
Week of August 3

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 August 5, 2015

Appellate Court Advance Release Opinions:

- AC35173 - [State v. Mosback](#)
- AC36907 - [Rodriguez v. Commissioner of Correction](#)
- AC36499 - [Zilkha v. Zilkha](#)

After a judgment of dissolution, the plaintiff learned that her ex-husband had not disclosed a claim against his former employer, which had settled for \$1.4 million, with a final installment of \$700,000 still due and owing. A motion was made to reopen the judgment and to enjoin the distribution of the remaining money. The Trial Court ordered that \$250,000 from the forthcoming settlement installment be held in escrow. After holding an Oneglia hearing, the Court concluded that there was probable cause of fraud and allowed discovery to proceed. But as of the date of the appeal, the plaintiff had not taken advantage of the permission to undertake discovery. In the interim, the attorney for the minor child filed a post-judgment motion for fees for himself, the guardian ad litem and the custody evaluator. The Court ordered \$125,000 of the escrow to be disbursed to those individuals.

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The ex-husband appealed, claiming the Court lacked authority when the judgment of dissolution had yet to be opened to order disbursements from the escrow. The Appellate Court agreed but for a different reason. It held that the Trial Court lacked authority to order distributions from the escrow account to pay for the attorney for the child, the guardian ad litem and the custody evaluator from the escrow account. The Trial Court did not have authority to choose which of a party's assets must be used to pay their share of such fees, but the Court did have authority to award those parties their fees, and to direct who was responsible for the payment.

The Trial Court did properly prohibit the ex-husband from testifying as to his observations regarding the guardian ad litem's alleged improper conduct in an attempt to seek a reduction of those fees. It is not proper to assert that a guardian ad litem committed improper conduct by not advocating for a party to exercise their visitation rights. The Trial Court had scolded the counsel for even asking the question, claiming it was ludicrous and improper, and that it would not tolerate such a line of inquiry. The Appellate Court held that the Trial Court properly precluded the defendant from offering his lay opinion about the propriety of the conduct of the guardian ad litem.

- AC36836 - [Riveiro v. Fresh Start Bakeries](#)

The Appellate Court rejected the employee's claim that the Commissioner should not have allowed the defendant employer to challenge whether his claimed injury arose out of and occurred within the scope of the plaintiff's employment, when the employee alleged that the employer had failed to provide sufficient notice in their Form 43 pursuant to C.G.S. § 31-294(c). The Form had said that the defendants challenged whether there was medical evidence supporting the causal connection between the back injury and the employment, and went on to liability.

The Appellate Court agreed with the Commissioner, that this was sufficient to deny the claim, as it would contradict the history given to the medical providers and thus, a denial of the claim is part and parcel of challenging the medical evidence. Utilizing the term "medical evidence" is not an admission that the injury occurred during the course of employment. Thus, the Commissioner could consider and accept the employer's evidence that the employee was not at work that day, and never reported any injury while on the job; and therefore, the claim could be disallowed.

- AC36589 - [Lawrence v. Cords](#)

Dissolution decree required defendant to pay plaintiff \$246,000, and thereafter, plaintiff was to quit claim her interest in the homestead to the defendant, and the defendant was to hold the plaintiff harmless as to all notes and mortgages. If the sum was not paid within sixty days, the defendant was to remove the cloud on a second piece of property and have it sold by a broker, and after payoff of the mortgage, and then have the \$246,000 paid to the plaintiff. After several months, the plaintiff moved to have the defendant held in contempt because he had neither paid the sum nor taken any steps towards listing the second property for sale.

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The Trial Court found that the defendant had sufficient assets and had stopped paying the mortgage on the house, and thereafter held him in contempt and directed that he could either pay the \$246,000 he owed plus the back mortgage payments, plus attorney's fees, or he could list the house for sale within seven days and pay the monthly mortgage payments going forward.

The ex-husband appealed, and claimed the Trial Court's direction was an improper post-dissolution division of property. The Appellate Court disagreed and said it was a clarification of the original orders under the Court's continuing jurisdiction to clarify an ambiguity in a prior judgment, as long as the clarification is not manifestly unreasonable. Read as a whole, the original dissolution judgment logically required the defendant to pay the mortgage payments on the marital home until he either bought out the plaintiff's interests or sold it.

But the Appellate Court agreed with the ex-husband that the original order was too vague to hold him in contempt, because it was a joint burden to list the property for sale, not his alone, and the obligation to pay the mortgage payments was not clearly stated in the original order. A finding of contempt cannot rest upon an implied obligation in a court order to pay the monthly mortgage payments. The underlying Court order must be sufficiently clear and unambiguous to support a finding of contempt.

- AC36225 - [Beck & Beck, LLC v. Costello](#)

Law firm sued their former client in Small Claims Court for unpaid legal fees for their prior representation of the client in his action brought against his condominium association. The former client filed a motion to transfer the case to the regular docket, along with an answer, special defenses and a four-count counterclaim, alleging breach of contract, good faith and fair dealing, professional malpractice, and CUTPA. The counterclaim was stricken on the grounds that only a preliminary motion was denied in the underlying action with the right to try again with an expert, but the client opted not to try again. The defender former client then cited in the firm's principal, and asserted the same counterclaim against him. Those counterclaims were stricken, as well.

The Trial Court's decisions asserted that the defendant had failed to assert "justiciable claims," thus depriving the Court of jurisdiction. In rendering its decision, the Trial Court also said that it relied upon the record of the underlying case. The case then proceeded to trial on the collection action where the law firm won a whopping \$700 and then was denied a request for an award of attorney fees. Then to add the firm's headaches, the Appellate Court reversed holding that in granting the Motions to Strike, the Trial Court strayed beyond the permissible bounds of its authority in assessing the legal sufficiency of the counterclaims. The Trial Court should have limited itself to the allegations of the counterclaims and not looked into the merits of the claim by reviewing the underlying court file in the original lawsuit against the condo association. The judgment was reversed, and remanded to the Trial Court, with a footnote suggesting that it was also improper for the law firm to move to strike the second counterclaim against the individual partner. That motion to strike should have been filed by the individual defendant, not the law firm.

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Another footnote commented on the denial of the request for attorney fees pursuant to C.G.S. §52-251(a) (awarded to prevailing parties after an improper removal from small claims court). While the law firm now claims it was entitled to its attorney fees, it failed to appeal that issue.

- AC36184 - [Carter v. State](#)
 - AC37168 - [Anthony A. 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. Copyright 2015 Pullman & Comley, LLC. All Rights Reserved.

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.