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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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SCHALLER, J. dissenting. The majority dismisses the defendant's appeal for lack of a final judgment. Because I conclude that the trial court's order was a final judgment, I respectfully dissent.

The procedural history of the case as it concerns this appeal is troubling in many respects. Well over one year ago, in April, 2001, the issue concerning supervised visitation arose. The family services report ordered by the trial court was not completed for more than four months, although the subject was considered to be urgent. Even after the report was finished, one and one-half months elapsed before a hearing was convened. At the hearing, on October 10, 2001, the parties, both pro se, were given the report *for the first time*. Although the trial court gave the defendant, Rose Li-Hwa Strobel, a short time during a recess to read the report, the court denied her request for a meaningful hearing at which she could challenge the report prior to the entry of an order. Although six months already had elapsed in this *urgent* matter since the issue of supervised visitation first arose, the trial court apparently believed that the matter was *again* so *urgent* that an emergency order was needed. Stating that the court was "*not going to litigate the report right now*," the trial court ruled against the defendant's interest based on, as the majority states, "the severity of the allegations contained in the report," and indicated that a hearing on the merits would be held in November, 2001. A full hearing on the merits still has not been held. The majority raises the final judgment issue sua sponte and dismisses the defendant's appeal.

I disagree with the majority's conclusion that the order in this case is not a final judgment. I believe that the logic formulated in *Madigan* v. *Madigan*, 224 Conn. 749, 620 A.2d 1276 (1993), controls this case and that, under the *Curcio* test; *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983); the order is a final judgment.

As did the court in *Madigan*, I conclude that there is a final judgment in the present case because the trial court's order so concluded the defendant's rights that further proceedings cannot affect them. The court awarded sole custody to the plaintiff, Kevin L. Strobel, and ordered that the defendant, the former custodian of the child, be restricted to supervised visitation with the child. Although that order was termed temporary and deemed necessary in this *emergency* situation, the order nonetheless governed the ability of the defendant to interact with her child for whatever period of time elapsed until the next hearing was held.

Although the majority views the scheduling of the hearing *on the merits* as a bar to meeting the second

factor of the *Curcio* test, I do not agree. The majority, in relying on the later scheduled hearing, overlooks the fact that until such time as the hearing is in fact held, the defendant is left without any redress from the court's ruling. I conclude that the *emergency* order meets the second factor of the *Curcio* test because no further proceeding could in any way alter the defendant's access to her child for the period prior to the next hearing. Although the hearing, when held, will indeed affect the *subsequent* rights of the defendant, the result of that hearing will have no retroactive effect or capacity to replace time in which the defendant's visitation has been restricted by supervision. Therefore, the court's order did so conclude the defendant's rights that later proceedings could not affect them.

As stated in *Madigan*, "[a] lost opportunity to spend significant time with one's child cannot be replaced by a subsequent order of custody . . . ." *Madigan* v. *Madigan*, supra, 224 Conn. 756. Although the *Madigan* court did state that in the context of a pendente lite matter in a dissolution proceeding and after a hearing on the issue, the reasoning is applicable in the present case. Time with a child is defined by the minutes and hours that a parent enjoys with the child; custody and supervision relate to the ability of a parent to stand alone as the guardian of his or her offspring. The impact of a temporary order should not be overlooked in favor of the resolution of a full hearing once the *Curcio* test is satisfied. As stated in *Madigan*, "[t]o deny immediate relief to an aggrieved parent interferes with the parent's custodial right over a significant period in a manner that cannot be redressed by a later appeal." Id.

Similarly, the reasoning in *Madigan* should be applied to the present case because, as that case stated, "a temporary custody order may have a significant impact on a subsequent permanent custody decision. . . . [A]n order of temporary custody may establish a foundation for a stable long-term relationship that becomes an important factor in determining what final custodial arrangements are in the best interests of the child. . . . Accordingly, not only is any impropriety in granting an initial order for temporary custody not subsequently reversible, but it may also have an adverse spillover effect on the ultimate determination of custody." (Citations omitted.) Id. 756–57. In the present case, which has been, and continues to be, hotly contested, we should not ignore those words.

Guided by the principles articulated in *Madigan*, I conclude that the defendant in the present case has satisfied the second factor of the *Curcio* test. I also would note that although the majority's position may seem persuasive in light of the scheduling of a full hearing within one month in this case, such considerations of time are not relevant under the *Curcio* test. I also note that despite one unsuccessful attempt to hold

a full hearing, the temporary order has continued in effect for nearly nine months.

As stated previously, despite any further hearing that may occur, no prospective order that may enter can affect the time that has elapsed prior to the entry of that order in which the defendant has been limited to supervised visitation with her child. In light of that reality, if the defendant's appeal is dismissed, the defendant will be left with no way to seek redress from the court's order. Despite the possible future modification of the orders that may come with the subsequent hearing, such a result is not preferable.

Finally, although neither of the pro se parties has briefed the issues as fully and adequately as we might want, the defendant's claims on appeal are sufficiently clear and understandable for us to address them. The defendant's first claim is that she did not receive a copy of the family relations report, on which the trial court's orders appear to have been based, until just before the hearing in question took place, and that she did not have an adequate opportunity to review the report in preparation for the hearing. The second claim is that her due process rights were violated when the trial court modified the custody and visitation orders without the proper pleadings having been filed, and without giving her reasonable notice and an opportunity to be heard. The third claim is that the trial court ordered supervised visitation despite the fact that a similar motion previously had been denied. The issues should be addressed on their merits.

For the foregoing reasons, I respectfully dissent.