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PATRICE WARD *v*. KATHY GREENE ET AL.
(SC 16883)

Sullivan, C. J., and Katz, Palmer, Vertefeuille and Zarella, Js.[1]

Argued March 20, 2003—officially released February 3, 2004

Joseph A. Moniz, for the appellant (plaintiff).

Linda L. Morkan, with whom, on the brief, were *Theodore J. Tucci* and *Deirdre A. Devaney*, for the appellee (defendant Village for Families and Children, Inc.).

Opinion

ZARELLA, J. The plaintiff, Patrice Ward, individually and in her capacity as administratrix of the estate of Raegan McBride, brought an action against several defendants including the Village for Families and Children, Inc.,[2] to recover for, inter alia, the wrongful death of McBride, as authorized by General Statutes § 52-555 (a).[3] The plaintiff appeals from the judgment rendered by the trial court in favor of the defendant after it granted the defendant's motion for summary judgment on the plaintiff's wrongful death cause of action. The dispositive issue in this appeal is whether the defendant owed McBride a duty of care by virtue of General Statutes (Rev. to 1997) § 17a-101.[4] We conclude that the trial court properly determined that the defendant did not owe a duty of care to McBride. Accordingly, we affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. The defendant is a private, nonprofit organization that contracts with individuals to provide foster care and, prior to 1995, day care to children in need. The defendant contracted with Kathy Greene to provide day care and foster care. In August, 1995, the defendant ended its contract with Greene as a day care provider because it eliminated its day care program. The defendant did, however, continue its contract with Greene as a foster care provider.

Although the record does not indicate what, if any, interest the defendant had in Greene's day care operation prior to ending its day care contract with Greene in 1995, the record does indicate that after the defendant ended its contract with Greene as a day care provider, the defendant: (1) had no ownership interest in Greene's day care facility; (2) did not refer or direct children to Greene's day care operation; (3) did not pay Greene for the operation of her day care program; (4) did not supervise Greene in the operation of her day care program; and (5) did not investigate to determine Greene's qualifications to be licensed as a day care provider, or to determine whether her license should be renewed. The state department of public health (public health) was responsible for licensing Greene as a day care provider.

In 1996, the plaintiff sought the services of a day care provider for McBride. The plaintiff learned from a friend that Greene provided day care services out of her home. The plaintiff contacted the public health hotline to determine whether Greene was a qualified day care provider and to see whether any complaints had been made against Greene as a day care provider. The plaintiff was informed by public health that there was nothing in the state's file other than a report that one child had fallen off a bicycle while in Greene's care. In January, 1997, Greene began providing full-time day care

services to McBride. While McBride was attending Greene's day care program, Greene remained a licensed foster care provider for the defendant. Thereafter, on February 24, 1997, McBride suffered a head injury while in Greene's care. McBride was taken to a hospital by ambulance and pronounced dead upon her arrival. Edward McDonough, deputy medical examiner for the state, ruled that McBride's death was a homicide. On September 22, 1999, Greene was convicted of manslaughter in the first degree.

Thereafter, the plaintiff brought an action against several defendants for damages arising out of McBride's death. The plaintiff claims that the defendant is liable under the wrongful death statute, § 52-555, for damages arising out of McBride's death. The defendant moved for summary judgment on the ground that it was not liable under § 52-555 because it did not owe a duty of care to McBride. During the course of oral argument on the defendant's motion for summary judgment, the plaintiff's counsel was asked repeatedly to provide a basis for any duty of care owed to McBride by the defendant. The plaintiff's counsel stated that the duty arose by virtue of § 17a-101, the statute providing for mandatory reporting of suspected child abuse. Acting on the premise that the plaintiff properly alleged a violation of § 17a-101, the trial court went on to determine whether the defendant owed McBride a duty of care under that statute.[5]

