2018 WL 6264070
Supreme Court of Connecticut,
Judicial District of Tolland at Rockville.

Mark J. GRAVES
v.
The CHRONICLE PRINTING COMPANY et al.

CV185010056S
|
November 7, 2018

Opinion

Farley, J.

***1** This case arises out of a series of newspaper articles published in the *Willimantic Chronicle* concerning the arrest and prosecution of the plaintiff, Mark Graves. Mr. Graves, who is self-represented, asserts claims of defamation, negligent supervision, negligent infliction of emotional distress and invasion of privacy based on the content of those articles. The defendants are: the Chronicle Printing Company (the "Chronicle"), a reporter for the Chronicle, Michelle Firestone, and two editors at the newspaper, Michael Lemanski and Jennifer Lemanski. Collectively, these defendants are referred to as the "Chronicle Defendants." Christopher Rood, a Willimantic police officer, is also a defendant. The defendants have filed special motions to dismiss the case under General Statutes § 52-196a, the "Anti-SLAPP" statute. For the reasons discussed below, the defendant Rood's motion is granted and the Chronicle Defendants' motion is granted in part and denied in part.

FACTUAL AND PROCEDURAL BACKGROUND

According to his complaint, in 2015 the plaintiff was a resident of Willimantic, a musician and the owner and operator of a music store there called "Local Music." On June 9, 2015, the plaintiff was arrested by the Willimantic Police and charged with one count of risk of injury to a minor pursuant to General Statutes § 53-21(a)(1) and two counts of risk of injury to a minor involving sexual contact pursuant to General Statutes § 53-21(a)(2). The plaintiff was prosecuted on those charges until he pleaded guilty to a single count of risk of injury to a minor under § 53-21(a)(1), on April 20, 2016, and was sentenced on June 15, 2016. The two counts brought under § 53-21(a)(2) were nolled at the time of the guilty plea. Between June 10, 2015 and June 17, 2016 the *Willimantic Chronicle* published ten articles about the case. The ninth article was published on April 22, 2016 following the guilty plea and the tenth article on June 17, 2016 after sentencing. The plaintiff alleges that the articles contained false and defamatory statements about him. Two of the statements at issue were attributed to Mr. Rood in the *Chronicle* stories.

The first ten counts of the plaintiff's second amended complaint assert claims of defamation arising out of the publication of each of the *Chronicle* articles, setting forth those claims in separate counts as to each article. The plaintiff complains of a number of allegedly inaccurate statements, several of which were repeated in numerous articles. He also complains of a number of omissions in several of the articles. Only two of the statements at issue were repeated in the final article published on June 17, 2016. First, the plaintiff claims the Chronicle Defendants falsely reported that he was a resident of Willimantic. He alleges that although he was a Willimantic resident at the time of his arrest, he moved out of Willimantic in August 2015. The Chronicle Defendants nevertheless continued referring to him as a Willimantic resident in its October 5, 2015 article and thereafter. The ninth and tenth articles, published on April 22, 2016 and June 17, 2016 respectively, also refer to him as a "City man." The plaintiff further objects to the Chronicle Defendants' additional statement in the June 17, 2016 article that he was "found guilty" and "sentenced to jail time" even though he had pleaded guilty and the court suspended execution of his six-year jail sentence. The article also allegedly omitted the fact that the two charges involving sexual contact were dropped. The statements attributed to the defendant Rood of which the plaintiff complains were originally published in the first article and repeated in many of the subsequent articles.[1] They were not repeated in the tenth and final article. The plaintiff also complains in count four that Rood omitted from the arrest warrant affidavit a statement by the victim to the effect that although the defendant had behaved improperly, he never actually touched her improperly. He maintains this omission led to false reporting by the Chronicle Defendants to the effect that that he had physically abused the victim.[2]

***2** In addition to the defamation claims asserted in counts one through ten, the plaintiff asserts a cause of action against all defendants in count eleven for negligent infliction of emotional distress based on their alleged false statements and implications in the articles and, as to Mr. Rood, also upon his omission of an exculpatory statement from the arrest warrant affidavit. The plaintiff asserts a claim of negligent supervision against the Chronicle in count twelve for failing to supervise the individual Chronicle Defendants. Finally in count thirteen the plaintiff asserts an invasion of privacy claim against the Chronicle Defendants, claiming they placed him in a false light before the public.

On April 23, 2018, the plaintiff commenced this action. His original complaint named only the Chronicle Defendants. On June 4, 2018, the plaintiff moved to cite Rood as an additional defendant. The court granted that motion on June 18, 2018 and Rood was served with a summons and complaint on July 2, 2018 that was returned to court on July 5, 2018.

