

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Garland v. City of New York

2021 NY Slip Op 00839 (N.Y. Ct. App. 2021) · No. 2019-05831 · Decided February 10, 2021

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the plaintiff's motion to vacate a discovery provision requiring authorizations for medical records from five years before the accident through the present. The court held that the plaintiff placed her entire medical condition in controversy through broad allegations of physical injuries, exacerbation of preexisting conditions, and loss of enjoyment of life, and that the five-year limitation was proper.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Cheryl E. Chambers, J.; Robert J. Miller, J.; Valerie Brathwaite Nelson, J.
JURISDICTION	New York
DECIDED	February 10, 2021
DOCKET	2019-05831
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from an order denying her motion to vacate a provision of a preliminary conference order requiring authorizations for release of her medical records for the five-year period preceding the accident through the present.
STANDARD OF REVIEW	Abuse of discretion review of the Supreme Court's management and limitation of discovery.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Theresa Garland v. City of New York, New York City Transit Authority, other defendants and respondents

TOPICS

discovery dispute

waiver

personal injury

civil procedure

appellate procedure

PRACTICE AREAS

civil procedure

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QUESTIONS PRESENTED

1. Whether Garland waived the physician-patient privilege by affirmatively placing her entire medical condition in controversy through broad allegations of physical injury, exacerbation of preexisting conditions, and loss of enjoyment of life.
2. Whether the Supreme Court providently exercised its discretion by limiting discovery of Garland's past medical records to the five-year period preceding the accident through the present.

HOLDINGS

1. A plaintiff in a personal-injury action waives the physician-patient privilege when the plaintiff affirmatively places a physical or mental condition in controversy; Garland did so by making broad allegations concerning physical injuries, exacerbation of preexisting medical conditions, and loss of enjoyment of life.
2. The Supreme Court providently exercised its discretion by limiting access to Garland's past medical records to the five-year period preceding the accident through the present.

FACTUAL BACKGROUND

Theresa Garland sued to recover damages for personal injuries allegedly sustained while boarding a bus owned and operated by the defendants. She alleged broad physical injuries, exacerbation of preexisting medical conditions, and loss of enjoyment of life. A preliminary conference order required her to authorize release of all medical records for the five years before the accident through the present, and she challenged that requirement as overbroad.

PROCEDURAL HISTORY

Garland commenced a personal-injury action based on injuries allegedly sustained while boarding a bus owned and operated by the defendants. The Supreme Court, Kings County, entered a preliminary conference order requiring medical-record authorizations, and later denied Garland's motion to vacate that provision as overbroad. The Appellate Division affirmed the order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- O'Brien v. Village of Babylon, 153 A.D.3d 547, 548-549
- Cynthia B. v. New Rochelle Hosp. Med. Ctr., 60 N.Y.2d 452, 456-457
- Greco v. Wellington Leasing L.P., 144 A.D.3d 981, 982
- Bravo v. Vargas, 113 A.D.3d 577, 578-579

- Romance v. Zavala, 98 A.D.3d 726, 727
- DeStrange v. Lind, 277 A.D.2d 344, 345

OPINION

PER CURIAM.

Garland v City of New York (2021 NY Slip Op 00839) Garland v City of New York 2021 NY Slip Op 00839 Decided on February 10, 2021 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on February 10, 2021 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

CHERYL E. CHAMBERS ROBERT J. MILLER VALERIE BRATHWAITE NELSON, JJ. 2019-05831 (Index No. 12782/15) [*1]Theresa Garland, appellant, vCity of New York, et al., defendants, New York City Transit Authority, et al., respondents. Harmon, Linder & Rogowsky (Mitchell Dranow, Sea Cliff, NY, of counsel), for appellant. Lawrence Heisler, Brooklyn, NY (Timothy J. O'Shaughnessy of counsel), for respondents.

DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Lawrence Knipel, J.), dated April 4, 2019. The order, insofar as appealed from, denied the plaintiff's motion to vacate so much of a preliminary conference order of the same court (Martin Schneier, J.H.O.) dated August 6, 2018, as directed the plaintiff to provide authorizations for the release of all her medical records for the period beginning five years prior to the subject accident through the present.

ORDERED that the order dated April 4, 2019, is affirmed insofar as appealed from, with costs. The plaintiff commenced this action to recover damages for personal injuries she allegedly sustained while boarding a bus owned and operated by the defendants.

On August 6, 2018, the Supreme Court issued a preliminary conference order, inter alia, directing the plaintiff to provide authorizations for the release of all her medical records for the period beginning five years prior to the subject accident through the present (hereinafter the disputed provision).

The plaintiff moved to vacate the disputed provision on the ground that the demand was overbroad. The Supreme Court denied the motion, and the plaintiff appeals. Although physician-patient communications are privileged under CPLR 4504, a plaintiff in a personal injury action will be deemed to have waived the privilege when he or she has affirmatively placed his or her mental or physical condition in issue (see O'Brien v Village of Babylon, 153 AD3d 547, 548).

Moreover, once such a waiver has occurred, the plaintiff must provide duly executed and acknowledged written authorizations for the release of relevant medical records under the liberal discovery provisions of the CPLR (see *Cynthia B. v New Rochelle Hosp. Med. Ctr.*, 60 NY2d 452, 456-457).

Here, contrary to the plaintiff's contention, she affirmatively placed her entire medical condition in controversy through broad allegations of physical injuries, exacerbation of preexisting medical conditions, and loss of enjoyment of life (see *O'Brien v Village of Babylon*, 153 AD3d at [*2]548-549; *Greco v Wellington Leasing L.P.*, 144 AD3d 981, 982; *Bravo v Vargas*, 113 AD3d 577, 578-579).

Moreover, the Supreme Court providently exercised its discretion in limiting access to the plaintiff's past medical records to the five-year period before the subject accident (see *Romance v Zavala*, 98 AD3d 726, 727; *DeStrange v Lind*, 277 AD2d 344, 345).

Accordingly, the court properly denied the plaintiff's motion to vacate the disputed provision of the preliminary conference order. DILLON, J.P., CHAMBERS, MILLER and BRATHWAITE NELSON, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court