The trial court granted the defendant's motion for summary judgment on the plaintiff's wrongful death claim on the basis of its determination that the defendant did not owe a duty of care to McBride under § 17a-101. The trial court reasoned that the class of persons that § 17a-101 was intended to protect is limited to identifiable victims, which the court defined as children who have reported abuse or neglect or about whom reports of abuse or neglect have been made to mandated reporters. Thus, the trial court determined that, since there was no relationship between the defendant and McBride and the defendant had no knowledge that Greene was abusing McBride, McBride was not within the class of persons that § 17a-101 was intended to protect. The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

Prior to addressing the plaintiff's claim, we address our standard of review. ''The standard of review of a trial court's decision granting summary judgment is well established. Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment,

the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law. . . . Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary.'' (Internal quotation marks omitted.) *Gould* v. *Mellick & Sexton*, 263 Conn. 140, 146, 819 A.2d 216 (2003).

The plaintiff claims on appeal that the trial court improperly failed to recognize that a public policy exists in this state creating a private cause of action for an aggrieved individual where a mandated reporter fails to report instances of suspected child abuse to designated officials or agencies. At oral argument before this court, the plaintiff clarified that her cause of action properly is characterized as a wrongful death cause of action under § 52-555, not a private cause of action under § 17a-101.[6] The plaintiff further clarified that § 17a-101 merely establishes the duty of care owed to McBride by the defendant. The plaintiff contends that the public policy statement set forth in § 17a-101 (a), ''[t]o protect children whose health and welfare may be adversely affected through injury and neglect,'' together with the mandatory reporting provisions set forth in § 17a-101 (b), creates a duty of care that extends to children situated similarly to McBride.[7]

As a preliminary matter, we address the defendant's claim that this court should decline to review the plaintiff's claim on the ground that it was inadequately briefed. We recognize that ''[w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly.'' (Internal quotation marks omitted.) *Gangemi* v. *Zoning Board of Appeals*, 255 Conn. 143, 179, 763 A.2d 1011 (2001). Nevertheless, while the plaintiff has failed to analyze in depth the issues presented, she has directed our attention to the plain language of § 17a-101 as a source for the claimed duty. In the exercise of our discretion, therefore, we review the plaintiff's claim.

We now review the law regarding a wrongful death cause of action. ''The elements of a cause of action . . . for a wrongful death are clear from the explicit language of the statute, which as a statute in derogation of the common law is limited to matters clearly within its scope. . . . The plaintiff must prove not only a violation of a standard of care as a wrongful act, but also a causal relationship between the injury and the resulting death. A causal relation between the defendant's wrongful conduct and the plaintiff's injuries is a fundamental element without which a plaintiff has no case. . . . If

the chain of causation of the damage, when traced from the beginning to the end, includes an act or omission which, even if wrongful or negligent, is or becomes of no consequence in the results or so trivial as to be a mere incident of the operating cause, it is not such a factor as will impose liability for those results.'' (Citations omitted; internal quotation marks omitted.) *Grody* v. *Tulin*, 170 Conn. 443, 448–49, 365 A.2d 1076 (1976).

A wrongful death cause of action, therefore, requires that the party seeking relief allege an underlying theory of legal fault and that such fault is the proximate cause of the injury. Id. In the present case, the plaintiff alleged the following material allegations in support of her wrongful death cause of action. The plaintiff alleged that: (1) Greene had a contractual agreement with the defendant to provide foster care services; (2) the defendant had received numerous reports that Greene physically abused children in her care prior to the time that Greene provided day care to McBride; (3) the defendant had a duty to report allegations of abuse to the department of children and families (department); (4) the defendant failed to report allegations of Greene's abuse; (5) prior to placing McBride in Greene's care, the plaintiff contacted public health to see if any complaints had been made against Greene and was told that there was nothing in the state's file concerning abuse; (6) Greene subsequently abused McBride, causing her death; and (7) the defendant's actions were the proximate cause of McBride's death.

