

OFFICE OF THE CLERK
DOCKET NO. LLI-CV-21-50140-19 SUPERIOR COURT : SUPERIOR COURT
JON A. GOODWIN 2022 MAY 16 PM 2 56 : J.D. OF LITCHFIELD
VS. JUDICIAL DISTRICT OF : AT TORRINGTON
LITCHFIELD :
STATE OF CONNECTICUT
RAYMOND J. MILOT, ET AL : MAY 16, 2022

MEMORANDUM OF DECISION RE: MOTION TO DISMISS

In the present action currently pending against three defendants, the defendant Dr. Joanna M. Iurato, moves to dismiss counts one through four under General Statutes § 52-196a. The special motion to dismiss, memorandum of law in support of the special motion to dismiss, and the exhibits attached thereto were all filed under seal.

Thereafter, the plaintiff filed a motion seeking limited discovery relevant to the special motion to dismiss under § 52-196a (d). The court granted the plaintiff's motion authorizing the plaintiff to depose Dr. Khalil and Dr. Iurato with questioning limited to any reports made about the plaintiff, the reason(s) why said reports were made, and/or the information contained in the affidavits Dr. Khalil and Dr. Iurato submitted in support of their motions to dismiss. The plaintiff was also allowed to depose the keeper of records for the Connecticut Department of Children and Families (DCF) but could only access those records pertaining to the plaintiff under General Statutes § 17a-28 (g) (1).

On May 2, 2022, the plaintiff filed an objection to Dr. Iurato's special motion to dismiss. Argument was held on the motion in a virtual courtroom on May 9, 2022. For the following reasons, Dr. Iurato's motion is granted.

- JANO sent
- Copy emailed to ROJD
- Copy mailed to SRP Jon A. Goodwin

AC
5/16/22

106.20

I

FACTS

The plaintiff brings this action against Dr. Iurato alleging that on October 10, 2019, she reported to defendant Raymond Milot and DCF that the plaintiff abused minor child N¹ by placing him in a basket hold. The plaintiff was investigated by DCF and continues to suffer damage to his reputation, negatively impacting his ability to raise capital for current ventures and taking time away from work. The plaintiff's claims against Dr. Iurato sound in slander per se (count one), false light invasion of privacy (count two), intentional infliction of emotional distress (count three), and negligent infliction of emotional distress (count four).

Dr. Iurato has submitted an affidavit² and the plaintiff has not. The following facts are gleaned from Dr. Iurato's unopposed affidavit. Dr. Iurato began seeing Raymond Milot, N, and others for court ordered family therapy in July 2019. There was, purportedly, significant conflict between and among the parents and children and significant behavioral issues from N including poor communication and coping skills. Dr. Iurato learned by Mr. Milot that the plaintiff had moved into N's mother's home. During a therapy session, the children advised Dr. Iurato that the plaintiff had physically restrained N on two occasions. In the first incident, the plaintiff held N's hands down while N's mother sat on him, and another child was made to hold his legs down. In the second incident, the plaintiff allegedly backed N up to a washing machine and allegedly held his legs in a weird position. N's mother reportedly told the plaintiff to stop hurting N.

¹ "In view of [the] policy of protecting the privacy interests of juveniles, [the court refers] to the child involved in this matter as [N]." *Boisvert v. Gavis*, 332 Conn. 115, 121 n.3, 210 A.3d 1 (2019).

² General Statutes § 52-196a (e) (2) provides that in "ruling on a special motion to dismiss, the court shall consider pleadings and supporting and opposing affidavits of the parties attesting to the facts upon which liability or a defense, as the case may be, is based."

Dr. Iurato understood that restraining a child carries a risk of serious physical harm including abrasions, bruises, soft tissue compressions, fractures, asphyxiation, as well as psychological harm. Dr. Iurato, believing she had reasonable cause to suspect that N was at imminent risk of serious harm, notified DCF by an oral report to the DCF hotline on October 10, 2019, which she followed up with a Form 136 written report.

