

Finn v Golden

2025 NY Slip Op 35346(U)

January 16, 2025

Supreme Court, Rockland County

Docket Number: Index No. 030989/2024

Judge: David Fried

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR §5513 [a]), you are advised to serve a copy of this Order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
PATRICIA FINN,

Plaintiff,

-against-

MARGARET B. GOLDEN

Defendants.

-----X
HON. DAVID FRIED, A.J.S.C.

DECISION & ORDER

Index No. 030989/2024
Motion Seq. Nos. 2, 3, & 7

The papers filed electronically via NYSCEF numbered 13 – 18 (“Motion Seq. No. 2”); 32 – 37 & 39 (“Motion Seq. No. 3”); and, 92 – 96¹ (“Motion Seq. No. 7”) were read and considered herein. Upon such reading and consideration, the Motions are disposed as follows:

BACKGROUND

On May 1, 2024, Defendant filed Motion Seq. No. 1 to dismiss Plaintiff’s causes of action pursuant to CPLR §§3211(a)(1) and (7). In support of her Motion, Defendant filed a Memorandum of Law in Support (NYSCEF Doc. No. 11) which made reference to a 2023 Decision & Order by the Village of Wesley Hills Justice Court (Schenlwar, J.) dismissing criminal charges against Plaintiff due to facial insufficiency. Annexed to said Memorandum, was a copy of Judge Schnelwar’s Decision & Order (NYSCEF Doc. No. 10). In response, Plaintiff filed her Memorandum of Law in Opposition (NYSCEF Doc. No. 31) along with seven exhibits (NYSCEF Doc. Nos. 24 – 30), some of which contain records of Plaintiff’s arrest and the criminal proceedings against her, records of a Family Court proceeding between Plaintiff and Defendant, text messages between Plaintiff, Defendant, and their mother, and a letter from Plaintiff’s doctor.

¹ NYSCEF Document Nos. 95 & 96 were filed by Plaintiff under Motion Sequence No. 6. However, upon further inspection of said documents, it appears that the documents are in reply to Defendant’s opposition to Motion Sequence No. 7. Therefore, they have been considered herein as a part of Motion Sequence No. 7.

On December 5, 2024, the parties appeared virtually before the undersigned for a conference, where Defendant's attorney allegedly read into the record sealed Family Court documents pertaining to a family offense proceeding between the parties, referenced Judge Schnelwar's Decision & Order (NYSCEF Doc. No. 10), and purportedly made misrepresentations about both of the aforesaid documents.

Plaintiff now brings the within Motion Seq. No. 2 by way of an Order to Show Cause, signed by the Court on May 10, 2024, to permanently seal or redact Defendant's supporting papers to Motion Seq. No. 1 (NYSCEF Doc. Nos. 10 & 11) and seal or redact all future filings which make reference to Judge Schnelwar's Decision & Order (NYSCEF Doc. No. 10). Plaintiff also brings the within Motion Seq. No. 3 by way of an Order to Show Cause, signed by the Court on August 13, 2024, to permanently seal and or redact her opposition papers to Motion Seq. No. 1 (NYSCEF Doc. Nos. 24 – 31). Along with signing Plaintiff's Orders to Show Cause for Motion Seq. Nos. 2 and 3, the Court granted Plaintiff temporary injunctions sealing, from public view, NYSCEF Doc. Nos. 10, 11, and 24 – 31, pending the issuance of a decision by this Court.

Additionally, in response to the events that took place at the December 5th virtual conference, Plaintiff brings the within Motion Seq. No. 7 by notice of motion to strike the portion of the transcript of said conference wherein Defendant's attorney read sealed Family Court documents into the record; to seal the conference transcript; to preclude Defendant from using or relying on any sealed records from the Criminal or Family Courts; to impose sanctions on Defendant for violations of confidentiality statutes, ethical misconduct, and improper use of sealed records; and to seal the record of this matter altogether.