The allegations in the plaintiff's wrongful death count sound in negligence. ''The existence of a duty of care is an essential element of negligence. . . . A duty to use care may arise from a contract, from a statute, or from circumstances under which a reasonable person, knowing what he knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result from his act or failure to act.'' (Internal quotation marks omitted.) *Calderwood* v. *Bender*, 189 Conn. 580, 584, 457 A.2d 313 (1983).

The plaintiff in the present case claims that the duty of care owed to McBride by the defendant arises by virtue of § 17a-101. ''Where the court adopts the requirements of a legislative enactment as the standard of conduct of a reasonable person, a violation of the enactment may constitute negligence per se, or create a presumption of negligence, or make out a prima facie case of negligence, or constitute evidence of negligence, depending on the legal doctrine followed in a particular jurisdiction . . . .'' 57A Am. Jur. 2d 669–70, Negligence § 743 (1989).

It is unclear in the present case whether the plaintiff relies on § 17a-101 to establish negligence per se, a presumption of negligence, a prima facie case of negligence or evidence of negligence. This ambiguity is of no consequence in the present case, however, because

in determining whether a duty of care is owed to a specific individual under a statute, the threshold inquiry for each legal doctrine is whether the individual is in the class of persons protected by the statute. Thus, we must determine the class of persons protected by § 17a-101.

There is no Connecticut appellate case law that discusses the scope of the class of persons protected by § 17a-101. This case, therefore, presents an issue of first impression. The plaintiff claims in her brief that the purpose of § 17a-101 is to protect *all* of the children of the state. At oral argument before this court, the plaintiff narrowed her view of the class of persons protected by § 17a-101 to include, as it applies to the present matter, all of the children in Greene's care during the course of the defendant's relationship with Greene regardless of whether: (1) the children were receiving day care or foster care services from Greene; (2) the children were placed in Greene's care by the defendant or by another individual; and (3) the defendant had actual knowledge of the abuse of the specific individual. The plaintiff contends that the public policy statement set forth in § 17a-101 (a) demonstrates that all such children are within the class of persons protected by § 17a-101. We disagree.

The policy statement contained in § 17a-101 (a) lends little support for the plaintiff's interpretation of the protected class. The opening line of the statute, for example, provides in relevant part: ''The public policy of this state is: To protect children whose health and welfare may be adversely affected *through injury and neglect* . . . .'' (Emphasis added.) General Statutes (Rev. to 1997) § 17a-101 (a). The plaintiff implies that the use of the plural ''children'' must mean either ''all children'' or ''all children in the care of the provider.'' This reading of the statute, however, ignores the ending phrase that provides ''may be adversely affected through injury and neglect . . . *and for these purposes* to require the reporting of suspected child abuse, investigation of such reports by a social agency, and provision of services, where needed, to *such child and family*.'' (Emphasis added.) General Statutes (Rev. to 1997) § 17a-101 (a).

From this reading of the statutory language, we conclude that the policy statement appears to be directed at the child, or children in the case of multiple children placed at risk in a singular incident, who should be the subject of a report of abuse or neglect under the statute and are, accordingly, in need of services. The policy statement thus suggests that the legislature intended to focus on children who *already* have been exposed to conduct that amounts to a reportable event, and we do not find merit in the plaintiff's argument that the statute creates a duty of care to every child who has been in the care of the defendant.

The courts of several other states, with almost identical mandated reporter statutes and under facts analogous to the facts in the present case, also have considered this precise issue and determined that the class of individuals protected by mandated reporter statutes is limited to the child who has been abused or neglected and is, or should have been, the subject of a mandated report.

The Court of Appeals of Ohio, for example, determined whether individuals other than the child who has been abused or neglected and is, or should have been, the subject of a mandated report could bring a negligence action under Ohio's mandated reporter statute, which is almost identical to Connecticut's statute. *Curran* v. *Walsh Jesuit High School*, 99 Ohio App. 3d 696, 651 N.E.2d 1028 (1995). The court stated: "[The plaintiff] is correct in asserting that failure to perform a statutory duty imposed by [the mandated reporter statute] is actionable. . . . Further, [the plaintiff] is correct that the duty imposed . . . is intended for the protection of individuals rather than for the public in general. . . . [T]he Supreme Court of Ohio addressed the issue stating, the statute is not directed at or designed to protect the public at large, but intended to protect a specific child who is reported as abused or neglected. However, because the statute is intended to protect the specific child who is reported abused or neglected, [the plaintiff] has failed to persuade this court that he has standing to bring a civil claim for [the] alleged breach of the statutory duty . . . .

