
Week of May 22, 2017

May 26, 2017

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 May 26, 2017

Supreme Court Advance Release Opinions: Released after 11:30 a.m.

- SC19568, SC19569 - [Mayer v. Historic District Commission](#)

The statutory grounds for aggrievement for zoning appeals do not apply to Historic Districts. To appeal a Historic District Commission ruling, one must prove classic aggrievement. Here the abutting neighbors could not appeal the refusal of the commission to allow the removal of a portion of an historic barn on the next door property without showing how their property was being devalued by the proposal. This they failed to do.

- SC19526 - [State v. Swebilus](#)

Appellate Court Advance Release Opinions: Released after 11:30 a.m.

- AC37869 - [Chicago Title Ins. Co. v. Accurate Title Searches, Inc.](#)

Title company sued title examiner who messed up the search and did not catch two pre-existing encumbrancers. The Trial Court awarded the plaintiff all sums paid to settle out with the two claimants to protect its insured's title, but refused to award the company the legal fees it incurred negotiating those

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Week of May 22, 2017

settlements. Both sides appealed. This decision held that the claim sounded in negligence so all the company had to do was establish that its settlement was reasonable. This requirement was satisfied with a finding accomplished through a court pretrial. The defendant argued unsuccessfully that the claim really sounded in indemnification which would have required the plaintiff to additionally prove it was “legally obligated to pay the claims.” Indemnification only arises if there are two tortfeasors; here there was only one. Further the insurer’s contractual obligation to its insured does not convert its negligence action against the tortfeasor to recover its expenses into one seeking indemnification. This decision also held that the Trial Court incorrectly applied the American Rule to deny the plaintiff its attorney fees incurred investigating and negotiating settlements with the title claimants. That rule applies to fees incurred in the main case, not legal fees incurred responding to the acts that arose from the defendant’s negligence.

- AC38753 - [Rinfret v. Porter](#)

Trial Court’s decision to apply the Bad Faith Exception to the American Rule and award the defendant her attorney fees due to bad faith conduct of the plaintiff was reversed. Despite having agreed that the courts of England would resolve a custody dispute between the American father and the English mother, the father still brought a custody complaint in CT and litigated it over four years – often failing to show up for hearings – before it was finally dismissed. This decision held that to impose the Bad Faith Exception to the American Rule, a Trial Court must find by clear and convincing evidence that the disputed conduct was pursued in bad faith **and** was entirely without color. Further the court must make specific factual findings supporting such conclusions with a high degree of specificity.

The Trial Court’s 28 factual findings here did not specify which ones supported the court’s conclusions and they in turn were drawn from vague references to years of prior litigation without specificity. If the plaintiff was motivated to harm the defendant for having exercised her rights in England, that could point to a finding of bad faith. But even if the action here amounted to bad faith, it must also be without color. That can be without color as to the legal principles, or the factual allegations. **Without color as to the facts** can be satisfied by a finding that the offender lied about the key events. An example of **without color legally** can be suing over something that you already settled with your opponent.

Here there was some color to the claim as the plaintiff was a resident of Connecticut. Bad faith but with color precludes the application of the exception to the rule. A footnote criticized the Trial Court for the manner in which it conducted the hearing which amounted to an inquisition where the judge made the plaintiff stand there and rattled off proposed facts and then demanded a response, "True or not true?" and then would make a finding it was true, no matter what the plaintiff or his counsel said...relying upon memory of prior proceedings. This alone might have justified a reversal but for the plaintiff’s failure to preserve that issue on appeal.

- AC37808 - [State v. Joseph R. B.](#)
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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. © 2017 Pullman & Comley, LLC. All Rights Reserved.

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