DOCKET NO: FBT-CV23-5053115-S	:	SUPERIOR COURT
MARIA ALICEA	OFFICE OF THE CLERK SUPERIOR COURT	J.D. OF BRIDGEPORT
V.	2024 MAY 29 P 3:59	AT BRIDGEPORT
PAUL GANIM	JUDICIAL DISTRICT OF BRIDGEPORT	MAY 29, 2024

MEMORANDUM OF DECISION REGARDING DEFENDANTS' MOTION TO DISMISS

FACTS

On January 26, 2015, Judge Paul Ganim, the defendant, in his role as a probate judge at the Probate Court of Bridgeport, ordered the appointment of a conservator for Octavio Alicea, the father of the plaintiff, Maria Alicea. The court found that Octavio Alicea had been "diagnosed as a person with dementia, confusion, delirium, depression and anxiety. [Octavio Alicea] is not able to make rational decisions and is unable to care for self. He has poor safety awareness and requires 24-hour assistance with all activities of daily living. [Octavio Alicea] cannot make informed decisions regarding her health or finances on his own. [Octavio Alicea] is unable to provide for his/her comfort and maintenance, maintain where he/she lives, apply for benefits or services or consent to routine medical and/or dental procedures, . . . [t]he personal affairs of [Octavio Alicea] will be at risk if a conservator of the person is not appointed." Motion to Dismiss, Exhibit A, Decree/Appointment of Conservator. Based on this conclusion, the court appointed an independent conservator for Octavio Alicea, citing "the great deal of family conflict between [Octavio Alicea's] children." Id.

On March 28, 2022, Judge Clifford Hoyle accepted the resignation of Fransica Hodges, the second conservator for Octavio Alicea, based on testimony that "her ability to effectively

serve as conservator has been thwarted by [Octavio Alicea's] daughter Maria Mercedes Alicea." Id. Then, on March 22, 2023, Judge Lisa Wexler heard the plaintiff's petition to dissolve the conservatorship. The probate court again found that "the medical condition of Mr. Alicea is such that he continues to require a conservator to assist in his financial affairs . . ." and denied the plaintiff's petition to terminate the conservatorship. Id.

The plaintiff, along with Octavio Alicea, also brought an action at the United States District Court of Connecticut, alleging violations of his Fourth, Thirteenth, and Fourteenth Amendment rights, and the First Amendment rights of both the plaintiff and Octavio Alicea. Id., Exhibit C; see also *Alicea* v. *Bridgeport*, United States District Court, No. 3:22-cv-00221 (KAD) (D. Conn. May 10, 2022). There, Judge Vatti recommended that the plaintiff's claim be denied, without leave to amend, on the basis that the plaintiff lacked standing and that the defendant are entitled to immunity from such action. Judge Vatti also recommended, and the court adopted, that the plaintiff not be permitted to amend her claim, as the defects were incurable.

On October 30, 2023, the plaintiff commenced the present action against the defendant and the Bridgeport Probate Court. The defendants filed this motion to dismiss (#102.00) on December 11, 2023. The plaintiff filed an objection on December 26, 2023 (#103.00), and the defendants filed a memorandum in response on January 10, 2024 (#104.00). Oral argument was heard on February 26, 2024.

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.) *Fay* v. *Merrill*, 336 Conn. 432, 445, 246 A.3d 970 (2020). "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). "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, 84 A.3d 895 (2014).

The defendants seek dismissal of the plaintiff's complaint on the grounds of: (1) absolute judicial immunity; (2) sovereign immunity; (3) qualified immunity; (4) statutory immunity pursuant to General Statutes § 4-165; (5) improper service; and (6) lack of standing. For the reasons stated herein, the defendants' motion is granted.

I. Absolute Judicial Immunity

The defendant Ganim claims that the doctrine of judicial immunity serves as an absolute bar from liability in this matter. "It is a long-standing doctrine that a judge may not be civilly sued for judicial acts he undertakes in his capacity as a judge. The rationale is that a judge must be free to exercise his judicial duties without fear of reprisal, annoyance or incurring personal liability. . . . Absolute immunity, however, is strong medicine. . . . The presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties. . . .

"The officers to whom the absolute protection of judicial immunity extends is limited. This fact reflects an [awareness] of the salutary effects that the threat of liability can have . . . as well as the undeniable tension between official immunities and the ideal of the rule of law. .

. . The protection extends only to those who are intimately involved in the judicial process, including judges, prosecutors and judges' law clerks. . . . Moreover, it is important to note that even judges do not enjoy absolute immunity for administrative as opposed to judicial actions. . . . The determination is made using a functional approach. . . . [I]mmunities are grounded in the nature of the function performed, not the identity of the actor who performed it." (Citations omitted; emphasis added; internal quotation marks omitted.) *Lombard* v. *Edward J. Peters, Jr., P.C.*, 252 Conn. 623, 630–32, 749 A.2d 630 (2000).

Absolute immunity does not protect a judge if "the judicial conduct is so far outside the normal scope of judicial functions that the judge was in effect not acting as a judge." *Shay* v. *Rossi*, 253 Conn. 134, 170, 749 A.2d 1147 (2000), overruled in part on other grounds by *Miller* v. *Egan*, 265 Conn. 301, 325, 828 A.2d 549 (2003), citing *Stump* v. *Sparkman*, 435 U.S. 349, 364, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978). There are exceptions to absolute immunity. "Judicial immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. . . . Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." (Internal quotation marks omitted.) *Leseberg* v. *O'Grady*, 115 Conn. App. 18 (2009), quoting *Mireles* v. *Waco*, 502 U.S. 9, 11–12, 112 S. Ct. 286, 116 L.Ed.2d 9 (1991).

The appointment of a conservator is a judicial act and within the subject matter jurisdiction of the probate court. See General Statutes § 45a-650 (appointment of conservator); General Statutes § 45a-654 (appointment of temporary conservator). See also *Collins* v. *West Hartford Police Dept.*, 380 F. Sup.2d 83, 90 (D. Conn. 2005) ("appointment of a conservator

for [plaintiff's mother] properly viewed as a judicial act within the jurisdiction of the probate court").

In *Leseberg*, the Appellate Court affirmed the dismissal of alleged violations of due process, intentional infliction of emotional distress, and negligence per se against a probate court judge for his appointment of a conservator. The court explained that "[a] judge does not act in the complete absence of authority, even if she acts erroneously, unless the judicial conduct is so far outside the normal scope of judicial functions that the judge was in effect not acting as a judge." (Internal quotation marks omitted.) *Leseberg* v. *O'Grady*, supra, 115 Conn. App. 23.

The same principles are applicable in the present case. The defendant, acting in his judicial capacity, ordered a conservator for the plaintiff's father. This act is within the subject matter jurisdiction of the probate court pursuant to § 45a-650. And, even if the appointment of the conservator was in error, the appointment of a conservator is not outside the normal scope of judicial functions as a probate judge. Accordingly, the defendant Ganim is entitled to judicial immunity from this suit.

II. Sovereign Immunity

The defendants also claim that they are shielded by the doctrine of sovereign immunity. "[T]he doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss." (Internal quotation marks omitted.) *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, 301 Conn. 268, 274, 21 A.3d 759 (2011). "Claims involving the doctrines of common-law sovereign immunity and statutory immunity, pursuant to [General Statutes] § 4-165, implicate the court's subject matter jurisdiction." (Internal quotation marks omitted.) *Devine* v. *Fusaro*, 197 Conn. App. 872, 877, 232 A.3d 1178

(2020). Accordingly, "a motion to dismiss is the appropriate procedural vehicle to raise a claim that sovereign immunity [or statutory immunity] bars the action." (Internal quotation marks omitted.) *Manifold* v. *Ragaglia*, 94 Conn. App. 103, 116, 891 A.2d 106 (2006).

Regarding the common-law exceptions to sovereign immunity, "[i]n the absence of a proper factual basis in the complaint to support the applicability of these exceptions, the granting of a motion to dismiss on sovereign immunity grounds is proper." (Internal quotation marks omitted.) *Markley* v. *Dept. of Public Utility Control*, 301 Conn. 56, 66, 23 A.3d 668 (2011). Similarly, "[l]ack of a statutory waiver of [sovereign] immunity is a jurisdictional defect properly raised by a motion to dismiss." *Conboy* v. *State*, 292 Conn. 642, 650, 974 A.2d 669 (2009).

