

## SUPREME COURT PENDING CASES

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

AARON LYNCH et al. *v.* STATE OF CONNECTICUT et al., SC 20646  
*Judicial District of Hartford*

**Medical Malpractice; Sovereign Immunity; Whether Claims Commissioner’s Authorization to Sue the State Covered Plaintiffs’ Claims; Whether “Wrongful Life” Claim Should Be Recognized in Connecticut.** After obtaining permission from the Claims Commissioner to sue the state of Connecticut (state) for medical malpractice pursuant to General Statutes § 4-160, Jean-Marie Monroe-Lynch and Aaron Lynch brought this action against the state on their own behalf and on behalf of their son, Joshua, and the estate of their deceased daughter, Shay. They alleged that Jean-Marie became pregnant with Joshua and Shay, who were twins, after the state’s hospital performed an intra-uterine insemination (IUI) procedure using sperm from a donor positive for cytomegalovirus (CMV) antibodies. They further alleged that Shay died in utero and Joshua was born with debilitating, life-long medical conditions due to the resulting CMV infection. They claimed, inter alia, that the state committed medical malpractice based upon (1) negligent fertility treatment in that the state did not obtain Jean-Marie’s informed consent where it failed to inform her of the risks associated with infection by CMV in the IUI procedure and (2) negligent prenatal treatment in that the state should have been alerted to the possibility of CMV infections in the fetuses based on an ultrasound examination. The trial court struck Joshua’s negligent prenatal treatment claim, stating that it was a “wrongful life” claim that it declined to recognize. The court, however, refused to strike the negligent fertility treatment claims brought on behalf of Joshua and Shay’s estate, concluding that they were medical malpractice claims and not “wrongful life” claims. After trial, the court found in favor of the plaintiffs and awarded damages in excess of \$36 million. The state appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself. On appeal, the state claims that the plaintiffs’ action is barred by the doctrine of sovereign immunity. Specifically, it argues that the fertility treatment claims predicated on a lack of informed consent were outside the scope of the Claims Commissioner’s permission to sue the state, which was limited to medical malpractice claims. It also asserts that the plaintiffs never received permission to sue on their prenatal medical malpractice claims, as they failed to submit to the Claims Commissioner a good

faith certificate and an opinion letter from a similar health care provider for those claims as required by § 4-160 (b). In addition, the state claims that the negligent fertility treatment claims brought on behalf of Joshua and Shay's estate are, in fact, "wrongful life" claims and that a "wrongful life" claim should not be recognized in Connecticut because it does not allege any legally cognizable injury to the child and "demands a calculation of damages dependent upon a comparison between the Hobson's choice of life in an impaired state and nonexistence" that the law is not equipped to make, quoting *Becker v. Schwartz*, 46 N.Y.2d 401, 412 (1978). Finally, the state claims that the trial court improperly relied on the testimony of Dr. McMeeking, the plaintiff's expert, in concluding that the donor sperm used in the IUI procedure caused the CMV infections to Jean-Marie, Joshua and Shay. It asserts that Dr. McMeeking's causation testimony should not have been admitted because it was unsupported by a valid scientific methodology and was based on unproven, speculative factual assumptions.

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STATE *v.* DANIEL VELASQUEZ-MATTOS, SC 20683  
*Judicial District of New Haven*

**Criminal; Sexual Assault in First Degree; Constancy of Accusation Witnesses; Whether Constancy of Accusation Witnesses' Testimony Was Inconsistent with Victim's Testimony or Too Detailed; Whether Trial Court Properly Precluded Defendant from Impeaching Witness with Pending Criminal Charge.** The eight-year-old victim and his family moved into the second floor apartment of a multifamily home, living above the apartment of the thirty seven-year-old defendant. The defendant befriended the victim and bought gifts for him, including a videogame system that he did not allow the victim to use in the victim's apartment, claiming he might break it. Instead, the defendant insisted that the victim play videogames in the defendant's bedroom, and, while doing so, the defendant locked his bedroom door and sexually assaulted the victim. Brandishing a knife, the defendant threatened that he would kill the victim's family if he disclosed the abuse. After a series of incidents that made clear to the victim's parents that this relationship was inappropriate, the victim disclosed the abuse to family members while the defendant was hospitalized. The police later arrested the defendant, charging him with sexual assault and risk of injury to a child. At trial, the defendant impeached the victim's credibility on cross-examination by claiming that he had fabricated the allegations. The state therefore sought to admit testimony from the victim's family about the victim's