"Generally, in order to maintain a claim of negligence per se based on the defendant's violation of a statute, the plaintiff must show that he is among the class of individuals that the statute is designed to protect: In an action for neglect of duty it is not enough for the plaintiff to show that the defendant neglected a duty imposed by statute, and that he would not have been injured if the duty had been performed, but to entitle him to recover, he must further show that such duty was imposed for his benefit, or was one which the defendant owed to him for his protection and security, from the particular loss or injury of which he complains. . . .

"We believe that [Ohio's mandated reporter statute] imposes a duty which is owed solely to the minor child of whom reports[8] have been received concerning abuse or neglect. . . . In so holding, we find instructive the Supreme Court of Ohio's statement . . . that [Ohio's mandated reporter statute] is intended to protect a specific child who is reported as abused or neglected." (Citations omitted; internal quotation marks omitted.) Id., 699–700.

In determining the class of persons protected by a statute, we do not rely solely on the statute's broad

policy statement. Rather, ''we review the statutory scheme in its entirety, including the design of the scheme as enacted.'' *Gore* v. *People's Savings Bank*, 235 Conn. 360, 380–81, 665 A.2d 1341 (1995). Other states with similar policy statements also have determined that a reporting statute's broad policy statement does not, by itself, define the class of persons protected by the statute.

The purpose of the Utah reporting statute, for example, is ''to protect the best interests of children, offer protective services to prevent harm to the children, stabilize the home environment, preserve family life whenever possible, and encourage cooperation among the states in dealing with the problem of child abuse.'' *Owens* v. *Garfield*, 784 P.2d 1187, 1191 (1989). Similarly, § 17a-101 (a) provides: ''The public policy of this state is: To protect children whose health and welfare may be adversely affected through injury and neglect . . . to provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes to require the reporting of suspected child abuse . . . .''

The Utah Supreme Court, however, concluded that: ''Although the statute is intended to address the problem of child abuse, we are not persuaded that it can be read to create a legally enforceable duty on the part of the [mandated reporter] to protect all children from child abuse in all circumstances. Such a duty would be impossible to perform. The statute sets up procedures to be followed by [mandated reporters] when they are alerted of suspected abuse of identified children, but it does not create a duty on the part of the [mandated reporter] to protect children who are never identified as being in need of protection.'' *Owens* v. *Garfield*, supra, 784 P.2d 1191.

We similarly look to the substantive provisions of Connecticut's mandated reporter statute, which are focused on individuals who already have been abused or neglected and should have been the subject of a mandated report. For example, the reporting requirements are triggered whenever a mandated reporter ''has reasonable cause to suspect or believe that *any child* under the age of eighteen years is in danger of being abused or has had nonaccidental physical injury, or injury which is at variance with the history given of such injury, inflicted upon him by a person responsible for such child's health, welfare or care or by a person given access to such child by such responsible person, or has been neglected, as defined in section 46b-120 . . . .'' (Emphasis added.) General Statutes (Rev. to 1997) § 17a-101a. Once the requirement to report is triggered, the mandated reporter must report: ''(1) The names and addresses of *the child* and his parents or other person responsible for his care; (2) the age of *the child*; (3) the gender of *the child*; (4) the nature and

extent of *the child's injury or injuries*, maltreatment or neglect; (5) the approximate date and time the injury or injuries, maltreatment or neglect occurred; (6) information concerning any previous injury or injuries to, or maltreatment or neglect of, *the child* or his siblings; (7) the circumstances in which the injury or injuries, maltreatment or neglect came to be known to the reporter; (8) the name of the person or persons suspected to be responsible for causing such injury or injuries, maltreatment or neglect; and (9) whatever action, if any, was taken to treat, provide shelter or otherwise assist *the child*." (Emphasis added.) General Statutes § 17a-101d. These provisions, therefore, focus only on the abused child.

