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PETER REK ET AL. *v.* KIRK PETTIT ET AL.
(AC 45210)

Bright, C. J., and Elgo and Seeley, Js.

Syllabus

The plaintiffs, the legal guardians of C, a minor child, appealed to this court from the December, 2021 judgment of the trial court issuing certain orders regarding visitation between the defendant maternal grandparents and C. The plaintiffs subsequently amended their appeal to include a challenge to the trial court's denial of their motion for a mistrial and their motion to open and vacate the judgment. While this appeal was pending, the trial court granted the plaintiffs' motion to terminate visitation between the defendants and C, and no appeal was taken from that judgment. *Held* that, because the plaintiff's appeal was moot, this court lacked subject matter jurisdiction and, accordingly, the appeal was dismissed: because the trial court rendered judgment terminating visitation between the defendants and C while this appeal was pending, there no longer was any practical relief that this court could grant by addressing the merits of the plaintiffs' appeal, and, even if this court were to conclude that the trial court improperly entered the visitation related orders in question or that it failed to render judgment in accordance with statute (§ 51-183b), a remand to the trial court for further proceedings would be futile, as no actual controversy remained regarding visitation between the defendants and C; moreover, contrary to the plaintiffs' claim that it was unclear whether a portion of the trial court's December, 2021 order regarding therapy for C remained in effect after visitation was terminated, it was apparent that, when read in the context of the evidentiary hearing, that portion of the order was plainly intertwined with the visitation issues before the trial court and was, therefore, mooted when the court terminated visitation; furthermore, the collateral consequences exception to the mootness doctrine did not apply, as the plaintiffs failed to show that there was a reasonable possibility, rather than mere conjecture, that the issue of the defendants' standing to seek visitation would arise in the future, as the defendants did not avail themselves of their right to appellate review or reconsideration by the trial court regarding the judgment terminating visitation, and the plaintiffs also failed to show that there was a reasonable possibility that they would suffer reputational harm as a result of certain statements by the trial judge in a ruling made in connection with the December, 2021 visitation orders, as the trial judge's statements of which the plaintiffs complained were more expressions of frustration with the plaintiffs than factual findings of malfeasance on their part and any collateral consequences stemming from those isolated statements were speculative at best, particularly when considered in light of the undisputed fact that the plaintiffs ultimately were found in contempt due to their failure to comply with the trial judge's visitation orders.

Argued May 11—officially released October 24, 2023

Procedural History

Action seeking to modify the terms of a visitation agreement, brought to the Superior Court in the judicial district of Waterbury, Juvenile Matters, where the court, *Coleman, J.*, rendered judgment granting the plaintiffs' motion to modify visitation and issued certain orders; thereafter, following an evidentiary hearing, the court, *Hon. Eric D. Coleman*, judge trial referee, reversed its previous orders and issued new orders, from which the plaintiffs appealed to this court; subsequently, the court, *Hon. Eric D. Coleman*, judge trial referee, denied the plaintiffs' motion for a mistrial, and the plaintiffs filed an amended appeal; thereafter, the court, *Hon. Eric*

D. Coleman, judge trial referee, denied the plaintiffs' motion to open and vacate, and the plaintiffs filed a second amended appeal; subsequently, the court, *Rapillo*, *J.*, granted the plaintiffs' motion to terminate visitation between the defendants and the minor child. *Appeal dismissed.*

Megan L. Wade, with whom was *James P. Sexton*, for the appellants (plaintiffs).

Opinion

ELGO, J. This appeal concerns the propriety of the December 15, 2021 judgment of the trial court issuing certain orders regarding visitation between the defendants, Kirk Pettit and Charlotte Pettit, and Caleb, a minor child.[1] On appeal, the plaintiffs, Peter Rek and Carisa Rek, the legal guardians of Caleb, claim that the court (1) lacked subject matter jurisdiction to issue those orders, (2) improperly denied their motion to open and vacate the December 15, 2021 judgment, and (3) improperly denied their motion for a mistrial due to the court's failure to render judgment in accordance with General Statutes § 51-183b.

While this appeal was pending, the trial court granted the plaintiffs' motion to terminate visitation between the defendants and Caleb. When no appeal was taken from that judgment, this court invited the parties to file supplemental briefs on the issue of whether the present appeal is moot. Having considered that issue of subject matter jurisdiction in light of the foregoing, we conclude that the plaintiffs' appeal is moot and dismiss the appeal.

The relevant facts are not in dispute. On August 8, 2016, the Superior Court for Juvenile Matters, *Dooley*, *J.*, appointed the plaintiffs as legal guardians of Caleb and approved a visitation agreement between the plaintiffs and the defendants. That agreement, which was entered as an order of the court, specifically provided that enforcement or modification thereof would be in family court. On November 29, 2016, the plaintiffs filed the underlying action seeking to modify the terms of the visitation agreement. The defendants, in turn, filed an objection and a motion for contempt. As this court noted in *Rek* v. *Pettit*, 214 Conn. App. 854, 280 A.3d 1260, cert. dismissed, 345 Conn. 969, 285 A.3d 1126 (2022), protracted litigation between the parties followed. Id., 857.

Relevant to this appeal is the judgment rendered by the court, *Hon. Eric D. Coleman*, judge trial referee, on December 15, 2021, following a three day evidentiary hearing on the issue of the parties' compliance with existing visitation orders. The court at that time issued various orders regarding visitation between the defendants and Caleb and the appointment of a therapist to facilitate such visitation. The court also suspended Caleb's treatment with his personal therapist, Patricia Levesque.

On December 28, 2021, the plaintiffs filed a motion for a mistrial with the trial court predicated on the court's failure to render a timely decision pursuant to § 51-183b.[2] The plaintiffs commenced the present appeal on January 3, 2022. Approximately three weeks later, the court denied the plaintiffs' motion for a mistrial and the plaintiffs thereafter filed an amended appeal with this court to include a challenge to that determination.

On November 14, 2022, the plaintiffs filed a motion to open and vacate the December 15, 2021 judgment and

related orders on the ground that the court lacked subject matter jurisdiction to issue them pursuant to *Roth* v. *Weston*, 259 Conn. 202, 789 A.2d 431 (2002), and General Statutes § 46b-59. After hearing argument from the parties, the court orally denied that motion on December 8, 2022. The plaintiffs then filed a second amended appeal to challenge the court's denial of their motion to open and vacate.

The plaintiffs filed their appellate brief with this court on January 30, 2023. On March 7, 2023, the defendants filed a notice of their intent not to file an appellate brief in this appeal. This court thereafter heard oral argument from the plaintiffs' counsel on May 11, 2023.

While this appeal was pending, the plaintiffs filed a motion with the trial court to terminate visitation between the defendants and Caleb. The court, *Rapillo*, *J.*, held a two day hearing in March, 2023, and issued a memorandum of decision on July 11, 2023, in which it concluded that, "based on the testimony of the guardian ad litem, the therapists and [Caleb] himself, the court cannot conclude that mandating visitation [with the defendants] is in the best interest of this young man. . . . [It] is in [Caleb's] . . . best interest and the evidence is sufficient to show that he would suffer psychological harm by being forced to engage in further efforts at reunification with the [defendants]." The court thus granted the plaintiffs' motion and ordered that "[v]isitation with the defendant[s] . . . is terminated immediately."

When the appeal period passed without the filing of an appeal by any party to challenge the propriety of that judgment, this court invited the parties to file supplemental briefs on the issue of mootness. See *Chief of Police* v. *Freedom of Information Commission*, 68 Conn. App. 488, 491 n.4, 792 A.2d 141 (2002) ("in matters involving subject matter jurisdiction, we have exercised our discretion in determining whether to order parties to brief the issue or to decide the issue in lieu of such an order"). We now conclude that the present appeal is moot.

"Mootness implicates [this] 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. . . . In other words, where the question presented is purely academic, we must refuse to entertain the appeal." (Citation omitted; internal quotation marks omitted.) *Harris* v. *Harris*, 291 Conn. 350, 354–55, 968

A.2d 413 (2009).

The present appeal concerns the propriety of the orders issued by the court on December 15, 2021, regarding visitation between the defendants and Caleb and the appointment of a therapist to facilitate such visitation. Because the trial court rendered judgment terminating visitation between the defendants and Caleb while this appeal was pending, there no longer is any practical relief that this court can grant by addressing the merits of the plaintiffs' appeal. Even if we were to conclude that the trial court improperly entered the visitation related orders in question or that the court failed to comply with the 120 day rule of § 51-183b, a remand to the trial court for further proceedings would be futile, as no actual controversy remains regarding visitation between the defendants and Caleb.

