State of New York
Court of Appeals

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To be argued Wednesday, October 16, 2019

No. 81 Haar v Nationwide Mutual Fire Insurance Company

Dr. Robert D. Haar, an orthopededic surgeon, submitted claims to Nationwide Mutual Fire Insurance Company in 2012 seeking payment for his medical treatment of patients injured in accidents involving vehicles insured by Nationwide. The insurer denied one claim in full based on a Peer Review Report which found there was "no cause and effect relationship" between the injuries treated and the alleged accident. Nationwide partially denied three other claims on the ground that the amounts billed exceeded the limits of the No Fault fee schedule. Nationwide also filed a complaint with the New York State Office of Professional Medical Conduct (OPMC) about Haar's conduct involving all four claims. The OPMC notified Haar in 2017 that it had concluded its investigation and would take no disciplinary action against him.

Haar then filed this suit against Nationwide seeking damages under Public Health Law § 230(11)(b) for allegedly filing false complaints in bad faith to the OPMC. Section 230(11)(b) states, "Any person, organization, institution, insurance company, osteopathic or medical society who reports or provides information to the [OPMC] in good faith, and without malice shall not be subject to an action for civil damages or other relief as the result of such report."

U.S. District Court dismissed Haar's claim, finding that section 230(11)(b) does not create a private right of action to recover for bad faith or malicious complaints to the OPMC. The court said that, "for the reasons stated in Lesesne v Brimecome (918 F Supp 2d 221)" and the Appellate Division, Second Department's decision in Elkoulily v NYS Catholic Healthplan, Inc. (153 AD3d 768 [2017]), it "agrees that the New York Court of Appeals, were it faced with the question, would hold that this statute does not create a private right of action."

The U.S. Court of Appeals for the Second Circuit observed that the Appellate Division, First Department reached the opposite conclusion in Foong v Empire Blue Cross & Blue Shield (305 AD2d 330 [2003]), which held that a "plaintiff has an implied right of action under Public Health Law § 230(11)(b)." The Second Circuit is asking this Court to resolve the issue in a certified question: "Does the New York Public Health Law Section 230(11)(b) create a private right of action for bad faith and malicious reporting to the Office of Professional Medical Conduct?"

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State of New York
Court of Appeals

To be argued Wednesday, October 16, 2019

No. 82 Matter of Walsh v New York State Comptroller

Patricia Walsh was a Nassau County correction officer in March 2012, when she and another officer were assigned to pick up an unruly female inmate at Hempstead District Court and bring her back to the county jail. They handcuffed the inmate, who appeared to be intoxicated by alcohol or drugs and needed assistance climbing up the two steps into the back of the transport van. When they arrived at the jail and directed the inmate to step out of the van, she tripped and fell forward onto Walsh, who tried to break her fall. Walsh was knocked to the ground, suffering a torn rotator cuff and neck injury with required surgery.

Walsh applied for performance of duty disability retirement benefits under Retirement and Social Security Law § 607-c, which provides benefits for correction officers who suffer disabling injuries "as the natural and proximate result of any act of any inmate." Her application was denied on the ground that her disability "was not the result of an act of any inmate."

The State Comptroller accepted the determination and denied the application for benefits, saying, "The courts have ruled the statute is not to be construed to require demonstration of 'an intentional overt act of an inmate,'" but it does "require demonstration of 'some "affirmative act on the part of the inmate...." The Comptroller concluded that "the involuntary nature of the inmate's fall ... precluded consideration of the event as an act of an inmate."

The Appellate Division, Third Department confirmed the decision to deny benefits. "The phrase 'any act of any inmate' is not statutorily defined...," it said, "but we have interpreted this language to require a showing that the claimed injuries ... were 'caused by some affirmative act on the part of the inmate'.... An 'affirmative act' need not be intentionally aimed at the officer..., but does need to be volitional or disobedient in a manner that proximately causes his or her injury...." It said Walsh's "injuries did not ... 'occur contemporaneously with, and flow[] directly, naturally and proximately from, ... [any] disobedient and affirmative act' on the part of the inmate.... Indeed, by all accounts, the inmate in question could barely walk or stand unassisted..., and the hearing testimony reflects that she simply lost her footing and fell...."

Walsh argues that "the plain language of the statute applies to injuries caused by "*any* act of *any* inmate'..., and the recognized rules of statutory construction in New York hold that general language such as 'any' must be construed broadly and given its full meaning.... Where a correction officer's response to an inmate's act – in this case, attempting to exit a high-risk van – forces her to risk disabling injury as a matter of duty, then she should be protected by the statute when such risk comes to pass." She says, "Neither the statutory text ... nor anything in the legislative history supports a judge-made limitation of 'any act of any inmate' to only 'volitional or disobedient' acts," and therefore, when "an intoxicated inmate performs an act that causes disabling injuries to a correction officer, such act is an 'act of an inmate' within the meaning of [section] 607-c without needing to also be 'volitional or disobedient.'"

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State of New York
Court of Appeals

To be argued Wednesday, October 16, 2019

No. 83 Town of Delaware v Leifer

Ian Leifer owns 68 rural acres in the Town of Delaware, Sullivan County, and in August 2014 he began holding an annual three-day outdoor music festival called "The Camping Trip," which offered live music, food vendors, and camping and was attended by several hundred people. The festival was focused on observance of Shabbat and no musical performances were scheduled during the Jewish Sabbath itself, which runs from sunset Friday to sunset Saturday. The property is located in a "rural district" under the Town's zoning code, which prohibits theaters in rural districts. The zoning code defines 'theater" as: "Any building or room or outdoor facility for the presentation of plays, films, other dramatic performances, or music." Town officials advised Leifer in 2016 that the festival violated the prohibition against theaters in the area and he would need a use variance. When he did not seek a variance, the Town brought this action for a permanent injunction barring him from holding such festivals on his land.

Supreme Court granted the Town's motion for summary judgment and permanently enjoined Leifer for holding the festivals, rejecting his argument that the zoning restriction was unconstitutional. It allowed Leifer to pursue "uses consistent with the single family residence situate on the Premises."

The Appellate Division, Third Department affirmed, saying the theater restriction is consistent with the First Amendment because it "does not target specific speech or ideas and instead regulates the time, place and manner in which expressive activity may occur," and it is "narrowly tailored to serve ... a substantial government interest in preserving the character of the area and preventing threats to that character, such as excessive noise." The zoning code expressly allows uses "customarily conducted entirely within a dwelling," it said, so residents of the rural district can "worship, watch films, play music, have family and friends visit and engage in other private behavior customarily conducted by homeowners.... The theater restriction only prevents a property owner in the same zoning district from setting up facilities for a cultural presentation, such as an outdoor music festival where hundreds of paid ticket holders" attend. It said the restriction is not void for vagueness because it "is limited by its language to indoor and outdoor facilities where cultural performances are staged."

Leifer argues the theater restriction "is not a valid time, place and manner regulation" because it is not narrowly tailored "to achieve the identified governmental interest of preventing" excessive noise. "The 'theater' prohibition applies equally to loud music as it does to silent films and mime acts. This governmental interest could have been achieved by simply enacting a noise ordinance.... [T]he 'theater' prohibition enjoins all aspects of Mr. Leifer's gathering, not just the amplified music. It enjoins the Sabbath observance during which no music is played.... It enjoins the playing of daytime non-amplified music, the singing of songs and dancing." He contends the restriction is unconstitutionally vague because, under "a literal reading" of the code, "it is a crime to perform music or plays in any room or house" in the rural district; "it is a crime to sing songs around a campfire; it is a crime to play music during a backyard party or backyard wedding; it is a crime for people to sing in prayer according to their religion."

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