Matter of Rademacher v Schneiderman
2015 NY Slip Op 31636(U)
September 1, 2015
Supreme Court, Wyoming County
Docket Number: 47824
Judge: Michael M. Mohun
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At a term of the Supreme Court held in and for the County of Wyoming, at the Courthouse in Warsaw, New York, on the 1st day of September, 2015.

PRESENT: **HONORABLE MICHAEL M. MOHUN**
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

In the Matter of the Application of
MATTHEW RADEMACHER,

Petitioner

v.

DECISION AND ORDER
Index No. 47824

ERIC T. SCHNEIDERMAN, as Attorney General of the State of New York,
Respondent

By petition pursuant to Article 78 of the CPLR, verified on June 16, 2015, Matthew Rademacher, a former employee of the New York State Department of Corrections and Community Supervision [hereinafter, "DOCCS"], seeks a judgment nullifying the May 18, 2015, determination of the respondent which denied him continued payments, pursuant to Public Officers Law §17, for the cost of his defense in a civil suit brought against him by a prison inmate. Upon the answer and verified return, dated July 16, 2015, submitted by respondent's attorney, George Michael Zimmermann, Assistant Attorney General, and with the supporting affirmation of Megan

Levine, Deputy Attorney General, dated July 16, 2015, the respondent asks that the May 18, 2015, determination be confirmed and the petition dismissed. By notice of motion, also dated July 16, 2015, supported by the affidavit of George Michael Zimmerman, Esq., sworn to on July 15, 2015, together with the annexed exhibits and the accompanying memorandum of law, the respondent now moves pursuant to CPLR §510(1) for an order transferring venue of this matter to the Supreme Court for the County of Albany on the grounds that venue is not properly placed in Wyoming County.

NOW, after reading the above-mentioned papers, and after hearing the arguments of counsel for the parties, upon due deliberation, the following decision is rendered upon the respondent's motion.

The petitioner is a former corrections officer who worked at the Attica Correctional Facility. In a complaint dated March 21, 2012, George Williams, a prison inmate who had been incarcerated at Attica, named the petitioner and three other corrections officers – Keith Swack, Sean Warner and Erik Hibsch – as defendants in a civil action for damages brought pursuant to 42 U.S.C. §1983 and Correction Law §24. Williams alleged in the complaint that the four officers assaulted him without justification on August 9, 2011. The Court notes that paragraph "7" of the complaint states "[t]hat at all times herein mentioned, defendants were acting within the course and scope of their employment with DOCCS."

The August 9, 2011, incident also gave rise to criminal charges

against the officers. The petitioner, Warner and Swack were each charged with Gang Assault in the 1st degree, Tampering with Physical Evidence and Official Misconduct. Warner was also charged with two additional counts of Offering a False Instrument for Filing in the 1st degree. Ultimately, on March 2, 2015, the three officers pleaded guilty to one count each of Official Misconduct to satisfy the indictment.

The respondent initially agreed to pay for the cost of each officer's defense in the civil case in accordance with the provisions of Public Officers Law §17. After the guilty pleas, however, the respondent stopped doing so. By a letter dated May 18, 2015, from Megan Levine, Esq., the respondent notified the petitioner's attorney in the civil case that the petitioner was no longer considered to be entitled to have his defense provided for by the state. Ms. Levine cited the guilty plea in the criminal case as the basis for the changed determination, asserting that, by pleading guilty, the petitioner "admitted to a knowing commitment [sic] of an act outside the scope of his employment." She stated that because "[t]he nature of the conduct to which Mr. Rademacher pled [. . .] cannot be said to be within the scope of his employment," the state no longer had any obligation under Public Officers Law §17(2) to continue to pay for the defense.

Seeking a judgment reversing this determination, the petitioner commenced this special proceeding on June 18, 2015. In the instant

motion, the respondent contends that venue for the special proceeding is not properly placed in Wyoming County under CPLR §506(b). On the grounds that venue would be appropriately placed in Albany County, the respondent asks for an order transferring the matter to the Albany County Supreme Court.

A special proceeding against a body or officer may be commenced "in any county within the judicial district where the respondent made the determination complained of or refused to perform the duty specifically enjoined upon him by law, or where the proceedings were brought or taken in the course of which the matter sought to be restrained originated, or where the material events otherwise took place, or where the principal office of the respondent is located" (CPLR §506[b]). The respondent contends that the matter should be moved to Albany County because that is where the respondent's principle office is, where the determination was made and where "all material events" occurred. In opposition to the motion, the petitioner argues that Wyoming County is, in fact, "where the material events otherwise took place," and that venue is proper here on that basis.

Upon consideration, the Court finds that venue is not authorized in Wyoming County under the statute. In the context of CPLR §506(b), the phrase "where the material events otherwise took place" is construed to mean "the county wherein occurred the underlying events which gave rise to

the official action complained of" (Daley v. the Board of Estimate of the City of New York, 258 A.D. 165, 166 [2nd Dept., 1939]; Matter of Brothers of Mercy Nursing and Rehabilitation Center v. De Buono, 237 A.D.2d 907, 907–908 [4th Dept., 1997]). Here, however, the "official action" of which the petitioner complains is "the same as the determination of which [he] complains" (Matter of Riverkeeper, Inc., et al v. New York State Department of Environmental Conservation, 972 N.Y.S.2d 146, 2013 N.Y. Slip Op. 50834(U) [Westchester Co. Sup. Ct., May 21, 2013]). As such, "the relevant material event was the decision-making process leading to the determination under review" (Matter of Vigilante v. Dennison, 36 A.D.3d 620, 622 [2nd Dept., 2007]). Notably, no separate fact finding process occurred in Wyoming County which might justify placing venue here. On the contrary, since the complaint in this case "definitively allege[s]" that the officers were acting within the scope of their employment, the Attorney General was not authorized by the statute to look beyond the pleadings to make any factual inquiry at all (Matter of Sharrow v. State, 216 A.D.2d 844, 845-846 [3rd Dept., 1995], leave to appeal denied by 87 N.Y.2d 801 [1995]). Given this, and notwithstanding Ms. Levine's statement that the guilty plea in Wyoming County provided the basis for the Attorney General's decision, the Court must conclude that the plea did not constitute a "material event" for venue purposes. Thus, the Court agrees with the respondent that all relevant material events occurred in Albany.

NOW, THEREFORE, it is hereby

ORDERED that the respondent's motion pursuant to CPLR §510(1) is granted; and it is further

ORDERED that this matter be heard in Albany County and that the clerk of the Supreme Court of Wyoming County be and hereby is directed to transmit all papers on file in this action to the clerk of the Supreme Court of the County of Albany in accordance with CPLR §511(d).

DATED: September 1, 2015
Warsaw, New York

GRANTED
SEP -1 2015
CHIEF CLERK
WYOMING COUNTY SUPREME COURT

HON. MICHAEL M. MOHUN
Acting Justice of the Supreme Court