In their supplemental brief, the plaintiffs submit that the present appeal is not moot for two reasons. They first contend that, because the court's July 11, 2023 judgment "*only* concerns termination of visitation, the December 15, 2021 order terminating the therapeutic relationship between Caleb and Levesque appears to remain in effect."[3] (Emphasis in original.) They argue that "[i]t is not clear that the July 11, 2023 order terminating visitation explicitly voids Judge Coleman's order regarding Levesque, because that order was not directly related to the visitation orders." The record before us belies that claim. At the hearing held on August 16, 2021, Levesque offered her professional opinion that forcing Caleb to participate in therapy with the defendants would "further traumatize him"[4] and that it was not advisable to engage another therapist for purposes of facilitating visitation with the defendants. After counsel for the parties concluded their respective examinations, the court proceeded to question Levesque extensively with respect to how her work with Caleb affected the court's visitation orders.[5] The court also asked Levesque if her purpose at any time was "to facilitate the visitation between Caleb and [the defendants] that was a part of the stipulated agreement reached in Juvenile Court," to which Levesque replied that she was not "involved" with the defendants but rather was providing therapeutic treatment to Caleb.

In light of that questioning, during closing argument counsel for the defendants sought to modify the defendants' proposed orders to seek removal of Levesque "from this boy's life."[6] At the conclusion of the hearing, the court noted its concern that "the professionals that are involved" were not "getting the job done" and then ordered, in its subsequent memorandum of decision, that "[t]he psychotherapy sessions and any other contacts between [Caleb and Levesque] shall be suspended until further order of the court." When read in the context of the evidentiary hearing held on June 1 and 28, and August 16, 2021, that order plainly was intertwined with the visitation issues before the court, as this court has held.[7]

Accordingly, when the court terminated visitation between the defendants and Caleb on July 11, 2023, it effectively mooted the December 15, 2021 order suspending therapy sessions with Levesque.

The plaintiffs also claim that the "collateral consequences" exception to the mootness doctrine applies. "[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." (Internal quotation marks omitted.) *Putman* v. *Kennedy*, 279 Conn. 162, 169, 900 A.2d 1256 (2006).

In this regard, the plaintiffs allege that, "[g]iven the lengthy litigation in this case," there is a reasonable possibility that the issue of the defendants' standing to seek visitation will arise again in the future. We do not agree. The record indicates, and no one doubts, that the defendants love their grandson, who was six years old when this litigation commenced.[8] He is now thirteen and repeatedly has indicated, in written statements admitted into evidence as exhibits and testimony before the trial court earlier this year, that he does not wish to have contact with the defendants. When the trial court terminated visitation between the defendants and Caleb, it specifically found that Caleb "would suffer psychological harm by being forced to engage in further efforts at reunification with the [defendants]." The defendants thereafter did not avail themselves of their right to appellate review of that determination, nor did they seek reconsideration by the trial court.[9] Indeed, there has been no further activity in this case since Judge Rapillo ordered that visitation be terminated immediately. For that reason, we believe the prospect of further litigation between the parties regarding the defendants' visitation with Caleb is mere conjecture at this time.

The plaintiffs also allege that they will suffer the collateral consequence of reputational harm; see *Williams* v. *Ragaglia*, 261 Conn. 219, 233, 802 A.2d 778 (2002); due to certain statements made by Judge Coleman in his March 8, 2022 ruling on the defendants' motion for a protective order, which also appear in his December 7, 2022 articulation of that ruling.[10] In our view, the comments of which the plaintiffs complain were more expressions of frustration with the plaintiffs than factual findings of malfeasance on their part.[11] We conclude that any collateral consequences stemming from those isolated statements are speculative at best, particularly when considered in light of the undisputed fact that the plaintiffs ultimately were found in contempt due to their failure to comply with Judge Coleman's visitation orders. See id., 227 (collateral consequences standard requires showing of "more than an abstract, purely speculative injury"). Because the plaintiffs have not met their burden of demonstrating "that

there is a reasonable possibility that prejudicial collateral consequences will occur"; *State* v. *McElveen*, 261 Conn. 198, 208, 802 A.2d 74 (2002); we conclude that the plaintiffs' appeal is moot.

The appeal is dismissed.

In this opinion the other judges concurred.

[1] The defendants are Caleb's maternal grandparents.

[2] General Statutes § 51-183b provides: "Any judge of the Superior Court and any judge trial referee who has the power to render judgment, who has commenced the trial of any civil cause, shall have power to continue such trial and shall render judgment not later than one hundred and twenty days from the completion date of the trial of such civil cause. The parties may waive the provisions of this section." See also *Waterman* v. *United Caribbean, Inc.*, 215 Conn. 688, 693, 577 A.2d 1047 (1990) ("a late judgment is merely voidable, and not void" under § 51-183b).

[3] To be clear, the court did not *terminate* Caleb's relationship with Levesque. Rather, it ordered that "[t]he psychotherapy sessions and any other contacts between [Caleb and Levesque] shall be suspended until further order of the court."

[4] As Levesque explained, Caleb "has consistently expressed that he does not want to have a relationship with [the defendants]. He's afraid of them and what they could possibly do. So, for the people that he trusts, whether it's the [plaintiffs], myself or whomever, to put him in that position would not only traumatize him . . . but it could compromise his trust with the adults who care for him."

[5] Among the questions Judge Coleman posed to Levesque were the following: (1) "So it was you that decided that the [defendants] should not exchange any writings with Caleb?" (2) "Was it you that decided that telephone contact between the [defendants] and Caleb [was] not appropriate?" (3) "And was it you that decided that the . . . fun time meetings were [no] longer appropriate?" And (4) "[a]nd was it you that provided that the provision for visits between the [defendants] and Caleb one time per week was not appropriate?"

[6] Both the plaintiffs' counsel and the guardian ad litem for Caleb opposed that request.

[7] In its March 8, 2022 order on the defendants' postjudgment motion for a protective order, the trial court specifically found that its December 15, 2021 decision constituted a "visitation order" and, thus, was not subject to an automatic appellate stay. The plaintiffs subsequently challenged the propriety of that determination in a motion for review filed with this court. In our published decision on that motion, this court agreed with the trial court's conclusion that its December 15, 2021 orders "are visitation orders that are not automatically stayed pursuant to Practice Book § 61-11 (c)." *Rek* v. *Pettit*, supra, 214 Conn. App. 856.

[8] At the June 28, 2021 hearing, the guardian ad litem testified that, whenever she spoke with Caleb, she explained that the reason for this litigation "is that the [defendants] love him and want to have a relationship with him." She further testified that, in her conversations with the defendants, they emphasized that "they don't want to force anything on [Caleb]."

[9] The defendants also did not file an appellate brief or a supplemental brief in this appeal.

[10] The plaintiffs also take issue with certain factual findings allegedly made by Judge Rapillo in her July 11, 2023 judgment. The propriety of those findings is not properly before us, as the plaintiffs have not amended their appeal to challenge that July 11, 2023 judgment. See Practice Book § 61-9 ("[s]hould the trial court, subsequent to the filing of a pending appeal, make a decision that the appellant desires to have reviewed, the appellant shall file an amended appeal within twenty days from the issuance of notice of the decision"); *Brown* v. *Brown*, 190 Conn. 345, 350–51, 460 A.2d 1287 (1983) (refusing to consider appellant's challenge to court ruling rendered subsequent to filing of appeal because appellant did not amend appeal to include that claim); *Carlson* v. *Carlson*, 210 Conn. App. 501, 511, 270 A.3d 181 (2022) (same). In this regard, we note that, in addition to granting the plaintiffs' motion to terminate visitation in her July 11, 2023 decision, Judge Rapillo also found the plaintiffs in contempt "in that they wilfully and intentionally violated a valid [and] unambiguous court order" and ordered them to pay the defendants $2500 in attorney's fees. Although the plaintiffs twice have amended the present appeal with this court, they have not done so to challenge any aspect of the July 11, 2023 judgment.

[11] In its March 8, 2022 memorandum of decision on the defendants' motion

for a protective order to ensure compliance with the court's December 15, 2021 orders, the court stated that the plaintiffs had "inexplicably engaged the services" of Levesque and that they had "not done all that they could have done" to ease Caleb's anxiety to facilitate visitation with the defendants. The court further noted that "[t]he plaintiffs' good faith in this [visitation] matter" had been called into question due to a variety of factors, including "their resistance" to the visitation orders imposed by the court on December 15, 2021. In addition, the court found that "[n]either . . . Levesque nor [licensed clinical social worker] Kristan McLean nor [the guardian ad litem] testified that they personally observed [Caleb] exhibit the so-called severe symptoms of anxiety . . . ."