IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

James Van Nguyen

Plaintiff,

v.

Patricia Foley, Jody Alholinna, Nancy Martin, Charles R. Vig, Keith B. Anderson, Rebecca Crooks-Stratton, and Cole W. Miller,

Defendants.

Case No. 0:21-CV-00991 (ECT/TNL)

DEFENDANT JODY ALHOLINNA'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)

Defendant Jody Alholinna moves the Court to dismiss Plaintiff's claims against her pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff's claims against Ms. Alholinna in this matter arise out of Ms. Alholinna's performance of her duties as a court-appointed guardian ad litem for Plaintiff's minor child in a tribal court child welfare proceeding. Because guardians ad litem are entitled to absolute quasi-judicial immunity, each of Plaintiff's claims against Ms. Alholinna fails as a matter of law and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). Additionally, Plaintiff's claim for intentional infliction of emotional distress is barred by the applicable statute of limitations, and Plaintiff's Amended Complaint fails to state a claim for abuse of process. Ms. Alholinna is therefore entitled to a dismissal of all claims against her herein pursuant to Fed. R. Civ. P. 12(b)(6).

Allegations of Plaintiff's Amended Complaint

The factual allegations directed against Ms. Alholinna in Plaintiff James Van Nguyen's lengthy Amended Complaint are few. First, Plaintiff alleges that Ms. Alholinna was a guardian ad litem appointed by the SMSC Tribal Court for A.J.N., Mr. Nguyen's daughter.[1] He further alleges that in her report to the tribal court, Ms. Alholinna claimed that Mr. Nguyen had a history of substance abuse, which Plaintiff denies. *Id.* at ¶80-81. Plaintiff alleges that Ms. Alholinna, along with Defendants Foley and Martin, failed to confirm or verify information provided to her by Plaintiff's ex-wife, Amanda Gail Gustafson, or to provide evidence to substantiate or support such accusations. *Id.* at ¶¶ 78, 82. Plaintiff alleges that on December 4, 2014, Ms. Alholinna presented her findings and recommendations to the tribal court.[2] Finally, Plaintiff alleges that Scott County issued a maltreatment determination against Ms. Gustafson and that, with the knowledge of Ms. Alholinna and several other defendants, the SMSC Tribal Court and SMSC Child and Family Services did nothing about it. *Id.* at ¶ 126.

---

[1] Amended Complaint, ¶ 11. See also, Affidavit of Matthew D. Sloneker, Exhibit A. "Though matters outside the pleading may not be considered in deciding a Rule 12 motion to dismiss, documents necessarily embraced by the complaint are not matters outside the pleading." *Enervations, Inc. v. Minn. Mining & Mfg. Co.*, 380 F.3d 1066, 1069 (8th Cir. 2004). Documents necessarily embraced by the pleadings include "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *Kushner v. Beverly Enters., Inc.*, 317 F.3d 820, 831 (8th Cir. 2003). In this case, Plaintiff's Amended Complaint cites the contents of this Order, and thus it may be considered by the Court without converting this motion into a motion for summary judgment.

[2] Amended Complaint, ¶ 84. This claim is directly controverted by Exhibit G to Plaintiff's Amended Complaint, which is a transcript of the December 4, 2014 hearing. This transcript demonstrates that Ms. Alholinna was not appointed to serve as a guardian ad litem by the tribal court until the close of that hearing, and that Ms. Alholinna presented no findings or recommendations to the court at that hearing.

Plaintiff's Amended Complaint then asserts claims against all Defendants for violations of Plaintiff's Fourteenth Amendment substantive and procedural due process rights, violation of the Indian Civil Rights Act (25 U.S.C. § 1302), violation of the Stored Communications Act (18 U.S.C. § 2701, *et seq.*), abuse of process, and intentional infliction of emotional distress.[3] As described below, only three of these counts even mention Ms. Alholinna.

