DOCKET NO. CV-22-6024206-S	:	SUPERIOR COURT
WILLIAM MIHALIAK	:	J.D. OF TOLLAND
v.	:	AT ROCKVILLE
KEHE DISTRIBUTORS, INC., ET AL.	:	JUNE 12, 2024

MEMORANDUM OF DECISION

HON. CODY N. GUARNIERI, JUDGE. Before this court is the motion to intervene filed by the State of Connecticut (State), dated January 24, 2024 (Entry at Docket No. 136.00.) The plaintiff, William Mihaliak, objected to the State's motion on January 31, 2024 (Entry at Docket No. 139.00). The State submitted their reply, dated April 24, 2024 (Entry at Docket No. 141.00), and the plaintiff submitted a further rebuttal brief, dated May 28, 2024 (Entry at Docket No. 144.00). The court heard oral argument at short calendar on May 28, 2024.[1] For the reasons discussed herein, the motion to intervene is GRANTED and the objection is OVERRULED.

I. BACKGROUND

On February 9, 2022, the plaintiff, William Mihaliak, filed a six-count complaint against the defendants, Kehe Distributors, Inc., Kehe Distributors, LLC, and Karen Poblenz as Administrator of the Estate of Eric Poblenz. In the operative complaint (Entry at Docket No. 125.00), the plaintiff alleges the following facts relevant to the court's consideration. On or about February 27, 2020, the plaintiff was an employee of the State of Connecticut Department of Transportation (DOT). While in the course and scope of his employment with the State, the plaintiff was parked in a DOT construction vehicle within a highway work zone on I-84 westbound near exit 73, where road construction was occurring nearby. The defendant Poblenz drove his tractor trailer at high rate of speed into the rear of the plaintiff's stationary truck, causing him serious injuries and losses.

On January 24, 2024, the State moved to intervene as a co-plaintiff (Entry at Docket No. 136.00). The State avers in its motion that the plaintiff was in the employ of the State, within the scope of the Workers' Compensation Act, and that his injuries arouse out of and in the course of his employment (Entry at Docket No. 137.00). The State further asserts in its motion that it has paid, and has become obligated to pay, a sum of money to the plaintiff and on his behalf under the terms of the State's Workers' Compensation Act. Finally, the State claims in its motion that, as of the date of that filing, it had not received statutory notification of this action pursuant to General Statutes § 31-293, and only recently learned of this action. (Entry at Docket No. 136.00).

[1] The court also reviewed the oral argument held before the court, *Gordon, J.*, on March 26, 2024, which preceded further briefing by the parties at the request of the court.

STEVEN PAPPAS
ASSISTANT CLERK

Notice of memorandum sent on 6-12-24 to: 1
- Reporter of Judicial Decisions
- All counsel of record; JDNO

On January 31, 2024, the plaintiff objected to the State's motion to intervene (Entry at Docket No. 139.00). The plaintiff argues that, under General Statutes § 31-293, a motion to intervene must be filed within thirty days after receipt of notice of the civil action. The plaintiff argues that a notice was delivered to the State on March 23, 2022, and therefore its right to intervene in this case abated thirty days later. In support of his objection, the plaintiff attaches as Exhibit A, a purported notice of the initiation of this action that he sent certified, with return receipt, in the mail pursuant to § 31-293. That notice, dated March 23, 2022, was directed to the Commissioner of the Department of Administrative Services (DAS), located at 450 Columbus Boulevard in Hartford, Connecticut. In the notice, the plaintiff references the respondent, or his employer, as "State of Connecticut – DOT" and encloses the complaint in this action.

In its reply, the State does not contest that the letter of notice sent by the plaintiff was, in fact, sent to and received by DAS on March 25, 2022. Indeed, the return receipt is attached as Exhibit B to the plaintiff's motion. However, the State argues that the plaintiff's notice was insufficient as a matter of law. The State argues that due process principles require that notice be reasonably calculated to reach the correct party and be properly served. The State further contends that the notice was sent to the wrong agency (DAS instead of DOT), at the wrong location (Hartford instead of DOT's office in Newington), without sufficient indication of the intended recipient (a single reference to "DOT" in the subject line of the letter), thus failing to meet the notice requirements of § 31-321 of the Workers' Compensation Act.

The plaintiff counters that, because it is uncontested that DAS received the notice on March 25, 2022, and that there was reference to DOT in the subject line of the notice, any due process requirements for notice were met. Moreover, the plaintiff argues that DAS is essentially the employer for all State employees, and that notice of a claim under the Workers' Compensation Act for a State employee must be directed to DAS under § 31-294c (a).

II. STANDARD OF REVIEW

General Statutes § 31-293 (a) provides in pertinent part that "[w]hen any injury for which compensation is payable under the provisions of this chapter has been sustained under circumstances creating in a person other than an employer . . . a legal liability to pay damages for the injury, the injured employee may claim compensation under the provisions of this chapter, but the payment or award of compensation shall not affect the claim or right of action of the injured employee against such person, but the injured employee may proceed at law against such person to recover damages for the injury . . . If the employee . . . brings an action against such person, he shall immediately notify the others, in writing, by personal presentation or by registered or certified mail, of the action and of the name of the court to which the writ is returnable, and the others may join as parties plaintiff in the action within thirty days after such notification, and, if the others fail to join as parties plaintiff, their right of action against such person shall abate unless the employer, insurance carrier or Second Injury Fund gives written notice of a lien in accordance with this subsection."

