IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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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)

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

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In response to Defendant Jody Alholinna's motion to dismiss, Plaintiff argues that Ms. Alholinna is not entitled to absolute quasi-judicial immunity in her role as a guardian ad litem because she was appointed by a tribal court rather than by a state or federal court. This case, however, includes federal claims that were brought in federal court and are governed by federal law, which extends judicial and quasi-judicial immunity to officials of tribal courts. While Plaintiff also attempts to argue that Ms. Alholinna is not entitled to immunity because her alleged actions exceeded the scope of her authority, it is clear that the conduct alleged falls squarely within a guardian ad litem's role. Plaintiff's mere dissatisfaction with Ms. Alholinna's conduct, conclusions, and recommendations does not remove the cloak of immunity afforded to a guardian ad litem in the performance of her duties. Because Ms. Alholinna is entitled to absolute immunity for the conduct alleged in

Plaintiff's Amended Complaint, Plaintiff fails to state a claim upon which relief can be granted and Ms. Alholinna is entitled to a dismissal of all claims against her pursuant to Fed. R. Civ. P. 12(b)(6).

Ms. Alholinna is additionally entitled to dismissal of Plaintiff's claim for intentional infliction of emotional distress, as it is time-barred. Plaintiff also fails to state a claim for abuse of process. Finally, Ms. Alholinna is entitled to a dismissal of all claims against her on the bases set forth by the other defendants in their motion to dismiss, including but not limited to the doctrine of sovereign immunity. Because Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted against Ms. Alholinna, all claims against her in this matter must be dismissed.

## Argument & Authorities

### I. Ms. Alholinna is entitled to immunity as a tribal court-appointed guardian ad litem just as she would be if she had been appointed by a state or federal court.

Plaintiff first argues that Ms. Alholinna is not entitled to immunity as a court-appointed guardian ad litem, because she was appointed by a tribal court and not by a state or federal court. But Plaintiff does not cite any authority for the proposition that tribal court officials are not afforded the same immunities as in state or federal courts. To the contrary, case law makes clear that absolute judicial or quasi-judicial immunity applies to those whose activities are integral to the functioning of the courts whether they be in state, federal, or tribal court.

As an initial matter, it bears noting that Plaintiff has filed this action in federal court, not in tribal court. It is also important to note that most of Plaintiff's claims are based upon federal law. A federal court applies federal law to "matters governed by the Federal

Constitution or by acts of Congress," and the law of the state in which it sits to all other matters. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). As such, this case is governed by federal law and Minnesota law, both of which provide for absolute quasi-judicial immunity for guardians ad litem as set forth in Ms. Alholinna's initial memorandum.

Quasi-judicial absolute immunity applies notwithstanding the fact that Ms. Alholinna was appointed by a tribal court rather than by a state or federal court. In *Sandman v. Dakota*, 816 F.Supp. 448 (W.D. Mich. 1992), a tribal member brought suit against a tribal court judge in federal court under the Indian Civil Rights Act. The court did not examine that particular tribe's laws to determine the immunities to which the tribal judge was entitled. Rather, the court noted that, "[u]nder common law, officials who are acting in a judicial capacity are protected by judicial immunity." *Id.* at 452. The court did not distinguish between tribal court judges and state or federal judges in applying this common law immunity.

*Sandman* is no aberration. In *Acres v. Marston*, No. 34-2018-00236829-CU-PO-GDS, 2019 WL 8400827 (Cal. Sup. Ct. Feb. 11, 2019), the plaintiff sued a tribal court judge, the tribal court clerk, and the judge's law clerks. The court applied California common law on judicial and quasi-judicial immunity in dismissing the plaintiff's claims against those with "judicial roles" in tribal court. *Id.* at *7-11. As in *Sandman*, it was the law on immunities of the forum, not the particular tribe, that governed.

The Eighth Circuit has specifically cited *Sandman* in noting that "a tribal court judge is entitled to the same absolute judicial immunity that shields state and federal court judges." *Penn v. United States*, 335 F.3d 786, 789 (8th Cir. 2003). The common law

immunity granted to guardians ad litem, or other judicial officers for that matter, is no different. Like a judge, their activities are "integrally related to the judicial process." *Cok v. Cosentino*, 876 F.2d 1, 3 (1st Cir. 1989). As such, Ms. Alholinna is entitled to absolute quasi-judicial immunity under the common law. Plaintiff's claims against her therefore fail as a matter of law and must be dismissed.

Additionally, as set forth in the other defendants' motion to dismiss, which arguments were adopted by Ms. Alholinna, sovereign immunity protects the actions of Ms. Alholinna in this matter. Sovereign immunity extends to tribal administrative agencies and tribal courts. *Fort Yates Pub. Sch. Dist. #4 v. Murphy ex rel. C.M.B.*, 786 F3d 662, 670-71 (8th Cir. 2015). Furthermore, sovereign immunity "extends to tribal officials who act within the scope of the tribe's lawful authority." *Kodiak Oil & Gas (USA) Inc. v. Burr*, 932 F.3d 1125, 1131 (8th Cir. 2019). The only exception is for a suit seeking to "enjoin a prospective action that would violate federal law," and Plaintiff seeks no prospective injunctive relief against Ms. Alholinna in this matter. *281 Care Comm. v. Arneson*, 638 F.3d 621, 632 (8th Cir. 2011). As a result, the claims against Ms. Alholinna in this matter are barred by both absolute quasi-judicial immunity and sovereign immunity.

## II. There is no allegation that Ms. Alholinna exceeded the scope of her role as a guardian ad litem.

Plaintiff's second argument is that his claims against Ms. Alholinna survive notwithstanding the absolute federal and state immunities that protect her conduct as a guardian ad litem because she somehow acted outside the scope of her authority. This argument is supported by neither fact nor law.

The immunity granted to guardians ad litem is not so narrow as Plaintiff suggests. Plaintiff argues that *McCuen v. Polk Cnty., IA*, 893 F.2d 172 (8th Cir. 1990), supports his claims against Ms. Alholinna, but it does not.[1] In *McCuen*, the district court granted summary judgment to the guardian ad litem based on *qualified* immunity. *Id.* at 174. While affirming the grant of summary judgment, the Eighth Circuit made clear that the guardian ad litem was entitled to *absolute* immunity from liability, not just qualified immunity. *Id.* *McCuen* says nothing about a guardian ad litem's immunity being dependent on the scope of the authority or specific assignment granted by a court, as Plaintiff suggests in his opposition to this motion.

Likewise in *Myers*, the guardians ad litem appointed in that case participated in family court hearings, monitored and attended interviews between children and law enforcement personnel, sought the appointment of therapists for their wards, and made recommendations to the court concerning visitation with parents and participation in criminal proceedings. *Myers v. Morris*, 810 F.2d 1437, 1465 (8th Cir. 1987), *overruled on other grounds*, *Burns v. Reed*, 500 U.S. 478 (1991). The Eighth Circuit held that the

[1] Plaintiff misattributes to *McCuen* a quotation that guardians ad litem are only entitled to immunity "when they act at the court's discretion." That quote, which actually uses the word "direction" rather than "discretion," comes from the Seventh Circuit case of *Cooney v. Rossiter*, 583 F.3d 967 (7th Cir. 2009), not *McCuen*. In *Cooney*, the court held that the guardian ad litem was entitled to absolute immunity because the conduct alleged – including communicating with the children's psychiatrist, writing a report with false conclusions, and providing one parent but not the other with a draft copy of the guardian ad litem's report – "all occurred within the course of [the guardian ad litem's] court-appointed duties." *Id.* at 970. Plaintiff's allegations of Ms. Alholinna's failure to verify allegedly false information regarding him (Amended Complaint, ¶¶ 78, 80-82, 84-85) was conduct that fell squarely within the course and scope of her court-appointed duties.

guardians ad litem had absolute immunity for any claims based on their providing reports and recommendations to, and testifying before, the family court. *Id.* at 1466.

Plaintiff also cites *Falk v. Sadler*, 341 S.C. 281 (S.C.App. 2000), for the proposition that guardians ad litem may be liable for conduct outside the scope of their appointed duties. First, this South Carolina case provides no legal authority as to the scope of immunity granted to guardians ad litem under Minnesota or federal law. Second, it fails to support Plaintiff's position in this case.