First, Plaintiff's Amended Complaint contains several paragraphs alleging that his ex-wife, Ms. Gustafson, obtained Plaintiff's confidential communications with his attorney and provided them to Defendant Foley.[4] Ms. Alholinna is mentioned in none of these paragraphs. *Id.* It is not until Plaintiff's Indian Civil Rights Act claim that he alleges that Ms. Alholinna repeatedly intercepted Plaintiff's private conversations and attorney-client communications, with the help of Defendant Foley and Plaintiff's ex-wife. *Id.* at ¶¶ 170-171. According to Mr. Nguyen, this alleged conduct violated his right to be free of unreasonable search and seizure and his rights to equal protection of the law and due process. *Id.*

Secondly, in support of his state law claim for abuse of process, Plaintiff alleges that Ms. Alholinna, along with Defendants Foley and Martin, "used false information and improperly obtained communications in Tribal Court proceedings to sway jurisdiction of Plaintiff and Ms. Gustafson's dissolution proceeding pending in Scott County."[5] Plaintiff further alleges that the SMSC Family and Children's Services Department came up with a

[3] Amended Complaint, ¶¶ 132-210.
[4] Amended Complaint, ¶¶ 52-53, 56, 58-62.
[5] Amended Complaint, ¶ 191.

strategy to fraudulently open a child welfare proceeding "through the coordination and direction" of Ms. Alholinna and Defendants Martin and Foley. *Id.* at ¶ 192.

Finally, Plaintiff's state law claim for intentional infliction of emotional distress reasserts that Ms. Alholinna "intentionally intercepted private, confidential, attorney-client communications from an opposing party in a case and used the same for the gain of a third opposing party in the same matter."[6] Plaintiff alleges that this was improper and "outside the scope of Defendants Foley and Alholinna's roles in the proceedings." *Id.* at ¶ 201. Plaintiff also alleges that these actions "abused Plaintiff in a manner that was extreme, outrageous, and unjustified." *Id.* at ¶ 202.

Argument & Authorities

The purpose of a Rule 12(b)(6) motion to dismiss for failure to state a claim is to test the legal sufficiency of a complaint so as to eliminate those actions "which are fatally flawed in their legal premises and deigned to fail, thereby sparing the litigants the burden of unnecessary pretrial and trial activity." *Young v. City of St. Charles*, 244 F.3d 623, 627 (8th Cir. 2001). In order to survive a Rule 12(b)(6) motion, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

I. Plaintiff's claims against Ms. Alholinna are barred by absolute quasi-judicial immunity.

"[A]bsolute immunity defeats a suit at the outset, so long as the official's actions were within the scope of the immunity." *Imbler v. Pachtman*, 424 U.S. 409, 419 n. 13, 96

[6] Amended Complaint, ¶ 200.

S.Ct. 984 (1976). In fact, absolute immunity fully protects an official's acts from personal liability for damages, even if the official should have known that the acts clearly violated the plaintiff's rights. *Id.* at 419 n. 13. "Where an official's challenged actions are protected by absolute immunity, dismissal under Rule 12(b)(6) is appropriate." *Sample v. City of Woodbury*, 836 F.3d 913, 916 (8th Cir. 2016). In this case, Plaintiff's claims against Ms. Alholinna fail to state a claim upon which relief can be granted, because Ms. Alholinna's actions as a guardian ad litem are protected by absolute immunity. Whether immunity bars an action is a question of law. *Sletten v. Ramsey County*, 675 N.W.2d 291, 299 (Minn. 2004).

Guardians ad litem are entitled to "absolute quasi-judicial immunity for those activities integrally related to the judicial process." *Cok v. Cosentino*, 876 F.2d 1, 3 (1st Cir. 1989); *Gardner ex rel. Gardner v. Parson*, 874 F.2d 131, 146 (3d Cir. 1989) ("We would agree that a guardian [ad litem] should be absolutely immune when acting as an integral part of the judicial process."); *Fleming v. Asbill*, 42 F.3d 886, 889 (4th Cir. 1994) (guardians ad litem in custody cases are entitled to quasi-judicial immunity from § 1983 liability); *Kurzawa v. Mueller*, 732 F.2d 1456, 1458 (6th Cir. 1984) ("A failure to grant immunity would hamper the duties of a guardian ad litem in his role as advocate for the child in judicial proceedings."); *Cooney v. Rossiter*, 583 F.3d 967, 970 (7th Cir. 2009) ("Guardians ad litem…are absolutely immune from liability for damages when they act at the court's direction."); *McCuen v. Polk Cnty., Ia.*, 893 F.2d 172, 174 (8th Cir. 1990) (guardian ad litem is entitled to absolute immunity); *Wideman v. Colorado*, 409 Fed.Appx.

