

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 08-80736-Civ-Marra/Johnson

JANE DOES #1 and #2,
Petitioners,

UNITED STATES,
Respondent.

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Respondent, United States of America, by and through its undersigned counsel, files its Motion for Summary Judgment, pursuant to Rule 56, Federal Rules of Civil Procedure, and states:

I. STATEMENT OF UNCONTROVERTED FACTS

1. On or about September 24, 2007, Jeffrey Epstein entered into a Non-Prosecution Agreement with the United States Attorney's Office for the Southern District of Florida.

2. On or about October 29, 2007, an Addendum to the Non-Prosecution Agreement was executed by Jeffrey Epstein, and First Assistant United States Attorney [REDACTED] on behalf of Assistant United States Attorney [REDACTED].

3. On June 30, 2008, Jeffrey Epstein entered pleas of guilty to one charge of felony solicitation of prostitution and one charge of felony procurement of a minor to engage in prostitution in the Circuit Court, Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Epstein was sentenced the same date, and is currently imprisoned in Palm Beach County, Florida.

4. Jeffrey Epstein has not had any federal criminal charges filed against him in the United States District Court, Southern District of Florida, for the period January 1, 2001 to the present.

II. THERE HAS NEVER BEEN ANY "CASE" OR "COURT PROCEEDING" IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, AGAINST JEFFREY EPSTEIN.

A. Victim's Claims ^{E1}

On July 7, 2008, Jane Doe filed her Emergency Victim's Petition for Enforcement of Crime Victim's Rights Act, 18 U.S.C. Section 3771 (D.E. 1). Jane Doe alleged that, while she was a minor child, she was the victim of federal crimes committed by Jeffrey Epstein. She alleged that she believed Epstein was the subject of a federal criminal investigation being conducted by the United States Government in the Southern District of Florida. Jane Doe acknowledge that Epstein had recently been prosecuted and pleaded guilty, on June 30, 2008, in the Circuit Court for Palm Beach County, "to various similar state offenses including solicitation of minors for prostitution." (D.E. 1, ¶ 2.)

Jane Doe also alleged, upon information and belief, that Epstein was engaged in plea negotiations with the United States Attorney, Southern District of Florida, concerning federal crimes which Epstein was alleged to have committed against minor children, including her. (D.E. 1, ¶ 3.) Jane Doe alleged that “[s]uch negotiations may likely result in a disposition of the charges in the next several days.” Id.

Jane Doe alleged she had been denied her rights under the Crime Victim Rights Act (CVRA), because she had received no consultation with the attorney for the Government regarding the possible disposition of the charges; no notice of any public court proceedings; no information regarding her right to restitution; and no notice of her rights under the CVRA. (D.E. 1, ¶ 5.)

B. There Is No Dispute That There Has Never Been Any “Case” or “Court Proceeding” Against Epstein, in the United States District Court, Southern District of Florida, Involving Sexual Abuse Victims.

The rights of crime victims are set forth in 18 U.S.C. § 3771(a), and include eight (8) specific rights. Jane Doe’s petition alleges a violation of § 3771(a)(5), the right to consult with the attorney for the Government; § 3771(a)(2), the right to reasonable, accurate, and timely notice of any public court proceeding; § 3771(a)(6), the right to full and timely restitution as provided in law; and notice of her rights under the CVRA.

It is undisputed that no federal criminal charges have been filed against Jeffrey Epstein, in the U.S. District Court, Southern District of Florida, pertaining to the sexual abuse of minors. The United States submits that, since there is no “case” pending in the Southern District of Florida against Epstein, or any “court proceeding” involving an offense against Jane Doe, she cannot invoke any protections under 18 U.S.C. § 3771(a)(2) and (5).

Title 18, United States Code, § 3771(a)(5), provides that a crime victim has “[t]he reasonable right to confer with the attorney for the Government in the case.” In its interpretation of a federal statute, the court assumes that “Congress used words in a statute as they are commonly and ordinarily understood,” and reads the statute to give full effect to each of its provisions. United States v. DBB, Inc., 180 F.3d 1277, 1281 (11th Cir. 1999), citing United States v. McLymont, 45 F.3d 400, 401 (11th Cir. 1995). Section 3771(a)(5) grants a crime victim the reasonable right to confer with the attorney for the Government “in the case.” The phrase “in the case” must be considered since there is a canon of statutory construction that “discourages courts from adopting a reading of a statute that renders any part of the statute mere surplusage.” Bailey v. United States, 516 U.S. 137, 146 (1995)(noting that each word in a statute is intended to have “particular, nonsuperfluous meaning”).

Respondents submit that Congress intended the phrase “in the case” to mean a case filed in the district court. Federal criminal cases are filed in the United States district courts through the filing of a criminal

complaint, Fed.R.Cr.P. 3, or indictment, Fed.R.Cr.P. 7. In each instance, an attorney representing the United States Government is required to sign the complaint or indictment. Thus, each criminal case filed in the district court has an attorney for the Government representing the sovereign United States.

In contrast, § 3771(a)(1) provides that a crime victim “has the right to be reasonably protected from the accused.” No mention is made about a case or court proceeding. Thus, Congress intended that this right attaches even before a case is filed in the district court. The absence of any mention of the attorney for the Government is also telling, since the case may still be in the investigative stage, and not yet been assigned an attorney. In such a case, the federal law enforcement agency would be responsible for providing the reasonable protection from the accused.

