STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(Filed: May 20, 2013)

(DAVID) JAY JOHNSON, CHRISTINA JOHNSON, and GLORIA JOHNSON	:	
v.	:	**C.A. No. WC 2011-0366**
PETER KOSSEFF, Ph.D., KERRY RAFANELLI, Esq., and JUDITH LUBINER, Ph.D.	:	

DECISION

SAVAGE, J. This matter is before the Court on a Motion to Dismiss filed by counsel for Defendant Judith Lubiner. The motion seeks to dismiss Plaintiffs' Second Amended Complaint for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure.

I

Facts and Travel

This Court provided an in-depth factual and procedural history of this case in its previous Decision. See Johnson et al. v. Kosseff et al., C.A. No. WC-2011-0366 (Jan. 11, 2013). As a result, it incorporates that decision by reference into this Decision.

A

Family Court Case

According to Plaintiffs' Second Amended Complaint, this case arises out of prior proceedings before the Rhode Island Family Court. Specifically, Plaintiffs allege that they were parties to a Family Court action from roughly 2005-2010 that involved a number of issues,

including child custody and visitation, as well as allegations of domestic violence against David B. Johnson by his wife, Gloria Johnson, and the couple's two children: Jay Johnson and Christina Johnson. They assert that the Family Court appointed Peter Kosseff in that action in 2005 to evaluate each member of the family and provide psychological services from 2006 to 2010. Id. ¶¶ 4, 8. Kosseff was a clinical psychologist in the State of Rhode Island. Id. ¶ 5. According to Plaintiffs, Mr. Johnson retained Kerry Rafanelli in 2006 to represent him in the case. Id. ¶ 6. Rafanelli was an attorney licensed in the State of Rhode Island. Id. ¶ 7. In 2007, Plaintiffs assert that the Family Court appointed Judith Lubiner to work through ongoing "therapeutic interventions" with Jay and Christina. Id. ¶ 9. At the time, Lubiner—who is now deceased—was allegedly a clinical psychologist in the State of Rhode Island who also worked "as a sub-contractor [sic] for the State of Rhode Island Judiciary on federally funded grant programs at the Garrahy Judicial Complex." Compl. ¶ 4; Second Am. Compl. ¶ 10.

At the time of the appointments of Kosseff and Lubiner, Plaintiffs allege that Jay and Christina were each already in therapy; however, once court-ordered therapy began, Jay and Christina were forced to stop seeing their individual therapists and began seeing Kosseff and Lubiner exclusively. Id. ¶¶ 13, 52; Second Am. Compl. ¶ 50. During their therapy sessions, it is alleged that Kosseff and Lubiner conspired to use "experimental deprogramming therapies" on Jay and Christina. Second Am. Compl. ¶ 52. Furthermore, Rafanelli allegedly "colluded" with Kosseff and Lubiner to stop Jay and Christina's private therapists from "'interfering' with the deprogramming." Compl. ¶ 30.

B

Present Case

The case before this Court arises primarily out of the alleged conduct of Kosseff, Lubiner, and Rafanelli during the course of the Family Court case. Plaintiffs generally allege malpractice and negligence on the part of all three Defendants. See id. ¶¶ 3, 18. Plaintiffs have filed several complaints at various points during this case: the Statement of Claim, the Amended Statement of Claim, and the Second Amended Complaint. While Plaintiffs' Second Amended Complaint is the operative complaint before this Court relative to the instant Motion to Dismiss, each of these complaints builds on the previously filed complaint. As such, this Court will navigate through a brief analysis of each of these complaints in turn.

1

Complaints

On June 6, 2011, Plaintiffs filed the original complaint, entitled "Statement of Claim," against three named Defendants—Rafanelli, Kosseff, and Lubiner—for alleged legal and medical malpractice. Compl. intro., ¶ 9. Gloria Johnson purported to file that Statement of Claim on behalf of herself, individually, and her children, Jay Johnson and Christina Johnson. The Statement of Claim contained four counts of negligence against the three Defendants; however, prior to the Defendants filing any responses, Plaintiffs filed an "Amended Statement of Claim" on June 24, 2011. In their Amended Statement of Claim, Plaintiffs attempted to incorporate the first Statement of Claim to provide "clarity on causes of action and prayers for relief." Am. Compl. at 1. Similar to the Complaint, Plaintiffs alleged a pattern of negligent conduct by the Defendants that caused personal injury and other harms to each of them. Id. Plaintiffs added that they have Post-traumatic Stress Disorder that "psychologically and

emotionally disables them" and is a result of having been persecuted for Parental Alienation Syndrome during the Family Court proceedings. Id. at 3.

