

FST-CV-14 5014313-S

SUPERIOR COURT
STAMFORD - NORWALK
JUDICIAL DISTRICT

CONNECTICUT SUPERIOR COURT

LISA WHITNUM BAKER

2015 MAY -6 P 3:45

JUDICIAL DISTRICT OF STAMFORD/

V.

NORWALK AT STAMFORD

STATE OF CONNECTICUT,
ET AL.

MAY 6, 2015

MEMORANDUM OF DECISION RE MOTION TO DISMISS (#104)

On September 15, 2014, the self-represented plaintiff, Lisa Whitnum Baker, filed a complaint against attorney Ross Kaufman, the State of Connecticut (state) and three employees of the judicial system, Dorye Jackson, Angela Hanley, and Matthew Haine (judicial employees), who work in the Family Services Office in the Stamford Courthouse. The State and the judicial employees have moved to dismiss the counts pertaining to them.

Using identical language in the five relevant counts, the second count alleges civil conspiracy against all defendants to inflict emotional distress on plaintiff; the third count charges that the State and the judicial employees were in dereliction of their duty; the fourth count asserts intentional infliction of emotional distress against all defendants; the sixth count alleges loss of consortium against all defendants; and the seventh count alleges negligence against all defendants. In each count, the plaintiff seeks compensatory and punitive damages. The plaintiff additionally seeks, at the end of the complaint, "mandamus and preliminary injunctive relief" for a letter of apology from the judicial employees to plaintiff's ex-husband, explaining that they violated his right to a marital conciliation.

On October 27, 2014, the State and the judicial defendants filed the present motion to dismiss the complaint on the grounds of sovereign, absolute quasi-judicial, and statutory immunity, with a memorandum of law attached in support (# 104.00). The plaintiff filed an

objection on January 5, 2015 (# 113.00). Oral argument was heard at short calendar on January 2015, and the court gave the state and judicial defendants the opportunity to reply to the plaintiff's objection, which was filed on January 16, 2015 (# 122.00). As more fully set forth below, the court dismisses the counts pled against the state and the judicial employees on the grounds of sovereign immunity.¹

BACKGROUND

The complaint alleges that the plaintiff was "railroaded into divorce" by her husband's son and the staff of the assisted living residence where her husband lived (referred to thereafter as "the powers that be"), that she was denied access to her husband for thirteen months, and that she requested and was granted conciliation counseling from the Family Services Office.

The complaint further alleges that, on three separate occasions, Ms. Jackson, the Family Services Supervisor of the Stamford Family Service Office, ejected plaintiff from her office shortly after the commencement of three initial intake scheduling sessions. Once the conciliation sessions were arranged, the complaint further alleges that two Family Relations Counselors, Ms. Hanley and Mr. Haine, sabotaged the sessions by their conduct.

Plaintiff alleges that Jackson denied the plaintiff's statutory right to conciliation and also violated court orders. Plaintiff asserts that the Family Services employees' actions contributed to the breakdown of the plaintiff's marriage, that their actions were purposeful and, she believes, under the directive of "the powers that be", i.e., individuals who sought to keep the plaintiff away from her husband.²

Paragraph 8 of the Complaint alleges:

¹ The defendants also moved to dismiss the complaint for failure to include a proper return date and a recognizance. Plaintiff cured these defects by amendment (#120.00, # 121.00).

² The complaint also alleges that Hanley and Haine must have disclosed confidential information to Attorney Kaufman about a changed criminal date involving a charge against plaintiff. She alleges that this demonstrates an improper ex parte conversation, but does not explain how this caused the damages alleged in the complaint.

The details of the failure of state agencies to do their job has resulted in a great injustice to this couple. One of those state agencies was the Stamford Courthouse Family Relations Office that failed on three occasions to arrange conciliation in violation of two judges orders.

The Family Services programs are provided by the Court Support Services Division of the Connecticut Judicial Branch.

