

NO. LLI-CV-21-5014019-S

JON A. GOODWIN : SUPERIOR COURT
VS. : J. D. OF LITCHFIELD
RAYMOND J. MILOT, JUNIOR, ET AL. MAY 1, 2022

**BRIEF IN OPPOSITION TO DEFENDANT IURATO'S SPECIAL MOTION
TO DISMISS AND FOR OTHER RELIEF**

This action has been brought against Raymond J. Milot, Jr., the former husband of the plaintiff's significant other, and others. The first four counts of the Complaint seek damages from Joanne Iurato for (1) slander, (2) false light invasion of privacy, (3) intentional infliction of emotional distress, and (4) negligent infliction of emotional distress. These claims are grounded on the factual allegation that on October 10, 2019, the defendant Iurato "falsely stated orally to Raymond J. Milot and the Connecticut Department of Children and Families that the plaintiff abused minor child Noah Milot, including by placing him in a 'basket hold.'" (Paragraph 3)

Ms. Iurato moves to dismiss on several grounds. She asserts that these claims constitute a claim of medical malpractice and that the plaintiff has not complied with the requirements of General Statutes Section 52-190a. She further asserts that she "has absolute immunity from liability based upon the

litigation privilege....” She also asserts immunity as a mandated reporter pursuant to General Statutes Section 17-101e(b), which provides civil immunity to any mandated reporter who makes a “good faith” report of alleged child abuse. She finally asserts that, in communicating as alleged in the complaint with the Department of Children and Families, she was acting as a citizen and engaging in activity protected by the First Amendment. As such, she claims that the plaintiff’s suit against her constitutes “Strategic Litigation Against Public Participation” intended to chill her exercise of free speech. In that contention, she seeks substantial economic damages from the plaintiff pursuant to General Statutes Section 52-196a.

It is Iurato’s last contention that is before the court at this time.

Defendant’s Medical Malpractice Argument

The argument that this is a medical malpractice action subject to the requirements of such an action is frivolous on its face. Neither party claims that the plaintiff was a patient of the defendant or in privity with one of her patients; this suit manifestly is not one for medical malpractice or any other kind of malpractice.

Defendant’s Litigation Privilege Argument

The defendant’s claim of a litigation privilege also is frivolous on its face because nobody claims that the defendant had any communication with any

court. Had she done so, or allegedly done so, her argument at least would merit some consideration. But she did not and nobody says that she did. She did not even make a report to, for example, a guardian *ad litem*. Rioux v. Barry, 283 Conn. 338, 927 A.2d 304 (2007), holds that absolute immunity protects those who maliciously and falsely accuse others of wrongdoing *in judicial or quasi-judicial proceedings*. Defendant Iurato's false statements were not made in any judicial or quasi-judicial proceeding and, accordingly, the litigation privilege is not applicable here.

Defendant's Mandated Reporter Immunity Argument

The defendant's claim of Section 17-101e(b) immunity may properly be asserted in this case. However, the defendant is not entitled to either emergency relief or any pretrial relief at all on the mere basis of her sworn assertions.

"A motion to dismiss...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." Gurliacci v. Mayer, 218 Conn. 531, 544, 590 A.2d 914 (1991). "Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it....Jurisdiction of the subject matter is the power...to hear and determine cases of the general class to which the proceedings in question belong." Doe v. Roe, 246 Conn. 652, 661, 717 A.2d 706 (1998). "Once it is determined that a tribunal

has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action....It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged.” Stepney Pond Estates, Ltd. v. Monroe, 260 Conn. 406, 417, 797 A.2d 494 (2002); Keller v. Beckenstein., 305 Conn. 523, 531, 46 A.3d 102 (2012).

“It is well established that [i]n ruling upon whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.” Miller v. Egan, 265 Conn. 301, 305 (2003); Brookridge District Assn. v. Planning & Zoning Commission, 259 Conn. 607, 611, 793 A.2d 215 (2002); Lawrence Brunoli, Inc. v. Branford, 247 Conn. 407, 410-11, 722 A.2d 271 (1999); Cottman Transmission Systems, Inc. v. Hocap Corp., 71 Conn. App. 632, 637 (2002).

A motion to dismiss “admits all facts which are pleaded, invokes the existing record and must be decided upon that alone.” Barde v. Board of Trustees, 207 Conn. 59, 62, 539 A.2d 1000 (1988). “When ruling on a motion to dismiss, the trial court is required to view the evidence in the light most favorable to the plaintiff and to draw every reasonable inference in his favor.” Gulycz v. Stop & Shop Cos., 29 Conn. App. 519, 523, 615 A.2d 1087, *cert. denied*, 224

Conn. 923, 618 A.2d 527 (1992).

Section 17-101e(b) provides immunity only to a mandated reporter who makes a “good faith” report of alleged child abuse. Whether the defendant’s statements were made “in good faith” is a question of fact which cannot be resolved on a motion to dismiss. *E.g.*, Chain v. Biddle, 1999 WL 179623, 24 Conn. L. Rptr. 201 (Licari, J.); Greco v. Anderson, 2000 WL 1763732, 28 Conn. L. Rptr. 605 (Shortall, J.).

Defendant’s “Anti-SLAPP” Argument

As noted above, the only issue properly before the court at this time is the defendant’s contention that in making her report to the Department of Children and Families she was engaging in conduct protected by the First Amendment and thus may obtain immediate economic damages from the plaintiff for having brought suit against her for doing so. Her argument necessarily is that the present suit is an attempt to chill her free speech rights.

As a matter of law, the defendant’s statements to the Department of Children and Families do not constitute the exercise of free speech and accordingly are not covered by General Statutes 52-196a. Because the defendant, as she expressly asserts, was a *mandated reporter*, making the statements to the DCF was a specific part of her job duties. As such, those statements are not protected by the First Amendment. Garcetti v. Ceballos, 547

U.S. 410, 421 (2006); Schuman v. Dianon Systems, Inc., 304 Conn. 585, 610-11, 43 A.3d 111 (2012).

This conclusion is reinforced by the fact that the legislature has chosen to provide specific protections to mandated reporters for the contents of their reports to the Department of Children and Families, pursuant to General Statutes Section 17-101e(b).

Conclusion

Defendant Iurato's Special Motion to Dismiss and Motion for Costs and Attorney's Fees must be denied.

THE PLAINTIFF

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CERTIFICATION OF SERVICE

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