

STATE OF CONNECTICUT

DOCKET NO. CV20 6136500S

JOHN ALAN SAKON

SUPERIOR COURT

JUDICIAL DISTRICT  
OF HARTOFRD

LINDA S. SMITH, ET AL

OCTOBER 13, 2021

MEMORANDUM OF DECISION: MOTION TO DISMISS

By this action, the self-represented plaintiff, John Alan Sakon, seeks to recover damages against the defendants, Linda S. Smith and Linda S. Smith, Ph.D., LLC, based on claims of breach of contract, unethical conduct, extortion and blackmail related to the contractual claims, and the Connecticut Unfair Trade Practices Act. Pursuant to the complaint, Smith is a psychologist who does business as Linda S. Smith, Ph.D, LLC. The plaintiff's claims arise out of a family court matter entitled, *Sakon v. Sakon*, Superior Court, Judicial District of Hartford, Docket No. CV-16-6071228-S, which involves a custody dispute between the plaintiff and his ex-wife.

The court takes judicial notice of the following facts from the record of the family matter court action. On January 18, 2018, the plaintiff filed a motion for custody/psychological evaluation, requesting the court to enter orders requiring that the parties participate in a comprehensive psychological evaluation for the purposes of assisting the court in entering orders for the custody and access of their minor child. See *Sakon v. Sakon*, supra, Superior Court, Docket No. CV-16-6071228-S, Motion for Order #193. In Motion for Order #193, the plaintiff asserted that the parties had previously agreed to utilize Dr. Linda Smith to

10/13/21 - cc: R. J. D., J. Sakon, SA Johnson

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conduct such comprehensive evaluation and that she had indicated her willingness to do so. On January 19, 2018, the court issued a decision on the motion for custody/psychological evaluation, ordering “said requests by the verbal agreement of the parties to be commenced with Dr. Humphrey and Dr. Smith.” Order #195. In the order, the court stated that the plaintiff had obtained funds for said services and shall be solely responsible for their costs. The court later clarified this order as follows: “The oral agreement of the parties . . . was that the [plaintiff] was to be solely responsible for the \$10,000 retainer payable to Dr. Linda Smith . . . . The court order was to codify that agreement. The court did not that date enter any further orders as to the allocation of payments that may have become due thereafter to Drs. Smith and Humphrey.” Order #542.10.

The plaintiff alleges in this action that on March 18, 2018, the plaintiff and the defendants entered into a contract for the defendants to conduct a custody evaluation for use in the family action. Under the contract, the defendants agreed to write the report or evaluation in a timely manner, that the report would last between 30-50 hours, and that the defendants would follow an established budget to prepare the report of \$9,000 to \$15,000, at an hourly fee of \$300. The defendant further alleges that the contract established that the plaintiff pay certain retainers, which he paid to the defendants. The plaintiff claims that the defendants breached the contract by failing to complete the report in a timely manner, exceeding the contractually budgeted amount by approximately \$21,000, and prohibiting use of the report unless the additional amounts are paid. As a result of the delays, the plaintiff claims that the evaluation became stale and outdated.

The plaintiff served the defendant, Linda S. Smith, in this action by leaving a true and attested copy of the summons and complaint at her usual place of abode on December 8, 2020.

The plaintiff served the defendant LLC by leaving a true and attested copy of the summons and complaint on top of a common conference table in the conference room on the first floor in the building where the defendant LLC's office is located.

The defendants move to dismiss this action on the ground that the court lacks subject matter jurisdiction because they acted as "court-appointed evaluators" and therefore this action is barred by absolute immunity and in particular, the litigation privilege. In addition, the defendant LLC asserts that the court lacks personal jurisdiction over it, because the plaintiff failed to properly serve the defendant LLC in accordance with General Statutes § 52-243r. The court concludes that absolute immunity does not apply to the facts as alleged or the judicial record and therefore denies the motion on that ground. The court grants the motion to dismiss as to the defendant LLC for lack of personal jurisdiction due to insufficient service of process.

#### DISCUSSION

"[A] motion to dismiss . . . 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." (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *MacDermid, Inc. v. Leonetti*, 310 Conn. 616, 626, 79 A.3d 60 (2013). "When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, 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.” (Internal quotation marks omitted.) *Conboy v. State*, 292 Conn. 642, 651, 974 A.2d 669 (2009); accord *Designs for Health, Inc. v. Miller*, 187 Conn. App. 1, 8, 201 A.3d 1125 (2019) (personal jurisdiction). “As the doctrine of absolute immunity concerns a court’s subject matter jurisdiction . . . we are mindful of the well established notion that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged. . . . The question before us is whether the facts as alleged in the pleadings, viewed in the light most favorable to the plaintiff, are sufficient to survive dismissal on the grounds of absolute immunity.” (Internal quotation marks omitted.) *Kenneson v. Eggert*, 196 Conn. App. 773, 780, 230 A.3d 795 (2020).