184, 186 (10th Cir. 2010) (affirming grant of absolute quasi-judicial immunity to a guardian ad litem).

Absolute immunity for guardians ad litem serves an important public interest. A guardian ad litem "serves as the court's eyes and ears and must exercise discretion in conducting his investigation and making his recommendations, without fear of subsequent civil liability." *Kent v. Todd County*, No. CIV 99-44 (JRT/RLE), 2001 WL 228433, at *8 (D. Minn. Feb. 21, 2001) (quoting *Weseman v. Meeker County*, 659 F.Supp. 1571, 1577-78 (D. Minn. 1987)). As such, a guardian ad litem is "absolutely immune in exercising functions such as testifying in court, prosecuting custody or neglect petitions, and making reports and recommendations to the court in which the guardian acts as an actual functionary or arm of the court, not only in status or denomination but in reality." *Gardner*, 847 F.2d at 146; *see also Dornheim v. Sholes*, 430 F.3d 919, 925 (8th Cir. 2005) (a guardian ad litem's immunity extends to duties of preparing reports and making recommendations to the court). The scope of this absolute immunity extends to claims arising out of the guardian's investigation, preparation of reports, recommendations to the court, and testimony before the court. *Myers v. Morris*, 810 F.2d 1437, 1466-67 (8th Cir. 1987), *overruled on other grounds*, *Burns v. Reed*, 500 U.S. 478 (1991).

A guardian ad litem is afforded absolute immunity "even when claims of malice and bad faith in investigating and preparing their reports are asserted against them." *Kent*, 2001 WL 228433, at *8 (citing *Demoran v. Witt*, 781 F.2d 155, 158 (9th Cir. 1986)). An act is not outside a guardian ad litem's jurisdiction just because it is wrongful or even unlawful. *Dahl v. Charles F. Dahl, M.D., P.C. Defined Ben. Pension Trust*, 744 F.3d 623, 630-31

(10th Cir. 2014). "Immunity does not protect only the innocent," but instead is "conferred so that judicial officers can exercise their judgment (which on occasion may not be very good) without fear of being sued in tort." *Id.* at 631.

Minnesota state courts also view guardians ad litem as officers of the court who are entitled to absolute immunity. *Tindell v. Rogosheske*, 428 N.W.2d 386, 387 (Minn. 1988) (citing *Hoverson v. Hoverson*, 12 N.W.2d 497, 500 (Minn. 1943)). "The guardian's duty is to act within the course of that judicial proceeding in furtherance of the best interests of the child for whom the guardian has been appointed." *Tindell*, 428 N.W.2d at 387. As such, the Minnesota Supreme Court has held that a guardian ad litem "must be free, in furtherance of the goal for which the appointment was made, to engage in a vigorous and autonomous representation of the child." *Id.* "Immunity is necessary to avoid harassment from disgruntled parents who may take issue with any or all of the guardian's actions." *Id.* As a result, a guardian ad litem "is absolutely immune from liability for acts within the scope of that guardian's exercise of statutory responsibilities." *Id.*

In this case, all of Plaintiff's allegations against Ms. Alholinna all relate to her duties as a court-appointed guardian ad litem on behalf of Plaintiff's child. Plaintiff alleges that Ms. Alholinna's report to the tribal court included information that Plaintiff disputes.[7] Plaintiff claims that Ms. Alholinna failed to confirm or verify information provided to her by Plaintiff's ex-wife, and that Ms. Alholinna failed to provide evidence to substantiate or support the information provided by Ms. Gustafson. *Id.* at ¶¶ 78, 82. He alleges that Ms. Alholinna did nothing about a maltreatment determination issued against Ms. Gustafson

[7] Amended Complaint, ¶¶ 80-81.

by Scott County, that Ms. Alholinna was given or directed the interception of some of his communications, and that Ms. Alholinna knew of or participated in a strategy to support the exercise of tribal court jurisdiction over Plaintiff's minor child. *Id.* at ¶¶ 126, 170-171, 192. All of these claims, however, including claims that a guardian ad litem has overprotected or underprotected a child, are barred by the absolute immunity given to guardians ad litem. *See Tindell v. Rogoscheske*, 421 N.W.2d 340, 341-342 (Minn. App. 1988). Because all of Plaintiff's allegations in this case relate to Ms. Alholinna's conduct in her capacity as a guardian ad litem for Plaintiff's child, Ms. Alholinna is entitled to absolute immunity and Plaintiff's claims fail as a matter of law.

While Plaintiff's Amended Complaint alleges at one point that some of Ms. Alholinna's alleged conduct fell outside the scope of her role in the underlying proceedings,[8] the specific conduct alleged clearly falls within the scope of her duties as a guardian ad litem. A guardian ad litem is appointed by the court in order to represent and protect the interests of the child. Minn. Stat. § 260C.163, subd. 5(a). A guardian ad litem's investigation includes reviewing relevant documents, meeting with and observing the child, considering the child's wishes, and interviewing parents, caregivers, and others with knowledge relevant to the case. Minn. Stat. § 260C.163, subd. 5(b)(1). The guardian ad litem must advocate for the child's best interests and present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based. Minn. Stat. § 260C.163, subd. 5(b)(5). All of the allegations leveled against Ms. Alholinna relate to her performance of these duties of a guardian ad litem. Because

[8] Complaint, ¶ 201.

that conduct is protected by absolute immunity, Plaintiff's claims against Ms. Alholinna fail as a matter of law and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

Plaintiff's vague claim that Ms. Alholinna intercepted Plaintiff's privileged communications with his attorney fails to state a claim upon which relief can be granted and fails to overcome the immunity to which Ms. Alholinna is entitled as a guardian ad litem. Plaintiff first alleges that his ex-wife, not Ms. Alholinna, somehow obtained Plaintiff's confidential communications with his attorney and provided them to others.[9] To the extent that Ms. Alholinna merely received such communications from Ms. Gustafson, there is no basis for a claim against Ms. Alholinna as she was acting in her role as a guardian ad litem.

In *Dahl*, the plaintiff claimed that her telephone conversations with her minor children were unlawfully monitored, recorded, and disclosed by the children's guardian ad litem in divorce proceedings. 744 F.3d at 624. She brought federal wiretapping claims against the guardian ad litem based on his use of one of these recordings during an interview with the child and during his verbal report to the court. *Id.* at 630. The court dismissed the claims against the guardian ad litem, finding that "both uses were within the report-and-recommendation function that generally warrants immunity for guardians ad litem." *Id.* Likewise in this case, Ms. Alholinna is entitled to absolute immunity even if she used unlawfully obtained communications between Plaintiff and his attorney as part of her report-and-recommendation duties as a court-appointed guardian ad litem, and Plaintiff's claims against her therefore fail as a matter of law.

[9] Amended Complaint, ¶¶ 52-53, 56, 58-62.

The plaintiff in *Dahl* also claimed that the guardian ad litem had acted outside his jurisdiction by abandoning his role as the guardian ad litem in order to advocate for the plaintiff's husband. *Id.* at 631. The court similarly dismissed that argument:

> But her complaint amounts to no more than challenging [the guardian ad litem's] motives and criticizing what he decided to do or say on various occasions; she does not dispute his authority to make the decisions. Certainly a GAL has authority to assist one of the parties when the parties are at odds about who should have custody. [Plaintiff's] grievance is only that the GAL decided to assist [Plaintiff's ex-husband] instead of her. Moreover, even if [the guardian ad litem] had acted outside his jurisdiction in some respects, he would not thereby forfeit immunity for the conduct challenged here regarding the October 12 recording. Because [the guardian ad litem] used the recording in furtherance of his GAL duties and in response to the court's order to report on the well-being of the children, he is entitled to quasi-judicial immunity on the federal wiretapping claim.

