

1
2 UNITED STATES COURT OF APPEALS
3 For the Second Circuit
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5
6 August Term, 2008
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8 (Argued: May 20, 2009

Questions Certified: October 27, 2009

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10 Certified Questions Answered: April 3, 2012

Final Submission: May 29, 2012

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12 Decided: September 25, 2012)

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14 Docket No. 08-2626-cv
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16
17 DANIEL GROSS,
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19 *Plaintiff,*

20
21 CAROLYN DEE KING,
22

23 *Plaintiff-Appellant,*

24
25 —v.—
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27 M. JODI RELL, GOVERNOR, STATE OF CONNECTICUT, IN HER OFFICIAL CAPACITY; MAGGIE EWALD,
28 FORMER ACTING LONG-TERM CARE OMBUDSMAN OF THE CONNECTICUT DEPARTMENT OF SOCIAL
29 SERVICES, IN HER OFFICIAL CAPACITY; THOMAS P. BRUNNOCK, PROBATE JUDGE FOR THE DISTRICT
30 OF WATERBURY, IN HIS INDIVIDUAL CAPACITY; KATHLEEN DONOVAN, IN HER INDIVIDUAL
31 CAPACITY; JONATHAN NEWMAN, IN HIS INDIVIDUAL CAPACITY; GROVE MANOR NURSING HOME,
32 INC., IN ITS INDIVIDUAL CAPACITY,
33

34 *Defendants-Appellees,*
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38 Before: JACOBS, *Chief Judge*, STRAUB AND HALL, *Circuit Judges*.
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41 On return from the Connecticut Supreme Court after the answer of questions certified by
42 this Court on October 27, 2009. The Connecticut Supreme Court held as a matter of Connecticut
43 law that conservators enjoyed quasi-judicial immunity when acting with the approval or
44 authorization of the Probate Court and that court-appointed attorneys for conservatees do not
45 enjoy quasi-judicial immunity. It also advised that the Probate Court does not have the authority

1 to issue orders to entities not a party to its proceedings and so such entities taking care of
2 conservatees would not be acting as agents of the Probate Court. We hold that the scope of
3 federal quasi-judicial immunity for conservators and court-appointed attorneys for conservatees
4 is the same as Connecticut quasi-judicial immunity and that the nursing home in whose care the
5 conservator placed the plaintiff-conservatee is not entitled to quasi-judicial immunity. The
6 judgment of the District Court is therefore **VACATED** and the case **REMANDED** for further
7 proceedings not inconsistent with this opinion.

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11 CT, for *Plaintiff-Appellant*.

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14 Connecticut (Richard Blumenthal, Attorney General, Jane R.
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16 Attorney General, *of counsel*), Hartford, CT, for *Defendants-*
17 *Appellees M. Jodi Rell, Maggie Ewald, and Thomas P. Brunnock*.

18
19 RICHARD A. ROBERTS (Nadine M. Pare, James R. Fiore, *of counsel*),
20 Nuzzo & Roberts, L.L.C., Cheshire, CT, for *Defendant-Appellee*
21 *Kathleen Donovan*.

22
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24 Dowling, Hartford, CT, for *Defendant-Appellee Jonathan*
25 *Newman*.

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27 JEFFREY R. BABBIN, Wiggin and Dana LLP, New Haven, CT, for
28 *Defendant-Appellee Grove Manor Nursing Home, Inc.*

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31 STRAUB, *Circuit Judge*:

32 On October 27, 2009, we certified questions to the Connecticut Supreme Court regarding
33 the scope of Connecticut quasi-judicial immunity for conservators and court-appointed attorneys
34 for conservatees, as well as regarding the role of such actors and of nursing homes that house
35 conservatees in the Connecticut system. On April 3, 2012, the Connecticut Supreme Court
36 answered our certified questions in an opinion, holding as a matter of state law that conservators
37 are entitled to quasi-judicial immunity when their actions are authorized or approved by the
38 Probate Court and that court-appointed attorneys for conservatees are not entitled to quasi-

1 judicial immunity. It also described the role of nursing homes housing conservatees in the
2 Connecticut system and suggested that such entities should not be entitled to quasi-judicial
3 immunity.

