

M.L. v City of New York
2023 NY Slip Op 33988(U)
November 8, 2023
Supreme Court, Kings County
Docket Number: Index No. 514012/2021
Judge: Mark I. Partnow
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At an IAS Term, Part CVA 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 8th day of November, 2023.

P R E S E N T:

HON. MARK I. PARTNOW,

Justice.

-----X
M.L. and S.L.,

Plaintiffs.

Index No. 514012/2021

-against-

MS#12.

CITY OF NEW YORK; JEWISH CHILD CARE
ASSOCIATION OF NEW YORK f/k/a JEWISH YOUTH
SERVICES OF BROOKLYN, INC.; and DOES 1-10,

Defendants.
-----X

The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and

Affidavits (Affirmations) Annexed _____ 21-22.

Opposing Affidavits (Affirmations) _____ 23.

Affidavits/ Affirmations in Reply _____ 24.

Other Papers: _____

Upon the foregoing papers, Defendant Jewish Child Care Association of New York f/k/a Jewish Youth Services of Brooklyn, Inc. (JCCA) moves (motion sequence #2) for an order, pursuant to CPLR 3211 (a) (5), dismissing the complaint of plaintiffs M.L. and S.L. (the Plaintiffs) as against JCCA. JCCA argues that the claims in the complaint pertaining to physical abuse should be dismissed as the Child Victim's Act (CVA) only relates to claims related to sexual abuse and are otherwise untimely. JCCA also seek an

order striking scandalous and prejudicial language contained within the complaint pursuant to CPLR 3024(b).

Plaintiffs commenced this action pursuant to the Child Victim's Act (CVA) and raise one cause of action against JCCA for negligence. The Plaintiffs contend that they were sexually and physically abused in 1965 when they children and were placed in foster care at the Levine residence in Long Island. The Plaintiffs also allege that JCCA had actual or constructive notice that the Plaintiffs were being sexually abused while in the care of the Levine family. The Plaintiffs contend that JCCA was negligent in the placement of the Plaintiffs at the Levine residence and in the retention of the Levine residence as a foster home.

DISCUSSION

CPLR 3211(a)(5)

The Court denies the application made by JCCA to dismiss the cause of action of negligence by the Plaintiff as against the JCCA. "On a motion to dismiss a cause of action pursuant to CPLR 3211(a)(5) as barred by the applicable statute of limitations, a defendant must establish, *prima facie*, that the time within which to sue has expired" (*Bullfrog, LLC v. Nolan*, 102 A.D.3d 719, 959 N.Y.S.2d 212 [2d Dept 2013]). However, the CVA is a claim revival statute that revives abuse claims of childhood survivors that were time -- barred under the existing statute of limitations. "A claim -- revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice" (see *World Trade Center v. Battery Park City Authority*, 30 N.Y.3d 377, 400 [2017]). A review of the

Plaintiffs' cause of action for negligence against JCCA shows that, while it does describe instances of physical abuse, is based upon numerous allegations of sexual assault and is therefore timely pursuant to the CVA. The argument made by JCCA that the Plaintiffs' negligence claim is made untimely by allegations of physical abuse is unavailing.

CPLR 3024 (b)

Next, JCCA argues that language in paragraphs 52 and 57 relating to structural and system flaws and deficiencies in the foster care system should be stricken from the complaint. In opposition, plaintiff asserts that the courts disfavor motions to strike matter from pleadings and that JCCA has not met the high bar of establishing that the portions of the complaint they want to strike would cause prejudice to the actual parties to the case, are scandalous or otherwise irrelevant.

CPLR 3024 (b) enables the court to strike scandalous or prejudicial matter unnecessarily inserted in a pleading (*Pisula v Roman Catholic Archdiocese of NY*, 201 AD3d 88, 96 [2d Dept 2021]). "What qualifies as scandalous or prejudicial matter in a given complaint is sui generis" (*id.*). "Matter that is scandalous or prejudicial will not be stricken if it is relevant to a cause of action in a complaint or petition or its material elements" (*id.* at 97). "However, the mere striking of matter from a pleading under CPLR 3024 (b) does not, ipso facto, preclude related facts or evidence from being admitted at a later trial" (*id.*). "Whether to strike allegedly scandalous or prejudicial matter from a pleading in a given instance is left to the discretion of the trial court"

(*id.*). “[N]o appeal lies as of right from an order granting or denying a motion to strike scandalous or prejudicial matter” (*id.* at 98). Here, the court finds that paragraphs 52 and 57, which refer to “substantial structural and systemic flaws and deficiencies in the foster care system” (paragraph 52) and “that sexual abuse in foster homes was a serious and recurrent problem” outside of the facts alleged by the Plaintiffs (paragraph 57) are scandalous and/or prejudicial and must be stricken from the pleadings.

CONCLUSION

All arguments raised on this motion and evidence submitted by the parties in connection thereto have been considered by this court, regardless of whether they are specifically discussed herein. Accordingly, it is

ORDERED that JCCA’s motion, mot. seq. no. 2, to dismiss the cause of action for negligence insofar as asserted against them is decided as follows:

- (i) The portion of the motion seeking dismissal complaint pursuant to CPLR 3211(a)(5) is denied; and
- (ii) The portion of the motion seeking to strike scandalous and/or prejudicial paragraphs in the complaint is granted to the extent that paragraphs 52 and 57 are hereby stricken.

This constitutes the decision and order of the court.

ENTER,



Mark I. Partnow, J. S. C.