FILED
AUG 15 2018
Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M.J., *et al.*,

Plaintiffs,

v.

THE DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Case: 1:18-cv-01901 (L Deck)
Assigned To : Sullivan, Emmet G.
Assign. Date : 8/14/2018
Description: Civil Rights-Non Employ.

Chief Judge Beryl A. Howell

MEMORANDUM AND ORDER

The individual plaintiffs in this action, "Medicaid-eligible children with mental health disabilities who are needlessly institutionalized, or at serious risk of institutionalization," Compl. ¶ 1, have moved to proceed using pseudonyms, Pls.' Mem. Supp. Mot. Leave to Proceed Anonymously ("Pls.' Mem.") at 2, in their instant challenge to the District of Columbia's alleged failure to provide medically necessary intensive community-based services, *see* Compl. ¶ 1. For the reasons set forth below, the Court will grant the plaintiffs' motion, subject to any further consideration by the United States District Judge to whom this case is randomly assigned.[1]

I. BACKGROUND

The plaintiffs are "Medicaid-eligible children" who "need intensive community-based services to avoid institutionalization and improve their mental health conditions." Compl. ¶¶ 1, 4. The plaintiffs seek injunctive relief and contend that the District of Columbia and its officials have "fail[ed] to provide medically necessary intensive community-based services," causing "the Plaintiff children [to] cycle unnecessarily in and out of institutions—including

[1] Under Local Civil Rule 40.7(g), "the Chief Judge shall . . . hear and determine . . . motions to file a pseudonymous complaint." LCvR 40.7(g).

psychiatric hospitals, psychiatric and other residential treatment facilities, the District's detention centers, and group homes—to their detriment." *Id.* ¶ 3. The plaintiffs contend that, without these services, "they are at high risk of doing poorly in school, becoming involved in the delinquency and criminal systems and, as they transition to adulthood, being unable to obtain a job or live independently." *Id.* ¶ 5.

II. LEGAL STANDARD

Generally, a complaint must state the names of the parties. FED. R. CIV. P. 10(a) ("The title of the complaint must name all the parties."); LCvR 5.1(c)(1) ("The first filing by or on behalf of a party shall have in the caption the name and full residence address of the party," and "[f]ailure to provide the address information within 30 days of filing may result in the dismissal of the case against the defendant."); LCvR 11.1 (same requirement as LCvR 5.1(c)(1)). The public's interest "in knowing the names of [ ] litigants" is critical because "disclosing the parties' identities furthers openness of judicial proceedings." *Doe v. Pub. Citizen*, 749 F.3d 246, 273 (4th Cir. 2014); *see also Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978) ("[T]he courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."). Nevertheless, courts have, in special circumstances, permitted a party "to proceed anonymously" when a court determines "the impact of the plaintiff's anonymity" outweighs "the public interest in open proceedings and on fairness to the defendant." *Nat'l Ass'n of Waterfront Emp'rs v. Chao* ("*Chao*"), 587 F. Supp. 2d 90, 99 (D.D.C. 2008) (RMC).

In the past, when balancing these two general factors, two different but analogous tests have been applied in this circuit. The first test consists of the six factors set forth in *United States v. Hubbard*, 650 F.2d 293, 317–21 (D.C. Cir. 1980):

> (1) the need for public access to the documents at issue; (2) the extent to which the public had access to the document prior to the sealing order; (3) the fact that a party has objected to disclosure and the identity of that party; (4) the strength of the property and privacy interests involved; (5) the possibility of prejudice to those opposing disclosure; and (6) the purpose for which the documents were introduced.

Doe v. CFPB ("*Doe I*"), No. 15-1177 (RDM), 2015 WL 6317031, at *2 (D.D.C. Oct. 16, 2015). In other cases, a "five-part test to balance the concerns of plaintiffs seeking anonymity with those of defendants and the public interest" has been applied. *Eley v. District of Columbia*, No. 16-806 (GMH), 2016 WL 6267951, at *1 (D.D.C. Oct. 25, 2016). These factors, drawn from *Chao*, include the following:

> (1) whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of a sensitive and highly personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties; (3) the ages of the persons whose privacy interests are sought to be protected; (4) whether the action is against a governmental or private party; and (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Doe v. Teti, Misc. No. 15-01380 (RWR), 2015 WL 6689862, at *2 (D.D.C. Oct. 19, 2015); *see also Roe v. Bernabei & Wachtel PLLC*, 85 F. Supp. 3d 89, 96 (D.D.C. 2015) (TSC); *Doe v. U.S. Dep't of State*, Civil No. 15-01971 (RWR), 2015 WL 9647660, at *2 (D.D.C. Nov. 3, 2015); *Doe v. Cabrera*, 307 F.R.D. 1, 5 (D.D.C. 2014) (RBW).

