

M.P. v Davidson

2023 NY Slip Op 34462(U)

November 3, 2023

Supreme Court, Kings County

Docket Number: Index No. 507226/2020

Judge: Sabrina Kraus

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SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. SABRINA B. KRAUS PART 57

Justice

INDEX NO. 507226/2020

M.P. AND J.P., MOTION DATE N/A

Plaintiff, MOTION SEQ. NO. 001

DANIEL DAVIDSON

Defendants.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers 8 - 27 (Motion 001) were read on this motion to/for DISMISS

BACKGROUND

Plaintiffs commenced this action under the Child Victims Act ("CVA") seeking damages for alleged sexual abuse they suffered as minor children at the hands of a family member.

Plaintiffs had commenced an action for such relief prior to the enactment of the CVA which was dismissed based on the expiration of the statute of limitations.

On October 30, 2020, Defendant moved to dismiss this action pursuant to CPLR §3211(a)(5) asserting it is barred by the statute of limitations and the doctrine of res judicata.

For the reasons stated below, the motion is denied.

ALLEGED FACTS

The following facts are alleged in the complaint.

Defendant is the cousin of Plaintiffs' mother. Plaintiffs and their mother are members of the Hasidic Jewish community in Brooklyn, New York. As a result, they are very naïve, gullible,

and sheltered from the outside world. As a result of their close relationship, Plaintiffs' mother looked up to Defendant like an older brother. Accordingly, she was very trusting of him. At the time of the actions complained of, Defendant would come to Plaintiffs' mother and tell her that he was in school obtaining a degree and would need to borrow her children for a study that he had to perform that was necessary for his classes. Trusting Defendant implicitly, and happy to get some moments of respite while Defendant was watching over her children, Plaintiffs' mother agreed to allow Defendant to take out her children so that he could conduct his study. To Plaintiffs' mother's knowledge, Defendant was taking her sons out to eat and then back to his apartment in Brooklyn, New York, so that he could use them for his school study, and then bringing them back to Plaintiffs' apartment in Brooklyn. Unbeknownst to Plaintiffs' mother, what Defendant was doing was sexually abusing Plaintiffs repeatedly for months, and then threatening them not to tell anybody what happened. At the time, Plaintiffs were approximately 6 and 11 years old.

Additional facts included in the motion papers submitted are that the family confronted Defendant, who admitted to the abuse, went into treatment, and agreed to pay \$300,000.00 in damages but never did.

DISCUSSION

NY CPLR 214-g provides:

Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.27, 255.26 or 255.25 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law, or a predecessor statute that prohibited such conduct at the time of the act, which conduct was committed against a child less than eighteen years of age, which is barred as of the effective date of this section

because the applicable period of limitation has expired, and/or the plaintiff previously failed to file a notice of claim or a notice of intention to file a claim, is hereby revived, and action thereon may be commenced not earlier than six months after, and not later than two years and six months after the effective date of this section. In any such claim or action: (a) in addition to any other defense and affirmative defense that may be available in accordance with law, rule or the common law, to the extent that the acts alleged in such action are of the type described in subdivision one of section 130.30 of the penal law or subdivision one of section 130.45 of the penal law, the affirmative defenses set forth, respectively, in the closing paragraph of such sections of the penal law shall apply; and (b) **dismissal of a previous action, ordered before the effective date of this section, on grounds that such previous action was time barred, and/or for failure of a party to file a notice of claim or a notice of intention to file a claim, shall not be grounds for dismissal of a revival action pursuant to this section.** (emphasis added).

While it is true that the Appellate Division, Second Department ruled that the matter was barred by the statute of limitations, the very next day, Governor Cuomo signed into law the Child Victims Act (“CVA”). Plaintiffs made a motion to renew in the Second Department, based on the change of law. The Second Department denied the motion without prejudice to Plaintiffs seeking relief in this Court.

Plaintiffs then made a motion to renew in this court. Defendant opposed the motion, arguing that the motion was premature, because the CVA did not go into effect until August 2019, several months later, and therefore Plaintiffs could only seek relief by initiating a new lawsuit after that time period arrived. The court (Bailey-Schiffman, J) agreed with the argument that the motion to revive the case was premature at that time, and thus denied the motion on that ground. However, in her order Justice Baily-Schiffman noted that the CVA provides for the revival of any case for a one-year period, even those that were previously dismissed on statute of limitations grounds.

After taking the position, that Plaintiffs would have to start a new lawsuit after August 2019, which is precisely what Plaintiffs have now done, Defendant now takes the opposite position that this claim should be barred based on *res judicata* based on the first case. The court rejects this argument based on the plain language of the CVA which specifically allows claims that were

previously dismissed based on the statute of limitations to be revived, and the position taken by Defendant in the prior action.

Defendant further argues that the CVA as applied in this action is unconstitutional.

