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## Week of August 1, 2016

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](mailto:emccreery@pullcom.com). I hope the reader finds these summaries helpful. – Edward P. McCreery

Posted August 24, 2016

### Supreme Court Advance Release Opinions:

- SC19589 - [Velecela v. All Habitat Services, LLC](#)
- SC19589 Concurrence - [Velecela v. All Habitat Services, LLC](#)

Claim for negligent infliction of bystander emotion distress asserted by the wife who found her husband crushed by a fallen vehicle at work was barred by the exclusivity provision of the Workers Compensation Act, just as would be a claim by the decedent husband, because it's a derivative claim. The concurrence added that had the complaint alleged willful or malicious conduct on the part of the employer, the result would have been different.

### Appellate Court Advance Release Opinions:

- AC36936 - [David P. v. Commissioner of Correction](#)
- AC38006, AC38007 - [Zilkha v. Zilkha](#)

Ex-husband who had beaten his wife and then blamed it on the kids claimed (1) the Trial Court should have found his financial circumstances changed and altered its financial orders; (2) that it was prejudiced when it failed to do so; and (3) that he only agreed to the original decree (10 years before) under duress. The Trial

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Judge had made a statement that it was simply ridiculous that the parties had spent over \$1 million fighting over motions, but no one sought to recuse him at that time. The alleged duress was the wife's threat to object to accelerated rehabilitation type treatment of his physical assault. The defendant's expert claimed that his income earning ability dropped from \$250 thousand a year to \$20 thousand per year (now get this) because no one would hire him after newspaper articles had stated the defendant had wilfully violated financial and federal security laws, was a loose cannon employee, had been associated with insider trading, had lied to authorities, and was responsible for a serious incident of family violence perpetrated against his wife. Only after the motion to modify was denied did the defendant move to disqualify the judge for the prior statements. The Appellate Court held the disqualification effort was too little, too late, and would not be reviewed. It also held that the refusal to modify the financial orders was consistent with 46b-86 where the request cannot be based upon by the movant's own extravagance, neglect, misconduct or other unacceptable reason. The Trial Judge did not have to give any credence to the expert's testimony. No effort to raise the issue of duress over a ten year span was justification for the Trial Court to deny the claim.

- AC37189 - [Placide v. Commissioner of Correction](#)
- AC37108 - [Petrov v. Gueorguieva](#)

PB 25-26e requires motions to modify custody to specify the grounds for the request. Here the trial modified custody to provide primary residence would be with the mother who relocated to New York because the child was about to start school there, even though that ground was not listed in her Motion. Due process in custody decision does require notice under the pleadings. But the trend is to construe all civil pleadings broadly as only requiring that necessary to put the respondent on notice of a party's general theory so they can't claim surprise or prejudice. This is especially true in custody disputes where the Trial Court is cloaked with the duty to independently ascertain the child's best interests. Certainly permanency of residence for schooling is a justified reason to alter custody and the defendant cannot claim surprise when the need to address the issue in the future had been repeatedly mentioned. (The case discusses the elements that go into a decision to change custody).

- AC37679 - [Apodaca v. Commissioner of Correction](#)
- AC38112 - [Baldwin v. Commissioner of Correction](#)
- AC37344 - [Holdmeyer v. Thomas](#)

Judgment evicting Tenant was reversed. Tenant had filed a complaint with the Health Department that the apartment was infested with bed bugs. Before the expiration of six months, Landlord brought an eviction action. Under those facts, the statute creates a rebuttable presumption that the eviction is retaliatory and shall not be allowed. The Landlord can rebut the presumption however only by proving one of the following: (1) Tenant's use was illegal; (2) Landlord wished to move in themselves; (3) Tenant caused the problem; or (4) the Notice To Quit was issued before the complaint. Landlord failed to prove one of these four reasons. A footnote adds the Tenant's complaint must have been made initially in good faith.

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- AC37861 - [Cornelius v. Commissioner of Correction](#)
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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. © 2016 Pullman & Comley, LLC. All Rights Reserved.*

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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.