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United States District Court,
W.D. New York.

Adam PRITCHARD, et al., Plaintiffs,
v.
THE COUNTY OF ERIE, et al., Defendants.

No. 04-CV-00534C(SC). | April 17, 2006.

Attorneys and Law Firms

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Opinion

CURTIN, J.

***1** By order dated December 9, 2004 (Item 5),[1] this matter was referred to United States Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), to conduct all pretrial matters. On January 4, 2006, Judge Scott issued an order (Item 78) granting in part plaintiffs' "omnibus motion" for various forms of pretrial relief (Item 25) and directing the "County Defendants"[2] to produce several documents as to which those defendants claim attorney-client privilege or attorney work product protection. On January 19, 2006, the County Defendants filed objections (Item 79) to Judge Scott's order, and have submitted the disputed documents under "proposed seal" for further *in camera* review (*id.,* Ex. C). The court has also received plaintiffs' memorandum of law (Item 85) in opposition to the County Defendants' objections, and the reply affirmation of James P. Domagalski, Esq. (Item 90), counsel for the County Defendants.

District court review of magistrate judges' discovery-related rulings is governed by Rule 72(a) of the Federal Rules of Civil Procedure and the Federal Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A). Both the rule and the statute state that as to non-dispositive matters, a district court shall reverse a magistrate judge's order only where it has been shown that the order is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed.R.Civ.P. 72(a).

Elaborating on this standard, the Supreme Court has held that a finding is "clearly erroneous" if the reviewing court is "left with the definite and firm conviction that a mistake has been committed." *Easley v. Cromartie,* 532 U.S. 234, 242, 121 S.Ct. 1452, 149 L.Ed.2d 430 (2001) (quoting *United States v. United Gypsum Co.,* 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948)). A judicial finding is not rendered clearly erroneous simply because the reviewing court "would have decided the case differently." *Anderson v. City of Bessemer City, N.C.,* 470 U.S. 564, 573, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985). Rather, "[w]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Id.* at 574 (1985) (citing *United States v. Yellow Cab Co.,* 338 U.S. 338, 342, 70 S.Ct. 177, 94 L.Ed. 150 (1949)). A finding is considered to be contrary to law "when it fails to apply or misapplies relevant statutes, case law, or rules of procedure." *Catskill Dev., L.L.C. v. Park Place Entertainment Corp.,* 206 F.R.D. 78, 86 (S.D.N.Y.2002) (citation omitted).

Under this standard, the district court affords magistrate judges "broad discretion in resolving discovery disputes and reversal is appropriate only if their discretion is abused." *Lyondell-Citgo Refining, LP v. Petroleos de Venezuela, S.A.,* 2004 WL 3019767, at *2 (S.D.N.Y. December 29, 2004) (quoting *Derthick v. Bassett-Walker Inc.,* 1992 WL 249951, at *8 (S.D.N.Y. Sept.23, 1992)). Thus, a party seeking to overturn or modify a discovery order bears a heavy burden. *Schwartz v. Metropolitan Property and Cas. Ins. Co.,* 393 F.Supp.2d 179, 181 (E.D.N.Y.2005).

***2** Upon consideration of the matters set forth in the parties' submissions and in Judge Scott's January 4, 2006 order, the court finds that the County Defendants have failed to meet this burden. After *in camera* review of the documents at issue, consisting of correspondence between former Assistant County Attorney Kristin Baudo Machelor and various Erie County Sheriff's Department personnel regarding the drafting and implementation of a revised strip-search policy for the County's Holding Center and Correctional Facility, Judge Scott determined that the information in those documents goes beyond the rendering of legal advice "into the realm of policy making and administration" and, as a result, is not protected from disclosure by the attorney-client privilege (Item 78, p. 4). Judge Scott relied upon the legal precedent established in cases decided within the Second Circuit, such as *Mobil Oil Corp. v. Department of Energy,* 102 F.R.D. 1 (N.D.N.Y.1983), and *Ames v. Black Entertainment Television,* 1998 WL 812051 (S.D.N.Y. November 18,

1998), in determining that the privilege did not apply where the Assistant County Attorney was acting as an advisor on prison policy and procedure rather than as a legal advisor or advocate.

Having considered the holdings in these and other pertinent cases, having conducted its own *in camera* review of the disputed documents, and having fully considered Judge Scott's findings under the highly deferential standard of review provided in Fed.R.Civ.P. 72(a) and 28 U.S.C. § 636(b)(1)(A), this court finds no clear error of fact, misapplication of the law, or abuse of discretion that would warrant setting aside or modifying the magistrate judge's January 4, 2006 order in any way. Accordingly, the County Defendants' objections are overruled, and counsel shall make arrangements for the production of the *in camera* documents as directed by Judge Scott.

So ordered.

Footnotes

1 The December 9, 2004 referral order was signed by Chief United States District Judge Richard J. Arcara, acting in lieu and stead of the undersigned during a temporary period of illness.

2 As explained by Judge Scott in his January 4, 2006 order:

> The "County Defendants" consist of Erie County, its former and present Sheriffs and named Sheriff's Department officials who were allegedly responsible for the Erie County Holding Center and the Erie County Correctional Facility, all of the defendants in this action save defendant [H. McCarthy] Gipson (who is separately represented).

(Item 78, p. 1 n. 1).