, on the grounds that they owed no duty to release plaintiff until they received Judge Gesmer's order and the five additional days of confinement that Acosta was held in custody were privileged. In support of their motion, defendants rely on the deposition testimony of Ms. Kym Bailey, a captain with DOC and Ms. Laura Mello, an attorney employed by DOC in their legal division.

Ms. Bailey, who is stationed at MDC and currently oversees the discharge of prisoners, testified that she does not know how court orders are received by DOC and she is unaware of any couriers (Bailey deposition, NYSCEF Doc No. 35 at 18). She also stated that there have been instances when typical procedures were not followed and, instead, a court officer or attorney would deliver an order from a judge to a DOC facility in order to initiate a release (*id.* at 18, 23).

Ms. Mello executed an affidavit that stated in part:

Any court order signed by a Judge that orders the release of an inmate must be received by the Department by facsimile transmission directly from the Court. The Legal Division is not involved in the inmate court-ordered release process, but if contacted by a court, regardless of issue, the Legal Division will facilitate the delivery of any court-delivered documentation to the appropriate division or facility

(Mello aff, NYSCEF Doc No. 36 ¶ 2).

As to the instant matter, Ms. Mello stated:

Upon information and belief, the Department did not receive the Court Order ordering the release of Plaintiff (the "Order") until the Legal Division received the Order by facsimile transmission on February 23, 2016 at approximately 12:05pm. The Legal Division sent the Order to the facility where Plaintiff was housed at approximately 12:58pm that same day. See facsimile transmittal cover page, annexed as part of Exhibit A. Upon information and belief, Plaintiff was released from custody that same day, on February 23, 2016

(*id.* ¶ 4).

Ms. Mello further testified that generally, the court would fax a release order to the appropriate facility in order to initiate a release (Mello deposition, NYSCEF Doc No. 37 at 21). However, on February 23, 2016, a paralegal at the Legal Division, who is now deceased, forwarded Judge Gesmer's order regarding the release of Acosta to MDC (*id.* at 17-18). It is unknown how the paralegal obtained the order in the first place (*id.* at 25- 27).

Mr. Charles Mason, a correction officer employed by DOC for over 20 years, had also been produced by defendants and deposed at a deposition. However, the defendants do not rely on Mr. Mason's deposition but, instead, contend that his deposition testimony should be disregarded, because he is stationed at a different facility and he has never worked at MDC. In opposition, plaintiff relies on Mr. Mason's deposition testimony and contends that his testimony raises questions of fact, as he testified as to the common protocols after a judge issues a release order. Specifically, Mr. Mason testified as follows:

Q If a judge issues an immediate release order in the Supreme Court, New York County, can you tell me how that immediate release order, the contents, are communicated with the facility where the individual is housed?

...

A After the judge signs the immediate release order, it is delivered to the court, the DOC section. If the inmate is housed on Riker's Island, an officer from Riker's Island picks up the mail for Riker's Island and if it is for the facilities for other boroughs, Manhattan, Queens or Bronx, there is a carrier that picks up that mail also.

Q In other words, there is a carrier that is employed by the Department of Correction that picks up that order and delivers it to the facility; am I correct?

...

A. Yes.

(Mason deposition, New York St Cts Elec Filing [NYSCEF] NYSCEF Doc No. 34 at 16-18).

Mr. Mason explained that a DOC courier will deliver mail from the courts to each facility's general office, where a DOC employee will sign a document stating that it has been received (*id.* at 19-22). If it is a court order, it gets logged into the DOC system and given to a DOC captain, who will then release the inmate (*id.*).

DISCUSSION

The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; see also *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Upon proffer of evidence establishing a prima facie case by the movant, "the party opposing a motion for summary judgment bears the burden of produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact" (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008] [internal quotation marks and citation omitted]). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks and citation omitted]). The court's function in a summary judgment motion is issue-finding rather than issue-determination (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied (*Sillman*, 3 NY2d at 404).