The original summons, served on April 23, 2018, listed the Chronicle's agent for service of process, Patrice Crosbie, as a defendant rather than the Chronicle. The complaint did not name Crosbie as a defendant or make any allegations against her. The marshal served Crosbie at her usual place of abode and she, not the Chronicle, was identified as a defendant by the court. On May 31, 2018 the plaintiff filed an amended summons identifying the Chronicle as a defendant and eliminating Crosbie, but no withdrawal of action was filed as to Crosbie. The plaintiff also filed his first amended complaint on that date. The Chronicle and Crosbie filed a timely motion to dismiss pursuant to Practice Book § 10-30 on June 14, 2018, seeking a dismissal as to Crosbie, because there were no allegations against her, and as to the Chronicle because it was not identified in the summons and was not properly served. On June 28, 2018, all of the Chronicle Defendants filed a motion for extension of time to respond to the first amended complaint due to the pendency of the June 14, 2018 motion to dismiss. The court granted that motion on June 16, 2018. On August 13, 2018, the court heard oral argument on the June 14, 2018 motion to dismiss. On that date, the court dismissed the case as to Crosbie and service was accepted by counsel for the Chronicle. At that point, the Chronicle became a proper defendant in the case. On August 13, 2018 the court also granted another extension of time to the Chronicle Defendants, allowing them until August 30, 2018 to respond to the plaintiff's second amended complaint filed on July 5, 2018.

On August 30, 2018 the Chronicle Defendants filed a special motion to dismiss pursuant to General Statutes § 52-196a, arguing that all the claims against them arise out of the exercise of their first amendment rights in connection with a matter of public concern and that the plaintiff cannot establish probable cause that he will prevail on the merits of his claims. They maintain that all of the statements at issue are true or substantially true and were not defamatory, but they discuss only the statements contained in the tenth article because, they argue, any claims based on statements made in the first nine articles are barred by the applicable statutes of limitation. They argue further that the plaintiff's claims for negligent infliction of emotional distress, negligent supervision and invasion of privacy, to the extent they are based on statements made in the tenth article, fail to state a valid cause of action. On August 17, 2018, Rood filed a motion for extension of time to respond to the plaintiff's second amended complaint. The motion was granted on September 4, 2018. On September 17, 2018 Rood filed a special motion to dismiss claiming that all the claims against him are within the scope of the Anti-SLAPP statute as well and are barred by the applicable statute of limitations. He adopted the arguments advanced by the Chronicle Defendants on the merits of the causes of action alleged against him for defamation and negligent infliction of emotional distress.

***3** On September 13, 2018 the plaintiff filed an opposition to the Chronicle Defendants' motion to dismiss, arguing that it was untimely and that the court, therefore, should not consider it. He maintains the Chronicle Defendants could have raised their arguments under § 52-196a in the June 14, 2018 motion to dismiss, or at oral argument on that motion on August 13, 2018 following their receipt of the second amended complaint filed on July 5, 2018.

On September 17, 2018, the case was scheduled for a hearing on the Chronicle Defendants' motion to dismiss as well as a status conference. Prior to commencing a hearing on the Chronicle Defendants' motion to dismiss, the court inquired of the plaintiff whether he wished to proceed with a hearing on Rood's motion to dismiss, but advised the plaintiff it was entirely up to him whether the court would

do so. The plaintiff had received a copy of Rood's motion previously and expressed a preference to proceed on both motions, so the court conducted a hearing on both. The plaintiff testified and offered one exhibit into evidence. The plaintiff's testimony and the exhibit, however, added nothing of material substance beyond what is alleged in the second amended complaint. No evidence was offered by the defendants. The court heard argument from all parties.

DISCUSSION

I. Applicability of Section 52-196a and Standard of Review

General Statutes § 52-196a(b) provides that "[i]n any civil action in which a party files a complaint, counterclaim or cross claim against an opposing party that is based on the opposing party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, such opposing party may file a special motion to dismiss the complaint, counterclaim or cross claim." The motion must be filed "not later than thirty days after the date of return of the complaint" unless the court, for good cause, extends the time to do so. General Statutes § 52-196a(c). § 52-196a(e)(3) provides:

> The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint, counterclaim or cross claim is based on the moving party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, unless the party that brought the complaint, counterclaim or cross claim sets forth with particularity the circumstances giving rise to the complaint, counterclaim or cross claim and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint, counterclaim or cross claim.

In this case, the defendants claim the statements at issue involve the exercise of their right to free speech on a matter of public concern. The statute defines the "right of free speech" as "communicating, or conduct furthering communication, in a public forum on a matter of public concern." General Statutes § 52-196a(a)(2). The statute identifies a "matter of public concern" as "an issue related to (A) health or safety, (B) environmental, economic or community wellbeing, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work." General Statutes § 52-196a(1). If the statements at issue in this case involve the exercise of free speech on a matter of public concern, the statute places the burden on the plaintiff to "set[ ] forth with particularity the circumstances giving rise to the complaint ... and "demonstrate[ ] to the court that there is probable cause, considering all valid defenses, that the [plaintiff] will prevail on the merits of the complaint." General Statutes § 52-196a(e)(3).

