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## Week of August 28

### Appellate Court Notes: Week of October 28

*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 28, 2015*

#### Supreme Court Advance Release Opinions:

- SC19309 - [Staton v. Commissioner of Correction](#)
- SC19195 - [Campos v. Coleman](#)
- SC19195 Dissent - [Campos v. Coleman](#)

In a 4-3 split decision the Court insured that the cost of living will be going up in CT as your insurance premiums go up. Bicyclist was struck and killed by truck. The Trial Court granted a Motion to Strike the claim of loss of parental consortium. The jury awarded \$4 million in damages and then reduced that by 40% contributory negligence. Only the children appealed over the striking of their claim. The Court reversed its 1998 decision and will now allow claims by minor children for loss of parental consortium. The Motion to Strike was set aside and a new trial on the children claims was ordered. The parameters of this new cause of action are: the child must have been born (or adopted) before the tort; must be under 18; must join their claim with that of the parents; can only recover up to the age of 18 if the damages flow past that; and can only recover up from the date of the tort up to the date of death of the parent. In this case only one child qualified

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and could only recover for the three days between the accident and the death of their father in the hospital. In a footnote the Court added that seeing your parent suffering in the hospital does not qualify as recoverable damages under this new tort, as that is a bystander emotional distress claim and you have to be present and saw the tort to recover for that. So while this plaintiff may have a nominal recovery, they certainly caused a sea of change in the law which the majority acknowledged may cause CT insurance rates to go up. (Good grief.) The dissent argues it was up to the legislature, not the courts, to make such laws, and in fact many of the jurisdictions the majority relied upon to justify their opinion changed the law legislatively. A majority of states appear to still disallow the claim.

### Appellate Court Advance Release Opinions:

- AC36186 - [347 Humphrey Street, LLC v. Board of Zoning Appeals](#)

This is another example of the local agency granting a variance and the courts on appeal taking a hardline that you have to show a hardship. A long time deli and food market that was a non-conforming use in a residential zone sought to expand its footprint to improve rear delivery access to alleviate street congestion, improve handicap accessibility, improve access and seating for its customers, etc. The Court noted these are not showings of a legal hardship justifying a variance.

- AC36997 - [Carriage House I-Enfield Assn., Inc. v. Johnston](#)

Condo Association entered into a contract with unit owner allowing expansion of a deck if the owner added a privacy wall on one side of the deck. The Town's PZC granted permission to the unit owner for the expanded deck but not the privacy wall. The Association warned the unit owner not to proceed, but she did anyway and the deck was built. As built, it also violated other provisions of the contract. The Association then went to the PZC and got permission for the addition of a privacy wall. The Association notified the unit owner, they could now add the privacy wall, or take down the deck, or face daily fines. The unit owner still refused to add the wall. The Association imposed daily fines and then sought to foreclose those fines. The Trial Court ruled in favor of the Association. On appeal it was held that the contract with the Association was not "illegal" just because the Association inserted a requirement for an improvement within a common area over which the unit owner had no control. The Association went back and fixed that oversight on its own. To the extent the unit owner had a claim of "impossibility of performance," (for requiring an improvement in a common area), the unit owner waived that defense by not raising it during trial.

- AC36476 - [State v. Davis](#)
- AC36567 - [State v. Parnoff](#)
- AC36605 - [State v. Logan](#)
- AC36235 - [Braham v. Newbould](#)

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- AC36350 - [State v. Martone](#)
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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. Copyright 2015 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.