Highlights | Recent Superior Court Decisions

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Administrative Law

High Watch Recovery Center, Inc. v. Department of Public Health, 69 CLR 307 (Cohn, Henry S., J.T.R.), holds that the rule that an appeal to court under the Administrative Procedure Act may be taken from an agency decision only if the decision was entered in a proceeding in which a hearing was "required by statute or regulation," Conn. Gen. Stat. § 4-166(2), bars an appeal from a proceeding in which the agency voluntarily holds a hearing, even though pursuant to a separate statute applicable specifically to the appellant's business a mandatory hearing could have been requested. The opinion holds that there is no right to appeal from a decision by the Department of Health approving a certificate of need for the establishment of a substance abuse facility, Conn. Gen. Stat. § 19a-638, even though a mandatory hearing could have been requested.

The statute disqualifying persons convicted of specified crimes from eligibility to hold a pistol permit applies to comparable crimes committed under the laws of other states. *Stratford Police Dept. v. Board of Firearms Permit Examiners*, 69 CLR 267 (Cordani, John L., J.). The opinion holds that a resident of this state who was convicted in 2006 under New York law for the possession of a controlled substance is permanently ineligible for a pistol permit in this state, because the same conduct, if committed in this state, would violate one of the statutes listed in Conn. Gen. Stat. § 29-28. The opinion reasons that the statutory list of disqualifying crimes presented in the statute establishes the nature of the conduct for which an applicant is statutorily considered to be unsuitable to receive a pistol permit.

Civil Rights

Hasiuk v. Colt Defense, LLC, 69 CLR 355 (Budzik, Matthew J., J.), holds that the provision of the Connecticut Discriminatory Practices Act reciting that an award of attorneys fees to a plaintiff that prevails on a discrimination complaint "shall not be contingent upon the amount of damages requested by or awarded to the complainant," Conn. Gen. Stat. § 46a-104, establishes a strong public policy in favor of awarding attorneys fees as an incentive to attorneys to prosecute such claims, even for prevailing plaintiffs who recover only nominal damages. This opinion awards attorneys fees of approximately $95,000 to a plaintiff who recovered damages on a workplace hostile environment claim for discrimination based on national origin only in the very nominal amount of $1.00.

The Discriminatory Practices Act, Conn. Gen. Stat. § 46a-58, Connecticut's foundational civil rights statute that prohibits interference with the constitutional rights of identified categories of persons with respect to a broad range of life activities, may not be relied on to remedy claims based on *employment* discrimination because the more targeted Connecticut Fair Employment Practices Act, Conn. Gen. Stat. § 46a-60 et seq., has been interpreted as displacing the Discriminatory Practices Act with respect to employment-related claims. As a result, the broader remedies available under the Discriminatory Practices Act, such as emotional distress damages and attorneys fees, are not available to remedy CFEPA violations. *State of Connecticut Judicial Branch v. Gilbert*, 69 CLR 229 (Cordani, John L., J.). The opinion is also useful for its holding that the authorization for an award of back pay to remediate a discriminatory employment practice, as authorized by Conn. Gen. Stat. § 46a-86(b), may include an allowance for lost pay incurred as a result of being forced to take time away from work to attend court proceedings for the prosecution of a party's claim.

Corporations and Other Business Organizations

Link v. Link, 69 CLR 330 (Noble, Cesar A., J.), holds that an LLC member's prosecution of a petition for the dissolution of a closely-held LLC does not automatically disqualify the member from also prosecuting a derivative action against the other members on claims of diversion and misuse of corporate assets and a lockout of the plaintiff. The defendant/members claim that the plaintiff's attempt to dissolve the entity is contrary to the LLC's interests as well as their own interests and therefore the plaintiff cannot comply with the requirement that the plaintiff in a derivative action be able to fairly and adequately represent the interests of the LLC and the other members. The opinion reasons that the interests of the plaintiff are not inconsistent with those of the LLC, and any recovery on the derivative claims will also benefit the defendants as LLC members.

A member of an LLC engaged in the business of purchasing and refurbishing residential properties may not recover for another member's retention of the proceeds of sales of LLC properties, under a theory of either conversion or a violation of the statutory theft statute, because the claimant does not have a personal property interest in either the refurbished residential properties or the proceeds from their

sale. *Mahato v. Khadka*, 69 CLR 316 (Taylor, Mark H., J.).

Family Law

Zealand v. Balber, 69 CLR 323 (Kavanewsky, John F., J.), holds that although a gift of an engagement ring is generally presumed to be conditional on the occurrence of a marriage, with the parties' intent that the ring be returned if there is no marriage, the presumption is defeated by a long period of living together in an intimate but unmarried relationship. This opinion awards the ring to the donee as part of a judicial partitioning of the parties' assets upon the termination of their relationship.

The opinion in *Tilsen v. Benson*, 69 CLR 241 (Klau, Daniel J., J.), involves the dissolution of a marriage between Jewish spouses and a dispute over a clause of the parties' "Ketubah," a religious contract frequently formed before a Jewish marriage, reciting that the parties agree to "live in compliance with Torah law all the days of their lives." The parties disagree as to amount and form of payment that will be due the wife under Torah law and are expected to provide competing testimony from rabbinical experts. The opinion holds that the court lacks subject matter jurisdiction over the dispute because it cannot be resolved without the court rendering an interpretation of religious dogma.

