

Pardo-Payne v County of Nassau

2010 NY Slip Op 33533(U)

December 14, 2010

Supreme Court, Nassau County

Docket Number: 18753/2007

Judge: Michele M. Woodard

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SCAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
CAROLYN PARDO-PAYNE,

Plaintiff,

-against-

COUNTY OF NASSAU, NASSAU COUNTY POLICE
DEPARTMENT, CHRISTOPHER T. McKEON and
REGINA PARDO-DAVIES,

Defendants.

MICHELE M. WOODARD,
J.S.C.
TRIAL/IAS Part 12
Index No. : 18753/2007
Motion. Seq. No.: 01, 02 & 03

DECISION AND ORDER

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
-----X

CHRISTOPHER McKEON and KATHERINE McKEON,

Plaintiff,

-against-

REGINA PARDO-DAVIES,

Defendant.

Action No.: 2
Index # 21504/2009

-----X
Papers read on this Decision:

Plaintiff's Notice of Motion	01
McKeons' Notice of Cross Motion	02
County of Nassau's Notice of Cross-Motion	03
Defendant Pardo-Davies' Opposition	xx
McKeon's Reply to Cross Motion	xx
Defendant County of Nassau's Reply	xx

In motion sequence number one (1) as a Defendant in action number one (1) under Index No. 018753/07, Pardo-Davies moves for an order pursuant to CPLR §3124, compelling County of Nassau, Nassau County Police Department and Christopher T. McKeon collectively the ("County") to comply with discovery demands.

In motion sequence number two (2) Christopher and Katherine McKeon, cross-move for an order directing Defendant Regina Pardo-Davies (“Pardo-Davies”) to comply with their Notice for Discovery and Inspection, dated June 4, 2010

In motion sequence number three (3) the County of Nassau s/h/i/a Nassau County Police Department and Officer Christopher McKeon cross-move to compel Pardo-Davies to comply with outstanding discovery requests.

This matter is before the court as a result of a motor vehicle accident which occurred on June 24, 2007 at approximately 1:15 a.m. at the intersection of Hungry Harbor Road and Rosedale Road in North Woodmere, New York. Officer McKeon was responding to an emergency call that a female was grabbed on the street and dragged into a car. Upon receiving the call, Officer McKeon drove without lights and sirens eastbound on Hungry Harbor Road through a residential area toward Rosedale Road. It was at this point that Officer McKeon’s vehicle and Regina Pardo-Davies vehicle collided. Carolyn Pardo-Payne (“Pardo Payne”) was a passenger in the Pardo-Davies vehicle. A field breathalyser test on Pardo-Davies was conducted at the scene which revealed her blood alcohol level to be .15. Pardo-Davies was arrested at the scene of the accident for Driving While Intoxicated. Pardo-Payne commenced a personal injury action against Pardo-Davies, the County and Officer McKeon in 2007. Officer McKeon and his wife also brought an action against Pardo-Davies in 2009.

Pardo-Davies’ criminal case resulted in an acquittal and in an automatic sealing of the proceedings. Pardo-Davies had never submitted to a further blood alcohol test by the arresting officers, and the initial field breathalyzer test was held not admissible in the criminal trial.

On or about June 13, 2008 Pardo-Davies served a FOIA ("FOIA") request upon the Nassau County Police Department Legal Bureau. The County denied the request on June 18, 2008 indicating that disclosure at that time might interfere with the criminal proceeding and that the request should be renewed after the full adjudication of the criminal proceeding. On July 29, 2009, Pardo-Davies, pursuant to F.O.I.A., requested the information again and the County denied the request. Pardo-Davies served a Notice for Discovery and Inspection, dated June 26, 2008, on the County requesting the Police Report from the incident that Officer McKeon was responding to when the subject accident occurred. She sought the Central Complaint Report to which Officer McKeon was responding; any 911 calls and on air communications made relative to the emergency call that Officer McKeon was responding to or the subject accident. Pardo-Davies argues the nature of the underlying call Officer McKeon was responding to and whether it was an emergency is critical to the defense of this case.

On June 4, 2010 the McKeons served a Notice of Discovery and Inspection on Pardo-Davies seeking duly executed HIPAA authorizations by Pardo-Davies permitting the McKeon's to obtain the complete Emergency Room record and hospital chart relative to her treatment at Nassau University Medical Center on the day of the accident and an authorization from Pardo-Davies unsealing the criminal proceedings and permitting them to obtain certified copies of all proceedings, testimonies and other evidence related to her arrest. On June 30, 2010, the County served a Notice for Discovery and Inspection on Pardo-Davies seeking names and addresses of witnesses to the accident and a duly executed authorization unsealing the criminal proceedings and permitting the County to obtain all certified copies of all proceedings, testimonies and other evidence. The County argues that any blood work obtained by the Emergency room staff is relevant

in pursuing this matter. According to the County, the discovery should be provided to establish the mental and physical condition of Pardo-Davies which is a material issue in this matter.