4 We now consider whether the conservator for an elderly conservatee, his court-appointed
5 attorney, and the nursing home that housed him in allegedly abusive circumstances are entitled to
6 quasi-judicial immunity as a matter of federal law. We hold that federal quasi-judicial immunity
7 parallels state quasi-judicial immunity for these actors. The judgment of the District Court with
8 regards to Kathleen Donovan (“Donovan”), the conservator, Jonathan Newman (“Newman”),
9 Daniel Gross’s (“Gross”) court-appointed attorney, and Grove Manor Nursing Home, Inc.
10 (“Grove Manor”), the nursing home in which Gross was housed, as to the federal claims and,
11 with regards to Donovan and Newman, as to the state claims is therefore VACATED and the
12 case REMANDED for further proceedings not inconsistent with this opinion.

13 **BACKGROUND**

14 The facts necessary to understand this opinion are set forth below. A fuller account of
15 the factual background is available in our certification opinion, *Gross v. Rell* (“*Gross I*”), 585
16 F.3d 72 (2d Cir. 2009). The allegations of the complaint are accepted as true in this recitation.

17 Gross, an octogenarian resident of the state of New York, sought treatment in a hospital
18 in Waterbury, Connecticut, where his daughter lived. While there, a hospital employee filed an
19 application for appointment of a conservator in Waterbury Probate Court for reasons unknown.

20 The Probate Court appointed Newman to represent Gross in the involuntary
21 conservatorship action. Despite the fact that the hearing did not conform to the proper notice
22 procedure, that Gross was not a Connecticut resident, and that Gross appeared to be alert and

1 intelligent at the time of hearing, Newman concluded that there was no legal basis to deny the
2 application.

3 On September 1, 2005, the Probate Court appointed Donovan as conservator of Gross's
4 person and estate. A week or two later, Donovan placed Gross in a "locked ward" in Grove
5 Manor Nursing Home. Gross remained captive in Grove Manor for roughly ten months, and
6 during that time, numerous restrictions were placed upon him, including limits to the duration
7 and circumstances of visits with his daughter.

8 On June 9, 2006, Gross filed a petition for a writ of habeas corpus with the Connecticut
9 Superior Court. Referring to Gross's conservatorship as "a terrible miscarriage of justice," the
10 court granted the writ.

11 Gross filed the instant suit in the District of Connecticut. The complaint contained both
12 federal and state claims against a number of defendants; only those claims at issue today are
13 discussed in this opinion. Gross filed state and federal law claims against Donovan and Newman
14 and federal claims against Grove Manor. The District Court dismissed these claims reasoning
15 that all three actors enjoyed quasi-judicial immunity. Gross appealed.

16 We held that Gross' appeal depended upon unresolved questions of state and federal law
17 regarding the scope of quasi-judicial immunity. *Gross I*, 585 F.3d at 96. We certified the
18 following questions to the Connecticut Supreme Court:

- 19 1. Under Connecticut law, does absolute quasi-judicial immunity extend to conservators
20 appointed by the Connecticut Probate Courts?
21
- 22 2. Under Connecticut law, does absolute quasi-judicial immunity extend to attorneys
23 appointed to represent respondents in conservatorship proceedings or to attorneys
24 appointed to represent Conservatees?

25 We also observed that resolving whether Donovan, Newman, and Grove Manor enjoyed
26 quasi-judicial immunity as a matter of federal law required further information regarding the role

1 these actors played in the state system. The Supreme Court has advised that we can determine
2 whether an actor is entitled to quasi-judicial immunity by reference to six factors described in

3 *Cleavinger v. Saxner*:

4 (a) the need to assure that the individual can perform his functions without
5 harassment or intimidation; (b) the presence of safeguards that reduce the need for
6 private damages actions as a means of controlling unconstitutional conduct; (c)
7 insulation from political influence; (d) the importance of precedent; (e) the
8 adversary nature of the process; and (f) the correctability of error on appeal.

9 474 U.S. 193, 202 (1985). We sought guidance as to how to apply these factors in determining
10 the availability of federal quasi-judicial immunity in a third certified question:

11 3. What is the role of conservators, court-appointed attorneys for conservatees, and nursing
12 homes in the Connecticut probate court system, in light of the six factors for determining
13 quasi-judicial immunity outlined in *Cleavinger v. Saxner*, 474 U.S. 193, 201-02 (1985)?

14 The Connecticut Supreme Court accepted our certified questions and on April 3, 2012,
15 issued an opinion. *Gross v. Rell* (“*Gross II*”), 304 Conn. 234 (2012). It held that none of the
16 types of actors here enjoy absolute quasi-judicial immunity as a matter of Connecticut law. It
17 held that “conservators are entitled to quasi-judicial immunity from liability for acts that are
18 authorized or approved by the Probate Court.” *Id.* at 253. When conservators act pursuant to the
19 authorization or approval of the Probate Court, the court reasoned, “they function *as* the Probate
20 Court.” *Id.* at 252. Outside of such situations, however, conservators in the Connecticut system
21 function as fiduciaries of the conservatee and may be held personally liable. *Id.* at 253-54.

22 With regards to court-appointed attorneys for conservatees, the Connecticut Supreme
23 Court concluded that such attorneys should enjoy no immunity as a matter of Connecticut law. It
24 observed,

25 [T]he primary purpose of the statutory provision of [Conn. Gen. Stat.] § 45a-649
26 requiring the Probate Court to appoint an attorney if the respondent [*i.e.*, an
27 individual who is the subject of conservatorship proceedings prior to the
28 imposition of a conservator] is unable to obtain one is to ensure that respondents

1 and conservatees are fully informed of the nature of the proceedings and that their
2 articulated preferences are zealously advocated by a trained attorney both during
3 the proceedings and during the conservatorship. The purpose is not to authorize
4 the Probate Court to obtain the assistance of an attorney in ascertaining the
5 respondent's or conservatee's best interests. Because the function of such court-
6 appointed attorneys generally does not differ from that of privately retained
7 attorneys in other contexts, this consideration weighs heavily against extending
8 quasi-judicial immunity to them.

9 *Id.* at 264-65. It also contrasted court-appointed attorneys for conservatees with court-appointed
10 attorneys for children, noting that court-appointed attorneys for children are called upon to play
11 dual roles, "to assist the court in serving the best interests of the child and to function as the
12 child's advocate." *Id.* at 267. It emphasized that these roles "are not easily disentangled." *Id.*
13 Thus, court-appointed attorneys for conservatees should enjoy no quasi-judicial immunity. *Id.* at
14 265-66.

15 Finally, the Connecticut Supreme Court made several observations about the role of
16 nursing homes that house conservatees in the Connecticut legal system. After noting that "the
17 Probate Court does not have the statutory authority to issue injunctive orders to third parties to
18 carry out its decisions on behalf of a conservatee," the court stated that because Grove Manor
19 was not party to the conservatorship hearing, Grove Manor "[was] not acting as the Probate
20 Court's agent when it complie[d] with the conservator's instructions." *Id.* at 277-78. The
21 actions of Grove Manor, therefore, were not an extension of the authority of the Probate Court
22 and should not, in the opinion of the Connecticut Supreme Court, be entitled to quasi-judicial
23 immunity.

24 The case returned to us for consideration of the remaining questions of federal law. We
25 have had the benefit of supplemental briefing from the parties on the extent to which federal
26 quasi-judicial immunity should apply in light of the Connecticut Supreme Court's opinion.

1 **DISCUSSION**

2 The Connecticut Supreme Court has advised us of the limits of state quasi-judicial
3 immunity. We adopt its analysis and remand the state law claims against Donovan and Newman
4 to the District Court for further proceedings. Gross did not appeal the dismissal of his state law
5 claims against Grove Manor.

6 We next consider the District Court’s holding on the motion to dismiss that Donovan,
7 Newman, and Grove Manor enjoy federal quasi-judicial immunity for the federal law claims. On
8 an appeal from a grant of a motion to dismiss, we review de novo the decision of the district
9 court. *Capital Mgmt. Select Fund Ltd. v. Bennett*, 680 F.3d 214, 219 (2d Cir. 2012). We accept
10 all factual allegations in the complaint as true, drawing all reasonable inferences in favor of the
11 plaintiff. *Tiberio v. Allergy Asthma Immunology of Rochester*, 664 F.3d 35, 36 (2d Cir. 2011).
12 “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as
13 true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
14 (2009) (internal quotation marks omitted).

