

<b>Doe v Mount Sinai W.</b>
2023 NY Slip Op 32036(U)
June 16, 2023
Supreme Court, New York County
Docket Number: Index No. 805090/2022
Judge: Kathy J. King
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. KATHY J. KING PART 06**

*Justice*

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JANE DOE, BABY DOE,

Plaintiff,

- v -

MOUNT SINAI WEST, ABIGAIL KAHN, LATISHA E.  
MORETA, GRAHAM ASHMEAD, LOIS E. BRUSTMAN,  
RAYZE SIMONSON

Defendant.

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**INDEX NO.** 805090/2022

**MOTION DATE** 03/11/2022

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for LEAVE TO FILE.

Upon the foregoing papers, plaintiffs move by order to show cause for an order: 1) authorizing plaintiffs to proceed using pseudonyms in the underlying action and 2) directing that the County Clerk enter the caption of this action as ""JANE DOE" and "BABY DOE", an Infant By Her Mother and Natural Guardian JANE DOE V. MOUNT SINAI WEST, ET AL." <sup>1</sup> Defendants oppose the motion.

In support of the motion Plaintiff, Jane Doe, asserts that her name, and that of her child, infant plaintiff Baby Doe, should not be publicly disclosed since Jane Doe is a public figure who appears on television before millions of Americans. Jane Doe contends that if the requested relief is not granted, she would be subjected to physical and mental harm, including, *inter alia*, harassment, humiliation, and risk to the personal safety of both she and Baby Doe.

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<sup>1</sup> The Court notes that plaintiffs properly moved for a temporary restraining order, pursuant to CPLR § 6301, seeking an order to proceed anonymously for a sealing order. However, plaintiffs failed to disclose their true names in the caption of the order to show cause, as required by statute. The Court in its discretion will entertain plaintiffs' motion, since the Court (J. Margaret Chan) granted plaintiffs' request for interim relief, permitting plaintiffs to proceed anonymously until the determination of the instant motion.

Jane Doe further argues that if she were not permitted to use a pseudonym, the sensitive and intimate nature of the facts which are the subject of the underlying action would be disclosed to the public and likely end her career. Plaintiffs' complaint contains eight causes of action arising from allegations of obstetrical medical malpractice throughout her pregnancy, childbirth and postpartum care, to wit: medical malpractice and lack of informed consent on behalf of Jane Doe and Baby Doe, loss of services by Jane Doe and Baby Doe, and gender and race discrimination, pursuant to New York City Human Rights Law, § 8-107(1)(a) and New York State Human Rights Law § 296(1). Plaintiffs indicate that in prosecuting the within action plaintiffs are willing to disclose their identities to defendants' attorneys, experts, consultants, and any person otherwise retained to provide specialized advice to defendants in this action.

Plaintiffs allege that based on defendants' negligence, it was necessary for Jane Doe to give birth to Baby Doe several weeks early, during which a vacuum extractor was used to facilitate the birth, without an episiotomy. Jane Doe alleges that as a result, she sustained significant third-degree tearing of her vagina and perineum, and has perivaginal pain and severe scarring of the area. As a result of these injuries and concomitant pain, Jane Doe contends that she was unable to have sexual intercourse with her husband for a year and a half after the birth of Baby Doe, and that sexual intercourse causes extreme pain and carries the risk of further tearing. According to Jane Doe, she may require surgical repair of the vaginal canal if more conservative treatment is not successful, and further contends that her mental trauma is so great that she does not wish to give birth to a second child, although she and her husband had always planned to do so. It is alleged that Baby Doe's premature birth has presented "highly sensitive developmental risks."