II

DISCUSSION

At issue is whether under § 52-196a, the court should dismiss the claims against Dr. Iurato, a defendant sued for making a report to DCF about the health and safety of a child. After construing § 52-196a and examining the relevant case law, the court grants Dr. Iurato's motion.

General Statutes § 52-196a (e) (3) provides in relevant part: "The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint . . . is based on the moving party's exercise of its right of free speech, right to petition the government . . . in connection with a matter of public concern, unless the party that brought the complaint . . . sets forth with particularity the circumstances giving rise to the complaint . . . and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint"

A. The Defendant's Speech Was a Petition to the Government on a Matter of Public Concern

In deciding Dr. Iurato's special motion to dismiss, the court must use a two-part test. First, the court must decide whether the complaint is based on the defendant's exercise of her right to petition the government. For purposes of a special motion to dismiss, the legislature defined the phrase right to petition the government. "Right to petition the government means (A)

communication in connection with an issue under consideration or review by a legislative, executive, administrative, judicial or other governmental body, (B) communication that is reasonably likely to encourage consideration or review of a matter of public concern by a legislative, executive, administrative, judicial or other governmental body” (Internal quotation marks omitted.) General Statutes § 52-196a (a) (3). “Matter of public concern means an issue related to (A) health or safety, (B) . . . community well-being” (Internal quotation marks omitted.) General Statutes § 52-196a (a) (1). The plaintiff concedes that the report made by Dr. Iurato pertained to the health and safety of N and, thus, was a matter of public concern under § 52-196a (a) (1). The plaintiff argues that the defendant’s statements did not constitute an exercise of free speech and, thus, are not covered by § 52-196a.

The plaintiff does not address whether Dr. Iurato’s speech was a petition to the government. Instead, the plaintiff contends that Dr. Iurato’s report to DCF does not fall under § 52-196a because it was not “free speech” as the statement was made in the course of her employment. The plaintiff cites *Garcetti v. Ceballos*, 547 U.S. 410, 421, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006), and *Schumann v. Dianon Systems, Inc.*, 304 Conn. 585, 610–11, 43 A.3d 111 (2012). However, neither *Garcetti* nor *Schumann* are controlling and are completely inapposite to the situation before the court. At issue in *Garcetti* and *Schumann* was whether an employer could control its employees’ official job-related speech and act against an employee who made statements pursuant to his or her official duties. See *Garcetti v. Ceballos*, *supra*, 421; *Schumann v. Dianon Systems, Inc.*, *supra*, 610–11.

The plaintiff does not discuss whether the speech at issue constituted petitioning the government under § 52-196a. In a remarkably similar case, the Superior Court, *Knox, J.*, dismissed claims against defendants who reported one of the plaintiffs to the state police for

alleged sexual abuse of a child. *Day v. Dodge*, Superior Court, judicial district of New London, Docket No. CV-18-6035362-S (January 25, 2019, *Knox, J.*) (67 Conn. L. Rptr. 750). “In contacting and communicating with the state police about this incident, the defendants were petitioning government.” *Id.*, 752. Judge Knox found that the matter was of significant public concern and fell into the category of community well-being. *Id.* The court found that the defendants satisfied their initial burden of showing that the claims against them were based on the defendants’ exercise of their right to petition the government. *Id.*

Like the court in *Day*, this court finds that Dr. Iurato’s report to DCF was a petition to the government on a matter of public concern. Thus, the defendant has satisfied the first prong under § 52-196a.

B. The Plaintiff Cannot Establish Probable Cause that He Will Prevail Against Dr. Iurato

“If the first prong of § 52-196a (e) (3) is satisfied, the court must next determine *whether a plaintiff sets forth with particularity the circumstances giving rise to the complaint . . . and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint . . .* The court must consider the pleadings and supporting or opposing affidavits submitted by the parties. . . . Probable cause is a bona fide belief in the existence of facts essential under the law for the action and such as would warrant a [person] of ordinary caution, prudence and judgment, under the circumstances, in entertaining it.” (Citations omitted; emphasis added; internal quotation marks omitted.) *Day v. Dodge*, *supra*, 67 Conn. L. Rptr. 753.