"Rather than suing the state directly, a plaintiff instead may elect to sue a particular state official or employee. If, however, the plaintiff sues that person only in his or her official capacity as a representative of the state, that suit will be construed as the equivalent of a suit against the state itself and, without a valid waiver, the suit likewise will be barred by sovereign immunity. See *Miller* v. *Egan*, supra, 265 Conn. at 313, 828 A.2d 549. To avoid a dismissal on sovereign immunity grounds, a plaintiff must elect to sue the state official in his or her individual capacity." *Devine* v. *Fusaro*, 205 Conn. App. 554, 259 A.3d 655 (2021).

At the outset, the defendant names the Bridgeport Probate Court as a defendant in the complaint. Such a claim directly against a state entity is inherently within the realm of sovereign immunity. "[I]f a plaintiff hopes to maintain an action for monetary damages against the state itself, he may do so only if such a suit is authorized pursuant to a clearly expressed statutory waiver of sovereign immunity or if the plaintiff first obtains a waiver from the Claims Commissioner." Id. The plaintiff has not alleged that she has received a waiver from the Claims

Commissioner. Without such a waiver, she cannot succeed on a claim for monetary damages. As such, the defendant Bridgeport Probate Court is entitled to sovereign immunity.

The plaintiff does not allege in the complaint whether she is suing the defendant Ganim in his official or individual capacity. To answer this question, courts apply the factor test set forth in *Spring* v. *Constantino*, 168 Conn. 563, 568, 362 A.2d 871 (1975). "If all four criteria [of the *Spring* test] are satisfied, the action is deemed to be against the state and, therefore, is barred. . . . The criteria are: (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." (Citation omitted; internal quotation marks omitted.) *Kenney* v. *Weaving*, 123 Conn. App. 211, 1 A.3d 1083 (2010). The application of the *Spring* factors in the present case supports a conclusion that the defendant is sued in his official capacity.

First, there can be little doubt that, as a sitting judge of the probate court, the defendant is a state official. See *Adams* v. *Rubino*, 157 Conn. 150, 251 A.2d 49 (1968) (confirming the constitutionality of the probate court as an arm of the state). See also *Leseberg* v. *O'Grady*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV-07-500-97-58-S (April 10, 2008, *Gilardi, J.*) ("Judge O'Grady was acting as an officer of the state when he rendered his judicial decisions in the plaintiff's cases, and the principal of sovereign immunity therefore applies in this action.").

Second, the plaintiff's allegations arise from the defendant's review and appointment of a conservator for her father. These actions were done in the defendant's role as a judge of the probate court, and accordingly is a matter in which he represents the state.

Third, the plaintiff named both the defendant Ganim and the defendant Bridgeport Probate Court as defendants in this matter. The plaintiff does not state that she is suing the defendant Ganim in his individual capacity. "Nowhere in the plaintiff's complaint did he allege that he was bringing an action against the defendants in their individual capacities. Instead, as already noted, the complaint repeatedly alleged that the defendants acted in their official capacity. . . . We decline to permit the plaintiff now, merely by making a conclusory statement that he also sought relief against the individual defendants, to avoid dismissal of the complaint. Otherwise, it would simply be too easy for a plaintiff, who originally had alleged causes of action against a state officer only in his official capacity, thus seeking relief solely against the state, subsequently to claim that he also sought relief against the state officer in his individual capacity." *Miller* v. *Egan*, supra, 265 Conn. 309–10. The root of the plaintiff's complaint is the appointment of a conservator for her father. The evaluation and issuance of conservators is a regular function of the probate court. Thus, as the probate court is the true entity for which relief is sought, the third *Spring* factor has been met.

Finally, if a plaintiff were able to hold a probate judge civilly liable for issuing a conservator in accordance with his role and responsibilities as a probate judge, it would surely be a constraint on the state's future activities of adjudicating guardian matters. See *Sienkiewicz* v. *Ragaglia*, Superior Court, judicial district of Fairfield, Docket No. CV-03-0401770-S (April 3, 2007, *Matasavage, J.*) ("Any finding against the [state agency] employees undoubtedly will have an effect on the procedures used by the agency in future cases . . . ."). Such a restraint on the judicial process would impermissibly constrain the state's probate operations.

Accordingly, the application of the *Spring* factors supports the conclusion that the defendant is being sued in his official capacity, not his individual capacity. As such, the doctrine of sovereign immunity is applicable in this case.