disclosure of the abuse under ” 6-11 (c) (1) of the Connecticut Code of Evidence, which provides that, if the defendant impeaches the credibility of a sexual assault complainant, then the state may respond with constancy of accusation witnesses to offer testimony corroborating that the victim made an allegation of sexual assault and the timing thereof. Such testimony may not be admitted for substantive purposes and can contain only “those details [of the alleged assault] necessary to associate the complainant’s allegations with the pending charge.” The court overruled the defendant’s hearsay objection and admitted the testimony. Following his conviction, the defendant appealed directly to the Supreme Court pursuant to General Statutes § 51-199 (b) (3), claiming that the the constancy of accusation testimony was improperly admitted because the victim did not testify about certain aspects of the sexual abuse to which the family had testified. He also argues that their testimony contained unnecessary details of the assault that were not needed to associate the victim’s allegations with the pending charges. The defendant further claims that the trial court erred in precluding him from impeaching the victim’s father with his pending criminal charge. He argues that the pending charge was relevant to show the father’s motive to testify favorably for the state and that the court improperly applied the rule of evidence for impeaching a witness with a prior felony conviction. While the defendant claims that these errors were harmful, the state contends that they were harmless and, moreover, that the defendant did not preserve his claim regarding the father’s testimony. The state further argues that the constancy of accusation testimony was also properly admitted to rebut the recent suggestion of fabrication and that inconsistencies in that testimony and the victim’s are subjects for cross-examination.

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

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STATE *v.* ANDRES C., SC 20692  
*Judicial District of New Haven*

**Criminal; Whether Defendant Waived Claim That He Was Entitled to Disclosure of Victim’s Journals As Discoverable Statements of a Witness; Whether *Brady* Review of Victim’s Journals by Nonlawyer Member of Prosecutor’s Office Was Constitutionally Adequate.** The defendant was charged with various crimes based on allegations that he sexually abused a minor child on numerous occasions. During the victim’s testimony at trial, the parties

learned for the first time that she maintained journals relating to her abuse. The defendant requested access to the journals “as discovery.” The trial court conducted an in chambers discussion with the parties, after which it ordered the state to review the journals to determine if they contained any statements by the victim concerning the incidents in question or any exculpatory material that must be disclosed to the defendant. The trial court stated that, if there were any question as to what must be disclosed, it would conduct an in camera review. The defendant raised no objection to the procedure. The prosecutors assigned the task of reviewing the journals, which were handwritten in Spanish, to a bilingual investigator in their office. After trial, the defendant was convicted of sexual assault in the third degree and risk of injury to a child. The defendant appealed, claiming that the trial court improperly denied him access to the victim’s journals because they constituted discoverable statements of a witness under Practice Book § 40-13A. Section 40-13A provides that, upon written request by a defendant and without an order of the judicial authority, the prosecuting authority shall provide photocopies of all statements within its possession that were prepared concerning the offense charged. The Appellate Court (208 Conn. App. 825) held that the defendant waived the claim because he agreed to the procedure to be used for the review, and potential disclosure, of the contents of the journals and, having agreed to this procedure before the trial court, he could not challenge that procedure on appeal. The defendant also claimed that his rights under *Brady v. Maryland*, 373 U.S. 83 (1963), were violated by the procedure employed by the prosecutors with respect to review of the victim’s journals. Specifically, the defendant argued that the prosecutors were required to personally review the victim’s journals for exculpatory information and could not delegate the task to a nonlawyer member of their office. The Appellate Court held that the defendant could not prevail on the claim because, although the ultimate obligation for complying with *Brady* rests with the prosecutor, it did not follow that the personal review of items such as the victim’s journals by a prosecutor is constitutionally required. The Appellate Court affirmed the conviction, and the defendant filed a petition for certification to appeal from the decision. The Supreme Court granted the petition as to the questions of whether the Appellate Court incorrectly concluded that (1) the defendant waived his claim that he was entitled to disclosure of the contents of the victim’s journals as the discoverable statements of a witness and (2) the *Brady* review of the victim’s journals by a nonlawyer member of the prosecutor’s office was constitutionally adequate.

