

Dakessian v Dakessian

2024 NY Slip Op 30998(U)

March 26, 2024

Supreme Court, New York County

Docket Number: Index No. 157245/2023

Judge: Kathleen Waterman-Marshall

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHLEEN WATERMAN-MARSHALL **PART** **09M**

Justice

-----X

SVIATLANA DAKESSIAN,

Petitioner,

- v -

SUZANNE DAKESSIAN, NEW YORK CITY DEPARTMENT
OF HEALTH AND MENTAL HYGIENE, BUREAU OF VITAL
STATISTICS

Respondents.

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INDEX NO. 157245/2023

MOTION DATE 08/09/2023,
10/19/2023

MOTION SEQ. NO. 001, 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 20, 21, 22, 23, 31, 32

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER) .

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for DISMISSAL .

Upon the foregoing documents: this Article 78 Proceeding brought by Petitioner Sviatlana Dakessian (“Petitioner”) seeking a judgment directing the Respondent New York City Department of Health and Mental Hygiene (“Mental Hygiene”) to correct the death certificate of her alleged husband Vartkes Dakessian (“V. Dakessian”) to reflect that he was married to Petitioner at the time of his death, and for sanctions against Respondent Suzanne Dakessian (“S. Dakessian”), is dismissed as barred by the doctrine of *res judicata*. Upon the same record, the motion by S. Dakessian for sanctions against Petitioner, is granted.

Brief Background

This is Petitioner’s second attempt, via Article 78 Proceeding, to change V. Dakessian’s death certificate. She was unsuccessful on her first proceeding, brought in Queens County Supreme Court, which – on virtually the exact same record as is presented here – dismissed Petitioner’s claims on the merits and found them to be worthy of sanctions. Having not prevailed in Queens, Petitioner tried again in Manhattan.

The Queens County Article 78 Proceeding

Petitioner commenced her first Article 78 Proceeding in Queens County Supreme Court against Mental Hygiene and S. Dakessian (collectively, “Respondents”) on April 27, 2022. Her petition sought: (1) a declaratory judgment directing Mental Hygiene to correct the Marital/Partnership Status listed on the death certificate of V. Dakessian from “Widowed” to

“Married” and to name Petitioner as the Surviving Spouse; and (2) a money judgment in favor of Petitioner and against S. Dakessian, in the sum of at least \$25,000. Petitioner alleged, *inter alia*, that she and V. Dakessian were married on April 18, 2017 and did not divorce prior to V. Dakessian’s death on December 24, 2021, and that S. Dakessian, V. Dakessian’s daughter from a prior marriage and the Informant on the death certificate, “either intentionally, recklessly or negligently failed to inform [Mental Hygiene] that her father was married to... Petitioner at the time of his death” (NYSCEF doc. 37, pg. 2). Petitioner also alleged that she attempted to correct the death certificate by contacting Mental Hygiene but was informed that a court order was required to effectuate the proposed amendments. In support of her petition, Petitioner submitted, *inter alia*, a copy of the Certificate of Marriage Registration between Petitioner and V. Dakessian, the Death Certificate, and a certification from the Queens County Clerk that no records of a Supreme Court Matrimonial Action between Petitioner and V. Dakessian were found for the period of January 2017 to December 2021.

Mental Hygiene did not answer the petition or otherwise appear in the Queens Proceeding.¹ S. Dakessian moved to dismiss the Queens Proceeding and for an award of sanctions against Petitioner, pursuant to 22 NYCRR § 130-1.1. While S. Dakessian did not oppose Petitioner’s request to amend the Death Certificate, she claimed that Petitioner and V. Dakessian divorced prior to V. Dakessian’s death and that the first time she received information regarding their alleged remarriage was upon being served with the petition.

By Decision and Order dated December 2, 2022, the court (Hon. Joseph J. Esposito, J.S.C.) denied Petitioner’s application, granted S. Dakessian’s motion to dismiss the claims against her, and awarded sanctions to S. Dakessian in the sum of \$2,000, payable by Petitioner within 120 days (the “December 2022 Decision”). As is here relevant, the December 2022 Decision provides:

[P]etitioner commenced this special proceeding to correct a death certificate issued for [V.] Dakessian to list her as his surviving spouse. The Court finds that an Article 78 proceeding is the incorrect vehicle to obtain the relief sought.

...

[T]he petition must be dismissed since [S. Dakessian] is neither a “body” or “officer” pursuant to CPLR 7802(a). As such, the Article 78 relief is unavailable to [P]etitioner as against [S. Dakessian]. In addition, the petition is moot as to [S. Dakessian] since she attests that she will not prevent [Petitioner] from amending the death certificate[.]

...

The Court finds that there is insufficient evidence to prove that [Petitioner’s] intent was to harass or maliciously injure [S. Dakessian]. However, the petition did include material factual statements that were false, i.e., “[S.] Dakessian, either intentionally, recklessly or negligently failed to inform [NYCDHMH] that her

¹ Mental Hygiene claims herein that Petitioner amended the caption of the Queens Proceeding to include Mental Hygiene when it moved to renew and reargue the December 2022 Decision, and that it was not served with the underlying petition or otherwise made aware of the Queens Proceeding until this Article 78 proceeding.

father was married to [Petitioner] at the time of his death[.]”... [S. Dakessian] expressed in her affidavit that she was unaware of the marriage between [P]etitioner and her late father at the time of death. Moreover, there is no evidence or testimony as to whether or not [Petitioner] attempted to reach out to [S. Dakessian] to express her wishes to amend the death certificate prior to bringing the instant action. The Court finds that if [P]etitioner contacted [S. Dakessian] to inquire further information regarding the death certificate, then the instant petition would have been unnecessary.

On February 8, 2023, Petitioner moved, in effect, for leave to renew and reargue Justice Esposito’s sanctions award. Petitioner submitted a letter dated March 16, 2022, purportedly by Mental Hygiene (the “March 16th Letter”), to evidence that the Mental Hygiene contacted S. Dakessian to notify her of Petitioner’s request to amend the death certificate and, thus, S. Dakessian was aware of same. The court (Esposito, J.) denied Petitioner’s motion in its entirety by Decision and Order dated February 23, 2023 (the “February 2023 Decision”), which provides in relevant part:

[Petitioner] mentioned in her Petition that she tried contacting [Mental Hygiene] but failed to advise the Court or her attorney that she received a response. Moreover, although [Petitioner] contends that [Mental Hygiene] reached out to [S. Dakessian] to inform her of the requested change, that information cannot be considered as evidence as to whether or not [S. Dakessian] was aware that her father married Petitioner for the second time. And as stated in the [December 2022 Order], Petitioner, as a surviving spouse, ... was capable of amending the death certificate without approval of [S. Dakessian].

Furthermore, the Court finds that the March 16th [L]etter fails to demonstrate that it was actually sent by [Mental Hygiene] Death Corrections and Amendment Unit. The letter is neither certified nor contains any contact information of the department or a specific contact person.

The Instant Article 78 Proceeding

On July 18, 2023, Petitioner commenced this Article 78 Proceeding against Respondents for the same relief that she unsuccessfully sought in the Queens Proceeding: (1) a declaratory judgment directing Mental Hygiene to correct the Marital/Partnership Status listed on V. Dakessian’s death certificate from “Widowed” to “Married” and to name Petitioner as the Surviving Spouse; and (2) a money judgment in favor of Petitioner and against S. Dakessian, the sum of at least \$25,000. Petitioner supports her application with the same arguments as she raised in the Queens Proceeding, including that S. Dakessian “either intentionally, recklessly or negligently failed to inform [NYCDHMH] that her father was married to...Petitioner at the time of his death” (NYSCEF Doc 1, pg. 2). Petitioner also submits the same documentary evidence, along with a July 14, 2023 email, purportedly from Mental Hygiene, notifying Petitioner that her second application to correct the death certificate, filed after the dismissal of the Queens Proceeding, was returned because the Informant disagreed with the proposed amendments (the “July 14th Email”),² and certain filings in the Queens proceeding, including her Notice of

² It is unclear whether the content of the July 14th Email differs from that of the March 16th Letter.

Petition and correlating documents, an affidavit of S. Dakessian, the December 2022 Order, and the February 2023 Order.

On September 22, 2023, S. Dakessian moved to dismiss Petitioner's claims against her and to sanction Petitioner, pursuant to 22 NYCRR § 130-1.1. Mental Hygiene opposed the petition and claimed, *inter alia*, that Petitioner is barred from seeking the requested relief under the doctrines of *res judicata* and collateral estoppel, and otherwise failed to offer sufficient documentary evidence in support of her proposed amendments. In response, Petitioner, *inter alia*, amplifies her allegations respecting S. Dakessian, who she now claims "was acting with malice aforethought, and with the specific intent of denying... Petitioner the honor of being listed as the widow of [V. Dakessian]... when she responded to... Petitioner's second application [to amend the Death Certificate] by disagreeing with the proposed amendment."

The matter was recently reassigned to Part 9.

This Article 78 Proceeding is Barred by Res Judicata

It is well-settled that the doctrine of "[r]es judicata is designed to provide finality in the resolution of disputes to assure that parties may not be vexed by further litigation" (*Reilly v Reid*, 45 NY2d 24, 28 [1978]). This doctrine precludes a party from litigating "a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter. The rule applies not only to claims actually litigated but also to claims that could have been raised in the prior litigation" (*In re Hunter*, 4 NY3d 260, 269 [2005]). New York State "has adopted the transactional analysis approach in deciding *res judicata* issues" (*O'Brien v Syracuse*, 54 NY2d 353, 357 [1981], citing *Matter of Reilly v Reid*, 45 NY2d 24); "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions, even if based upon different theories or seeking a different remedy" (*id.*).

Petitioner's Queens Proceeding and this Article 78 proceeding are brought against the same parties, S. Dakessian and Mental Hygiene, and arise from the same subject matter: namely, S. Dakessian's purported failure to include Petitioner as the Surviving Spouse on V. Dakessian's death certificate. Petitioner raised the same allegations and sought identical relief in both proceedings (*see Reilly v Reid*, 45 NY2d at 30 [proceeding barred where petition requested same basic relief and predicated on same foundation facts as petition in prior action between parties]; *Miller v Livanis*, 189 AD3d 446 [1st Dept 2020] [action, *inter alia*, barred by *res judicata*; arises out of same circumstances as prior article 78 proceeding wherein plaintiff challenged same decision of defendant]). Indeed, the petitions in both actions are virtually identical.

The Queens County Supreme Court (Esposito, J.) fully considered and finally resolved Petitioner's causes of action in the Queens Proceeding when, in its December 2022 Decision, the court found that an Article 78 proceeding is the improper vehicle to obtain the relief sought, denied Petitioner's petition to amend the death certificate, and dismissed the claims asserted against S. Dakessian. The court then denied Petitioner's motion to renew and reargue the December 2022 Decision. Petitioner now asserts the exact same claims, addressed and disposed by Justice Esposito, upon virtually the exact same record. Petitioner's failure to present a satisfactory denial letter by Mental Hygiene in the Queens Proceeding does not entitle her to a

second opportunity to litigate before this Court. Accordingly, the Court must find that this Article 78 proceeding is barred by the doctrine of *res judicata* (*Matter of Police Benevolent Assn. of City of N.Y., Inc. v City of New York*, 215 AD3d 463 [1st Dept 2023] [article 78 proceeding barred under *res judicata* where matters raised in petition subject to prior article 78 proceeding, in which court issued valid final judgment on merits, denying and dismissing proceeding]).

S. Dakessian's Motion for Sanctions is Granted

As is here relevant, 22 NYCRR § 130-1.1 (a) authorizes “the court, in its discretion... [to] award to any party or attorney in a civil action or proceeding... costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney’s fees, resulting from frivolous conduct[.]” Frivolous conduct includes, *inter alia*, that which

is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law[,...] is undertaken primarily to... harass or maliciously injure another... [or] asserts material factual statements that are false.... In determining whether conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, ... and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party (*id.* § 130-1.1 [c] [1-3]).

The factors relevant to this action clearly establish that Petitioner engaged in frivolous conduct, warranting an award of attorney’s fees to S. Dakessian. In the December 2022 Order, Justice Esposito, *inter alia*, determined that Petitioner asserted “material factual statements that were false [in her petition], i.e., ‘[S.] Dakessian, either intentionally, recklessly or negligently failed to inform [Mental Hygiene] that he father was married to [Petitioner] at the time of his death’” and awarded S. Dakessian sanctions against Petitioner in the sum of \$2,000 for such material misstatements (December 2022 Decision, Pg. 3). The same court reaffirmed its determination and award in its February 2023 Decision denying Petitioner’s motion to renew and reargue. Unbowed by the prior dismissal of her claims on the merits and prior award of sanctions against her, Petitioner reasserts the same false statement, *verbatim*, in her petition herein. Petitioner’s actions in rehashing the same claims and arguments, previously found to be sanctionable, constitutes sanctionable conduct (*id.* 130-1.1 [c] [1], [2], [3]; *see generally Yan v Klein*, 35 AD3d 729, 729-30 [1st Dept 2006] [costs under 22 NYCRR 130-1.1 properly awarded to defendant where plaintiff’s continued press of same meritless claims, most of which barred by *res judicata* and collateral estoppel, despite warnings appeared primarily intended to harass defendants]).

The Court cannot determine the precise amount of fees incurred by S. Dakessian in connection with this frivolous Article 78 proceeding. However, the circumstances of this action, including but not limited to the \$13,000 total fees that she purportedly incurred, the content of her retainer agreement, the limited complexity of issues involved, and the purpose of sanctions under 22 NYCRR § 130-1.1 (*see Levy v Carol Mgmt. Corp.*, 260 AD2d 27, 34 [1st Dept 1999] [sanctions are “retributive” and “goal oriented”; “The goals include preventing the waste of

judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics”)], warrant an award of \$5,000, payable to S. Dakessian by Petitioner as a sanction for frivolous conduct.

Accordingly, it is hereby

ORDERED that Petitioner’s petition to amend the death certificate of V. Dakessian and for other relief, is denied and the petition is dismissed; and it is further

ORDERED that S. Dakessian’s motion to dismiss the claims against her and for an award of sanctions against Petitioner, is granted; and it is further

ORDERED that S. Dakessian is awarded \$5,000 in attorney’s fees, representing the reasonable fees incurred as a result of Petitioner’s frivolous conduct in this action, payable by Petitioner directly to S. Dakessian, through counsel, by April 25, 2024.



3/26/2024
DATE

KATHLEEN WATERMAN-MARSHALL,
J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE