

**Wexler v City of New York**

2024 NY Slip Op 30960(U)

March 21, 2024

Supreme Court, New York County

Docket Number: Index No. 161521/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

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LINNEA WEXLER, LINNEA WEXLER,  
  
Petitioner,

**INDEX NO.** 161521/2023

**MOTION DATE** 03/19/2024

**MOTION SEQ. NO.** 001 002

- v -

THE CITY OF NEW YORK, NEW YORK CITY FAMILY COURT, NEW YORK FAMILY COURT, BRONX FAMILY COURT, COUNTY OF SUFFOLK, NEW YORK, APPELLATE DIVISION OF THE SUPREME COURT OF NEW YORK, FIRST DEPARTMENT, OFFICE OF ATTORNEYS FOR CHILDREN, TOWN OF SOUTHAMPTON, NEW YORK, SOUTHAMPTON TOWN POLICE DEPARTMENT, SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE, SOUTHAMPTON TOWN JUSTICE COURT, SOUTHAMPTON TOWN ATTORNEYS, NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, ATTORNEY GRIEVANCE COMMITTEE, FIRST JUDICIAL DEPARTMENT, GIGI N. PARRIS, ASHLEY MULLIN,

**DECISION + ORDER ON MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for ARTICLE 78.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 66, 67, 68, 69

were read on this motion to/for DISMISSAL.

Motion Sequence Numbers 001 and 002 are consolidated for disposition<sup>1</sup>. The cross-motion (MS001) by respondent the City of New York to dismiss is granted. The motion (MS002) by the County of Suffolk and Suffolk County Attorney's Office ("Suffolk Respondents") to

<sup>1</sup> The Court will handle MS003 in connection with the currently pending motion by the Southampton respondents (NYSCEF Doc. No. 70) which has not yet received a sequence number from the back office (this other motion will presumably be MS004). Without a sequence number, the motion cannot be decided.

dismiss the claims against them is granted. The Court also dismisses the petition as against the State Respondents, as defined below.

## **Background**

This proceeding arises out of a Family Court dispute between petitioner and her former partner; they share a daughter. Petitioner insists that they were never married. She claims in that in March 2020, her former partner filed for a temporary order of protection based on false pretenses in order to remove the child from her.

She observes that she is currently in the middle of litigation with her former partner over the custody of their daughter and insists that her former partner has access to tremendous resources through his law firm. Petitioner objects to various orders that, according to her, have resulted in her not being able to see her child (except for a few days) since March 1, 2023.

She makes numerous allegations against respondents that, basically, they have all condoned and reinforced the alleged fraud committed by her former partner on the courts. In addition to taking issue with many of the events in her custody litigation, petitioner also decries the state of Family Court in New York. She seeks, among many claims for relief, “a mistrial” of the Family Court case, at least \$1 million from each of the respondents for various criminal acts, that the Family Court case be transferred to a different judge, and an order of protection against the judge and her court attorney. Petitioner insists that each of the many temporary orders of protection is illegal and violates the Family Court Act. She complains that sealed records were used in violation of the criminal code.

Respondents New York Family Court; New York City Family Court; Bronx Family Court; Appellate Division of the Supreme Court of New York, First Department; Office of

Attorneys for Children; New York State Commission on Judicial Conduct; Attorney Grievance Committee, First Judicial Department; Hon. Gigi Parris and Ashley Mullin (collectively, the “State Respondents”) observe that petitioner brought an unsuccessful and similar Article 78 proceeding against Judge Parris and Ms. Mullin.

They make numerous arguments about the procedural inadequacies of the instant petition and stress that petitioner has a legal remedy to appeal decisions that she does not like. The State Respondents observe that petitioner is suing the judge (and the judge’s court attorney) relating to the custody litigation before Judge Parris. They observe that there were multiple orders of protection issued against petitioner to stay away from her former partner and her child, except for court-ordered calls and supervised visitations with the child.

County of Suffolk and the Suffolk County District Attorney’s Office (“Suffolk Respondents”) move to dismiss the petition for various reasons, including that petitioner lacks a cognizable cause of action. They observe that, before the criminal case was sealed, they produced records pursuant to a subpoena, contrary to petitioner’s insistence that the disclosure of these records violated the criminal code. According to these respondents, they received a so-ordered subpoena asking for records from a pending criminal case against petitioner and simply turned over the records.

The City of New York cross-moves to dismiss, in large part, on the ground that the proper way to challenge Family Court orders is to appeal, not to bring an Article 78 proceeding. It also emphasizes that money damages are not awarded in Article 78 proceedings.

### **Discussion**

The Court dismisses the petition as against all respondents except for the Southampton Respondents (as noted above, those issues will be dealt with in MS003 and MS004). All

respondents noted that petitioner cannot bring this proceeding on behalf of her daughter as she does not currently have legal custody of her daughter (CPLR 1201). In fact, this proceeding arises out of petitioner's claims that she was wrongfully deprived of the custody of her daughter.

The Court also finds that petitioner failed to state a cause of action against any of these respondents. In this Court's reading of the many, many allegations in the petition and in petitioner's other papers, petitioner is incredibly frustrated with how her custody case is going. She is upset with the judge, the judge's court attorney, all of the related courts, as well as state agencies and other entities that have some relationship to her proceeding. Of course, a custody case is a highly charged and often very stressful litigation. But that does not mean that petitioner can seek the relief she requests here, which includes that this Court award millions in damages to petitioner and to refer various respondents for criminal prosecution.

The Court also rejects the requests for relief that are outside the scope of an Article 78 proceeding, including the award of money damages. Moreover, the undersigned does not preside over a criminal docket nor does it have the power to impose criminal charges on respondents. And so while this Court completely understands petitioner's frustration and search for justice, unfortunately this Article 78 proceeding is just not the way to right the perceived wrongs.

As the respondents point out, the proper procedure for petitioner is to appeal the decisions in Family Court. This Court is not an appellate court for decisions made in Family Court. In fact, it seems petitioner is well aware that decisions in Family Court can be appealed (*see e.g., Matthew P. v Linnea W.*, 197 AD3d 1070, 1070 [1st Dept 2021] [an appeal involving the custody case about which petitioner complains]).

Another basis for dismissal against respondent Parris and Mullin is that petitioner brought a similar prior Article 78 proceeding against these two respondents and lost (NYSCEF Doc. No. 30). She cannot bring up the same types of claims already dismissed by another judge.

Accordingly, it is hereby

ORDERED that the petition is dismissed as against respondents New York Family Court; New York City Family Court; Bronx Family Court; Appellate Division of the Supreme Court of New York, First Department; Office of Attorneys for Children; New York State Commission on Judicial Conduct; Attorney Grievance Committee, First Judicial Department; Hon. Gigi Parris, Ashley Mullin, County of Suffolk and the Suffolk County District Attorney’s Office, and the City of New York.

3/21/2024

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE