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OFFICE OF CHIEF DISCIPLINARY COUNSEL *v.* ROBERT O. WYNNE (AC 44763)

Elgo, Suarez and Seeley, Js.

Syllabus

The plaintiff, the Office of Chief Disciplinary Counsel, appealed from the judgment of the trial court approving two applications to become supervising attorneys to the defendant, a deactivated attorney. The defendant had been placed on interim suspension from the practice of law in January, 2021, until further order of the court. In February, 2021, L, an attorney, filed an application to become the defendant's supervising attorney pursuant to the applicable rule of practice (§ 2-47B). In March, 2021, the court heard argument on the threshold issue of whether Practice Book § 2-47B prohibited the defendant from having any communication with clients or third parties regarding matters that were the subject of representation by the supervising attorney or his firm. In its memorandum of decision, the court concluded that, pursuant to Practice Book § 2-47B, a court may expressly permit, by written order, a deactivated attorney who is employed by a supervising attorney in the role of paralegal or legal assistant to communicate with clients and third parties regarding matters that are the subject of representation by the supervising attorney or his or her firm, provided that the communication does not amount to engaging in the practice of law. Thereafter, the court held a hearing on the application itself. L testified that the defendant would initially work remotely and that he could not give a date by which the defendant would be physically present in the office with him. Shortly after the hearing, D, another attorney, also filed an application to become a supervising attorney. The court approved both applications and thereby appointed L and D to serve as supervising attorneys for the defendant. The plaintiff filed this appeal in June, 2021. In July, 2022, however, L and D filed a motion to terminate their supervising attorney relationships with the defendant, and the trial court granted the motion in November, 2022. In light of this development, this court, sua sponte, ordered the parties to file supplemental briefs addressing whether this appeal should be dismissed as moot. In their briefs, both parties argued that this case should not be dismissed as moot because the issues raised by the plaintiff qualify for the "capable of repetition, yet evading review" exception to the mootness doctrine. *Held* that the plaintiff's appeal, claiming that the trial court improperly approved the supervising attorney applications and improperly held that a court may expressly permit a deactivated attorney who is employed by a supervising attorney in the role of paralegal or legal assistant to communicate with clients and third parties regarding matters that are the subject of representation by the supervising attorney or his or her firm, provided that the communication does not amount to engaging in the practice of law, was moot: there was no practical relief that could be afforded to the plaintiff, as the defendant was neither being supervised remotely nor was he employed as a paralegal with the ability to communicate with clients or third parties, and, therefore, there existed no live controversy; moreover, the plaintiff's claims were not properly subject to appellate review under the "capable of repetition, yet evading review" exception to the mootness doctrine, as the effect of the challenged court order, namely, the remote supervision of the defendant and his role as a paralegal with the court's written permission to communicate with clients and third parties was not, by its very nature, of limited duration because the defendant's suspension would conclude only upon further order of the court, and, as such, the defendant's suspension was still ongoing and theoretically "indefinite"; furthermore, the controversy between the parties was not durationally limited by the very nature of the claim or circumstances but rather became moot due to an external factor, namely, the supervising attorneys' choice to terminate their relationship with the defendant, that was not inherently present in every case similar to the one before this court, so there was no "insurmountable time constraint"

inherent to this type of dispute that would render the substantial majority of these challenges moot in the future; accordingly, this court lacked subject matter jurisdiction to consider the plaintiff's claims.

Argued February 6—officially released August 8, 2023

Procedural History

Presentment by the plaintiff for alleged professional misconduct by the defendant, brought to the Superior Court in the judicial district of Hartford and tried to the court, *Sheridan*, *J.*; judgment suspending the defendant from the practice of law on an interim basis until further order of the court; thereafter, the court, *Sheridan*, *J.*, granted applications to become supervising attorneys filed by Sergei Lemberg et al., and the plaintiff appealed to this court; subsequently, the court, *Cobb*, *J.*, granted the motion to terminate their supervising attorney relationships with the defendant filed by Sergei Lemberg et al. *Appeal dismissed.*

Leanne M. Larson, first assistant chief disciplinary counsel, for the appellant (plaintiff).

Patrick Tomasiewicz, for the appellee (defendant).

Opinion

ELGO, J. The plaintiff, the Office of Chief Disciplinary Counsel, appeals from the judgment of the trial court approving two applications to become supervising attorneys to the defendant, Robert O. Wynne, a deactivated attorney.[1] On appeal, the plaintiff argues that the court improperly (1) approved the applications to become the defendant's supervising attorneys in light of their proposal to supervise the defendant remotely and (2) held that, pursuant to Practice Book § 2-47B, a court may expressly permit, by written order, a deactivated attorney who is employed by a supervising attorney in the role of paralegal or legal assistant to communicate with clients and third parties regarding matters that are the subject of representation by the supervising attorney or his or her firm, provided that the communication does not amount to engaging in the practice of law. During the pendency of this appeal, however, the trial court granted a motion to terminate the supervising attorney relationships at issue. As such, we ordered the parties to file supplemental briefs addressing whether this appeal should be dismissed as moot. In their briefs, the parties argue that the appeal is not moot under the "capable of repetition, yet evading review" exception to the mootness doctrine.[2] We are not persuaded that this exception applies and, therefore, dismiss this appeal for lack of subject matter jurisdiction.

The following undisputed facts are relevant to the resolution of the plaintiff's appeal. The defendant was placed on interim suspension from the practice of law on January 27, 2021, until further order of the court. On February 24, 2021, Attorney Sergei Lemberg filed an application to become the defendant's supervising attorney (application) pursuant to Practice Book § 2-47B. On March 19, 2021, the court heard argument on the threshold issue of whether Practice Book § 2-47B (a) (3) (F) and (b) (1) and (2) (A) and (B) prohibit the defendant from having any communication with clients or third parties regarding matters that are the subject of representation by the supervising attorney or his or her firm.

In its March 25, 2021 memorandum of decision, the court concluded that, "pursuant to Practice Book § 2-47B, a court may expressly permit, by written order, a deactivated attorney who is employed by a supervising attorney in the role of paralegal or legal assistant to communicate with clients and third parties regarding matters that are the subject of representation by the supervising attorney or his or her firm, provided that the communication does not amount to engaging in the practice of law."

Thereafter, on May 26, 2021, the court held a hearing on the application itself. Lemberg testified that the defendant would initially work remotely and that he

could not give a date by which the defendant would be physically present in the office with him. On May 27, 2021, Attorney Mark Dubois also filed an application to become a supervising attorney. By order dated May 27, 2021, the court approved both applications and thereby appointed Lemberg and Dubois to serve as supervising attorneys for the defendant. The plaintiff filed this appeal on June 7, 2021.

Following the commencement of this appeal, both supervising attorneys, on July 18, 2022, filed a motion to terminate the supervising attorney relationship with the defendant. On November 22, 2022, the trial court granted the motion. In light of this development, this court, sua sponte, ordered the parties to file supplemental briefs addressing whether this appeal should be dismissed as moot. In their briefs, both parties argue that this case should not be dismissed as moot because the issues raised by the plaintiff qualify for the capable of repetition, yet evading review exception to the mootness doctrine.

We first set forth the relevant legal principles governing whether a claim on appeal is moot. "Mootness implicates [the] court's subject matter jurisdiction and is thus a threshold matter for us to resolve. . . . It is a well-settled general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . An actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal. . . . When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot . . . . Because mootness implicates subject matter jurisdiction, it presents a question of law over which our review is plenary." (Internal quotation marks omitted.) *JP Morgan Chase Bank, Trustee* v. *Rodrigues*, 132 Conn. App. 757, 762, 34 A.3d 1001 (2012).

We conclude that the plaintiff's appeal is moot because no practical relief can be afforded to the plaintiff. As the facts currently stand, the defendant is neither being supervised remotely nor is he employed as a paralegal with the ability to communicate with clients or third parties. Therefore, there exists no live controversy, and the plaintiff's appeal is moot.

We next set forth the relevant principles of the capable of repetition, yet evading review exception to the mootness doctrine on which the parties rely. "Our cases reveal that for an otherwise moot question to qualify for review under the 'capable of repetition, yet evading review' exception, it must meet three requirements. First, the challenged action, or the effect of the chal-

lenged action, by its very nature must be of a limited duration so that there is a strong likelihood that the substantial majority of cases raising a question about its validity will become moot before appellate litigation can be concluded. Second, there must be a reasonable likelihood that the question presented in the pending case will arise again in the future, and that it will affect either the same complaining party or a reasonably identifiable group for whom that party can be said to act as surrogate. Third, the question must have some public importance. Unless all three requirements are met, the appeal must be dismissed as moot." *Loisel* v. *Rowe*, 233 Conn. 370, 382–83, 660 A.2d 323 (1995).

We conclude that the first requirement is dispositive. Our Supreme Court has held that "[t]he first requirement of the foregoing test 'reflects the functionally insurmountable time constraints present in certain types of disputes. . . . Paradigmatic examples are abortion cases and other medical treatment disputes.' . . . 'The basis for the first requirement derives from the nature of the exception. If an action or its effects is not of inherently limited duration, the action can be reviewed the next time it arises, when it will present an ongoing live controversy. Moreover, if the question presented is not strongly likely to become moot in the substantial majority of cases in which it arises, the urgency of deciding the pending case is significantly reduced. Thus, there is no reason to reach out to decide the issue as between parties who, by hypothesis, no longer have any present interest in the outcome.' " (Citation omitted.) *Wendy V.* v. *Santiago*, 319 Conn. 540, 546, 125 A.3d 983 (2015).

The plaintiff's appeal fails to meet this first prong and, therefore, does not fall within the capable of repetition, yet evading review exception.[3] The effect of the challenged court order, namely, the remote supervision of the defendant and his role as a paralegal with the court's written permission to communicate with clients and third parties is not, by its very nature, of limited duration. The record reflects that the trial court did not set a durational limitation on the defendant's interim suspension; instead, the defendant's suspension will conclude only upon further order of the court.[4] As such, the defendant's suspension is still ongoing and theoretically "indefinite." Indeed, the only durational limitation to this appeal was created by the supervising attorneys' choice to terminate their supervisory relationships with the defendant. Therefore, the controversy between the parties was not durationally limited by the very nature of the claim or circumstances but, rather, became moot due to an external factor that is not inherently present in every case similar to the one before us.[5] In light of the foregoing, we conclude that there is no "insurmountable time constraint" inherent to this type of dispute that would render the substantial majority of these challenges moot in the future.

Accordingly, we conclude that the controversy between the parties does not fall within the capable of repetition, yet evading review exception to the mootness doctrine and, therefore, we dismiss the appeal for lack of subject matter jurisdiction.

The appeal is dismissed.

In this opinion the other judges concurred.

[1] Pursuant to Practice Book § 2-47B (a) (1), "[a] 'deactivated attorney' is an attorney who is currently disbarred, suspended, resigned, or on inactive status."

[2] In its supplemental brief on appeal, the plaintiff also asserts that this appeal should not be dismissed as moot because it qualifies for the "collateral consequences" exception to the mootness doctrine. "[T]o invoke successfully the collateral consequences doctrine, the litigant must show that there is a reasonable possibility that prejudicial collateral consequences will occur. Accordingly, the litigant must establish these consequences by more than mere conjecture, but need not demonstrate that these consequences are more probable than not." *Putman* v. *Kennedy*, 279 Conn. 162, 169, 900 A.2d 1256 (2006). In the present case, the plaintiff does not allege that it will suffer any collateral consequences from a dismissal. Instead, it focuses on potential harm to the public, in particular, clients of other lawyers. Such concerns properly are considered when determining whether the claim is capable of repetition, yet evading review. Consequently, the plaintiff's collateral consequences claim is without merit. Furthermore, the plaintiff does not provide specific examples of the public or clients suffering prejudicial collateral consequences. Therefore, we conclude that the plaintiff's argument amounts to mere conjecture. See *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 502, 510, 970 A.2d 578 (2009) ("speculation and conjecture . . . have no place in appellate review" (internal quotation marks omitted)).

[3] The defendant concedes in his supplemental brief that "the issue in this matter is not of short duration. The order entered by the court had an indefinite term."

[4] During oral argument before this court, the attorney for the plaintiff represented that, although the pending suspension terminated in January, the defendant must appear before a standing committee and a three judge panel in order to be reinstated but currently cannot do so due to other pending disciplinary matters.

[5] In its supplemental brief, the plaintiff argues that, although it "does not possess statistics regarding the number and length of suspensions imposed by the courts," the duration of such suspensions is typically limited to three years. Similarly, the plaintiff asserts that, because a supervising attorney can terminate the relationship at any time, this creates a limited duration during which claims such as the present one can be asserted. We find these arguments unpersuasive in light of the relevant fact that the defendant's suspension is not limited to a set period of time and, therefore, there is no durational limitation inherent in the defendant's suspension or the supervisory relationships.