As set forth in Ms. Alholinna's initial memorandum, absolute immunity protects an official even if the official should have known that her acts clearly violated a plaintiff's rights. *Imbler v. Pachtman*, 424 U.S. 409, 419 n. 13, 96 S.Ct. 984 (1976). 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 or scope of authority 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).

In *Dahl*, as in this case, a parent brought a federal suit against a guardian ad litem claiming that the guardian ad litem exceeded the scope of his duties by violating federal wiretap laws. The Tenth Circuit affirmed the lower court's grant of summary judgment in favor of the guardian ad litem on grounds of quasi-judicial immunity and held that "an act is not outside of a GAL's jurisdiction just because it is wrongful, even unlawful." 744 F.3d at 630-31. Even accepting Plaintiff's allegations against Ms. Alholinna as true in this case,

her actions were in furtherance of her guardian ad litem duties to serve as the "eyes and ears" of the court, conduct an investigation, and make recommendations to the court in the child's best interests. As such, Ms. Alholinna is entitled to quasi-judicial immunity on Plaintiff's claims.

In his opposition to this motion, Plaintiff repeatedly argues that this case is different from the countless others in which guardians ad litem have been granted absolute immunity. Here, Plaintiff argues, he has alleged conduct by Ms. Alholinna that is outside her role as a guardian ad litem. A plain reading of Plaintiff's allegations against Ms. Alholinna, however, reveals otherwise.

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)). The proper functions of a guardian ad litem include "testifying in court, prosecuting custody or neglect petitions, and making reports and recommendations to the court…" *Gardner ex rel. Gardner v. Parson*, 847 F.2d 131, 146 (3d Cir. 1989); *see also Dornheim v. Sholes*, 430 F.3d 919, 925 (8th Cir. 2005) (a guardian ad litem's duties include preparing reports and making recommendations to the court). A guardian ad litem's duties include conducting an investigation, preparing of reports, making recommendations to the court, and testifying before the court. *Myers v. Morris*, 810 F.2d at 1466-67.

Plaintiff's allegations against Ms. Alholinna do not support a claim that she exceeded this proper scope. Rather, Plaintiff is critical of the way she went about her investigation and the information upon which she relied. For example, Plaintiff alleges that Ms. Alholinna's report contained a claim that Mr. Nguyen had a history of substance abuse, which Plaintiff denies.[2] He alleges that she failed to confirm or verify information provided by Plaintiff's now ex-wife, and that she failed to provide evidence to substantiate or support such information. *Id.* at ¶¶ 78, 82. He alleges that with Ms. Alholinna's knowledge, neither the SMSC Tribal Court nor SMSC Child and Family Services, took action in response to a maltreatment determination made by Scott County. *Id.* at ¶ 126. Finally, he alleges that Ms. Alholinna intercepted his communications. *Id.* at ¶¶ 170-171.

These are not allegations that Ms. Alholinna stepped outside the proper scope of her role as a guardian ad litem. The tribal court's order appointing Ms. Alholinna provided:

> The Court hereby appoints Jody Alholinna as Guardian *ad Litem* in this matter for A.J.N. The parties shall be responsive to Ms. Alholinna on all matters relevant to this case and allow her to have access to their homes, any other resident in the parties' homes, the child, including – if she deems it appropriate – through unannounced home visits. Ms. Alholinna shall have access to and copies of all files, records and transcripts in this case, and to the child's daycare, dental, medical and mental health records. The parties shall sign any release required by Ms. Alholinna to effectuate this access.[3]

Minnesota statutes further provide that a guardian ad litem shall carry out the following responsibilities: 1) Conduct an investigation to determine the facts relevant to the situation of the child and the family; 2) Advocate for the child's best interests; 3) Maintain the confidentiality of information related to the case, with the exception of sharing information

[2] Amended Complaint, ¶¶ 80-81.
[3] Exhibit A to the Affidavit of Matthew D. Sloneker, filed on June 2, 2021.

as permitted by law; 4) Monitor the child's best interests throughout the judicial proceeding; and 5) 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). A guardian ad litem's investigation must include – unless specifically excluded by the court – 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). The conduct alleged in Plaintiff's Amended Complaint all falls within the scope of these duties and responsibilities.

Plaintiff's factual allegations against Ms. Alholinna are not allegations that she stepped out of her role, but rather they are complaints about her methods and findings reminiscent of *Dahl*, where the court found that the plaintiff's 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." *Dahl*, 744 F.3d at 631. Where a plaintiff's grievance is merely that the guardian ad litem decided to endorse a course of action other than what the plaintiff would have preferred, the guardian ad litem's actions are protected by absolute immunity. *Id.* In *McCuen*, the court noted that a guardian ad litem's absolute immunity "extends beyond oral testimony to providing their reports and recommendations to the family court." *McCuen*, 893 F.2d at 174. More specifically in *McCuen*, the guardian ad

litem's role in helping to prepare and in signing a motion for an order to stay proceedings was held to be absolutely protected. *Id.* Such is the case here, where Plaintiff's allegations against Ms. Alholinna reveal that he is displeased with the way she conducted her investigation, the information she reviewed and relied upon, and the conclusions she reached. As a result, Ms. Alholinna is entitled to absolute immunity and all of Plaintiff's claims against her fail to state a claim upon which relief can be granted.

As is discussed next, even if his claims were not barred by absolute immunity (or dismissed for failure to plead an independent basis for federal jurisdiction), Plaintiff's state law tort claims fail as a matter of law.

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

In opposition to Ms. Alholinna's motion to dismiss, Plaintiff does not allege that his intentional infliction of emotional distress against Ms. Alholinna is timely, since the applicable limitations period is two years and this lawsuit was not commenced until almost six years after the underlying child welfare matter was closed. *Christenson v. Argonaut Ins. Companies*, 380 N.W.2d 515, 518 (Minn. App. 1986). Instead, Plaintiff argues that the limitations period should be equitably tolled because he has been engaged in "grueling efforts to restore his rights in tribal court proceedings" for the past several years.

The doctrine of equitable tolling "permits a plaintiff to sue after the statutory time period has expired if he has been prevented from doing so due to inequitable circumstances." *Kost v. Hunt*, 983 F.Supp.2d 1121, 1126-30 (D.Minn. 2013) (citing *Firstcom, Inc. v. Qwest Corp.*, 555 F.3d 669, 675 (8th Cir. 2009)). But equitable tolling offers only "an exceedingly narrow window of relief," and courts "rarely invoke doctrines

such as equitable tolling to alleviate a plaintiff from a loss of his right to assert a claim." *Kost*, 983 F.Supp.2d at 1130.

While Plaintiff alleges that he could not bring his current claims as he sought to enforce his rights in tribal court, he offers no explanation as to why he could not have timely pursued a claim for intentional infliction of emotional distress against Ms. Alholinna before his parental rights were litigated to conclusion in tribal court. He also makes no allegation that any conduct by Ms. Alholinna prevented him from recognizing or asserting his emotional distress claim within the limitations period. Because Plaintiff cannot establish that he has been diligently pursuing his rights with respect to his emotional distress claim, or that any extraordinary circumstance prevented him from timely asserting this claim, the doctrine of equitable tolling does not apply. Plaintiff's claim against Ms. Alholinna for intentional infliction of emotional distress is time-barred as a matter of law and must be dismissed.

**IV. Plaintiff's abuse of process claim fails as a matter of law, because Plaintiff has not sufficiently 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 and because Plaintiff's claim is time-barred.**

"The 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 opposition to this motion, Plaintiff argues that Ms. Alholinna used process to accomplish a result not within the scope of the proceedings in which it was issued by the same conduct that allegedly

supports Plaintiff's civil rights claims. But as set forth above, the conduct alleged against Ms. Alholinna was all well within the scope of her duties as a guardian ad litem for the purpose of effectuating those duties within the child welfare proceeding.

Plaintiff asserts in a conclusory fashion that Ms. Alholinna's purpose was "to improperly sway the tribal proceedings," but the referenced proceedings were the same proceedings in which Ms. Alholinna had been appointed as a guardian ad litem.[4] In addition, a guardian ad litem's support for a court's exercise of jurisdiction over a child welfare matter initiated by a child welfare agency is insufficient as a matter of law to constitute an abuse of process, because "the mere issuance of a complaint, standing alone, is an insufficient ground on which to base an abuse of process [claim]." *Surgidev Corp. v. Eye Technology, Inc.*, 625 F.Supp. 800, 805-06 n. 4 (D. Minn. 1986).

Once again, Plaintiff's grievance is ultimately with Ms. Alholinna's findings and recommendations, which she was specifically appointed to provide to the tribal court. A claim for abuse of process does not lie simply because Plaintiff disagrees with the court-appointed guardian ad litem's findings and recommendations, just as Plaintiff's disagreement with Ms. Alholinna's findings and recommendations does not invalidate the guardian ad litem's absolute immunity. Because Plaintiff's Amended Complaint does not state a cognizable claim for abuse of process, the claim fails as a matter of law and should be dismissed.

Furthermore, as argued in the Memorandum of Defendants Foley, Martin, Vig, Anderson, Crooks-Stratton, and Miller filed June 2, 2021 and adopted by Ms. Alholinna,

[4] Plaintiff's Memorandum, p. 15.

Plaintiff's abuse of process claim is time barred. The statute of limitations for an abuse of process claim is two years. Minn. Stat. § 541.07(1). Under Minnesota law, an abuse of process claim accrues, and the statute of limitations begins to run, when "some damage" has occurred as a result of the alleged abuse of process. *See Hansen v. U.S. Bank N.A.*, 934 N.W.2d 319, 327 (Minn. 2019). That damage, which refers to "any compensable damage," includes damage "created either by financial liability or the loss of a legal right." *Id.* at 327-28.

Plaintiff's claims against Ms. Alholinna for abuse of process are based on (1) an investigation into Plaintiff and Ms. Gustafson in the child welfare proceeding at the end of 2014 and beginning of 2015, (2) the reports from that investigation that were submitted to the Tribal Court in January 2015, and (3) testimony at a tribal court hearing in January 2015.[5] Plaintiff alleges that Ms. Alholinna, along with Defendants Foley and Martin, "used false and biased information, and omitted information that did not suit their purposes, to make recommendations that A.J.N. should remain a ward of the SMSC Tribal court indefinitely." *Id.* at ¶193. The tribal court ordered that A.J.N. become a ward of the tribal court on January 23, 2015. *Id.* at ¶ 85.

Plaintiff claims that the tribal court's action of ordering A.J.N. a ward of the tribal court "deprived [him] of his fundamental due process rights."[6] Thus, Plaintiff alleges suffering "some damage" when A.J.N. was made a ward of the tribal court on January 23, 2015 (the legal right that Nguyen claims he lost)—more than six years before the

[5] Amended Complaint, ¶¶ 55-64, 74, 83-85.
[6] Amended Complaint, ¶¶ 138, 140, 193.

Complaint herein was filed. Because the statute of limitations on Plaintiff's abuse-of-process claim expired more than four years ago, and because Plaintiff has failed to establish that he diligently pursued his rights or that any extraordinary circumstance prevented him from timely asserting this claim, the doctrine of equitable tolling does not apply, and this claim must be dismissed.

**V. Ms. Alholinna adopts and incorporates by reference the additional grounds requiring the dismissal of Plaintiff's Amended 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 Amended 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 Amended 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, whether appointed by a state or federal court or by a tribal court. Because Ms. Alholinna is entitled to absolute immunity, Plaintiff's claims against her fail as a matter of law and must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff's claim for intentional infliction of emotional distress is also time-barred, and the doctrine of equitable tolling cannot save this claim. Finally, in addition to immunity, Plaintiff's disagreement with Ms. Alholinna's findings and conclusions does

not create an abuse of process claim, where Ms. Alholinna's actions were all well within her role as a court-appointed guardian ad litem.

For these reasons, Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted, and Defendant Jody Alholinna is entitled to a dismissal of all claims against her herein, pursuant to Fed. R. Civ. P. 12(b)(6).

Dated: July 7, 2021

**LIND JENSEN SULLIVAN & PETERSON, A PROFESSIONAL ASSOCIATION**

By: /s/ *Matthew D. Sloneker*

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