

St. Paul's Sch. of Nursing, Inc. v Papaspiridakos

2013 NY Slip Op 33825(U)

August 12, 2013

Supreme Court, Queens County

Docket Number: 989/12

Judge: Bernice D. Siegal

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Short Form Order

NEW YORK STATE SUPREME COURT – QUEENS COUNTY
Present: HONORABLE BERNICE D. SIEGAL IAS TERM, PART 19
Justice

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St. Paul’s School of Nursing, Inc. doing business
as St. Paul’s School of Nursing, individually, and on
behalf of the students, faculty, and administration of
St Paul’s School of Nursing,

Index No.: 989/12

Plaintiff,

-against-

Nick Papaspiridakos,

Defendant.

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The following constitutes the decision and order of this court following a continued contempt hearing on the issue of whether defendant violated the Stipulation and Order by calling, by emailing, and by writing letters to St. Paul’s School of Nursing (hereinafter, “St. Paul’s”) faculty and staff, by posting comments on his public Facebook page about St. Paul’s faculty and staff, by sending Facebook friend requests to St. Paul’s faculty and staff, and by protesting and by handing out flyers outside of St. Paul’s campus.

Procedural History

On January 17, 2012, plaintiff St. Paul’s (hereinafter, “plaintiff”) commenced this action with an Emergency Order to Show Cause seeking a preliminary injunction barring defendant Nick Papaspiridakos (hereinafter, “defendant”), a former student at St. Paul’s, from entering St. Paul’s campuses or from communicating with the school’s faculty members or employees as a result of defendant’s threats and harassment to St. Paul’s faculty and staff, including his admission that he harbored thoughts about shooting several of those faculty and staff members.

On January 17, 2012, plaintiff and defendant entered into a stipulation and order (hereinafter, "Stipulation and Order") as a result of defendant's repeated threats and harassment of St. Paul's faculty, staff, and students. Paragraph 1 of the Stipulation and Order provided that defendant agreed "not to enter the leased premises of Staten Island and Queens campuses of St. Paul's School of Nursing." Paragraph 2 of the Stipulation and Order provided that defendant agreed "not to enter the floor on which the Queens leased premises are located." Paragraph 3 of the Stipulation and Order provided that defendant agreed "not to initiate communication with faculty, staff, employees[,] or students of St. Paul's School of Nursing." Paragraph 4 of the Stipulation and Order provided that defendant agreed "not to harass, annoy[,] or otherwise threaten the security of the faculty, staff, employees[,] or students of St. Paul's School of Nursing." Paragraph 5 of the Stipulation and Order provided that "defendant may communicate with faculty, staff, employees[,] or students who initiate contact with him."

On February 17, 2012, St. Paul's sent a cease and desist letter to defendant to stop defendant's continued harassment and intimidation of St. Paul's faculty and staff. On March 29, 2012, St. Paul's sent a second cease and desist letter to defendant to immediately cease and desist from any further conduct in violation of the Stipulation and Order.

Plaintiff subsequently filed with this court an Emergency Order to Show Cause for Contempt, pursuant to CPLR §5104 and Judiciary Law §§753(A) and 773, seeking an order finding defendant in contempt for his refusal and/or willful neglect to obey the Stipulation and Order; imposing a fine upon defendant in the amount of plaintiff's costs and expenses in bringing the Order to Show Cause; compelling compliance with the Stipulation and Order; requiring that Defendant not come within 100 yards of St. Paul's campuses or the homes of current or former St. Paul's faculty and staff members; and requiring that Defendant not initiate

communications with any relative, neighbor, friend, associate or acquaintance of any current or former St. Paul's faculty or staff members.

Pursuant to the Order to Show Cause, this court conducted a contempt hearing.