In response to the Amended Statement of Claim, Lubiner filed a Motion for a More Definite Statement pursuant to Rule 12(e) on July 1, 2011. Rafanelli then filed a Motion to Dismiss pursuant to Rule 12(b)(6) on July 8, 2011. These motions came before this Court for hearing on September 19, 2011. Following that hearing, and given its concerns that Plaintiffs' Amended Statement of Claim lacked definiteness, this Court entered an Order on September 23, 2011 that directed Plaintiffs to file a new complaint, to be entitled Plaintiffs' Second Amended Complaint, to assert more detailed claims. It is this pleading that would become the operative complaint in this case. The Court also allowed the Defendants to file answers or motions to respond to this Second Amended Complaint.

Pursuant to this Court's Order, Gloria Johnson filed a Second Amended Complaint on October 3, 2011. She purported to file that Second Amended Complaint on behalf of herself, individually, and her children, Jay Johnson and Christina Johnson. In that document's "Statement of Facts," Plaintiffs essentially recap the Family Court proceedings. Plaintiffs also claim that Lubiner's treatment of Jay and Christina caused them further harm, exacerbating the symptoms of their PTSD, including stress, loss of appetite, and insomnia. Second Am. Compl. ¶¶ 13-14. Plaintiffs further assert that, in addition to the harm caused to the children, Lubiner's individual treatment of Gloria Johnson caused her to be "re-traumatized" in a meeting with Mr. Johnson, resulting in a car accident. Id. ¶¶ 16-17. Plaintiffs claim that Gloria Johnson suffered "exacerbated PTSD, bruised carotid artery, head concussion, and other injuries" from the collision. Id. ¶¶ 15-17.

Plaintiffs further claim that the Defendants "schemed" to use the theory of Parental Alienation Syndrome in Court and even recommended that Jay and Christina undergo treatment for it in Texas. Id. ¶ 26. According to Plaintiffs, Defendants' actions caused injury, including: mental and emotional pain and suffering, therapeutic loss, loss of educational opportunity and loss of future earnings, loss of medical expenses, and impaired mental functioning. Id. ¶ 25. Further, they claim that the Defendants' actions resulted in Christina's hospitalization following a nervous breakdown, the loss of Gloria's job, and various violations of Plaintiffs' civil and constitutional rights. Id.

In the Second Amended Complaint's "Argument" section, Plaintiffs assert that Gloria Johnson was Jay and Christina's legal guardian and that neither Kosseff nor Lubiner obtained her signed consent for treatment. Id. ¶ 29. Accordingly, Kosseff and Lubiner are alleged to have violated various provisions of the Rhode Island General Laws, as well as two provisions of the APA Code. Id. ¶¶ 30-33.

Following the "Argument" section, individual counts against the Defendants make up the remainder of the Second Amended Complaint. Count I is brought by Plaintiffs against Rafanelli, asserting that he perpetuated a fraud on the Court and interfered with justice. Id. ¶¶ 41-42. Further, it asserts that he owed them a duty of candor and good faith and discriminated against them. Id. ¶¶ 40, 45-48. Count II is brought by Plaintiffs against Kosseff, asserting that Kosseff owed them a duty to provide an ethical and lawful standard of care and that he breached this duty, causing them injury. Id. ¶¶ 49-54. This Count also alleges that Lubiner and Kosseff conspired with each other to begin "experimental deprogramming therapies" and sets forth a timeline for the treatment by Kosseff and its alleged effects. Id. ¶¶ 52-62. Finally, it is alleged

that Kosseff and Lubiner committed fraud upon the Plaintiffs and upon the Court along with the assistance of Rafanelli. Id. ¶ 69.

Count III is brought by Plaintiffs against the Estate of Defendant Lubiner. Plaintiffs claim that Lubiner owed them a duty of care, which she breached as a result of negligence. Id. ¶¶ 72, 74. Plaintiffs allege that, as part of this negligence, Lubiner conspired with the other Defendants "in a scheme to defraud the Court regarding the domestic abuse." Id. Reference is also made in this Count to doctor-patient confidentiality; however, there does not appear to be a specific allegation that such a duty was breached. Id. ¶ 73.

