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Equal Protection

Kentucky[590] is applicable to instances of gender based peremptory challenges. Neither the United States Supreme Court, Second Circuit Court of Appeals, nor the New York Court of Appeals have squarely decided the issue.[591]

THIRD DEPARTMENT

Sisario v. Amsterdam Memorial Hospital[592]
(decided March 22, 1990)

Plaintiff claimed that the New York Civil Practice Law and Rules (CPLR) 3012-a,[593] "which requires a complaint in a medical malpractice suit to be accompanied by a certificate of merit"[594] violated the equal protection clauses of the federal[595] and state constitutions[596] because it protects only a certain class of health care providers from frivolous malpractice law suits and excludes other health care providers, as well as other professionals who are subject to frivolous malpractice claims.[597] Plaintiff also claimed that the statute violated the due process clauses of the federal[598] and state constitutions[599] because it denies access to the courts by requiring a certificate of merit

590. 476 U.S. 79 (1986).

591. Two federal circuit courts were split over the applicability of *Batson* to gender based peremptory challenges. *Compare* United States v. DeGross, 913 F.2d 1417 (9th Cir. 1990) (holding *Batson* applicable to gender based peremptory challenges) *with* United States v. Hamilton, 850 F.2d 1038 (4th Cir. 1988) (holding *Batson* is not applicable to gender based peremptory challenges), *cert. denied*, 110 S. Ct. 1109 (1990).

592. 159 A.D.2d 843, 552 N.Y.S.2d 989 (3d Dep't), *appeal dismissed*, 76 N.Y.2d 844, 559 N.E.2d 1287, 560 N.Y.S.2d 128 (1990).

593. N.Y. CIV. PRAC. L. & R. 3012-a (McKinney 1991).

594. *Sisario*, 159 A.D.2d at 843, 552 N.Y.S.2d at 990.

595. U.S. CONST. amend. XIV, § 1.

596. N.Y. CONST. art. I, § 11.

597. *Sisario*, 159 A.D.2d at 843, 552 N.Y.S.2d at 990 ("[p]laintiff claims that the statute is discriminatory because it affords protection only to certain health care providers while others who are sued for malpractice, such as attorneys or accountants, are denied similar protection (as are certain other health care providers such as osteopaths and chiropractors)").

598. U.S. CONST. amend. XIV, § 1.

599. N.Y. CONST. art. I, § 6.

before a plaintiff may file a malpractice case. The court held that the statute was constitutional.[600]

Defendants moved to dismiss plaintiff's malpractice claim because plaintiff failed to accompany his complaint with a certificate of merit which is required by CPLR 3012-a. The trial court ordered plaintiff to file a certificate of merit within thirty days and to pay each defendant two hundred and fifty dollars. Although that decision was affirmed by this court on appeal,[601] the plaintiffs never filed a certificate of merit. The defendants moved to dismiss, and upon rejecting the plaintiff's constitutional claims, a dismissal was granted. This appeal was then sought by plaintiff.

Using a rational basis standard, the court rejected the plaintiff's equal protection and due process claims. The court found that there was a rational basis for the statute, despite the fact that it excluded malpractice claims against certain health care providers and other professionals.

The court cited *Montgomery v. Daniels*[602] to support its statement that, "[w]hile a lack of a certificate of merit essentially operates to deny a plaintiff access to the courts, such access regarding claims not involving rights subject to special constitutional protection may be denied if there is a rational basis."[603] The *Sisario* court further stated that when applying a rational relation standard, the court may uphold a classification even though the state may have chosen another way to achieve its legitimate objective.

In *Montgomery*, the New York Court of Appeals rejected the plaintiff's equal protection claims brought under the federal and state constitutions.[604] The court upheld the constitutionality of the New York Insurance Law[605] despite the fact that it denied

600. *Sisario*, 159 A.D.2d at 844-45, 552 N.Y.S.2d at 991.