Even more compelling is the fact that, once a mandated reporter is aware of suspected abuse or neglect giving rise to a mandatory report, there is not one provision in the statutory scheme that requires the reporter to provide additional information about other children known to the reporter to be in the care of the suspected abuser. If the class of persons protected by § 17a-101 included such children, it would seem logical that the statute would require the reporter to disclose information about other children known to the reporter to be in the care of the suspected abuser.

The confidentiality requirements set forth in General Statutes (Rev. to 1997) § 17a-101k also demonstrate that the class of persons protected by § 17a-101 is limited to the children who have been abused or neglected and are, or should have been, the subject of a mandated report. For example, § 17a-101k provides in relevant part that "[t]he information contained in the reports and any other information relative to child abuse, wherever located, shall be confidential subject to such regulations governing their use and access as shall conform to the requirements of federal law or regulations. . . ." General Statutes (Rev. to 1997) § 17a-101k. Any information that is gathered concerning the reports of suspected abuse, therefore, is prohibited from public disclosure. Section 17a-101-6 of the Regulations of Connecticut State Agencies[9] sets forth the persons and agencies having emergency and routine access to the information contained in the abuse registry, and each person or agency authorized to access the information has an official investigative, medical or legal connection to the child who was abused or neglected and was the subject of a mandated report. Thus, children other than the child who is the subject of a mandated report do not directly benefit from the reporting requirements. Notwithstanding the fact that the confidentiality requirements are likely designed to protect the accused abuser, if the statutory scheme truly had been intended to protect children other than the child who is the subject of a mandated report, information relating to reports of abuse would be available to the public in general or, at a minimum, to the parents or guardians of children

also in the care of the abuser.

The confidentiality requirements, taken together with the fact that the statute requires that only information relating to the abused or neglected child be reported and not information relating to other known children in the care of the suspected abuser, strongly suggests that the class of persons protected by the statute is limited to the children who have been abused or neglected and are, or should have been, the subject of a mandated report. The plaintiff points to no substantive provisions that are aimed at protecting children other than children who have been abused or neglected and are, or should have been, the subject of a mandated report. From our review of the statutory scheme, we can find only two provisions that arguably benefit children outside this defined and identifiable group.

The first provision is found in General Statutes (Rev. to 1997) § 17a-101j (b), which provides: "Whenever a report has been made pursuant to section 17a-101b and section 17a-103 alleging that abuse or neglect has occurred at an institution or facility that provides care for children which is subject to licensure by the state and the Commissioner of Children and Families, after investigation, has reasonable cause to believe abuse or neglect has occurred, the commissioner shall forthwith notify the state agency responsible for licensure of such institution or facility of such information."

The second provision is found in General Statutes (Rev. to 1997) § 17a-101g, which provides in relevant part: "(a) Upon receiving a report of child abuse as provided in section 17a-101b, the Commissioner of Children and Families, or his designee, shall cause the report to be classified and evaluated immediately. If the report contains sufficient information to warrant an investigation, the commissioner shall make his best efforts to commence an investigation of a report concerning an imminent risk of physical harm to a child or other emergency *within two hours of receipt* of the report. . . .

"(c) If the Commissioner of Children and Families, or his designee, has probable cause to believe that the child *or any other child in the household is in imminent risk of physical harm from his surroundings* and that immediate removal from such surroundings is necessary to ensure the child's safety, the commissioner, or his designee, shall authorize any employee of the department or any law enforcement officer to *remove the child and any other child similarly situated* from such surroundings . . . ." (Emphasis added.)

