



Annual Review of Connecticut Supreme and Appellate Court Cases

June 16, 2021

10:00 a.m. – 11:00 a.m.

CT Bar Association

Webinar

CT Bar Institute, Inc.

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LAWYERS' PRINCIPLES OF PROFESSIONALISM

As a lawyer, I have dedicated myself to making our system of justice work fairly and efficiently for all. I am an officer of this Court and recognize the obligation I have to advance the rule of law and preserve and foster the integrity of the legal system. To this end, I commit myself not only to observe the Connecticut Rules of Professional Conduct, but also conduct myself in accordance with the following Principles of Professionalism when dealing with my clients, opposing parties, fellow counsel, self-represented parties, the Courts, and the general public.

Civility:

Civility and courtesy are the hallmarks of professionalism. As such,

- I will be courteous, polite, respectful, and civil, both in oral and in written communications;
- I will refrain from using litigation or any other legal procedure to harass an opposing party;
- I will not impute improper motives to my adversary unless clearly justified by the facts and essential to resolution of the issue;
- I will treat the representation of a client as the client's transaction or dispute and not as a dispute with my adversary;
- I will respond to all communications timely and respectfully and allow my adversary a reasonable time to respond;
- I will avoid making groundless objections in the discovery process and work cooperatively to resolve those that are asserted with merit;
- I will agree to reasonable requests for extensions of time and for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
- I will try to consult with my adversary before scheduling depositions, meetings, or hearings, and I will cooperate with her when schedule changes are requested;
- When scheduled meetings, hearings, or depositions have to be canceled, I will notify my adversary and, if appropriate, the Court (or other tribunal) as early as possible and enlist their involvement in rescheduling; and
- I will not serve motions and pleadings at such time or in such manner as will unfairly limit the other party's opportunity to respond.

Honesty:

Honesty and truthfulness are critical to the integrity of the legal profession – they are core values that must be observed at all times and they go hand in hand with my fiduciary duty. As such,

- I will not knowingly make untrue statements of fact or of law to my client, adversary or the Court;
- I will honor my word;
- I will not maintain or assist in maintaining any cause of action or advancing any position that is false or unlawful;

- I will withdraw voluntarily claims, defenses, or arguments when it becomes apparent that they do not have merit or are superfluous;
- I will not file frivolous motions or advance frivolous positions;
- When engaged in a transaction, I will make sure all involved are aware of changes I make to documents and not conceal changes.

Competency:

Having the necessary ability, knowledge, and skill to effectively advise and advocate for a client's interests is critical to the lawyer's function in their community. As such,

- I will keep myself current in the areas in which I practice, and, will associate with, or refer my client to, counsel knowledgeable in another field of practice when necessary;
- I will maintain proficiency in those technological advances that are necessary for me to competently represent my clients.
- I will seek mentoring and guidance throughout my career in order to ensure that I act with diligence and competency.

Responsibility:

I recognize that my client's interests and the administration of justice in general are best served when I work responsibly, effectively, and cooperatively with those with whom I interact. As such,

- Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the Court (or other tribunal) and my adversary of any likely problem;
- I will make every effort to agree with my adversary, as early as possible, on a voluntary exchange of information and on a plan for discovery;
- I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
- I will be punctual in attending Court hearings, conferences, meetings, and depositions;
- I will refrain from excessive and abusive discovery, and I will comply with all reasonable discovery requests;
- In civil matters, I will stipulate to facts as to which there is no genuine dispute;
- I will refrain from causing unreasonable delays;
- Where consistent with my client's interests, I will communicate with my adversary in an effort to avoid needless controversial litigation and to resolve litigation that has actually commenced;
- While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

Mentoring:

I owe a duty to the legal profession to counsel less experienced lawyers on the practice of the law and these Principles, and to seek mentoring myself. As such:

- I will exemplify through my behavior and teach through my words the importance of collegiality and ethical and civil behavior;
- I will emphasize the importance of providing clients with a high standard of representation through competency and the exercise of sound judgment;
- I will stress the role of our profession as a public service, to building and fostering the rule of law;
- I will welcome requests for guidance and advice.