DISCUSSION

As mentioned above, the State and the judicial employees have filed this motion to dismiss the counts in which they are included, i.e., counts two, three, four, six and seven on the grounds of three types of immunity (sovereign, absolute quasi-judicial and statutory).

“[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 (2013). “A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide.” (Internal quotation marks omitted.) *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41 (2014).

“Claims involving the doctrines of common-law sovereign immunity and statutory immunity, pursuant to § 4-165, implicate the court's subject matter jurisdiction.” (Internal quotation marks omitted.) *Lawrence v. Weiner*, 154 Conn. App. 592, 597, cert. denied, 315 Conn. 925 (2015).

Sovereign Immunity

“The principle that the state cannot be sued without its consent, or sovereign immunity, is well established under our case law. . . . It has deep roots in this state and our legal system in

general, finding its origin in ancient common law. . . . Not only have we recognized the state's immunity as an entity, but [w]e have also recognized that because the state can act only through its officers and agents, a suit against a state officer concerning a matter in which the officer represents the state is, in effect, against the state." (Internal quotation marks omitted.) *Chief Information Officer v. Computers Plus Center, Inc.*, 310 Conn. 60, 79-80 (2013). Thus, "[t]he doctrine of sovereign immunity protects state officials and employees from lawsuits resulting from the performance of their duty." (Internal quotation marks omitted.) *Henderson v. State*, 151 Conn. App. 246, 257 (2014).

The moving defendants argue that the plaintiff's claims are barred by sovereign immunity because the State is a named defendant, and, although the plaintiff purports to sue the judicial employees in their personal capacity, the allegations against them concern their role in an official capacity. The defendants further assert that the plaintiff does not satisfy any of the stringent exceptions to sovereign immunity. Next, the defendants argue that because the plaintiff's claims are against family service employees performing their official duty, the doctrine of absolute quasi-judicial immunity and statutory immunity under General Statutes § 4-165 prevent the plaintiff's claims against them.

The plaintiff counters that the three exceptions to sovereign immunity either apply or may be pending. She further asserts that statutory and absolute quasi-judicial immunity are inapplicable because she has alleged that the judicial employees acted with intent, wantonly, maliciously, with reckless disregard, and abused their power. Because the court finds that the relevant counts should be dismissed on the basis of sovereign immunity, it does not reach the other two grounds for dismissal, i.e., quasi-judicial immunity and statutory immunity.

A. Individual Versus Official Capacity

Plaintiff alleges that the judicial employees were acting in both their individual and official capacities. As a result, it is necessary to determine as a threshold matter in which capacity the judicial employees were acting in connection with the allegations of the complaint because “[i]f the plaintiff’s complaint reasonably may be construed to bring claims against the defendants in their individual capacities, then sovereign immunity would not bar those claims.” *Miller v. Egan*, 265 Conn. 301, 307 (2003).

“To determine whether an action is against the state or against a defendant in his individual capacity, we look to the four criteria established by our Supreme Court If all four criteria are satisfied, the action is deemed to be against the state and, therefore, is barred. . . . Accordingly, we must determine whether (1) a state official has been sued; (2) the suit concerns some matter in which that official represents the state; (3) the state is the real party against whom relief is sought; and (4) the judgment, though nominally against the official, will operate to control the activities of the state or subject it to liability.” (Citations omitted; internal quotation marks omitted.) *Cimmino v. Marcoccia*, 149 Conn. App. 350, 357-58 (2014).

Applying this four-part test to this action, the court finds: first, that the judicial employees working for Family Services were employed by the State; second, the complaint refers to actions while the judicial defendants were performing their official functions in the courthouse during mediation sessions, or, in other words, while working; third, the State would be subject to indemnify the defendants and is the real party in this action³; fourth, as the

³ Section 5-141d (a) provides: “The state shall save harmless and indemnify any state officer or employee, as defined in section 4-141, and any member of the Public Defender Services Commission from financial loss and expense arising out of any claim, demand, suit or judgment by reason of his alleged negligence or alleged deprivation of any person’s civil rights