The potential protection afforded under these provisions to those other than the child who is the subject of a complaint of abuse depends on the intervening acts of administrative agencies and is, therefore, remote and speculative. For example, an abusive care provider

might lose his or her license at some indeterminate point in the future, but revocation of a state license to provide care would occur after a substantial investigation and lengthy administrative process, if at all. Thus, the class of children who are protected by the statute and, therefore, owed a duty are not readily identifiable. Similarly, the provision that allows the state agency to remove children similarly situated to a child who has been abused or neglected requires an investigation and a subsequent determination by the agency that there are, in fact, other children similarly situated, and that such children are at imminent risk of harm. Again, there is no way to determine the children, if any, who will benefit from this provision.

Thus, whether these provisions ultimately will benefit children other than the child who has been abused or neglected depends entirely on administrative processes outside the control of the mandated reporter. These provisions, therefore, do not establish a specific and identifiable class. On the basis of the foregoing, we cannot say that a mandated reporter owes a legally enforceable duty to children unknown to the reporter who might stand the remote chance of benefiting from a report of abuse or neglect, where the benefit would depend entirely on the intervening acts of administrative agencies.

Finally, we note that McBride's injuries were, in the abstract, a foreseeable consequence of the defendant's failure to report prior abuse of other children. We have stated, however, that "[t]he conclusion that a particular injury to a particular plaintiff or class of plaintiffs possibly is foreseeable does not, in itself, create a duty of care. . . . Many harms are quite literally foreseeable, yet for pragmatic reasons, no recovery is allowed. . . . A further inquiry must be made, for we recognize that duty is not sacrosanct in itself, but is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection. . . . While it may seem that there should be a remedy for every wrong, this is an ideal limited perforce by the realities of this world. Every injury has ramifying consequences, like the ripplings of the waters, without end. The problem for the law is to limit the legal consequences of wrongs to a controllable degree." (Citations omitted; internal quotation marks omitted.) *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 576, 717 A.2d 215 (1998).

The public policy concerns inherent in the present case are of profound importance, namely, the protection of children's health and welfare, which may be affected adversely through injury and neglect. We are mindful, however, that extending liability to a mandated reporter for potential future abuse of children, unknown to the mandated reporter, may, in fact, undermine the salutary goals of the statutory scheme.

Specifically, extending the liability of a mandated reporter to such children undoubtedly will result in overburdening with nonmeritorious reports the agencies charged with investigating abuse and neglect claims, which have limited resources. For example, to shield themselves from liability, mandated reporters will feel compelled to report incidents that rightfully should not be reported, thereby diverting valuable resources from the claims that demand immediate attention. In 2003, for example, the department reported that it received 33,630 reports involving 95,214 individual allegations of suspected abuse or neglect. Of these allegations, 20,322 were substantiated after full investigations resulted in findings of reasonable cause to believe that neglect or abuse had occurred. These statistics aptly demonstrate that a vast amount of resources is required to investigate the tens of thousands of allegations brought to the attention of the department each year.[10]

The legislature obviously was concerned about overreporting, when in 1997 it amended Connecticut's mandated reporter statute.[11] Up until that time, General Statutes (Rev. to 1997) § 17a-101e (b) shielded reporters from liability when they, in good faith, reported suspected abuse or neglect.[12] With the enactment of Public Acts 1997, No. 97-319, § 12, the legislature opted also to shield reporters from liability when they, in good faith, do *not* report suspected abuse or neglect.[13]

The legislature, therefore, has expressed its desire that reporters use good judgment in reporting suspected abuse or neglect. Presumably, one of the legislature's goals in requiring that mandated reporters use good judgment is to ensure that the system does not become overburdened, thereby preventing the agencies charged with investigating suspected abuse or neglect from protecting the children of our state with the required level of efficacy. Essentially, the agencies rely on mandated reporters to filter allegations that cannot be substantiated, which enables the agencies to focus their limited resources on reports that demand immediate attention. Moreover, we have stated that there is a public policy in this state to ensure that limited governmental resources are used efficiently. See *Board of Education* v. *Freedom of Information Commission*, 217 Conn. 153, 161, 585 A.2d 82 (1991). Extending a mandated reporter's liability to children with whom the reporter has no relationship and about whom the reporter has no independent reason to suspect abuse or neglect invariably will result in making reporters less diligent. Mandated reporters will report all potential claims rather than exercising the requisite amount of discretion to determine the validity of such claims. This will further extend the department's resources and increase the risk of deficient action by the agency on claims that warrant attention and action.