A. Timeliness of the Chronicle Defendants' Motion

***4** First, the plaintiff challenges the timeliness of the Chronicle Defendants' motion. The motion was not filed within thirty days of the return of the original complaint on April 26, 2018. No motion to extend the time for doing so was filed on or before May 26, 2018. On the other hand, the Chronicle did not become a defendant until August 13, 2018 when counsel for the Chronicle accepted service. Thus the motion is timely, at least as to the Chronicle. [3]

The legislature has the authority to require truncated judicial procedures where it does so in order to achieve a legitimate policy objective to provide for a prompt

remedy. *Fishman v. Middlesex Mutual Assurance Co.*, 4 Conn.App. 339, 356, 494 A.2d 606 (1985). In doing so, it follows that the legislature may place limits on that remedy, such as the requirement under § 52-196a that a defendant avail itself of the opportunity to file a special motion to dismiss in a timely fashion. In this instance, however, the statute expressly gives the court the authority to exercise its discretion to allow extensions for good cause. The Chronicle Defendants did obtain extensions of time to respond to a succession of amended complaints filed by the plaintiff and the motion to dismiss was filed within the time permitted by those extensions. The question then is whether the time for those defendants to file the motion or seek an extension expired on May 27, 2018, whether the court extended the time retroactively,[4] or whether the amended complaints triggered new thirty-day periods within which the defendants were allowed to file motions under § 52-196a.

The original complaint filed in this case was in only three counts but raised claims of defamation concerning all ten Chronicle articles and asserted a claim of intentional infliction of emotional distress against all three individual Chronicle Defendants based on those articles. The return date was May 15, 2018 and process was returned on April 26, 2018. The thirty-day period within which a special motion to dismiss under § 52-196a runs from the "date of return of the complaint." It does not run from the date of appearance, as provided in Practice Book § 10-30 concerning other motions to dismiss, nor does it run from the return date. The date that process is returned is different than the "return date." See General Statutes § 52-46a. Thus, the individual Chronicle Defendants were required to file their special motion to dismiss on or before May 26, 2018. No motion to dismiss was filed, nor was any motion for extension of time filed by that date. At that point, therefore, those defendants had waived their right to file a special motion to dismiss. See *Pickett v. T.A.C. Collections, Inc.*, 31 Conn.App. 909, 625 A.2d 845 (1993). The plaintiff, however, proceeded to file amended complaints and § 52-196a specifically ties the thirty-day filing requirement to the filing of a complaint with the court. The extensions of time sought by the Chronicle Defendants did not specifically seek an extension of time under § 52-196a, but rather sought additional time "to file a responsive pleading" to the plaintiff's amended complaints. Nevertheless, the court considers these motions sufficient to extend the time to file a motion pursuant to § 52-196a, particularly in light of the legislature's desire to provide an expeditious consideration of the merits of a case within the scope of the statute. There was good cause to delay the filing of the motion in this case due to the convoluted status of the Chronicle and Crosbie, which was not resolved until August 13, 2018. Consequently, the court concludes the Chronicle Defendants' motion is timely.

B. Applicability of Section 52-196a to the Claims Against the Chronicle and Rood

***5** The court must first determine whether the claims against the defendants fall within the scope of § 52-196a. They fall within the scope of the statute in this case if the defendants were exercising their right of free speech as defined in the statute, on a matter of public concern, when they made the statements and omissions attributed to them. The court easily concludes that the Chronicle Defendants were doing so. Publishing articles concerning the arrest and prosecution of a person accused of harming children certainly satisfies the statutory definitions of "free speech" and "matter of public concern" as set forth above. The Chronicle Defendants were communicating in a public forum on an issue of public safety and community well-being. See *Nygard, Inc. v. Uusi-Kerttula*, 159 Cal.App.4th 1027, 1038-39, 72 Cal.Rptr.3d 210 (2008) (dismissing employer's claims against magazine that published former employee's statements about the employer); *Sipple v. Foundation for National Progress*, 71 Cal.App.4th 226, 238, 83 Cal.Rptr.2d 677 (1999) (magazine article concerning domestic violence allegations addressed a matter of public concern).[5]

The applicability of the Anti-SLAPP statute to Rood is not as straightforward in light of his status as a government official. The California courts have wrestled with the applicability of that state's Anti-SLAPP statute to government agencies and public officials acting in their official capacity and concluded that, even though such actors may not enjoy constitutional rights to free speech, the protection afforded by the Anti-SLAPP statute "extends to statements and writings of governmental entities and public officials on matters of public interest

and concern that would fall within the scope of the statute if such statements were made by a private individual or entity." *Vargas v. City of Salinas,* 46 Cal.4th 1, 16-19, 205 P.3d 207, 92 Cal.Rptr.3d 286 (2009). Other courts have similarly construed their state Anti-SLAPP statutes. *Wainwright v. Tyler,* 253 So.3d 203 (La.Ct.App. 2018) (statute applies to "any person" and "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest"); *Roach v. Ingram,* Court of Appeals of Texas, Houston (14th Dist.), Docket Nos. 14-16-00790-CV, 14-16-01016-CV (June 5, 2018) (statute applies to "a party's exercise of the right of free speech" and free speech is defined as "a communication made in connection with a matter of public concern"). These courts have simply looked to the language of the statute and found no exclusion for public entities and officials.

