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SULLIVAN, C. J., with whom ZARELLA, J., joins, dissenting. The majority concludes that the Appellate Court properly treated the trial court's actions as the effective equivalent of allowing the New York Times Company (Times), the Globe Newspaper Company, Inc., the Washington Post Company and the Hartford Courant Company (collectively, newspapers), to intervene in the withdrawn cases[1] and restoring the cases to the docket. I would conclude that the trial court's action is more properly characterized as the effective equivalent of docketing the newspapers' motions for the limited purpose of determining whether the court had jurisdiction to restore the cases to the docket. Accordingly, I believe that the cases should be remanded to the trial court for a determination as to whether the newspapers should be allowed to intervene and whether the cases should be restored to the docket. I also believe that, in making that determination, the court must consider whether the parties in the withdrawn matters relied on the permanence of the protective orders. If they did, the court should not grant the motions to intervene absent a showing of extraordinary circumstances or compelling need. Accordingly, I dissent.

At the April 24, 2002 hearing on the emergency motion to vacate the protective orders filed by the Times, counsel for the named defendant, the Bridgeport Roman Catholic Diocesan Corporation (Diocese),[2] argued that because "no motion was ever made to reopen or restore the case to the docket within four months, as required by [General Statutes] § 52-212a,"[3] the court lacked jurisdiction over the entire matter. The court responded that "[t]he case, clearly, wasn't reopened pursuant to that statute, so I don't see how I have personal jurisdiction, but the question is, that's not a subject matter jurisdiction statute." Counsel for the Diocese responded that, in the absence of consent of the parties, the court would have neither personal jurisdiction nor subject matter jurisdiction. Counsel for the Times argued that § 52-212a did not apply because the court had continuing jurisdiction over the protective orders in that they were injunctive in nature.

The court then asked counsel for the Times whether it could order the parties in the withdrawn matters to file materials in their possession with the court without having personal jurisdiction over the parties. Counsel for the Times argued that the court had ongoing jurisdiction to modify the order prohibiting the dissemination of those materials, but conceded that federal case law indicated otherwise. Counsel for the Diocese stated that the question of the court's jurisdiction to order the

parties to file materials with the court was ''another jurisdictional issue,'' and argued that the court had no such jurisdiction. He further argued that the Diocese had not had an opportunity to brief the question of whether the cases could be restored to the docket and that the Times had raised the continuing jurisdiction argument for the first time at the hearing. Counsel for the Times responded that ''if the court would find, after this hearing, further briefing is helpful, I would be more than happy to do that. If the suggestion is, let's go home now until jurisdiction is resolved, then I would just say that that's probably not the most efficient way to proceed, no harm, no foul, that we proceed to argue the merits and the court makes whatever decision it ultimately makes on the jurisdiction.''

The court stated that ''my impression is this is a matter of legitimate public interest that should be handled expeditiously, so that's why I've expedited this process.'' The court then ruled that it had jurisdiction ''with respect to what is in the clerk's office in sealed envelopes. I think, I do not have jurisdiction to order the parties to file anything, so I really don't feel that there's jurisdiction to enter that type of order.'' The court then reiterated that ''my determination is that I do have jurisdiction, at least with respect to what's been sealed in the files.'' The court indicated that it would hear the merits of the newspapers' claims immediately, but also indicated that its ruling that it had jurisdiction to hear the merits was ''subject to being revisited'' and that the parties should submit briefs on the issue.

The Diocese never filed briefs on the issue of the court's jurisdiction to restore the cases to the docket. Instead, on May 3, 2002, the Diocese filed three appeals to the Appellate Court from ''the trial court's [April 24, 2002] order restoring cases to docket, after passage of more than four months since withdrawal, and creating new case file.''

On May 8, 2002, the trial court issued its memorandum of decision on the merits of the emergency motion to vacate sealing orders. The court indicated that it viewed the appeals to the Appellate Court as inappropriate because it had ''specifically indicated [at the April 24 hearing] that it did not have jurisdiction over the parties and *the court did not enter any rulings in the* [*twenty-three*] *cases*.''[4] (Emphasis added.) The court also stated it had rendered no judgment in the new ''file'' created by the court for the purpose of addressing the newspapers' application and that it viewed the filing of the appeals and the Diocese's failure to file a brief on the jurisdictional issue ''as indicative of the Diocese's express waiver of the right to be heard further on the merits of the Times' application.'' The court then addressed the merits of the newspapers' claims. It determined that the protective orders had expired at the

time of settlement and granted the newspapers access to the records in all twenty-three of the withdrawn cases.