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

DAVID O’SULLIVAN *v.* ALAN F. HAUGHT, SC 20722  
*Judicial District of Hartford*

**Appellate Jurisdiction; Whether Appeal From Denial of Motion for Summary Judgment Based on Collateral Estoppel Properly Dismissed for Lack of Subject Matter Jurisdiction.** The plaintiff, David O’Sullivan, was the sole beneficiary of a will executed by his mother, Stephanie Haught, in 2012. In 2013, Stephanie Haught married the defendant, Alan F. Haught, and executed a will that revoked the prior will and named the defendant as her sole beneficiary. Stephanie Haught died in 2017, and the defendant applied to have the 2013 will admitted to probate. The plaintiff contested the will on the grounds that the decedent lacked testamentary capacity and that the will was the product of undue influence by the defendant. The Probate Court found that the plaintiff failed to prove his claims and admitted the will to probate. The plaintiff appealed from the decision to the Superior Court. The plaintiff also filed a civil action in which he alleged a claim of tortious interference with expected inheritance based on his claim that the defendant exercised undue influence over the decedent in connection with the execution of the will. The trial court consolidated the probate appeal and the civil action for trial. The defendant filed a motion for summary judgment on the tort claim on the ground that it is barred by the doctrine of collateral estoppel because the issue of undue influence was fully litigated in, and decided by, the Probate Court. The trial court denied the motion based on its finding that, due to the Probate Court’s limited statutory authority, it could not properly have adjudicated the tort claim. The defendant appealed from the trial court’s ruling denying his motion for summary judgment. The plaintiff filed a motion to dismiss the appeal, claiming that the Appellate Court lacked subject matter jurisdiction because the denial of a motion for summary judgment is not an appealable final judgment. While there is an exception allowing an immediate appeal from a trial court’s denial of a motion for summary judgment based on a colorable claim of collateral estoppel, the plaintiff claimed that it is patently obvious that collateral estoppel does not apply because the Probate Court had no statutory authority to adjudicate the tort claim. The defendant argued that the plaintiff’s claim is directly contradicted by *Solon v. Slater*, 204 Conn. App. 647, cert. granted, 337 Conn. 908 (2021). In *Solon*, the Appellate Court held that the plaintiff

was collaterally estopped from litigating her tortious interference claims in the Superior Court because the issue of whether the decedent had been subject to undue influence by the defendants had been finally determined by the Probate Court by virtue of a prior decree admitting the decedent's will, which was not challenged on appeal. The Appellate Court granted the motion to dismiss in the present case without a written decision. The defendant filed a petition for certification to appeal, which the Supreme Court granted as to the question of whether the Appellate Court properly dismissed, for lack of subject matter jurisdiction, the defendant's appeal from the trial court's denial of his motion for summary judgment based on collateral estoppel.

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IN RE COLE, SC 20746

*United States District Court for the District of Connecticut*

**Bankruptcy; Homestead Exemption; Whether Public Act 21-161, Which Increased Amount of Homestead Exemption From \$75,000 to \$250,000, Applies Retroactively to Debts Incurred by Debtor Before Public Act 21-161 Took Effect or Prospectively.**

In 1993, the legislature enacted Public Act 93-301 ("1993 Act"), then codified at General Statutes § 52-352b (t), which exempted from the claims of creditors the value of the debtor's homestead up to the amount of \$75,000 ("homestead exemption"). Section 3 of the 1993 Act provided: "This act shall take effect October 1, 1993, and shall be applicable to any lien for any obligation or claim arising on or after said date." Subsequently, courts in the United States Court of Appeals for the Second Circuit determined that § 52-325b (t) applied only to debts incurred on or after October 1, 1993, because the newly created homestead exemption was a substantive change in the law. In 2021, the legislature enacted Public Act 21-161 ("2021 Act"), now codified at General Statutes § 52-352b (21), which increased the amount of the homestead exemption from \$75,000 to \$250,000. Section 1 of the 2021 Act provides in part: "Section 52-352b of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2021) . . . ." Unlike the 1993 Act, the 2021 Act makes no reference to its applicability. On November 22, 2021, Elaine M. Cole (debtor) filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of Connecticut ("Bankruptcy Court"). At that time, she owned a home in Mystic, Connecticut, which was then under contract for sale to a third party. The debtor claimed a homestead exemption in her home in the amount of \$250,000 pursuant to § 52-352b (21). Anthony S. Novak (trustee), the Chapter 7 trustee of the bankruptcy