Connecticut's statute applies to any "party" and the "right of free speech" is defined as "communicating or conduct furthering communication, in a public forum on a matter of public concern." Based on the language of the statute, the court concludes that public officials are not excluded from the protection of the statute when they are "communicating or ... furthering communication, in a public forum on a matter of public concern." In this instance, Rood's statements to the Chronicle clearly fall within the scope of the statute. In the fourth count, however, the plaintiff alleges that Rood's omission of certain information from the arrest warrant affidavit, which the Chronicle obtained and relied upon in publishing its articles, cast the allegations against him in a false light. While arguably statements or omissions from an arrest warrant affidavit are not statements made in a public forum, the statute also protects the "right to petition the government." Applying this right to a public official acting in his or her official capacity may invoke the incongruous idea of the government petitioning itself. Courts have been divided, however, on the question whether the conduct of police officers in this context is protected pursuant to the language of an Anti-SLAPP statute. *Schaffer v. City and County of San Francisco,* 168 Cal.App.4th 992, 85 Cal.Rptr.3d 880 (2008) (concluding the California statute applies); *Jones v. City of Yakima Police Department,* United States District Court, E.D. Wash., Docket No. 12-CV-3005-TOR (May 24, 2012) (concluding the Washington statute did not apply).[6] This issue must also be resolved based on the language of the statute.

***6** The right to petition the government under § 52-196a "means (A) communication in connection with an issue under consideration or review by a legislative, executive, administrative, judicial or other governmental body, (B) communication that is reasonably likely to encourage consideration or review of a matter of public concern by a legislative, executive, administrative, judicial or other governmental body, or (C) communication that is reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, administrative, judicial or other governmental body." General Statutes § 52-196a(a)(3). Public officials regularly engage in activity as described in this definition. The allegation against Rood in this case concerns his preparation of an arrest warrant affidavit, which falls squarely within the scope of § 52-196a(a)(3)(A) and (B). Again, nothing in the statues suggests that public officials acting in their official capacities are excepted. The court agrees with the California court's assessment of that state's statute in *Schaffer* that "the salient question in this case is not whether respondents' acts are protected as a matter of law under the [state or federal constitutions] in some other context, but whether they fall within the statutory definition of conduct that the [l]egislature deemed appropriate for anti-SLAPP motions." *Schaffer v. City and County of San Francisco, supra*, 168 Cal.App.4th 1001. The court concludes that they do. The statute does not shield such defendants from liability. It just provides them with a procedural advantage designed to expeditiously dispose of unsupportable claims that might nevertheless chill speech and other legitimate activities because of the burdens associated with litigation. This legislative objective applies equally to such defendants and the language of the statue does not exclude them from its scope.

II. Statute of Limitations Defenses

The second amended complaint sets forth in detail the facts underlying the plaintiff's claims, including the dates of the articles. The plaintiff's testimony at the hearing reaffirmed those alleged facts and the court considers the facts to be as alleged in the second amended complaint for purposes of these motions. The defendants maintain these

facts are insufficient to establish probable cause that the plaintiff will prevail. The Chronicle Defendants maintain that the applicable statutes of limitation bar the first nine counts against them, and also any claims in the remaining counts based on anything other than the publication of the tenth article on June 17, 2018. Rood maintains that all the claims against him (counts one through eleven) are barred by the applicable statutes of limitations. The court agrees that all the claims asserted against Rood and the claims against the Chronicle Defendants in counts one through nine are barred by the applicable statute of limitations. The claims in count ten against the Chronicle Defendants are not barred to the extent they arise out of the article published on June 17, 2016. The remaining claims against the Chronicle Defendants also are not clearly barred by the statute of limitations.

As to the first ten counts alleging defamation, the Chronicle maintains that the first nine of them are precluded by the applicable statute of limitations and Rood maintains all ten are barred as to him. The court agrees. The statute of limitations applicable to these counts is General Statutes § 52-597. The statute requires that any action for libel or slander must be commenced "within two years from the date of the act complained of," in this case the publication of the *Chronicle* articles, Rood's statements to the *Chronicle* and Rood's omission from the arrest warrant affidavit. Rood's statements and omission and all of the articles, except the tenth, occurred more than two years prior to the commencement of suit. [7] Acknowledging that, the plaintiff claims the statute is tolled based on a continuing course of conduct because a number of the statements that appeared in the first few stories were repeated in later articles.

The continuing course of conduct doctrine does not apply to repeated publications of a defamatory statement. Each defamatory publication gives rise to a new cause of action, a distinct event actionable in itself. *Cweklinsky v. Mobil Chemical Co.,* 267 Conn. 210, 217, 837 A.2d 759 (2004). Because they are considered repeated wrongs and not a single continuous wrong, they are not subject to the continuing course of conduct doctrine. See *Watts v. Chittenden,* 301 Conn. 575, 588-89, 22 A.3d 1214 (2011). Other courts have reached the same conclusion. *Ravalese v. Lertora,* Superior Court, judicial district of Hartford, Docket No. CV-13-6042237-S (Elgo, J., January 4, 2017) (63 Conn. L. Rptr. 659); *Silano v. Cooney,* Superior Court, judicial district of Fairfield, Docket No. CV-12-5029873-S (Bellis, J., April 16, 2015); *Brady v. Bickford,* Superior Court, judicial district of New London, Docket No. CV-11-6007541-S (Zemetis, J., March 13, 2015) rev'd on other grounds, 179 Conn.App. 776, 183 A.2d 27 (2018); *Hechtman v. Connecticut Department of Public Health,* Superior Court, judicial district of Hartford, Docket No. CV-09-4043516-S (Prescott, J., December 3, 2009) (49 Conn. L. Rptr. 261).

***7** The court must consider each publication of an alleged defamatory statement separately for purposes of applying the statute of limitations. In this case, as to the Chronicle Defendants only the statements published in the tenth article on June 17, 2016 are within the two years proscribed by § 52-597. Consequently, there is no probability that the plaintiff will prevail on those counts as to the Chronicle Defendants. [8] With respect to Rood, his statements originally published by the Chronicle in 2015 were not repeated in the tenth article published on June 17, 2016; he made these statements once, in 2015. While the Chronicle Defendants could theoretically be liable for repeating Rood's 2015 statements in 2016, if they were defamatory, Rood himself would be liable only for his initial publication to the Chronicle. *Ravalese v. Lertora, supra*; See Restatement (Second) of Torts §§ 577A and 578 (1977). The motion to dismiss is granted as to counts one through nine as to the Chronicle Defendants and as to counts one through ten as to Rood.

The remaining counts against the defendants assert causes of action against all of them for negligent infliction of emotional distress (count eleven), against the Chronicle for negligent supervision (count twelve) and against all defendants for invasion of privacy (count thirteen). The Chronicle Defendants argue that none of these causes of action can withstand a statute of limitations defense, except to the extent they are based on the June 17, 2016 article. Rood argues that the negligent infliction of emotional distress claim against him is based on what he said to the Chronicle in April 2015 and therefore is completely barred by the statute of limitations. The defendants argue that the statute of limitations applicable to each of these claims is General Statutes § 52-584, which provides for a two-year limitations period triggered on the date the injury is sustained, discovered or reasonably should have been discovered, up to three years from the date of the act or omission involved. [9] The

court agrees that § 52-584 applies to counts eleven and twelve, both of which seek to recover damages caused by negligence. General Statutes § 52-577, however, applies to the thirteenth count alleging invasion of privacy. § 52-577 governs "action[s] founded upon a tort" and it provides for a three-year limitations period commencing on the date of the act or omission complained of. § 52-577 is generally applicable to all tort actions, except to the extent that another statute applies to the specific tort involved—for example, § 52-597 applies to causes of action for libel and slander. See *Collens v. New Canaan Water Company,* 155 Conn. 477, 490-91, 234 A.2d 825 (1967). Neither § 52-584 nor any other statute carves out an exception for invasion of privacy claims and, therefore, § 52-577 applies to that claim against the defendants. *Jonap v. Silver*, 1 Conn.App. 550, 554, 474 A.2d 800; *Jensen v. Times Mirror Co.,* 634 F.Sup. 304, 315 (D.Conn. 1986), on reconsideration 647 F.Sup. 1525.

The court agrees that the negligence claim against Rood is barred by the two-year statute of limitations set forth in § 52-584. His alleged negligence occurred around the time of the plaintiff's arrest in April 2015 and this action was not commenced against him until July 2, 2018, more than three years after the act or omissions of which the plaintiff complains. The plaintiff maintains that the continuous course of conduct doctrine tolls the limitation period, but the court disagrees.

