

SUPREME COURT PENDING CASES

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

STATE *v.* ANDREW L. SAMUOLIS, SC 20299
Judicial District of Windham

Murder; Motion to Suppress; Whether Warrantless Entry into Home in Response to Well-being Check Fit Emergency Exception to Warrant Requirement; Whether New Crime Exception to Warrantless Entry Applied. The defendant had mental health issues and lived with his father. His relationship with his father was strained, and his father eventually told him that he wanted sell the family home and live alone. After an argument, the defendant took a modified flare gun, shot his father to death, and moved the body to an upstairs bedroom. On June 21, 2013, police officers were dispatched to the defendant's residence in response to a neighbor's request for a well-being check on the defendant's father, who had not been seen in some time. Assessing the exterior, the officers found nothing suspicious but asked neighbors to monitor the house. On June 25, 2013, a neighbor sought another well-being check, citing the defendant's mental health, new chicken wire covering the basement windows, and a large number of flies at a second story rear window. Based on experience, one officer thought that the flies indicated that there might be a dead body in the house. Using a ladder, he looked in the second story window that was propped open with an air freshener but was unable to see anything noteworthy. The officers contacted a supervisor, who concluded that there was a dead body inside and that they would have to make entry to see if anyone needed assistance, and one officer cut a screen to enter an open second story window. The officer announced his presence, heard movement in the basement, and was shot by the defendant. He fled into the woods and was arrested after shooting at officers. The defendant was Mirandized and told arresting officers that he shot his father several months earlier and that the body started to smell so he sealed the room with tape. When officers came upon the sealed bedroom door, they decided to perform a protective sweep of the room to ensure there were no traps. An officer used a ladder to look through the bedroom window and saw a badly decomposed body, and a search warrant was thereafter obtained. The defendant moved to suppress the evidence seized at the house, claiming that both the initial entry and the subsequent protective sweep of the bedroom violated his fourth amendment rights. The state argued that a warrant was not required under emergency exception or the

new crime exception, which provides that a new crime “sufficiently attenuated” from an unlawful police entry precludes application of the exclusionary rule. The trial court found that the emergency exception applied because it was objectively reasonable for the police to enter the house to look for persons in need of assistance. In the alternative, it found that the new crime exception applied in light of the shooting. The motion to suppress was denied, and, following his conviction of, inter alia, murder, the defendant directly appealed to the Supreme Court. On appeal, he claims that it was not objectively reasonable to believe that anyone was dead or injured for the purposes of the emergency exception, citing the officers’ measured response and deliberations regarding the well-being check, the lack of a foul odor, and the fact that they called a supervisor before entering the house. He also argues that an objective belief that there is a dead body does not satisfy the emergency exception and that the trial court erred in concluding that the new crime exception applies. The state disagrees and also argues that the evidence was admissible under the independent source and inevitable discovery doctrines.

STATE *v.* HAROLD PATTERSON, SC 20349
Judicial District of Hartford

Murder; Uncharged Misconduct Evidence; Whether Trial Court Abused Its Discretion by Allowing Evidence of Two Prior Shootings. Melinda Santos and her cousin Elaine Declaybrook were at a night club in Springfield, Massachusetts, with the two victims, Lamar Gresham and Carlos Ortiz, and another male. After the club closed, the group traveled to a pizza restaurant in Hartford. Declaybrook left the group and began to walk home because she was upset about certain inappropriate advances made at the club. The group followed on foot and in a car, and they caught up with Declaybrook on Edwards Street. At the same time, Mark Mitchell was driving a car on Edwards Street containing the defendant in the front passenger seat and Willie Walker in the back seat. Mitchell drove the car up to Santos and Declaybrook, who were on foot, in order to speak to them. A male member of the group walked up to the front passenger side window of the car, where the defendant was seated, and told them to “get the fuck out of here.” The defendant then took out a firearm and fatally shot Gresham and Ortiz in the chest. Walker initially told the police in 2011 that he did not know anything about the incident, but, in 2016, both he and Mitchell recounted the murder for the police. During jury selection, the state sought permission to present uncharged