Dahl, 744 F.3d at 631. Similarly in this case, Ms. Alholinna is entitled to absolute immunity for actions she took in furtherance of her duties a guardian ad litem. Even if Plaintiff's allegations that Ms. Alholinna relied on unlawfully obtained communications in making her report to the tribal court are true, Plaintiff's Complaint fails to state a claim upon which relief can be granted against Ms. Alholinna and must therefore be dismissed.

To the extent that Plaintiff claims Ms. Alholinna herself surreptitiously obtained Plaintiff's privileged communications, the claim also fails to meet minimum pleading standards and should be dismissed. The pleading standard of Rule 8 of the Federal Rules of Civil Procedure "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007). A complaint is insufficient if it offers only "naked assertions devoid of further factual enhancement." *Id.* To survive a motion to dismiss, "a complaint must contain sufficient factual matter,

accepted as true, to state a claim to relief that is plausible on its face." *Id.* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Plaintiff's claims against Ms. Alholinna contain none of this. Plaintiff does not allege when or how Ms. Alholinna "intercepted" or directed the interception of Plaintiff's privileged communications, what the communications contained, or how they are relevant to anything. Plaintiff's allegations therefore cannot amount to a plausible claim for relief, and as a result they fail as a matter of law and should be dismissed.

Even if Plaintiff's vague claims regarding the supposed interception of his attorney-client communications are deemed sufficient, Ms. Alholinna remains entitled to immunity for such claims. The absolute immunity to which she is entitled "defeats a suit at the outset," and it applies even if she should have known that her actions violated Plaintiff's rights and even if Plaintiff claims she acted with malice and bad faith. *Imbler*, 424 U.S. at 419 n. 13; *Kent*, 2001 WL 228433, at *8 (citing *Demoran*, 781 F.2d 155). Because Ms. Alholinna's conduct as a guardian ad litem is protected by absolute immunity, Plaintiff's claims against her fail as a matter of law and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

II. Plaintiff's intentional infliction of emotional distress claim fails as a matter of law, because it is time-barred.

Plaintiff's Amended Complaint alleges a claim of intentional infliction of emotional distress against Ms. Alholinna. The statute of limitations applicable to an intentional infliction of emotional distress claim in Minnesota is two years. *Christenson v. Argonaut*

Ins. Companies, 380 N.W.2d 515, 518 (Minn. App. 1986). This lawsuit was commenced on April 14, 2021, when the first complaint was filed by Plaintiff.

The allegations against Ms. Alholinna set forth in Plaintiff's Amended Complaint all occurred prior to April 14, 2019, and thus more than two years before this lawsuit was commenced. Plaintiff alleges that Ms. Alholinna prepared a report to the tribal court, then presented courtroom testimony about her findings and recommendations on December 4, 2014.[10] The Amended Complaint does not allege any improper conduct by Ms. Alholinna after 2014. In fact, Ms. Alholinna's involvement in this matter ended July 15, 2015, when the child welfare matter in which she was appointed as a guardian ad litem was closed.[11]

"[W]hen it appears from the face of the complaint itself that the limitation period has run, a limitations defense may properly be asserted through a Rule 12(b)(6) motion to dismiss." *Varner v. Peterson Farms*, 371 F.3d 1011, 1016 (8th Cir. 2004) (internal quotations omitted). Because Plaintiff's Amended Complaint does not allege any conduct by Ms. Alholinna in the two years preceding the commencement of this action, his intentional infliction of emotional distress claim is time-barred and fails as a matter of law. Ms. Alholinna is therefore entitled to a dismissal of the Sixth Claim for Relief in Plaintiff's Amended Complaint.

[10] Amended Complaint, ¶¶ 80, 83.