1. Dr. Iurato has Immunity under General Statutes § 17a-101e

General Statutes § 17a-101e (b) provides in relevant part “Any person . . . [who] in good faith, (1) makes a report pursuant to sections 17a-101a to 17a-101d, inclusive . . . shall be

immune from any liability, civil or criminal, which might otherwise arise from or be related to the actions taken pursuant to this subsection and shall have the same immunity with respect to any judicial proceeding which results from such report or actions”

In *Day*, Judge Knox looked to the immunity provided to mandatory reporters of child neglect and abuse to determine whether there was probable cause that the plaintiffs would prevail on the merits of their claims. *Day v. Dodge*, supra, 67 Conn. L. Rptr. 753. Specifically Judge Knox cited General Statutes § 17a-101 (a) which sets forth that it is the public policy of the state to protect children “and for these purposes to require the reporting of suspected child abuse or neglect, investigation of such reports by a social agency, and provision of services, where needed, to such child and family.” (Internal quotation marks omitted.) *Day v. Dodge*, supra, 67 Conn. L. Rptr. 753. In *Day*, the defendants relied upon § 17a-101e (b) which granted immunity to a person, making a report in good faith. *Id.* The court reviewed the affidavits of the parties and found that the plaintiffs failed to submit evidence suggesting that the defendants acted in bad faith in making the report to the police of the alleged sexual abuse. *Id.*, 753–54.

Accordingly, Judge Knox held that the plaintiffs could not establish there was probable cause that they would prevail on the merits. *Id.*, 754. Because the defendants had immunity under § 17a-101e (b), the plaintiffs could not “sustain their burden of showing that they are likely to succeed on the merits, considering all valid defenses.” *Id.* The claims against the *Day* defendants were, therefore, dismissed. *Id.*

Here, the plaintiff was permitted limited discovery and allowed to depose Dr. Khalil and Dr. Iurato, questioning both regarding any reports made about the plaintiff, the reason(s) why said reports were made, and/or the information contained in the affidavits they submitted in support of their motions to dismiss. The plaintiff was also allowed to depose the keeper of

records for DCF, accessing those records pertaining to the plaintiff under General Statutes § 17a-28 (g) (1).

The plaintiff does not contest that Dr. Iurato was a mandatory reporter under § 17a-101 (b) (8), (10), (24), (28), and (30) as a psychologist, a social worker, mental health professional, a licensed marital and family therapist, and a licensed professional counselor, respectively. A mandatory reporter who has reasonable cause to suspect or believe any child under 18 has been abused or neglected must report his/her suspicions to DCF or law enforcement. General Statutes §§ 17a-101a (a) (1); 17a-101b; 17a-101d. Suspicion may be based on observations, allegations, facts, or statements by a child, victim, or third party. General Statutes § 17a-101a (d). "Such suspicion or belief does not require certainty or probable cause." General Statutes § 17a-101a (d).

Dr. Iurato learned that the plaintiff was living in N's mother's home and that the plaintiff had physically restrained N on two occasions. The plaintiff reportedly held N's hands down while N's mother sat on him, and another child was made to hold his legs down. On a second occasion, the plaintiff allegedly backed N up to a washing machine, holding his legs in a weird position. N's mother reportedly told the plaintiff to stop hurting N.

Dr. Iurato believes that restraining a child carries a risk of serious physical harm, including abrasions, bruises, soft tissue compressions, fractures, and asphyxiation, as well as psychological harm. Accordingly, Dr. Iurato notified DCF by an oral report to the DCF hotline on October 10, 2019, which she followed up with a Form 136 written report.

Notwithstanding the discovery that was afforded to him, the plaintiff has offered no evidence suggesting that Dr. Iurato acted with malice, knowledge of the falsity of the facts, or even recklessness in making her report to DCF. The court finds that Dr. Iurato's report to DCF

was made in good faith. The plaintiff cannot sustain his burden that he is likely to succeed on the merits considering Dr. Iurato's defense of absolute immunity under § 17a-101e (b). Counts one through four are dismissed pursuant to § 52-196a (e) (3).