PARTIES CONTENTIONS

In support of Motion Seq. No. 2, Plaintiff contends that she is entitled to her requested relief pursuant to CPL §160.50 and presumably FCA §166. Plaintiff, while conceding that Judge Schnelwar's Decision & Order (NYSCEF Doc. No. 10) was necessary to Defendant's Motion, contends that said filing serves no purpose other than to prejudice the prosecution of Plaintiff's claims. Defendant did not oppose Motion Seq. No. 2.

In support of Motion Seq. No. 3, Plaintiff contends that she "has been coerced to file sealed Family Court and Criminal Court documents in this Court in opposition oppose [*sic*] Defendant's motion to dismiss" (NYSCEF Doc. No. 34, pg. 4). As such, Plaintiff avers that to the extent contained within NYSCEF Doc. Nos. 24 through and including 31, the following should be sealed: pursuant to CPL §160.50(1)(c), any records of Plaintiff's arrest and the prosecution against Plaintiff that terminated in her favor; pursuant to FCA §166, any records of the Family Offense Petition filed by Defendant against Plaintiff; and pursuant to the Health Insurance Portability and Accountability Act ("HIPAA"), any of Plaintiff's medical information protected by same. Plaintiff further contends that there was no basis for Defendant to have disclosed sealed material in her motion to dismiss other than to prejudice

the prosecution of Plaintiff's claims.

In opposition to Motion Seq. No. 2, Defendant contends that her Memorandum of Law (NYSCEF Doc. No. 31), Attorney Affirmation (NYSCEF Doc. No. 24), and Plaintiff's Affirmation (NYSCEF Doc. No. 28) are not criminal court records that warrant sealing under CPL §160.50(1)(c). In addition, Defendant contends that by commencing the within action for malicious prosecution and slander, Plaintiff has placed her arrest and prosecution at issue, thereby waiving any statutory protections conferred by CPL §160.50(1)(c).

In reply, Plaintiff contends that Defendant's opposition failed to consider the protections afforded by FCA §166 and HIPAA; that Defendant misconstrues CPL §160.50 to apply only to official criminal court records rather than its broader and more accurate application to all records and papers relating to a party's arrest and prosecution; that case law shows that a plaintiff does not waive the privileges afforded by CPL §160.50, FCA §166, or HIPAA by filing a civil lawsuit; and that the case law cited by Defendant in her opposition is misapplied.

DISCUSSION

Plaintiff invokes three sources of law to justify the requested relief of the within Motions: CPL §160.50, FCA §166, and HIPAA. CPL §160.50(1) provides for the sealing of "all official records and papers... relating to the arrest or prosecution" of a party, excluding published court decisions, upon the termination of a criminal action or proceeding against a person in favor of such person. Similarly, FCA §166 prohibits the indiscriminate public inspection of the records of Family Court proceedings. HIPAA prohibits the wrongful disclosure of individually identifiable health information by third parties (*see* Health Insurance Portability and Accountability Act of 1996 [42 USCA §1320d *et seq.*]).

The protections afforded by the Criminal Procedure Law and Family Court Act are forfeited when a plaintiff initiates a civil action that places the contents of the protected material at issue (CPL §160.50; *see Green v. Montgomery*, 95 NY2d 693, 701 [2001] ["Where, however, an individual affirmatively places the underlying conduct at issue by bringing a civil suit, the courts have consistently held that the statutory protection is waived"]; FCA §166: *see Freeman v. Corbin Ave. Bus Co.*, 60 AD2d 824 [1st Dept 1978] *lv denied* 44 NY2d 649 [finding that by bringing wrongful death action, Plaintiff forfeited any statutory protections for Family Court records relating to the relations existing between decedent and wife]; *Harris v. City of Buffalo*, 197 AD2d 918 [4th Dept 1993] [finding that by bringing a civil action on behalf of decedent and their daughter, Plaintiff forfeited any statutory protections for Family Court records relating to paternity petition filed by Plaintiff alleging that decedent was the father of her daughter]; *Holmes v. DeVincenzo*, 163 AD2d 594 [2d Dept 1990]). In addition, HIPAA provides no remedy to a patient who affirmatively discloses her medical records to the public or affirmatively places their physical or mental condition at issue by commencing a personal injury action (*see Holzle v. Healthcare Services Group, Inc.*, 7 Misc3d 1027(A) [Sup Ct, Niagara County 2005] citing to *Koump v. Smith*, 25 NY2d 287 [1969]).

