Week of September 2

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 September 2, 2014

• SC19191 - Dorry v. Garden

The Supreme Court held that the *accidental failure of suit statute* saves a complaint that is not properly served within the original statute of limitations period, no matter how defective the original service of process, so long as the defendants received notice of the claim within the original limitations period. Under the statute, the plaintiff is given a whole extra year to properly serve the complaint. [I never understood why the legislature saw the need to make it a whole year.] Here, the marshal left process at the office of the defendant, and then erroneously reported "in-hand" service. The defendant admitted that he did see the complaint, left at his office before the expiration of the statute of limitations. This decision also held that the savings clause applies even when the marshal has delivered the papers on the eve of the statute of limitations, and is given thirty days to effectuate service. In that situation, the statute will still apply even when the defective original service was attempted after the SOL expired.....so long as the defendant received notice of the complaint sometime within the extra thirty days after the statute of limitations.

• AC35097 - Hall v. Commissioner of Correction

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- AC33354 - Fox v. Fox
- AC35997 - Jahn v. Board of Education

High school swim team participant sued the Board of Education when, during warm-up laps, another swimmer dove into him. He claimed that the coach was negligent when he left the swim team unsupervised during the warm-up drill, and should not have permitted multiple swimmers within the same lane, and that since he was a student at the school, he satisfied the "identifiable class subject to imminent harm" exception to governmental immunity under C.G.S. § 51-557n. The Appellate Court upheld the grant of summary judgment in favor of the municipal defendant.

First, the Court concluded that this was a discretionary act because boards of education are given substantial discretion to determine education policy, including the supervision of sporting events. This triggered governmental immunity. Next, the Court had to determine if an exception to that immunity had been properly pled. It disagreed with the plaintiff's claims that he had satisfied the identifiable person subject to imminent harm exception to governmental immunity. Here, the plaintiff only pled and briefed that he was a member of an identifiable **class**,*i.e.*, students of a school; as opposed to an identifiable ***individual***. Different rules apply to a class vs and individual claim of exception to immunity. The plaintiff's complaint and briefing were consistent in arguing the "class exception". The current standard to plead a "class exception" is the need to show it was an involuntary activity. Thus all students being forced to take a bus which is then involved in an accident might make the students on the bus eligible for the "class exception". Therefore, the Trial Court properly concluded that the defendant had not raised the identifiable individual exception, and he failed to point out to the Court how, as a member to the overall class of students, he would have been identified as a potential victim to this event. Rather, he made general arguments of school children being made subject to possible harm from extracurricular school activities. The Court held the plaintiff to his pleadings, and would not let him argue a different legal theory on appeal. The swim team was not an involuntary activity. The plaintiff chose to participate on this swim team when he joined it.

[I wonder if the outcome would have been different if he had pled that he was an identified individual swimmer put into danger by being assigned a lane by the coach with multiple users jumping in at random times from different ends with no one to supervise the users since the coach then left the room? Well in any event, the case points out the need to research the elements of your cause of action, no matter what it is, before you actually file a complaint to make sure you have pled the proper elements.]

- AC34760 - Diaz v. Commissioner of Correction
- AC34596 - State v. Luther
- AC34810 - Palmenta v. Commissioner of Correction

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- AC35706 - State v. Abraham

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.