

SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

JESSICA BILBAO *v.* TIMOTHY GOODWIN, SC 20078
Judicial District of Hartford

Dissolution of Marriage; Disposition of Parties' Cryopreserved Embryos; Whether Trial Court Properly Applied Balancing of Interests Approach in Awarding Embryos to Plaintiff. The parties married in 2011, and they decided to have a child together through in vitro fertilization. That process involved fertilizing the plaintiff's eggs with the defendant's sperm and storing the resulting embryos cryogenically until they were ready to be implanted. The parties signed an agreement with the reproductive services center that stored the frozen embryos which provided that, if they divorced, any unused embryos would be discarded according to ethical guidelines. The plaintiff brought this marital dissolution action in 2016, and the parties could not agree as to the disposition of the frozen embryos. The plaintiff wanted the embryos discarded pursuant to the agreement with the reproductive services center, but the defendant wanted to keep the embryos in storage in the event that the parties later reconciled or so that, if they did not reconcile, the embryos could be "put up for adoption." The trial court noted that there was no Connecticut appellate precedent addressing the ownership of cryopreserved embryos in a divorce action, but that the courts of some other states have applied a contract approach in resolving the issue. The court refused to apply the contract approach here, finding that the agreement the parties had entered into with the reproductive services center as to the disposition of the embryos was not supported by consideration and did not constitute an enforceable contract. The court instead applied the "balancing approach" employed in *Davis v. Davis*, 842 S.W.2d 588 (Tenn. 1992), in which the Tennessee Supreme Court balanced the divorcing parties' interests in order to determine to whom to award their frozen embryos. The court in *Davis* reasoned that the party seeking to destroy the embryos should prevail so long as the other party has a reasonable possibility of achieving parenthood by other means. That court also reasoned that, if the party seeking control of the embryos intends to donate them to another couple, the objecting party has a greater interest in the embryos and should prevail. Here, the trial court noted that the defendant already has six children and that the plaintiff did not want more children and that she did not want the embryos donated to strangers. The trial court also found that there

was no reasonable likelihood that the parties would reconcile. The court concluded that the plaintiff's interest in the control and management of her eggs outweighed any interest the defendant might have in donating them to strangers, and it ordered that the embryos were the property of the plaintiff. The defendant appeals, claiming that the trial court erred by applying the balancing test from *Davis*. He argues that the trial court improperly assumed that the embryos were property and improperly failed to consider his responsibilities and rights with respect to the embryos. The plaintiff disagrees and argues that the Supreme Court can affirm the judgment on the alternative ground that the parties' agreement with the reproductive services center, which provided that the embryos would be discarded if the parties divorced, was an enforceable contract.

ANTHONY JOHNSON *v.* BRIAN PRELESKI,
STATE'S ATTORNEY, SC 20104
Judicial District of New Britain

Statute of Limitations; Whether Appellate Court Properly Affirmed Judgment Dismissing Untimely Petition for New Trial Because Petitioner did not Satisfy “Personal Delivery” Requirement of Savings Statute, General Statutes § 52-593a. The petitioner was convicted of murder, and he served a petition for a new trial on the respondent state's attorney one day after the expiration of the three year period provided by General Statutes § 52-582, the statute governing the timeliness of a petition for a new trial. The respondent filed a motion to dismiss the petition, claiming it was untimely. The petitioner responded that the action was timely pursuant to General Statutes § 52-593a, which provides that a cause or right of action shall not be lost because of the passage of the relevant statute of limitations if “the process to be served is personally delivered to a state marshal” within the limitations period and such process is served within thirty days of the delivery. At a hearing on the motion to dismiss, the office manager for the petitioner's counsel testified that she had sent the summons and petition by fax to the marshal on August 5, 2014, which was before the limitations period expired. The marshal testified that the fax was successfully transmitted to his office and that he served the process on August 6, but that he could not recall whether he personally received the fax on August 5. The trial court dismissed the action, concluding that because process was not “personally delivered” to the marshal within the limitations period, § 52-593a did not operate to save the action. The petitioner appealed, and

the Appellate Court (174 Conn. App. 285) upheld the trial court's judgment. The court explained that a party seeking to rely on a savings statute must demonstrate compliance with the statute's provisions and, consequently, in order for § 52-593a to extend the time for service of process beyond the relevant statute of limitations, the process must be personally delivered to the marshal within the limitations period. The court determined that, in this case, although there was evidence that the process was transmitted via fax to the marshal's office within the limitations period, there was no evidence that the process in any form was personally delivered to the marshal as neither the marshal's return nor his testimony clarified when he actually came into physical possession of the process. The petitioner appeals, and the Supreme Court will decide whether the Appellate Court correctly affirmed the trial court's dismissal of the petition for a new trial for failure to satisfy the statutory "personal delivery" requirement of § 52-593a.

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.

*John DeMeo
Chief Staff Attorney*
