

Matter of Adriaansen v Bassett

2023 NY Slip Op 32982(U)

August 29, 2023

Supreme Court, Wayne County

Docket Number: Index No. 89055

Judge: Daniel G. Barrett

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This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court
held in and for the County of
Wayne at the Hall of Justice in the
Town of Lyons, New York on the
12th day of July, 2023.

PRESENT: Honorable Daniel G. Barrett
Acting Supreme Court Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WAYNE

In the Matter of an Application of
KALI ADRIAANSEN,

Petitioner,

DECISION
Index No. 89055

-vs-

NYS DEPARTMENT OF HEALTH COMMISSIONER MARY BASSETT,
NYS EMERGENCY MEDICAL ADVISORY COMMITTEE (SEMAC),
NYS EMERGENCY MEDICAL SERVICES COUNCIL (SEMSCO),
FINGER LAKES REGIONAL MEDICAL ADVISORY COMMITTEE (REMAC),
FINGER LAKES REGIONAL MEDICAL ADVISORY
SERVICES COUNCIL (REMSCO),
FINGER LAKES REGIONAL EMS PROGRAM AGENCY,
FINGER LAKES REMAC CO-CHAIRMAN JAMES SYRETT,
WAYNE COUNTY ALS MEDICAL DIRECTOR JAMES SYRETT,
COUNTY OF WAYNE,
MACEDON TOWN AMBULANCE MEDICAL DIRECTOR JAMES SYRETT,
TOWN OF MACEDON, NEW YORK
EASTERN WAYNE AMBULANCE MEDICAL
DIRECTOR JAMES SYRETT,
EASTERN WAYNE AMBULANCE,
SODUS TOWN AMBULANCE MEDICAL DIRECTOR CYNTHIA MARTINEZ,
SODUS TOWN AMBULANCE,
LYONS EMS STAFFING,

Respondents

The Petitioner has filed a Petition and Notice of Petition requesting various forms of relief. Each of the Respondents have filed a Motion to Dismiss this application.

PRELIMINARY MATTER

In response to an earlier action commenced by the Petitioner under index number CV088503, this Court issued a Decision dated September 28, 2022, and then subsequently issued an Amended Decision dated October 20, 2022. The Amended Decision replaced the initial Decision in its entirety. The Amended Decision dismissed all causes of action on the basis of the failure of the Petitioner to abide by CPLR §3013 and CPLR §3014 and did not address any other issues such as jurisdiction. The action was dismissed in its entirety without prejudice.

SUBJECT MATTER JURISDICTION

The Petitioner drafted an Amended Notice of Motion and Amended Verified Petition bearing index number CV088503 and served these pleadings on all of Respondents prior to securing index number CV089055. The second index number was purchased within days of the service of the pleadings bearing index number CV088503. The content of the pleadings bearing index number CV089055 appear to be identical to the pleadings which were served bearing index number CV088503 with the exception that the “new” pleadings bore the title of Petition and Notice of Petition.

The recipients of these pleadings have been placed on notice of the claims set forth in pleading which now bear the index number CV089055. The Court treats this error as harmless. Therefore the Court has subject matter jurisdiction over this matter. (See MacLeod v County of Nassau, 75 A.D. 3d 57 [2nd Dep’t 2010]).

PERSONAL JURISDICTION

The NYS Department of Health Commissioner, Mary Bassett, NYS Emergency Medical Advisory Committee (SEMAC), NYS Emergency Medical Services Council (SEMSCO) raised the issue of personal jurisdiction. The submitted Affidavits of Service indicate that an Assistant Attorney General and the Health Program Administrator, Kelly Coblio, were served with an Amended Verified Petition and Amended Petition bearing index number CV088503 in November 2022. The current Commissioner of the N.Y.S. Department of Health, James McDonald, pursuant to CPLR §307 (2) designated a list of people authorized to accept service of legal pleadings on behalf of the Department of Health. Ms. Coblio's name is not on that list. However, the list was issued on January 20, 2023 about two months after the aforementioned pleadings were served. This Court is granting the N.Y.S. Respondents until September 15, 2023, to provide the Court with an affidavit from someone with knowledge that Ms. Coblio was not authorized to accept legal process on behalf of the N.Y.S. Respondents in November 2022.