misconduct evidence regarding two prior shootings that occurred in June, 2008; one was on Acton Street and the other was on Mather Street in Hartford. The state sought to introduce eyewitness testimony that the defendant possessed and fired a gun during both incidents and expert testimony that the same firearm was used in all three shootings. The defendant objected and argued that the uncharged misconduct evidence was more prejudicial than probative because it introduced a confusing and distracting side issue for the jury, it would improperly arouse the jury's emotions, and it portrayed him as a "trigger happy menace." He also noted that the same firearm was used in a shooting on Cleveland Street but that he was not implicated in that shooting. The trial court granted the motion finding that the evidence was relevant to prove identity and whether the defendant had the means to carry out the crime, but it precluded the state from introducing evidence that the victim of the Acton Street shooting was killed. The state otherwise presented the uncharged misconduct evidence as proffered, and the court instructed the jury that the evidence could not be used as proof of bad character or of a propensity to engage in such conduct. The jury convicted the defendant of two counts of murder, and he appealed directly to the Supreme Court pursuant to General Statutes § 51-199 (c) (3). On appeal, the defendant claims that the trial court committed harmful error by allowing the uncharged misconduct into evidence because it was more prejudicial than probative. He specifically argues that the uncharged misconduct was more severe than the charged conduct and improperly portrayed him as someone with a hot temper who went around shooting people. He contends that the uncharged misconduct lacked probative value sufficient to overcome that prejudice because the evidence was cumulative, inflammatory and introduced an unnecessary side issue. Furthermore, he asserts that the prior shootings were too prejudicial because the state could not sufficiently demonstrate that the same firearm was used, as he was not connected to the shooting on Cleveland Street. The state counters that such a claim was not preserved for appellate review and that the defendant is attempting to assert a *Porter* claim, which he failed to do before the trial court.

STATE *v.* JUAN F., SC 20385
Judicial District of Hartford

Criminal; Statute of Limitations; Tolling; Whether Defendant Presented Sufficient Evidence of Availability for Arrest; Whether Law Enforcement Exercised Due Diligence In Executing Warrant. The defendant moved from Puerto Rico to Hartford to

find work. In October 2001, he was living in Hartford with his maternal uncle, his uncle's wife, and her six year old child, the victim. He shared a bedroom with the victim, who accused him of sexually assaulting her while she was asleep on October 19, 2001. The defendant was ordered to leave the house, and by November 2001, he had left Hartford to return to his mother's house in Puerto Rico. The victim was taken to a hospital for evaluation, and the police were notified. On November 19, 2001, Detective Mark Fowler of the Hartford Police Department secured a warrant for the defendant's arrest but learned that he had left for Puerto Rico. Fowler disseminated a flyer and checked records from the Department of Motor Vehicles as well as the Hartford police in an attempt to gain information that might be used to apprehend the defendant. Fowler was unsuccessful, and, on November 26, 2001, he entered the warrant into a national database that would alert other law enforcement authorities that the defendant had an outstanding warrant in Connecticut. The defendant continued to live in Puerto Rico for the next sixteen years, with the exception of eight months during 2010 when he lived in California. During those sixteen years, he was employed under-the-table and did not obtain a driver's license, pay taxes, use his name on any rental agreement or utility bill, or register to vote. He completed two terms of incarceration in Puerto Rico in 2003 and 2006, but the authorities did not contact Connecticut law enforcement. In May, 2017, the defendant moved to Rochester, New York and was arrested on unrelated charges. He was extradited to Connecticut, and the 2001 arrest warrant was executed on June 5, 2017. On June 12, 2019, the defendant filed a motion to dismiss on the ground that the prosecution was commenced outside of the five year statute of limitations in General Statutes (Rev. to 2001) § 54-193a. The trial court found that the defendant failed to sustain his initial burden under *State v. Swebilus* (325 Conn. 793) of showing that he was available for arrest and not elusive. The court also determined that the delay between the issuance of the warrant and its execution was not unreasonable, finding that the delay was protracted but that Fowler's efforts to execute the warrant were reasonable given the defendant's actions. The court denied the motion to dismiss, and the jury found the defendant guilty of three counts of sexual assault in the first degree and one count of risk of injury to a child. Pursuant to General Statutes § 51-199 (b) (3), the defendant directly appealed to the Supreme Court and claims that the trial court erred in denying his motion to dismiss. He contends that he was not being elusive as evidenced by the fact that he did not abscond to an unexpected location but, rather, had simply returned to his mother's home, which he had left only six

months prior and was the only other place where he had lived. The defendant further argues that the trial court erred in finding that Fowler's efforts at executing the warrant were sufficient to conclude that the delay was not unreasonable, citing leads that Fowler purportedly failed to pursue.

