

NO. LLI-CV21-5014019-S : SUPERIOR COURT
JON A. GOODWIN :
 : JUDICIAL DISTRICT OF LITCHFIELD
V. : AT TORRINGTON
MILOT, ET AL. : NOVEMBER 19, 2021

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS

Pursuant to Practice Book §10-30, Defendant Hardy-Massaró moves to dismiss Plaintiff's Count Thirty: negligent infliction of emotional distress claim as she is entitled to statutory immunity pursuant to Connecticut General Statutes § 4-165. Accordingly, for the reasons set forth more fully below, this motion should be granted and Count Thirty shall be dismissed.

I. BACKGROUND

The Plaintiff, Jon A. Goodwin, brings this *pro se* Complaint against seven Defendants including Supervisory Assistant Public Defender Karen Hardy-Massaró.¹ The Plaintiff's claims against Defendants Hardy-Massaró arise from allegations that occurred during a June 11, 2021 virtual school meeting regarding one of the minor child Defendants. (Compl., Pgs. 20-22, ¶¶ 59-69). The Plaintiff alleges that Defendant Hardy-Massaró violated Connecticut General Statutes 46(b)-124(b),(c), when she publicly disclosed a juvenile court order during the virtual meeting pertaining to the Plaintiff having no contact with the minor child. *Id.* at Pg. 20, ¶¶ 60-61. Specifically, the Plaintiff brings four counts against the Defendant including: slander, false light

¹ This Court may take judicial notice of the Registered Juris Information for Supervisory Assistant Public Defender Karen Hardy-Massaró, New Britain Juvenile Office on the Judicial Branch website, available at: <https://www.jud.ct.gov/attorneyfirminquiry/JurisDetail.aspx>. See *Conboy v. State*, 292 Conn. 642, 652 (2009) (may take judicial notice of public records); *Angiolillo v. Tradesource, Inc.*, No. X08CV034000294S, 2008 Conn. Super. LEXIS 271 at *12 (Conn. Sup. Ct. Feb. 6, 2008) (court took judicial notice of attorney information listed on the Judicial Branch website).

invasion of privacy, intentional infliction of emotional distress, and negligent infliction of emotional distress. *Id.* at Pgs. 20-22. In his requested relief, the Plaintiff seeks money damages in excess of \$15,000. *Id.* at Pg. 28. The Plaintiff brings this action against Defendant Hardy-Massaró in her individual capacity only. (Doc. No. 100.30).

II. ARGUMENT

A. Standard of Review, Motion to Dismiss.

A motion to dismiss shall be used to assert lack of jurisdiction over the subject matter, the person, insufficiency of process, or insufficiency of service of process. Practice Book §10-30(a). It “properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court” *Bellman v. Town of W. Hartford*, 96 Conn. App. 387, 393 (2006) (internal citations omitted). “The burden rests with the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute.” *Goodyear v. DiScala*, 269 Conn. 507, 511 (2004) (internal quotation marks omitted); *see also Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 423, 430 n. 12 (2003) (“The plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised.”).

“The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court *sua sponte*, at any state of the proceedings, including on appeal.” *Peters v. Department of Social Services*, 273 Conn. 434, 441 (2005). Once brought to the attention of the court, the issue of subject matter jurisdiction must be immediately acted upon by the court, *Gurliacci v. Mayer*, 218 Conn. 531, 545 (1991), and “whenever a court discovers that it lacks jurisdiction, it is bound to dismiss the case.” *Cahill v. Board of Education*, 198 Conn. 229,

238 (1985). Claims of “statutory immunity, pursuant to § 4-165, implicate the court’s subject matter jurisdiction.” *Manifold v. Ragaglia*, 94 Conn. App. 103, 114 (2006).

B. Defendant Hardy-Massaró is Entitled to Statutory Immunity From Plaintiff’s Count Thirty.

In Plaintiff’s Count Thirty, he brings a negligent infliction of emotional distress claim against Defendant Hardy-Massaró. (Compl., Pg. 22, ¶¶67-69). Plaintiff contends that the Defendant’s public disclosure of a juvenile court order was a false accusation that caused him severe mental and emotional distress. *Id.* at Pg. 22, ¶¶67-69. Even assuming Plaintiff could demonstrate as a matter of law that a public disclosure of a juvenile court order could constitute “severe emotional distress,” Defendant Hardy-Massaró, a current state employee, is entitled statutory immunity. Plaintiff fails to plead that he has received the requisite authorization from the Claims Commission to bring this count. As such, any alleged negligent act by the Defendant in this matter falls under the purview of Connecticut General Statutes § 4-165.