First, it is the court's view at this stage that the continuing course of conduct doctrine probably does apply to the plaintiff's negligent infliction of emotional distress claims. Our Supreme Court applied the doctrine to intentional infliction of emotional distress claims in *Watts v. Chittenden,* 301 Conn. 575, 22 A.3d 1214 (2011) and other courts, relying on *Watts,* have applied the doctrine to negligent infliction of emotional distress claims. *Brady v. Bickford, supra*. That question is not fully resolved for purposes of this case, however, because the plaintiff's claim of negligent infliction of emotional distress arises exclusively out of the alleged defamatory statements published in the ten newspaper articles that are the subject of the defamation claims. As stated above, the continuing course of conduct doctrine does not apply to repeated publications of a defamatory statement because each defamatory publication gives rise to a new and separate cause of action. *Cweklinsky v. Mobil Chemical Co., supra*, 267 Conn. 217. As such the circumstances of this case run counter to the rationale expressed by the court in *Watts* supporting the application of the continuing course of conduct doctrine to emotional distress claims in general. In *Watts* the court highlighted the logical view that a plaintiff should not be expected to bring separate lawsuits for each act committed over a period of time that contributes to the plaintiff's emotional distress. Viewed individually, those acts might not in themselves give rise to separate and valid causes of action, yet they are actionable when viewed as part of a pattern of conduct. *Watts v. Chittenden, supra*, 301 Conn. 587-88, citing *Heard v. Sheahan,* 253 F.3d 316 (7th Cir. 2001). In the context of repeated publications of a defamatory statement, however, Connecticut law does view each publication to be separately actionable. Thus, it is unclear the doctrine would apply in this case but, for purposes of a special motion to dismiss, the court considers that it probably does apply. [10]

***8** Notwithstanding the probable applicability of the continuing course of conduct doctrine to the plaintiff's negligent infliction of emotional distress claim against Rood, the court concludes it is not probable that the plaintiff can successfully avoid the statute of limitations based on that doctrine with respect to that claim. "In order to support a finding of a continuing course of conduct that may toll the statute of limitations there must be evidence of the breach of a duty that remained in existence after commission of the original wrong related thereto. That duty must not have terminated prior to commencement of the period allowed for bringing an action for such a wrong ... Where we have upheld a finding that a duty continued to exist after the cessation of the act or omission relied upon, there has been evidence of either a special relationship between the parties giving rise to such a continuing duty or some later wrongful conduct of a defendant related to the prior act." *Watts v. Chittenden, supra*, 301 Conn. 584, quoting *Sherwood v. Danbury Hospital,* 252 Conn. 193, 746 A.2d 730 (2000). There is no special relationship between Rood and the plaintiff in this case, nor is there any alleged wrongful act committed after April 2015. Consequently, the negligent infliction of emotional distress claim against Rood is barred by the statute of limitations.

The negligence claims against the Chronicle Defendants are distinguishable from the claim against Rood because the Chronicle Defendants continued publishing alleged defamatory statements about the plaintiff regularly over a period of fourteen months from April 2015 to June 17, 2016. Although there is no special relationship between the Chronicle and the plaintiff, there is evidence of "later wrongful conduct" related to the original wrongful conduct in April 2015. Under these circumstances, the limitations period is triggered by the last alleged wrongful act on June 17, 2016. The plaintiff's action, commenced within two years of that date, is probably timely as it concerns counts eleven and twelve alleging negligence against the Chronicle Defendants. [11]

Finally count twelve is timely filed as to the Chronicle Defendants because a three-year statute of limitations applies and most, if not all, all of the alleged conduct occurred within the three years prior to the commencement of suit. *Jonap v. Silver, supra*, 1 Conn.App. 554; *Jensen v. Times Mirror Co., supra*, 634 F.Sup. 315. The same cannot be said as to Rood, however, because the plaintiff did not commence suit against him until July 2, 2018 and his alleged conduct took place in April 2015. [12]

III. Merits of the Remaining Claims Against the Chronicle

A. Defamation

The plaintiff alleges in the tenth count that the defamatory statements published in the June 17, 2016 article are that he was referred to as a resident of Willimantic and a "City man," and also that the Chronicle reported he was "found guilty" and "sentenced to jail time" even though he had pleaded guilty and the court suspended execution of his six-year jail sentence. He further complains that the article omitted the fact that the state had dropped the charges involving alleged sexual contact pursuant to General Statutes § 53-21(a)(2) as a part of the disposition. This omission and the failure to report that he was not actually going to prison, he maintains, changed the slant and tone of the article sufficiently to constitute libel by innuendo. The Chronicle Defendants argue that the article, including these statements are substantially true and points to our Supreme Court's statement in *Woodcock v. Journal Publishing Co., Inc.* 230 Conn. 525, 554, 646 A.2d 92 (1994) that a "defendant will not be held liable [for defamation] as long as the statements are substantially true." [13]

***9** "A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him ... To establish a prima facie case of defamation, the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement." *Gambardella v. Apple Health Care, Inc.,* 291 Conn. 620, 627-28, 969 A.2d 736 (2009), quoting *Cweklinsky v. Mobil Chemical Co., supra*, 267 Conn. 217.