2

This Court's Prior Decision

In response to the Second Amended Complaint, Kosseff filed a Motion to Dismiss on October 12, 2011. On October 28, 2011, Rafanelli filed a Motion to Dismiss the Second Amended Complaint along with several other motions. Upon Plaintiffs' motion, this Court extended Plaintiffs' response period until January 6, 2012 and, on January 5, 2012, Plaintiffs then filed their objections to the Motions to Dismiss, filed by Rafanelli and Kosseff, along with a Motion for Substitution, seeking to substitute the Estate of Judith Lubiner as a party defendant as a result of Lubiner's death. On January 10, 2012, Lubiner's representatives objected to the Motion for Substitution.

These motions came before this Court for hearing on January 30, 2012. At the hearing, this Court denied Plaintiffs' Motion for Substitution on the grounds that they had merely attempted to substitute the "Estate of Judith Lubiner" without determining whether an estate had been opened or naming a particular party. Hr'g Tr. 3:13-18, Jan. 30, 2012. Indeed, Gloria Johnson represented to the Court at the hearing that she had contacted the Probate Court

regarding the Lubiner estate and had been told that an estate had not been opened. Id. at 2:16-18, 3:2-3.

This Court further refrained from ruling on the merits of the Motions to Dismiss filed by Rafanelli and Kosseff. Instead, this Court transferred the case to the Unauthorized Practice of Law Committee based on allegations of ghostwriting[1] and the unauthorized practice of law by Gloria Johnson in attempting to represent her two children. Id. 9:1-11. The Unauthorized Practice of Law Committee ultimately found no evidence of ghostwriting, although the extent of its inquiry into that matter is unclear to this Court. See Letter from Richard P. D'Addario, Chairman, Unauthorized Practice of Law Comm., to Gloria Johnson (July 20, 2012) (filed with Court on Oct. 25, 2012). The Committee indicated to Gloria Johnson, however, that she was unauthorized to represent the interests of her children in this case, stating that "[a] non-lawyer pro se litigant may not represent the interests of his/her children in a civil action." Id.

After the Committee transferred the case back to the Superior Court, this Court held a hearing on October 25, 2012 to address its procedural posture. It indicated to the parties that it would proceed to decision on the Motions to Dismiss filed by Defendants Rafanelli and Kosseff and render that decision no later than January 15, 2013. Rafanelli sought leave to submit a supplemental memorandum on or before October 26, 2012, which this Court allowed. This Court then gave Plaintiffs the opportunity to file a reply memorandum, which Gloria Johnson agreed to do on or before November 2, 2012. The Court advised Christina Johnson that, according to the decision of the Unauthorized Practice of Law Committee, her mother, Gloria, could not represent her in the case. Christina said that she understood, represented that she had

[1] This Court's concern in that regard centered on the difference in Gloria Johnson's original Complaint and her pleadings that followed, particularly given the intervening involvement of her non-lawyer disability advocate appointed by the Supreme Court and the advocate's statements on the record as to Plaintiffs' position on issues of law.

filed an Entry of Appearance that day and further stated, in response to an inquiry from defense counsel, that she would turn eighteen in November 2012. The Court file reflects that Christina Johnson filed an Entry of Appearance on October 25, 2012. It further reflects that Plaintiffs took no action to further amend the Second Amended Complaint after the decision of the Unauthorized Practice of Law Committee.

Rafanelli filed the requested supplemental memorandum on October 25, 2012; however, Plaintiffs did not file a timely reply memorandum within the timeframe set forth by this Court. This Court issued a written decision on January 11, 2013 that granted the Motions to Dismiss filed by Rafanelli and Kosseff. In granting Rafanelli's Motion to Dismiss, this Court held that:

> Plaintiffs have failed to allege fraud against Rafanelli with specificity, and as any other claims against him are barred by the absence of any attorney-client relationship between Plaintiffs and Rafanelli, they are unable to state a claim for legal malpractice against him. Moreover, even if Rafanelli were ultimately found to have violated the Rules of Professional Conduct in the underlying Family Court proceedings, "mere violation[s] of codes of professional responsibility and conduct do not . . . establish a private cause of action for damages sounding in negligence."

