

Williams v Westchester County Health Care Corp.

2012 NY Slip Op 33228(U)

August 13, 2012

Supreme Court, New York County

Docket Number: 50512/11

Judge: Joan B. Lefkowitz

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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 WESTCHESTER - COMPLIANCE PART

-----X
BELINDA WILLIAMS,

Plaintiff,

DECISION & ORDER

-against-

Index No. 50512/11
Motion Date: Aug. 13, 2012

WESTCHESTER COUNTY HEALTH CARE
CORPORATION and WESTCHESTER
MEDICAL CENTER,

Seq. No. 1

Defendants.
-----X

LEFKOWITZ, J.

The following papers were read on this motion by defendants for an order compelling plaintiff to provide authorizations permitting defendants to obtain copies of plaintiff's medical records for her drug and alcohol treatment.

Order to Show Cause - Good Faith Affirmation - Affirmation in Support - Exhibits
Affirmation in Opposition - Exhibit

Upon the foregoing papers and the proceedings held on August 13, 2012, this motion is determined as follows:

Plaintiff commenced this action to recover damages for personal injuries which she allegedly sustained when she slipped and fell on a wet condition in the hallway of defendants' premises. Plaintiff alleges, inter alia, the following injuries: back injuries, including disc herniations; right knee injury requiring surgery; left ankle, foot and toe injuries, including a left foot drop, numbness of the left foot and "great toe," and left ankle weakness. Plaintiff further alleges that her injuries are permanent and have resulted in a loss of range of motion, disability, anxiety and mental anguish. Defendants asserted numerous affirmative defenses, including the defense that Worker's Compensation was plaintiff's sole remedy.

On June 5, 2012, plaintiff appeared for a deposition and testified, inter alia, that she had abused drugs and alcohol for approximately 25 years since the age of 12, but she was in a day treatment program for her drug addiction between April 2009 and February 2010, approximately one year before the accident. Plaintiff further testified that when she was addicted to drugs she used alcohol, cocaine, crack, and marijuana.

By Notice to Produce dated June 7, 2012, defendants demanded, inter alia, records of any drug and alcohol treatment programs and counseling. Plaintiff refused to produce the records of her drug and alcohol treatment.

Defendants now move for an order compelling plaintiff to provide authorizations for records for any drug and alcohol treatment programs and counseling. Defendants contend that plaintiff's records of drug and alcohol treatment are material and necessary for the defense of the action. Defendants rely upon *Coddington v Lisk* (249 AD2d 817 [3d Dept 1998]), where the court held that plaintiff's drug addiction records may lead to evidence bearing on plaintiff's claim for personal injuries allegedly sustained in an automobile accident and should be disclosed in view of plaintiff's allegations of "permanent weakness and instability," "permanent effect of pain," and "loss of enjoyment of life." Defendants assert that, although plaintiff did not allege a "loss of enjoyment of life," her alleged injuries may be related to or exacerbated by her drug and alcohol use, including foot drop, weakness, permanent pain, disability, atrophy, anxiety and mental anguish. In support of their contention, defendants rely upon and annex to their motion papers various articles about drug use and its effects, including anxiety and certain neurological conditions. Specifically, defendants rely upon a medical article from the Mayo Clinic which states that potential causes of foot drop are nerve injury or nerve damage. Defendants also rely upon a medical article from emedicine.medscape.com which asserts that peripheral neuropathy can be caused by the consumption of alcohol over a long period of time and manifests initially in the lower extremities and feet. The article further states that symptoms of peripheral neuropathy include numbness and weakness. Defendants also rely upon an article from Wikipedia which states that foot drop can be caused by an "adverse reaction to a drug or alcohol." Finally, defendants contend that the production of plaintiff's drug treatment records should enable defendants' experts to reach appropriate medical conclusions as to a possible link between the alleged injuries and plaintiff's drug abuse.

Plaintiff opposes the motion. Plaintiff contends that defendants failed to establish a link between her prior drug and alcohol use, which ceased a year prior to the accident, and her injuries. Accordingly, plaintiff contends that defendants failed to demonstrate that her records of drug treatment are material and necessary in this action. Plaintiff asserts that defendants are engaging in a fishing expedition, attempting to invade her right to privacy, and are seeking evidence of socially unacceptable behavior to present to the jury. Plaintiff further contends that defendants' reliance on the Wikipedia article is disingenuous and notes that the Mayo Clinic article does not mention drug use as a cause of drop foot. Plaintiff also contends that none of the other articles relied upon by defendants assert that drug use could cause drop foot or her other injuries. Plaintiff notes that defendant failed to annex a medical affirmation in support of their motion. Finally, plaintiff contends that there is no support for defendants' contention that her drug use had an impact on her life span, quality of life or her claimed psychological damages of anxiety and mental anguish.

