DOCKET NO. HHB-FA-23-6082296-S	:	SUPERIOR COURT	
JEANETTE PORTALATIN	:	JUDICIAL DISTRICT OF NEW BRITAIN	
V.	:	AT NEW BRITAIN	Judicial District of New Britain SUPERIOR COURT FILED
CHESTER CASE	:	APRIL 24, 2024	APR 24 2024

MEMORANDUM OF DECISION

RE: MOTION TO DISMISS (#114)

ASSISTANT CLERK

This case comes in front of the court by virtue of a third-party visitation action brought by the plaintiff pursuant to General Statute § 46b-59[1] that was filed on October 23, 2023.[2] This action concerns the minor child, R., age eight.[3] On January 16, 2024, the defendant filed a motion to dismiss the action (#114), claiming the court lacks subject matter jurisdiction because the plaintiff's petition fails to satisfy the second prong requirement as set forth in *Roth* v. *Weston*, 259 Conn. 202, 234-35, 789 A.2d 431 (2002). Under that case, the petitioner must allege (1) a parent-child relationship with the child; and (2) that the "denial of the visitation will cause real and significant harm to the child. . . . [T]hat [the] degree of harm requires more than a determination that visitation would be in the child's best interest. It must be a degree of harm analogous to the kind of harm contemplated by [General Statutes] §§ 46b-120 and 46b-129, namely, that the child is 'neglected, uncared-for or dependent.'" Id. The defendant asserts that failure to satisfy this necessary pleading requirement, deprives this court of subject matter

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[1] To better understand this case, see *In re Ryan C.*, 220 Conn. App. 507, 299 A.3d 308 (2023).
[2] The court also notes parentage action [HHB-FA24-6083949-S] filed with the same parties wherein the plaintiff seeks to be adjudicated as the "de facto" parent of R. pursuant to General Statutes § 46b-490. A motion to dismiss was also filed in the case by the defendant.
[3] In view of our Supreme Court's policy of protecting the privacy interests of juveniles, the court refers to the child involved in this matter by initial. See, e.g., *Boisvert* v. *Gavis*, 332 Conn. 115, 121 n.3, 210 A.3d 1 (2019); *Frank* v. *Dept. of Children & Families*, 312 Conn. 393, 396 n.1, 94 A.3d 588 (2014).

4/24/2024 - Copies sent to all parties of record, Atty Scott Sandler Law office of Christopher Kenworthy. RWojcik

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jurisdiction. The plaintiff, in response to the motion to dismiss, filed an objection (#118), claiming that the plaintiff had pleaded sufficient facts in her petition for visitation to satisfy the second prong established in *Roth,* thereby allowing for the case to move forward and to hold an evidentiary hearing on the same. On March 7, 2024, the court held a hearing on the matter where both parties were represented by counsel who presented argument to the court. The court issues this decision in response to the motion and the objection.

FACTS AS PLEADED IN THE VERIFIED PETITION FOR VISITATION:

The plaintiff, the former foster parent of R. while he was in the care of the Department of Children and Families, claims in her verified petition for visitation (#100.30) that she is the "former full-time caregiver" of the child. That Connecticut has authority to decide the case because it is the home state of the child. The plaintiff alleges that she has a "parent-like" relationship with the child because she is the "psychological parent" and his "primary attachment." She alleges that she has provided the child food, shelter, discipline, and love for the past six years. She alleges that the child refers to her as "mommy" and that she is the only caregiver the child has known.[4] She indicates that the child has a strong emotional bond with her, that she is aware of all the child's likes and dislikes, that she potty trained the child, taught the child to speak and how to eat independently. She also alleges that the denial of visitation will cause real and significant harm to the child. Specifically, she alleges the child will suffer emotional difficulties if he does not have consistent contact with her and that if there is no contact, the child may very well develop "Reactive Attachment Disorder." She alleges that this

[4] Notwithstanding said allegation, the court notes the child has been in the care, custody and control of the defendant since approximately September 15, 2023.

finding was made by a forensic psychologist in 2021;[5] and that the child has indicated to his therapist, as recorded in a written report made by the child's therapist, that he does not "want to leave my mom. They are going to take me away. I don't want to live with my dad." The plaintiff alleges that the child will "undoubtedly be adversely impacted and emotionally scarred if he does not have consistent contact . . . ." The plaintiff also plead additional information to support a finding of a "parent-child" relationship with the minor child, which the court accepts. The plaintiff requests an alternating weekend access schedule, a week of summer vacation and a holiday schedule.

WHETHER THE VERIFIED PETITION FOR VISITATION CONTAINS SUFFICIENT FACTUAL ALLEGATIONS AS TO REAL AND SIGNIFICANT HARM

In his motion to dismiss, the defendant does not challenge the first prong needed to be pleaded sufficiently under *Roth*, namely that there is a parent-like relationship between the plaintiff and the child, he does however, challenge the second prong, that there would be real and significant harm to the child if the child is denied visitation with the petitioner. He writes that "[f]ailure to satisfy the necessary pleading requirement deprives this Court of subject matter jurisdiction."