Contentions

Plaintiff contends that defendant is in contempt pursuant to CPLR §5104 as a result of his refusal and/or willful neglect to obey the Stipulation and Order. Plaintiff further contends that defendant violated the Stipulation and Order through the following conduct: calling Carol Zajac, Campus President of St. Paul's, at her office at St. Paul's on February 8, 2012; sending an email to Dr. Vilma Greene, a General Education Instructor at St. Paul's, on February 9, 2012; sending friend requests on Facebook to Agnes Quinn, Director of Nursing at St. Paul's, and Donna Darcy, a Clinical Coordinator at St. Paul's, on February 9, 2012; sending a friend request on Facebook to Debra Schlesinger-Weil, a nursing instructor at St. Paul's, on February 14, 2012; calling Lynn Salvage ("Salvage"), an employee of St. Paul's, on her cell phone on February 15, 2012; harassing, annoying, and threatening the faculty, staff, and employees of St. Paul's through defendant's daily Facebook postings; harassing, annoying, and threatening the faculty, staff, employees, and students of St. Paul's by passing out materials containing unattributed threats of shootings at St. Paul's; protesting outside St. Paul's Queens campus on March 16, 2012; threatening to distribute flyers and to protest at Lynn Salvage's family home and the train station her elderly father uses on March 27, 2012 via Facebook post; recommending a link to an article regarding a former nursing student's shooting and killing of students and staff members at a nursing school in Oakland on his Facebook page on April 4, 2012; posting harassing comments attacking Salvage's family on Facebook on May 23, 2012; posting threatening comments attacking St. Paul's staff members on Facebook on June 26, 2012; protesting and handing out

flyers in front of St. Paul's campus on August 30, 2012 and September 13, 2012; calling and sending a letter to the America Israel Cultural Foundation (hereinafter, "AICF") where Salvage sits on the Board; sending a letter to the home of Agnes Quinn in October 2012; and sending a harassing letter to Agnes Quinn on November 29, 2012 that was part of a mass mailing where her next door neighbor received the letter as well. Papaspiridakos later admitted at the hearing to mailing the letters and only contends that the contents of the letter are not harassing. In addition, testimony was adduced that defendant's action caused Quinn and Savage stress and fear because defendant knew where both Quinn and Savage lived and the postings on face book appeared threatening, to wit "Cards are on the table, bullets in the gun."

Defendant contends that he abided with the Stipulation and Order. Defendant contends that he never went inside the building of St. Paul's violating the Stipulation and Order and that he had a table set up outside of the building for students to take flyers to inform the students about the school and its faculty, not to harass the students or St. Paul's staff. Defendant also contends that he was not harassing Agnes Quinn by his actions. Defendant further contends that his Facebook posts were never sent to any individual at St. Paul's, but instead, were opinions posted on his public page. Defendant contends that he called Carol Zajac at her office at St. Paul's on February 8, 2012 to inquire as to whether Salvage and Agnes Quinn were fired and that Carol Zajac could not comment on it; and that he called Salvage on her cell phone to clarify that she had been fired and she confirmed that she had been and did not care to talk about it.

Plaintiff's Emergency Order to Show Cause for Contempt is granted in part and denied in part and this court modifies the terms of the Stipulation and Order as more fully set forth below.

Discussion

The issue before this court is whether defendant violated the terms agreed upon between the parties in the Stipulation and Order. CPLR §5104 provides, in pertinent part, that:

“Any interlocutory or final judgment or order, or any part thereof, not enforceable under either article fifty-two or section 5102 may be enforced by serving a certified copy of the judgment or order upon the party or other person required thereby or by law to obey it and, if he refuses or willfully neglects to obey it, by punishing him for a contempt of the court.”

Judiciary Law §753(A)(3) provides, in pertinent part, that:

“A court or record has power to punish, by fine and imprisonment, for either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced, in any of the following cases: . . . (3) for any other disobediences to a lawful mandate of the court.”

“A motion to punish a party for civil contempt is addressed to the sound discretion of the court.”

(*Hughes v Kameneva*, 96 AD3d 845, 846 [2d Dept 2012]; see also *Matter of Philie v Singer*, 79 AD3d 1041, 1042 [2d Dept 2010]; *Chambers v Old Stone Hill Rd. Assoc.*, 66 AD3d 944, 946 [2d Dept 2009].) The party seeking to hold another in civil contempt bears the burden of proving the contempt by clear and convincing evidence. (See *Hughes*, 96 AD3d at 846; *Town Bd. of Town of Southampton v R.K.N. Realty, LLC*, 91 AD3d 628, 629 [2d Dept 2012]; *Matter of Philie*, 79 AD3d at 1042; *Chambers*, 66 AD3d at 946; *Rienzi v Rienzi*, 23 AD3d 447, 448 [2d Dept 2005].)

“To sustain a finding of civil contempt, a court must find that the alleged contemnor violated a lawful order which clearly expressed an unequivocal mandate, and that, as a result of the violation, a right or remedy of a party to the litigation was prejudiced.” (*Hughes*, 96 AD3d at 846, quoting *Matter of Philie*, 79 AD3d at 1042; see also *Town Bd. of Town of Southampton*, 91 AD3d at 629; *Casavecchia v Mizrahi*, 57 AD3d 702, 703 [2d Dept 2008].) Deliberate or willful disobedience is not required, instead, “the mere act of disobedience, regardless of its motive, is

sufficient if such disobedience defeats, impairs, impedes, or prejudices the rights or remedies of a party.” (*Philie*, 79 AD3d at 1042; *see also Bais Yoel Ohel Feige v Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc.*, 78 AD3d 626, 626 [2d Dept 2010]; *Casavecchia*, 57 AD3d at 703.) In addition, the charge party must have knowledge of the court’s order. (*See Matter of Dept. of Envtl. Protection of City of New York v Dept. of Envtl. Conservation of State of New York*, 70 NY2d 233, 240 [1987]; *Town Bd. of Town of Southampton*, 91 AD3d at 629; *Gerelli Ins. Agency, Inc. v Gerelli*, 23 AD3d 341, 341 [2d Dept 2005].)

Here, plaintiff and defendant agreed on terms defendant was to follow in the Stipulation and Order, dated January 17, 2012. A stipulation may be considered a court order. (*See Town Bd. of Town of Southampton*, 91 AD3d at 629; *Fuerst v Fuerst*, 131 AD2d 426, 427 [2d Dept 1987].) In addition, defendant had knowledge of the Stipulation and Order. The issue remains as to which of defendant’s numerous acts violated the Stipulation and Order.

Defendant did not violate paragraph 1 of the Stipulation and Order, which stated that defendant agreed to not enter leased premises of Staten Island and Queens campuses of St. Paul’s. Here, defendant only protested outside of the building and set up a table outside of the front of the building to either hand out flyers or for students to take these flyers. Defendant never entered the leased premises of either campus of St. Paul’s. Despite plaintiff’s contention that these activities violated the Stipulation and Order, defendant never entered the leased premises and did not violate paragraph 1 of the Stipulation and Order.

Defendant did violate paragraph 3 of the Stipulation and Order, which stated that defendant agreed not to initiate communication with St. Paul’s faculty, staff, employees, or students. Here, defendant called Carol Zajac, the Campus President, at her office; called Salvage on her cell phone, called and sent a letter to AICF, where Salvage is on the board; and sent a

letter to the home of Agnes Quinn. Even though defendant clarified his reasoning that he called Carol Zajac to inquiry as to whether Salvage and Agnes Quinn had been fired and that he called Salvage to find out whether she was fired, he still initiated communication with St. Paul's current and former employees. Thus, defendant violated paragraph 3 of the Stipulation and Order with this conduct, and this conduct prejudiced plaintiff's right or remedy.

Furthermore, defendant sent friend requests to Agnes Quinn, Donna Darcy, and Debra Schlesinger-Weil. Agnes Quinn testified at the continued contempt hearing that, even though she accepted his friend request by accident, within two hours she unfriended him. The question becomes whether friend requests initiate communication with St. Paul's faculty, staff, employees, or students. "Social media web sites, such as Facebook . . . , exist to allow individuals to interact with 'real world' friends, relatives[,] and those individuals sharing common interests that may be as close as your own town, or as far away as a distant continent." (*Fawcett v Altieri*, 2013 WL 150247, * 2 [Sup Ct Richmond County 2013].) Since Facebook serves to allow interaction through communication between individuals, sending Facebook requests to become friends with St. Paul's faculty, staff, employees, or students would constitute as initiating communication. Thus, by doing so, defendant violated paragraph 3 of the Stipulation and Order, and this conduct prejudiced plaintiff's right or remedy.