2. Dr. Iurato Has Absolute Immunity

In addition, the court also finds that Dr. Iurato's absolute immunity supports the dismissal of the plaintiff's claims asserted against her. "[A]bsolute immunity implicates the trial court's subject matter jurisdiction." *Scholz v. Epstein*, 341 Conn. 1, 8, 266 A.3d 127 (2022).

Absolute immunity historically provided immunity to attorneys for defamation actions brought against them for statements made in court. Statements made during judicial or quasi-judicial proceedings (in court as well as in pleadings and affidavits) are also absolutely privileged from liability when they are pertinent and material to the controversy, even if such statements are made while the communicator knows of their falsity. Preparatory communications that may be directed to the goal of a proceeding are also covered by the privilege. *Hopkins v. O'Connor*, 282 Conn. 821, 832, 925 A.2d 1030 (2007).

"[A]bsolute immunity furthers the public policy of encouraging participation and candor in judicial and quasi-judicial proceedings. This objective would be thwarted if those persons whom the common-law doctrine was intended to protect nevertheless faced the threat of suit. In this regard, the purpose of the absolute immunity afforded participants in judicial and quasi-judicial proceedings is the same as the purpose of the sovereign immunity enjoyed by the state. . . [C]ourts have recognized absolute immunity as a defense in certain retaliatory civil actions in order to remove this disincentive and thus encourage citizens to come forward with complaints or to testify." (Citation omitted; internal quotation marks omitted.) *Rioux v. Barry*, 283 Conn. 338, 344, 927 A.2d 304 (2007).

“[W]e [do] not assess whether the alleged misconduct was proper advocacy . . . the purpose of the privilege is to provide immunity from having to defend such advocacy decisions, even if that means immunity occasionally applies to misconduct.” *Scholz v. Epstein*, supra, 341 Conn. 14–15. “The rationale underlying the privilege is grounded upon the proper and efficient administration of justice. . . . Therefore, in determining whether a statement is made in the course of a judicial proceeding, it is important to consider whether there is a sound public policy reason for permitting the complete freedom of expression that a grant of absolute immunity provides. . . . In making that determination, the court must decide as a matter of law whether the allegedly defamatory statements are sufficiently relevant to the issues involved in a proposed or ongoing judicial proceeding, so as to qualify for the [litigation] privilege. The test for relevancy is generous, and judicial proceeding has been defined liberally to encompass much more than civil litigation or criminal trials.” (Citations omitted; internal quotation marks omitted.) *Hopkins v. O’Connor*, supra, 282 Conn. 839.

Absolute immunity extends to claims such as fraud; *Simms v. Seaman*, 308 Conn. 523, 69 A.3d 880 (2013); intentional interference with contractual or beneficial relations; *Rioux v. Barry*, supra, 283 Conn. 343; and intentional infliction of emotional distress; *DeLaurentis v. New Haven*, 220 Conn. 225, 597 A.2d 807 (1991). “[I]n expanding the doctrine of absolute immunity to bar claims beyond defamation, this court has sought to ensure that the conduct that absolute immunity is intended to protect, namely, participation and candor in judicial proceedings, remains protected regardless of the particular tort alleged in response to the words used during participation in the judicial process. . . . [B]ecause the privilege protects the *communication*, the nature of the [legal] theory [on which the challenge is based] is irrelevant.” (Emphasis in

original; internal quotation marks omitted.) *MacDermid, Inc. v. Leonetti*, 310 Conn. 616, 628, 79 A.3d 60 (2013).