[11] Exhibit K to Plaintiff's original Complaint is a transcript of a July 15, 2015 hearing in that matter. The Court notes that, though a written order would be forthcoming, the matter "is effectively closed now." Complaint, Exhibit K, Doc 1-12, filed April 14, 2021, pp. 9-10.

III. Plaintiff's abuse of process claim fails as a matter of law, because Plaintiff has not alleged that Ms. Alholinna had an ulterior purpose or that she used the process to accomplish a result not within the scope of the proceedings in which it was issued.

Abuse of process is not cognizable as a civil rights violation under 42 USC § 1983. *Fagnan v. City of Lino Lakes, Minn.*, 914 F.Supp.2d 1019, 1025 (D. Minn. 2012) (citing *Santiago v. Fenton*, 891 F.2d 373, 388 (1st Cir. 1989)). "[A]buse of process is not a free-standing constitutional tort if state law provides a remedy for abuse of process." *Id.* (quoting *Adams v. Rotkvich*, 325 Fed.Appx. 450, 453 (7th Cir. 2009)).

Under Minnesota law, "[t]he essential elements for a cause of action for abuse of process are the existence of an ulterior purpose and the act of using the process to accomplish a result not within the scope of the proceedings in which it was issued, whether such result might otherwise be lawfully obtained or not." *Kellar v. VonHoltum*, 568 N.W.2d 186, 192 (Minn. App. 1997) (citing *Hoppe v. Klapperich*, 28 N.W.2d 780, 786 (Minn. 1947)). In this case, however, Plaintiff has not alleged that Ms. Alholinna had an ulterior purpose or that she used some process to accomplish a result outside the proper scope of the proceedings. Even if Ms. Alholinna was aware or assisted SMSC Family and Children's Services Department in exercising jurisdiction over Plaintiff's child, Ms. Alholinna's actions were squarely within the scope of her responsibilities as guardian ad litem to represent the interests of the minor child. Plaintiff's allegations, even if true, could not support a claim for abuse of process. As such, the claim fails as a matter of law and should be dismissed.

IV. Ms. Alholinna adopts and incorporates by reference the additional grounds requiring the dismissal of Plaintiff's Complaint set forth by Defendants Foley, Martin, Vig, Anderson, Crooks-Stratton, and Miller.

The other defendants in this matter have asserted additional grounds requiring the dismissal of Plaintiff's Complaint herein. Ms. Alholinna hereby adopts and incorporates by references those arguments applicable to the claims against her. To the extent the Court finds that any of those bases require the dismissal of Plaintiff's Complaint or any part thereof, Ms. Alholinna is also entitled to a dismissal of the claims against her in this matter.

Conclusion

Plaintiff's allegations against Ms. Alholinna all relate to the performance of her duties as a guardian ad litem. A guardian ad litem is entitled to absolute immunity for acts within the scope of her responsibilities, even where there are claims of malice and bad faith in investigating and preparing reports. Because Ms. Alholinna is entitled to absolute immunity for her conduct acting as a guardian ad litem for Plaintiff's daughter, Plaintiff's claims against her fail as a matter of law and must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). In addition, Plaintiff's claim for intentional infliction of emotional distress is barred by the statute of limitations and therefore fails as a matter of law and must be dismissed. Finally, Plaintiff's abuse of process claim fails to state a claim upon which relief can be granted, because Plaintiff has not alleged facts sufficient to support such a claim.

For these reasons, Defendant Jody Alholinna is entitled to a dismissal of all claims against her herein, pursuant to Fed. R. Civ. P. 12(b)(6).

Dated: June 2, 2021

LIND JENSEN SULLIVAN & PETERSON, A PROFESSIONAL ASSOCIATION

By: /s/ *Matthew D. Sloneker*

Paul C. Peterson (#151543)
Matthew D. Sloneker (#0338953)
Attorneys for Defendant Jody Alholinna
1300 AT&T Tower
901 Marquette Avenue South
Minneapolis, MN 55402
(612) 333-3637
paul.peterson@lindjensen.com
matt.sloneker@lindjensen.com