Appellate Notes

PULLMAN & COMLEY

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Week of March 23

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 March 23, 2015

- SC19139 - State v. Johnson
- SC19062 - State v. Johnson
- SC19200 - Feliciano v. Autozone, Inc.

The Supreme Court reversed both the Trial Court and the Appellate Court, which had approved summary judgment in favor of the employer upon the plaintiff's claims that she had been improperly terminated. She had alleged that she was a Jamaican Rastafarian, and that her supervisor referred to her in derogatory terms and said she was "likely to steal." She also claimed that the supervisor had rubbed against her, and when she complained, he swore at her and often made comments about her looks and her hair. She was terminated upon recommendation of headquarters when it was found that she would leave her cash register "open" with her pass for other employees to use, in violation of company policy. The court agreed that there was no evidence that her termination had been based upon her race, and even if her boss made the statements attributed to him, there was no evidence that her termination was based on that. She had never been accused of stealing.

But the court reversed the Trial Court's decision throwing out her claims that she was subject to a hostile work environment. The Appellate Court had affirmed the Trial Court's decision on this issue upon the alternate grounds that the plaintiff had not specifically pled the claim of hostile work environment under

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§46a-60. The Supreme Court disagreed and stated that although the plaintiff's complaint was not a "model of clarity," it was sufficient to raise a hostile work environment claim under §46a-60(a)(8)(C). That was reinforced by the plaintiff's answer to discovery and her opposition to the motion for summary judgment which all clearly asserted a hostile environment claim. Failing to specifically plead the statutory citation does not mean the defendant was not sufficiently apprised of the appropriate claim. Turning to whether sufficient evidence existed to defeat summary judgment on the hostile claim, the court noted there must be more than a few isolated incidents and more than sporadic slurs. Those requirements, however, were satisfied here, when over a period of just a few months, the supervisor allegedly rubbed against her three times, sent her text messages, and ridiculed her several times. This was sufficient so that a reasonable juror might conclude that the workplace was permeated with discrimination, intimidation, ridicule and insults sufficiently severe and pervasive to alter the condition of employment to one of an abusive working environment. Summary Judgment should not have been granted on that claim.

- AC35605 - State v. Davis
- AC36446 - Gorski v. McIsaac

Motion to modify child support by the husband was denied after application of Massachusetts law, which allows the imposition of support after the age of eighteen while a child is still in college.

- AC36202 - Moody v. Commissioner of Correction
- AC36655 - Solway v. Ray

Three children owned 50 percent of a Westport home after their father died and their mother owned the other 50 percent. At some point the children signed an agreement to ensure their mother had a life use of the property and that her new roommate would be allowed 180 days to vacate after she dies. There must have been a falling out because next the children sued their mother petitioning the court to order a sale of house. The mother claimed that the children waived their right to a Partition Sale by entering into the life estate / vacating agreement. The Trial Court ordered that a physical partition was impractical, and ordered a partition by sale pursuant to C.G.S. § 52-495. The Appellate Court agreed, noting that while there can be circumstances where a separate agreement entered into between the parties, such as a trust instrument, might defeat the right to a partition action, it is otherwise a matter of right. The creation of a life estate alone is not sufficient to imply a waiver of the right to partition, because the statute contemplates a partition by sale may be subject to a life estate. Similarly, the provision to allow the friend to remain on the property falls short of the type of agreement where the parties have voluntarily substituted an alternate method for dealing with their common interest in the property than what the statute otherwise provides.

- AC36368 - Martocchio v. Savoir

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Dispute over grandparent visitation rights.

• AC36114 - Emerick v. Freedom of Information Commission

An appeal from an adverse FOIC decision must be filed within forty-five days. That forty-five days commences when the Commission orally denies a motion to reconsider its decision, and NOT from the date notice of the denial of reconsideration is mailed to the parties. C.G.S. § 4-183(c)(2) is the applicable statute, and unlike other subdivisions within the statute, there is no mention in it of the mailing sate of the final decision.

• AC36493 - Commission on Human Rights & Opportunities v. Echo Hose Ambulance

The plaintiff was an African American female who claims she was subject to verbal harassment and an abusive work environment on a continuing basis as an ambulance attendant until she was asked to leave. As a volunteer, she was voted out of the ambulance program after a membership meeting, and she was informed there was no right of appeal. She filed a complaint with the CHRO, and the Ambulance Corps and the City moved to strike the claim of employment discrimination on the grounds that she was not an employee of either entity. The referee granted the motion, claiming that the plaintiff had not shown that she received any remuneration for services, and therefore, there was no employer/employee relationship. The CHRO appealed to the Superior Court which affirmed the referee's decision. The Appellate Court agreed, noting that no Connecticut decision had previously construed the term of "employee" under CFEPA, and certainly the agency had not, and therefore, review by the Court would be de novo without deference to any prior agency interpretation of the law.

The court concluded that it was appropriate for the referee to have applied prior interpretation of the term under federal law. Clearly, under CFEPA, the plaintiff must have been an employee. That is easy to determine when the employee receives traditional compensation, but it is less clear when the purported employment is for non-monetary benefits. Non-monetary remunerations can exist, however, which trigger an employment relationship, such as health insurance, sick pay, disability, pension benefits, life insurance, and other attributes.

Nonetheless, it would be inappropriate to use Connecticut's common law "right of control" test," (as CHRO argued) because that is generally applied to distinguish between employees and independent contractors. You must first determine whether the person has, in fact, been "hired." Connecticut has historically looked to the Federal Courts' interpretation under CFEPA, and those decisions apply the hiring and remuneration tests. Only if the person has been "hired" and there is some form of remuneration, would it then be appropriate to move on to the right of control test. Nowhere did the plaintiff allege she received any kind of remuneration from the ambulance service, nor that she received any other type of substantial type of benefits. Therefore as a pure volunteer she could not assert a claim under CFEPA and CHRO would have no jurisdiction over her complaint.

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- AC35721 - State v. Negedu

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.