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

STATE *v.* JAMES A., SC 20453
Judicial District of Waterbury at G.A. 4

Criminal; Whether Trial Court Abused Its Discretion in Joining Sexual Assault, Strangulation, and Risk of Injury Charges with Threatening and Disorderly Conduct Charges for Trial; Whether Trial Court Abused Its Discretion in Denying Defendant's Request to Testify About Non-Sexual Nature of Prior Convictions. The defendant was charged under two docket numbers with sexual assault, risk of injury, and strangulation crimes arising from conduct involving two of his minor stepdaughters between 2014 and 2018. The defendant was also charged under two additional docket numbers with (1) threatening in the second degree, arising from the defendant's displays of physically violent behavior and threats towards family members during a party in August 2018, and (2) disorderly conduct, arising from a physical dispute on the following day between the defendant and a family member in which the police determined that the defendant was the "primary aggressor." The state filed a motion to consolidate the four cases in a single trial and argued that the charges involved discrete facts, the crimes were not violent in nature and did not involve brutal or shocking conduct by the defendant, and the trial would not be complex. The trial court granted the state's motion and denied the defendant's later motion to sever the threatening and disorderly conduct cases from the sexual assault, risk of injury, and strangulation cases. During trial, the parties agreed that they would not elicit testimony regarding the defendant's history of prior robbery convictions. One of the trial witnesses nonetheless testified that the defendant had been in jail, at which point the jury was excused, the trial court struck the remark, the parties agreed to a curative jury instruction, and the trial court warned the witness that he would be found in contempt if he made additional similar remarks. The defendant requested, as an additional remedy, that he be permitted to testify that the prior convictions were for non-sexual crimes but that the

state be precluded from naming the crimes. The trial court ruled that, if the defendant were to testify about his prior convictions, he would be opening the door to inquiry by the state regarding the specific nature of the underlying crimes. The defendant elected not to testify. The jury found him guilty as charged, and he also pleaded guilty to being a persistent felony offender. He was sentenced to a total effective sentence of 50 years of incarceration, suspended after 35 years, and 20 years of probation. The defendant appeals from his conviction to the Supreme Court under General Statutes § 51-199 (b) (3). The Supreme Court will decide whether the trial court abused its discretion in joining the defendant's cases where he argues that the evidence was not cross-admissible across the cases, he was substantially prejudiced by the joinder, and his defense was prejudiced by the cumulative effect of the individually weak cases. The Supreme Court will also decide whether the trial court abused its discretion in denying the defendant's request for permission to testify about his prior convictions without opening the door to disclosing the names of the underlying felonies, where the defendant argues that the curative jury instruction was insufficient to counter the prejudicial effect of the witness' remark and that the trial court's ruling was harmful in that it precluded him from testifying in his own defense.

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

JOHN S. ADAMS, CO-ADMINISTRATOR (ESTATE OF RYAN
MICHAEL ADAMS) et al. v. AIRCRAFT SPRUCE
& SPECIALTY CO. et al., SC 20505
Judicial District of Stamford-Norwalk at Stamford