In support of the motion, plaintiffs submit, *in camera*, the affidavit of Jane Doe, which details the extent of her exposure as a public figure on a major media platform viewed by the public

both nationally and internationally, together with the high-profile cases she has covered during the time she has been employed. Her husband is a well-known consultant, whose client base may also expose him to public scrutiny. She avers that due to the “visible and highly polarizing nature” of their jobs they receive “threats, ridicule and regular harassment,” and annexes a sampling of harassing messages, direct messages and posts received by Jane Doe in her capacity as a public figure from Facebook, Twitter and Instagram.

In opposition, defendants argue that there is a Constitutional presumption of openness of the judicial process, and plaintiffs’ need for anonymity does not outweigh the prejudice or public interest in knowing the identity of the parties. They assert that plaintiffs’ application is based solely on embarrassment and humiliation, which are insufficient for granting plaintiffs’ application. Defendants further argue that there is nothing unusual about the circumstances of this case that warrant the use of a pseudonym, and that plaintiffs’ claims that revealing their identities would result in social stigmatization and pose a safety risk to them, are purely speculative. Defendants contend that they would be unfairly and unduly prejudiced because they would be subject to adverse publicity and reputational damage, while plaintiffs would be allowed to be “free to litigate in the court of public opinion while hiding behind a pseudonym.”

It is well-settled that a plaintiff seeking a court order to use a pseudonym must “provide facts specific to the plaintiff that will allow the motion court to exercise its discretion in an informed manner” (*N.S. v Frankenhoff*, 215 AD3d 592, 592 [1st Dept 2022], quoting *Twersky v Yeshiva Univ.*, 201 AD3d 559, 559 [1st Dept 2022]). “Claims of public humiliation and embarrassment...are not sufficient grounds for allowing a plaintiff...to proceed anonymously” (*Anonymous v Lerner*, 124 AD3d 487, 488 [1st Dept 2015]). Further, whether plaintiffs are

seeking monetary damages does not affect the plaintiffs' request to proceed anonymously, since such damages may be the only appropriate or available relief (*see Doe v New York Univ.*, 6 Misc 3d 866, 879 [Sup Ct, NY County 2004]).

In exercising its discretion, courts should consider certain factors, such as: 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; whether the party seeking anonymity has an illegitimate ulterior motive; the extent to which the identity of the litigant has been kept confidential; 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 entity; the magnitude of the public interest in maintaining confidentiality or knowing the party's identity; whether revealing the identity of the party will dissuade the party from bringing the lawsuit; whether the opposition to anonymity has an illegitimate basis; and whether the other side will be prejudiced by use of the pseudonym (*Doe v Good Samaritan Hosp.*, 65 Misc 3d 987, 988-989 [Sup Ct, Nassau County 2019] [internal quotation marks and citations omitted]).

Courts have recognized 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, because the public still has access to the records (*see Doe v Doe*, 189 AD3d 406, 407 [1st Dept 2020]; 6 Misc 3d at 866; *Doe v Bellmore–Merrick Cent. High School Dist.*, 1 Misc 3d 697, 701 [Sup Ct, Nassau County 2003]; *see also Doe v Szul Jewelry, Inc.*, 2008 NY Slip Op 31382[U], \*13 [Sup Ct, NY County 2008]).

The public's right to access, inspect and copy judicial records "is not absolute or unfettered, and involves judicial discretion (6 Misc 3d at 876-877). Although the general rule is one of openness and disclosure (*see CPLR § 2101*; "*J. Doe No. 1*" v *CBS Broadcasting Inc.*, 24 AD3d 215 [1st Dept 2005]), there is a common-law exception which empowers a Court to "use its discretion in balancing [the party's] privacy interest against the presumption in favor of open trials

and against any potential prejudice to [the opposing party]” (124 AD3d at 487; *accord* 215 AD3d at 592).

In the case at bar, the Court finds that defendants have failed to establish that they would be unfairly and unduly prejudiced by allowing plaintiffs to remain anonymous. Further, defendants are not a government entity, a factor which would otherwise militate in favor of disclosure of plaintiffs’ identity (*see Szul Jewelry* at \*13).

