Appellate Notes

PULLMAN & COMLEY

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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 July 31, 2018

Appellate Court Advance Release Opinions:

AC39140 - State v. Grajales
AC40082 - State v. Vega
AC39272 - Jepsen v. Camassar
AC40248 - State v. Turner
AC39946 - Johnson v. Commissioner of Correction
AC39014 - Steller v. Steller

Separation agreement incorporated into the divorce decree clearly contemplated allowing a second look at the ex-husband's alimony obligations, and insurance obligations meant to back up the alimony, once the ex-husband decided to retire. Thus the trial court was fully empowered to modify the husband's obligations when he indicated he wished to slow down in preparation for retiring by taking a few more weeks of vacation time each year and preparing his dental practice for sale. But the trial court did commit plain error when it based the new alimony amount upon the conjecture that the doctor's annual income would drop from more than $400k/year to about $200k/year, which in turn was based solely on the doctor's testimony that would be the likely result of taking more vacation time. It also committed plain error by failing to consider the

doctor's non-wage income. And finally – it was error to conclude the doctor's medical practice was on the verge of being sold (wherein the ex-wife was entitled to a percentage) when there was again no solid evidence of a pending sale.

AC39426 - Wells Fargo Bank, N.A. v. Melahn

This one comes up all the time for you litigators but if you searched for this decision, you would never find it. If you successfully strike an opponent's complaint and they merely re-assert the same allegation again without addressing the deficiency, then you can ignore the re-pleading and proceed to the next step – which in this case was moving for judgment.

AC38674 - State v. Stephenson AC39655 - Carter v. Watson AC38934 - Aurora Loan Services, LLC v. Condron

When the loan documents provided that the borrower had to be provided notice of default before the lender could foreclose on the collateral, the lender shot itself in the foot by sending the default notice by certified mail. At the time of foreclosure, they were only able to show the certified letter was sent. They could not produce the green receipt card to evidence the borrower actually received the notice. Had the lender merely sent the notice of default by first class postage, then the law would have imposed a presumption of delivery. The foreclosure in favor of the lender was revereded and judgment was ordered for the borrower. That's why we recommend that if you are going to send something certified, send it by both certified mail and regular mail and state that on the letter.

AC38174 - Bridgeport v. Grace Building, LLC

Housing court judge committee reversible error when it refused to reopen a default judgment against the tenant. The trial court had granted a request of the defendant's attorney to withdraw on the eve of trial and delayed the trial by four weeks to allow the defendant to obtain new counsel. The defendant's managing member showed up and announced he had brought an attorney to court with him but he refused to file the appearance and left. Plaintiff confirmed that was true. The trial court denied a request for more time and entered a default judgment. A few days later a new attorney appeared and filed a motion to reopen. The trial court denied the motion asserting dilatory tactics of the defendant. The appellate court reversed holding that all along the defendant had asserted it had good defense to the foreclosure – namely it was a 99 year lease and rent payments were covered by environmental remediation payments. The defendant had not actually caused any significant delays in the proceedings. Rather it was the plaintiff who caused delays by misstating facts in the complaint and taking six months to fix them. Finally, the appeal was not moot despite the defendant's ejectment from the property because if the eviction was wrongful, it could still ask for restoration of its possession as there were 90+ years remaining on the written lease.

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AC39772 - Hirschfeld v. Machinist

A practical inability of the husband to divide some passive investments with the ex-wife as envisioned by the divorce agreement precluded the trial court from holding him in contempt. The ex-wife could not point to a modification to the agreement to argue her position because it was never incorporated into the court's judgment. The ex-husband could also not be held in contempt for unilateral lowering the alimony because he had a plausible argument to justify his actions. The problem was more attributable to the confusing language of the agreement.

AC39039 - State v. Kukucka
AC39398 - Windsor v. Loureiro Engineering Associates

Architects and engineers must be sued within seven years of the completion of the project they designed. But what if there is no ongoing construction project associated with the professional's work? How do you measure the statute of limitations (SOL)? Here the engineering firm was asked to do a report on the structural integrity of the school and the ability to upgrade it. Several years later the roof collapsed and the town sued, but well more than seven years after the completed report. This decision held that first, it was proper for the trial court to abate the jury trial and instruct the parties to brief the SOL issue as if they were arguing a summary judgment. Thereafter the trial court properly concluded the seven years started to run when the report was completed and accepted by the town. Sections of the report that referenced further testing that need to be done to reach some conclusions did not act as a tolling of the SOL.

AC40240 - Anderson v. Ocean State Job Lot
AC39791 - Gainey v. Commissioner of Correction
AC39175 - Schimenti v. Schimenti

Ex-wife moved to hold husband in contempt for his refusal to pay the initiation fee to the Innis Arden golf club as envisioned by the separation agreement. The husband argued the wife was looking for a higher level of membership than the agreement contemplated. The trial court judge did not like that argument and made some comments that resulted in her decision being over turned. She said that the arguments hit a nerve with her (about how women are treated as second class citizens at some "male dominated" clubs) and thus the wife would be entitled to the same level of membership as her ex-husband had at his club and that in deciding the issue she admitted bring her life "experiences" and prejudices" on the topic to the table. The appellate court reversed saying the judge should have only interpreted the intent of the parties as evidenced by the language of the agreement and not interjected her admitted prejudices into the decision which resulted in "plain error."

AC40445 - Packard v. Packard
AC40020 - State v. Artiaco
AC40760 - In re Mariana A.

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The factual summary, or even the legal conclusions, of any case may be summarized, redacted, paraphrased or altered at the author's discretion for ease of reading. Accuracy of the summary cannot be guaranteed and the viewer is referred to the actual case for an exact reading. The Docket number should be a link to the full decision.