Honor:

I recognize the honor of the legal profession and will always act in a manner consistent with the respect, courtesy, and weight that it deserves. As such,

- I will be guided by what is best for my client and the interests of justice, not what advances my own financial interests;
- I will be a vigorous and zealous advocate on behalf of my client, but I recognize that, as an officer of the Court, excessive zeal may be detrimental to the interests of a properly functioning system of justice;
- I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;
- I will, as a member of a self-regulating profession, report violations of the Rules of Professional Conduct as required by those rules;
- I will protect the image of the legal profession in my daily activities and in the ways I communicate with the public;
- I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance; and
- I will support and advocate for fair and equal treatment under the law for all persons, regardless of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, gender identity, gender expression or marital status, sexual orientation, or creed and will always conduct myself in such a way as to promote equality and justice for all.

Nothing in these Principles shall supersede, supplement, or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which a lawyer's conduct might be judged, or become a basis for the imposition of any civil, criminal, or professional liability.

KENNETH J. BARTSCHI

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Kenneth Bartschi is a principal with the Hartford firm of Horton, Dowd, Bartschi & Levesque, P.C., where his practice includes appellate litigation in civil, family, constitutional, and criminal matters. He has argued numerous cases in the Connecticut Supreme Court and Appellate Court that have had significant impacts on the law, including *Millbrook Owners Association v. Hamilton Standard*, 257 Conn. 1 (2001), and *Ramin v. Ramin*, 281 Conn. 324 (2007) (en banc). He served as cooperating counsel with Gay & Lesbian Advocates & Defenders in the landmark marriage-equality case, *Kerrigan v. Commissioner of Public Health*, 289 Conn. 135 (2008) (en banc). He began working at Horton, Dowd, Bartschi & Levesque, P.C., as a law clerk in 1995 and joined the firm as an associate in the fall of 1996, becoming a partner in 2000. He is a member of the bars of the State of Connecticut, the State of New York, the United States District Court for the District of Connecticut, the Second Circuit Court of Appeals, and the United States Supreme Court.

Attorney Bartschi serves as co-author of West's *Connecticut Rules of Appellate Procedure (Annotated)* with Wesley Horton and has done so since the 2004 Edition. Along with Attorney Horton, Attorney Bartschi has co-authored the annual Appellate Review for the Connecticut Bar Journal since the 2000 Review. He is also one of the co-authors of the Connecticut Practice Book Annotated (4th Ed.), published by West and *MCLE New England, A Practical Guide to Divorce in Connecticut*.

Attorney Bartschi is a fellow of the American Academy of Appellate Lawyers. In 2006, he was a co-recipient of the Judge Maxwell Heiman Award from the Hartford County Bar Association. He serves on the executive committees of the Appellate Advocacy and LGBT sections of the Connecticut Bar Association and is a member of the Human Rights and Responsibilities section. He previously served as co-chair of the HRR Section and as a member of the Board of Directors for the Connecticut Women's Education and Legal Fund. He has appeared on seminar panels, speaking on appellate issues, and is frequently asked to judge moot court competitions and classes at the UConn School of Law. Attorney Bartschi earned a Bachelor of Music in music education from Potsdam College in 1987 and holds a Masters of Music degree in performance from Arizona State University, which he earned in 1989. He graduated with honors from the UConn Law School in 1996.

KAREN L. DOWD

Attorney Dowd is a principal at Horton, Dowd, Bartschi & Levesque, P.C. in Hartford, Connecticut. She is admitted to practice in Connecticut state courts as well as in the United States District Court for the District of Connecticut, the United States Court of Appeals for the Second Circuit, and the United States Supreme Court. Her practice includes trial and appellate litigation in Connecticut state and federal courts, and the representation of attorneys in professional responsibility matters. She consults with trial counsel on presenting legal issues and in preparing cases for appeal.

Attorney Dowd co-authors the annual Connecticut Practice Book Annotated, Vol. 1, annotated by current and former members of the firm. Attorney Dowd provides author's comments to chapters on pleadings and motions. She also co-authored Connecticut Insurance Law. She is a member of the Board of Directors of the Granby Land Trust.

Attorney Dowd served as Chair of the Connecticut Bar Association Litigation Section from 2005 to 2007 after serving as an officer for the prior four years. She continues to serve on the Litigation Section Executive Committee as an Honorary Member. Attorney Dowd taught written and oral advocacy in the Moot Court interterm at the University of Connecticut School of Law.