"An individual's entitlement to a prospective cause of action is well settled in our state law. A right of action, including one for personal injuries, is a vested property interest, before as well as after judgment." (Internal quotation marks omitted.) *Worsham* v. *Greifenberger*, 242 Conn. 432, 438, 698 A.2d 867 (1997). See also *Massa* v. *Nastri*, 125 Conn. 144, 147, 3 A.2d 839 (1939). "Moreover, the United States Supreme Court has held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." (Internal quotation marks omitted.) *Worsham* v. *Greifenberger*, supra, 242 Conn. 438. See also *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 428, 455, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982). Therefore, in order for the abatement provision of General Statutes § 31-293 (a) to apply, notice must be given that comports with both the statute and the requirements of due process. See *Worsham* v. *Greifenberger*, supra, 242 Conn. 444.

"The United States Supreme Court in *Mullane* stated that [a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity [to be heard] . . . The court pointed out that an essential function of notice is to enable the recipient to choose for himself whether to appear or default, acquiesce or contest . . . with regard to proceedings affecting the recipient's interests." (Citations omitted; internal quotation marks omitted.) *Worsham* v. *Greifenberger*, supra, 242 Conn. 440. See also *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950).

The failure to provide sufficient notice pursuant to § 31-293 (a) acts to toll the period during which a party can seek to intervene. See *Lakewood Metal Products, Inc.* v. *Capital Mach. & Switch Co. Eyeglasses*, 154 Conn. 708, 710, 226 A.2d 392 (1967) ("[a]s the plaintiff never notified [his employee of the third-party action], [the employee] could not be barred from intervening by the passage of the time which this statute prescribes, because, until notice is given, the time does not begin to run"); *Rana* v. *Ritacco*, 236 Conn. 330, 336, 672 A.2d 946 (1996) (discussing institution of third party action in accordance with § 31-293); *Durrschmidt* v. *Loux*, 230 Conn. 100, 103, 644 A.2d 343 (1994) (same); *Misiurka* v. *Maple Hills Farms, Inc.*, 15 Conn. App. 381, 385, 544 A.2d 673 (1988) ("[f]ailure to notify an employer of pending litigation pursuant to General Statutes § 31-293 allows an employer to enter the action *at any point* in the proceedings" ([e]mphasis added)).

III. DISCUSSION

The crux of the dispute between the parties is the sufficiency of the notice provided by the plaintiff to the State pursuant to General Statutes § 31-293 (a).[2] The parties agree that the plaintiff

[2] The State also argues that the limitation period to intervene contained in General Statutes § 31-293 (a) does not apply to the State pursuant to the doctrine of nullum tempus occurrit regi ("nullum

sent a notice to DAS at its Hartford offices, which was received on March 25, 2022. Moreover, there is no disagreement that the subject line of the notice made reference to "DOT." Notwithstanding those concessions, the court finds that the plaintiff's notice was not reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action and, therefore, did not meet the due process requirements under *Mullane*.

It is beyond dispute that the plaintiff was an employee of DOT and not of DAS. At the time of this accident, he alleges to have been parked in a DOT construction vehicle within a highway work zone on I-84 westbound. On this issue, the court agrees with the reasoning in *Gothberg* v. *Caliendo*, Superior Court, judicial district of New Haven, Docket No. CV-99-0422366-S (May 3, 2000, *Thompson, J.*) (27 Conn. L. Rptr. 245), that notice pursuant to § 31-293 should be sent to that person or official where its contents were most likely to come to the attention of the proper state official. In *Gothberg*, the court found notice under § 31-293 insufficient where an employee of the then Department of Environmental Protection sent notice to the Secretary of State's Office, instead of the agency for which he worked or the Attorney General's Office. Id.

Like *Gothberg*, the plaintiff's notice in this case was sent to an agency that was not the one in which he was employed. There was also no further information in the notice properly identifying any intended recipient beyond "DOT." See General Statutes § 31-321. While the plaintiff argues that DAS essentially acts as a human resources department for all of the State of Connecticut, and that notice to DAS is therefore sufficient under § 31-294c (a), the court disagrees. General Statutes § 31-294c addresses the initial notice of claim under the Workers' Compensation Act by a claimant. In relevant part, § 31-294c (a) provides that "[a]n employee of the state shall send *a copy* of the notice to the Commissioner of Administrative Services." (Emphasis added.) That a state employee claimant must send a copy of his or her initial notice of claim to DAS suggests neither that the copy to DAS is sufficient to notify the employer (at the claimant's department or agency) of the claim, nor that notice of a third-party action under § 31-293 can be sent to DAS.

IV. CONCLUSION

For the reasons stated above, the State's motion to intervene is therefore GRANTED and the objection thereto is OVERRULED.

SO ORDERED

BY THE COURT

Guarnieri, J.

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tempus"). However, as the statutory notice provided to the State pursuant to General Statutes § 31-293 (a) was insufficient as a matter of law, the court does not reach that argument.