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v Crowell-Collier*

Publishing Co., 21 NY2d 403, 406 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, “a party does not have the right to uncontrolled and unfettered disclosure” (*Foster*, 74 AD3d at 1140; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). The party seeking disclosure has the burden to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims (*Foster*, 74 AD3d at 1140). The court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Mironer v City of New York*, 79 AD3d 1106, 1108 [2d Dept 2010]; *Auerbach v Klein*, 30 AD3d 451, 452 [2d Dept 2006]).

It is well settled that a party waives the physician-patient privilege by affirmatively putting his or her physical or mental condition in issue (*Fox v Marshall*, 91 AD3d 710 [2d Dept 2012]; *Lombardi v Hall*, 5 AD3d 739, 740 [2d Dept 2004]). However, a party does not waive the privilege with respect to unrelated physical or mental conditions or treatment (*McLane v Damiano*, 307 AD2d 338 [2d Dept 2003]; *Cottrell v Weinstein*, 270 AD2d 449 [2d Dept 2000]; *Kohn v Fisch*, 262 AD2d 535 [2d Dept 1999]). “[A] party must provide duly executed and acknowledged written authorizations for the release of pertinent medical records under the liberal discovery provisions of the CPLR [citation omitted] when that party has waived the physician-patient privilege by affirmatively putting his or her physical or mental condition in issue” (*Cynthia B. v New Rochelle Hosp. Med. Ctr.* 60 NY2d 452, 456-457 [1983]; see CPLR 3121 [a]; *DeLouise v S.K.I. Wholesale Beer Corp.*, 79 AD3d 1092 [2d Dept 2010]). In *DeLouise* (79 AD3d at 1093), the court held that plaintiff placed her entire medical condition in controversy through the broad allegations of physical injury and mental anguish in the complaint and bill of particulars. In *Coddington v Lisk* (249 AD2d 817 [3d Dept 1998]), which is relied upon by defendants, the court held that plaintiff’s drug addiction records may lead to evidence bearing on plaintiff’s claim for personal injuries allegedly sustained in an automobile accident and should be disclosed in view of plaintiff’s allegations of “permanent weakness and instability,” “permanent effect of pain,” and “loss of enjoyment of life.” In *Steward v New York City Housing Authority* (302 AD2d 449 [2d Dept 2003]), the court held that plaintiff’s alcohol and substance abuse records should be disclosed as they may be useful in preparation for trial and lead to relevant evidence bearing on the plaintiff’s claim for damages for personal injuries.

In the present action, as in *DeLouise*, plaintiff’s broad allegations of disability, anxiety and mental anguish are sufficient to place her history of substance abuse and treatment into controversy. Moreover, although plaintiff correctly contends that defendants have failed to offer adequate proof in support of their contention that plaintiff’s alleged foot drop condition could be caused by her drug use, the medical articles¹ annexed by defendants in support of the motion are sufficient to demonstrate a correlation between drug use and certain injuries alleged by plaintiff,

¹ The court notes that it does not consider Wikipedia a reliable source for medical information insofar as the articles can be modified online by the public and is not a recognized source for “serious jurisprudential analysis” (*In re Wiesner*, 94 AD2d 167, 187 [1st Dept 2012]). Accordingly, the court has not considered the Wikipedia article submitted by defendants in support of the present motion.

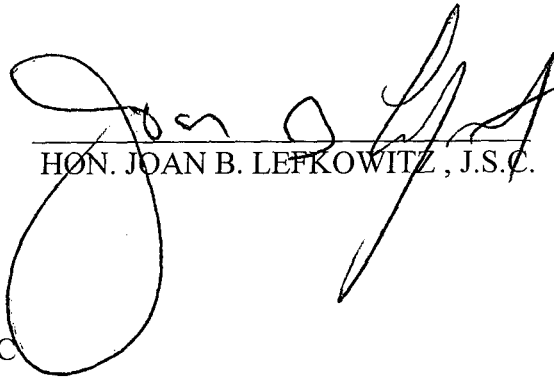
including the neurological conditions of numbness and weakness of her left ankle and foot, as well as anxiety. In view of the foregoing, defendants have established that plaintiff's records of alcohol and drug treatment and counseling may reasonably lead to evidence bearing on the plaintiff's claim for damages and may be useful in the preparation for trial.

Accordingly, it is

ORDERED that defendants' motion is granted, and plaintiff is directed to provide to defendants, on or before August 24, 2012, authorizations for any and all providers from whom she obtained drug and alcohol treatment and counseling; and it is further

ORDERED that all parties are directed to appear for a conference in the Compliance Part, Courtroom 800, on September 11, 2012 at 9:30 a.m.

Dated: White Plains, New York
August 13, 2012


HON. JOAN B. LEFKOWITZ, J.S.C.

TO:

Dominick J. Robustelli & Associates, PLLC
By Dominick J. Robustelli, Esq.
Attorneys for Plaintiff
200 Mamaroneck Ave., Ste. 500
White Plains, NY 10601
By NYSCEF

Gordon & Silber, P.C.
By Charles V. Weitman, Esq.
Attorneys for Defendants
355 Lexington Ave., 7th Floor
New York, NY 10017
By NYSCEF

cc: Compliance Part Clerk