Annual Review of Connecticut Supreme and Appellate Court Cases (2021CLC-CL02)

Agenda

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| 10:00 – 10:30 a.m. | Attorney Bartschi will review the Connecticut Supreme Court cases and changes in the Court from the past year. |
| 10:30 – 11:00 a.m. | Attorney Dowd will review the Connecticut Appellate Court cases and changes in the Court from the past year. |

2021 Supreme Court Review

By Kenneth J. Bartschi
HORTON, DOWD, BARTSCHI & LEVESQUE, P.C.

A. Constitutional Law

Fay v. Merrill, SC 20486 (Feb. 11, 2021) (executive order adding fear of Covid-19 to reasons to vote by absentee ballot did not violate separation of powers or Article VI, § 7).

Casey v. Lamont, SC 20494 (Mar. 29, 2021) (statute conferring emergency powers on governor did not violate separation of powers and included power to respond to Covid-19 pandemic).

B. Civil Procedure

Rodriguez v. Kaiaffa, LLC, SC 20274 (Oct. 6, 2020) (trial court properly certified plaintiff class in restaurant worker wage dispute).

C. Administrative Law

One Elmcroft Stamford, LLC v. Zoning Board of Appeals, SC 20393 (Jan. 25, 2021) (where legislature repealed a statute and later amended the statute in the same session, the repeal governed).

Meriden v. Freedom of Information Commission, SC 20378 (Mar. 12, 2021) (gathering of leadership group to draft recommendations to city council was not a “meeting” for purposes of open-meeting laws because the group had no authority to act on behalf of the city).

D. Arbitration

A Better Way Wholesale Autos, Inc. v. Saint Paul, SC 20386 (Apr. 15, 2021) (30-day limit set forth in Conn. Gen. Stat. § 52-420(b) to file motion to vacate an arbitration award was subject matter jurisdictional and was not preempted by the Federal Arbitration Act).

D. **Arbitration (cont.)**

Blondeau v. Baltierra, SC 20282 (Sept. 24, 2020) (trial court properly vacated part of arbitration award in a dissolution of marriage action as pertained to child support, but improperly vacated the award as to the remaining financial orders).

New Haven v. AFSCME, Council 4, Local 3144, SC 20362 (Mar. 4, 2021) (arbitration award reinstating city employee terminated for ethics violations did not violate public policy).

E. **Torts**

Harvey v. Dept. of Correction, SC 20325 (Oct. 9, 2020) (administratrix needed to comply with the statutes of limitation set forth in both Conn. Gen. Stat. § 4-160 (one year to bring action after authorization by claims commissioner) and § 52-555 (wrongful death statute of limitations)).

Doe #2 v. Rackliffe, SC 20420 (Dec. 15, 2020) (extended statute of limitations set forth in Conn. Gen. Stat. § 52-577d for sexual assault claims by minors did not apply to medical malpractice claim against a pediatrician who sexually abused them absent an act of intentional sexual abuse).

Cole v. New Haven, SC 20425 (Oct. 15, 2020) (genuine issue of material fact as to whether a police officer violated a ministerial duty in a pursuit that caused an accident).

Fisk v. Redding, SC 20333 (Nov. 9, 2020) (jury interrogatories were not inconsistent where jury found that a retaining wall was inherently dangerous but that the defendant's use of the land was reasonable).

Stone v. East Coast Swappers, LLC, SC 20382 (Dec. 11, 2020) (no rebuttable presumption that a court should award counsel fees upon a CUTPA finding).

Kent Literary Club of Wesleyan University v. Wesleyan University, SC 20226 (Mar. 5, 2021) (reversing and remanding for new trial because of instructional error pertaining to claims of promissory estoppel, tortious interference, and CUTPA concerning off-campus housing agreement between university and fraternity).

F. **Property**

Boccanfuso v. Daghoghi, SC 20397 (Sept. 30, 2020) (trial court did not abuse its discretion in rejecting defense of equitable nonforfeiture).

G. **Taxes**

Redding v. Georgetown Land Development Co., SC 20322 (Sept. 21, 2020) (because special tax district had priority over other liens, except town liens, the fire district's lien was subordinate to the special tax district).

Ledyard v. WMS Gaming, Inc., SC 20418 (Apr. 21, 2021) (General Statutes § 12-161a authorizes court to award counsel fees to municipality for an action in federal court to determine whether the town could pursue its tax collection action in state court).

