

Stora v City of New York

2024 NY Slip Op 30717(U)

March 7, 2024

Supreme Court, New York County

Docket Number: Index No. 150572/2022

Judge: Sabrina Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT:	<u>HON. SABRINA KRAUS</u>	PART	57M / CVA
/	<i>Justice</i>		
-----X		INDEX NO.	<u>150572/2022</u>
NILEJAWEL STORA, individually and on behalf of her minor child QR,		MOTION DATE	<u>12/18/2023</u>
Plaintiff,		MOTION SEQ. NO.	<u>003</u>

- v -

CITY OF NEW YORK, CITY OF NEW YORK
ADMINISTRATION FOR CHILDREN'S SERVICES, JOHN
JANE DOES, KIM BROWN, TERRY BROWN, RISING
GROUND, INC., JOHN JANE DOES

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 64, 65, 66, 67, 68

were read on this motion to/for JUDGMENT - SUMMARY.

BACKGROUND

Plaintiff commenced this action under the Child Victims Act (“CVA”) seeking damages individually and on behalf of her minor child QR based on allegations that QR was sexually assaulted and abused in or about December 2019 while in foster care.

ALLEGED FACTS

On December 28, 2019, QR and her sister, BC were placed by a foster care agency under the care of defendants Kim Brown and Terry Brown (“the Browns”). QR was six years old at the time and BC was approximately six months old. The Browns also have seven biological children and four adopted former foster children. On or about May 8, 2020, QR and BC were returned to Plaintiff’s home.

Plaintiff alleges that while QR was under the care of the Browns, she was assaulted on more than one occasion by three of the Browns’ sons. They would call QR into their room, ask

her to pull her pants down, force her to touch their genitalia, get on top of her, vaginally and anally rape her, and force her to give them fellatio. Plaintiff asserts that this was a regular occurrence, and that Kim Brown was aware of this and even installed cameras in her sons' bedroom.

OCFS Investigation and Hearing

On July 7, 2020, someone filed a complaint to the Statewide Central Register of Child Abuse and Maltreatment (“SCR”) against Kim Brown. This complaint alleged that she was aware that one of her sons was engaging in sexual activity with another child, and that she had failed to take steps to prevent this behavior.

The New York State Office of Children and Family Services (“OCFS”) investigated the complaint and on November 5, 2020, concluded that the allegations of inadequate guardianship were “substantiated” as to Kim Brown. She promptly appealed the decision and requested that the report be amended and that all complaints be “unsubstantiated.” OCFS further reviewed the complaint and allegations against the Kim Brown but denied their request. After this denial, she requested an administrative review by the OCFS. OCFS also denied her request to amend the report. However, she appealed this decision and the OCFS Bureau of Special Hearing scheduled a hearing to further review the matter.

On June 17, 2021, a virtual hearing was conducted before Administrative Law Judge Glenn Harris. New York City Administration for Children’s Services (“ACS”) and Kim Brown were represented by counsel at the hearing. SCR was also listed as a party but submitted documents in lieu of appearance.

On August 30, 2021, Administrative Law Judge John Franklin Udochi issued a written decision directing SCR and ACS to seal and amend the report to reflect a finding of

“unsubstantiated” as to the allegations of inadequate guardianship against Kim Brown. The court found that ACS failed to meet its burden by a preponderance of evidence that maltreatment occurred. The court reasoned that although evidence in the record established that QR was sexually abused, there was no evidence in the record to corroborate that such abuse occurred in the Brown’s home, or that Kim Brown was told that any abuse occurred. The court noted inconsistencies in QR’s statements, and that Kim Brown had reported sexualized behavior by QR to the foster care agency, opining that “(s)ince the foster care did not remove the child when the Appellant reported it, they were most likely aware of the sexual abuse having occurred in a prior foster home.”

DISCUSSION

The Browns contend that plaintiff’s claims against them are barred by *res judicata* and collateral estoppel, arguing that the prior OCFS ruling in their favor has preclusive effect. They contend that plaintiff had a full and fair opportunity to participate in the administrative proceeding.

In opposition, plaintiff argues that the motion is premature prior to the completion of discovery, and that neither *res judicata* nor collateral estoppel bar her claims as she and QR were not parties to the administrative proceeding and, although they participated by prompting ACS’s investigation, they lacked privity or control and were not represented by ACS. They note that the administrative proceeding sought injunctive relief, as opposed to the within litigation which seeks monetary damages. They also contend that the Browns fail to meet their burden by not submitting an affidavit from Terry Brown.

Analysis

The doctrine of *res judicata* precludes a party from litigating “a claim where a judgment on the merits exists from a prior action between the same parties involving the same

subject matter” (*Matter of Hunter*, 4 NY3d 260, 269 [2005]). Under New York's transactional approach to the rule, “once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy” (*O'Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]). Additionally, res judicata is generally applicable to quasi-judicial administrative determinations that are “rendered pursuant to the adjudicatory authority of an agency to decide cases brought before its tribunals employing procedures substantially similar to those used in a court of law” (*Ryan v New York Tel. Co.*, 62 NY2d 494, 499 [1984]).