On the basis of the foregoing, we conclude that the class of persons protected by § 17a-101 is limited to those children who have been abused or neglected and are, or should have been, the subject of a mandated report. We agree with the trial court, therefore, that the defendant did not owe a duty of care to McBride because she was not within the class of persons protected by § 17a-101.

We conclude that the trial court properly granted the defendant's motion for summary judgment on the plaintiff's wrongful death cause of action because the plaintiff failed to allege a viable theory of legal fault on the part of the defendant that was the proximate cause of McBride's injuries as required by § 52-555.

The judgment is affirmed.

In this opinion SULLIVAN, C. J., and PALMER and VERTEFEUILLE, Js., concurred.

[1] This case originally was heard by a panel consisting of Justices Borden, Katz, Palmer, Vertefeuille and Zarella. Subsequent to the oral argument, Justice Borden was recused and Chief Justice Sullivan was substituted for him. Chief Justice Sullivan read the briefs and listened to the tape of the oral argument.

[2] The Village for Families and Children, Inc., is the only defendant involved in this appeal. References to the defendant are to the Village for Families and Children, Inc.

[3] General Statutes § 52-555 (a) provides: ''In any action surviving to or brought by an executor or administrator for injuries resulting in death, whether instantaneous or otherwise, such executor or administrator may recover from the party legally at fault for such injuries just damages together with the cost of reasonably necessary medical, hospital and nursing services, and including funeral expenses, provided no action shall be brought to recover such damages and disbursements but within two years from the date of death, and except that no such action may be brought more than five years from the date of the act or omission complained of.''

[4] General Statutes (Rev. to 1997) § 17a-101, as in effect at the time of the events that gave rise to this action, provides in relevant part: ''(a) The public policy of this state is: To protect children whose health and welfare may be adversely affected through injury and neglect; to strengthen the family and to make the home safe for children by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes to require the reporting of suspected child abuse, investigation of such reports by a social agency, and provision of services, where needed, to such child and family.

''(b) The following persons shall be mandated reporters: Any physician or surgeon licensed under the provisions of chapter 370 or 371, any resident physician or intern in any hospital in this state, whether or not so licensed, and any registered nurse, licensed practical nurse, medical examiner, dentist, dental hygienist, psychologist, school teacher, school principal, school guidance counselor, school paraprofessional, social worker, police officer, clergyman, pharmacist, physical therapist, osteopath, optometrist, chiropractor, podiatrist, mental health professional or physician assistant, any person who is a licensed substance abuse counselor, any person who is a licensed marital and family therapist, any person who is a sexual assault counselor or a battered women's counselor as defined in section 52-146k or any person paid to care for a child in any public or private facility, day care center or family day care home which is licensed by the state. . . .'' Unless otherwise indicated, all references and citations in this opinion to § 17a-101 are to that statute as revised to 1997.

[5] We note that neither party disputes the viability of the plaintiff's wrongful death claim on the ground that a violation of § 17a-101 was not alleged in the pleadings as providing the basis of the duty owed to McBride by the defendant. We will review the trial court's determination, therefore, under the assumption that a violation of § 17a-101 properly was alleged.

[6] We note that in count fourteen of the amended complaint, the plaintiff alleged a private cause of action under § 17a-101. That count already had been stricken prior to the summary judgment that is the subject of this appeal. See *Ward* v. *Greene*, judicial district of New London at Norwich, Docket No. X04-CV-99-0120118 (February 21, 2002).