H. **Criminal Law**

State v. Komisarjevsky, SC 18973 (Apr. 12, 2021) (individual voir dire sufficiently protected the defendant's right to a fair trial in light of pretrial publicity).

State v. Armadore, SC 20248 (Mar. 23, 2021) (Appellate Court should have permitted supplemental briefing where U.S. Supreme Court issued new rule regarding use of cell phone data after oral argument in this case).

State v. Rolon, SC 20423 (Nov. 13, 2020) (trial court should have suppressed warrantless search of defendants because they were not within the immediate vicinity of property to be searched pursuant to a warrant); *State v. Espino*, SC 20428 (Nov. 13, 2020) (same).

State v. Christopher S., SC 20247 (Mar. 10, 2021) (defendant's custodial interrogation was admissible despite failure to video record it as the state established the statement was voluntary and reliable for purposes of Conn. Gen. Stat. § 54-1o).

State v. Rodriguez, SC 20372 (Sept. 24, 2020) (declining to reach confrontation clause claim concerning DNA evidence; concurrence suggesting evidentiary rules for various aspects of the process of handling DNA evidence).

H. Criminal Law (cont.)

State v. Raynor, SC 20183 (Dec. 4, 2020) (trial court should have considered whether to hold a *Porter* hearing on the reliability of ballistics evidence).

State v. Best, SC 20278 (Oct. 14, 2020) (trial court did not abuse its discretion in admitting photograph of interior of the car the victims used to drive to the hospital as the blood showed the seriousness of the injuries and the defendant's intent and were not unduly prejudicial simply because the picture was gruesome).

State v. Manuel T., SC 20250 (Nov. 19, 2020) (video of interview with sexual assault victim was admissible under medical records exception to hearsay rule; trial court improperly excluded text screen shots as recipient testified to their authenticity).

State v. Lamantia, SC 20190 (Sept. 3, 2020) (evidence was sufficient to convict defendant of witness tampering where she texted participant in a fight that a state trooper was coming to interview him and that he should lie about what occurred).

State v. Cody M., SC 20213 (Sept. 21, 2020) (because Conn. Gen. Stat. § 53a-223a (violation of a protective order) criminalizes discrete acts, various comments the defendant made to the victim were separation violations).

State v. Jones, SC 20261 (Dec. 1, 2020) (defendant was entitled to jury instruction as to credibility of jailhouse informant even though the confession did not occur in jail because the witness provided the information when he was incarcerated and obtained a benefit for testifying).

State v. Michael T., SC 20230 (Apr. 22, 2021) (trial court is not required to use precise statutory language when instructing jury not to draw an adverse inference because the defendant did not testify but use of statutory "failure to testify" language is not improper or unconstitutional).

State v. Gonzalez, SC 20317 (Mar. 2, 2021) (defendant was not deprived of a fair trial or right to present closing argument where prosecutor reserved a portion of her discussion of the evidence for rebuttal).

H. Criminal Law (cont.)

State v. Gomes, SC 20407 (Jan. 26, 2021) (appeal was not moot where defendant was deported pending appeal because reversal of the conviction would help repair reputation).

State v. Davis, SC 20335 (Mar. 26, 2021) (remand for hearing on claimed conflict of interest between defendant and his counsel where trial judges failed to make affirmative inquiry as to nature of conflict when raised at trial)

State v. Angel M., SC 20106 (Dec. 31, 2020) (trial court did not punish defendant by increasing sentence where defendant refused to apologize to victim).

State v. Imperiale, SC 20391 (Jan. 7, 2021) (placement of defendant in sex-offender treatment during probation did not violate due process or equal protection rights or amount to cruel and unusual punishment).

Ross v. Commissioner of Correction, SC 20281 (Jan. 11, 2021) (collateral estoppel did not apply to claim of prosecutorial impropriety because on direct appeal focus is on the prosecutor's actions while the habeas court examines the actions of the defense counsel).

Moore v. Commissioner of Correction, SC 20252 (Mar. 15, 2021) (defense counsel must correct defendant's articulated misunderstanding of the law if it is material to assessing plea offer).

State v. Bischoff, SC 20302 (Jan. 15, 2021) (trial court properly denied motion to correct an illegal sentence because a 2015 amendment reducing the sentence for drug offenses did not apply retroactively).

