



APPELLATE COURT
STATE OF CONNECTICUT

AC 242687

LYNNETTE RICHARDSON, ADMINISTRATRIX (ESTATE OF J'ALLEN JONES) ET AL.

v.

SCOTT SEMPLE ET AL.

October 25, 2024

O R D E R

Notice having been given to the public on the judicial branch website on October 17, 2024, the petition for review dated October 7, 2024, filed by the American Civil Liberties Union of Connecticut (petitioner), was heard by this court on October 24, 2024. No party to the underlying action filed a written response to the petition within the time provided in Practice Book § 77-1, but the defendants' counsel appeared and argued, as is allowed under that rule. Counsel for the petitioner also appeared and argued.

As a preliminary matter, the trial court docket does not reflect the issuance of a formal order from the court granting or denying a motion filed by any of the parties to the litigation in accordance with General Statutes § 51-164x (c) and Practice Book § 77-1 as is ordinarily required for this court to conduct the review contemplated by that statute and Practice Book provision. Instead, the petitioner has provided correspondence from the court, *Morgan, J.*, dated October 4, 2024, denying the petitioner's request for a copy of a video that is in the clerk's possession because the "exhibit is under seal pursuant to a protective order issued by the court on November 13, 2019." As a result, and absent any written objection by the parties to this case, this court construes the October 4, 2024 correspondence from the court as an order that "limits the disclosure of . . . other materials on file with the court" for the purposes of Practice Book § 77-1 (a).

The following background is relevant. The parties to the underlying civil action filed a "joint motion for protective order regarding Department of Correction videos," which was granted by the court on November 13, 2019. [Docket 115 and 115.86]. The

protective order pertained to the parties' use of and access to the videos "during the litigation of this matter" to address how the videos were to be "shown, handled, and possessed." The order also required the parties to file a joint motion to file the videos under seal if the videos were to be presented to the court or at trial.

On March 5, 2024, nine defendants to the underlying action filed a motion for summary judgment. In support of their motion, the defendants repeatedly refer to "Exhibit A," which they describe in that motion as a video that "depicts an escort through the interior of a high security correctional facility, including the operation of security doors, locations of cameras, use of restraints, and use of techniques to maintain control of inmates." [Motion for Summary Judgment, fn. 1, Docket 192.0]. The defendants also indicated that in their accompanying memorandum of law in support of summary judgment that they would provide the court "taking up this motion with a copy of the video to review in deciding said motion" because the video is "subject to a protective order which restricts the dissemination of this video and filing of such video on the public docket." [Memorandum in Support of Summary Judgment, fn. 2, Docket 193.0]. The parties appeared for argument on the defendants' motion for summary judgment on September 20, 2024.

Although there is presently some disagreement between the parties as to how and when Exhibit A came into the clerk's possession and whether Exhibit A was "lodged" or "filed" with the court, there is no dispute that the video is on a physical disc that is now in the possession of the trial court clerk. There also is no dispute that the defendants have filed, claimed and begun oral argument on their motion for summary judgment, which relies upon and, therefore, requires the court to view and consider the contents of that video.

There is no indication in the record, however, that the parties or the court followed the procedures outlined in Practice Book §§ 7-4B, 7-4C and 11-20A with respect to Exhibit A before the court issued its October 4, 2024 correspondence to the petitioner denying access to the Exhibit on the ground that it is "under seal pursuant to a protective order issued by the court on November 13, 2019." To the extent that the court relied on the protective order as a basis to prevent the petitioner from accessing Exhibit A, its order must be vacated. "As a rule, documents filed in court are open for public inspection, unless an exception applies." *Bank of New York v. Bell*, 120 Conn. App. 837, 844, appeal dismissed, 298 Conn. 917 (2010). That presumption attaches to all "judicial documents," that is, any material "submitted to the court for its review in the discharge of the court's adjudicatory function." *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 217 (2005).

"An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis" to seal or limit the disclosure of a judicial document. Practice Book § 11-20A (c). The protective order here is nothing more than such an agreement. It does not obviate the requirement that a party who submits an exhibit to the court in support of a motion for summary judgment but desires to limit the public's ability to see that exhibit comply with the pertinent statutes and rules of practice. Practice Book § 11-20A exists to afford notice and an opportunity for the parties *and the public* to be heard as to whether there is a substantial privacy interest in the content of the filing that outweighs the public's interest in viewing judicial documents. At the hearing before this court, counsel for the petitioner and for the defendants represented that they did not object to this court remanding this matter back to the trial court for the purpose of conducting a hearing in accordance with Practice Book § 11-20A.

Accordingly, the petition for review is granted, in part, in that the October 4, 2024 order is vacated and the matter is remanded to the trial court with direction to promptly conduct a properly noticed hearing in compliance with Practice Book § 11-20A on the issue of whether the Exhibit A should be sealed or its disclosure limited in whole or in part.¹

By the Court,

/s/

Carl D. Cicchetti
Chief Clerk

Notice sent: October 25, 2024
Counsel of Record
Clerk, Superior Court, HHDCV186098918S
Hon. Lisa K. Morgan

¹ For the sake of clarity, and in order to ensure that the trial court has an opportunity to make the determination required by this order, Exhibit A shall remain inaccessible to the public pending the trial court's resolution of the proceeding required by our remand.