In addition, there is a question as to whether defendant initiated contact with St. Paul's students when he handed out flyers to them outside the front building. Defendant's testimony at the continued contempt hearing contradicts itself as to whether he actually handed out flyers to students or these flyers were at a table outside the building for the students to take. Defendant also testified that the flyers consisted of student experiences with comments made by others, and that he had been given this packet out for two years to inform the students about St. Paul's.

Whether he violated paragraph 3 of the Stipulation and Order by handing out flyers cannot be determined since there is a question of material fact as to whether he initiated contact with the students and then handed interested students the flyers or whether the students initiated the contact by walking up to the table to take flyers.

The next question before this court is whether defendant's posts on his public Facebook page harassed St. Paul's faculty, staff, employees, or students, thus, violating paragraph 4 of the Stipulation and Order, which stated that defendant agreed not to harass, annoy, or otherwise threaten security of St. Paul's faculty, staff, employees, or students. An individual has a constitutional right to post comments on its public Facebook page; however, "there are still consequences for . . . [his/her] public posts. What . . . [he/she] give[s] to the public belongs to the public." (*People v Harris*, 36 Misc 3d 868, 878 [NYC Crim Ct New York County 2012].) On one hand, both Agnes Quinn and Salvage testified at the continued contempt hearing that defendant's continuous comments harassed, terrified, and upsetted them. On the other hand, defendant admitted at the continued contempt hearing that he made these posts so that St. Paul's involved staff would read them, but his intention was not to harass them. Black's Law dictionary defines harassment as "words, conduct, or action (usu. repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose" (Black's Law Dictionary [9th ed. 2009, harassment.]) Since these Facebook posts were made to the public on defendant's public Facebook page and were not posted on anyone's specific Facebook page from St. Paul's faculty, staff, employees, or students, these Facebook posts were not directed at a specific faculty, staff, employee, or student at St. Paul's and did not constitute as harassment in violation of paragraph 4 of the Stipulation and Order.

“Civil contempt fines must be ‘remedial in nature and effect’ and awards should be formulated ‘not to punish an offender, but solely to compensate or indemnify private complainants’.” (*Town Bd. of Town of Southampton*, 91 AD3d at 630–31, quoting *State of New York v Unique Ideas*, 44 NY2d 345, 349 [1978]; see also *Hinkson v Daughtry-Hinkson*, 31 AD3d 608, 609 [2d Dept 2006]; *Matter of Dept. of Hous. Preserv. & Dev. of the City of New York v DEKA Realty Corp.*, 208 AD2d 37, 43 [2d Dept 1995].) Under Judiciary Law §773, fines may be awarded in a civil contempt proceeding where “actual damage has resulted from the defendants’ contemptuous acts” or one where “there may be prejudice to a complainant’s rights but it is not shown that such an actual loss or injury has been caused.” (*Town Bd. of Town of Southampton*, 91 AD3d at 631; see also *Unique Ideas*, 44 NY2d at 349; *Matter of Dept. of Hous. Preserv. & Dev. of the City of New York*, 208 AD2d at 43.) Here, no actual damages have been demonstrated; and, “[i]n an action to punish for civil contempt, where, . . . no actual damages have been demonstrated, the court may impose upon the offending party the other party’s reasonable costs and expenses, including attorney’s fees’.” (*Glennon v Mayo*, 174 AD2d 600, 601 [2d Dept 1991]; see also *Manes v Manes*, 248 AD2d 516, 517 [2d Dept 1998]; *Gordon v Janover*, 121 AD2d 599, 600 [2d Dept 1986].)

St. Paul’s must submit admissible proof, together with the Settled Order, detailing the legal fees and expenses incurred by plaintiff in the Civil Contempt proceeding.