The standard that a trial court must apply when faced with a motion to dismiss a petition for visitation on the basis that it fails to allege the jurisdictional elements set forth in *Roth* is well established. Specifically, "the trial court is required . . . to scrutinize the [petition] and to

[5] On December 11, 2023, the plaintiff filed a Motion for Order (#110) seeking to bring information from a confidential proceeding, specifically the court ordered evaluation of Dr. Derek Franklin. In her motion, the plaintiff avers that "[w]hile non-confidential information is available to satisfy the initial prong, the information for the second prong is contained in a confidential proceeding." The court also notes that the defendant filed an objection to the same (#112). That motion has not been acted on and cannot therefore be considered by the court relative to this Motion to Dismiss.

determine whether it contains specific, good faith allegations of both relationship and harm. . . . If the [petition] does not contain such allegations, the court lacks subject matter jurisdiction and the [petition] must be dismissed." (Internal quotation marks omitted.) *Romeo* v. *Bazow*, 195 Conn. App. 378, 387, 225 A.3d 710 (2020). *Bazow* also instructs that the court is to limit its consideration to the allegations contained in the plaintiff's petition, including the attached affidavit. Id., 388.

The court starts from the proposition that "[i]mplicit in the statute [General Statute § 46b-59] is. . . a rebuttable presumption that visitation that is opposed by a fit parent is not in a child's best interest. In sum, therefore, we conclude that there are two requirements that must be satisfied in order for a court: (1) to have jurisdiction over a petition for visitation contrary to the wishes of a fit parent; and (2) to grant such a petition. First, the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that denial of the visitation will cause real and significant harm to the child. . . . Second, once these high jurisdictional hurdles have been overcome, the petitioner must prove these allegations by clear and convincing evidence. *Roth* v. *Weston*, supra, 259 Conn. 234-35. The defendant asserts that he is a "fit parent," and that visitation with the plaintiff is not in R.'s best interest. Based on the plaintiff's petition for visitation, as filed, the court finds sufficient the allegations of a parent-child like relationship between the plaintiff and R., although the court notes it has been since September 2023 that the plaintiff had that type of contact and interaction with R.[6] Further, the defendant does not challenge the same. It is the second prong of the jurisdictional requirement that is challenged. The defendant argues that pursuant to pertinent case law that "[t]he family

[6] See *In re Ryan C.*, supra, 220 Conn. App. 507, 299 A.3d 308.

entity is the core foundation of modern civilization. The constitutionally protected interest of parents to raise their children without interference undeniably warrants deference and, absent a powerful countervailing interest, protection of the greatest possible magnitude. *Lassiter* v. *Dept. of Social Services*, 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981); *Stanley* v. *Illinois*, [405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)]. Consequently, interference is justified only when it can be demonstrated that there is a compelling need to protect the child from harm. In the absence of a threshold requirement of a finding of real and substantial harm to the child as a result of the denial of visitation, forced intervention by a third-party seeking visitation is an unwarranted intrusion into family autonomy. Accordingly, in the absence of any such requirement of harm, § 46b–59 does not justify interference with parental rights." Id., 228–29. The defendant argues that as plead, the allegations of harm contained in the plaintiff's petition are speculative and do not rise to the level of harm contemplated by our Appellate Court in *Roth*, as the plaintiff has alleged that "complete severance from me **may** very well cause him to develop Reactive Attachment Disorder" and that "[R.] will suffer emotion difficulties if he does not have consistent contact with me." (Emphasis Added). The defendant goes on to cite cases wherein the Appellate Court has held similar pleadings insufficient to allow for jurisdiction. For example, the defendant cites *Hunter* v. *Shrestha*, 195 Conn App. 393, 396, 225 A.3d 285 (2020), wherein the Appellate Court found an allegation that denial of access would "compound [the minor child's] early childhood trauma" did not rise to the level of harm contemplated in *Roth* to support an exercise of jurisdiction, and thus, the Appellate Court upheld the trial court's dismissal of the petition for visitation for lack of subject matter jurisdiction. The defendant also cites *Fuller* v. *Baldino*, 176 Conn. App. 451, 459, 168 A.3d 665 (2017), wherein the Appellate Court found an allegation that a child "suffers" and "is very emotional" when

unable to see the petitioner was inadequate to allow for family intrusion, as such an allegation do not rise to the level of neglect, abuse or abandonment as required under *Roth*, and thus, the Appellate Court upheld the trial court's dismissal of the petition for visitation for lack of subject matter jurisdiction.