Truth is a defense to a claim of defamation and a defendant is not liable if the statements are substantially true. *Strada v. Connecticut Newspapers, Inc.,* 193 Conn. 313, 320-22, 477 A.2d 1005 (1984); *Mercer v. Cosley,* 110 Conn.App. 283, 955 A.2d 550 (2008). "It is not necessary for the defendant to prove the truth of every word of the libel. If he succeeds in proving that the main charge, or gist, of the libel is true, he need not justify statements or comments which do not add to the sting of the charge or introduce any matter by itself actionable ... The issue is whether the libel, as published, would have a different effect on the reader than the pleaded truth would have produced." (Quotation and citations omitted.) *Goodrich v. Waterbury Republican-American, Inc.,* 188 Conn. 107, 113, 448 A.2d 1317 (1982). Moreover, there is a qualified privilege that applies to reporting on official proceedings such as the plaintiff's arrest and prosecution. "The publication of defamatory matter concerning another in a report of an official action or proceeding ... is privileged if the report is accurate and complete or a fair abridgement of the occurrence reported." *Burton v. American Lawyer Media, Inc.,* 83 Conn.App. 134, 138 (2004), cert. denied, 270 Conn. 914, 853 A.2d 526 (2004), quoting 3 Restatement (Second), Torts, Report of Official Proceeding or Public Meeting, § 611, p. 297 (1977).

The court agrees that the statements concerning the plaintiff's plea and sentence are substantially true.[14] The deviations from literal accuracy do not change the gist of the story that the prosecution of the plaintiff had resulted in a finding of guilt[15] and a sentence pursuant to which the plaintiff was exposed to six years of incarceration. The fact that the plaintiff was not going to actually serve all or part of that time does not distinguish him from many other sentenced criminal defendants. Further, the Chronicle's reference to the plaintiff as a Willimantic resident and a "city man" was actually true as of the time the underlying criminal offenses occurred. This is enough to make the statement substantially true. Even if it were false, however, the statement is not defamatory because it does not harm the plaintiff's reputation.

Notwithstanding the substantial truth of the plea and sentencing information, the plaintiff maintains that the article was nevertheless defamatory due to the omissions from the article. He maintains that the article is defamatory, even if the statements are taken to be true, because of the information that was left out. Connecticut does appear to recognize a claim for libel by innuendo. *Strada v. Connecticut Newspapers, Inc., supra*, 193 Conn. 323. To prevail on a cause of action for libel by innuendo a plaintiff must prove that, although the statement by the defendant is true, the defendant knew of the "existence of additional material facts which, if reported, would have changed the tone of the article ..." *Id.*, 322. "Innuendo or inference may result merely from the tone or 'slant' of an article, or innuendo or inference may also result from the failure to present the whole picture." *Id.* The example cited by the court in *Strada* illustrates how the omission of relevant information can fundamentally change the meaning an average reader would take away from a literally truthful news story. *Id.*, citing *Memphis Publishing Co. v. Nichols,* 569 S.W.2d 412 (Tenn. 1978) (newspaper reported a woman was found shot in the company of another woman's husband, but neglected to mention that the other woman as well as the victim's husband were also present and that the victim was an innocent bystander to the shooting).

***10** Nothing close to the innuendo described in *Strada* is present in this case and, even though something less extreme might still be actionable, the fact that the sentence was suspended and that other charges were dropped does not alter the gist of the June 17, 2016 article, reporting that the plaintiff was found guilty and sentenced on a charge of risk of injury to a minor. There is no evidence that this article implied the plaintiff had pleaded guilty to a risk of injury charge under § 53-21(a)(2) involving sexual contact. While it is possible a reader may have misperceived the severity of the sentence, that does not constitute the kind of defamatory innuendo the court in *Strada* suggested might be actionable. It is a less than perfect recitation of the facts surrounding the main point of the article, reporting that the plaintiff had been convicted and sentenced on a charge of risk of injury to a minor. The court, therefore, concludes that the plaintiff has not proven he will probably be successful on his libel by innuendo claim regarding the June 17, 2016 article that is the subject of count ten. The Chronicle's motion to dismiss is granted as to that count.