Trial Court Procedure; Personal Jurisdiction; Whether Trial Court Properly Granted Defendant Aircraft Parts Seller's Motion to Dismiss Plaintiff's Product Liability Claim Because Exercise of Specific Jurisdiction Would Violate Due Process. The decedent, eighteen-year-old Connecticut resident Ryan Michael Adams, was killed in an airplane crash in Morrisville, New York. The plaintiffs, John S. Adams and Mary Lou Hanney, are the decedent's parents and the co-administrators of his estate, and they brought this action asserting, inter alia, a product liability claim against the defendant Aircraft Spruce & Specialty Co. (hereinafter the defendant), a seller of overhauled aircraft engine replacement parts. The claim was the plaintiffs' only claim against the defendant and alleged that the defend-

ant sold the defective carburetor that was installed in the plane and malfunctioned on the day of the crash. The defendant filed a motion to dismiss the claim for lack of personal jurisdiction, arguing that the Connecticut long-arm statute was inapplicable and that the exercise of personal jurisdiction would violate due process where (1) it was a California corporation, (2) it had “remote, attenuated contacts” in Connecticut, (3) the crash occurred in New York, and (4) the carburetor was sold in New York. The trial court concluded that the defendant’s conduct was encompassed by General Statutes § 33-329 (f) (3), which provides in relevant part that a foreign corporation is subject to any claim by a state resident “arising . . . out of the . . . distribution of goods by such corporation with the reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold.” The trial court then considered whether the defendant had sufficient minimum contacts in Connecticut, such that the exercise of specific personal jurisdiction sought by the plaintiffs would comport with due process. The trial court concluded: “[R]ecent United States Supreme Court precedent [in *Walden v. Fiore*, 571 U.S. 277 (2014), and *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773 (2017),] has established that, in order for a court to assert specific personal jurisdiction over an out-of-state party consistent with the requirements of due process, the defendant must have engaged in some activity that connects it to the forum state, and the lawsuit must arise out of or relate to those contacts.” It determined that the exercise of personal jurisdiction here would violate due process where the defendant’s only contacts in Connecticut were limited sales that comprised less than one percent of its total revenue, the allegedly defective carburetor was not sold in Connecticut, and the crash occurred in New York. It accordingly granted the defendant’s motion to dismiss. In this appeal by the plaintiffs, which the Supreme Court transferred to its own docket, the Supreme Court will determine whether the trial court properly dismissed the plaintiff’s product liability claim against the defendant for lack of personal jurisdiction. The plaintiffs argue that the trial court improperly required them to show that the defendant’s in-state conduct actually contributed to their injuries and that, per the U.S. Supreme Court’s recent decision in *Ford Motor Co. v. Montana Eighth Judicial Circuit Court*, 141 S. Ct. 1017 (2021), due process requires only that a foreign defendant’s in-state conduct “relates to” a plaintiff’s claimed injuries.

SHANE J. CARPENTER *v.* BRADLEY J. DAAR et al., SC 20524
Judicial District of Middlesex

Medical Malpractice; Whether Appellate Court Properly Affirmed Dismissal on Ground that General Statutes § 52-190a Opinion Letter Was Not Authored by Similar Health Care Provider. The plaintiff alleged that the defendant dentist, Bradley J. Daar, negligently failed to diagnose and treat an infection during a root canal surgery and, as a result, the plaintiff required emergency care. He brought an action in June, 2017, that was dismissed for failing to comply with General Statutes § 52-190a, which requires the plaintiff in a medical malpractice action to attach to the complaint “a written and signed opinion letter of a similar health care provider, as defined in section 52-184c . . . that there appears to be evidence of medical negligence.” The plaintiff thereafter brought the underlying medical malpractice action pursuant to the accidental failure of suit statute. He raised the same allegations and also claimed that Daar held himself out as a specialist in endodontics. The plaintiff attached to that complaint the same opinion letter, authored by Dr. Charles Solomon, and also attached a supplemental correspondence to establish that Solomon was a similar health care provider. The supplemental correspondence stated that Solomon was licensed to practice dentistry in New York, received his “specialty [b]oards in [e]ndodontics,” and taught endodontics at Columbia University for the past eight years. The defendants moved to dismiss the action on the ground that Solomon was not a similar health care provider under § 52-184c (c) and supported that motion with Daar’s affidavit affirming that he is a general dentist, that he performed the plaintiff’s root canal in that capacity, and that he neither is nor represented that he was a specialist in endodontics. The plaintiff argued that Daar’s website held him out as a specialist in endodontics, but the plaintiff did not seek to amend his complaint in order to attach a new opinion letter or to modify the allegation that Daar held himself out as a specialist. Instead, the plaintiff submitted a supplemental affidavit from Solomon representing, inter alia, that he teaches “general dentistry and the performance of endodontic procedures, including root canals, by general dentists.” The court dismissed the action after concluding that Daar did not hold himself out as a specialist and, therefore, Solomon was not a similar healthcare provider under § 52-184c (b) because his letter failed to establish that he practiced or taught general dentistry. The plaintiff appealed to the Appellate Court (199 Conn. App. 367), which determined that Daar was a nonspecialist practicing general dentistry and that Solomon’s opinion letter and supplemental correspondence did