estate of the debtor, objected to the debtor's claimed homestead exemption, arguing that the debtor could not use the increased homestead amount set forth in the 2021 Act, as her debts were incurred before October 1, 2021, the effective date of the 2021 Act. The Bankruptcy Court rejected the trustee's argument, concluding that the 2021 Act applied to the debtor and all bankruptcy debtors claiming homestead exemptions pursuant to § 52-352b (21) on or after October 1, 2021. In support of its interpretation of the 2021 Act, the Bankruptcy Court stated: "Absent a clear expression of legislative intent to the contrary, and based upon the legislature's presumptively intentional elimination of limiting language and its explicit repeal of the [o]riginal [h]omestead [e]xemption, the Court finds that the [new homestead exemption set forth in the 2021 Act] shall be applied retroactively." The trustee appealed from the Bankruptcy Court's decision to the United States District Court for the District of Connecticut (District Court), claiming that the Bankruptcy Court improperly concluded that the 2021 Act applied retroactively to debts incurred by the debtor prior to that act's effective date. Finding no binding Connecticut authority on the question of the retroactivity of the 2021 Act, the District Court certified the following question, which the Supreme Court accepted pursuant to General Statutes § 51-199b: "Whether Public Act 21-161 applies retroactively to debts incurred by the debtor before Public Act 21-161 took effect or prospectively."

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MARLINE ADESOKAN et al. *v.* TOWN OF BLOOMFIELD et al.,  
SC 20753

*Judicial District of Hartford*

**Governmental Immunity; Identifiable Person-Imminent Harm Exception; General Statutes § 14-283; Whether Trial Court Properly Concluded that Defendant Entitled to Governmental Immunity for Accident Involving Police Cruiser Responding to an Emergency.** The plaintiff was driving her two children to daycare and summer camp in August, 2017, when she stopped at an intersection in a construction zone before making a left turn at the direction of a construction worker. At the same time, the defendant officer from the defendant town's police department was responding to a report of a kidnapping with his emergency lights and sirens activated. When the plaintiff attempted to make the left turn, her vehicle was struck by the police cruiser as it tried to pass. The plaintiff, on behalf of herself and her children, brought this action against the town and the officer, alleging that the officer had been

negligent by, inter alia, traveling at an excessive speed in violation of General Statutes § 14-283 (d), which requires those who operate emergency vehicles “to drive with due regard for the safety of all persons and property.” The defendants moved for summary judgment on the ground of governmental immunity for the officer’s discretionary acts and omissions, citing the Supreme Court’s recent decision in *Borelli v. Renaldi* (336 Conn. 1). The court in *Borelli* reasoned that § 14-283 (d) “imposes a discretionary duty to act” but limited its decision to “an officer’s decision to initiate a pursuit.” The trial court here, relying on *Borelli*, concluded that the officer’s manner of operating the emergency vehicle was discretionary, and, therefore, the town was entitled to immunity. The court also rejected the plaintiffs’ claim that they fit an exception to governmental immunity for identifiable victims who are subject to imminent harm, finding that the plaintiffs were not exposed to imminent harm and had not presented evidence that they were within a class of identifiable victims. The plaintiffs appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself pursuant to General Statutes § 51-199 (c). The plaintiffs claim that there are issues of material fact and that the trial court misapplied *Borelli*, as the Supreme Court’s holding was limited to an officer’s initial decision to engage in a pursuit, which does not apply here to a negligence claim based on the manner in which the officer drove his emergency vehicle. The plaintiffs also claim that the court erred in rejecting their argument that the identifiable victim-imminent harm exception applied, and they argue that the court exceeded its authority because it should have allowed the jury to determine whether the officer was engaged in ministerial or discretionary acts as a question of fact. The defendants counter that the trial court correctly applied *Borelli* and that there were no underlying factual disputes that needed to be resolved under the identifiable person-imminent harm exception, which the court properly rejected. Furthermore, they argue that the plaintiffs cannot rely on the fact that the construction worker directed the plaintiff mother to turn, as they failed to plead any such allegations in the complaint. The Supreme Court will also consider the effect, if any, of its decision in *Daley v. Kashmanian* (344 Conn. 464), which was released during the pendency of this appeal. In *Daley*, the Supreme Court reasoned that the operation of a nonemergency vehicle “is a highly regulated activity that constitutes a ministerial function,” but the court left open the question of whether responding to an emergency call under § 14-283 “changes driving from a ministerial to a discretionary task.”

*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*

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