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Welcome to our Supreme and Appellate Court summaries webpage. On this page, I provide abbreviated summaries of decisions from the Connecticut appellate courts which highlight important issues and developments in Connecticut law, and provide practical practice pointers to litigants. I have been summarizing these court decisions internally for our firm for more than 10 years, and providing relevant highlights to my municipal and insurance practice clients for almost as long. It was suggested that a wider audience might appreciate brief summaries of recent rulings that condense often long and confusing decisions down to their basic elements. These summaries are limited to the civil litigation decisions. I may from time to time add commentary, and may even criticize a decision's reasoning. Such commentary is solely my own personal opinion.. Pullman & Comley's Appellate Practice Group of which I am a member includes experienced appellate advocates in almost every area of the law. Should you have a need to consult about a potential appeal, please email me at emccreery@pullcom.com I hope the reader finds these summaries helpful. – Edward P. McCreery

Posted March 30 2016

Supreme Court Advance Release Opinions:

- **SC19436 - Miller v. Appellate Court**

When the appellant's attorney kept missing deadlines and failed to comply with other Appellate Court rules in four pending appeals, one of which might be deemed frivolous, the Appellate Court summoned the attorney to appear and show cause as to why she should not be sanctioned. The attorney appeared and claimed that she had filed matters in a timely fashion, she had legitimate excuses, the infractions were minor, and maybe someone in the Clerk's Office had tampered with the court web site. The Appellate panel noted its disagreement with all of the attorneys claims and suggested she was now misrepresenting the record and refusing to accept responsibility for her conduct.

The court noted that in a deposition of the attorney, she claimed that as a solo practitioner, no one taught her the "ins and outs" of Connecticut practice, so she was ignorant of the rules, and had adopted a hit-or-miss approach to the Rules of Civil Procedure. The Appellate Court then concluded that counsel's actions exhibited a persistent pattern of irresponsibility that included the filing of a frivolous appeal and failure to timely file documents with the court. Accordingly, the court suspended the attorney from the practice before the Appellate Court for a period of six months, and attached conditions upon any application for readmission, and

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referred the matter for any further action to the Disciplinary Counsel.

The attorney was allowed to continue one appeal if she filed an affidavit with the court, assuring it she would comply with its orders. When she did not comply, she was denied permission to pursue the fourth appeal as well. The attorney filed a Writ of Error with the Supreme Court, claiming that the Appellate Court had abused its discretion, asserting that the discipline was disproportionate to the alleged misconduct. The Supreme Court disagreed, and noted the courts have authority to regulate the conduct of the attorneys before them and enforce certain standards of conduct as one of their inherent powers. As part of Caseflow Management, the courts have the right to impose deadlines and enter such orders as are necessary to comply with the court's standards. C.G.S. § 51-84(a) notes that attorneys are subject to all the rules and orders of the court before which they act. The statute is reinforced by Practice Book § 85-2, which allows the court to enter orders that include suspensions from practice. Section 8-4 of the Rules of Professional Conduct is not the exclusive list of misconduct for which an attorney may be sanctioned. The court added that the attorney also misstated the record on appeal, when she argued that this is the first time in Connecticut that an attorney has been sanctioned by a court for not complying with the rules or orders of the court. The Supreme Court added that the attorney's arguments and her briefing reveal a disturbing disregard for, or ignorance of the facts of the underlying cases, which she argues the sanction was not justified.

The Supreme Court noted that the Appellate Court also had the right to refer the matter to the Disciplinary Counsel. The court interpreted that as not a request for the Grievance Panel to impose duplicative punishment, but rather, a request for determination whether the attorney's conduct before the Appellate Court was part of a larger pattern of irresponsibility. Providing a hint to the Disciplinary Counsel, the court adds that it does not know whether or not the Disciplinary Counsel will find other instances of neglect or unacceptable conduct. However, in light of the numerous transgressions before the Appellate Court, it certainly was appropriate to refer the matter. *[Note: This attorney was previously sanctioned by the Federal Court and is currently suing the Office of Disciplinary Counsel.]*

Appellate Court Advance Release Opinions:

- AC152069 - [State v. Abushaqra](#)
- **AC36978 - [Ceddia v. Ceddia](#)**

The Trial Court upheld a downward modification of alimony paid by the husband from \$1,700 per week to \$700 per week. The plaintiff-wife was an attorney who had been making \$55,000 per year, but left to start her own law firm and had no income at the time of the modification. The Trial Court found her earning capacity to be \$75,000 per year with a net worth in assets of \$2 million. The Trial Court found a change in circumstances of the wife principally because the plaintiff's interest in a trust had increased in value from \$1 million to \$1.5 million.

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The defendant-husband at the time of the modification, was an emergency room physician. But there had been a change in circumstances in the husband, as well, who was an emergency room physician whose base salary had increased by \$80,000 to \$275,000 per year, with net assets of only \$600,000. Weighing the change in circumstances of both parties, the Trial Court thought that downward adjustment of the fixed alimony was appropriate.

The ex-wife appealed. The Appellate Court disagreed that the husband had waived any right to seek modification based upon an increase in the value of the trust. In a lesson for carefully drafting documents, the court determined that the husband's waiver of any claim in the trust was in a dissolution agreement that only dealt with an assignment of marital assets. It did not include a specific waiver of the right to seek a later modification of alimony, based upon the wife's interest in the trust increasing in value. The agreement contained no provision, as required by C.G.S. § 46(b)-86(a) that precluded modification of the periodic alimony amount. Accordingly, case law provides that the vesting of a contingent interest can be the basis to define a substantial change in a party's financial circumstances. The ex-husband here is not seeking to claim any portion of the trust itself. If the parties wanted to preclude modification of the periodic alimony, they should have known how to do so. Thus, while the ex-wife is entitled to any increase in the value of the trust asset she was awarded, that increase can still be the basis for a finding of a substantial change in circumstances.

Next, the ex-wife claimed that she had already disclosed in her court documents that the trust might be worth \$1 million "or more." Thus she argued there had been no real "increase" in the trust's value since the divorce. The Appellate Court noted, however, that when defense counsel tried to cross-examine her as to the exact amount of the trust, plaintiff's (ex-wife's) counsel objected strenuously to that line of questioning, pointing out that it said it was \$1 million, and that is all the other side needed to know. Therefore, the Trial Court justifiably relied upon the evidence that the trust was only \$1 million at the time of dissolution, and had now grown to \$1.5 million by the time of the modification. The modification was affirmed.

• **AC37258 - Francini v. Goodspeed Airport, LLC**

This is an interesting case of first impression concerning property law. Plaintiff's property was accessible only by easement across the defendant's property. The easement was also shared by several other property owners. The property owners approached the defendant and asked for permission to modify the easement to allow the addition of utilities. The defendant agreed to that proposal, with all of the property owners except the plaintiff. Accordingly, the plaintiff could not run electricity to his house, and had to power it by a generator. Therefore, the plaintiff turned around and sued the defendant, claiming an easement-by-necessity to add commercial utilities to the already-existing easement.

The Trial Court granted a summary judgment to the defendant, on the grounds that easements-by-necessity may not be granted for any purpose other than to provide physical access to a landlocked property. Acknowledging that it was an issue of first impression, the Appellate Court reversed, noting that easements-

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by-necessity may be extended to include commercial utilities because access to utilities are consistent with the necessity of an easement which is supplying something that is highly convenient and beneficial to the property user.

The decision noted that no Connecticut case could be found that ever granted an easement-by-necessity for utilities. The court noted the basic law that an easement-by-necessity will be imposed where a conveyance by the grantor leaves the grantee with a parcel that would be otherwise inaccessible except over land to the grantor, or where the grantor retained an adjoining parcel which he can reach only lands of the grantee. Requiring easements in such situations is consistent with public policy of disfavoring leaving landlocked useless parcels.

The decision noted that the law of easement-by-necessity must adapt to modern innovations and needs, and cannot be locked in the ancient past. Reviewing other states' decisions, the court noted that this was the trend of the law. Denying a property access to utilities would make it incapable of being used for most modern purposes. This includes such things as water, electricity, and communications with the outside world. It is especially appropriate in the circumstances of this case, where there is already an easement for access to the property, and there will be minimal intrusion by extending existing utilities to the plaintiff's property. The court noted it was not ruling that an easement had to be granted, per se, and the matter was remanded for trial. *[A footnote added that a Connecticut District Court Decision had reached the same conclusion, applying Connecticut law.]*

- AC37581 - [State v. Labarge](#)
- AC36418 - [State v. Daniel B.](#)

- **AC37286 - [Valentine v. Valentine](#)**

In this appeal from a divorce decree, the court upheld an order that the ex-wife had to try to refinance the house once a year for eight years to get the husband off the mortgage, or be forced to sell the property. It did not matter that she currently had a bad credit history. The plaintiff had a college degree and had exhibited the ability to earn money. Therefore, the court's order was not a fantasy that would leave her destitute.

The plaintiff also claimed that the Trial Court erred when, as part of the Final Decree, the Trial Court did not address the defendant's failure to comply with a pendente lite motion that he pay the mortgage while the divorce case was pending and accrued an arrearage of \$32,000. She also claimed that the court did not address the defendant husband's failure to pay a previously issued discovery sanction of \$16,000. This decision held that the Trial Court reasonably concluded that the parties' transfer of the husband's interest in the house to the wife in anticipation of potentially resolving the separation of property before trial, also addressed the issue of any mortgage payment arrearage. If the plaintiff wanted to claim that the husband still owed the mortgage arrearage, he should have brought it up in a motion for contempt before the Trial Court.

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Absent that, it was appropriate for the Trial Court to incorporate the issue of any accumulated mortgage arrearage into the Final Property Distribution Order.

The Appellate Court did agree however that it was error for the Trial Court not to have addressed the unpaid contempt fines in the Final Decree. Contempt findings of a Trial Court may not be ignored when compiling a Final Judgment. One who defies public authority and willfully refuses their obedience does so at their peril. The defendant will not be excused for his contempt merely because the plaintiff was able to obtain discovery information at her own expense through other means. The matter was remanded for a hearing to ascertain what was the exact amount of fines imposed by the Trial Court, and for direction thereafter that the defendant pay those civil fines independent of the property Separation Agreement, as contempt fines are not part of the mosaic of property distribution that may be wrapped up in the property award.

- AC36626 - [State v. Polynice](#)
- AC37031 - [State v. Gilligan](#)

The facts and holdings of any case may be redacted, paraphrased or condensed for ease of reading. No summary can be an exact rendering of any decision, however, so interested readers are referred to the full decisions. The docket number of each case is a hyperlink to the Connecticut Judicial Department online slip opinion. Copyright 2016 Pullman & Comley, LLC. All Rights Reserved.

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