[7] We note that neither party disputes that the defendant is a mandated reporter pursuant to § 17a-101. Thus, we will not address the issue of whether the defendant is actually a mandated reporter.

[8] We note that the use of the phrase ''minor child of whom reports have been received concerning abuse or neglect'' in *Curran* refers not to the required statutory report itself but to reports made to the mandated reporter concerning abuse and neglect, which give rise to the duty to file a required report under the statute.

[9] Section 17a-101-6 of the Regulations of Connecticut State Agencies provides: ''(a) Persons and agencies having emergency access to the registry. ('Emergency access' means ability to query central registry by telephone and get immediate response by telephone after verifying caller is who he/she says he/she is). ('Routine access' means ability to query central registry and response given by appointment or in writing).

''(1) Only the following persons shall be eligible for both emergency access and routine access to the registry:

''(A) A legally-mandated public or private child protective agency investigating a report of known or suspected child abuse or neglect; or an agency treating a child or family which is the subject of a report of record; or a designated agency under contract to the department of children and families performing such investigation or treatment;

''(B) A police or other law enforcement agency investigating a report of known or suspected child abuse or neglect;

''(C) A physician who has before him a child who he reasonably suspects may be abused or neglected;

''(D) A person legally authorized to place a child in protective custody when such person has before him a child whom he reasonably suspects to be abused or neglected and such person requires the information in registry to determine whether to place the child in protective custody;

''(E) An agency having the legal responsibility or authorization either to care for, treat or supervise a child who is the subject of a report or record, or to care for, treat or supervise a parent, guardian or other person responsible for such child's welfare;

''(2) Additional persons eligible only for routine access to the registry include the following:

''(A) Any person named in the report or record who is alleged to be abused or neglected; if the person named in the report or record is a minor or is otherwise incompetent, his guardian ad litem or conservator;

''(B) A parent, guardian of other person responsible for the welfare of a child named in a report or record or their attorney except that the name or names of persons reporting the incidents of alleged abuse shall not be discharged;

''(C) Subject to the prior approval of the commissioner of the department of children and families or his designee, persons engaged in bona fide research provided, however, that no information identifying the subjects of the report shall be made available unless it is absolutely essential to the research purposes.

''(D) A court, upon its finding that access to such records may be necessary for determination of an issue before such court; but such access shall be limited to 'in-camera inspection' unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;

''(E) Any appropriate state or local official responsible for carrying out his or her official functions with respect to child protective services.''

[10] See 2003 Department of Children and Families Town Page Report.

[11] During debate on the amendment before the House of Representatives, Representative Ellen Scalettar, in response to an inquiry from Representative Dominic Mazzoccoli, provided the following explanation for amending the statutory language: ''[A]t this time there is immunity, this only applies to mandated reporters. A mandated reporter who in good faith makes a report of child abuse and it's proved to be false, that person is immune from liability. There are many cases now though that we have heard about where professional people in particular feel that they must err always on the side of reporting even when in their professional judgment they really don't believe there has been abuse. And so long as they're exercising their profes-

sional judgment as a mandated reporter and in good faith don't make a report, this lends some balance to that reporting requirement.'' 40 H. R. Proc., Pt. 18, 1997 Sess., p. 6594, remarks of Representative Ellen Schalettar.

[12] General Statutes (Rev. to 1997) § 17a-101e (b) provided in relevant part: ''Any person, institution or agency which, *in good faith, makes the report . . . shall be immune from any liability, civil or criminal,* which might otherwise be incurred or imposed and shall have the same immunity with respect to any judicial proceeding which results from such report provided such person did not perpetrate or cause such abuse or neglect.'' (Emphasis added.)

[13] General Statutes § 17a-101e (b), as it incorporates Public Acts 1997, No. 97-319, § 12, provides in relevant part: ''Any person, institution or agency which, in good faith, makes, *or in good faith does not make, the report . . .* shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed and shall have the same immunity with respect to any judicial proceeding which results from such report provided such person did not perpetrate or cause such abuse or neglect.'' (Emphasis added.)