Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-117

AUGUST TERM, 2019

Garrett Cornelius* v. Jennifer Barrett-Hatch	}	APPEALED FROM:
	}	
	}	Superior Court, Orleans Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 295-12-18 Oscv
		Trial Judge: Howard E. Van Benthuysen

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals a civil division order granting defendant's motion to dismiss for lack of a prima facie case because defendant was entitled to absolute immunity. On appeal, plaintiff argues that the court erred in concluding that defendant was immune from suit and in disposing of defendant's immunity claim in the context of a motion to dismiss. We affirm.

Plaintiff filed a complaint against defendant, the Orleans County State's Attorney, for abuse of process, alleging the following facts. Plaintiff was charged in Orleans County with aiding in the commission of a felony for assisting his brother who had allegedly escaped from custody. While the charges were pending, plaintiff was incarcerated for lack of bail and conditions of release were imposed preventing him from having contact with his brother or being at the home where he had lived with his brother. Plaintiff appealed the bail order and conditions of release, and the Supreme Court in a single-Justice order vacated the bail and conditions and ordered plaintiff released on his personal recognizance. The bail order criticized the limited evidence supporting the charge and pointed out that 13 V.S.A. § 1503 exempts certain family members from the charge of aiding an escaped prisoner.[1] After the case was remanded to the criminal division, the State dismissed the charges against plaintiff. Plaintiff then filed this suit alleging that defendant filed the criminal charges against plaintiff to force his brother out of hiding and that defendant knew or should have known the charge lacked a legal basis because of the exemption in 13 V.S.A. § 1503 for siblings.

Defendant filed a motion to dismiss under Vermont Rule of Civil Procedure 12(b)(4) and (6), arguing that as the Orleans County State's Attorney she had absolute immunity from suit for actions taken in her official capacity and that service of process was inadequate. Plaintiff opposed

[1] Plaintiff was charged with being an accessory to escape from furlough under 13 V.S.A. § 3, the felony being a violation of § 1501(b)(1)(B), and was not actually charged for harboring his brother under 13 V.S.A. § 1503. He contends that the accessory to escape charge was nonetheless precluded. Because defendant's entitlement to immunity does not depend on whether the charges were adequately supported by probable cause or instigated for a malicious purpose, we do not reach the question of whether § 1503 precluded the prosecution.

the motion, arguing that the complaint sufficiently pled the elements of abuse of process because defendant lacked authority to prosecute plaintiff, and that a defense of official immunity had to be raised in an answer, not through a Rule 12(b)(6) motion to dismiss.

The trial court granted the motion to dismiss. The court explained that defendant had absolute immunity from civil suit for actions taken within her general authority and concluded that charging plaintiff with a crime was within the scope of her duties. The court held that defendant's immunity applied regardless of whether the charges had a legitimate basis. The court concluded that defendant could raise the absolute immunity issue in a Rule 12(b)(6) motion to dismiss because there was no factual dispute. Plaintiff appeals.

On appeal, plaintiff argues that the court erred granting the motion to dismiss. We review decisions on a motion to dismiss without deference and "under the same standard as the trial court and will uphold a motion to dismiss for failure to state a claim only if it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." Birchwood Land Co. v. Krizan, 2015 VT 37, ¶ 6, 198 Vt. 420 (quotation omitted).

Here, to make a claim for abuse of process, plaintiff had to "plead and prove: 1) an illegal, improper or unauthorized use of a court process; 2) an ulterior motive or an ulterior purpose; and 3) resulting damage to the plaintiff. These elements are separate and distinct." Jacobsen v. Garzo, 149 Vt. 205, 208 (1988). Plaintiff argues that the facts as alleged in his complaint established these elements, and therefore the court erred in granting the motion to dismiss. Plaintiff contends that the first element—improper or unauthorized use of a court process—was met because defendant filed charges against plaintiff when she knew he was exempt from prosecution for that crime.

