

SUPREME COURT PENDING CASES

STATE *v.* BRUCE JOHN BEMER, SC 20195
Judicial District of Danbury

Criminal; Whether Pretrial Order Compelling Defendant to Undergo Testing for Sexually Transmitted Disease and HIV a Final Judgment; Whether Trial Court Abused its Discretion in Ordering Testing; Whether General Statutes § 54-102a Testing Order Violated Defendant's Rights Against Unreasonable Searches. The defendant was charged with patronizing a prostitute who was a victim of human trafficking in violation of General Statutes § 53a-83 (c) (2) (A) and conspiracy to traffic in persons in violation of General Statutes §§ 53a-48 and 53a-192a. Prior to trial, the state filed a motion seeking that the court order that the defendant undergo testing for sexually transmitted disease and for HIV pursuant to General Statutes § 54-102a. The trial court granted the state's motion and ordered the defendant to submit to testing. The defendant appeals. He acknowledges that, in criminal cases, there is generally no appealable final judgment until the court imposes sentence, but both the defendant and the state urge that the order here, while interlocutory, is nonetheless a final judgment under the finality tests set out in *State v. Curcio*, 191 Conn. 27 (1983). As to the merits, the defendant claims that the trial court abused its discretion in ordering the testing where he has yet to be convicted of any crime and where he argues that testing will not assist the state in the criminal case and will not assist the victims or advance the public health. The defendant also contends that the order that he submit to testing violates his state and federal constitutional rights against unreasonable searches.

IN RE ZAKAI F., SC 20234
Judicial District of New Haven

Child Protection; Whether Parent Who Temporarily Relinquished Custody and Seeks Reinstatement of Guardianship Rights Entitled to Constitutional Presumption that Reinstatement is in Child's Best Interest. Kristi F. voluntarily agreed to relinquish temporary guardianship of her minor child, Zakai, to the child's maternal aunt, the petitioner. When Kristi asked that the petitioner return Zakai to her care, the petitioner did not respond and, instead, filed a petition seeking custody and guardianship of Zakai in the Probate Court, which issued an order that vested temporary cus-

tody of Zakai in the petitioner. The matter was then transferred to the Superior Court, where the parties entered into a stipulation providing that guardianship of Zakai would be transferred to the petitioner. Kristi then filed a motion asking that she be reinstated as Zakai's guardian pursuant to General Statutes § 45a-611. The trial court denied the motion, finding that reinstatement of her guardianship rights was not in Zakai's best interests. Kristi appealed, claiming, among other things, that the trial court failed to apply the constitutional presumption that, because she had never been adjudicated an unfit parent, she was entitled to a presumption that she would act in Zakai's best interests. The Appellate Court (185 Conn. App. 752), affirmed the judgment, finding that the trial court properly considered evidence presented by the petitioner and Zakai, through their attorney and guardian ad litem, rebutting the presumption that reunification with Kristi was in Zakai's best interests. The Appellate Court also ruled that the trial court had properly applied the fair preponderance of the evidence standard in determining that reunification was not in the child's best interests. The Supreme Court granted Kristi certification to appeal, and it will decide whether a parent who has temporarily relinquished custody and seeks the reinstatement of guardianship rights under General Statutes § 45a-611 is entitled to a constitutional presumption that reinstatement is in the best interests of the child and, if so, whether a heightened burden of proof is required by *Santosky v. Kramer*, 455 U.S. 745 (1982), which held that a clear and convincing evidence standard of proof must be applied when the state is seeking to terminate a parent's rights.

The Practice Book Section 70-9 (a) presumption in favor of coverage by cameras and electronic media does not apply to the case above.

LAURA KOS et al. v. LAWRENCE & MEMORIAL HOSPITAL et al.,
SC 20256

Judicial District of New London

Medical Malpractice; Whether “Acceptable Alternative Treatments” Jury Instruction Supported by Evidence; Whether Precedent Allowing for Acceptable Alternative Treatments Instruction Should be Overruled. The plaintiffs brought this medical malpractice action claiming that the defendants were negligent in inspecting and repairing the plaintiff mother's episiotomy following childbirth and that the mother suffered harm as a result. At the conclusion of the trial, the trial court, pursuant to *Wasfi v. Chaddha*, 218

Conn. 200 (1991), instructed the jury that a physician may choose between alternative acceptable methods of diagnosis and treatment without incurring liability solely because that choice may have led to an unfortunate result. The jury returned a verdict for the defendant, and the plaintiffs appeal, claiming that the trial court erred in giving the “acceptable alternatives” charge under the circumstances here. The plaintiffs claim that there was no evidence that there were alternative, appropriate methods for inspecting the tissue tear, emphasizing that the experts who testified at trial disagreed about what inspection technique was appropriate. The plaintiffs also urge that the Supreme Court overrule *Wasfi* or limit its holding, claiming that the era of uniform deference to physician norms and common practices is over and that modern malpractice law is moving away from a “custom-based” standard of care and toward a “reasonable physician” standard.

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys’ Office for the convenience of the bar. They in no way indicate the Supreme Court’s view of the factual or legal aspects of the appeal.

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