Francis v. Board of Pardons & Paroles, SC 20377 (Mar. 16, 2021) ("definite sentence" for purposes of parole statute means full sentence imposed without counting reduction for statutory credits).

Mitchell v. State, SC 20287 (Feb. 26, 2021) (trial court failed to give proper consideration to the reasons for the delay in seeking certification to appeal the denial of a motion for new trial).

2021 APPELLATE COURT REVIEW

by Karen L. Dowd

I. HOW THE COURT REVIEWS CASES

- *State v. Robert B.*, 200 Conn. App. 637 (2020) (where defendant failed to preserve claim for error in allowing evidence in at trial by moving to strike the testimony or seeking a curative instruction, no appellate review)
- *In re Miracle C.*, 201 Conn. App. 598 (2020) (failure to appeal separate and independent basis for decision renders appeal moot). See also *In re Phoenix A.*, 202 Conn. App. 827 (2021) (cert. denied per docket); *State v. Cicarella*, 203 Conn. App. 811, 812 (2021).
- *Featherston v. Katchko & Son Constr. Servs., Inc.*, 201 Conn. App. 774 (2020), cert. denied, 336 Conn. 923 (2021) (first appeal was not from a final judgment but amended appeal was and included all issues in first appeal so issues preserved for review)
- *In re Miyuki M.*, 202 Conn. App. 851 (2021) (evidentiary issue not of constitutional magnitude simply because part of termination of rights proceeding)
- *Johnson v. Johnson*, 203 Conn. App. 405, 408 (2021) (inadequate briefing = no review)
- *Brown v. Cartwright*, 203 Conn. App. 490 (2021) (acceptance of curative charge which party requested waives right to complain about charge)

II. CRIMINAL LAW & PROCEDURE

- *Pentland v. Comm'r of Correction*, 200 Conn. App. 296, cert. denied, 335 Conn. 973, 241 A.3d 129 (2020) (trial court properly dismissed habeas for lack of subject matter jurisdiction where petitioner had finished serving time for charge, even though he was still serving time for other charges).
- *State v. Rivera*, 200 Conn. App. 401 (2020) (Insufficient evidence that altercation took place in public place as required by statute: public place requirement not waived by defendant's counsel's closing argument given ambiguity of statement and lack of indication that court or prosecutor treated statement as concession).

- *State v. Gaston*, 201 Conn. App. 276, cert. denied, 335 Conn. 981 (2020) (defendant had no standing to raise witness' fifth amendment rights).
- *Wright v. Comm'r of Correction*, 201 Conn. App. 339 (2020), cert. denied, 336 Conn. 905 (2021) (C.G.S. §54-125d did not create constitutionally protected liberty interest in parole eligibility or hearing) (See also *Wright v. Giles*, 201 Conn. App. 353 (2020)).
- *State v. Parker*, 201 Conn. App. 435 (2020) (trial court erred in incarcerating defendant for failure to pay restitution without first finding an ability to pay).
- *State v. Freeman*, 201 Conn. App. 555 (2020) (one month delay in serving warrant (signed before statute of limitations but served after) was not unreasonable even though defendant was incarcerated at the time as court took notice of how long it takes to serve inmates) (cert. granted on the following question: "Did the Appellate Court correctly conclude that the trial court properly denied the defendant's motion to dismiss on the basis of its determination that the state had executed the arrest warrant without unreasonable delay?" *State v. Freeman*, 336 Conn. 907, 243 A.3d 1180 (2021))
- *State v. Minh Anh Han*, 201 Conn. App. 568 (2020) (trial court could not sua sponte terminate defendant's participation in accelerated rehab program without giving defendant an opportunity to be heard)
- *State v. Ervin B.*, 202 Conn. App. 1 (2020) (review of evidence necessary to prove threatening in the second degree (conviction reversed for insufficient evidence)).
- *Felder v. Comm'r of Correction*, 202 Conn. App. 503 (2021) (in determining timeliness of filing of subsequent state habeas, federal habeas petition did not count as a prior petition) (cert. granted on the following questions: "1. Did the Appellate Court correctly determine that the meaning of 'a prior petition challenging the same conviction' in General Statutes § 52-470 (d) plainly and unambiguously refers only to prior state habeas petitions? 2. Did the Appellate Court correctly apply the 'abuse of discretion' standard of review to the habeas court's determination that the petitioner had failed to show good cause for delay pursuant to § 52-470 (d) and (e) in filing his habeas petition? 3. Did the Appellate Court correctly determine that the habeas court did not abuse its discretion in rejecting

the petitioner's claim that his ignorance of the statutory deadlines was good cause necessary to overcome the rebuttable presumption of unreasonable delay as set forth in § 52-470 (d) and (e)?" *Felder v. Comm'r of Correction*, 336 Conn. 924 (2021))