On May 10, 2002, the Appellate Court ordered the parties to appear and give reason why the appeals should not be dismissed for lack of an appealable final judgment. The court also ordered a stay of all proceedings, including the trial court's May 8, 2002 order releasing the records. The Appellate Court supplemented this order on May 13, 2002, with an order directing the parties to address in their briefs on the final judgment question whether the appeals properly had been taken from the April 24, 2002 hearing or whether they should have been taken from the May 8, 2002 decision. After the hearing on these issues, the Appellate Court, on June 5, 2002, ordered that its May 10 and May 13, 2002 orders be marked ''off,'' apparently because it had determined that the trial court had not acted on the pending motions to intervene or articulated the basis for its authority to open a new file at the request of a nonparty more than 120 days after the withdrawal of the actions. Accordingly, the Appellate Court ordered the trial court to act on the motions to intervene and to articulate the basis for its authority to open a new file.

On June 7, 2002, the trial court granted all pending motions to intervene in the case captioned *Application of New York Times* v. *Sealed Records*, Superior Court, judicial district of Waterbury, Docket No. X06-CV-02-0170932-S, and denied all pending motions to intervene in the withdrawn cases. On June 13, 2002, the court issued its articulation in which it stated that it was unable to act on the motions to intervene in the withdrawn cases—which never had been docketed—because the cases had not been reopened. It further stated that it had opened a ''new file'' on the basis of its inherent powers to address complaints, applications and petitions that are presented to it. The court also relied on this court's decision in *AvalonBay Communities, Inc.* v. *Plan & Zoning Commission*, 260 Conn. 232, 246, 796 A.2d 1164 (2002), as supporting its authority to enter postjudgment orders after the expiration of the four month period prescribed by § 52-212a.

On the basis of this history, the majority concludes that the *only possible* interpretation of the court's actions at the April 24, 2002 hearing is that the court effectively restored the cases to the docket. I disagree. Although the trial court ruled unequivocally at the April 24, 2002 hearing that it had jurisdiction over the sealed documents, its ruling that it had jurisdiction to hear arguments on the merits of the Times' claim without restoring the cases to the docket pursuant to § 52-212a clearly was *provisional*. If the issue had been briefed as requested by the court, the court might have been persuaded that it could not take any action that would affect the withdrawn cases without restoring the cases

to the docket and that it had no authority to do so. The trial court's May 8, 2002 decision also should not be treated as the effective equivalent of restoring the cases to the docket because, as the majority recognizes, the trial court lacked jurisdiction to issue any ruling at that point in light of the pending appeals. Accordingly, I would conclude that the court made no determination that can be treated as the functional equivalent of restoring the cases to the docket and, therefore, that there was no appealable final judgment.[5] For the same reasons, I would also conclude that the trial court's actions cannot be treated as the effective equivalent of permitting the newspapers to intervene.[6]

In any event, even if it is assumed that the court effectively restored the cases to the docket, I would reverse that ruling because the trial court never applied the proper standard. I believe that the trial court was required to consider whether the parties in the withdrawn cases had settled the cases in reliance on the permanence of the protective orders.[7] If so, the court should not have granted the motions to intervene absent a showing of some extraordinary circumstance or compelling need. The general rule is that intervention after an action has been terminated is highly disfavored and will be granted only in extraordinary cases.[8] Several courts have recognized an exception to this rule when intervention is sought for the purpose of modifying a protective order entered in the terminated action. See, e.g., *Pansy* v. *Stroudsburg*, 23 F.3d 772, 778–79 (3d Cir. 1994) (court does not follow rule prohibiting intervention in terminated action where intervention is sought for purpose of modifying protective order). The rationale for this exception is that, because ''the desired intervention relates to an ancillary issue and will not disrupt the resolution of the underlying merits, untimely intervention is much less likely to prejudice the parties.'' (Internal quotation marks omitted.) Id., 779, quoting *Public Citizen* v. *Liggett Group, Inc.*, 858 F.2d 775, 786 (1st Cir. 1988), cert. denied, 488 U.S. 1030, 109 S. Ct. 838, 102 L. Ed. 2d 970 (1989); see also *Equal Employment Opportunity Commission* v. *National Children's Center, Inc.*, 146 F.3d 1042, 1047 (D.C. Cir. 1998) (''timeliness requirement is to prevent prejudice in the adjudication of the rights of the existing parties, a concern not present when the existing parties have settled their dispute and intervention is for a collateral purpose'' [internal quotation marks omitted]); *Mokhiber* v. *Davis*, 537 A.2d 1100, 1105 (D.C. App. 1988) (''access to court records does not involve relitigation of the underlying dispute, so the rationale behind requiring extraordinary circumstances for postjudgment intervention does not as a rule apply to access claims'').