Matter of Josey v Goord, 9 NY3d 386, 389-91 (2007); see *Sherwyn Toppin Marketing Consultants, Inc. v New York State Liquor Auth.*, 103 AD3d 648 (2d Dept 2013). Collateral estoppel prevents “a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party... whether or not the... causes of action are the same.” *Simmons v Trans Express Inc.*, 37 NY3d 107, 112 (2021), quoting *Ryan v New York Tel. Co.*, 62 NY2d 494, 500 (1984). It applies only where “the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action,” and the party who is being estopped “had a full and fair opportunity to litigate the issue in the earlier action.” *Simmons*, 37 NY3d at 112, quoting *Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349 (1999). “[T]he fundamental inquiry is whether relitigation should be permitted in a particular case in light of what are often competing policy considerations, including fairness to the parties, conservation of the resources of the court and the litigants, and the societal interests in consistent and accurate results.” *Simmons*, 37 NY3d at 112, quoting *Gilberg v Barbieri* 53 NY2d 285, 292 (1981). The party invoking collateral estoppel has the burden of identifying the issues in the present litigation and the prior determination, whereas the opposing party has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action. *Juan C. v Cortines*, 89 NY2d 659, 667 (1997); *Kaufman v Eli Lilly and Co.*, 65 NY2d 449, 456 (1985).

Here it is undisputed that the administrative action arose from the same transactions and occurrences as the within action and pertained to identical issues.¹ It is further undisputed that neither plaintiff nor QR were direct parties to the prior administrative action.

A decision can have preclusive effect under either *res judicata* or collateral estoppel if the party against whom preclusion is sought is found to have been in privity with a party to the prior action, even if they themselves were not a party to the prior action. *See Zimmerman v Tower Ins. Co. of New York*, 13 AD3d 137 (1st Dept 2004); *Bayshore Family Partners, L.P. v Foundation of Jewish Philanthropies of Jewish Federation of Greater Fort Lauderdale*, 270 AD2d 374 (2d Dept 2000). Privity is “an amorphous concept not easy of application” and “includes those who are successors to a property interest, those who control an action although not formal parties to it, those whose interests are represented by a party to the action, and [those who are] coparties to a prior action.” *Buechel v Bain*, 97 NY2d 295, 304 (2001), quoting *Matter of Juan C. v Cortines*, 89 NY2d 659 (1997). “The effect of the permitted activity on the party’s interests is key in relationship to the totality of the circumstances and discrete facts at issue in each forum, including a party’s access to personal counsel and direct representation.” *David v Biondo*, 92 NY2d 318, 324 (1998). Policy considerations must be considered to calculate the “jurisprudential price” of denying plaintiff access for resolution of her case in civil court. *Id.*

In *Biondo, supra*, the court considered whether a plaintiff was barred by collateral estoppel from bringing a dental malpractice action where a professional disciplinary board had dismissed disciplinary charges stemming from the same incident initiated by the plaintiff and brought by the state office of professional discipline (“OPD”). The court noted that the plaintiff was not represented by the OPD and was represented by counsel in the proceeding only in her

¹ The court notes that Terry Brown was not a party to the administrative proceeding, however, neither party raises this as an issue.

capacity as a witness. The court found that the plaintiff was not in privity with the OPD and thus not precluded from bringing her claims, noting that it would be against the public's interest in effectively regulating medical professionals to put patients who report misconduct to professional regulators at risk of forfeiting judicial resolution of their civil claims.

Here, the procedural history of the administrative action is analogous to *Biondo*, except for the fact that there is no indication that plaintiff or QR were represented by counsel in the proceeding. Additionally, neither testified at the hearing, although their interviews with ACS agents were admitted as hearsay evidence. Further, there are similar policy concerns at play, as a ruling that plaintiff is precluded from bringing their claim by an adverse administrative determination would deter the effective regulation of foster care misconduct. Thus, neither plaintiff nor QR were in privity with ACS in the prior administrative proceeding, and absent a meaningful opportunity to participate in the proceeding are not precluded from bringing claims against the Browns before this court.

Additionally, *res judicata* is inapplicable where the relief sought was not available in the prior action. *Parker v Blauvelt Volunteer Fire Co., Inc.*, 93 NY2d 343, 647 (1999); *Ross Realty v V & A Fabricators, Inc.*, 42 AD3d 246 (2d Dept 2007). As monetary damages were not available in the administrative proceeding, *res judicata* is inapplicable to plaintiff's claims.

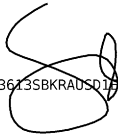
CONCLUSION

Accordingly, it is hereby:

ORDERED, that defendants Kim Brown and Terry Brown's motion for summary judgment is denied in its entirety; and it is further

ORDERED that counsel appear for a virtual compliance conference on March 21st, 2024,
at 12:30 P.M.

This constitutes the decision and order of this court.


202403071236435BKRAUS017296E32EC2495CB6EE1DFCC2B2B730

<u>3/7/2024</u> DATE		<u>SABRINA KRAUS, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
	<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