601. Sisario v. Amsterdam Memorial Hosp., 146 A.D.2d 837, 536 N.Y.S.2d 242 (3d Dep't 1989).

602. 38 N.Y.2d 41, 340 N.E.2d 444, 378 N.Y.S.2d 1 (1975).

603. *Sisario*, 159 A.D.2d at 844, 552 N.Y.S.2d at 990.

604. *Montgomery*, 38 N.Y.2d at 45-46, 340 N.E.2d at 446, 378 N.Y.S.2d at 4.

605. N.Y. INS. LAW §§ 5101-108 (McKinney 1985 & Supp. 1991).

access to the court to certain classes of people.[606] In determining that the rational relation standard was, in fact, the proper test to apply, the court examined analyses previously made by the United States Supreme Court:[607]

> [T]he Supreme Court has made it clear that access to the courts in and of itself is not an independent constitutional right. The right to access to the courts will be accorded special constitutional protection only where the right sought to be asserted through such access is a right recognized in the constitutional sense as carrying a preferred status and so entitled to special protection and then only where there is no alternative forum in which vindication of that constitutionally protected right may be sought.[608]

Further, the *Montgomery* court wrote:

> By contrast the Supreme Court has held that access to the courts for the resolution of other claims (involving rights not subject to special constitutional protection) may be denied if there is a rational basis therefor; no proof is required of any compelling State interest or that the legislative choice of means of accomplishment was the least restrictive.[609]

The *Sisario* court decided that since "those in plaintiff's position do not constitute a suspect class, nor do the requirements of CPLR 3012-a interfere with the exercise of a fundamental right,"[610] plaintiff's claim would be analyzed under a rational relation standard. The court acknowledged that the statute was designed to alleviate some of the problems "faced by the health care industry due to high medical malpractice insurance premiums which discourage physicians and dentists from practicing in New York."[611] The requirement of a certificate of

606. *Montgomery*, 38 N.Y.2d at 61, 340 N.E.2d at 456, 378 N.Y.S.2d at 17-18.

607. *See, e.g.*, Ortwein v. Schwab, 410 U.S. 656 (1973); United States v. Kras, 409 U.S. 434 (1973); Boddie v. Connecticut, 401 U.S. 371 (1971).

608. *Montgomery*, 38 N.Y.2d at 60, 340 N.E.2d at 456, 378 N.Y.S.2d at 17.

609. *Id.*

610. *Sisario*, 159 A.D.2d at 843, 552 N.Y.S.2d at 990.

611. *Id.* at 844, 552 N.Y.S.2d at 990-91.

merit is aimed at reducing the amount of frivolous medical malpractice cases commenced in the state. The fact that the legislature has chosen to move "one step at a time"[612] does not mean that the statute is not rationally related to the legislature's objective.[613]

In addition, the court rejected plaintiff's due process claim that access is being denied to the courts "because an attorney must first find a physician who agrees that the case has merit"[614] before a plaintiff may bring a claim. The court stated that unless there is a right that has been recognized as needing special protection, the state may restrict access to the courts.[615] Here, no fundamental right existed and the objective of the statute is rationally related to the restrictions the statute imposes. Therefore, the court held that there was no denial of substantive due process.[616]

In 1955, the United States Supreme Court established the "one step at a time" equal protection doctrine articulated by the appellate division in *Sisario*.[617] "The reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind."[618] In 1970, the Supreme Court wrote that the equal protection clause of the Federal Constitution does not require that a state try to remedy every aspect of a problem legislatively or not address the issue at all.[619]

Federal courts have also decided that mediation resulting in restricted access to the courts does not necessarily infringe upon

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612. *Id.* at 845, 552 N.Y.S.2d at 991.

613. *Id.*

614. *Id.*

615. *Id.* ("Under due process, for access to the courts to be recognized it must be in conjunction with a right recognized as entitled to special protection. Otherwise the State may condition access to the courts." This is because "access to the courts in and of itself is not a right protected by the constitution."); *see* Colton v. Riccobono, 67 N.Y.2d 571, 576, 496 N.E.2d 670, 673, 505 N.Y.S.2d 581, 584 (1986).

