

DOCKET NO: LLICV216028132S

SUPERIOR COURT

RIORDAN, KAREN Et Al
V.
CAVERLY, PHD, JENNIFERJUDICIAL DISTRICT OF LITCHFIELD
AT TORRINGTON

3/10/2022

ORDERORDER REGARDING:
02/03/2022 120.00 ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER:

As requested by the plaintiff, the court took the issues raised by the court in this order on the papers. The following constitutes the court's order dismissing this case.

In order #120, later clarified by orders ##121.10 and 122.10, the court ordered briefing on two issues concerning the court's subject matter jurisdiction over this lawsuit. The first issue was whether the adult plaintiff (hereafter the plaintiff) has standing to bring this action on behalf of her minor children. The second issue was whether the doctrine of absolute litigation immunity compels the court to dismiss the case. The plaintiff filed two documents that the court will consider to be responsive to these orders, ##127 and 143. The defendant filed her response at #138. The court set down a remote hearing on 3/3/22 for argument of these issues (#141). The plaintiff waived her right to appear and asked the court to decide these issues on the papers (#144). Absent objection, the court granted this request (#144.10). For the reasons set forth below, the court finds the second question in favor of the defendant. Because the doctrine of absolute immunity compels the court to dismiss this case in its entirety, there is no need for the court to decide the first issue.

The plaintiff's complaint alleges the following facts. The defendant, a licensed psychologist, committed malpractice "while serving as a 'forensic' expert in psychology related to a custody dispute" in the plaintiff's divorce case. 5/19/21 Complaint, introductory para. [FN 1]. The court appointed the defendant to perform a custody evaluation in the dissolution action. The defendant provided testimony, based upon her evaluation report, during a hearing on temporary custody. The defendant recommended that the plaintiff's husband receive sole legal temporary custody. This opinion failed to comply with the requisite standard of care and constituted fraud and misrepresentation in a variety of ways. The plaintiff lost temporary custody of her children "largely in part due to the Defendant's testimony and malpractice." The plaintiff claims that she and the children "have been harmed in isolation from one another for over one year, emotional distress, harm to the children by deprivation of mother's affection." 5/19/21 Complaint, para. 14.

In sum, the complaint alleges that defendant's participation in an earlier court hearing as a witness expressing an opinion as to temporary custody has harmed the plaintiff and her children by helping to bring about a court decision that separated the plaintiff mother from the children.

The doctrine of "absolute immunity implicates the trial court's subject matter jurisdiction. See Tyler v. Tatoian, 164 Conn.App. 82, 87, 137 A.3d 801 ("the doctrine of absolute immunity concerns a court's

subject matter jurisdiction” [internal quotation marks omitted]), cert. denied, 321 Conn. 908, 135 A.3d 710 (2016); *Perugini v. Giuliano*, 148 Conn.App. 861, 873, 89 A.3d 358 (2014) (same); see also *Stone v. Pattis*, 144 Conn.App. 79, 95–100, 72 A.3d 1138 (2013) (claim for negligent infliction of emotional distress against certain attorney-defendants for communications made while defending against federal lawsuit was barred by absolute immunity because communications were absolutely privileged; trial court properly dismissed claim for lack of subject matter jurisdiction).” *Bruno v. Travelers Companies*, 172 Conn. App. 717, 723, 161 A.3d 639 (2017).

“[S]ubject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it ... and a judgment rendered without subject matter jurisdiction is void. ...” *Deutsche Bank National Trust Co., v. Bialobrzkeski*, 123 Conn. App. 791, 798, 3 A.3d 183 (2010). Lack of subject matter jurisdiction can be raised at any time. *Waterbury v. Washington*, 260 Conn. 506, 527, 800 A.2d 1102 (2002). The court may raise the issue of subject matter jurisdiction sua sponte. *Webster Bank v. Zak*, 259 Conn. 766, 774, 792 A.2d 66 (2002) Once raised, the court must consider and decide the issue of jurisdiction before proceeding further. *Schaghticoke Tribal Nation v. Harrison*, 264 Conn. 829, 839 n.6, 826 A. 2d 1102 (2003); *Figueroa v. C & S Ball Bearing*, 237 Conn. 1, 4, 675 A.2d 845 (1996).

The doctrine of absolute immunity, also called the litigation privilege, *Bruno*, supra, 172 Conn. App. 719, n. 2 is quite broad.

“Connecticut has long recognized the litigation privilege ... [and has extended it] to judges, counsel and witnesses participating in judicial proceedings.” (Citation omitted; internal quotation marks omitted.) *Simms v. Seaman*, 308 Conn. 523, 536–37, 69 A.3d 880 (2013); see also *Villages, LLC v. Longhi*, 166 Conn.App. 685, 699, 142 A.3d 1162, cert. denied, 323 Conn. 915, 149 A.3d 498 (2016). *Bruno*, supra, 172 Conn. App. 725.

“In *MacDermid, Inc. v. Leonetti*, 310 Conn. 616, 79 A.3d 60 (2013), our Supreme Court explained: ‘In *Simms*, we noted that the doctrine of absolute immunity originated in response to the need to bar persons accused of crimes from suing their accusers for defamation. [*Simms v. Seaman*, supra, 308 Conn.] at 531, 69 A.3d 880. The doctrine then developed to encompass and bar defamation claims against all participants in judicial proceedings, including judges, attorneys, parties, and witnesses. *Id.*, at 532, 69 A.3d 880. We further noted that, [l]ike other jurisdictions, 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 *Id.*, at 536, 69 A.3d 880.