not demonstrate that he is a similar healthcare provider. Furthermore, the court determined that the plaintiff could not cure the opinion letter with Solomon's supplemental affidavit and, instead, was required to amend his complaint. The court therefore affirmed the judgment of dismissal on the alternative ground that the trial court should not have considered Solomon's supplemental affidavit, and the Supreme Court granted the plaintiff's petition for certification to appeal, limited to the issue of whether the Appellate Court properly affirmed the judgment of dismissal. The plaintiff on appeal argues that the Appellate Court erred in concluding that the supplemental affidavit could not be considered, that he failed to sufficiently allege that Daar held himself out as a specialist in endodontics, and, ultimately, that Solomon was not a similar healthcare provider.

DAVID CROUZET *v.* FIRST BAPTIST CHURCH OF STONINGTON
et al., SC 20545

Judicial District of New London

Appellate Review; Whether Appellate Court Properly Reversed Trial Court's Judgment for Defendants in Action Regarding Contamination of Neighboring Plaintiff's Property Because (1) Trial Court Committed Clear Error in Finding that Secondary Source was Responsible for Contamination and (2) Even if There was Secondary Source, Its Presence Did Not Mean That Plaintiff Failed to Prove that Defendants Caused Contamination. The plaintiff owns property located at 50 Trumbull Avenue in Stonington. The defendants, First Baptist Church of Stonington and Second Congregational Church of Stonington, jointly own abutting property at 48 Trumbull Avenue, where they operate a parsonage. The plaintiff brought this action against the defendants raising various contract, statutory, and tort claims for the alleged contamination of the basement, groundwater, and soil on the plaintiff's property by an underground oil tank on the defendants' property. During trial, both the plaintiff and the defendants called multiple expert witnesses to testify in support of their respective cases. One of the questions addressed at trial was whether there was a secondary source of contamination located under the plaintiff's property. The trial court issued a brief oral decision from the bench finding in favor of the defendants. The trial court stated that it would disregard the testimony of several witnesses called by both sides as excessively partisan and that the only credible witnesses were one called by the defendants and one called by the plaintiff, whose "data was outdated and outweighed"

by the testimony of the defendants' witness. The trial court further concluded that "the defense has shown a secondary source exists beneath the basement property owned by the plaintiff" and that "the plaintiff has failed to prove the allegations that [the] defendant[s] ha[d] caused the pollution beneath his house." The plaintiff appealed to the Appellate Court (199 Conn. App. 532), which reversed the trial court's judgment. The Appellate Court determined that the trial court had clearly erred in finding that the defendants had proven a secondary source of contamination "because there was no expert who testified, with a reasonable degree of probability, that a secondary source . . . existed . . . or that the possible secondary sources . . . are likely the cause of the oil contamination on the plaintiff's property." The court also concluded that the only expert witness who was fully credited by the trial court had given secondary source testimony that was speculative and based on conjecture. It further held that the trial court's secondary source conclusion did not legally and logically lead to its conclusion that the plaintiff had failed to prove that the defendants had caused the contamination on his property. In this certified appeal by the defendants, the Supreme Court will decide whether the Appellate Court, on the record in the case, properly reversed the judgment of the trial court rendered for the defendants on the grounds that (1) the trial court committed clear error in finding that a secondary source was responsible for the contamination of the plaintiff's property, and (2) even if there had been a secondary source of contamination, the presence of that secondary source does not mean that the plaintiff failed to prove that the defendants' oil tank contaminated their property.

STEPHEN BIRK HOLD *v.* SUSAN BIRK HOLD, SC 20593

Judicial District of Fairfield

Dissolution; Alimony; Whether Trial Court Properly Included Advances on Commissions from Plaintiff Former Husband's Employment and Money Earned By and Paid to Plaintiff's LLC as Income Subject to Alimony under Separation Agreement.