Because the sole rationale for allowing intervention in a terminated action, when intervention is sought for the purpose of modifying a protective order, is that such intervention will not affect the settled expectations of

the parties,[9] I believe that the court must determine whether the parties relied on the permanence of the protective orders in settling the cases *before* allowing intervention. If the court determines that reliance on the permanence of the protective orders was an integral part of the settlement or disposition of the case, I believe that the court should not grant the motions to intervene absent a showing of an extraordinary circumstance or compelling need. Cf. *Securities & Exchange Commission* v. *TheStreet.com*, 273 F.3d 222, 229 (2d Cir. 2001) (when parties have relied on protective order, court should not modify order ''absent a showing of improvidence in the grant of [the] order or some extraordinary circumstance or compelling need'' [internal quotation marks omitted]), quoting *Martindell* v. *International Telephone & Telegraph Corp.*, 594 F.2d 291, 296 (2d Cir. 1979);[10] see also *In re Agent Orange Product Liability Litigation*, 821 F.2d 139, 147 (2d Cir.) (when parties have relied on permanence of protective order, ''it can only be modified if an extraordinary circumstance or compelling need warrants the requested modification'' [internal quotation marks omitted]), cert. denied sub nom. *Dow Chemical Co.* v. *Ryan*, 484 U.S. 953, 108 S. Ct. 344, 98 L. Ed. 2d 370 (1987); *Federal Deposit Ins. Co.* v. *Ernst & Ernst*, 677 F.2d 230, 232 (2d Cir. 1982) (same).[11] Accordingly, I would remand the case to the Appellate Court with instruction to remand the case to the trial court to determine whether the cases should be restored to the docket. I believe that the court, in making that determination, should consider whether the parties relied on the permanence of the protective orders in reaching settlement and, if so, whether there are extraordinary circumstances or compelling needs warranting intervention.

[1] See footnote 3 of the majority opinion.

[2] For convenience, we refer to the defendants, collectively, as the Diocese.

[3] General Statutes § 52-212a provides in relevant part: ''Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed. . . .''

[4] The majority states that ''there is no principled way'' to separate the court's ruling on the protective orders from the court's ruling on the documents. I disagree. As the trial court recognized, it is clear that the court must have jurisdiction over documents in its possession in the sense that the court ultimately must make the decision as to how and when to dispose of the documents. As I discuss more fully in the body of the opinion, however, if the court does not have personal jurisdiction over the parties to the withdrawn cases or determines that modifying orders entered in those cases will upset the settled expectations of the parties, I do not believe that the court has jurisdiction over those orders.

[5] The case relied on by the majority, *CFM of Connecticut, Inc.* v. *Chowdhury*, 239 Conn. 375, 685 A.2d 1108 (1996), is distinguishable because, in that case, we determined that ''[t]he conclusion is inescapable that, had a formal motion to restore to the docket been presented to [the trial court, it] would have granted it.'' Id., 392. Nothing in the record before us in the present case leads to any such inescapable conclusion. Indeed, the trial court specifically denied that it had reopened the cases and took no action that would have required the cases to have been reopened until it issued its May 8, 2002 ruling granting the newspapers access to the sealed records, at which time it lacked jurisdiction to take any such action.

[6] I agree with the majority's conclusion that, under federal law, interven-

tion appears to be a proper procedural device for a nonparty to seek to modify a protective order, even after the action in which the order was entered has terminated. I see no differences between federal law and Connecticut law to suggest that such a procedure may not be employed here. I am concerned, however, that this procedure occasionally may give rise to practical difficulties. When, as in the present case, there are numerous parties to the underlying action and the motion to intervene is brought long after the termination of the case, it may prove impossible to locate and give notice of the motion to some of the parties. It also is not clear what the procedure for giving notice of the motion to intervene should be or how the court can be expected to give notice of hearings and rulings to parties who are no longer represented by the attorneys who appeared for them in the terminated action. I believe that the inability to give proper notice to all parties should weigh heavily against granting the motion to intervene.

I also note that, in the present case, it is a mere fortuity that the parties had not retrieved and the court had not destroyed the documents before the newspapers sought to intervene. In my view, that fact should weigh against allowing intervention. If it is acceptable as a policy matter for parties to retrieve documents from the court and for the court to destroy documents at a certain point, then the same policy interests—presumably those favoring stability and finality in the disposition of cases—should militate against restoring the matter to the docket. The mere accident that the documents are still in the court's custody in the present case is not a reason for treating the case differently from a case in which the parties and the court diligently fulfilled their obligations with respect to the documents.

[7] The Diocese represents in its brief that "[i]n settling these actions, the Diocese relied upon the existence of the [protective] orders and the confidentiality that they ensured. . . . The Diocese also relied upon the expectation that the materials filed under seal would continue to be treated as such. . . . In deciding to settle, an essential factor was the expectation and belief by the Diocese that the sealed materials in the court files would remain sealed, and that the discovery documents were and would remain confidential."

