**OPINION SUMMARY**
**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

**SPECIAL DIVISION**

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| EVITA TOLU, | ) | |
| | ) | No. ED109721 |
| Appellant, | ) | |
| | ) | Appeal from the Circuit Court |
| v. | ) | of the City of St. Louis |
| | ) | |
| JAMES REID, PH.D., JAMES REID, PH.D., LLC, JENNIFER WEBBE VAN LUVEN, FITZGIBBONS PSYCHOLOGICAL ASSOCIATES, AND ELAINE PUDLOWSKI, | ) | Hon. Steven R. Ohmer |
| | ) | |
| | ) | December 28, 2021 |
| Respondents. | ) | |

Evita Tolu appeals the entry of a judgment dismissing all claims she asserted against persons and entities who provided professional services pursuant to court orders in an earlier filed child custody modification proceeding.

AFFIRMED.

1. Elaine Pudlowski, the appointed guardian ad litem in the child custody modification proceeding, was protected by quasi-judicial immunity, and Tolu's claims against her for constructive fraud and/or breach of fiduciary duty were properly dismissed as a matter of law, as all of Pudlowski's actions about which Tolu complains were within the scope of Pudlowski's assigned judicial functions.

2. James Reid, Ph.D., who was appointed by the family court in the child custody modification proceeding to conduct psychological evaluations as the court's independent expert to assist the court with its best interest findings, was protected by quasi-judicial immunity, even though the family court was not authorized by Rule 60.01 to appoint Dr. Reid as the court's independent expert. As a result, Tolu's claims against Dr. Reid for breach of the standard care, and for breach of contract, (a claim that is duplicative of Tolu's malpractice claim), were properly dismissed as a matter of law on the basis of immunity, as all of Dr. Reid's actions about which Tolu complains were within the scope of Dr. Reid's assigned judicial functions.

3. Tolu alleged no facts permitting the conclusion that she was Jennifer Webbe Van Luven's patient or that she was owed a fiduciary duty by Van Luven. In addition, the family court's order, which was attached to Tolu's petition, authorized Van Luven to serve only as the children's therapist in the child custody modification proceeding. As a result, Tolu's claims against Van Luven for breach of the standard of care, and for constructive fraud and/or breach of fiduciary duty, were properly dismissed as a matter of law.

4. Tolu's claims against Pudlowski, Dr. Reid, and Van Luven for violation of the Missouri Merchandising Practices Act were properly dismissed because Tolu did not challenge the trial court's conclusion that the 2020 amendments to the Act applied to preclude claims against Dr. Reid and Van Luven sounding in malpractice, and because Tolu did not purchase goods or services from Pudlowski.

5. Tolu's points on appeal failed to preserve any claim of error relating to dismissal of claims against James Reid, Ph.D., LLC, and Fitzgibbons Psychological Associates.

Opinion by: Cynthia L. Martin, P.J.
Gary W. Lynch, S.J., and W. Douglas Thompson, S.J., concur.

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Attorney for Respondent Elaine Pudlowski: Albert J. Bronsky, Jr.

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**