“The doctrine of absolute immunity as applied to statements made in the context of judicial and quasi-judicial proceedings is rooted in the public policy of encouraging witnesses, both complaining and testimonial, to come forward and testify in either criminal or civil actions. The purpose of affording absolute immunity to those who provide information in connection with judicial and quasi-judicial proceedings is that in certain situations the public interest in having people speak freely outweighs the risk that individuals will occasionally abuse the [immunity] by making false and malicious statements. . . . [T]he possibility of incurring the costs and inconvenience associated with defending a [retaliatory] suit might well deter a citizen with a legitimate grievance from filing a complaint. . . . Put simply, absolute immunity furthers the public policy of encouraging participation and candor in judicial and quasi-judicial proceedings.” (Internal quotation marks omitted.) *Priore v. Haig*, 196 Conn. App. 675, 692, 230 A.3d 714, cert. granted, 335 Conn. 955, 239 A.3d 317 (2020). “Moreover, our Supreme Court has stated that a court faced with determining whether absolute litigation immunity applies to statements made during a judicial or quasi-judicial proceeding should apply the immunity generously. See, e.g., *Gallo v. Barile*, [284 Conn. 459, 467, 935 A.2d 103 (2007)] (‘[t]he test for relevancy is generous, and judicial proceeding has been defined liberally to encompass much more than civil litigation or criminal trials’ (internal quotation marks omitted)).” *Id.*, 692–93.

Absolute immunity applies in quasi-judicial proceedings. *Id.*, 691. In *Priore v. Haig*, *supra*, 677–80, the plaintiff brought his action because he felt certain statements made by the defendant at a zoning hearing were false, including a statement that the plaintiff had a criminal past and was not trustworthy. The Appellate Court held that the defendant had absolute

immunity and thus upheld the trial court's dismissal of the matter. *Id.*, 712. Indeed, absolute immunity has been applied in a myriad of quasi-judicial proceedings. See, e.g., *Craig v. Stafford Construction, Inc.*, 271 Conn. 78, 856 A.2d 372 (2004) (absolute immunity applies to internal affairs investigations of police because encouraging public to come forward with complaints more important than protecting officers from false allegations of racial discrimination); *Chadha v. Charlotte Hungerford Hospital*, 272 Conn. 776, 865 A.2d 1163 (2005) (proceedings before medical examining board of department of public health are quasi-judicial).

The test for relevancy, as noted above, is generous and only requires a loose connection between the statement and the subject matter of the proceeding. See, e.g., *Kenneson v. Eggert*, 196 Conn. App. 773, 784, 230 A.3d 795 (2020) (statements made during postverdict settlement conference were relevant because they were part of discussion to resolve underlying tort action); *Ravalese v. Lertora*, 186 Conn. App. 722, 734, 200 A.3d 1153 (2018) (in defamation action, report prepared by psychologist for child's guardian ad litem proceeding was relevant because it was made at request of party to underlying proceeding, both parties to underlying action agreed to make it available to counsel, and it pertained to court's consideration of child's best interests).

In *Cleary v. Bonjour*, United States District Court, Docket No. 3:17-CV-1957 (VLB) (D. Conn. May 25, 2018), *aff'd sub nom. Cleary v. MacVicar*, 813 Fed Appx. 12 (2020), the court dismissed, on the grounds of absolute immunity, a claim against a therapist who provided a report in a custody proceeding. The court noted that reports in a child custody proceeding "are integrally related to an ongoing judicial proceeding." (Internal quotation marks omitted.) *Id.*

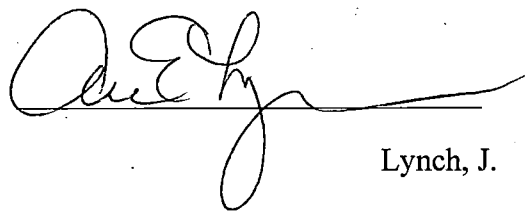
In the present action, Dr. Iurato was providing court ordered therapy. Dr. Iurato made a report to DCF. Like the reports made in *Craig* and *Chadha*, Dr. Iurato's report to DCF was made in the context of a quasi-judicial proceeding and is thus protected by absolute immunity.

Accordingly, the plaintiff cannot establish probable cause that he will prevail on the merits of his claims against Dr. Iurato and her special motion to dismiss under § 52-196a must be granted.

III

CONCLUSION

For all the foregoing reasons, Dr. Iurato's motion to dismiss is granted.

A handwritten signature in black ink, appearing to read "J. Lynch", is written over a horizontal line. The signature is fluid and cursive, with the last name "Lynch" being more legible than the first initial "J".

Lynch, J.