The parties' marriage was dissolved in 2009 pursuant to a separation agreement (agreement) that was incorporated into the divorce decree. Article V of the agreement provided in relevant part with respect to alimony that the plaintiff would pay to the defendant 30 percent of his "gross annual base income from employment," which was defined as "income actually received by the Husband from employment . . . from any and all sources derived" and "without limiting the generality

of the foregoing . . . shall include income from wages, salaries, consulting or other fees, commissions, director's fees and compensation for or by reason of past, present, or future employment, in whatever form received." At the time, the plaintiff was the chief executive officer of a major corporation who had always been compensated with a base annual salary reported on a Form W-2. He left that employment after the parties' divorce and formed a limited liability company through which he did consulting work. The resulting income was direct deposited into the LLC's account. The plaintiff also began to work for Cushman and Wakefield (C&W) as a commercial real estate broker in 2015. He received "draws" from C&W, which he characterized as loan type advances on commissions that he did not earn unless he effected corresponding sales. Between 2015 and 2019, the plaintiff received \$877,721 from C&W and \$630,930 through his consulting work but paid the defendant \$210,000 in alimony. The defendant filed a postjudgment motion for contempt, alleging that the plaintiff had failed to comply with the agreement because his alimony payments did not account for the entirety of his income. The plaintiff in turn filed a motion for modification on the ground that the alimony provision of the agreement did not account for the substantial change in his employment circumstances. The trial court heard and decided the motions together. It granted the motion for contempt, finding that Article V of the agreement included all gross income from all sources and did not exclude income earned from self-employment or as an independent contractor, as argued by the plaintiff. It ordered the plaintiff to pay an arrearage of \$252,595 to the defendant and an additional \$80,000 in attorney's fees for her prosecution of the motion for contempt. The trial court also granted the plaintiff's motion for modification, but instead of making the requested modification, it altered his alimony obligation to a fixed sum of \$6,500 per month based on a net annual income and earning capacity of approximately \$250,000. The plaintiff filed this appeal from the trial court's judgment in Appellate Court, and the Supreme Court transferred it to its own docket. The Supreme Court will decide whether the trial court properly interpreted the agreement by including the C&W draws and the money earned by and paid to the plaintiff's LLC as income subject to alimony. It will also decide whether the trial court properly modified the plaintiff's alimony obligation where he argues that the projected net income and earning capacity on which it relied was speculative. The Supreme Court will further decide whether the trial court properly found the plaintiff in contempt where he argues that he acted in good faith in characterizing his income for alimony purposes and whether the trial court properly

awarded attorney's fees to the defendant for prevailing on her motion for contempt.

WIND COLEBROOK SOUTH, LLC *v.* TOWN OF COLEBROOK,
SC 20594

Judicial District of Litchfield

Municipal Tax Appeal; Double Taxation; Whether Wind Turbines Are Properly Classified as Real Property; Whether Trial Court Erred in Refusing to Consider the Plaintiff's Expert Appraisal. The plaintiff constructed a wind turbine facility on two contiguous parcels in the defendant town. The facility, consisting of two towers with wind turbines and associated computer processing equipment, produces electricity that the plaintiff sells to an energy company. The towers are approximately 325 feet tall, and each turbine is anchored to a concrete foundation with bolts. The base of each tower has an exterior door leading to a room that is large enough to fit several individuals and certain equipment. As part of the approval and construction process, the plaintiff agreed to decommission the turbines at the end of their useful life, which is approximately twenty years, by unfastening the anchor bolts and removing the turbines completely. After the facility began operations in 2015, the defendant's assessor and two professional appraisers requested information from the plaintiff in order to classify the facility and to assess its value for tax purposes. The plaintiff filed a declaration of personal property that included the wind turbines and the associated equipment. The defendant's appraisers, however, classified the turbines as real property and used a cost-based approach to determine their assessed value. The plaintiff appealed to the defendant's board of assessment appeals pursuant to General Statutes § 12-117a, challenging the assessment on the grounds that the turbines were improperly classified as real property and were overvalued. The board denied the plaintiff's appeal, and the plaintiff appealed that decision to the Superior Court. The trial court reasoned that the room at the base of each tower could be occupied by multiple people and, therefore, the turbines are "structures" or "buildings" that are taxable as real property under General Statutes § 12-64, which similarly classifies garages, barns or silos as real property. The court rejected the plaintiff's claim that the turbines should be classified as personal property based on the plaintiff's objective intent to treat them as such, which the plaintiff asserts is evidenced by the fact that they will be decommissioned. As a result, the trial court rendered judgment for the defendant in part, the plaintiff appealed to

