

Ajaka v Mount Sinai Hosp.

2023 NY Slip Op 35066(U)

December 22, 2023

Supreme Court, Queens County

Docket Number: Index No. 705751/2018

Judge: Tracy Catapano-Fox

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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GHASSAN AJAKA, as Administrator of the Estate of
JIRYES AJAKA, Deceased,

Index No. 705751/2018

Part MDP

Plaintiff,

Motion Date: December 6, 2023

-against-

Calendar No. 1

Sequence No. 2

THE MOUNT SINAI HOSPITAL, THE MOUNT
SINAI HOSPITAL QUEENS d/b/a MOUNT SINAI
QUEENS, THE MOUNT SINAI MEDICAL
CENTER, INC., MOUNT SINAI HEALTH SYSTEM,
INC., and MOUNT SINAI HOSPITALS GROUP INC.,

FILED
12/22/2023 *PL*
COUNTY CLERK
QUEENS COUNTY

Defendants.

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The following papers numbered EF-71 to EF-91 read on this motion by plaintiff to vacate the July 19, 2021 Court Order and direct defendants to produce the medical records in the name of Joseph Ajaka, or alternatively schedule a hearing to resolve the issue.

Pages
Numbered

Notice of Motion, Affirmation, Exhibits.....	EF71-EF83
Affirmation in Opposition, Exhibits.....	EF84-EF89
Reply Affirmation.....	EF90-EF91

Upon the foregoing papers and oral argument before the Court, it is ordered that this motion is determined as follows:

Plaintiff's motion to vacate the July 19, 2021 Court Order is granted, as plaintiff demonstrated that the interest of justice warrants vacatur and a hearing to determine whether the medical records of non-party Joseph Ajaka should be released to plaintiff. (*See Matter of Weintrob v. Weintrob*, 87 A.D.3d 749, 750 [2d Dept. 2011]). Plaintiff commenced this medical malpractice action by filing the Summons and Complaint on April 16, 2018 and issue was joined via service of defendants' Answer on February 16, 2021.

Plaintiff seeks to vacate a Court Order dated July 19, 2021 by the Honorable Peter O'Donoghue, and direct defendants to produce Joseph Ajaka's medical records or hold a hearing to determine the issue. Plaintiff argues that Justice O'Donoghue's Order following the *in-camera* inspection and hearing must be vacated because it is not an appealable order, the Court's determination was barred under the law of the case doctrine, and the Court's review did not satisfy the remittitur. Plaintiff argues that Justice O'Donoghue's determination that the records shall not be disclosed was not an order, and even if it did constitute an order, it was not entered on a notice of motion and was therefore *sua sponte*. Plaintiff further argues that as the determination was not a product of the motion, it cannot be appealed and the order must therefore be vacated.

Plaintiff also argues that the Court was barred from relying on federal and state privacy laws to deny disclosure because the Second Department rejected those arguments when it reversed Judge O'Donoghue's prior court order dismissing this action. Plaintiff also argues that the Court's determination did not satisfy the remittitur because it did not establish a sufficient basis to deny disclosure. Plaintiff argues that the Court erred in limiting the hearing testimony to Joseph Ajaka and not permitting plaintiff Ghassan Akaja, the decedent's father, or any other third party to testify. Plaintiff further argues that plaintiff Ghassan Akaja is the sole non-medical eyewitness to plaintiff decedent Jiryas Ajaka's treatment at defendants' facility, and his testimony would have definitively established whether decedent Jiryas Ajaka was treated on the relevant dates. Plaintiff further argues that the *in-camera* inspection was performed by Justice O'Donoghue's law clerk who merely indicated that the records were in Joseph's name and did not consider information that demonstrated the records belonged to someone other than Joseph Ajaka. Plaintiff further argues that although plaintiff decedent and Joseph Ajaka were brothers, they had drastically different weights which would be reflected in the medical records and demonstrate that it was Jiryas Ajaka who was treated by defendants. Based upon the foregoing, plaintiff argues that vacatur is warranted and the Court must conduct a further *in-camera* inspection and hearing to determine whether the medical records should be released.

Defendants oppose plaintiff's motion and argue that vacatur is not warranted because plaintiff failed to identify the Order he is seeking vacatur of pursuant to CPLR §2214(c), the Order should not be characterized as a *sua sponte* Order, and the Court properly declined to compel production of Joseph Ajaka's records based on the *in-camera* inspection and hearing. Defendants further argue that the law of the case doctrine did not bar Justice O'Donoghue from relying on federal and state privacy laws because the Appellate Division Second Department did not explicitly adopt or reject those arguments. Defendants also argue that Justice O'Donoghue satisfied the Appellate Division's remittitur by conducting the *in-camera* inspection of the records. Defendants further argue that the Appellate Division did not specifically mandate a hearing, but rather ordered that a hearing be conducted upon the *in-camera* inspection if the Court deemed it necessary. Defendants further argue that plaintiff cannot now argue that he was not permitted to testify or offer an affidavit at the hearing, as plaintiff did not ask the Court for permission to submit

plaintiff's testimony, plaintiff's affidavit, excerpts from the decedent's discharge papers, or decedent's autopsy report into evidence. Based upon the foregoing, defendants argue that vacatur is not warranted.