- *Godfrey v. Comm'r of Correction*, 202 Conn. App. 684 (2021) (habeas denied where petitioner plead guilty to avoid death penalty which was subsequently abolished. Petitioner claimed doctrine of frustration of purpose) (cert. denied per docket).
- *Collins v. Comm'r of Correction*, 202 Conn. App. 789 (2021) (habeas denied as trial counsel did not have conflict of interest because he refused to front money for litigation expenses) (cert. denied per docket).
- *State v. Capasso*, 203 Conn. App. 333 (2021) (C.G.S. §53a-114 (reckless burning of another's property does not require exclusivity in ownership by another) (Pet. Cert. filed 4/9/21)
- *State v. Love*, 203 Conn. App. 692 (2021) (defendant sufficiently raised request for counsel by referring in filing to case which held that a self-represented person has a right to counsel re: motion to correct illegal sentence even if the motion did not expressly ask for counsel)
- *State v. King*, Docket No. 42764, 2021 WL 1522569 (released Apr. 20, 2021) (trial court properly sentenced defendant as a 3-time repeat offender based upon 2 DUI's in Florida)
- *State v. Chester J.*, Docket No. 41403 (released Apr. 27, 2021) (trial court properly found no prima facie violation of sixth amendment right that venire pool be a fair cross section of the community: defendant failed to establish that any underrepresentation of African-Americans and Hispanics resulted from systematic exclusion)

III. CIVIL CASES

- *Clinton v. Aspinwall*, 200 Conn. App. 205 (2020) (improper charge requiring bad faith or gross negligence for managers under operating agreement was harmless; if jury found bad faith or gross negligence then they necessarily found defendants did not act in their best judgment) (Defs.' cert. granted on following questions: "1.

Did the Appellate Court correctly conclude that § 3.4 of the limited liability company operating agreement imposes an affirmative duty on the managers to exercise 'best judgment' but does not impose an affirmative duty on the managers to act in 'good faith'? "2. If the answer to the first question is in the affirmative, did the Appellate Court correctly conclude that the trial court's instruction to the jury that § 3.4 of the agreement 'prohibits actions that are taken in bad faith' constituted harmless error?" *Clinton v. Aspinwall*, 335 Conn. 980 (2020)) (Pla.'s cert. granted on the following question "Did the Appellate Court correctly conclude that the limited liability company operating agreement unambiguously provides that an action to amend the agreement or to involuntarily remove a member shall be performed by the consent of members controlling 60 percent or more of the company, without requiring approval by the board of managers?" *Clinton v. Aspinwall*, 335 Conn. 979 (2020)).

- *Costanzo v. Town of Plainfield*, 200 Conn. App. 755, 239 A.3d 370 (2020) (as suit against town for failure to enforce building codes sounding in negligence, defendant town could apportion to property owners) (cert. granted on following questions: "1. Did the trial court's order dismissing the defendants' apportionment complaint constitute a final judgment permitting interlocutory appellate review? "2. If the answer to the first question is in the affirmative, did the Appellate Court correctly conclude that the trial court had improperly dismissed the defendants' apportionment complaint because the plaintiffs' complaint was based in part on a claim of negligence against the defendants, and, therefore, the defendants were entitled, under General Statutes § 52-572h, to bring an apportionment complaint sounding in negligence against additional parties not named in the plaintiffs' lawsuit?" *Costanzo v. Town of Plainfield*, 335 Conn. 976, 242 A.3d 104 (2020)).
- *Autry v. Hosey*, 200 Conn. App. 795 (2020) (in bench trial, court finding that pedestrians hit by car experience greater emotional distress than those involved in motor vehicle accidents was clearly erroneous and not harmless)
- *LaPierre v. Mandell & Blau, M.D.'s, P.C.*, 202 Conn. App. 44 (2020) (claim of alleged negligence for allowing patient to fall from MRI table and out of wheelchair

was medical malpractice claim under §52-190a; as there was no opinion letter, case was properly dismissed)