616. *Sisario*, 159 A.D.2d at 845, 552 N.Y.S.2d at 991.

617. *See* Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 489 (1955).

618. *Id.*

619. *See* Dandridge v. Williams, 397 U.S. 471, 486-87 (1970).

procedural due process rights. In *Woods v. Holy Cross Hospital*,[620] the court used a rational relation standard to decide that a Florida law requiring medical malpractice claimants to "participate in a mediation process prior to bringing an action in court"[621] does not unconstitutionally infringe upon due process by restricting or denying access to the courts:

> Access to the courts is not an independent right; it is accorded special protection *only* when the right a claimant wishes to assert through such access is given a preferred status *and* thus entitled to special protection and if there is no alternative forum in which that specially protected right may be enforced.[622]

The court stated that if there is a rational basis for restricting access to the courts, there is no constitutional violation. Also, in *Holman v. Hilton*,[623] a United States District Court wrote that denial of access to the courts is only violative of due process rights when that denial infringes upon a fundamental right.[624] Absent such infringement, a rational basis standard must apply.[625] The court referred to *Ortwein v. Schwab*[626] and *United States v. Kras*,[627] to support its proposition. These cases limited the application of an earlier decision, *Boddie v. Connecticut*,[628] which held that "due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard."[629] *Boddie* was thus restricted "to cases involving fundamental constitutional rights over which state courts have exclusive control."[630]

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620. 591 F.2d 1164 (5th Cir. 1979).
621. *Id.* at 1166.
622. *Id.* at 1173 n.16 (emphasis in originial).
623. 542 F. Supp. 913 (D.N.J. 1982), *aff'd*, 712 F.2d 854 (3d Cir. 1983).
624. *Id.* at 919.
625. *Id.* at 920.
626. 410 U.S. 656 (1973), *reh'g denied*, 411 U.S. 922 (1973).
627. 409 U.S. 434 (1973).
628. 401 U.S. 371 (1971).
629. *Id.* at 377.
630. *Hilton*, 542 F. Supp. at 920.

Therefore, the *Sisario* court is consistent with current federal standards on equal protection and due process analyses with respect to the issues addressed in that case. The federal courts use a "one step at a time approach" to legislative initiative intending to remedy a social or economic problem. As articulated in *Sisario*, equal protection will not be violated if every aspect of an issue is not addressed by the legislature. Further, federal analysis parallels the *Sisario* decision in that access to the courts for civil proceedings is generally not an absolute right and may be restricted, absent a violation of fundamental constitutional rights, if there is a rational basis for doing so.

Arnold v. Constantine[631]
(decided November 15, 1990)

Recent appointees to the aviation unit of the state police contended that the police superintendent's failure to compensate them at the same pay rate as other pilots in the aviation unit violated their equal protection rights under the federal[632] and state[633] constitutions. The court held that there was no equal protection violation under either the federal or state constitutions.[634]

In 1985, respondent, police superintendent decided to expand the types of duties to be performed by the aviation unit and increased the unit number of operational hours. Additionally, respondent re-classified new applicants for the aviation unit as troopers instead of the higher ranked position of technical sergeant.[635] In 1986, four new appointees, petitioners herein, were assigned to the aviation unit as troopers. Upon respondent's failure to promote petitioners to technical sergeants, petitioners brought an article 78 proceeding challenging this failure to compensate them at a pay rate equal to the other pilots in the unit.[636]

631. 164 A.D.2d 203, 563 N.Y.S.2d 259 (3d Dep't 1990).
632. U.S. CONST. amend. XIV, § 1.
633. N.Y. CONST. art. I, § 11.
634. *Arnold*, 164 A.D.2d at 206, 563 N.Y.S.2d at 261.
635. *Id.* at 204-05, 563 N.Y.S.2d at 260.
636. *Id.* at 205, 563 N.Y.S.2d at 261.