15 Gross brings suit pursuant to 42 U.S.C. § 1983. Congress, in enacting § 1983, “expressed
16 no intention to do away with the immunities afforded state officials at common law.” *City of*
17 *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 258 (1981). Certain actors associated with the
18 courts enjoy absolute, quasi-judicial immunity from suit because such immunity is “necessary to
19 protect the judicial process.” *Burns v. Reed*, 500 U.S. 478, 485 (1991). In determining whether
20 a particular actor is entitled to quasi-judicial immunity, we must ensure that our decisions are
21 “predicated upon a considered inquiry into the immunity historically accorded the relevant
22 official at common law and interests behind it.” *Id.* (quoting *Imbler v. Pachtman*, 424 U.S. 409,
23 421 (1976)). “[T]he official seeking absolute immunity bears the burden of showing that such

1 immunity is justified for the function in question.” *Id.* at 486. “The presumption is that qualified
2 rather than absolute immunity is sufficient to protect government officials in the exercise of their
3 duties.” *Id.* at 486-87. We must determine whether Donovan, Newman, and Grove Manor are
4 entitled to quasi-judicial immunity as a matter of federal law and consider each defendant in turn.

5 **I. Donovan**

6 The Connecticut Supreme Court held that conservators such as Donovan “are entitled to
7 quasi-judicial immunity from liability for acts that are authorized or approved by the Probate
8 Court.” *Gross II*, 304 Conn. at 253. Donovan argues that we should adopt a broader federal
9 quasi-judicial immunity. She argues that conservators should be entitled to quasi-judicial
10 immunity “for all actions undertaken within their statutory authority,” a position espoused by
11 three dissenting justices of the Connecticut Supreme Court, *id.* at 282 (McLachlan, *J.*,
12 dissenting), or, in the alternative, that conservators should enjoy immunity “for all actions that
13 are reasonably necessary to fulfill the [Probate] Court’s directives.”

14 The dissenters, upon whose opinion Donovan relies, differed from the majority primarily
15 in their view of the role of conservators in the Connecticut system. They believe that the
16 conservator serves as an agent of the Probate Court to “safeguard[] the best interests of the
17 conserved person . . . so long as he is acting within his statutory authority.” *Id.* The majority, by
18 contrast, held that a conservator acts as an agent of the Probate Court only when their actions are
19 authorized or approved by the Probate Court. *Id.* at 253. While the dissenting opinion presents a
20 thoughtful analysis of the difficult issues at stake in this case, we are bound by the majority’s
21 holding regarding Connecticut state law as to the scope of the agency relationship between
22 Donovan and the Probate Court.

1 Donovan also argues that federal authority supports the proposition that the scope of her
2 federal immunity should be expanded beyond what Connecticut law allows. In so arguing,
3 Donovan relies principally upon *Cok v. Cosentino*, 876 F.2d 1 (1st Cir. 1989). There, the First
4 Circuit held that conservators of marital assets in a divorce proceeding “have absolute quasi-
5 judicial immunity for those activities integrally related to the judicial process.” *Id.* at 3. Such
6 immunity, like the immunity enjoyed by judges, “would fail to attach only when such persons
7 perform acts which are clearly outside the scope of their jurisdiction.” *Id.* In reaching this
8 decision, however, the First Circuit found that the conservator in question “functioned as [an]
9 agent[] of the court.” *Id.* The First Circuit’s approach is thus consistent with the Connecticut
10 Supreme Court’s approach because under both conservators enjoy quasi-judicial immunity when
11 they act as agents of the court.

12 Also consistent with the Connecticut Supreme Court’s approach is the jurisprudence of
13 our sister circuits with regards to the scope of immunity of a bankruptcy trustee. A bankruptcy
14 trustee is charged with safeguarding the assets of the bankruptcy estate under court supervision
15 and thus has responsibilities both toward the estate and the court. Bankruptcy trustees are
16 generally immune to the extent that they are acting with the approval of the court. *See, e.g.,*
17 *United States v. Hemmen*, 51 F.3d 883, 891 (9th Cir. 1995) (bankruptcy trustees usually enjoy
18 quasi-judicial immunity, but only for actions that “arise out of [their] duty to protect the assets of
19 the estate”); *Gregory v. United States*, 942 F.2d 1498, 1500 (10th Cir. 1991) (bankruptcy trustee
20 enjoys absolute immunity when executing “facially valid judicial orders”); *Bennett v. Williams*,
21 892 F.2d 822, 823 (9th Cir. 1989) (“Bankruptcy trustees are entitled to broad immunity from suit
22 when acting within the scope of their authority and pursuant to court order.”).