[8] See *United States* v. *Associated Milk Producers, Inc.*, 534 F.2d 113, 116 (8th Cir.) ("[t]he general rule is that motions for intervention made *after* entry of final judgment will be granted only upon a strong showing of entitlement and of justification for failure to request intervention sooner" [emphasis in original]), cert. denied sub nom. *National Farmers' Organization, Inc.* v. *United States*, 429 U.S. 940, 97 S. Ct. 355, 50 L. Ed. 2d 309 (1976); *Crown Financial Corp.* v. *Winthrop Lawrence Corp.*, 531 F.2d 76, 77 (2d Cir. 1976) (intervention after judgment is unusual and not often granted); *Black* v. *Central Motor Lines, Inc.*, 500 F.2d 407, 408 (4th Cir. 1974) ("[i]ntervention is ancillary and subordinate to a main cause and whenever an action is terminated, for whatever reason, there no longer remains an action in which there can be intervention"); *Abdul-Raheem* v. *Orr*, 672 F. Sup. 1389, 1391 (W.D. Okla. 1986) (when action is terminated, for whatever reason, there no longer remains action in which to intervene); *Mundt* v. *Northwest Explorations, Inc.*, 947 P.2d 827, 830 (Alaska 1997) (motions to intervene made after conclusion of litigation normally are not timely absent showing of justification); *In re One Cessna 206 Aircraft*, 118 Ariz. 399, 402, 577 P.2d 250 (1978), quoting *United States* v. *Associated Milk Producers, Inc.*, supra, 116; *State Employees' Credit Union, Inc.* v. *Gentry*, 75 N.C. App. 260, 264, 330 S.E.2d 645 (1985) (motions to intervene made after judgment has been rendered are disfavored and are granted only after finding of extraordinary and unusual circumstances or upon strong showing of entitlement and justification); *Marteg Corp.* v. *Zoning Board of Review*, 425 A.2d 1240, 1243 (R.I. 1981) (because of potential of prejudice to parties, person seeking to intervene after judgment has especially heavy burden).

[9] My research has revealed no cases in which the court has found an exception to the rule prohibiting intervention in a closed case merely because the remedy granted in the case was injunctive in nature. Cf. *Garrity* v. *Gallen*, 697 F.2d 452, 455–56 (1st Cir. 1983) (denying postjudgment motion to intervene in case in which court granted injunctive relief as, inter alia, untimely); *Vonage Holdings Corp.* v. *Minnesota Public Utilities Commission*, United States District Court, Docket No. 03-5287 (D. Minn. January 14, 2004) (same). Thus, I believe that the majority's reliance on the rule enunciated in *AvalonBay Communities, Inc.* v. *Plan & Zoning Commission*, supra, 260 Conn. 246, that courts always have jurisdiction to effectuate their judgments, and the corollary rule that courts always have jurisdiction to modify injunctions, is misplaced. The rationale for allowing postjudgment

intervention for the purpose of modifying a protective order is not that doing so will vindicate the judgment, but that doing so will *not affect* the rights of the parties as bargained for or adjudicated before the case was terminated. Conversely, when granting the intervention will undermine the settlement or judgment, it must be denied except in an extraordinary case. Accordingly, I believe that the principle underlying *AvalonBay Communities, Inc.*, that the integrity of judgments should be protected, acts to *limit* the court's power to grant postjudgment intervention for the purpose of modifying a protective order.

[10] In *Securities & Exchange Commission* v. *TheStreet.com*, supra, 273 F.3d 224–25, the intervening plaintiff sought to intervene prior to judgment for the purpose of modifying a protective order. The District Court granted the motion to intervene and unsealed certain documents. Id., 227. On appeal to the United States Court of Appeals for the Second Circuit, the defendant did not challenge the intervention, but only the modification of the protective order. Id., 228. The court noted that modification should not be granted absent compelling need or extraordinary circumstances when the protective order has been relied upon. Id., 229. In my view, when intervention is sought *after* judgment, the principle cited by the Second Circuit Court of Appeals should bar not only modification, but also intervention.

[11] In *Mokhiber* v. *Davis*, supra, 537 A.2d 1105–1106, the court concluded that, when secrecy is integral to settlement, the potential for inequity should affect the court's evaluation of the merits of the motion to modify a protective order, not the right to intervene. As I have indicated, however, the rationale for allowing intervention after judgment in such cases is that it is not inequitable to do so when it would not affect the litigated rights of the parties. Therefore, I believe that this is a threshold issue that must be resolved *before* the court considers the merits of the motion for modification.