

DOCKET NO. LLI-CV21-5014019-S	:	SUPERIOR COURT
	:	
JON A. GOODWIN	:	JUDICIAL DISTRICT
	:	OF LITCHFIELD
V.	:	AT TORRINGTON
	:	
RAYMOND J. MILOT, ET AL.	:	FEBRUARY 7, 2022

**SUR-REPLY TO REPLY TO OBJECTION TO MOTION FOR PERMISSION
TO CONDUCT LIMITED DISCOVERY**

The defendant, Joanne Iurato, Ph.D., MSW, LCSW, briefly replies to the plaintiff's Reply to Objection to Motion for Permission to Conduct Limited Discovery.¹

The plaintiff's Reply is incorrect at every level.

To begin, the defendant does not need to address an argument to the legislature. The legislature has spoken. Indeed, not only does the statute specifically require the Court to stay all discovery pending adjudication of the Special Motion, the statute also provides that, when ruling upon a Special Motion, 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." Conn. Gen. Stat. § 52-196a(d) and (e)(2). In other words, the procedure, as enacted by the legislature, specifically contemplates adjudication based upon pleadings and Affidavits, *without* discovery.

With respect to the statutory exception, the plaintiff's Motion and Reply do not present good cause. To the contrary, the plaintiff's argument is that he

¹ The pertinent filings are the plaintiff's Motion (117.00); the defendant's Objection (120.00); the co-defendant's Objection (122.00); the plaintiff's Reply (121.00); and the subject filing.

“believes, based on other events, that [Dr. Iurato and Dr. Khahil] were in fact significantly engaged on behalf of one side in a highly contentious matter in the Juvenile Court arising out of a marriage dissolution.” Reply at p. 2. That being the case, the plaintiff does not need discovery. His “belief” is the basis upon which he filed the lawsuit and is the same basis upon which he should defend the Special Motion. The plaintiff cannot have it both ways. He cannot file a lawsuit based upon a “belief” that Dr. Iurato failed to act in good faith, but then argue that he needs discovery in order to satisfy his burden, i.e. to “[set] forth with particularity the circumstances giving rise to the complaint ... and [to demonstrate] to the court that there is probable cause, considering all valid defenses, that [he] will prevail on the merits of the complaint[.]” Conn. Gen. Stat. § 52-196a(e)(3). If the plaintiff, without discovery, cannot buttress his “belief” with actual facts to demonstrate probable cause, it follows that the lawsuit should never have been filed in the first place.

Lastly, with respect to the plaintiff’s argument that Dr. Iurato now seeks “significant economic damages,” the plaintiff’s complaint rings hollow. The plaintiff initiated this lawsuit. The defendant is entitled to defend herself, and if she prevails, the statute provides for the recovery of costs and reasonable attorney’s fees. Conn. Gen. Stat. § 52-196a(f)(1). If that is not a risk the plaintiff is willing to accept, he has the option of withdrawing the Complaint. But with knowledge of the risk, if he chooses to continue and the defendant’s Special Motion is granted, he cannot be heard to complain.

Wherefore, the defendant respectfully objects to the plaintiff's Motion and asks the Court to proceed with argument on the Special Motions to Dismiss scheduled for February 14, 2022.

THE DEFENDANT,

By: /s/ Jonathan A. Kocienda

Jonathan A. Kocienda

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Her Attorneys

CERTIFICATION

I hereby certify that a copy of the foregoing document was or will immediately be mailed or delivered electronically or non-electronically on this the 7th day of February, 2022 to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who receive or will immediately be receiving electronic delivery.

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/s/ Jonathan A. Kocienda

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