the Appellate Court, and the Supreme Court transferred the appeal to itself pursuant to Practice Book § 65-1. The plaintiff claims on appeal that the trial court erred because the wind turbines and associated equipment should be classified as personal property. It argues that the turbines are not equivalent to the real property listed in § 12-64 but, rather, are more like the personal property listed in General Statutes § 12-41 (c), which includes “cables, wires, poles . . . and other fixtures of water, gas electric and heating companies.” The plaintiff argues, moreover, that the defendant’s personal property declaration form expressly instructs taxpayers to declare turbines as personal property, that the defendant classifies another taxpayer’s turbine as personal property, and that the turbines should be taxed as personal property in accordance with the plaintiff’s intent. The plaintiff also claims that the trial court erred, as a matter of law, by refusing to consider its expert’s appraisal based on the income approach method and that the defendant improperly imposed a double assessment on certain property.

IN RE VADA V. et al., SC 20603/SC 20604

Juvenile Matters at New Haven

Child Protection; Trial Court Procedure; Whether the Trial Court Violated the Respondent Parents’ Constitutional Rights to Open Access to the Courts, an In-Person Trial at Common Law, Equal Protection, and Due Process by Terminating Their Parental Rights after a Virtual Hearing Held via Microsoft Teams. In August 2019, the petitioner, the Commissioner of Children and Families, filed petitions for termination of parental rights as to the respondent mother and the respondent father in the interests of their two minor children. The petition alleged as to the respondents the adjudicatory ground of failure to rehabilitate. On October 28, 2020, and November 4, 2020, a virtual trial was held on the petition via the Microsoft Teams videoconferencing platform rather than in-person due to the COVID-19 pandemic. Both respondents participated in the trial by sharing a cellular telephone outside the proximity of counsel. Counsel for the respondent mother represented to the trial court that she was communicating with her client via text messaging, while counsel for the respondent father represented that he had been in contact with his client during the trial via a messaging program. On the second day of trial, the respondents encountered difficulty in using the video feature of Microsoft Teams. The respondent mother testified via the audio feature only, while the respondent father testified via the video

feature but experienced problems with the quality of the connection, image, and sound. The trial court reserved decision at the end of the second day of trial and issued a memorandum of decision on December 18, 2020, granting the petitions as to both respondents and their parental rights in both minor children. Both respondents filed appeals from the trial court's judgment in the Appellate Court, and those appeals were subsequently transferred to the Supreme Court as SC 20603 (the respondent father's appeal) and SC 20604 (the respondent mother's appeal). The respondents' claims on appeal are identical. The Supreme Court will decide whether the trial court denied the respondents' rights to an in-person trial at common law as guaranteed by Article First, § 10 and Article Fifth, § 1 of the Connecticut Constitution by terminating their parental rights after a virtual hearing held via Microsoft Teams. The Supreme Court will also decide whether the respondents' due process rights were violated by the virtual hearing held via Microsoft Teams because they were precluded from confronting adverse witnesses personally in the physical presence of the judicial authority. Finally, the Supreme Court will decide whether the trial court violated the respondents' constitutional rights to due process, equal protection, and open access to the courts by holding the virtual hearing via Microsoft Teams and not providing them with their own exclusive devices and Internet connections so that they could participate via both audio and video. The petitioner argues in turn that the respondents' unpreserved claims are not reviewable under *State v. Golding*, 213 Conn. 233 (1989), because, inter alia, they are not constitutional in nature and the respondents at trial waived the rights that they assert on appeal.

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
Chief Staff Attorney*