With the relevant legal principles in mind, and upon review of the allegations contained in the plaintiff's petition, the court does not find that the allegations of potential emotional difficulties or the possibility that the child may develop Reactive Attachment Disorder as sufficient to meet the required second prong of the *Roth* analysis, i.e., that the denial of the visitation will cause real and significant harm to R., "analogous to the kind of harm contemplated by §§ 46b-120[7] and 46b-129,[8] namely, that the child is 'neglected, uncared-for or dependent,'" nor does the court find that the allegations of the petition amount to abuse, neglect or abandonment, which would cause the state to intrude upon a family's integrity. In this case, the petition fails to allege that the child is abandoned, being denied proper care and attention, physically, educationally, emotionally, or morally, or is being permitted to live under conditions, circumstances, or associations injurious to the well-being of the child. Nor does it allege the child is homeless, nor that his home/parent cannot provide the specialized care that his physical, emotional or mental condition requires. Accordingly, the court cannot find, based on the petition, that the minor child will suffer real and significant harm akin to neglect if visitation were denied.

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[7] General Statutes § 46b-120 (4) provides: "A child may be found 'neglected' who, for reasons other than being impoverished, (A) has been abandoned, (B) is being denied proper care and attention, physically, educationally, emotionally or morally, or (C) is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child.

[8] General Statutes § 46b-120 (6) provides in relevant part: "A child may be found 'uncared for' (A) who is homeless, (B) whose home cannot provide the specialized care that the physical, emotional or mental condition of the child requires . . . ."

See *Firstenberg* v. *Madigan*, 188 Conn. App. 724, 735, 205 A.3d 716 (2019) ("[t]he statute is clear and unambiguous that a petition for visitation must make specific, good faith allegations that the minor child will suffer real and significant harm akin to neglect if visitation were denied").

"The level of harm that would result from denial of visitation in such a situation is not of the magnitude that constitutionally could justify overruling a fit parent's visitation decision. Indeed, the only level of emotional harm that could justify court intervention is one that is akin to the level of harm that would allow the state to assume custody under . . . §§ 46b-120 and 46b-129—namely, that the child is 'neglected, uncared-for or dependent' as those terms have been defined." (Internal quotation marks omitted.) *Romeo* v. *Bazow*, supra, 195 Conn. App. 391; see also *Vaughan* v. *Chapman*, Superior Court, judicial district of Danbury, Docket No. FA-20-5015950-S (July 27, 2021, *Truglia, J.*) (allegation that children "could" suffer serious emotional harm if denied visitation "is speculative, at best. In order to overcome the second jurisdictional hurdle, the plaintiff must set forth with specificity real and significant harm that the children likely *will* face, if visitation is denied." [Emphasis in original.]); *Ruffino* v. *Bottass*, Superior Court, judicial district of Hartford, Docket No. FA–05–4019188–S (April 11, 2006, *Epstein, J.*) (41 Conn. L. Rptr. 181, 181) (allegation that children were in "attachment phase of development" and denial of visitation would be psychologically harmful to children was insufficient).

The court is also aware of the status of the petitioner who gave of her heart and home as a foster parent. However, as set forth in an Appellate Court decision concerning this case, "[i]t is well established that [f]oster families do not have the same rights as biological families or adoptive families. . . . It is unquestioned that [b]iological and adoptive families have a liberty

interest in the integrity of their family unit which is part of the fourteenth amendment's right to familial privacy. . . . Foster parents, on the other hand, do not enjoy a liberty interest in the integrity of their family unit. . . . Rather, [t]he rights of foster parents are defined and restricted by statute . . . [and] the expectations and entitlements of foster families can be limited by the state. . . . The statutory scheme provides to foster parents a limited and narrow set of rights regarding foster children. Such a limited and narrow set of rights is consistent with the premise that [f]oster parents are entrusted with foster children on a temporary basis only." (Internal quotation marks omitted.) *In re Ryan C.*, 220 Conn. App. 507, 522, 299 A.3d 308, cert. denied, 348 Conn. 901, 300 A.3d 1166 (2023).

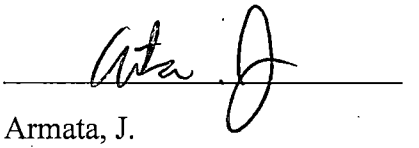
"[I]t is by no means obvious that foster parents and foster children have the same interest in a continuation of their relationship. When the child leaves the foster family, it is because the agency with custody of him has determined that his interests will be better served by a new home, either with his natural parents, adoptive parents, or a different foster family. Any assessment of the child's alleged deprivation must take into account not only what he has lost, but what he has received in return. *Smith* v. *O.F.F.E.R.*, [431 U.S. 816,] 857 n. 1, 97 S.Ct. [2094, 53 L.Ed.2d 14 (1977)] (*Stewart, J.*, concurring)." *Nye* v. *Marcus*, 198 Conn. 138, 145, 502 A.2d 869, 873 (1985).

While the court is sympathetic to the petitioner and the extended care and love she provided for R., the court cannot as a matter of law allow the petition as pleaded to go forward. "We do not doubt that the foster parents have developed a bond with [the child] and that separation is painful. We by no means disparage the salutary role of foster parents in general and, presumably, the role of the foster parents in this case. We are bound, however, by the law." *In re Joshua S.*, 127 Conn. App. 723, 729 n.3, 14 A.3d 1076 (2011).

For all the foregoing reasons, the plaintiff's petition is dismissed.

SO ORDERED.

BY THE COURT,



Armata, J.