Appellate Notes

PULLMAN & COMLEY

A publication of Pullman & Comley, LLC

Week of January 5

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 based on my own particular field of practice, so you will not find distillations of the many criminal and matrimonial law decisions on this page. I may from time to time add commentary, and may even criticize a decision's reasoning. Such commentary is solely my opinion . . . and when mistakes of trial counsel are highlighted because they triggered a particular outcome, I will try to be mindful of the adage . . . "There but for the grace of God . . .." I hope the reader finds these summaries helpful. – Edward P. McCreery

Posted January 5, 2015

• SC19037 - Brody v. Brody

In this multi-million dollar matrimonial dissolution action, the SCT took the opportunity to clarify Connecticut law on civil contempt. The court set aside prior Appellate precedent and held that henceforth indirect civil contempt must be established by "clear & convincing evidence," not by the preponderance of the evidence. (The underlying judgment of our own Lynda Munroe was upheld but that of our former Bill Wenzel was reversed.)

• SC19168 - Guarino v. Allstate Property & Casualty Ins. Co.

The auto insurance provider of UIM coverage* is entitled to summary judgment dismissing the UIM claim as soon as the plaintiff settles with any potential responsible tortfeasors for a dollar amount that exceeds the UIM coverage limit without the need to go back to the trier of fact to then allocate fault to see if the allocation results in a dollar amount exceeding the coverage.

[*For those unfamiliar with UM / UIM coverage, it is meant to cover you when the person who rams into you has no or insufficient insurance to cover your injuries. But every dollar you collect reduces your UN/UIM coverage. So if you have $20,000 of UM/UIM coverage and collect $19,000 from the tortfeasor, you only have $1,000 left which you can get from your own insurer. Thus you should NEVER elect to take the minimum UM/

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UIM coverage. Even a $300,000 limit may not be enough. If you have a $1,000,000 liability policy, you should ask for $1,000,000 in UM/UIM coverage. It costs pennies to add to the limit. Remember if an uninsured or underinsured (one with only 20k of coverage) driver seriously hurts you, the UM/UIM coverage may be the only pot you will have to recover for your injuries.]

- SC19275 - Rocky Hill v. SecureCare Realty, LLC

The issue in this case was when does a state contractor become an arm of the state and thus enjoy immunity in the same manner as the state? Here the state put out an RFP for nursing home operators to set up state reimbursed nursing homes to house ill convicts. The proposals had to be on land already zoned for nursing homes. The defendant entered into a contract with the state to operate a home on land in the town of the plaintiff representing it was already zoned for that use. The town disputed that and brought a dec action to determine that a nursing home could not be built there. The trial court dismissed the town's lawsuit holding that the contract to provide a state service made the defendant an arm of the state and thus immune from the lawsuit. It also held that the enabling statute for the nursing home proposals trumped local zoning regulations. The Supreme Court reversed. It noted that there is an eight part test to determine if a contractor is essentially performing a government function and thus entitled to immunity as follows: ''(1) the state created the entity and expressed an intention in the enabling legislation that the entity be treated as a state agency; (2) the entity was created for a public purpose or to carry out a function integral to state government; (3) the entity is financially dependent on the state; (4) the entity's officers, directors or trustees are state functionaries; (5) the entity is operated by state employees; (6) the state has the right to control the entity; (7) the entity's budget, expenditures and appropriations are closely monitored by the state; and (8) a judgment against the entity would have the same effect as a judgment against the state.'' All the factors go into a blender before an answer pops out and no one factor determines the answer. Here the trial court used the correct test but reached the wrong conclusions. In particular factor #3 was deemed to have been the contractor's Achilles heel. The entity was not entirely financially dependent on the state. It had invested significant sums of its own money in the project that were not subject to reimbursement and would receive funding from Medicare going forward. Therefore it could not be deemed an arm of the state. Further the court found the enabling statute did not trump local zoning. The facilities had to be compliant with local zoning. Nothing in the statute said they could get around that. The case was remanded for a determination on the merits.

- AC35533 - State v. Ayala
- AC32247, AC32830 - Gagne v. Vaccaro

In this bitterly contested 15 year foreclosure fight, the defendant filed 4 interlocutory appeals. This decision held that the trial court could: (a) award additional attorney fees to the foreclosing plaintiff for the costs of the appeals; (b) add interest onto the attorney fee award if it was not paid when ordered; (c) refuse to allow the defendant to conduct extensive discovery against the plaintiff's law firm about their attorney fee request

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when detailed time entries were already provided; and (d) hold the defendant in contempt of court if all the fees were not deposited with the court by the judge's deadline .....but.....the trial court should have first held an evidentiary hearing before holding the defendant in contempt of court to allow him an opportunity to show why he should not be held in contempt including a late payment of the funds to the clerk.

- AC35497 - Millan v. Commissioner of Correction
- AC35849 - Previti v. Monro Muffler Brake, Inc.

Workers Comp Commissioner was within his authority to reduce the employee's claim for attorney fees for unreasonably delay in handling the claim by the employer from $1400 to $1 because the employee failed to submit evidence of exactly what was the amount of added attorney fees caused by the delay.

- AC35133 - Taylor v. Commissioner of Correction
- AC34491 - State v. McNeil
- AC35450 - State v. Bozelko
- AC36016 - Oldani v. Oldani