In a brief period after September 15, 2023, or when the Court receives the response from the Attorney General's Office, the Court will supplement this Decision by indicating whether personal jurisdiction has been secured over the NYS Respondents.

STATUTE OF LIMITATIONS

Ths Article 78 proceedings against the Respondents in the earlier action, CV088503, are still timely because that action was dismissed without prejudice. Respondents who are not named in the earlier action are not timely since no activity is alleged in the Petition to have occurred within four (4) months (CPLR §217 (1)) of the commencement of the present action. Consequently, Article 78 actions alleged against the following Respondents are dismissed:

1. EMS Staffing, Inc, [Lyons EMS Staffing in the caption];
2. County of Wayne;
3. Eastern Wayne Medical Services, Inc. [Eastern Wayne Ambulance in the caption];
4. Sodus Town Ambulance;
5. Town of Macedon.

RES JUDICATA AND COLLATERAL ESTOPPEL

Motions to dismiss based on res judicata and collateral estoppel are denied as the initial action was dismissed without prejudice.

FAILURE TO STATE A CAUSE OF ACTION

Each of the Respondents has raised the defense that the Petition fails to state a cause of action. Professor Siegel in New York Practice Sixth Edition addresses this issue.

All pleadings must be liberally construed. Draftsmanship is secondary. Under the CPLR, if a cause of action can be spelled out from the four corners of the pleading, a cause of action is stated and no successful motion lies under CPLR §3211 (a)(7) based on a failure to plead one. The pleading can be pathetically drawn; it can reek of miserable draftsmanship. That is not the inquiry. We want only to know whether it states a cause of action-any cause of action. If it does, it is an accepted CPLR pleading. NY Practice Sixth Edition, page 391.

In a footnote Professor Siegel continues.

This is not to encourage sloppy pleading. If the pleading, although it states a cause of action and satisfies CPLR§3013, is so jumbled or disorderly that it can't be answered, the defendant can move to compel a more definite statement. That motion lies under CPLR §3024 (a), but that's a matter distinct from whether the pleadings states a cause of action and whether the pleadings states a cause of action is the inquiry on a motion under CPLR §3211 (a)(7).
NY Practice Sixth Edition, page 391.

The Court notes that the Petition and attachments consist of approximately 900 pages. The Court is in a position where it should not advocate for any party, but 900 pages is vastly excessive for a Petition in this case. The Court can determine at least one cause of action in the Petition. Each of the Respondents has raised the issue of non-compliance with CPLR §3013 and CPLR §3014. Rather than denying the motion to dismiss and waiting for the Respondents to move for a more definite statement pursuant to CPLR §3024(a), the Court orders the Petitioner to serve an Amended Petition to the Respondents by October 30, 2023. The Respondent will then be required to serve responding papers pursuant to the CPLR.

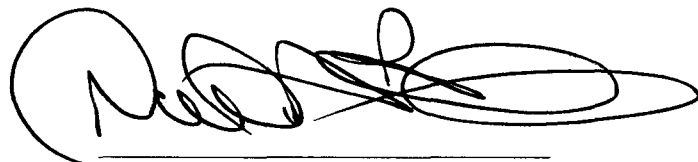
The Court encourages the Petitioner to review CPLR §3013 and CPLR §3014. As a suggestion to the Petitioner, this Court would excise from the current Petition all materials regarding the travails of fellow health care worker, Andrew DeWolf, a transcript of any type and many exhibits.

The Court grants Petitioner's request to proceed as a Poor Person in this action.

All other forms of relief requested in these applications are denied.

Counsel for the N.Y.S. Respondents to prepare an Order consistent with this Decision after the Supplemental Decision is issued.

Dated: August 29, 2023
Lyons, New York

A handwritten signature in black ink, appearing to read 'Daniel G. Barrett', written over a horizontal line.

Daniel G. Barrett
Acting Supreme Court Justice