Health Law

Western Connecticut Health Network v. Ainger, 69 CLR 341 (D'Andrea, Robert A., J.), holds that a patient whose health insurance was unexpectedly canceled retroactively to a period before substantial hospital costs were incurred may be required to personally compensate the hospital at its full "pricemaster" rates, i.e., at the rates each hospital must file with the Health Systems Planning Unit of the Department of Health's Office of Health Strategy from which insurer discounts are negotiated, Conn. Gen. Stat. § 19a-681. The opinion seems to suggest but does not directly hold that a hospital has no discretion to accept a lesser rate, at least from individual patients that cannot meet the statutory definition of a health service's "payer," Conn. Gen. Stat. § 19a-646(a)(4).

A private citizen lacks standing to prosecute a civil action to enforce provisions of the public health code. *Richey v. Ellington*, 69 CLR 278 (Sheridan, David M., J.). Rather, exclusive jurisdiction over the enforcement of the Code is delegated to the Department of Health and to local municipal health officials. The opinion holds that a property owner lacks standing to prosecute an action against a municipality for contamination to a private well caused by storm water runoff.

Pensions and Other Employee Benefit Plans

An employer's unilateral imposition of an oversight program for an employer's employee medical insurance constitutes an unfair labor practice for failing to engage in collective bargaining, where the four-tier oversight program (a) requires prior approval to confirm the efficacy of drugs before a physician-recommended drug may be used by an employee, (b) adds oversight for the use of opioids; (c) requires that employees try generic drugs before using a brand specified by a physician; and (d) requires oversight of the quantity and concentration of drugs prescribed for employees. *Waterbury v. State Board of Labor Relations*, 69 CLR 347 (Cordani, John L., J.).

Welsh v. Martinez, 68 CLR 1 (Schuman, Carl J., J.), holds that although retirement accounts are generally exempt from execution to satisfy a creditor claim, such accounts may be taken into consideration for purposes of determining whether a debtor has the financial ability to pay a fine imposed as a sanction for civil contempt of court. The opinion reasons that a sanction order is not directed at the retirement funds but rather merely relies on those funds in making an evaluation as to whether it is equitable to deny the debtor's request for a stay, and (b) application of the exemption statutes is limited to orders issued "for the purpose of *debt collection*," Conn. Gen. Stat. § 52-352a(c).

Torts

Riccio v. Bristol Hospital, Inc., 69 CLR 303 (Morgan, Lisa K., J.), holds that an experienced attorney's failure to include in the opinion of negligence accompanying a medical malpractice complaint a description of the author's professional qualifications, as required by Conn. Gen. Stat. § 52-190a, resulting in a dismissal of a medical malpractice action, does not constitute a "matter of form" or "mere mistake or inadvertence," within the meaning of the Accidental Failure of Suit Statute, Conn. Gen. Stat. § 52-592. Therefore an action dismissed for such a failure may not be saved in reliance on the savings statute.

A Superior Court opinion holds that the

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ing DAS liens of about $263,000 in total. DAS was repaid by attorney's firm, from escrowed funds, and by the firm's insurance carrier. *Windham JD Grievance Panel v. Louis Mark Rubano*, #18-0144 (7 pages).

Presentment ordered for violation of Rules 1.2, 1.3, 1.4(a)(1), (2), (3) and (4), 1.5(a), 1.15(e), 8.4(1), and 8.4(4) where attorney in divorce matter accepted a retainer and thereafter failed to send billing statements; failed to communicate with client allowing divorce to enter pursuant to a settlement she had not seen and of which she was not informed; failed to advise of settlement timing and then failed to tender the settlement proceeds to her in a timely fashion (three months after multiple requests); and failed to answer grievance complaint. Additional violations of Rules 3.3 and 8.1(2) added by panel. *Service-Corso v. Sean Patrick Barrett*, #18-0616 (10 pages). ■

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opinion of negligence accompanying a medical malpractice complaint need not be from an author certified in precisely the same specialty as the defendant; rather, certification need only be in a field that serves the same general medical practice area as the defendant and requires skills overlapping those needed for the contested treatment of the plaintiff. *Sacco v. Littlejohn*, 69 CLR 314 (Krumeich, Edward T., J.).

■ Trade Regulation

The "ascertainable loss" element of a CUTPA claim is not satisfied solely by the fact that attorneys fees have been incurred to pursue the cutpa claim. *National Loan Acquisitions Co. v. Olympia Properties, LLC*, 69 CLR 335 (Wilson, Robin L., J.).

The plaintiff in a trade secrets case has the initial burden of disclosing with particularity the alleged misappropriated trade secrets, to allow the defendant an opportunity to avoid unnecessarily disclosing its own trade secrets. *Edgewell Personal Care Co. v. O'Malley*, 69 CLR 246 (Lee, Charles T., J.). ■

Classifieds

Business

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