We conclude that the trial court properly dismissed plaintiff's complaint because the facts as alleged demonstrate that defendant was immune from suit. "[P]rosecutors . . . have absolute immunity from civil suits to the extent that the actions complained of are associated with the judicial phase of the criminal process and are within [their] general authority. . . ." Muzzy v. State By & Through Rutland Cty. State's Attorney, 155 Vt. 279, 279 (1990). A prosecutor's decision to file criminal charges is within the general scope of prosecutorial authority and is shielded from civil liability by absolute immunity.[2] Levinsky v. Diamond, 151 Vt. 178, 186-87 (1989).

Plaintiff concedes that defendant was the duly elected State's Attorney for the county and entitled to immunity when acting in her official capacity but alleges that absolute immunity did not apply in this case because he was exempt from prosecution for the crime charged by defendant and defendant charged him with the crime based on ulterior motives. We have recently reiterated that the impropriety of a charge (or other action within the scope of a state's attorney's general authority) and the state's attorney's alleged bad motive in levying a charge do not undercut a state's attorney's absolute immunity. See O'Connor v. Donovan, 2012 VT 27, ¶ 27, 191 Vt. 412 ("That defendant was allegedly motivated by ill will or a malicious design to interfere with plaintiff's livelihood does not diminish the absolute immunity afforded conduct otherwise within the general scope of defendant's authority."); Muzzy, 155 Vt. at 281 (explaining that absolute immunity does

[2] The acts identified by plaintiff in his complaint are the filing and pursuit of criminal charges against him. The statute describes the duties of a state's attorney to include "prosecut[ing] for offenses committed within [the state's attorney's] county, and all matters and causes cognizable by the Supreme and Superior Courts on behalf of the State, [and] fil[ing] informations and prepar[ing] bills of indictment." 24 V.S.A. § 361(a). There is no factual dispute that these acts were within her general authority.

not depend on prosecutor's motive and "absolute immunity protects acts of negligence or oversight that occur within the scope of the prosecutor's quasi-judicial authority"). Because defendant's action was taken within her general authority as a state's attorney, she has absolute immunity from this civil suit.

We are not persuaded that we should nevertheless reverse because defendant raised the absolute-immunity argument in a motion to dismiss pursuant to Rule 12(b)(6). The facts as set forth in plaintiff's complaint establish immunity as a matter of law, so the claim can be disposed of through a Rule 12(b)(6) motion to dismiss.[3] See Powers v. Office of Child Support, 173 Vt. 390, 399 (2002) (affirming trial court's dismissal of plaintiff's claims against Office of Child Support employees where facts as alleged in complaint demonstrated that defendants were entitled to immunity as a matter of law). Even if a judgment on the pleadings pursuant to Vermont Rule of Civil Procedure 12(c) is the more appropriate procedural vehicle for analyzing the absolute-immunity defense here, any error in the form of the pleading would be harmless.

Affirmed.

BY THE COURT:

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Marilyn S. Skoglund, Associate Justice

_____

Beth Robinson, Associate Justice

_____

Harold E. Eaton, Jr., Associate Justice

[3] This case is distinguishable from Levinsky, which plaintiff cites for the proposition that immunity cannot be raised in a Rule 12(b)(6) motion to dismiss. In Levinsky, the Court concluded that the case should not have been dismissed on a motion to dismiss because the complaint "clearly allege[d] that the defendant acted beyond the scope of his duties." 140 Vt. at 602. For that reason, the Court concluded that whether the defendant had an absolute defense depended on a factual determination, so his claim for absolute immunity should have been raised in a responsive pleading. Id. Here, there is no dispute that the acts for which plaintiff seeks to hold defendant liable—all associated with defendant's prosecution of plaintiff—were acts generally within defendant's responsibilities and authority as a prosecutor. As reflected above, since Levinsky, this Court has reiterated and clarified that a prosecutor is absolutely immune for prosecutorial decisions of the type at issue here. Accordingly, there are no disputed facts for resolution by a fact finder.