The *Chao* and *Hubbard* factors weigh the same two general concerns. *Doe Co. No. 1 v. CFPB* ("*Doe II*"), 195 F. Supp. 3d 9, 15–16 (D.D.C. 2016) (RDM). Specifically, these concerns are: (1) the "[s]trength of the [g]eneralized [p]roperty and [p]rivacy [i]nterests" involved and "the possibility of prejudice" to those opposing disclosure, *Hubbard*, 650 F.2d at 320–21; and (2) whether the "justification" for nondisclosure "is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of

a sensitive and highly personal nature," *Teti*, 2015 WL 6689862, at *2. Thus, in *Doe II*, the Court determined that

> the question before the Court is not best answered with a rigid, multi-part test but with an assessment of whether the non-speculative privacy interest that the movants have identified outweigh the public's substantial interest in knowing the identities of the parties in litigation, along with any legitimate interest that the non-moving parties' interest may have in revealing the identity of the movants.

Doe II, 195 F. Supp. 3d at 17.

This balancing inquiry accords with the D.C. Circuit's test for whether a district court should exercise its discretion to permit an exception from Federal Rule of Civil Procedure 10(a). The Circuit has acknowledged the district court's discretion "to grant the 'rare dispensation' of anonymity" to litigating parties under certain limited circumstances, provided the court has "inquire[d] into the circumstances of particular cases to determine whether the dispensation is warranted." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1464 (D.C. Cir. 1995) (quoting *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993)). In exercising this discretion, the D.C. Circuit has required the court to "take into account the risk of unfairness to the opposing party, as well the customary and constitutionally-embedded presumption of openness in judicial proceedings." *Id.* (internal citations and quotation marks omitted).

Thus, whichever test applies, the same general balancing inquiry is at issue: "whether the non-speculative privacy interest that the movants have identified outweigh the public's substantial interest in knowing the identities of the parties in litigation, along with any legitimate interest that the non-moving parties' interest may have in revealing the identity of the movants." *Doe II*, 195 F. Supp. 3d at 17; *see also Chao*, 587 F. Supp. 2d at 99 (assessing whether "the impact of the plaintiff's anonymity" outweighs "the public interest in open proceedings and on fairness to the defendant").

III. DISCUSSION

At this early stage of the litigation, this Court is persuaded that the individual plaintiffs have met their burden of showing that their privacy interests outweigh the public's presumptive and substantial interest in knowing the details of judicial litigation. The public's interest in the litigants' identity is *de minimis* compared to the significant privacy interests of the individual plaintiffs, minor children with mental health disabilities.

In this case, the plaintiffs have "a strong interest in protecting their identities and the highly sensitive details about their mental health disabilities that will necessarily be revealed during this litigation." Pls.' Mem. at 4. The two individual plaintiffs in this case are teenagers with "serious emotional disturbance[s]" who have been "hospitalized multiple times due to [their] mental health disabilities." Compl. ¶¶ 11–13. The relevant records in this case "could include medical records; testimony from therapists, counselors, and other providers; [and] evidence of [the plaintiffs'] experiences being institutionalized in psychiatric residential treatment facilities [and] juvenile justice facilities," among other sensitive information. Pls.' Mem. at 4. The plaintiffs are also minors and are "more vulnerable to the risk of harm." *Id.* (citing *Yaman v. U.S. Dep't of State*, 786 F. Supp. 2d 148, 153 (D.D.C. 2011)). Given the "highly sensitive" nature of the minor plaintiffs' "minor health disabilities and their experiences of institutionalization," the individual plaintiffs have established a significant privacy interest. *Id.* at 2.

As to the non-moving parties' interests, allowing the plaintiffs to proceed under pseudonyms will have no impact on any private rights as the only defendants are government agencies and officers. The plaintiffs' identities will also be made known to the defendants during the course of litigation. *Id.* at 5. Allowing the plaintiffs to proceed pseudonymously

thus will not compromise the defendants' ability to defend this action and poses little "risk of unfairness to the opposing party." *Chao*, 587 F. Supp. at 99. Finally, any public interest in disclosing the identities of the plaintiffs and their children is outweighed by the sensitive nature of the plaintiffs' medical records and the plaintiffs' substantial privacy interests.

In sum, weighed against the minimal apparent interest in disclosure, the plaintiffs' significant interest in maintaining their anonymity at this early stage in the litigation is more than sufficient to overcome any general presumption in favor of open proceedings. *See Horowitz v. Peace Corps*, 428 F.3d 271, 278 (D.C. Cir. 2005) ("If there is no public interest in the disclosure of certain information, 'something, even a modest privacy interest, outweighs nothing every time.'" (quoting *Nat'l Ass'n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989))).

IV. CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the plaintiffs' Motion for Leave to Proceed Anonymously is **GRANTED**, subject to any further consideration by the United States District Judge to whom this case is randomly assigned, and the case may proceed using the pseudonyms "M.J."; "J.J.," for M.J.'s next friend; "L.R."; and "D.M.," for L.R.'s next friend; and it is further

ORDERED that the list of the full names of the plaintiffs and their next friends shall remain under seal until further order of the Court.

SO ORDERED.

Date: August 14, 2018

Beryl A. Howell

BERYL A. HOWELL
Chief Judge