Plaintiff alleges that due to the negligence of the defendants he was falsely imprisoned for an additional five days. To establish a cause of action for false imprisonment pursuant to New York law, a plaintiff "must show that: (1) the defendant intended to confine him, (2) the plaintiff was conscious of the confinement, (3) the plaintiff did not consent to the confinement and (4) the confinement was not otherwise privileged" (*Broughton v State*, 37 NY2d 451, 456 [1975]). Here, the dispositive factor is whether the additional confinement was privileged.

“A detention, otherwise unlawful, is privileged where the confinement was by arrest under a valid process issued by a court having jurisdiction” (*Davis v City of Syracuse*, 66 NY2d 840, 842 [1985] [internal quotation marks and citation omitted]). “In other words, ‘where the illegal imprisonment is pursuant to legal process which is valid on its face, the State cannot be held liable in damages for wrongful detention ... [unless] the court issuing the process lacked jurisdiction of the person or the subject matter’” (*Collins v State of New York*, 69 AD3d 46, 51 [4th Dept 2009] quoting *Harty v State of New York*, 29 AD2d 243, 244 [3d Dept 1968], *affd* 27 NY2d 698 [1970]).

As to plaintiff’s negligence claim, defendants argue that they are not responsible for transmission of court orders and owed no duty to plaintiff until it received Judge Gesmer’s release order. Moreover, they contend that even if they had a duty to plaintiff, Acosta’s confinement for the additional five days was privileged. Defendants rely on *Matter of Murray v Goord* (1 NY3d 29, 32 [2003]), wherein the Court of Appeals stated, prison officials are “not free to disregard a commitment order” and are “conclusively bound by the contents of commitment papers accompanying a prisoner” (*id.*, quoting *Middleton v State of New York*, 54 AD2d 450, 452 [3d Dept 1976], *affd* 43 NY2d 678 [1977]; *see also Mullen v State of New York*, 122 AD2d 300, 302 [3d Dept 1986], *lv denied* 68 NY2d 609 [1986], *cert denied* 480 US 938 [1987] [Prison officials are “bound to implement a commitment regardless of whether the sentence is proper”]).

While it may be true that defendants were bound to keep Acosta in custody until receipt of a release order, there exist triable issues of fact in this case as to how, when, where and who first received Acosta’s release order. Ms. Mello’s affidavit and the facsimile transmission sheet she references establish that the DOC Legal Division forwarded the Order on February 23, 2016 to MDC (NYSCEF Doc No. 36). Fatal to defendant’s motion, however, is that the record is devoid of any evidence as to when the order was received. If DOC received Judge Gesmer’s Order, yet

failed to release Acosta until five days later, DOC's continued detention of Acosta would not be privileged but, instead, liability would attach (*e.g. Miller v State*, 124 AD3d 997, 999 [3d Dept 2015] [affirming judgment holding State liable for continuing to confine a claimant after the maximum expiration date of sentence and finding that such continued confinement was not privileged]).

Curiously here, Ms. Bailey, whose duty it is to oversee the discharge of prisoners, testified that she does not know how a court order reaches MDC (NYSCEF Doc No. 35 at 13). Although Ms. Mello testified that a court would fax an order to the proper DOC facility (NYSCEF Doc No. 37 at 14-15), there is no clear indication on this record as to what occurred here. Moreover, Ms. Bailey's testimony as to how orders are received is contradicted by Mr. Mason, who testified that DOC has a specific division tasked with picking up court orders and delivering them to the designated DOC facility (NYSCEF Doc No. 34 at 22-23). Again, there is no indication on this record as to what exactly occurred here. While defendants argue that Mr. Mason's testimony should be disregarded, as it raises only issues concerning credibility, as has been held: "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004] [internal quotation marks and citation omitted]). Based on the record here, this court finds that defendants have failed to meet their burden. Accordingly, defendants' motion for summary judgment is denied.

CONCLUSION

For all of the aforementioned reasons, it is hereby

ORDERED that defendants The City of New York and New York City Department of

Corrections' motion for summary judgment (Motion Sequence Number 001) is denied in its entirety.

Dated: March 15, 2023

ENTER:



HON. J. MACHELLE SWEETING, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: