

Mansfield v Iapocce
2024 NY Slip Op 35042(U)
March 27, 2024
Supreme Court, Ulster County
Docket Number: Index No. EF2023-303
Judge: Kevin R. Bryant
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STATE OF NEW YORK
SUPREME COURT

ULSTER COUNTY

**AMBER MANSFIELD as mother and natural guardian of
GAGE B., an infant,**

Plaintiff,

DECISION AND ORDER

-against-

Index No.: EF2023-303

**MICHAEL A. IAPOCCE, in his capacity as
COMMISSIONER OF THE DEPARTMENT OF
SOCIAL SERVICES, et. al.**

Defendants.

Supreme Court, Ulster County
Present: Hon. Kevin R. Bryant, J.S.C.

Appearances:

Plaintiff:

Howard Evan Shafran
Attorney for Amber Mansfield as mother and natural guardian of Gage B. an infant
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Kingston, NY 12401

Defendant(s):

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Bryant, K.:

On February 28, 2023, a Summons and Complaint were filed by the Amber Mansfield, as mother and natural guardian of Gage B. (hereinafter referred to as "Plaintiff") as a hybrid action under Article 78 of the CPLR alleging constitutional claims related to the Foster Care system and the policies of the Ulster County Department of Social Services and further alleging negligence and personal injury; and

Answers and further submissions having been received by the Court; and

A Notice of Motion having been filed by Plaintiff seeking, *inter-alia*, the disclosure of Ulster County Department of Social Services records pursuant to Social Services Law §372; and

No response to the motion having been submitted by Defendants; and

The Court having reviewed the records in camera in-order-to determine whether disclosure of the records is warranted.

NOW, for the reasons set forth herein, the motion is hereby denied¹.

Plaintiff herein has filed a complaint pursuant to Article 78 of the CPLR which raises constitutional claims regarding the foster care system which is governed by a myriad of statutes and state regulations. Plaintiff has co-mingled a personal injury claim which seemingly alleges negligence and personal injuries proximately caused by what Plaintiff claims is this unconstitutional systemic failure of the Ulster County Department of Social Services. Notably, throughout the months this matter has been pending, counsel has been focused on the personal injury aspects of this matter without addressing fundamental procedural and jurisdictional issues related to the Article 78.

It is the finding of this Court that as this matter *inter-alia*, challenges and brings into question procedures set forth in state-wide regulations related to the foster care licensing and supervision processes, removals and placement pursuant to Article Ten of the Family Court, and permanency planning, it clearly falls within the requirements of Executive Law §72 and CPLR §1012.

As such, all proceedings are held in abeyance pending notice being provided to the New York State Attorney General which shall be completed on or before April 5, 2024.

With-regard-to the instant motion for discovery, it is well settled that "[t]he supervision of discovery, and the setting of reasonable terms and conditions for disclosure, are within the sound discretion of the Supreme Court. The Supreme Court's discretion is broad because it is familiar

¹ In determining this Petition, the Court has considered the documents specifically cited herein as well as all other documents electronically filed in this matter as appearing on NYSCEF.

with the action before it” (Hamed v. Alas Realty Corp., 209 A.D.3d 628 (2nd Dept., 2022))². See also, Umana v. Tower E. Condo., 208 A.D.3d 710 (2nd Dept., 2022)).

With regard to the Article 78 causes of action, “[u]nder CPLR article 78, a plaintiff is not entitled to discovery as of right but must seek leave of court pursuant to CPLR 408. Because discovery tends to prolong a case and is therefore inconsistent with the summary nature of a special proceeding, discovery is granted only where it is demonstrated that there is a need for such relief” (see, Matter of Johnson v. Annucci, 208 A.D.3d 1403 (3rd Dept., 2022)). See also, Matter of Bramble v. New York City Dept. of Education, 125 A.D.3d 856 (2nd Dept., 2015); Pyramid Management Group v. Board of Assessors, 243 A.D.2d 876 (3rd Dept., 1997); Lynch v. Bd. of Education, ___ Misc.3d ___, 2023 NY Slip Op 30250 (Supreme Court, New York County, January 25, 2023))³.

With regard to the request for discovery in the negligence causes of action, it is well accepted that “[r]eports of child abuse to child protective officials, as well as documents generated during the ensuing investigation, are confidential and may only be made available to the specifically enumerated individuals, agencies or facilities detailed in Social Services Law §422(4)(a) . . . [O]ne entity entitled to access those records is a court, upon a finding that the information in the record is necessary for the determination of an issue before it . . . but that provision is narrowly interpreted to allow the court to have access to the record for its own use to decide a particular issue and does not authorize a court to expand the carefully crafted statutory and exclusive list of those to whom access is authorized” (C.T. v. Brant, 202 A.D.3d 1360 (3rd Dept., 2022)).

“[T]he legal authority for plaintiff to provide access to its confidential foster care records is protected and limited by Social Services Law §372(4)(a)” and “[d]isclosure is limited to what is shown to be necessary and should be accompanied by adequate safeguards to limit as much as possible the unnecessary loss of confidentiality” (Matter of Carla L., 45 A.D.3d 375 (1st Dept., 1974). See also, McIntyre v. Bradford White Corp., 222 A.D.3d 1077 (3rd Dept., 2023).

This Court has reviewed the affirmation in support of the motion and notes that in many respects, counsel’s assertions in support of the motion are simply inaccurate. Contrary to counsel’s representations, Plaintiff’s parental rights were not “suspended” while her children were placed in foster care, and she continued to have regular contact with her son pursuant to the terms and conditions of the Family Court Order.

The claim that “[s]he was not permitted to know where her son was or with whom” is also fundamentally inaccurate as is the assertion that “[a]ll she had to satisfy herself that her son’s safety and welfare would be looked after was the assurances of the Ulster County DSS and their selected foster parents”.

² Internal citations, quotations and punctuation omitted in all quotations contained herein.

³ This Court notes that no request for leave of Court has been submitted or granted to conduct discovery with-regard to the Article 78.

Contrary to counsel's assertions, the children were placed in foster care pursuant to Article Ten of the Family Court Act which includes a litany of due process protections for Plaintiff, including, but not limited, to the right to counsel, the right be fully informed regarding the child's progress and development in foster care and all other significant details regarding the foster care placement. In this regard, contrary to counsel's assertion, Social Services Law §1089(c)(2) and other controlling regulations specifically contradict counsel's assertions regarding his client's lack of access to information regarding the child's placement, services, health and medical care throughout the time the child was placed in foster care⁴.

The question of whether the Department complied with these statutory and regulatory requirements is directly before the Court during required permanency hearings and fully addressed with the parent during service plan reviews. As explained by the Court in Matter of Evan V., 114 A.D.3d 149 (3rd Dept., 2013), mandatory permanency reviews "are aimed at ultimately achieving permanent discharge of children in foster care, require plaintiff to review progress made through implementation of the previous service plan . . . The reviews will often entail in-depth sharing, discussion, and consideration of confidential information, such as medical and mental health information of the children or parents".

Plaintiff was represented throughout the proceedings in the Family Court. She had a full and fair opportunity in the Family Court to contest any factual determination made by the Family Court regarding placement, appropriate services and contact with her children. Plaintiff also had a full and fair opportunity to appeal any contested factual determination made by the Family Court regarding the need for placement, potential resources and/or services for herself or for the children.

The records reviewed by this Court *in camera* demonstrate that Plaintiff consented to necessary findings entered by the Family Court pursuant to Family Court Act §1055. She was provided regular visitation with her children and participated in the Department's permanency reviews and Permanency Hearings conducted by the Court. Her participation in these services was a component of her service plan and she presumptively could not have secured the return of the children without cooperating with the Department and complying with the service plan.

As such, it is the finding of this Court that insofar as counsel's articulation of the need for disclosure is based upon fundamentally inaccurate assertions, there has been no showing of the need for the records and therefore the motion is denied.

Counsel for Plaintiff is directed to provide notice of these proceedings to the New York State Attorney General pursuant to Executive Law §71 on or before April 5, 2024.

All further proceedings in this matter are held in abeyance pending notice to the Attorney General.

⁴ See, 22 NYCRR 441.22(e); 90 ADM-21

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The matter is hereby scheduled for an in-person status conference on May 14, 2024, at 3:30 p.m. to address scheduling issues on the Article 78 proceedings which shall proceed prior to any action on the personal injury causes of action.

The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

Dated: March 27, 2024
Kingston, New York

ENTER,


HON. KEVIN R. BRYANT, J.S.C.