General Statutes § 4-165 provides immunity to state employees sued in their individual capacity for negligence in the discharge of their duties. *Hanna v. Capitol Region Mental Health Center*, 74 Conn. App. 264, 268 (2002); *see also Martin v. Brady*, 261 Conn. 372, 379 (2002) (explaining that to overcome immunity provided in § 4-165 the plaintiff must prove the defendants’ conduct “is more than negligence [and] more than gross negligence.”); *Hamilton v. Lajoie*, 660 F. Supp.2d 261, 265 (D. Conn. 2009) (“By the Connecticut Supreme Court’s reading, [section 4-165(a)] means that ‘state employees may not be held personally liable for their negligent actions performed within the scope of their employment.’”) (quoting *Miller v. Egan*, 265 Conn. 301, 319 (2003)).

General Statute § 4-165(a) provides, in relevant part, that “[n]o state officer or employee shall be personally liable for damage or injury, not wanton, reckless or malicious, caused in the

discharge of his or her duties or within the scope of his or her employment. Any person having a complaint for such damage or injury shall present it as a claim against the state under the provisions of this chapter.” Conn. Gen. Stat. § 4-165(a). Section 4-165 immunity implicates this Court’s subject matter jurisdiction. *Woodruff v. Hemingway*, 297 Conn. 317, 321 (2010); *Manifold v. Ragaglia*, 94 Conn. App. 103, 113-14 (2006). Additionally, General Statutes § 4-141 defines which employees are included within the penumbra of § 4-165, which includes public defenders. Conn. Gen. Stat. § 4-141 (“state officers and employees includes . . . attorneys appointed by the Public Defender Services Commission as public defenders, assistant public defenders or deputy assistant public defenders.”).

Here, Assistant Public Defender Hardy-Massaró is clearly entitled to immunity pursuant to General Statutes § 4-165 from Plaintiff’s negligent infliction of emotional distress claim. Plaintiff’s sole allegations against the Defendant relate to her alleged conduct at the June 11, 2021 virtual school meeting for the minor child she represents in the juvenile court matter. Although Plaintiff’s *po se* Complaint is sparse, this Court can construe his pleadings liberally. *Markley v. Dep’t of Pub. Util. Control*, 301 Conn. 56, 74 (2011). Defendant Hardy-Massaró’s official title and assignment to the New Britain Office of the Public Defender, Juvenile Matters is public record and subject to this Court’s judicial notice. *See supra* footnote 1. Additionally, by Plaintiff’s own admission he has been reported and accused of abusing the minor child to the Connecticut Department of Children and Families. (Compl. Pgs. 1-2, ¶¶ 3,5).

As such, the Defendant was acting within the scope of her duties as an assistant public defender and is immune from Count Thirty. *See Manifold*, 102 Conn. App. at 328 (affirming trial court’s grant of 4-165 immunity in negligent infliction of emotional distress claim); *see also Rutledge v. Krynski*, No. CV166032664S, 2016 WL 7142794 (Conn. Super. Ct. Nov. 1, 2016)

(State trooper was statutorily immune from driver's claim of negligent infliction of emotional distress, because, by definition, negligent infliction of emotional distress was not a claim of wanton, reckless, or malicious behavior); *see also McCurdy v. Jones*, No. CV085009093, 2010 WL 654491, at *2 (Conn. Super. Ct. Feb. 19, 2010) ("A cause of action for negligent infliction of emotional distress, by definition, is not a claim that the defendant acted 'wilfully or maliciously.'"). Therefore, the claim of negligent infliction of emotional distress must be dismissed against Defendant Hardy-Massaró.

III. CONCLUSION

The Court should grant this motion and dismiss the aforementioned claim because this Court lacks subject matter jurisdiction.

DEFENDANT
Hardy-Massaró

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CERTIFICATION

I hereby certify that on November 19, 2021 a copy of the forgoing was filed electronically [and served by mail on anyone unable to accept electronic filing]. Parties may access this filing through the Court's system.

/s/ *Samantha C. Wong*

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