“[A] claim-revival statute will satisfy the Due Process Clause of the [New York] State Constitution if it was enacted as a reasonable response in order to remedy an injustice.” *In re World Trade Ctr.*, 30 N.Y.3d at 400, 89 N.E.3d 1227; *see also Carroll v. Trump*, No. 22-CV-10016, 2023 WL 185507, at *9 n.40 (S.D.N.Y. Jan. 13, 2023); *Giuffre v. Andrew*, 579 F. Supp. 3d 429, 453 (S.D.N.Y. 2022); *Farrell v. U.S. Olympic & Paralympic Comm.*, 567 F. Supp. 3d 378, 391 (N.D.N.Y. 2021); *PC-41 Doe*, 590 F. Supp. 3d at 558.

The Legislative Memorandum accompanying the CVA bill, justifies passage for the Act as follows:

New York is one of the worst states in the nation for survivors of child sexual abuse. New York currently requires most survivors to file civil actions or criminal charges against their abusers by the age of 23 at most, long before most survivors report or come to terms with their abuse, which has been estimated to be as high as 52 years old on average. Because of these restrictive statutes of limitations, thousands of survivors are unable to sue or press charges against their abusers, who remain hidden from law enforcement and pose a persistent threat to public safety. This legislation would open the doors of justice to the thousands of survivors of child sexual abuse in New York State by prospectively extending the statute of limitations.... Passage of the Child Victims Act will finally allow justice for past and future survivors of child sexual abuse, help the public identify hidden child predators through civil litigation discovery, and shift the significant and lasting costs of child sexual abuse to the responsible parties.

Legis. Mem. (“CVA Sponsor’s Mem.”), 2019, N.Y. Sess. Laws (Advance Sheets A-39) (McKinney).

It is now well settled that the CVA passes constitutional muster and comports with due process requirements [*see eg Torrey v. Portville Cent. Sch.*, 66 Misc. 3d 1225(A), (N.Y. Sup. Ct. 2020); *Giuffre v Dershowitz*, 19 CIV. 3377 (LAP), 2020 WL 2123214 (S.D.N.Y Apr. 8, 2020)].

Every federal and state court to consider the issue has found it constitutional. *See, e.g., Andrew*, 579 F. Supp. 3d at 453 (“Defendant is not the first litigant to advance this argument [that the CVA is unconstitutional], which has been rejected by every New York state and federal court to have encountered it. And it has been rejected repeatedly for good reason.”); *Farrell*, 567 F. Supp. 3d at 393 (“[T]he Court finds that the CVA is a constitutional revival statute designed to remedy an injustice; and, consequently, it does not violate either the New York or federal Due Process Clauses.”); *PC-41 Doe*, 590 F. Supp. 3d at 558 (“[T]he CVA, which afforded victims of childhood sexual abuse a limited period of time within which to pursue their claims of sexual abuse through the judicial system, was a reasonable, non-arbitrary response to remedy an injustice and therefore satisfies the New York Due Process Clause.”); *PB-36 Doe v. Niagara Falls City Sch. Dist.*, 152 N.Y.S.3d 242, 248, 72 Misc.3d 1052 (N.Y. Sup. Ct. 2021), *aff’d*, 182 N.Y.S.3d 850, 213 A.D.3d 82 (N.Y. App. Div. 2023); *ARK3 Doe v. Diocese of Rockville Ctr.*, No. 900010/2019, 2020 N.Y. Misc. LEXIS 1964, *15 (N.Y. Sup. Ct. May 11, 2020) (finding that “the [CVA] is a reasonable response to remedy the injustice of past child sexual abuse” and “does not violate [the defendant’s] right to due process under the New York State Constitution”); *Torrey v. Portville Cent. Sch.*, 125 N.Y.S.3d 531, 66 Misc.3d 1225A (N.Y. Sup. Ct. 2020) (“[T]he Court finds the [CVA] a reasonable response to remedy an injustice. As such, it does not violate [the defendant’s] right to due process under the New York State Constitution.”).

These courts have concluded, as does this court that the Legislature, in passing the CVA, was responding to the tremendous injustices created by a short limitation period for claims arising out of sexual abuse. Its decision to open a limited window of time to bring claims is a reasonable response to remedy that injustice. The court finds no unconstitutionality in the application of the revival statute to the facts in the case at bar.

WHEREFORE it is hereby:

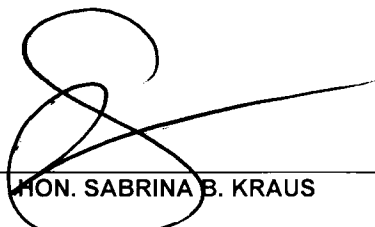
ORDERED that the motion to dismiss is denied in its entirety; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a virtual compliance conference on January 30, 2024, at 10:00 AM.

This constitutes the decision and order of the court.

11/3/2023
DATE


HON. SABRINA B. KRAUS

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE