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ERICA LAFFERTY ET AL. *v.* ALEX
EMRIC JONES ET AL.
(AC 46194)

Bright, C. J., Prescott and Moll, Js.

Syllabus

The plaintiff in error, P, who was the attorney for the defendants in the underlying consolidated actions, filed a writ of error challenging the order by the trial court, *Bellis, J.*, suspending him from the practice of law for a period of six months. Judge Bellis had conducted a show cause hearing at which P appeared and was represented by counsel and in which the Chief Disciplinary Counsel participated. Judge Bellis found, by clear and convincing evidence, that P had violated certain Rules of Professional Conduct and ordered his suspension. P effectuated service of process on the first defendant in error, the Office of Chief Disciplinary Counsel. In response, disciplinary counsel filed a motion to dismiss on the ground of misjoinder. Thereafter, P made service on the second defendant in error, Judge Bellis, who subsequently filed a motion to dismiss for lack of proper service of process. *Held:*

1. This court denied disciplinary counsel's motion to dismiss: disciplinary counsel appeared in the underlying matter and participated in the show cause hearing before the trial court without objection and was responsible for its prosecution, and he did not cite any authority to support the proposition that he was a misjoined party in a disciplinary proceeding, even if that proceeding had been initiated by the trial court; moreover, by virtue of disciplinary counsel's institutional role and powers set forth in the rule of practice (§ 2-34A (b)), he is the party perhaps most well suited to participate in the writ of error and to defend the propriety of the trial court's order suspending P from the practice of law.
2. This court granted Judge Bellis' motion to dismiss for lack of proper service of process and dismissed the writ of error with respect to her, finding that P did not serve her in a timely manner and that she filed a timely motion to dismiss.

Considered March 1—officially released August 1, 2023

Procedural History

Writ of error from the order of the Superior Court in the judicial district of Waterbury, *Bellis, J.*, suspending the plaintiff in error from the practice of law for a period of six months; thereafter, the defendants in error each filed a motion to dismiss. *Motion to dismiss denied as to the defendant in error Office of Chief Disciplinary Counsel; motion to dismiss granted and writ of error dismissed as to the defendant in error Hon. Barbara N. Bellis.*

Christopher T. DeMatteo, in opposition to the motions.

Brian B. Staines, in support of the motion filed by the Office of Chief Disciplinary Counsel.

Robert J. Deichert, assistant attorney general, in support of the motion filed by Hon. Barbara N. Bellis.

Opinion

PER CURIAM. This writ of error was commenced by the plaintiff in error, Norman A. Pattis—a Connecticut attorney and counsel of record for the defendants, Alex Emric Jones and Free Speech Systems, LLC,¹ in the underlying consolidated tort actions² arising out of the mass shooting at Sandy Hook Elementary School. The plaintiff in error challenges the order of the second defendant in error, Honorable Barbara N. Bellis,³ suspending him from the practice of law for a period of six months for violating numerous provisions of the Rules of Professional Conduct.

In response to the writ of error, the first defendant in error, the Office of Chief Disciplinary Counsel, filed a motion to dismiss on the ground of misjoinder. Judge Bellis also filed a motion to dismiss the writ of error for lack of proper service of process. By separate orders dated March 1, 2023, we denied the motion to dismiss filed by the Office of Chief Disciplinary Counsel and granted Judge Bellis' motion to dismiss, indicating in both orders that an opinion would follow. This opinion provides our reasons for those orders.

The following facts and procedural history are relevant to our resolution of the motions to dismiss. On August 4, 2022, in each of the consolidated actions, the trial court issued, sua sponte, an order requiring Attorney Pattis to appear and show cause at a hearing on August 10, 2022, “as to whether he should be referred to disciplinary authorities or sanctioned by the court directly; see . . . Practice Book [§] 2-45; regarding the purported release of medical records of the plaintiffs, in violation of state and federal statute and this court's protective order, to unauthorized individuals.” The order also directed the clerk “to notify Chief Disciplinary Counsel, Brian Staines [disciplinary counsel], of the show cause hearing and . . . to immediately provide him with a copy of this order.” Disciplinary counsel had previously filed an appearance.

On August 10, 17 and 25, 2022, the trial court conducted the show cause hearing, at which Pattis appeared and was represented by counsel; disciplinary counsel also participated in the hearing. In a memorandum of decision dated January 5, 2023, the trial court found, by clear and convincing evidence, that Pattis had violated rules 1.1, 1.15 (b), 3.4 (3), 5.1 (b), 5.1 (c), and 8.4 (4) of the Rules of Professional Conduct. As discipline for those violations, the court suspended Pattis from the practice of law in the state of Connecticut for a period of six months (suspension order). This writ of error followed.⁴

On January 20, 2023, Pattis filed in this court a writ of error, which had been allowed and signed by a clerk of the court in which the suspension order was issued. See Practice Book § 72-3 (a). The writ of error desig-

nated the return date as February 7, 2023. The writ of error, which does not expressly identify any defendant in error, was accompanied by a signed marshal's return of service, indicating that service had been made *upon disciplinary counsel* on January 13, 2023. Thus, because Pattis had complied with the requirements of Practice Book § 72-3 (c), the writ of error *as to disciplinary counsel* was deemed properly returned to the appellate clerk on January 20, 2023.

On January 30, 2023, Pattis filed a docketing statement identifying only disciplinary counsel as the defendant in error. That same day, pursuant to Practice Book § 66-8, disciplinary counsel filed his motion to dismiss the writ of error, contending that (1) according to the January 30, 2023 docketing statement, he was the only defendant in error, (2) he was a misjoined party, and (3) Judge Bellis had not been served.

On January 31, 2023, Pattis filed an amended docketing statement stating that both disciplinary counsel and Judge Bellis are the defendants in error. On February 3, 2023, Pattis filed a signed marshal's return of service, indicating that service had been made with respect to Judge Bellis on January 31, 2023. On February 10, 2023, pursuant to Practice Book § 66-8, Judge Bellis filed her motion to dismiss the writ of error for lack of proper service of process.

I

We first address disciplinary counsel's motion to dismiss the writ of error on the ground of misjoinder.⁵ Specifically, disciplinary counsel argues that he is not a proper party to this writ of error proceeding.⁶ We are not persuaded.

According to our review of the record, disciplinary counsel appeared in the underlying matter and essentially was responsible for prosecuting the alleged violations of the Rules of Professional Conduct that the court had alleged against the plaintiff in error. Disciplinary counsel did not raise any objection to participating in the show cause hearing (and he does not claim otherwise on appeal). He entered into stipulations of fact, submitted a memorandum of law with respect to Pattis' invocation of the fifth amendment privilege against self-incrimination, called his own witnesses, cross-examined Pattis' witnesses, expressly took the position in a posttrial brief that Pattis had violated various provisions of the Rules of Professional Conduct and the General Statutes, and even made the recommendation that Pattis be suspended for a period of six months—a recommendation that the court adopted.

Moreover, disciplinary counsel has not cited any authority, and we are not aware of any, to support the proposition that he is a misjoined party in a disciplinary proceeding, even if initiated by a trial court, particularly when he participated without objection and was respon-

sible for its prosecution.⁷ We note that, of the cases referenced in disciplinary counsel's motion to dismiss, which appear with and without citation, for the proposition that the trial court is the proper defendant in error in a writ of error proceeding arising from attorney discipline in an underlying matter, none stands for the proposition that disciplinary counsel is a misjoined party in such a matter. See *State v. Perez*, 276 Conn. 285, 885 A.2d 178 (2005); *Burton v. Mottolese*, 267 Conn. 1, 835 A.2d 998 (2003), cert. denied, 541 U.S. 1073, 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004); *Briggs v. McWeeny*, 260 Conn. 296, 796 A.2d 516 (2002); *Ambrose v. Ambrose*, Connecticut Appellate Court, Docket No. AC 45424 (writ of error filed April 11, 2022). Accordingly, those cases, particularly those decisions issued prior to the creation of the Office of Chief Disciplinary Counsel, effective January 1, 2004, are inapposite to the precise question before us.

In our view, disciplinary counsel, by virtue of his active participation in the underlying proceedings and his institutional role and powers set forth in Practice Book § 2-34A (b), is the party perhaps most well suited to participate in this writ of error and to defend the propriety of Judge Bellis' order suspending Pattis from the practice of law. Indeed, the underlying disciplinary procedures invoked by the trial court are akin to an attorney presentment proceeding, which disciplinary counsel routinely initiates and prosecutes. See Practice Book § 2-34A (b) (7).

II

We next address Judge Bellis' motion to dismiss the writ of error. In support of her motion, Judge Bellis makes three contentions: (1) Pattis did not serve "[a]ll parties to the underlying action," namely, the plaintiffs, as required by Practice Book § 72-3 (e); (2) Pattis did not serve her in a timely manner; and (3) the materials served on Judge Bellis did not include a summons. Because we agree with the second contention, we grant Judge Bellis' motion to dismiss the writ of error.⁸

We begin with a review of the applicable rules of appellate procedure that govern our resolution of Judge Bellis' motion. Practice Book § 72-3 (a) requires that a writ of error be presented for signature to a judge or clerk of the court in which the judgment or decision was rendered within twenty days of the notice of the complained of judgment or decision. Section 72-3 (b) further provides: "The writ of error shall be *served* and returned *as other civil process*, except that the writ of error shall be served at least ten days before the return day and shall be returned to the appellate clerk at least one day before the return day. The return days are any Tuesday not less than twelve nor more than thirty days after the writ of error is signed by a judge or clerk of the court." (Emphasis added.)

In the present case, the writ of error was served on Judge Bellis on January 31, 2023, which is fewer than ten days from the February 7, 2023 return day. The record also demonstrates that Judge Bellis filed her motion to dismiss on February 10, 2023, nine days after her attorney filed an appearance on February 1, 2023. Accordingly, because process was not served in a timely manner upon Judge Bellis, who filed a timely motion to dismiss, we grant Judge Bellis' motion to dismiss the writ of error for lack of proper service of process.⁹ See *Chevalier v. Wakefield*, 85 Conn. 374, 375, 82 A. 973 (1912) (when writ of error is not “served and returned within the prescribed period before its return day,” writ “must fail as any other action must”).

The motion to dismiss filed by disciplinary counsel is denied; the motion to dismiss filed by Judge Bellis is granted and the writ of error as it pertains to Judge Bellis is dismissed.

¹ Although there were additional defendants who participated in the underlying actions, Jones and Free Speech Systems, LLC, were the only remaining defendants at the time of the show cause hearing described in this opinion. We therefore refer in this opinion to Jones and Free Speech Systems, LLC, as the defendants.

² The consolidated actions are *Lafferty v. Jones*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. CV-18-6046436-S; *Sherlach v. Jones*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. CV-18-6046437-S; and *Sherlach v. Jones*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. CV-18-6046438-S.

³ In this opinion, we refer to the second defendant in error interchangeably as the trial court and Judge Bellis.

⁴ The suspension order is currently stayed. The following recitation sets forth the procedural background leading to the issuance by this court of a stay.

On January 6, 2023, Pattis filed in the trial court, pursuant to Practice Book § 61-12, a motion for a stay of the suspension order during the pendency of the defendants' appeals in the underlying actions and of any writ of error proceedings relating to the suspension order. On January 11, 2023, the trial court denied that motion. On January 12, 2023, Pattis filed in this court, pursuant to Practice Book §§ 61-14 and 66-6, an emergency motion for review seeking an interim stay of the suspension order pending the filing and adjudication of a motion for review of the trial court's January 11, 2023 denial of his motion for a stay. That same day, this court granted Pattis' emergency motion for review and granted in part the relief requested, stating that the suspension order “is hereby stayed until Monday, January 23, 2023. If . . . Pattis files a motion for review on or before January 23, 2023, and files a writ of error in full compliance with the appellate rules on or before January 25, 2023, then this emergency stay will remain in effect until the resolution of the motion for review.”

On January 20, 2023, Pattis filed his writ of error. That same day, Pattis filed a motion for review of the trial court's January 11, 2023 denial of his motion for a stay.

On January 23, 2023, this court “ordered, sua sponte, that the trial court, *Bellis, J.*, articulate the factual and legal basis for its order of January 11, 2023, denying the motion for a discretionary stay of its January 5, 2023 order suspending . . . Pattis from the practice of law in Connecticut for six months. See *Griffin Hospital v. Commission on Hospitals & Health Care*, 196 Conn. 451, 457–58 [493 A.2d 229] (1985).” That same day, the trial court issued an articulation.

On February 9, 2023, this court granted Pattis' motion for review and granted in part the relief requested, stating that “the trial court's January 5, 2023 disciplinary order is stayed until final resolution of the writ of error.”

⁵ See *Rodriguez v. Kaijaffa, LLC*, 337 Conn. 248, 274, 253 A.3d 13 (2020) (“[w]hether the [parties] are the correct party is an issue of misjoinder and does not implicate the court's subject matter jurisdiction”).

⁶ In his motion to dismiss—filed prior to Judge Bellis being identified as a second defendant in error in Pattis’ amended docketing statement and served with process—disciplinary counsel does not argue that the writ of error should be dismissed on the basis of the nonjoinder of an indispensable party, i.e., Judge Bellis. See footnote 9 of this opinion.

⁷ We do not perceive any jurisdictional or other bar to adjudicating Pattis’ writ of error with only the participation of disciplinary counsel in light of our dismissal of the writ of error as to Judge Bellis, as we explain in part II of this opinion.

⁸ Accordingly, we need not address the first and third contentions.

⁹ In our view, under the circumstances of this case, the dismissal of the writ of error as to Judge Bellis for lack of proper service upon her does not implicate this court’s jurisdiction over the writ in its entirety. Indeed, only in cases involving the imposition of summary criminal contempt by a trial court do our appellate rules governing writs of error designate that the defendant in error be the Superior Court. Practice Book § 72-3 (e). Prior to the adoption of Practice Book § 72-3 (e) in 2003, writs of error challenging summary criminal contempt were often brought against one of the underlying parties to the case rather than the Superior Court itself. See *Brown v. Regan*, 84 Conn. App. 100, 851 A.2d 1249 (naming supervisory assistant state’s attorney as defendant in error), cert. denied, 271 Conn. 926, 859 A.2d 577 (2004). Moreover, because the legislature has repealed the statutes regulating the writ; see Public Acts 2003, No. 03-176, § 3; see also General Statutes (Rev. to 2003) § 52-272 et seq.; the “sole responsibility [is] on the courts to regulate and limit writs of error” E. Prescott, Connecticut Appellate Practice & Procedure (7th Ed. 2021) § 9-1:1.2, p. 549. We do not interpret our rules of practice regulating writs of error to require the dismissal of a writ for lack of jurisdiction if the plaintiff in error has failed to name or properly serve the judge who imposed discipline on an attorney in the underlying proceeding. Dismissal of the entire writ seems particularly unjustified in the circumstances of this case, in which the propriety of the court’s order disciplining Pattis will be defended by disciplinary counsel.
