

DOCKET NO. LLI-CV21-5014019-S	:	SUPERIOR COURT
	:	
JON A. GOODWIN	:	JUDICIAL DISTRICT
	:	OF LITCHFIELD
V.	:	AT TORRINGTON
	:	
RAYMOND J. MILOT, ET AL.	:	MAY 5, 2022

REPLY TO BRIEF IN OPPOSITION TO SPECIAL MOTION TO DISMISS

The defendant, Joanne Iurato, Ph.D., MSW, LCSW, respectfully replies to the plaintiff's Brief in Opposition to Special Motion to Dismiss filed May 2, 2022 (132.00).

Pursuant to Conn. Gen. Stat. § 52-196a(e)(3), to survive the defendant's Special Motion to Dismiss, the plaintiff was required to: (1) rebut the defendant's initial showing that the Complaint was based upon the defendant's exercise of her right of free speech or right to petition the government in connection with a matter of public concern; or (2) set forth with particularity, the circumstances giving rise to the Complaint, and demonstrate that there is probable cause, considering all valid defenses, that the plaintiff will prevail on the merits. The plaintiff's Opposition does neither.

With respect to the first requirement, the plaintiff argues that because the defendant was a mandated reporter, her oral and written reports to DCF do not fall within the protection of the anti-SLAPP statute. The plaintiff is wrong.

Conn. Gen. Stat. § 52-196a protects a party from litigation that is based upon his or her right of free speech or right to petition the government in connection with a matter of public concern. “Matter of public concern” includes issues related to “health or safety.” Conn. Gen. Stat. § 52-196a(a)(1). The health and safety of children is an undisputed matter of public concern. “Right of free speech” means “communicating, or conduct furthering communication, in a public forum on a matter of public concern.” Conn. Gen. Stat. § 52-196a(a)(2). “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, or (C) communication that is reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, administrative, judicial or other governmental body.

Conn. Gen. Stat. § 52-196a(a)(3).

“The purpose of a SLAPP suit is to punish and intimidate citizens who petition state agencies and have the ultimate effect of ‘chilling’ any such action.” Field v. Kearns, 43 Conn. App. 265, 276, cert. denied, 239 Conn. 942 (1996). The purpose of Connecticut’s anti-SLAPP legislation is to protect defendants who are sued for such actions. In the present case, the plaintiff’s Complaint is precisely the type of litigation that our anti-SLAPP legislation is designed to protect

against. The plaintiff's Complaint against the defendant is based entirely upon the defendant's communication to a government body (DCF) involving a substantive issue of public concern, and that is, protection of a child from imminent risk of serious harm. The fact that the defendant is a mandated reporter is true but irrelevant. Conn. Gen. Stat. § 52-196a does not exclude the actions of mandated reporters. Indeed, nothing in the statute suggests that a mandated reporter is excepted from its protection. The only issue is whether the defendant's actions fall within the statutory definitions of conduct that the legislature has deemed appropriate for anti-SLAPP motions, which it squarely does, in plain language. See e.g. Graves v. Chronicle Printing Co., Superior Court, judicial district of Tolland at Rockville, Docket No. CV-185010056-S (November 7, 2018, *Farley, J.*) (2018 WL 6264070, 2018 Conn. Super. LEXIS 3795, *17-18) (finding legislative objective applies to statements made by a police officer in an arrest warrant affidavit; salient question is not whether officer's actions were protected as a matter of law in another context, but whether they fall within the statutory definitions of the anti-SLAPP statute).

The two cases cited by the plaintiff, which he represents as support for his argument, have no bearing on the analysis. Both involve allegations of wrongful termination due to speech made in the workplace. In Garcetti v. Ceballos, 547 U.S. 410 (2006), the issue was whether the First Amendment protected a

government employee from discipline based upon speech made pursuant to the employee's official duties. In Schumann v. Dianon Sys., 304 Conn. 585 (2012), our Supreme Court was asked to determine whether Garcetti was applicable to a private employer.