Pardo-Davies opposes both applications concerning the unsealing of the criminal proceeding arguing that by receiving an acquittal in the criminal proceeding the issue concerning the impairment of her ability to operate a motor vehicle has been resolved. She further argues that she was arrested at the scene of the accident on charges which were unsubstantiated and were an attempt to use her as a scapegoat.

The County opposes Pardo-Davies's application arguing that they have properly responded to the plaintiff's discovery request by either providing the requested information or by providing a statement indicating that the County reserves its rights to produce discoverable material up to and including the trial of the matter. Regarding the 911 tapes, the County argues that they cannot be produced pursuant to NYS County Law Section 308(4) The County further claims compliance with the Plaintiff's request for the "Central Complaint Report" arguing that it does not have a "Central Complaint Report" and all discoverable documents and reports in its possession regarding the subject motor vehicle accident have been provided. According to the County, the remaining documents are privileged, confidential and not discoverable

The McKeons have submitted a Reply to the opposition to their cross- motion arguing that the criminal proceedings are very relevant to this civil proceeding.

The filing of a cross-claim by Pardo-Davies has put her conduct at issue. See *Rodriguez v. Ford Motor Company* 301 AD 2d 372 (1st Dept. 2003).

CPLR §3101(a) provides that there shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action, regardless of the burden of proof (see *Allen v.*

Cromwell-Collier Pub. Co., 21 NY 2d 403, [1968]; see also *Spectrum Systems International Corporation v. Chemical Bank*, 78 NY 2d 371[1991]; *Quevedo v. Eichner*, 29 AD3d 554[2d Dept. 1999]). The Court of Appeals in *Allen*, supra, held that [t]he words material and necessary' are ... 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” (*Id*; see also *Andon v. 302-304 Mott Street Assocs.*, 94 NY 2d 740, [2007]; *Spectrum Systems International Corporation v. Chemical Bank*, supra; *Parise v. Good Samaritan Hosp.*, 36 AD3d 678 [2d Dept. 2007]). This statute embodies the policy determination that liberal discovery encourages fair and effective resolution of disputes on the merits, minimizing the possibility for ambush and unfair surprise (*Spectrum Systems International Corporation v. Chemical Bank*, supra citing 3A Weinstein-Korn-Miller, N.Y. Civ. Prac. § § 3101.01-3101.03).

Civil Rights Law §50-a(1) exempts from disclosure personnel records of police officers without the express written consent of the subject officer or a lawful court order. Prior to issuing an order for an in camera review of an officer's personnel records, the court must give “interested parties the opportunity to be heard” and the inspection may be conducted only upon “a clear showing of facts sufficient to warrant the judge to request records for review Civil Rights Law §50-a[2]). The initial burden, therefore, is on the party seeking disclosure to demonstrate “in good faith, ‘some factual predicate’ warranting the intrusion into the personnel records of” the officer (*Taran v. State of New York*, 140 AD2d 429[1988]; see also *People v. Gissendanner*, 48 NY 2d 543 [1979]).

Information regarding the incident to which Officer McKeon was responding to is very

relevant to the matter before this Court. As such, all three motions are *granted*.

ORDERED, that the County shall provide any and all recordings of the on-air communication between Officer McKeon and the Communications Bureau relative to his assignment and response to the accident to which he was responding. It is further

ORDERED, that the County shall provide the recording of any and all 911 calls made in connection with the incident that Officer Mckeon was responding to and the accident in which Officer McKeon was involved within 14 days. It is further

ORDERED, that the records relating to the criminal proceeding of *People v. Pardo- Davies* are to be unsealed and provided to the opposing sides within 14 days of this decision. It is further

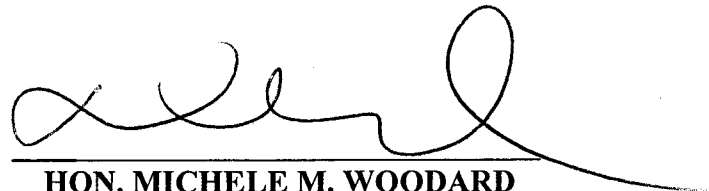
ORDERED, that Regina Pardo-Davies shall execute authorizations for her medical/hospital records from June 24, 2007 within 14 days of this decision. It is further

ORDERED, that the parties are directed to appear on January 6, 2011 at 10:00 a.m. for a Certification Conference.

This constitutes the **DECISION** and **ORDER** of this Court.

DATED: December 14, 2010
Mineola, N.Y. 11501

ENTER:



HON. MICHELE M. WOODARD
J.S.C.

F:\DECISION - DISCOVERY\pardo payne.wpd

ENTERED

DEC 16 2010

NASSAU COUNTY
COUNTY CLERK'S OFFICE