#### A. Litigation Privilege

The defendants argue that they are immune from suit because they were “appointed by the court” as the psychological evaluators in connection with the defendant’s custody proceedings in the family court action. The complaint does not assert that the defendants were “court appointed” and the judicial record does not reflect that the defendants were “court appointed.” At best, the record demonstrates that the court approved the parties agreement to have the defendants conduct the evaluation and for the plaintiff to be responsible for the \$10,000 retainer. The plaintiff objects to the motion and argues that absolute immunity is inapplicable here because the complaint addresses the parties’ contract and breach of that contract and the family court’s orders do not address the parties’ contract for services.

“It is well settled that communications uttered or published in the course of judicial proceedings are absolutely privileged so long as they are in some way pertinent to the subject of the controversy. . . . The [litigation] privilege extends beyond statements made during a judicial proceeding to preparatory communications that may be directed to the goal of the

proceeding. . . . The litigation privilege was initially applied to bar claims of defamation. . . . More recently, however, our Supreme Court has expanded the scope of immunity afforded to statements made during the course of a judicial proceeding beyond defamation.” (Citations omitted; internal quotation marks omitted.) *Tyler v. Tatoian*, 164 Conn. App. 82, 88, 137 A.3d 801, cert. denied, 321 Conn. 908, 135 A.3d 710 (2016). “Connecticut has long recognized the litigation privilege, and that [t]he general rule is that defamatory words spoken upon an occasion absolutely privileged, though spoken falsely, knowingly, and with express malice, impose no liability for damages recoverable in an action in slander . . . .” (Internal quotation marks omitted.) *MacDermid v. Leonetti*, 310 Conn. 616, 627, 79 A.3d 60 (2013). “[T]he [Connecticut Supreme Court] explained that the privilege was founded [on] the principle that in certain cases it is advantageous for the public interest that persons should not be in any way fettered in their statements, but should speak out the whole truth, freely and fearlessly.” (Internal quotation marks omitted.) *Simms v. Seaman*, 308 Conn. 523, 538, 69 A.3d 880 (2013).

While acknowledging that courts have extended absolute immunity to a variety of judicial and quasi-judicial officers, the Supreme Court noted that: “[t]he determining factor in all these decisions is whether the official was performing a function that was integral to the judicial process.” *Gross v. Rell*, 304 Conn. 234, 248, 40 A.3d 240 (2012). “We repeatedly have recognized that [a]bsolute immunity . . . is strong medicine . . . . Therefore, not every category of persons protected by immunity are entitled to absolute immunity. In fact, just the opposite presumption prevails—categories of persons protected by immunity are entitled only to the scope of immunity that is necessary to protect those persons in the performance of their duties.” (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Carrubba v.*

*Moskowitz*, 274 Conn. 533, 540–41, 877 A.2d 773 (2005). “Absolute immunity would not be available, however, when persons who would normally be accorded immunity perform acts which are clearly outside the scope of their jurisdiction.” (Internal quotation marks omitted.) *Id.* 544.

In this case, the plaintiff’s claims do not challenge any conduct of the defendants related to any statements made by the defendants in any court proceedings or in the evaluation report prepared for the court proceeding. Rather, the plaintiff’s allegations involve the breach of a private contract between the parties for the defendants’ preparation of the custody evaluation report “for use in Connecticut Superior Court” in the family matter. In particular, the plaintiff alleges that under the contract, the defendants agreed to write the report or evaluation in a timely manner, that the report would last between 30-50 hours, and that the defendants would follow an established budget to prepare the report of \$9,000 to \$15,000, at an hourly fee of \$300. The plaintiff further alleges that the contract established that he pay certain retainers, which he paid to the defendants. The plaintiff claims that the defendants breached these contract terms by failing to complete the report in a timely manner and that they exceeded the contractually budgeted amount by approximately \$21,000 and will not allow use of the report unless the additional amounts are paid. As a result of the delays, the plaintiff claims that the evaluation became stale and outdated. These allegations do not concern preparatory communications directed to the goal of the proceeding, nor testimony from the underlying family matter. Thus the court finds that the litigation privilege does not apply to bar this action.