Here, Plaintiff commenced the within action, alleging seven separate causes of action against Defendant: malicious prosecution based upon Defendant filing criminal and Family Court cases against Plaintiff; abuse of process based upon Defendant's purported amplification of false allegations in a Family Offense Petition filed against Plaintiff; slander relating to statements purportedly made by Defendant that Plaintiff was a danger to and abusive of the parties' elderly mother, and that Plaintiff stole money and documents from their mother; two claims purportedly sounding in negligence and one claim for breach of fiduciary duty arising from Defendant's misuse of a power of attorney obtained from the parties' mother; and tortious interference of contract concerning a contract Plaintiff entered with the parties' mother to purchase two vehicles from her. As a result of the foregoing, Plaintiff alleges to have sustained financial and reputational harm, physical injuries, and extreme emotional distress.

Accordingly, to the extent that Plaintiff seeks to permanently seal and or redact any official records and papers relating to her arrest or prosecution pursuant to CPL §160.50, any records of Family Court proceedings under FCA §166, any records related to her health pursuant to HIPPA, or any documents referencing thereof, the right to same has been forfeited by virtue of having commenced the within action and placing the contents of said records at issue. All records that Plaintiff seeks to have permanently sealed are directly relevant to the prosecution and or defense of one or more of her pleaded causes of action, as evidenced by their reference in Plaintiff's opposition to Defendant's motion to dismiss (*see* NYSCEF Doc. No. 31).²

Plaintiff's reliance on the Court of Appeal's decision in *Matter of Katherine B. v. Cataldo* is misplaced. Contrary to Plaintiff's Memorandum in Reply (NYSCEF Doc. No. 40, pg. 9), *Matter of Katherine B.* did not stand for the proposition that a party does not automatically forfeit her statutory right under CPL §160.50 by commencing a civil action. In fact, *Matter of Katherine B.* does not touch upon the waiver/forfeiture of the statutory rights under CPL §160.50 at all. Rather, it pertains to the application of CPL §160.50(1)(d)(ii) in a matter involving the unsealing of criminal records to a prosecutor for the purposes of making sentencing recommendations in a subsequent criminal action involving the accused—a set of facts entirely unrelated to those presently before this Court (*see Matter of Katherine B. v. Cataldo*, 5 NY3d 196 [2005]).

Plaintiff's forfeiture renders her Motion Sequence No. 7 moot, as the Court has held, *supra*, that the documents that Defendant's attorney referenced or read into the record at the December 5th conference (Judge Schnelwar's Decision & Order and documents pertaining to the family offense proceeding between the parties), are not subject to the statutory protections of CPL §160.50 or FCA §166. Moreover, the Court will not entertain Defendant's request submitted with its opposition papers to Motion Sequence No. 7 for it to impose sanctions on Plaintiff pursuant to 22 NYCRR §130-1, as Defendant has not properly moved for same.

² Notably, Plaintiff has not substantiated her claim that she was "coerced" to file sealed family court and criminal documents in opposition to Defendant's motion to dismiss. Use of said term appears to be purely rhetorical albeit inartful.

In light of the foregoing, it is hereby

ORDERED, that Plaintiff's Motion Sequence Nos. 2, 3 & 7 are DENIED in the entirety. The Temporary Restraining Orders entered heretofore herein are VACATED, and the Clerk is directed to UNSEAL those records contained within the NYSCEF record hereof, which were previously sealed on a temporary basis.

The foregoing constitutes the Decision & Order of this Court.

Dated: New City, New York
January 16, 2025

ENTER:

A handwritten signature in dark ink, appearing to read 'David Fried', written over a horizontal line.

HON. DAVID FRIED, A.J.S.C.
STATE OF NEW YORK
COUNTY OF ROCKLAND