Appellate Notes

PULLMAN & COMLEY

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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

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Supreme Court Advance Release Opinions:

- SC19516 - Doe v. Boy Scouts of America Corp.
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A new trial was ordered when the Boy Scouts of America (BSA) was found liable by a jury to the tune of $12 million for the molestation of a scout by a slightly older scout who was his troop leader. The plaintiff's theory at trial was not that the BSA was aware of this scout's propensities, but that it did not generally implement safety programs and mandatory adult supervision on all overnight camping when it knew such events had happened in the past. The Court held that the jury should have been instructed (as requested by the BSA) that the BSA could not be liable for the unanticipated intentional or criminal acts of another unless its conduct increased the risk of the misconduct that occurred here such as knowing there was a risk and failing to take steps to prevent it. But the Court suggested the plaintiff had presented all the elements of that test so it would be up to a new jury with a proper instruction to decide the case again. For purposes of remand, the Court went on to reject several other defenses of the BSA. Whether the actor had known propensities to commit the act is a factor for a jury to consider, though one that seems to be missing here, and not the only nor decisive factor. The Court all but said one must assume that a certain percent of the population are

perverts, both old and young, who would love nothing better than to go camping amongst some young scouts. But merely pointing to the unanticipated conduct of the actor is not a defense. Here the "peculiar conditions" the law requires to impose a duty on the BSA could very well be deemed by the jury to have been allowing scouts to camp together without adult supervision in "remote and secluded spaces."

The jury could conclude this increases the risk of molestation as compared to being exposed to the general populace, but a defendant is free to put on evidence it does not. The Court held that the 30 year *after majority* statute of limitations (SOL) in 52-577d applied for sexual abuse of a minor (whether negligent or intentional) and thus applied here, even though BSA was not the perpetrator. But the Trial Court incorrectly failed to apply the three year SOL to the CUTPA claim as that limitation is right in the statute that creates the cause of action.

Three justices disagreed that the 30 year SOL applied here to a non-perpetrator. Two justices thought the failure to provide the proper instruction on the law was a harmless error because the plaintiff had established all the elements of the cause of action. In a reply footnote the majority said that's silly - it is error not to instruct the jury on the proper law when it is specifically requested by the defendant, as happened here.

• SC19563 - Connery v. Gieske

Husband initially said he had no objection to the will, then he did file objections, elections for spousal share, demands for document production, attempts to depose the executor, demands for personalty, and a claim to remove all disputes to the Superior Court. A Probate hearing was held where that Court determined only the personal property dispute was eligible for removal and the other demands were denied. The husband filed a writ in Superior Court claiming the Probate Court lacked jurisdiction. The Trial Court deemed that an untimely appeal under 45a-186(a) and dismissed the suit. On appeal the husband claimed it was not an appeal, but rather an attempt to vindicate a right to a jury trial. The Court said nonsense - it's an appeal - but it should not have been dismissed because it was not untimely because the Probate Court took two years to mail out notice of its decision and the appeal period does not begin to run until notice is mailed.

Appellate Court Advance Release Opinions:

• AC37710 - Mariano v. Hartland Building & Restoration Co.

Injured worker sued subcontractor when bridge under construction collapsed. Employer of worker intervened to recover workers comp payments. Subcontractor then impleaded the engineer on the job for contribution. Engineer then cross claimed against the employer claiming it was the one that was actively negligent. Employer then moved for summary judgment on the cross claim asserting the protections of the workers comp act and said there was no contract imposing a duty on it to the engineer. The engineer responded - "Oh yeah - what about that silly little contract you had with the State DOT requiring you to indemnify it from all claims to protect it....and its 'agents?'.....and I know for a fact that they deem me to be their agent." The Trial Court granted summary judgment to the employer claiming the affidavit of the engineer was conclusory and

Week of October 3, 2016

without evidentiary support. The Appellate Court reversed and said even if it was conclusory, it switched the ball back into the employer's court to rebut entirely any suggestion the engineer could be deemed an agent of the State.

• AC37905 - Great Country Bank v. Ogalin

A post-judgment property execution may be used to pursue money owed by a corporation to one of its employees for unreimbursed expenses. Here the defendant was employed by his family corporation and was deposed and disclosed he had business expenses that he was owed. Then the defendant's daughter who was in charge of the corporation was deposed and testified that she had not gotten around to reimbursing those expenses. But during a turn over hearing, she swore all the expenses were already reimbursed. The Trial Court could choose to disbelieve the second testimony and concluded the company owed money to the defendant and order it turned over to the tune of $20,000.

• AC38119 - Nogueira v. Commissioner of Correction

• AC37880 - Juma v. Aomo

Summary dissolution opinion of no merit.

• AC37703 - State v. Collymore