Pursuant to CPLR §5015(a), the court may vacate a default judgment based upon excusable default, newly discovered evidence, misconduct of an adverse party, lack of jurisdiction, or a change in a prior judgment or order upon which the default is based. (*Kopsick v. Town of Hempstead*, 213 A.D.3d 830, 831 [2d Dept. 2/15/2023].) A party moving to vacate pursuant to CPLR §5015 must also demonstrate a potentially meritorious defense. (*Diaz v. Diaz*, 71 A.D.3d 947, 948 [2d Dept. 2010].) In addition to the grounds set forth in CPLR §5015(a), the court may also vacate its judgment in the interests of substantial justice. (*Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 68 [2003].)

Pursuant to CPLR §2214(c), a party in an e-filed action may rely on e-filed papers and need not include those papers within the motion. (*Reardon v. Macy's, Inc.*, 191 A.D.3d 712, 714 [2d Dept. 2021]; see also *Eastern Funding LLC v. San Jose 63 Corp.*, 172 A.D.3d 818, 819 [2d Dept. 2019].)

It is noted that the Appellate Division Second Department decision reversed Judge O'Donoghue's order dated November 27, 2018, which granted defendants' motion for summary judgment and dismissal of the Complaint, and denied plaintiff's cross-motion directing defendants to provide all medical records allegedly belonging to plaintiff decedent Jiryas Ajaka which were mistakenly in the name of his brother Joseph Ajaka. The Second Department recognized that plaintiff's claim arises out of medical treatment allegedly given to plaintiff decedent Jiryas Ajaka in May 2016 during two visits to defendants' emergency room. In reversing the November 27th Order, the Second Department held that an *in camera* review of the medical records belonging to Joseph Ajaka was required, and a hearing if the Supreme Court deemed necessary, to determine if there exists a sufficient basis to release the records to plaintiff. (*Ajaka v. Mount Sinai Hosp.*, 189 A.D.3d 963, 964 [2d Dept. 2020].)

Plaintiff's motion to vacate the July 19, 2021 decision and Order is granted, as plaintiff demonstrated that vacatur is warranted in the interest of justice. As an initial matter, defendant's argument that plaintiff's motion is defective because it did not include the order for which he is seeking vacatur is without merit, as this is an e-filed action and the documents referenced were submitted through NYSCEF. (See *Reardon, supra.*) Plaintiff demonstrated through the documentary evidence including the hearing transcript and July 19, 2021 Order that the medical records are material and relevant, as there is information in them that would identify plaintiff decedent as the recipient of medical care by defendants. Plaintiff indicated that plaintiff decedent and his brother Joseph had very different weights that would be reflected in the records, and demonstrate which person presented to defendants' facility for care on the dates in question.

Further, the appellate court required that these records be properly considered by *in camera* review and a possible hearing, and therefore the issue of materiality has been predetermined.

Plaintiff also demonstrated that vacatur is warranted in the interest of justice, as the prior hearing and *in camera* inspection were not held in accordance with the Second Department directives. (*See generally Countrywide Bank, FSB v. Singh*, 173 A.D.3d 673 [2d Dept. 2019][vacatur in the interest of justice was warranted when the trial court interfered with the contractual agreement between the parties by denying the plaintiff’s summary judgment motion].) It is noted that the prior judge was visually impaired and the hearing transcript reflects that his law secretary reviewed the *in camera* medical records and was not able to provide findings with respect to the height and weight of the patient who presented to defendants’ facility. Based upon the hearing transcript and oral argument before the undersigned, there is insufficient evidence to demonstrate that the Court conducted the *in-camera* inspection and rendered a decision consistent with the remittitur order of the Second Department. Therefore, plaintiff demonstrated that a further *in-camera* inspection and hearing is warranted to review the patient demographics and ascertain the identity of the patient to determine if the medical records belong to plaintiff decedent.

Defendants failed to sufficiently refute plaintiff’s claims. Defendants’ argument that plaintiff did not offer additional testimony or documentary evidence at the hearing is without merit, as it is refuted by Alana Landa’s affirmation of merit. Defendants also failed to demonstrate that they would be prejudiced or in violation of any federal law by complying with a lawful Court Order to produce the records of Joseph Ajaka for an *in camera* inspection. While defendants correctly note that the Second Department decision did not address potential federal law implications, if this issue had been prohibitive to the appellate court, it would not have directed the trial court to perform an *in camera* inspection and possible hearing to determine whether to release the medical records. Therefore, based upon the evidence and arguments presented, plaintiff demonstrated that the hearing did not comply with the Appellate Division’s remittitur and the interest of justice warrants vacatur of the July 19, 2021 Order and a hearing to resolve the issue.

Accordingly, plaintiff’s motion to vacate the July 19, 2021 decision and Order is granted. Plaintiff is directed to produce the medical records for an *in-camera* inspection within thirty (30) days of the date of this Order with Notice of Entry. The parties are directed to appear for a hearing on Tuesday, February 20, 2024 at 9:30am.

This constitutes the decision and Order of the Court.

Dated: December 22, 2023

FILED
12/22/2023
COUNTY CLERK
QUEENS COUNTY



Hon. Tracy Catapano-Fox, J.S.C.