1 Donovan argues that a broader quasi-judicial immunity is necessary for conservators to
2 feel free to perform their duties without fear of vexatious litigation. The simplest answer to this
3 objection is that the Connecticut Supreme Court, which is much more versed in the intricacies of
4 Connecticut law and the Connecticut legal system than we, disagrees. The United States
5 Supreme Court has also advised that we are to be “quite sparing in our recognition of absolute
6 immunity” and that we are not “to extend it any further than its justification would warrant.”
7 *Burns*, 500 U.S. at 487 (internal quotation marks omitted). We believe that the holding of the
8 Connecticut Supreme Court is in keeping with this dictate. Donovan’s vague threats of impaired
9 job function do not suffice to constitute the substantial showing necessary for us to find that
10 quasi-judicial immunity attaches when she acted without the authorization or approval of the
11 Probate Court. We therefore hold that Donovan is immune from suit only to the extent that she
12 acted with the authorization or approval of the Probate Court. Our holding, however, is informed
13 by the Connecticut Supreme Court’s description of the role of its conservators. We do not opine
14 regarding the availability of quasi-judicial immunity for conservators in other states.

15 **II. Newman**

16 The Connecticut Supreme Court held that attorneys for conservators do not enjoy quasi-
17 judicial immunity from suit. This holding is consistent with the Supreme Court’s holding that
18 court-appointed attorneys in criminal trials do not enjoy absolute immunity as a matter of federal
19 common law. *Ferri v. Ackerman*, 444 U.S. 193, 204-05 (1979). In so holding, the Supreme
20 Court reasoned that “the primary office performed by appointed counsel parallels the office of
21 privately retained counsel,” who may be sued by clients. *Id.* at 204. The Connecticut Supreme
22 Court similarly reasoned that attorneys for conservatees do not differ in function from privately
23 retained counsel. *Gross II*, 304 Conn. at 264-65.

1 Newman does not argue that he should enjoy a broader immunity as a matter of federal
2 law than he does as a matter of Connecticut law. Newman asks only that we clarify that he is
3 still entitled to raise as a defense that he did not breach his duty to his client. Newman is, of
4 course, entitled to raise such a defense before the District Court, and we express no opinion as to
5 whether such a defense will succeed as a matter of fact or law.

6 **III. Grove Manor**

7 Finally, we consider the extent to which Grove Manor enjoys quasi-judicial immunity.
8 The Connecticut Supreme Court advised us that the Probate Court was without authority to issue
9 orders that were binding upon third parties such as Grove Manor. *Gross II*, 304 Conn. at 277. It
10 concluded, therefore, that Grove Manor was not acting as the Probate Court's agent in caring for
11 Gross and that it stood in the same relationship with Donovan as it would with any ordinary
12 client, which is to say that it could refuse her orders. *Id.* at 277-78. Because Grove Manor was
13 not "performing the judicial function of the Probate Court" by housing Gross, it is not, in the
14 Connecticut Supreme Court's view, entitled to quasi-judicial immunity. *Id.* at 279.

15 Nor would Grove Manor be entitled to quasi-judicial immunity, even in the absence of a
16 binding court order, if Grove Manor had believed that its actions were sanctioned by court order.
17 The mere fact that an individual believed that her actions were sanctioned by court order is not
18 sufficient to confer quasi-judicial immunity. *See Groh v. Ramirez*, 540 U.S. 551, 563-65 (2004)
19 (analyzing whether officers who executed a facially invalid warrant could be held liable in terms
20 of qualified immunity); *Kulas v. Valdez*, 159 F.3d 453, 456 (9th Cir. 1998) (holding by a divided
21 panel that a prison doctor complying with an invalid court involuntary medication order was
22 entitled to qualified, but not absolute quasi-judicial immunity).