The case before the Court is not an employment matter. The plaintiff is not an employee alleging wrongful discipline or termination by the defendant based upon speech in the workplace. The plaintiff is alleging that the defendant did not have a good faith basis for reporting her concern to DCF that the plaintiff had placed a child at imminent risk of serious harm. That the plaintiff cannot provide the Court with case law that is even remotely close to the case at hand is very telling. In contrast, the defense has presented Day v. Dodge, Superior Court, judicial district of New London at New London, Docket No. KNL-CV-186035362-S (January 25, 2019, *Knox, J.*) (67 Conn. L. Rptr. 750, 2019 Conn. Super. LEXIS 157), a case quite similar to the case at hand.

In Day, the defendants' reporting obligations as registered adult volunteers with the Cub Scouts was not an issue. Id., *5 (anti-SLAPP statute is not limited to a specific class and expressly applies to any "party"). Rather, the trial court determined that the defendants' actions of reporting their concerns of child sexual abuse were squarely protected by the anti-SLAPP statute. See also Graves, supra (applying anti-SLAPP statute to police officer).

In the present case, the defendant, whether mandated or not, reported a substantive issue of public concern to DCF. Accordingly, the defendant, as a “party,” is entitled to protection pursuant to the statute.

With respect to the plaintiff’s second requirement – that the plaintiff set forth with particularity, the circumstances giving rise to the Complaint and demonstrate that there is probable cause, considering all valid defenses, that the plaintiff will prevail on the merits – little discussion is required. The plaintiff does not dispute that if the defendant’s reports to DCF were made in good faith, she is entitled to immunity pursuant to Conn. Gen. Stat. § 17a-101e. The plaintiff’s only argument is that the question of whether the defendant’s reports were made in good faith cannot be resolved on a motion to dismiss because it is a question of fact for a jury.

The plaintiff’s argument conveniently ignores that on February 8, 2022, this Court (*Lynch, J.*) specifically gave the plaintiff an opportunity to obtain factual support for his Complaint by granting the plaintiff’s Motion to depose the defendant on three relevant issues: (a) the defendant’s oral and written reports to DCF; (b) the reasons why said reports were made; and (c) any information included within the defendant’s Affidavit or any other attachments submitted in support of the Special Motion to Dismiss (117.10). The plaintiff took the opportunity to depose the defendant on April 7, 2022. Despite the deposition, the

plaintiff does not cite to a single word of testimony to support the validity of his Complaint. The plaintiff simply has no evidence or argument to overcome the defendant's statutory immunity.

Based upon the foregoing, and the additional arguments presented in the defendant's Special Motion to Dismiss and Memorandum of Law, Counts One through Four of the plaintiff's Complaint should be dismissed. In accordance with Conn. Gen. Stat. § 52-196a(f)(1), the defendant further moves for an award of costs and reasonable attorney's fees, including such costs and fees incurred in connection with the filing and presentation of the Special Motion to Dismiss.

THE DEFENDANT,

By: /s/ Jonathan A. Kocienda

Jonathan A. Kocienda

Juris No. 414585

Laura E. Waltman

Juris No. 415864

DANAHERLAGNESE, PC

Juris No. 101685

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 5th date of May, 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.

Jon A. Goodwin
95 Indian Trail (CLC)
New Milford, CT 06776
jgoodwin@protonmail.com

John R. Williams
John R. Williams and Associates, LLC
51 Elm Street, Suite 409
New Haven, CT 06510
jrw@johnrwilliams.com

Law Offices of Rebecca Mayo Goodrich
23 South Main Street
P.O. Box 1420
New Milford, CT 06776
rmg@mayogoodrichlaw.com

Samantha C. Wong
AG – Public Safety
110 Sherman Street, 2nd Floor
Hartford, CT 06105
samantha.wong@ct.gov

/s/ Jonathan A. Kocienda

Jonathan A. Kocienda
Commissioner of the Superior Court