Johnson v. Kosseff et al., C.A. No. WC-2011-0366, 2013 WL 207252 (R.I. Super. Ct. Jan. 11, 2013) (quoting Vallinoto v. DiSandro, 688 A.2d 830 (R.I. 1997)). In granting Kosseff's Motion to Dismiss, this Court held that "the importance of extending quasi-judicial immunity to court-appointed psychologists call[ed] for all of the claims against him to be dismissed." Id.

3

Defendant Lubiner's Motion to Dismiss

This Court's prior Decision—dismissing Counts I and II of the Second Amended Complaint against Rafanelli and Kosseff, respectively—left only Count III of the Second Amended Complaint unaddressed. As previously noted, that Count applies exclusively to

Defendant Lubiner. Subsequent to this prior Decision, Gloria Johnson again attempted and failed to substitute a party for the deceased Lubiner. Her second motion to substitute came before a hearing justice of this Court in Washington County on January 15, 2013 who denied the motion based on Gloria Johnson's failure to name an appropriate party for substitution.

In an attempt to ascertain the appropriate party to substitute for Lubiner, Gloria Johnson propounded interrogatories on counsel for Lubiner on or around January 18, 2013. In response, counsel for Lubiner moved to strike those interrogatories pursuant to Rule 33 of the Rhode Island Superior Court Rules of Civil Procedure as having been served upon a non-party. On March 18, 2013, the hearing justice granted the motion to strike, noting that, over the objection of counsel for Defendant Lubiner, she had "given [Gloria Johnson] leeway to propound certain questions . . . that would allow [her] to establish who it is that should be properly substituted on behalf of Dr. Lubiner" but that "these interrogatories d[id] not accomplish that" goal. Hr'g Tr. 7:6-12 Mar. 18, 2013. Counsel for Lubiner informed the hearing justice at that hearing that it would be filing the instant Motion to Dismiss on behalf of the now deceased Lubiner. Id. at 8:8-10.

As promised on March 29, 2013, counsel for the now deceased Lubiner, filed Defendant Judith Lubiner (deceased)'s Motion to Dismiss Plaintiffs' Second Amended Complaint for Failure to State a Claim Pursuant to Rule 12(B)(6). Upon the filing of the Motion to Dismiss, this Court entered a Scheduling Order that required Plaintiffs to file any response or objection to the Motion to Dismiss on or before April 26, 2013 and permitted counsel for Lubiner to file a reply to any objection on or before May 3, 2013. The Scheduling Order also set this matter down for hearing before this Court in Providence County on May 17, 2013.

Pursuant to the terms of the Scheduling Order, Gloria Johnson filed a blanket objection to the Motion to Dismiss on April 26, 2013; however, she did not file a memorandum or articulate any basis for her objection in support of that objection. The same day, Gloria Johnson also filed the following four motions: (1) motion for a status hearing with the hearing justice in Washington County; (2) motion to amend interrogatories previously stricken; (3) motion for extension of time to amend interrogatories previously stricken; and (4) motion for clarity as to the medical records of Anna Goldenese—a woman whose nexus to this case is unclear to this Court. Each of these motions, as well as Gloria Johnson's objection, contains a certification stating that she mailed a copy of the subject pleading to counsel for Defendant Lubiner on April 26, 2013; however, Gloria Johnson has failed to schedule her motions for hearing. On May 6, 2013, counsel for Lubiner filed a "reply" which stated that she had yet to be served with copies of the documents filed by Gloria Johnson on April 26, 2013 and thus could not file a reply by the May 3, 2013 deadline set by this Court's Scheduling Order.

Per the terms of the Scheduling Order, this Court convened a hearing on May 17, 2013 in Providence County to address Defendant Lubiner's Motion to Dismiss. Plaintiff Gloria Johnson failed to appear to press her objection to that motion or articulate any grounds to support her objection. In addition, no other named Plaintiffs appeared. At the hearing, counsel for Defendant Lubiner rested on this Court's prior Decision with respect to the Motions to Dismiss filed by Defendants Rafanelli and Kosseff and her memorandum in support of her Motion to Dismiss. In response to inquiry from this Court, counsel for Defendant Lubiner also agreed that no proper party defendant remains before the Court because, following Dr. Lubiner's death in October 2011, Plaintiffs failed to substitute a proper party defendant in her stead.