Because there is not any case against Epstein in the Southern District of Florida, Jane Doe has no right under § 3771(a)(5) to consult with the attorney for the Government. The United States Attorney’s Office was under no obligation to consult with Jane Doe prior to concluding its Non-Prosecution Agreement with Epstein.

For the same reason, Jane Doe’s claim under § 3771(a)(2) also fails. There has been non “public court proceeding” against Epstein in the U.S. District Court, Southern District of Florida, since no criminal case has been filed against him in the federal court. Consequently, there has been nothing for which the U.S. Attorney’s Office was required to give notice to Jane Doe.

A different provision in the CVRA, 18 U.S.C. § 3771(b), also supports the Government’s interpretation of § 3771(a)(5). Section 3771(b)(1) provides as follows:

In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

There is no “court proceeding” in this case because no federal criminal charges have been lodged against Jeffrey Epstein. Section 3771(b)(1) envisions that a district court presiding over a criminal trial will be responsible for ensuring that a crime victim will be afforded rights granted in § 3771(a). Section 3771(a)(3), which is expressly referenced in § 3771(b)(1), provides that a crime victim has

The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

This provision contemplates that, in the event a defendant invokes the rule of sequestration in Fed.R.Evid. 615, the court must consider the crime victim’s rights under § 3771(a)(3), and can only exclude the victim from the

proceeding if the court finds there is clear and convincing evidence that the victim's testimony would be materially altered if the victim was allowed to hear other testimony at the proceeding. By providing a difficult evidentiary standard which must be met before a victim's right to be present in the court proceeding can be denied, Congress was purposefully limiting a court's discretion in sequestering trial witnesses.

In the instant case, there is no "court proceeding" since no federal criminal charges have been brought against Epstein. Therefore, § 3771(b)(1) is inapplicable. There is no role for this Court to fulfill under § 3771(b)(1).

III. SEPARATION OF POWERS PRINCIPLES PRECLUDE THE COURT FROM GRANTING ANY RELIEF REGARDING THE NON-PROSECUTION AGREEMENT

In the instant case, the Non-Prosecution Agreement between the Government and Jeffrey Epstein was concluded in September and October 2007, months before petitioners instituted their action. By entering into the Non-Prosecution Agreement, the United States was exercising its prosecutorial discretion as to the best means resolve the allegations that Epstein had violated federal law by engaging in criminal sexual misconduct with minors.

The Executive Branch enjoys exceedingly broad discretion in deciding how, or whether, to charge an individual. Bordenkircher v. Hayes, 434 U.S. 357, 668 (1978) ("In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion") (footnote omitted), and Nixon v. United States, 418 U.S. 683, 693 (1974) (Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case). Mindful of that principle, Congress expressly provided in the CVRA that, "[n]othing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction." 18 U.S.C. § 3771(d)(6).

Petitioners had no right under the CVRA to confer with the attorney for the Government, prior to the entry into the Non-Prosecution Agreement, because there was no existing case in the U.S. District Court.

Moreover, even if they had the right to confer, they had no legal means to prevent the United States from negotiating the Agreement it ultimately entered into with Epstein. Unlike the situation in In Re Dean, 527 F.3d 391 (5th Cir. 2008), the Non-Prosecution Agreement did not come before any federal court for review and approval, nor was such action required. In Dean, if the district court believed that the victims had been denied their right to consult under § 3771(a)(5), it could reject the plea agreement and direct that the required consultation occur prior to the negotiation of any new plea agreement. In contrast, the Non-Prosecution

Agreement never came before this court. Therefore, this Court is without authority to provide a remedy under § 3771(b)(1).

IV. THE GOVERNMENT IS ENTITLED TO SUMMARY JUDGMENT

Under Rule 56(c), Federal Rules of Civil Procedure, summary judgment shall be granted, “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” The basic issue before the Court on a motion for summary judgment is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Allen v. Tyson Foods, Inc., 121 F.3d 642, 646 (11th Cir. 1997), citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). Under Fed.R.Civ.P. 56(c), summary judgment is appropriate after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which the party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 321 (1986).

At the summary judgment stage, the district court’s task is to determine if there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). As to materiality, the substantive law will identify which facts are material. “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986). An issue of fact is “material” if it is a legal element of the claim, as identified by the substantive law governing the case, such that its presence or absence might affect the outcome of the suit. Tipton v. Bergrohr GMBH-Siegen, 965 F.2d 994, 998 (11th Cir. 1992), citing Liberty Lobby, 477 U.S. at 248, 106 S.Ct. at 2505. An issue is “genuine” if the record taken as a whole could lead a rational trier of fact to find for the nonmoving party. Tipton, *supra*, citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 1359 (1986).

The uncontroverted, material facts establish that there has never been a “case” against Jeffrey Epstein filed in the U.S. District Court, pertaining to the sexual abuse of minors. Without a case, the reasonable right to confer under § 3771(a)(5) does not apply. Additionally, there have been no court proceedings, public or otherwise, against Epstein in the U.S. District Court. Therefore, the Government cannot have failed to notify petitioners under § 3771(a)(2).

^{F1} At the hearing held on July 11, 2008, petitioner added Jane Doe No. 2 as a second petitioner.