Furthermore, as to the defendants’ claim of absolute immunity as a quasi-judicial officer, the Supreme Court has stated that in determining “whether court-appointed

conservators are entitled to absolute quasi-judicial immunity, we must initially determine whether they perform functions sufficiently comparable to those of officials who have traditionally been afforded absolute immunity at common law.” *Gross v. Rell*, supra, 304 Conn. 250. In *Gross*, the court held that “conservators are entitled to quasi-judicial immunity from liability for acts that are authorized or approved by the Probate Court.” *Id.* 253. The family court’s orders in this case appear to have authorized the plaintiff’s selection of the defendants as the evaluator, but did not order any particular contract terms, such as cost or timing of the report. There is no allegation in the complaint or record evidence that the defendants were court-appointed. See General Statutes § 46b-3 (which authorizes judges to employ the services of psychologists in any family relations matter); Practice Book § 25-33 (pertaining to court appointments of experts).

Even if the defendants were court-appointed, absolute immunity would not apply because the plaintiff’s breach of contract claims in this case do not fall within the scope of the jurisdiction or authorization of a quasi-judicial officer. Here, the plaintiff’s complaint is based on a private contract for services between the parties that was not required or approved by the family court. See e.g., *Anastasio v. Shaughnessy*, Superior Court, judicial district of Fairfield, Docket No. CV-08-5017263-S (September 30, 2009, *Bellis, J.*) (48 Conn. L. Rptr. 572) (denying guardian ad litem’s motion to dismiss on ground of quasi-judicial immunity because “the complaint . . . [did] not attack any of the defendant’s actions taken in the course of her representation of [plaintiff’s] children; it only alleges that the defendant committed malfeasances in connection with her attempts to collect legal fees”); *Skipp v. Brigham*, Superior Court, judicial district of Litchfield, Docket No. CV-16-5008059-S (November 2, 2016, *Moore, J.*) (partially granting guardian ad litem’s motion to dismiss on ground of quasi-

judicial immunity for allegations of fraud and perjury by overbilling where in underlying custody dispute court approved fees and granted orders requiring plaintiff to pay guardian ad litem).

The court disagrees that this case is controlled by the decisions in *Ngo v. Wirtes*, Superior Court, judicial district of Hartford, Docket No. CV-19-5057252-S (August 20, 2019, *Noble, J.*) and *Ravalese v. Lertora*, 186 Conn. App. 722, 200 A.3d 1153 (2018). In *Ngo*, the Superior Court dismissed the plaintiff's claims against a psychologist who provided reunification services to the plaintiff and his ex-wife during the course of their divorce. *Ngo v. Wirtes*, supra, Superior Court, Docket No. CV-19-5057252-S. The court found that the plaintiff's allegations could "generally be characterized as interference with his relationship and visitation with his daughter on the part of the defendants through the making of false statements, repeated misrepresentations, bad-faith negotiation, and noncompliance with court orders." *Id.* The court found that all of these allegations were "intimately related to each defendant's participation in a judicial process." *Id.* Similarly in *Ravalese*, the Connecticut Appellate Court affirmed the trial court's dismissal of an action against a psychologist expert in an underlying custody dispute. *Ravalese v. Lertora*, supra, 724. There the allegations in the plaintiff's complaint sounded in defamation, arising from the report the psychologist provided to the court in the custody dispute. *Id.* 726. The key to the Appellate Court's decision was that the plaintiff's allegations were all based on a report the defendant prepared for the purpose of assisting the trial court and to be used in the court proceeding. *Id.* 734

Both *Ngo* and *Ravalese* involve claims of defamation and misrepresentation stemming from the report prepared by the psychologist and do not involve claims of breach of contract. The plaintiff here makes no claims that involve the evaluation report and the plaintiff is not



asserting claims of defamation or false misrepresentation arising out of the substance of the report. Rather, plaintiff here alleges breach of contract and unfair practices arising out of the private contract that gave rise to the defendants' preparation of a custody evaluation. Accordingly, the defendants are not entitled to absolute immunity, thus, their motion to dismiss on the ground of absolute immunity is denied.

