

SUPREME COURT PENDING CASES

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

STATE *v.* ROY L., SC 20152
Judicial District of Hartford

Criminal; Whether Forensic Interview of Victim Properly Admitted Under Medical Treatment Exception to Hearsay Rule; Whether Prosecutor Engaged in Impropriety during Closing Argument; Whether Evidence Sufficient to Support Convictions; Whether First Degree Sexual Assault and Risk of Injury Statutes are Unconstitutionally Vague as Applied. Following a trial to the court, the defendant was convicted of sexual assault in the first degree, sexual assault in the fourth degree and risk of injury to a minor stemming from his inappropriate touching of his ten year old daughter. The victim claimed that, on multiple occasions, the defendant instructed her to lie down on his bed after she took a shower and that he would then rub her genital area with a wash cloth. The victim claimed that she told the defendant that his conduct made her uncomfortable and asked him to stop, but that he refused. The Department of Children and Families (DCF) had investigated allegations of similar misconduct by the defendant when the victim was three years old. The defendant had claimed at the time that the victim had a skin condition that necessitated the use of his purported cleaning procedure. A physical examination, however, showed that the victim had no skin condition on her genital area. The defendant subsequently acknowledged that his cleaning procedure was not necessary and agreed to follow the cleaning practices recommended by the victim's pediatrician. The defendant claims that he did not touch the victim's genital area following the conclusion of DCF's investigation. In this appeal from his conviction, the defendant argues that the trial court improperly used a "de minimus" standard in determining the admissibility of a recording of a forensic interview of the victim and that, even under the proper standard, the recording should not have been admitted because the interview had no medical purpose. The defendant also argues that he was deprived of a fair trial because, during closing argument, the prosecutor mischaracterized testimony by the defendant's girlfriend concerning whether she witnessed the defendant's conduct. The defendant also argues that there was insufficient evidence that he intended to humiliate or degrade the victim or that he gained sexual gratification by touching her to support his conviction of sexual assault in the fourth degree. The defendant additionally argues that

the statutes under which he was convicted of risk of injury to a minor and sexual assault in the first degree, General Statutes §§ 53-21 and 53a-70, respectively, are unconstitutionally vague as applied to him because he did not have fair warning that his conduct was criminal.

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

HELEN ZIEGLER BENJAMIN, AS TRUSTEE OF THE WILLIAM
ZIEGLER, III FAMILY IRREVOCABLE TRUST *v.* ISLAND
MANAGEMENT, LLC, SC 20501

Judicial District of Stamford-Norwalk at Stamford

Limited Liability Companies; Disclosure of Records; Whether Trial Court Properly Concluded That Plaintiff Member Was Entitled to Disclosure of Defendant Company’s Financial Records under Both Disclosure Statute (§ 34-255i (b)) and Company’s Operating Agreement. The William Ziegler, III Family Irrevocable Trust (Trust) owns a one-sixth membership interest in the defendant limited liability company. Section 5.7 of the defendant’s operating agreement provides: “Upon request, each Member . . . shall have the right . . . to inspect and copy any and all of the books and records of the Company.” The plaintiffs, as trustees of the Trust, brought this action, claiming that the defendant’s refusal to make certain of its financial records available for inspection violated both the operating agreement and General Statutes § 34-255i (b). That statute confers on a member of a “manager-managed limited liability company” the right to inspect and copy any record maintained by the company regarding its “activities, affairs [and] financial condition . . . to the extent the information is material to the member’s rights and duties,” provided that (1) the purpose for seeking the information is “reasonably related to the member’s interest as a member,” (2) the information sought is described with “reasonable particularity” in the demand for disclosure, and (3) the information sought is “directly connected to the member’s purpose.” The plaintiffs sought disclosure of, inter alia, the “general ledger” containing a record of all financial transactions conducted by the defendant and the records containing the salaries of the defendant’s managers, officers and employees. The plaintiffs sought disclosure of the defendant’s financial records in order to determine the value of the Trust’s membership interest in the defendant and to investigate potential wrongdoing by the defendant’s managers and officers. The trial court rendered judgment in favor of the plaintiffs, concluding that

the plaintiffs satisfied the criteria of § 34-255i (b) for obtaining the disclosure of the subject records and that the disclosure of the subject records was required under the clear and unambiguous language of § 5.7 of the operating agreement. The defendant appeals and claims, among other things, that the trial court improperly granted the plaintiff's statutory disclosure claim based on wholly unsupported mismanagement allegations and that it erred in not analyzing that claim under the "credible basis" standard. Under that standard, which has been adopted by the Delaware courts, a member seeking inspection of a limited liability company's records must present some evidence to suggest a "credible basis" from which a court can infer that mismanagement or wrongdoing may have occurred. In addition, the defendant claims that the court's analysis of the plaintiffs' statutory disclosure claim was flawed under § 34-255i (b) because the court failed to make findings that satisfied the "directly connected" and "reasonable particularity" criteria of the statute. Finally, contrary to the trial court's determination, the defendant claims that § 5.7 of the operating agreement cannot serve as an independent basis for ordering the disclosure of the subject records because none of the plaintiffs' disclosure demands invoked § 5.7 and the complaint sought to enforce the demands as they were made.

ROCHDI MAGHFOUR *v.* CITY OF WATERBURY, SC 20502
Judicial District of Waterbury

Interpleader; Retroactivity; Whether City Has Valid Lien under General Statutes § 7-464 on Proceeds of Plaintiff's Personal Injury Action Against Third Party Tortfeasor. The plaintiff brought this action seeking resolution of a dispute concerning a lien that his employer, the city of Waterbury, claimed on settlement proceeds that he received from a personal injury action against a third party tortfeasor. Prior to the settlement, the city had provided the plaintiff with notice that it was asserting the lien pursuant to General Statutes § 7-464, as amended by No. 17-165 of the 2017 Public Acts, in order to recover the amount that it paid to cover the medical expenses that the plaintiff incurred as a result of the accident. The act amended the statute by adding a provision giving self-insured municipalities that provide health insurance benefits to its employees "a lien on that part of a judgment or settlement that represents payment for economic loss for medical, hospital and prescription expenses incurred by its employees and covered dependents and family members when such expenses result from the negligence or recklessness of a

third party.” The trial court rendered summary judgment in favor of the plaintiff, finding that the city does not have a valid statutory lien on the settlement proceeds because the personal injury action was filed on July 14, 2017, and the act does not apply retroactively to settlements reached or judgments rendered in connection with litigation commenced before its effective date of October 1, 2017. The court explained that its conclusion was compelled by the fact that there is no express language in the act unambiguously providing that it applies retroactively and by the statutory dictates of General Statutes §§ 1-1 (u) and 55-3. Section 1-1 (u) provides that “[t]he passage . . . of an act shall not affect any action then pending,” while § 55-3 provides that “[n]o provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person . . . shall be construed to have a retrospective effect.” Because, the court found, the act imposed a new obligation on plaintiffs in personal injury actions to reimburse municipalities for medical expenses paid, it could not be applied retroactively. The city appeals from the judgment, claiming that its lien is valid regardless of whether the act applies retroactively because the settlement of the plaintiff’s personal injury action occurred on October 23, 2018, long after the effective date of the act, and the plain language of the statute gives the city a lien on the settlement, not on the underlying legal action.

THE METROPOLITAN DISTRICT *v.* CONNECTICUT DEPARTMENT
OF ENERGY AND ENVIRONMENTAL PROTECTION, SC 20507

Judicial District of Hartford

Sovereign Immunity; Whether Action Barred by Sovereign Immunity Because Claims for Declaratory Relief Actually Sought Monetary Relief; Whether Sovereign Immunity Impliedly Waived in Charter Giving Plaintiff Power to Provide Sewer System; Whether Plaintiff Required to Exhaust Administrative Remedies. The plaintiff, The Metropolitan District, is a municipal corporation chartered by the Connecticut General Assembly in 1929 to provide drinking water and sewer services to the Hartford area. The plaintiff operates a sewer system that collects wastewater and sewage from residential, commercial and industrial properties through a system of pipes that flow to one of several treatment facilities. The defendant, the Connecticut Department of Energy and Environmental Protection, is responsible for the maintenance of the Hartford Landfill, which is no longer in operation but still produces a large amount of leachate that is discharged into the plaintiff’s sewer system. In 2016, the plaintiff

notified the defendant that it had been improperly charging the defendant the ordinary domestic sanitary sewage rate instead of the higher remediated groundwater fee. The defendant refused to pay the higher rate. As a result, the plaintiff brought this action seeking a declaratory judgment that it has the authority under its charter to charge the defendant the remediated groundwater fee, to increase the amount of that fee, and to refuse to accept discharges from the Hartford Landfill into its sewer system. The trial court dismissed the action on the ground that it is barred by the doctrine of sovereign immunity. The trial court found that the ultimate goal of the litigation was to get the defendant to pay a higher rate and that, as such, the plaintiff's claims seeking declaratory relief are actually claims for monetary relief that cannot be brought against the state without permission from the claims commissioner or a statutory waiver of sovereign immunity by the legislature. The plaintiff appeals, arguing that the trial court's finding that its claims are for monetary, rather than declaratory, relief is not supported by the allegations of the complaint. The plaintiff also claims that the trial court erred in finding that the legislature did not impliedly waive sovereign immunity in the charter that gave the plaintiff broad powers over the operation and maintenance of the sewer system, including the power to sue. The plaintiff additionally claims that the trial court improperly found that it was required to exhaust its administrative remedies by bringing its claims before the claims commissioner, where its claims are for declaratory relief and the claims commissioner has jurisdiction only over claims for monetary relief against the state.

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.

*Jessie Opinion
Deputy Chief Staff Attorney*