II

Standard of Review

Motions to dismiss for failure to state a claim upon which relief can be granted are governed by Rule 12(b)(6) of the Rhode Island Rules of Civil Procedure. These motions merely "test the legal sufficiency of a claim for relief in any pleading" rather than dealing with the likelihood of success on the merits. See R.I. Super. Ct. R. Civ. P. 12(b)(6), Comm. § 12:9; Hyatt v. Village House Convalescent Home, Inc., 880 A.2d 821, 823 (R.I. 2005). In other words, "the sole function of a motion to dismiss is to test the sufficiency of the complaint" and review is, therefore, confined to the four corners of that pleading. Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008) (quotation omitted).

Under Rule 8(a), "[a] pleading which sets forth a claim for relief . . . [must] contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks." R.I. Super. Ct. R. Civ. P. 8(a). If the pleader is alleging fraud, however, "the circumstances constituting fraud . . . [must] be stated with particularity." R.I. Super. R. Ct. Civ. P. 9(b). Thus, in ruling on a Rule 12(b)(6) motion to dismiss, the Court must look to the allegations in the complaint in a light most favorable to the plaintiff and assume them to be true by resolving any doubts in plaintiff's favor. See Palazzo, 944 A.2d at 149 (citation omitted); R.I. Affiliate, ACLU, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989). The Court only may grant the Rule 12(b)(6) motion to dismiss "when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim." Palazzo, 944 A.2d at 149-50 (quotation omitted).

III

Analysis

Counsel for now deceased Defendant Lubiner filed the instant Motion to Dismiss Plaintiffs' Second Amended Complaint, pursuant to Rule 12(b)(6), for failure to state a claim upon which relief could be granted. In her memorandum in support of that motion, counsel argues that quasi-judicial immunity bars the claims found in Count III of the Second Amended Complaint, as the allegations contained therein arose from Lubiner's work as a court-appointed psychologist. In making that argument, counsel relies heavily on this Court's previous Decision, dated January 11, 2013, which granted Kosseff's Motion to Dismiss.

Before proceeding to the merits of the instant Motion to Dismiss, however, there is a threshold issue that this Court must address—namely, whether Plaintiffs' Second Amended Complaint must be dismissed as a result of Plaintiffs' failure to substitute a proper party defendant for Lubiner following her death. Rule 25 of the Rhode Island Superior Court Rules of Civil Procedure provides that "[i]f a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties." R.I. Super. Ct. R. Civ. P. 25(a)(1). However, "[i]f no motion for substitution is made the action shall be subject to dismissal under Rule 41(b)." Id. Rule 41(b) permits this Court, "in its discretion, [to] dismiss any action . . . for failure of the plaintiff to comply with these rules." R.I. Super. Ct. R. Civ. P. 41(b)(1).

At the time of Lubiner's death, both Rafanelli and Kosseff were named defendants in the instant action. As such, our rules of procedure provide that "the action [did] not abate" at that time. R.I. Super. Ct. R. Civ. P. 25(a)(2). Rather, at the time of Lubiner's death, the rules required only that "[t]he death shall be suggested on the record and the action shall proceed in favor of or against the surviving parties." Id. Subsequently, this Court issued its Decision dated

January 11, 2013, in which it granted the Motions to Dismiss filed by both Defendants Rafanelli and Kosseff, and then entered Final Judgment in their favor, consistent with the Decision. The entries of judgment as to Defendants Rafanelli and Kosseff thus left no viable party defendant in the case because prior to that time, Plaintiffs had failed to substitute a proper party defendant for Lubiner.[2] Under Rule 25(a)(1), therefore, notwithstanding the limited appearances of counsel of record for the now deceased Lubiner, this action is subject to dismissal, with prejudice, under Rule 41(b).