There are, however, three exceptions to sovereign immunity: "(1) when the legislature, either expressly or by force of a necessary implication, statutorily waives the state's sovereign immunity . . . (2) when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights . . . and (3) when an action seeks declaratory or injunctive relief on the basis of a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority." (Citations omitted.) *DaimlerChrysler Corp.* v. *Law*, 284 Conn. 701, 720, 937 A.2d 675 (2007). "By their terms, only the first of these three exceptions applies in an action seeking only monetary damages." *Devine* v. *Fusaro*, supra, 205 Conn. App. 565. "The second and third exceptions, by their terms, are applicable only in those actions seeking declaratory or injunctive relief. In such an action, the complaint must contain sufficient factual allegations that, if proven, would support a finding that a state official or employee has acted unconstitutionally or in excess of statutory authority to avoid dismissal on sovereign immunity grounds. See *Markley* v. *Dept. of Public Utility Control*, 301 Conn. 56, 65, 23 A.3d 668 (2011)." Id. n.10.

None of these exceptions are applicable here. The plaintiff has sued the defendant in his official capacity for his actions conducted in his role as a state probate judge. This is construed as a suit against the state itself (as of course is the suit against the Bridgeport Probate Court, a state entity). The plaintiff cannot succeed for claims of monetary damage against the state, as the Claims Commissioner has not given authorization. See *Devine* v. *Fusaro*, supra, 205 Conn.

App. 565. See also General Statutes § 4-160.[1] The doctrine of sovereign immunity prevents such claims from continuing.

Although the plaintiff does not explicitly request injunctive relief, to the extent that the second and third exceptions could be considered, neither are applicable here. The plaintiff does not allege that the defendant acted in a manner inconsistent with his statutory duties as a probate judge, nor that her rights were violated. The plaintiff does allege that the defendant has violated the constitutional rights of her father, but such claims do not give the plaintiff standing for injunctive relief. It is well settled that "a party is precluded from asserting the constitutional rights of another." *Frillici* v. *Westport*, 264 Conn. 266, 281, 823 A.2d 1172 (2003). See also *Jan G.* v. *Semple*, 202 Conn. App. 202, 244 A.3d 644 (2021). Accordingly, none of the exceptions to sovereign immunity are applicable here.

As the plaintiff's suit is against the state and against the defendant in his official capacity as a state officer, the defendants are entitled to sovereign immunity.

III. Alternative Grounds for Dismissal

The defendants also assert that, in the alternative to the above, the court lacks jurisdiction because (1) the plaintiff lacks standing and (2) service was improper.[2] The court will briefly discuss these alternative grounds for dismissal.

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[1] General Statutes § 4-160 (a) provides in relevant part: "Whenever the Claims Commissioner deems it just and equitable, the Claims Commissioner may authorize suit against the state on any claim which, in the opinion of the Claims Commissioner, presents an issue of law or fact under which the state, were it a private person, could be liable. . . ."

[2] The defendants also assert that they are entitled to qualified immunity and statutory immunity pursuant to General Statutes § 4-165, which reads in relevant part: (a) No state officer or employee shall be personally liable for damage or injury, not wanton, reckless or malicious, caused in the discharge of his or her duties or within the scope of his or her employment. Any person having a complaint for such damage or injury shall present it as a claim against the state under the provisions of this chapter." As the defendants are entitled to judicial immunity and sovereign immunity, these defenses are not discussed.

1. Standing

"[B]ecause the issue of standing implicates subject matter jurisdiction, it may be a proper basis for granting a motion to dismiss." *Electrical Contractors, Inc.* v. *Dept. of Education*, 303 Conn. 402, 413, 35 A.3d 188 (2012). "The proper procedural vehicle for disputing a party's standing is a motion to dismiss." (Internal quotation marks omitted.) *D'Eramo* v. *Smith*, 273 Conn. 610, 615 n.6, 872 A.2d 408 (2005). "If . . . the plaintiff's standing does not adequately appear from all materials of record, the complaint must be dismissed." (Footnote omitted; internal quotation marks omitted.) *Burton* v. *Dominion Nuclear Connecticut, Inc.*, 300 Conn. 542, 550, 23 A.3d 1176 (2011).

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue. . . . . Standing requires no more than a colorable claim of injury; a [party] ordinarily establishes . . . standing by allegations of injury. Similarly, standing exists to attempt to vindicate arguably protected interests. . . .