- *McCall v. Sopneski*, 202 Conn. App. 616 (2021) (immunity for dealer when loaner vehicle involved in accident under §14-60 (a) applied even though vehicle did not have dealer plates)
- *DeLeo v. Equale & Cirone, LLP*, 202 Conn. App. 650, cert. denied, 336 Conn. 927 (2021) (noncompete agreement was unreasonable and therefore unenforceable based upon restraints which, inter alia, unreasonably limited public's rights to CPA's services) (HDBL represented the plaintiff appellee)
- *Anderson v. Town of Bloomfield*, 203 Conn. App. 182 (2021) (question of intent to make third party a beneficiary of contract was issue of fact based on contract and facts)
- *Zweig v. The Marvelwood School*, Docket No. 42660, 2021 WL 1522518, at *11 (released Apr. 20, 2021) (summary judgment proper on plaintiff's wrongful discharge claim where plaintiff could show no statutory or constitutional provision or judicial public policy as to use of telephone poles in school garden; plaintiff also failed to prove causation in dismissal)
- *Gibilisco v. Tilcon Connecticut, Inc.*, Docket No. 43294, 2021 WL 1522556, at *2 (released Apr. 20, 2021) (trial court erred in granting summary judgment for defendant in employment termination case under *McDonnell Douglas*)
- *Pollard v. City of Bridgeport*, Docket No. 43260 (released Apr. 27, 2021) (abutting neighbor has no liability for defect in public sidewalk created when neighbor's tree roots pushed up sidewalk; growth of tree roots was not a positive or affirmative act by landowner)

IV. CIVIL PROCEDURE

- *Budrawich v. Budrawich*, 200 Conn. App. 229(2020), cert. denied, 336 Conn. 909, (2021) (failure to respond to email looking for consent to extend 120 days for decision was not a knowing waiver)
- *Larmel v. Metro N. Commuter R.R. Co.*, 200 Conn. App. 660 (2020) (arbitration matter went to judgment after plaintiff failed to request trial de novo; plaintiff filed accidental failure of suit case; App. Ct. held prior judgment was on the merits but

trial court should have entered judgment for defendant not dismissed case: Judge Eveleigh dissented on basis that judgment on compulsory arbitration is not a judgment on the merits) (cert. granted on the following questions: “1. Did the Appellate Court correctly conclude that a judgment rendered after mandatory arbitration pursuant to General Statutes § 52-549u is a ‘trial on the merits’ that bars a plaintiff from subsequently utilizing the accidental failure of suit statute, General Statutes § 52-592? “2. Was the plaintiff’s failure to request a trial de novo pursuant to General Statutes § 52-549z, following entry of the arbitrator’s decision under § 52-549u, a ‘matter of form,’ as contemplated by § 52-592?” *Larmel v. Metro N. Commuter R.R. Co.*, 335 Conn. 972 (2020))

- *Vaccaro v. Loscalzo*, 201 Conn. App. 606 (2020), cert. denied, 336 Conn. 908 (2021) (judgment for dismissal for failure to prosecute upheld: while fault was with attorneys, plaintiffs knew of conduct: primer on how to preserve and present failure to prosecute)
- *Peterson v. iCare Mgmt., LLC*, 203 Conn. App. 777 (2021) (no application of res judicata and collateral estoppel in nuisance/tort case for prior zoning regulation litigation with town)

V. FAMILY & JUVENILE CASES

- *Budrawich v. Budrawich*, 200 Conn. App. 229 (2020), cert. denied, 336 Conn. 909 (2021) (trial court erred in failing to first find whether there was a substantial change in circumstances before modifying alimony where agreement provided that alimony “shall be modifiable” if income was below a certain level)
- *Silver v. Silver*, 200 Conn. App. 505, cert. denied, 335 Conn. 973 (2020) (trial court had discretion to modify dissolution judgment in ruling on motion to “clarify and effectuate”).
- *Ross v. Ross*, 200 Conn. App. 720 (2020) (trial court failed to find presumptive amount of child support before modifying unallocated alimony/support).
- *Leonova v. Leonov*, 201 Conn. App. 285 (2020), cert. denied, 336 Conn. 906 (2021) (trial court erred in finding party in contempt where no written motion for contempt pending; but trial court could order reimbursement at issue in contempt claim)