“Furthermore, in *Rioux v. Barry*, [283 Conn. 338, 343–44, 927 A.2d 304 (2007),] we explained that [t]he 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 privilege 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. This objective would be thwarted if those persons whom the common-law doctrine [of absolute immunity] was intended to protect nevertheless faced the threat of suit. ...” *Id.*, 725-26.

“It is well settled that communications uttered or published in the course of judicial proceedings are absolutely privileged [as] long as they are in some way pertinent to the subject of the controversy.” (Internal quotation marks omitted.) *Villages, LLC v. Longhi*, supra, 166 Conn.App. at 699, 142 A.3d

1162.

Our courts have recognized that the doctrine of absolute immunity applies in many contexts involving witnesses or other actors in a dissolution case.

The Bruno case applied the doctrine of absolute immunity to a witness subpoenaed to testify in a dissolution action in which the witness provided testimony and disclosures in a formal judicial proceeding when the testimony and disclosures were relevant to that proceeding. Bruno, supra, 172 Conn. App. 729. Other dissolution cases have followed suit. Please see Ravelese v. Lertora, 186 Conn. App. 722, 730-35, 200 A.3d 1153 (2018), (allegedly defamatory report drafted by psychologist and provided to guardian ad litem for purposes of use in post-judgment motion hearing cloaked with absolute immunity); Skipp v. Brigham, Superior Court, Judicial District of Litchfield, Docket No. LLI CV 16 5008059S (Nov. 2, 2016, J. Moore, J.), 2016 WL 7138684 (absolute immunity applied to guardian ad litem for actions taken in, or necessary to, the performance of functions integral to the judicial process); Ngo v. Wirtes, Superior Court, Judicial District of Hartford, Docket No. HHD CV 19 5057252S (Aug. 20, 2019, Noble, J.) 2019 WL 4322666 (litigation privilege protected psychologist retained to provide reports to court regarding custody and parenting in divorce case) (Ngo I) ; Ngo v. Wirtes, Superior Court, Judicial District of Hartford, Docket No. HHD CV 19 5057252S (Jan. 6, 2020) 2020 WL 496860 (Noble, J.) (absolute immunity compelled dismissal of claim brought against family therapist who offered opinions regarding family reunification in dissolution case) (Ngo II); and Herzog v. Cunha, Superior Court, Judicial District of Stamford-Norwalk at Stamford, Docket No. FST CV 19 5021964 (Aug. 24, 2021, Lee, J.T.R.) (litigation privilege extended even to out of court e-mail communications made by counsel for one party in dissolution case to opposing counsel and to non-parties).

The defendant in this case may also avail herself of absolute immunity.

As in Ngo I and II, this defendant prepared a report regarding custody and testified from that report in a formal judicial proceeding, the temporary custody hearing in the plaintiff's still-pending dissolution action. The plaintiff's operative complaint, a judicial admission, Jones Destruction, Inc. v. Upjohn, 161 Conn. 191,199, 286 A.2d 308 (1971), admits that the defendant's testimony was relevant by alleging that the decision granting temporary legal custody to the plaintiff's husband was "rendered largely in part due to the Defendant's testimony and malpractice." 5/19/21 Complaint, para 7. The court, taking judicial notice of the plaintiff's dissolution case, see Christopher Ambrose v. Karen Ambrose, Docket No. FBTF196088163S, finds that the court, Grossman, J., accepted a stipulation of the parties to name the defendant as a court-appointed custody and parenting evaluator in the dissolution action for the purposes of providing the court with the defendant's opinion regarding these issues (Ambrose v. Ambrose, ##133 and 133.10). Like the witness in Bruno, supra, the defendant in this case testified in the temporary custody hearing after being served with a subpoena (#138, Exhibit C). Moreover, the public policy rationale behind the application of litigation privilege, namely that of "encouraging participation and candor in judicial...proceedings," which would be "thwarted if those persons whom the common-law doctrine [of absolute immunity] was intended to protect nevertheless faced the threat of suit. ..." Bruno, supra, 725-26, would be eviscerated if a party who feared testimony in an ongoing case could discourage such testimony by suing a potential witness in a different case. Filing # 114 in this case, the plaintiff's motion for temporary injunction seeking to bar the defendant's involvement with the plaintiff or her children in any capacity relative to the divorce trial performs two very clear functions. #114 both strongly suggests that the defendant may be called upon to testify in the divorce case and makes quite evident the goal of the instant case, namely, to prevent the defendant from participating in the ongoing dissolution trial.

The plaintiff's reliance on the trial court decision of Sakon v. Smith, Superior Court, Judicial District of Hartford, Docket No. HHD CV 20 6136500S (Oct. 13, 2021, Cobb, J.), 2021 WL 5112991 is misplaced.

Sakon is easily distinguishable from this case on the facts. Sakon declined to apply absolute immunity in a breach of contract suit in which a court-appointed therapist was sued not because of her testimony or the court's use of her report in a formal judicial proceeding, but, rather, because the therapist failed to complete her report in timely fashion and failed to authorize the use of the report until her fees were paid.

For all the reasons set forth above, the doctrine of absolute immunity applies to the allegations against the defendant. As a result, the court lacks subject matter jurisdiction in this case. Therefore, the court dismisses this case.

FN 1. The court, which may take judicial notice of court files, *State v. Gaines*, 257 Conn. 695, 705, n. 7, 778 A.2d 919 (2001), notes that the plaintiff's divorce trial is ongoing. Please see *Christopher Ambrose v. Karen Ambrose*, Docket No. FBTFA196088163S. The next trial date has been scheduled for 3/16/22 in the Regional Family Trial Docket court.

Judicial Notice (JDNO) was sent regarding this order/Copy emailed to ROJD.

435704

Judge: JOHN DAVID MOORE

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.