

Hunlock v New York City Tr. Auth.

2023 NY Slip Op 33159(U)

September 11, 2023

Supreme Court, New York County

Docket Number: Index No. 153113/2017

Judge: Denise M. Dominguez

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DENISE M DOMINGUEZ PART 21

Justice

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INDEX NO. 153113/2017

BRIANNE HUNLOCK

MOTION SEQ. NO. 004

Plaintiff,

- v -

**DECISION + ORDER ON
MOTION**

NEW YORK CITY TRANSIT AUTHORITY,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108

were read on this motion to/for

MISCELLANEOUS

For the reasons that follow, Defendant NEW YORK CITY TRANSIT AUTHORITY’S (“TRANSIT”) motion to compel the Plaintiff to appear for a further deposition and to provide authorizations permitting the release of the Plaintiff’s current medical records is denied in part and granted in part.

This personal injury action arises out of a June 16, 2018 incident that occurred at the 14th Street and 7th Avenue subway station in Manhattan, when the Plaintiff, apparently due to an unknown reason, fell from the platform and landed on the tracks where she was struck by a subway.

TRANSIT now moves to compel the Plaintiff to appear for a further/continued deposition, to answer questions she was previously directed not to answer and to compel the Plaintiff to provide authorizations, The Plaintiff’s current medical, mental health, and substance abuse records. A prior motion seeking similar relief was previously denied due to a procedural defect without prejudice and with leave to re-file by Order of this Court dated September 9, 2022. Therefore, this motion will now be addressed on the merits.

The Defendant previously moved by Order to Show Cause to compel the Plaintiff to provide “medical, mental health and substance abuse treatment records from 2008 to date”. By order of Judge Lisa A. Sokoloff dated June 29, 2020 (NYSCEF Doc 52), upon a review of the supporting medical records, and due consideration of the parties’ arguments, it was determined

that the Defendants had established that they were only entitled to obtain and review the Plaintiff's medical and psychological treatment records from January 2016 to June 2016, including those of Dr. Reyes. The June 29, 2020 Order (J. Sokoloff) did not direct the disclosure of any such records beyond the date of the accident. The First Department upheld this limited disclosure (NYSCEF Doc. 59), finding that the "...Defendant demonstrated that records dating back to the beginning of 2016 were material and necessary to determining whether plaintiff's February 2016 hospitalization was related to the accident that caused her injuries. However, defendant failed to show that records dating back to 2008 were material and necessary to assessing causation, plaintiff's ability to recover from her injuries, or her future prognosis". (*Hunlock v. New York City Transit Auth.*, 194 A.D.3d 522, 523, 148 N.Y.S.3d 104, 105 [1st Dept 2021]). The First Department also found that the "Defendant's expert made only generalized claims that these records were necessary to determine her life expectancy, which was insufficient in light of the evidence concerning plaintiff's overall health that has been disclosed". (*Id.*) Finally, it was held that "... whether plaintiff raised a loss of enjoyment claim in her bill of particulars—and her bill of particulars shows that she did not make that claim—defendant did not show that plaintiff's past history of substance abuse or mental health treatment was related to her injuries from the accident or that the accident exacerbated conditions that she exhibited before 2016." (*Id.*).

Accordingly, it has already been determined that the disclosure of mental health and substance abuse treatment records "from 2008 to date" are unwarranted. It has also been determined that the Defendant is only entitled to the medical and psychological treatment records that predate the accident by six months and that no psychological records following the date of the accident were warranted. The First Department specifically found the Defendant's argument that the mental health and substance abuse records were needed to evaluate life expectancy was unavailing as records regarding the Plaintiff's relative health at the time of the accident had already been disclosed. Upon a review of the record, the Defendant's arguments in the current motion do not substantially differ from those raised previously (NYSCEF Doc. 21, 85). Given the prior limitation on the records to be exchanged, which was upheld by the First Department, this Court will not now direct any additional disclosure. That branch of the Defendant's motion which seeks current mental health and substance abuse treatment records is denied.

As for that branch of the motion which seeks a further/continued deposition of the Plaintiff, it is granted in part. It does not appear that the issue of a potential additional deposition of the

Plaintiff was addressed at the time the prior Order to Show Cause was submitted. However, as the limited additional records were directed to be provided, it appears that deposition testimony concerning such treatment records is appropriate.

Therefore, the Plaintiff is directed to appear for a deposition concerning the medical and psychological treatment records, including those of Dr. Reyes from January 2016 to the date of the accident. Questions regarding the Plaintiff's current mental health or substance abuse treatment are impermissible as it has already been determined by the First Department that such records have not been shown to be material and necessary..

The Plaintiff is also directed to answer questions as to the medication, prescription or over the counter, that she is currently regularly taking. For those medications taken solely to treat mental health or substance abuse, the Plaintiff is directed to only answer questions as to name of the medication and the dosage and/or frequency taken, which seems to have been permitted previously (NYSCEF Doc. 87, 88). No further questioning related to current medications, taken to solely address or treat mental health or substance abuse issues, is permitted.

The Plaintiff is directed to answer questions regarding any diabetes treatment or drug testing at the methadone maintenance program between January 2016 and the date of the accident.

The Plaintiff is directed to answer questions as to whether she treated or consulted with Dr. Allyne Frankel, or any other primary care physician, regarding any of the injuries she sustained as a result of this accident. No questioning is permitted regarding treatment provided by a primary care physician that is unrelated to the injuries sustained in the subject accident. However, if any primary care physician records were exchanged as part of the January 2016 to June 2016 disclosure, questioning is permitted as to those limited records.

As for that branch of the motion which seeks the Plaintiff's complete methadone maintenance treatment program records, at this time, the Defendant has not shown that the methadone treatment program has regularly treated the Plaintiff related to the double leg amputation due to the subject accident. The Plaintiff's prior deposition testimony appears to indicate that her leg amputation only came up generally at the time of her yearly physical examination at the clinic (NYSCEF Doc. 88). No evidence has been submitted that the program conducted any nerve testing, range of motion testing, took any diagnostic images or performed anything other than a cursory inquiry. Therefore, at this time, the Defendant has not demonstrated that such records are material and necessary to its defense in this matter. However, the Defendant

is entitled at the Plaintiff's continued deposition to inquire further as to the yearly physical exam. The questioning shall be limited solely to clarifying to the nature and extent of the inquiry and/or exam related to the leg injury/complaints.

Accordingly, it is hereby

ORDERED that the Defendant's motion for a current medical, mental health, and substance abuse records is denied; and it is further

ORDERED that the Defendant's motion for a further/continued deposition is granted to the limited extent set forth above and shall be held by November 1, 2023; and it is further

ORDERED that the parties submit a proposed status conference order on consent as per Part 21 rules by October 2, 2023, setting forth the dates for the completion of any remaining outstanding discovery, with such discovery to be completed by November 30, 2023; and it is further

ORDERED that the note of issue is to be filed by November 30, 2023; and it is further

ORDERED that, within 15 days from the entry of this order, the movant shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk's Office, who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court; and it is further

ORDERED that such upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website)].

Any requested relief not expressly addressed herein has nonetheless been considered by the Court and is hereby expressly denied.

9/11/2023
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

HON. DENISE M. DOMINGUEZ J.S.C.