"Standing is established by showing that the party claiming it is authorized by statute to bring suit or is classically aggrieved. . . . The fundamental test for determining aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the subject matter of the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must

successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]. . . . Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Internal quotation marks omitted.) *Electrical Contractors, Inc.* v. *Dept. of Education*, supra, 303 Conn. 402, 413, quoting *May* v. *Coffey*, 291 Conn. 106, 112, 967 A.2d 495 (2009).

It is well settled that "a party is precluded from asserting the constitutional rights of another." *Frillici* v. *Westport*, supra, 264 Conn. 281. The alleged constitutional deprivations are the rights of the plaintiff's father, Octavio Alicea, not the plaintiff herself. See *Collins* v. *West Hartford Police Dept.*, 324 Fed. Appx. 137, 139 (2d Cir. 2009). The "proper party" to bring these alleged constitutional violations is therefore Octavio Alicea, not the plaintiff.

The plaintiff also claims that she suffered emotional distress from the defendant's actions regarding the conservatorship. Without reaching the merits or sufficiency of this claim, the plaintiff could have standing to bring such a claim as the allegedly aggrieved party. However, as discussed above, the defendant is immune from tort liability for actions conducted in the ordinary course of judicial conduct. See *Leseberg* v. *O'Grady*, supra, 115 Conn. App. 18; *Shahid* v. *Jongbloed*, Superior Court, judicial district of New Haven at New Haven, Docket No. CV-14-5034791 (January 7, 2015, *Vitale, J.*). As such, even if the plaintiff is the appropriate party for a claim of intentional infliction of emotional distress, that alone does not overcome the doctrine of judicial immunity.

2. Improper Service of Process

"[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.) *Pedro* v. *Miller*, 281 Conn. 112, 117, 914 A.2d 524 (2007). "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." (Emphasis omitted; internal quotation marks omitted.) *Bridgeport* v. *Debek*, 210 Conn. 175, 179–80, 554 A.2d 728 (1989). "If a defendant challenges the court's personal jurisdiction, the plaintiff bears the burden of proving the court's jurisdiction." *Golodner* v. *Women's Center of Southeastern Connecticut, Inc.*, 281 Conn. 819, 825, 917 A.2d 959 (2007). See *Scient Federal Credit Union* v. *Rabon*, 211 Conn. App. 264, 272 A.3d 264 (2022); *Morales* v. *Rodriguez*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV-23-6123678-S (December 4, 2023, *Povodator, J.*).

General Statutes § 52-64 (a) sets forth the requirement for effectuating service of process upon a state official:

> Service of civil process in any civil action or proceeding maintainable against or in any appeal authorized from the actions of, or service of any foreign attachment or garnishment authorized against, the state or against any institution, board, commission, department or administrative tribunal thereof, or against any officer, servant, agent or employee of the state or of any such institution, board, commission, department or administrative tribunal, as the case may be, may be made by a proper officer (1) leaving a true and attested copy of the process,

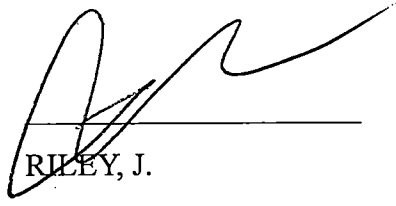
> including the declaration or complaint, with the Attorney General at the office of the Attorney General in Hartford, or (2) sending a true and attested copy of the process, including the summons and complaint, by certified mail, return receipt requested, to the Attorney General at the office of the Attorney General in Hartford. Id.

Thus, to properly have personal jurisdiction over the defendant, the plaintiff was required to serve the defendant by delivering the proper process papers to the Attorney General's office directly or through certified mail.

The defendant asserts that the plaintiff failed to follow this statutory instruction, and instead had a court marshal leave a copy of the summons and complaint with a clerk of the Bridgeport Probate Court. The plaintiff, in neither the complaint nor her objection to the present motion, has alleged facts relating to establish proper service of process. Without offering facts in support, the plaintiff cannot establish that she has met the statutory requirements of § 52-64 (a). Accordingly, without proper service of process, the court does not have personal jurisdiction over the defendants.

CONCLUSION

For the reasons stated herein, the defendant's motion is granted in its entirety.



RILEY, J.