- *In re D'Andre T.*, 201 Conn. App. 396, cert. denied, 336 Conn. 902 (2020) (Appellate Court declined to exercise supervisory authority to create new procedural rule when motion to terminate parental rights and motion to transfer guardianship are both pending).
- *In re Ja'maire M.*, 201 Conn. App. 498 (2020), cert. denied sub nom., 336 Conn. 911 (2021) (child was adjudicated neglected before father was identified. In proceeding on petition to terminate father's parental rights, neglect finding applied because (1) claim not preserved, (2) father acquiesced to neglect finding, and (3) father failed to take advantage of procedural options after he was identified: no violation of due process as neglect is finding as to status of child not finding of fault)
- *In re Kameron N.*, 202 Conn. App. 628, cert. denied, 336 Conn. 926, and cert. denied, 336 Conn. 927 (2021) (notice to tribe under Indian Child Welfare Act (ICWA) of proceeding on termination of parental rights for father was sufficient even though it did not state the termination was involuntary).
- *In re Kameron N.*, No. 44086, 2021 WL 609020 (Conn. App. Ct. Feb. 16, 2021), cert. denied, 336 Conn. 926, and 336 Conn. 927 (2021) (notice to tribe of termination of parental rights as to mother was not deficient under ICWA even though it failed to notify the tribe of right to intervene because the tribe admitted it had notice from companion case re father)
- *M. S. v. P. S.*, 203 Conn. App. 377 (2021) (order of alimony, support and payment of expenses which left husband with 10% of net income was within court's discretion given short term of order and orders on property distribution)
- *Mecca v. Mecca*, 203 Conn. App. 541 (2021) (where wife sent email with what details she had on intangible asset and husband chose not to read it, he could not claim fraudulent misrepresentation and failure to disclose as a basis to open the judgment) (Pet. Cert. filed 4/19/2021)

VI. MISCELLANEOUS

- *Silver Hill Hosp., Inc. v. Kessler*, 200 Conn. App. 742 (2020) (where defendant failed to plead special defense that hospital had duty to follow up with Medicare, fact finder did not have to consider claim).
- *C. A. v. G. L.*, 201 Conn. App. 734 (2020) (good primer on law re application for civil protection order).
- *Seramonte Assocs., LLC v. Town of Hamden*, 202 Conn. App. 467 (2021) (in case of first impression, “submit” no later than a date in C.G.S. §12-63c, rental income property tax, meant form had to be received by that date, not mailed) (cert. granted on the following question: “Did the Appellate Court properly construe the phrase ‘who fails to submit such information,’ as it is used in General Statutes § 12-63c (d)?” *Seramonte Assocs., LLC v. Town of Hamden*, 336 Conn. 923 (2021))
- *Bank of New York Mellon v. Tope*, 202 Conn. App. 540 (2021) (defendant's appeal from denial of motion to open and vacate claiming lack of standing by plaintiff was an impermissible collateral attack)(Judge Devlin dissented on the basis that this was a direct attack on the authority of the plaintiff to enforce the note in foreclosure).
- *Int'l Invs. v. Town Plan & Zoning Comm'n of the Town of Fairfield*, 202 Conn. App. 582 (2021) (special permits, though running with the land, may still be subject to temporal restrictions)(cert. granted on the following questions: "1. Did the Appellate Court correctly conclude that General Statutes § 8-2 (a) permits a municipal zoning commission to condition approval of a property developer's special permit on the completion of development within a specified time period, subject to extensions? 2. Did the Appellate Court correctly conclude that the special permit and site plan approval issued in 2006 to the defendant Fairfield Commons, LLC, to construct a 36,000 square foot retail building, which approval became effective in 2009, had expired in 2011, two years after the effective date, because, as of 2011, construction had not been started or completed, and the extension of the special permit and site plan, granted by the named defendant, the Town Plan and Zoning Commission of the Town of Fairfield, in 2018 under

authority of General Statutes § 8-3 (m), was invalid?" *Int'l Invs. v. Town Plan & Zoning Comm'n of the Town of Fairfield*, 336 C 928 (2021).

- *Lindquist v. Freedom of Info. Comm'n*, 203 Conn. App. 512 (2021) (drafts were subject to disclosure requirement but final comments used in deliberative process were).

VIII. CHANGES ON THE COURT

- Judge Robert Clark joined the Court.