#### B. Personal Jurisdiction

“[A]n action commenced by . . . improper service must be dismissed.” (Internal quotation marks omitted.) *Matthews v. SBA, Inc.*, 149 Conn. App. 513, 530, 89 A.3d 938, cert. denied, 312 Conn. 917, 94 A.3d 642 (2014). “[W]hen a particular method of serving process is set forth by statute, that method must be followed. . . . Unless service of process is made as the statute prescribes, the court to which it is returnable does not acquire jurisdiction. . . . The jurisdiction that is found lacking . . . is jurisdiction over the person . . . .” (Internal quotation marks omitted.) *Morgan v. Hartford Hospital*, 301 Conn. 388, 400, 21 A.3d 451 (2011). “Failure to comply with the statutory requirements of service renders a complaint subject to a motion to dismiss on the ground of lack of personal jurisdiction. . . . Facts showing the service of process in time, form, and manner sufficient to satisfy the requirements of mandatory statutes in that regard are essential to jurisdiction over the person.” (Internal quotation marks omitted.) *Id.* 401.

The defendant LLC is a limited liability company. General Statutes § 34-243r provides in relevant part: “(a) A limited liability company . . . may be served with any process, notice or demand required or permitted by law by any proper officer . . . leaving a true and attested copy with such company’s registered agent, or at his or her usual place of abode in this state. . . . (c) If a limited liability company . . . ceases to have a registered agent, or if its registered

agent cannot with reasonable diligence be served by any proper officer or other person lawfully empowered to make service, the company or foreign company may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the company or foreign company at its principal office. . . . (d) If process, notice or demand cannot be served on a limited liability company . . . pursuant to subsection (a) or (b) of this section, service may be made by any proper officer . . . handing a copy to the individual in charge of any regular place of business or activity of the company . . . if the individual is not a plaintiff in the action.”<sup>1</sup>

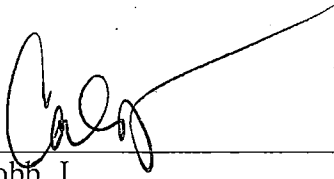
In the present case, the plaintiff did not adhere to the statutory requirements for service of process of a limited liability company under § 32-243r. The Return of Service indicates that the indifferent person searched the business address of defendant but was unable to find the office. Subsequently, the indifferent person “left the summons and complaint on top of the common conference table in the conference room on the first floor.” This form of service of process is not in compliance with § 34-243r, thus, the defendant LLC’s motion to dismiss for improper service is granted.

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<sup>1</sup> Section 34-243r (b) applies when the Secretary of the State has been appointed a foreign limited liability company’s agent for service of process, thus, subsection (d) is not applicable here.

## CONCLUSION

For the forgoing reasons the motion to dismiss is denied in part and granted in part. It is denied as to the defendants' claims of immunity and granted as to the defendant LLC for lack of personal jurisdiction.



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Cobb, J.

## Checklist for Clerk

**Docket Number:** HHD CV20-6136500

**Case Name:** Sakon v. Smith

**Memorandum of Decision dated:** 10/13/2021

**File Sealed:** Yes No X

**Memo Sealed:** Yes No X

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☞ **HHD-CV20-6136500-S** **SAKON, JOHN ALAN v. SMITH, LINDA S Et Al**  
 Prefix: HD2 Case Type: C90 File Date: 12/24/2020 Return Date: 12/22/2020

Case Detail Notices History Scheduled Court Dates E-Services Login Screen Section Help Exhibits

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**Case Information**

**Case Type:** C90 - Contracts - All other  
**Court Location:** HARTFORD JD  
**List Type:** No List Type  
**Trial List Claim:**  
**Last Action Date:** 08/30/2021 (The "last action date" is the date the information was entered in the system)

Short Calendar Look-up  
 By Court Location  
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 Motion to Seal or Close  
 Calendar Notices

**Disposition Information**

**Disposition Date:**  
**Disposition:**  
**Judge or Magistrate:**

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**Party & Appearance Information**

Party	No Fee Party	Category
P-01 <b>JOHN ALAN SAKON</b> Self-Rep: ☞ JOHN SAKON 28 FENWICK DRIVE FARMINGTON, CT 06032 File Date: 12/24/2020		Plaintiff
D-01 <b>LINDA S SMITH</b> Attorney: ☞ MORRISON MAHONEY LLP (404459) ONE CONSTITUTION PLAZA 10TH FLOOR HARTFORD, CT 06103 File Date: 01/25/2021		Defendant
D-02 <b>LINDA S. SMITH, PH.D, LLC</b> Attorney: ☞ MORRISON MAHONEY LLP (404459) ONE CONSTITUTION PLAZA 10TH FLOOR HARTFORD, CT 06103 File Date: 01/25/2021		Defendant



Comments

**Viewing Documents on Civil, Housing and Small Claims Cases:**

If there is an ☞ in front of the docket number at the top of this page, then the file is electronic (paperless).

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