B. Negligence and Invasion of Privacy

There is a claim of negligent infliction of emotional distress (count eleven) against the Chronicle Defendants and a claim of negligent supervision (count twelve) against the Chronicle. As discussed above, these claims are not clearly barred by the statute of limitations if the continuing course of conduct doctrine is ultimately held to apply. The court has determined that the invasion of privacy claim against the Chronicle Defendants (count thirteen) is not barred by the statute of limitations. These counts are all based on the facts alleged in counts one through ten and, as such, are essentially repetitious of the plaintiff's defamation claims. If there is no substantive merit to those claims as defamation claims, particularly based on a defense of substantial truth, there likely can be no legal merit to them when reasserted under the alternative legal theories of invasion of privacy and negligence. See *Goodrich v. Waterbury Republican-American, Inc., supra*, 188 Conn. 131-32; *Gianetti v. Connecticut Newspapers Publishing Co., Inc.,* Superior Court, judicial district of Fairfield, Docket No. CV-07-5012114-S (Dooley, J. November 30, 2010) aff'd 136 Conn.App. 67, 44 A.3d 191 (2012), cert. denied, 307 Conn. 923, 55 A.3d 567 (2012). The court, however, has not considered the merits of the allegations set forth in counts one through nine because it has disposed of them on statute of limitations grounds. Likewise the Chronicle Defendants have made only passing reference to a claim

of substantial truth regarding the statements at issue in those nine counts, without addressing the substance of the statements involved. Instead, they relied upon their statute of limitations defenses, which have been unsuccessful in this context as discussed above. For that reason, the court also declines to address the substance of the statements that are the subject of counts one through nine on the Chronicle Defendants' special motion to dismiss.[16] The motion is denied as to counts eleven, twelve and thirteen against the Chronicle Defendants.

IV. Conclusion

The defendant Rood's motion to dismiss (# 119) is granted. The Chronicle Defendants' motion to dismiss (# 116) is granted as to counts one through ten and denied as to counts eleven through thirteen.

All Citations

Not Reported in Atl. Rptr., 2018 WL 6264070, 67 Conn. L. Rptr. 442

Footnotes

1 According to the plaintiff, Rood falsely told the Chronicle that the original complaint, which prompted the police investigation, had come from a parent or guardian and, further, he falsely reported to the Chronicle that the matter had been referred to the Department of Children and Families. The former statement appeared in five articles up to and including the seventh and the latter appeared only in the first article.

2 The plaintiff also complains that several of the *Chronicle* articles referred to multiple victims when there was only one. He does not attribute this inaccuracy to Rood.

3 The plaintiff does not object to Rood's motion on the ground of untimeliness, even though the motion was due to be filed on August 4, 2018. The court considers the issue of timeliness waived as to Rood and the court will consider the merits of his motion.

4 Because the court concludes that the amendments triggered new thirty-day filing periods, the court does not reach the question whether an extension of time under § 52-196a can be granted retroactively.

5 California's anti-SLAPP statute is broad in scope, like the Connecticut statute, and covers, *inter alia*, “any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.” See Cal. Civ. Pro. Code § 425.16. Its operative language is found in subsection (b)(1): “A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.”

6 The Washington statute placed a much higher burden on the plaintiff responding to a motion to dismiss. Under that statute, the plaintiff must “demonstrate a likelihood of prevailing on his or her claims by clear and convincing evidence.” (Italics omitted.) *Jones v. City of Yakima Police Department, supra*. This distinction significantly influenced the court's determination of the scope of the statute. The Washington Supreme Court later concluded that this high evidentiary burden rendered the statute unconstitutional. *Davis v. Cox*, 182 Wash.2d 269, 351 P.3d 862 (2015).

7 There is no claim by the plaintiff that any saving statute applies and no evidence submitted that would support such a claim.

8 Arguably even the tenth count is outside the statute of limitations as to the Chronicle because the Chronicle was not properly served until August 13, 2018. The Chronicle has not asserted this position and even a successful defense to count ten on this ground is likely subject to General Statutes § 52-593.

9 There is no claim here that the plaintiff discovered the injury at any time other than the time of publication.

10 The defendants conceded in their motions that the doctrine applies to the negligence claims, but argue that the requirements of the doctrine are not met in this case.

11 This assumes that the court ultimately does rule the continuing course of conduct doctrine applies. That issue is not adequately briefed at this stage for the court to make a definitive ruling.

12 Even if the continuing course of conduct doctrine applied to that cause of action, which is questionable, as discussed above it does not apply to Rood in this case.

13 The only statements attributed to Rood did not appear in the tenth article, so there is no substantive basis for a finding of liability as to him under the tenth count.

14 The plaintiff did not submit copies of the articles published by the Chronicle at the hearing and the court relies upon the allegations of the complaint to discern the content of those articles.

15 A plea of guilty is, in effect, a conviction, the equivalent of a guilty verdict by a jury. *State v. Baldwin,* 183 Conn.App. 167, 172, 191 A.3d 1096 (2018).

16 The court recognizes it is the plaintiff's burden to establish a probability of success on these claims. The court also recognizes, however, that the plaintiff is self-represented and not as attuned to the nuances of shifting burdens. It is a particularly onerous task for the plaintiff in this instance to carry the burden of meeting the substance of arguments that have not been meaningfully formulated in the Chronicle Defendants' motion. Moreover, the procedural posture of the Chronicle Defendants on these allegations places the court in the position of initiating an independent analysis of the merits of these allegations without the benefit of analysis and argument from the defendants.