Balancing plaintiffs’ privacy interest against the presumption in favor of public disclosure and against permitting potential prejudice to defendants, and upon consideration of the aforementioned factors, the Court finds that allowing plaintiffs to proceed anonymously is appropriate. Access to court records will still be afforded to the public, 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 (6 Misc 3d at 877, quoting *Globe Newspaper Co. v Superior Court, County of Norfolk*, 457 US 596, 609 [1982] [internal quotation marks omitted]).

The moving papers provide “evidence corroborating the allegations in support of [their] request” (65 Misc 3d at 989), and annexed thereto, is a copy of Jane Doe’s profile on the public website of the media organization at which she is employed, as well as an article discussing her biography on informationcradle.com, and a New York Times wedding announcement of Jane Doe and her husband. The moving papers also annex an affidavit of Jane Doe’s psychotherapist, which discusses the therapy sessions conducted with Jane Doe commencing approximately six months after she gave birth to Baby Doe. Dr. Zafar opines that based on Jane Doe’s disclosures during therapy sessions, she suffers from guilt, shame, regret, trauma and sadness relating to her experience during childbirth. Dr. Zafar concluded that Jane Doe has a great deal of fear, including

fear of never having another child, fear of additional medical procedures to correct the damage sustained during childbirth, and fear of permanent loss of functions, including not being able to have sexual intercourse with her husband in the future. It is Dr. Zafar's opinion that if Jane Doe's identity were disclosed there would be a "substantial risk of emotional distress and mental harm for her" and that she would be in a constant state of anxiety, and that she and her family, including Baby Doe, would be subject to further harassment, ridicule and embarrassment. Dr. Zafar further opines that if her identity was disclosed, Jane Doe's "overall functioning and specifically her work functioning may decline as a result of the retraumatization and fear of being ridiculed and harassed due to her public media position." To date, Jane Doe has kept her identity confidential throughout these proceedings.

Based on the findings of fact and conclusions of law, the Court finds that there is no compelling reason for the defendants to be enjoined from disclosing plaintiffs' identity to anyone other than their attorneys, experts, consultants and any person retained to provide specialized advice to defendants in this action. As such, defendants are permitted to privately disclose plaintiffs' names for the purposes of discovery and inspection (*see* 215 AD3d at 592).

Accordingly, it is hereby,

**ORDERED**, that plaintiffs' motion to proceed in this action using pseudonyms, rather than plaintiffs' legal names, is granted, and the caption in this matter shall remain the same; and it is further

**ORDERED**, that all papers filed in this action, and all judgments, orders, decisions, notices to the Court, and any other document relating to the action refer to plaintiffs by the pseudonyms "JANE DOE and BABY DOE, an Infant By Her Mother and Natural Guardian JANE DOE"; and it is further

**ORDERED**, that all public filings in this action shall be redacted by removing plaintiffs' names and other pertinent identifying information to the extent necessary to preserve the identity of the plaintiffs; and it is further

**ORDERED**, that the parties, their attorneys, and their agents are to refrain from publicly disclosing plaintiffs' identities; and it is further

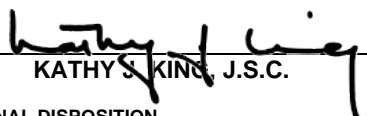
**ORDERED**, that defendants are permitted to disclose plaintiffs' identities and pertinent identifying information privately for purposes of discovery and investigation; and it is further

**ORDERED**, that in the event plaintiffs have not already done so, plaintiffs' legal names and identities and other pertinent identifying information shall be divulged to defendants within fifteen (15) days of the date of e-filing of this Decision and Order; and it is further

**ORDERED**, that plaintiffs shall serve a copy of this Decision and Order, with notice of entry, upon all defendants, as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), within twenty days of the date of this Decision and Order.

This constitutes the Decision and Order of the Court.

6/16/2023  
DATE

  
KATHY S. KING, J.S.C.

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