

Doe v. City of Las Vegas

United States District Court for the District of Nevada

June 25, 2019, Decided

Case No. 2:19-cv-00382-GMN-BNW

Reporter

2019 U.S. Dist. LEXIS 106645 *

JANE DOE, Plaintiff, v. CITY OF LAS VEGAS, et al.,
Defendants.

Notice: Decision text below is the first available text from the court; it has not been editorially reviewed by LexisNexis. Publisher's editorial review, including Headnotes, Case Summary, Shepard's analysis or any amendments will be added in accordance with LexisNexis editorial guidelines.

Opinion

[*1] ORDER

Before this court is Plaintiff's Motion to Proceed Anonymously. ECF No. 8. Defendant

Cody Racine filed a Response. ECF No. 47. Defendants City of Las Vegas, Ruben Sanchez,

James Suarez, Jonathan Cuff, Joseph Vanek, William McDonald, and Jon Stevenson ("City of

Las Vegas Defendants") also filed a Response. ECF No. 52. Mario Rueda, Zach Yeoman and

Jason Tullis filed a Joinder to Defendant Cody Racine's Response. ECF No 53. Plaintiff replied

to the City of Las Vegas Defendants' response. ECF No. 59. Plaintiff replied to Defendant Cody

Racine's response. ECF No. 60.

Plaintiff claims she was subjected to sexual harassment, gender discrimination, and

retaliatory tactics by the City of Las Vegas Fire and Rescue during her employment as a

firefighter. Plaintiff alleges the City of Las Vegas Fire and Rescue permitted and participated in

the distribution and viewing of a videotape during work

hours which displayed Plaintiff engaging

in sexual behavior. Plaintiff states she produced this videotape intending it be viewed only by her

former boyfriend, who was also a firefighter at the City of Las Vegas Fire and Rescue. Plaintiff

alleges that after they broke up, her now former boyfriend made this [*2] videotape available to other

firefighters, who in turn propagated its dissemination and viewing.

Plaintiff now requests to remain anonymous throughout the pendency of this litigation.

The court denies the motion for the reasons stated below.

I. Parties' positions

Plaintiff requests to proceed anonymously to avoid physical and economic retaliation.

ECF 8 at 2. Plaintiff bases her fear of harm on her belief that someone intentionally shot at her

car. *Id.* She also expresses concerns about the likelihood of being hired by another fire department

should her identity be revealed. *Id.* at 5. In addition, she fears public condemnation based on the

nature of the video involved in this case and notes the effect the distribution of this video has had

on her personal and professional life. *Id.* at 3-5.

Defendants oppose the request and argue Plaintiff's perceived physical harm is merely

conjecture and, in any event, rely on case law to suggest Plaintiff's claims do not rise to the

necessary level of harm. ECF No. 47 at 5-6; ECF No. 52 at 3-4. Defendants also state the ways in

which this case has caused personal embarrassment to them, and they point to acts Plaintiff

undertook to put her case in the public eye. ECF No. 52 at 4-6. [*3]

II. Analysis

Firmly embedded in the American judicial system is a presumption of openness in judicial

proceedings. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569-574 (1980) (describing

the benefits of full access to the court system). That is why our court system has a default

preference for openness, and parties are allowed to use pseudonyms "in the 'unusual case' when

nondisclosure of the party's identity 'is necessary ... to protect a person from harassment, injury,

ridicule or personal embarrassment.'" See *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d

1058, 1067-68 (9th Cir.2000) (citing *United States v. Doe*, 655 F.2d 920 (9th Cir. 1981) and *Doe*

v. Madison Sch. Dist. No. 321, 147 F.3d 832 (9th Cir. 1998)).

If such unusual or special circumstances exist, the district court has discretion to permit a

party to remain anonymous so long as "the party's need for anonymity outweighs [1] prejudice to

the opposing party and [2] the public's interest in knowing the party's identity." *Id.* at 1068

(quotation omitted). The court must "determine the precise prejudice at each stage of the

proceedings to the opposing party, and whether proceedings may be structured so as to mitigate

that prejudice." *Id.* (citing *James v. Jacobson*, 6 F.3d 233, 240-41 (4th Cir. 1993)). Finally, the

court must decide "whether the public's interest in the case would be best served by requiring that

the litigants reveal their identities." *Id.* at 1068-69 (citing [*4] *Doe v. Stegall*, 563 F.3d 180, 185 (5th

Cir. 1981)).

Applying this balancing test, courts have permitted plaintiffs to use pseudonyms in three

situations: (1) when identification creates a risk of retaliatory physical or mental harm; (2) when

anonymity is necessary "to preserve privacy in a matter of sensitive and highly personal nature";

and (3) when the anonymous party is "compelled to admit [his or her] intention to engage in

illegal conduct, thereby risking criminal prosecution[.]" *Id.* (citations omitted).

A. Protection from harassment, injury or personal embarrassment

Plaintiff claims there is a risk of both physical and economic harm if her identity is

disclosed in this case. As discussed below, the court neither finds that Plaintiff's fear of physical

harm is reasonable nor that she is vulnerable to retaliation. In addition, the consequences that

could flow from any economic harm are not extraordinary in nature, as required by the Ninth

Circuit. The court further finds that while the video involves personal and highly sensitive

material, Plaintiff's steps to publicize the case and other actions she has endorsed are inconsistent

with a desire to remain anonymous. These factors therefore weigh against allowing Plaintiff to

[*5] proceed anonymously.

i. Physical harm

In cases in which a party seeks to proceed anonymously based on fear of physical

retaliation, the court must balance "(1) the severity of the threatened harm; (2) the reasonableness

of the anonymous party's fears, and (3) the anonymous party's vulnerability so such retaliation."

Id. (citations omitted).

Plaintiff points to an incident in which a bullet hit her car on August 4, 2018, while it was

parked at the fire station, to substantiate the argument that there is a severe risk of threatened

physical harm. ECF No. 8 at 2, 5. Plaintiff fears this will not be an isolated incident should her

name be revealed. *Id.* at 5.

Having one's car shot at is severe and could constitute a risk of retaliatory physical harm,

so long as there is evidence to suggest that the act was indeed intended as such. It is hard for the

court to conclude that the Plaintiff's fear is reasonable, however, given she has only provided

conclusory allegations that she was the intended target. In addition, Defendants point out that

according to the Plaintiff's own complaint, her car was damaged because "someone in the nearby

neighborhood shot a stray bullet into the air." ECF No. 47 at 6 (referencing ECF [*6] No. 1 ¶ 121).

While the complaint also mentions that "no other cars were harmed or damaged," and that the

"damage was done specifically to Plaintiff's car," neither of these facts further elucidate how this

incident was intended to target the Plaintiff. ECF No. 1 ¶¶ 117, 121.

Courts that have analyzed the issue of reasonableness and allowed a party to remain

anonymous have relied on much more than what plaintiff presents in this case. *Advanced Textile*,

214 F.3d at 1071 (noting that plaintiffs in that case were interrogated, warned against and

threatened on numerous occasions, and noting the degree of collaboration by defendants in

finding threats would be carried out); *Doe v. Ayers*, 789 F.3d 944, 945 (9th Cir. 2015) (relying on

Petitioner's strong showing of risk of harm based on the affidavit of a highly-qualified

correctional expert); *Jane Roes 1-2 v. SFBSC Mgmt. LLC*, 77 F. Supp. 3d 990, 995 (N.D. Cal.

2015) (noting defendants' concession that plaintiffs

would be at risk of substantial risk of harm if

they were to reveal their true identities). As a result, the court agrees with Defendants that,

considering all surrounding facts, this incident cannot constitute the basis for fear of future

retaliation. ECF No. 47 at 5.

In addition to finding that Plaintiff's fear of retaliation is not reasonable, [*7] Plaintiff has not

pointed to any other acts since August 4, 2018 that she believes were retaliatory in nature. In

addition, she no longer lives in Nevada, thereby further mitigating any potential vulnerability.

ECF No. 52 at 7-8.

ii. Economic harm

Plaintiff also argues that she fears economic retaliation if her identity is disclosed. ECF

No. 8 at 2. She explains that her professional opportunities would be significantly decreased

"because of the narrow field she works in." ECF No. 8 at 5. Defendants did not respond to this

argument. ECF Nos. 52 and 60.

The Ninth Circuit addressed the issue of economic harm in *Advanced Textile* and made

clear that extraordinary consequences are necessary for a party to be allowed to remain

anonymous. *Advanced Textile*, 214 F.3d at 1071. The court explained that "threats of termination

and blacklisting are [] typical methods by which employers retaliate against employees who

assert their legal rights" *Id.* Unlike the typical situation, the retaliation against the plaintiffs

in *Advanced Textile* would have led to deportation, arrest and imprisonment in China. Here, at

worst, Plaintiff faces the possible consequence of being blacklisted. That is precisely the type of

scenario the Ninth Circuit explained [*8] would not suffice. *Id.* (comparing the facts of *Southern*

Methodist University Assoc. of Women Law Students v. Wynne & Jaffe, 599 F.2d 707, 713 (5th

Cir.1979), to the facts of that case). The type of economic retaliation Plaintiff relies on is not

sufficiently severe to warrant anonymity.

iii.Ridicule and personal embarrassment

Plaintiff also seeks anonymity to avoid harassment, ridicule and extreme personal

embarrassment and public condemnation. ECF 8 at 3, 5. She mentions her sanity and social life

have been affected since this incident, so much so that she has been unable to return to work. ECF

No. 8 at 3-4. The Ninth Circuit has recognized these concerns as proper bases upon which to

grant anonymity. *Advanced Textile*, 214 F.3d at 1067-68. Specifically, courts have recognized

cases involving social stigmatization, *Doe v. Rostker*, 89 F.R.D. 158, 162 (N.D. Cal. 1981), and

cases that fall within the area of human sexuality. *Jane Roes 1-2*, 77 F. Supp. 3d at 994.

The court agrees that the videotape in question could involve a highly personal and

sensitive matter. But the surrounding facts of this case do not suggest the Plaintiff has taken

precautions to preserve anonymity. Here, the Plaintiff purposefully availed herself of news media,

broadcasting the case and putting it in the public eye. ECF No. 52 at 4-6. While her name was not

used, she facilitated others' ability to learn of the existence [*9] of the case, including other fire

departments where she may now seek employment. In this same vein, the evidence preservation

letter Plaintiff sent identifies her by name. ECF No. 52 at 6. While the Plaintiff points out that

having her name as part of an evidence preservation letter cannot be equated to disclosing her

name to the public at large, the controlling fact is that her actions do not indicate the desire to

maintain privacy. ECF No. 59 at 3-4.

B. Prejudice to Defendants

Defendants ask the court to consider the attacks to their reputations, arguing that the

Plaintiff's accusations include the commission of a felony offense. ECF No. 47 at 2-4, 9-10. In

addition, Defendants note that these allegations are now part of a national blog dedicated to

firefighters. ECF No. 52 at 6-7. All Defendants point out that Plaintiff wishes to be protected

from embarrassment while subjecting them to it. ECF No. 47 at 9-10; ECF No. 52 at 7.

While Defendants argue they will face adverse publicity as a result of this case, they do not

explain how their case will be prejudiced if the Plaintiff is allowed to remain anonymous. See

Advanced Textile, 214 F.3d at 1072 (specifically noting defendants' inability to mount a defense

should plaintiff remain [*10] anonymous); *Doe v. Ayers*, 789 F.3d 944, 946 (9th Cir. 2015) (evaluating

prejudice to petitioner within the context of the litigation); *Doe v. Kamehameha School*, 596 F.3d

1036, 1045 n.7 (9th Cir. 2010) (analyzing whether anonymity would hinder the defendants'

standing defense). Instead, Defendants cite to *Doe v. Goldman*, 169 F.R.D. 138 (D. Nev. 1996),

for the proposition that attacks to their reputations suffice for purposes of this analysis. ECF No.

47 at 9-10.

First, *Goldman* was decided prior to the Ninth Circuit's interpretation of the prejudice

prong in *Advanced Textile*. Second, the court in *Goldman* also pointed to the effect that

anonymity would have on defendants' ability to probe credibility. Given that Defendants do not

articulate how Plaintiff's continued anonymity impacts

their ability to mount a defense in the litigation, the court finds Plaintiff's anonymity does not prejudice the Defendants. This factor

therefore weighs in favor of allowing Plaintiff to proceed anonymously.

C. Public interest

Plaintiff argues her identity is not crucial to the resolution of this case. ECF No. 8 at 4.

Specifically, she argues that remaining anonymous would not obstruct the public's ability to

scrutinize the important issues in this case, which is truly where the public interest lies. *Id.*

Defendants [*11] argue the public has a right to know who is accusing public entities of violating

federal and state laws, and who is accusing individuals in the commission of crimes. ECF No. 47

at 11.

It is true that in many cases the importance of an action may not be linked to the identity

of the party bringing a claim. In this case, however, the Plaintiff put the case in the public's eye,

undermining the need to proceed anonymously and strengthening the public's interest in the case.

Like in any other case, openness in judicial proceedings fosters the press' ability to research the

litigants' backgrounds (which may bear on matters pertaining to credibility) and the potential

motivations for suing. That information may be central to the public's broader understanding of

the case. Allowing the Plaintiff to proceed without using her true name undermines these

important values.

In sum, federal courts are courts of public record and the strong presumption is that the

public has a right to know who is seeking what in court and whether he or she is entitled to the

relief sought. The presumption can be overcome in

unusual cases where anonymity is critical,

which is not the case here. This factor therefore weighs against [*12] allowing Plaintiff to proceed

anonymously.

III. Conclusion

While there is no identifiable prejudice to Defendants in defending this case should the

plaintiff be allowed to remain anonymous, Plaintiff cannot show that the need for anonymity in

this case outweighs the public's interest in the proceedings. *See Advanced Textile*, 214 F.3d at

1068. This court is sympathetic to Plaintiff's concerns, but the facts of this case do not overcome

the paramount importance of open courts. This court would fail its obligation to the public by

allowing the Plaintiff to remain anonymous.

IT IS THEREFORE ORDERED that plaintiff's motion to proceed anonymously (ECF No.

8) is DENIED.

IT IS FURTHER ORDERED that Plaintiff must file an amended complaint using her true

identity no later than July 25, 2019.

DATED: June 25, 2019

BRENDA WEKSLER

UNITED STATES MAGISTRATE JUDGE

End of Document