Criminal Contempt

Under N.Y. Judiciary Law § 750(A)(3), a court can hold an individual in criminal contempt if an individual willfully disobeys a court mandate. Judiciary Law § 751 allows for a maximum punishment of a fine not exceeding one thousand dollars or imprisonment not exceeding 30 days. The statute allows for longer punishments for certain offenses, none of which

are applicable to the case at issue. In contrast to Civil Contempt, if the punishment is for criminal contempt, the sentence is punitive. *Id.* “A key distinguishing element between civil and criminal contempt is the degree of willfulness of the subject conduct. To be found guilty of criminal contempt, the contemnor usually must be shown to have violated the order with a higher degree of willfulness than is required in a civil contempt proceeding” (*Town of Southampton v. R.K.B. Realty, LLC*, at 629.) Valid reasons for holding a party in criminal contempt include “vindicating the authority of the court,” “protecting the integrity of the judicial process,” and “compelling respect of the court’s mandates.” (See *Matter of Rubackin v. Rubackin*, 62 A.D.3d 11 [2nd Dept. 2009].) Proof of guilt of criminal contempt must be beyond a reasonable doubt. (See *Town of Southampton v. R.K.B. Realty, LLC*, at 629; *Muraca v. Meyerowitz*, 49 A.D.3d 697 [2nd Dept 2008].) No showing of prejudice to the rights of a party to the litigation is needed “since the right of the private parties to the litigation is not the controlling factor.” (See *Matter of Department of Envntl Protection of City of N.Y.*, 79 N.Y.2d at 240.) “The element which escalates a contempt to criminal status is the level of willfulness associated with the conduct.” (See *McCain v. Dinkins*, 84 N.Y.2d 216, 226 [1994].) “Punishment for a criminal contempt is a drastic remedy for willful wrong.” (*People v. De Feo*, 308 N.Y. 595 [1955].)

At the hearing, it was adduced that Papaspiridakos harassed and annoyed Quinn via letters sent to her home and to her neighbors in direct violation of the January 17, 2012 stipulation. Accordingly, this court finds Papaspiridakos’ actions to be willful and it is also this court’s opinion that only a finding of criminal contempt will compel respect for the court and protect the integrity of the judicial process.

Accordingly, the court imposes a fine of \$1,000 for Papaspiridakos’ various violations of the January 17, 2012 So-Ordered Stipulation. (Judiciary Law 750(A)(3); (See *Town of*

Southampton v. R.K.B. Realty, LLC, 91 A.D.3d 628 [2nd Dept 2012][holding that “[u]nder the circumstances of this case, considering the multiple acts of disobedience and the purpose of criminal contempt, a \$1,000 fine assessed ...for each of the five separate acts of disobedience, was appropriate to vindicate the Supreme Court's authority].) Failure to pay the fine may result in imprisonment of up to thirty days. (Judiciary Law §751(1).)Failure to pay the fine may result in imprisonment. (See *Hayden v. Helfand*, 28 A.D.2d 567 [2nd Dept 1967].)

St. Paul's request costs and expenses in a proceeding to punish for a criminal contempt is denied. (See *People ex rel. Stearns v. Marr*, 19 Bedell 463 [1905].)

St. Paul's Various Requests for Additional Relief

St. Paul's request that the court require that Papaspiridakos “not initiate communications with any relative, neighbor, friend, associate or acquaintance of any current or former St. Paul's faculty and staff member” is denied as moot as the January 17, 2012, So-Ordered Stipulation is still in effect, however, the Order of this Court is modified during the pendency of this action as outlined below.

St. Paul's request for order requiring Papaspiridakos to not come within 100 yards of the St. Paul's campuses or homes of current or former St. Paul's faculty and staff members is granted.

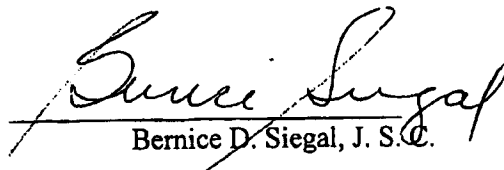
However, St. Paul's request for an order compelling Papaspiridakos to comply with the “Order of Protection” is denied as the January 17, 2012, So-Ordered Stipulation was not an “Order of Protection.” Furthermore, Papaspiridakos is already bound by the terms of the agreement as demonstrated by this court's determination that he is in criminal contempt for violating said Order.

Conclusion

For the reasons set forth above, St. Paul's motion is granted in part and denied in part.

Settle Order.

Dated: August 12, 2013


Bernice D. Siegal, J. S.C.