"It is a basic common-law principle that if a party dies before a verdict or decision is rendered in an action against him [or her], the action abates as to him [or her] and must be dismissed unless it is revived by substituting his [or her] personal representative." LesCarbeau v. Rodrigues, 109 R.I. 407, 410-11, 286 A.2d 246, 248 (1972) (citations omitted). Indeed, "[t]he only individual who is injured by a dismissal is a plaintiff" but this "is of no moment to the deceased defendant or his [or her] heirs or successors." Id. In other words, it was Plaintiffs' ultimate responsibility to protect their interests in this action by properly substituting an appropriate party for the deceased Defendant Lubiner, as required by Rule 25(a)(1). Based on Plaintiffs' failure to substitute a proper party defendant for Lubiner as required by Rule 25, this

[2] Plaintiff Gloria Johnson filed motions to substitute on two separate occasions. The first of these motions came before this Court on January 30, 2012. At the hearing, this Court denied the Motion for Substitution on the grounds that the motion merely attempted to substitute the "Estate of Judith Lubiner" with no indication that an estate had been opened and without naming Lubiner's personal representative. Hr'g Tr. 3:13-18 Jan. 30, 2012. Indeed, Gloria Johnson represented to the Court at the hearing that she had contacted the Probate Court regarding the Lubiner estate and had been told that an estate had not been opened. Id. at 2:16-18, 3:2-3. Plaintiff subsequently filed a second motion to substitute, which came before a hearing justice of this Court in Washington County on January 15, 2013. At that hearing, the hearing justice denied the motion based on Plaintiff's failure to name an appropriate party for substitution. At the May 17, 2013 hearing on Defendant Lubiner's Motion to Dismiss, counsel for the deceased Dr. Lubiner again represented, based on conversations with the decedent's son, that no estate had been opened for Lubiner.

Court finds that a dismissal, with prejudice, of their claims against Lubiner in Plaintiffs' Second Amended Complaint is warranted pursuant to Rule 41(b).

Even assuming, arguendo, that dismissal of this action as to Lubiner is not proper pursuant to Rules 25 and 41(b), the question then becomes whether, in the alternative, it should be dismissed on its merits. In support of such dismissal, counsel for Lubiner argues that "[t]he allegations in Plaintiffs' Second Amended Complaint are vague and fail to give Defendant-Lubiner notice of the causes of action against her." Def.'s Mem. at 3. Additionally, counsel argues—as did Kosseff in his Motion to Dismiss—that the alleged violations of statutes and of provisions of the American Psychological Association Ethics Code asserted by Plaintiffs fail to provide a basis for any viable cause of action against Lubiner. Furthermore, defense counsel notes that those alleged statutory and ethics violations "are not probative of issues in a negligence-based malpractice claim, which is what appears to be alleged by plaintiffs." Id.

In this regard, the Second Amended Complaint alleges that Lubiner was negligent and violated various sections of the Rhode Island General Laws, including: § 5-37 (dealing with the Board of Medical Licensure and Discipline); § 3-4 (dealing with the Transportation of Beverages under the regulations concerning alcoholic beverages); § 5-44 (regulating psychologists); § 8-10-7 (permitting the Family Court to appoint counseling personnel); and § 8-10-8 (requiring the Department of Human Services to provide the services of various professionals to the Family Court, as needed). Second Am. Compl. ¶¶ 30, 72. The Second Amended Complaint fails, however, to allege any factual basis for these alleged violations. Although certain provisions of these statutes provide for the filing of complaints with a board or reviewing committee, none of the statutes relied on by Plaintiffs create an independent cause of action in this Court for violation of their provisions.

The Second Amended Complaint also alleges that Lubiner and Kosseff violated certain provisions of the Code of Conduct of the American Psychological Association. As this Court held in its prior Decision on Kosseff's Motion to Dismiss, violations of medical codes of conduct or professional responsibility do not give rise to a private cause of action. See Vallinoto, 688 A.2d at 837. Additionally, Plaintiffs have failed to allege or establish any legal duty that Lubiner owed to them or how she breached that duty. Rather, Plaintiffs have relied upon the vague allegation that Lubiner "owed a duty to provide a standard of care that was both ethical and lawful" that was breached "multiple times in unethical ways" by, among other things, "conspir[ing] with Defendant Kosseff and Defendant Rafanelli in a scheme to defraud the Court." Second Am. Compl. ¶ 72.

As previously noted, if the pleader is alleging fraud, "the circumstances constituting fraud . . . [must] be stated with particularity." R.I. Super. Ct. R. Civ. P. 9(b). Here, the vague allegations of fraudulent conduct are insufficient to satisfy this strict pleading standard. Moreover, even if "the circumstances constituting fraud" had been "stated with particularity," as required by Rule 9(b), this Court would nonetheless find that the allegations against Lubiner in the Second Amended Complaint fail to state a claim upon which relief can be granted.

As with the allegations against Kosseff that were addressed by this Court in its January 11, 2013 Decision, Plaintiffs do not dispute that all of Lubiner's actions during the underlying Family Court proceedings were conducted within the scope of her employment as a court-appointed psychologist. In its prior Decision, this Court noted:

> Although our Supreme Court has not yet addressed this issue, many jurisdictions have extended immunity to court-appointed psychologists acting within the scope of their appointment. See Politi v. Tyler, 751 A.2d 788, 795 (Vt. 2000) (Morse, J., dissenting) (collecting cases which have extended immunity to court-appointed psychologists); Parker v. Dodgion, 971 P.2d 496,

> 498 (Utah 1998); Lythgoe v. Guinn, 884 P.2d 1085, 1093 (Alaska 1994). Such an extension of immunity is strongly supported by public policy considerations: "[i]n extending absolute judicial immunity to quasi-judicial officers such as court-appointed psychotherapists, most courts have relied in particular on the fear that '[e]xposure to liability could deter their acceptance of court appointments or color their recommendations.'" Lythgoe, 884 P.2d at 1089 (quoting Lavit v. Superior Court, 839 P.2d 1141, 1144 (Ariz. App. 1992)).

Johnson v. Kosseff et al., C.A. No. WC-2011-0366, 2013 WL 207252 (R.I. Super. Ct. Jan. 11, 2013). It thus held that Dr. Kosseff is immune from suit by Plaintiffs for his actions taken within the scope of his duties as a court-appointed psychologist.

In this Court's view, the precept of extending quasi-judicial immunity to court-appointed psychologists should apply with equal force to Defendant Lubiner as it did to Defendant Kosseff. Indeed, Plaintiffs have asserted no facts or legal argument to suggest otherwise. Accordingly, this Court holds that, even assuming that Defendant Lubiner is a proper party to this action, quasi-judicial immunity bars Plaintiffs' suit against her, as all of the actions alleged against her in the Second Amended Complaint undisputedly occurred within the scope of her employment as a court-appointed psychologist. As this Court held previously, to hold otherwise would risk deterring psychologists from accepting court appointments, thus interfering "with the Family Court's ability to provide families with effective counseling and mental health services." Id. (citation omitted).

For all of these reasons, this Court finds that Plaintiffs have failed to state any claims for relief against Defendant Lubiner in Count III of their Second Amended Complaint upon which relief can be granted. Accordingly, in the alternative to dismissal under Rule 41(b), all claims against the deceased Defendant Lubiner are dismissed pursuant to the Rule 12(b)(6) Motion to Dismiss filed on her behalf.

IV

Conclusion

For all these reasons, all claims against the deceased Defendant Lubiner in Count III of Plaintiffs' Second Amended Complaint are dismissed, with prejudice, under Rule 41(b) for failure to substitute a proper party defendant and, alternatively, under Rule 12(b)(6) for failure to state any claims upon which relief can be granted. Based on this Decision, Plaintiff Gloria Johnson's four additional motions filed on April 26, 2013, i.e., motion for a status hearing with the hearing justice in Washington County, motion to amend interrogatories previously stricken, motion for extension of time to amend interrogatories previously stricken, and motion for clarity as to medical records of Anna Goldenese, are denied as moot.[3]

Counsel for the deceased Defendant Lubiner, as the prevailing party, is directed to submit to this Court forthwith for entry an Order and Final Judgment that conform to this Decision. This Court expressly finds that Final Judgment may enter in favor of Defendant Lubiner pursuant to Rule 54(b), as there is no just reason for delay.

[3] Additionally, these motions must be denied as a result of Plaintiffs' failure to substitute a proper party defendant for the deceased Defendant Lubiner.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	(David) Jay Johnson, et al v. Peter Kosseff, Ph.D., et al
CASE NO:	WC 2011-0366
COURT:	Washington County Superior Court
DATE DECISION FILED:	May 20, 2013
JUSTICE/MAGISTRATE:	Savage, J.
ATTORNEYS:	
For Plaintiff:	Gloria Johnson, *pro se*; Christina Johnson, *pro se*
For Defendant:	Mark T. Nugent, Esq.; Amanda R. Prosek, Esq.; Mark P. Dolan, Esq.; J. Renn Olenn, Esq.; Michael B. Forte, Jr., Esq.