IN RE JEFFREY M.*
(SC 18959)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh, Harper and Vertefeuille, Js.**

Argued October 22, 2012—officially released January 29, 2013

Naomi Fetterman, with whom was *Aaron Romano*, for the appellant (respondent).

Michael Besso, assistant attorney general, with whom, on the brief, were *George Jepsen*, attorney general, *Gregory T. D'Auria*, solicitor general, and *Benjamin Zivyon*, assistant attorney general, for the appellee (proposed intervenor commissioner of children and families).

Opinion

EVELEIGH, J. The primary issue in this certified appeal is whether General Statutes (Sup. 2012) § 46b-140 permits the Superior Court to order the direct placement of a child committed to the department of children and families (department) in an out-of-state facility. On appeal, the respondent, Jeffrey M., asserts that the Appellate Court improperly reversed the judgment of the trial court ordering him to be committed to the custody of the department and placed in an out-of-state facility because, contrary to the Appellate Court's conclusion, such a placement is authorized by § 46b-140. The proposed intervenor, the department,[1] responds by asserting that the Appellate Court properly concluded that § 46b-140 does not give the Superior Court the authority to place a juvenile in an out-of-state facility.

The opinion of the Appellate Court sets forth the following facts and procedural history: "Jeffrey M., a fifteen year old juvenile, was charged with several robberies. On June 29, 2011, the trial court conducted a hearing on the matter. Jeffrey M. entered a plea of guilty to a single count of robbery in the second degree in violation of General Statutes § 53a-135. The court then found Jeffrey M. to be delinquent, according to the plea. The court ordered Jeffrey M. to be committed to the department and to be placed directly at the Glenn Mills School, a residential facility in Pennsylvania.

"On July 11, 2011, the department filed a motion to intervene in the matter and to modify or vacate the court's order. The department argued that the court's orders may cause Connecticut to violate the Interstate Compact on the Placement of Children and the Interstate Compact for Juveniles, enacted at General Statutes §§ 17a-175 and 46b-151h, respectively, and may exceed the court's placement authority pursuant to . . . § 46b-140 because the orders require placement in a privately run residential facility outside of this state. The court held a hearing on the motion on July 12, 2011. At the hearing, the court denied the department's motion. The court held further hearings on July 15 and 20, 2011, for the purpose of obtaining reports from the department concerning the execution of the court's order. On July 15, 2011, the department filed in this court a motion for an immediate interim stay. This court granted the motion on the same day. On July 28, 2011, this court granted the department's motion for review and requested relief for stay. At no point in the proceedings has the department been a party to this matter." *In re Jeffrey M.*, 134 Conn. App. 29, 31–32, 37 A.3d 156 (2012).

Thereafter, the department appealed from the decision of the trial court denying its motion to intervene to the Appellate Court. On appeal to the Appellate

Court, the department claimed that the trial court improperly: (1) denied the department's motion to intervene because the department was entitled to intervention as of right; and (2) ordered that the department place Jeffrey M. in an out-of-state facility upon a delinquency dispositional order of commitment to the department because it was not authorized by § 46b-140. Id., 32. The Appellate Court agreed with the department, reversed the judgment of the trial court as to the denial of the department's motion to intervene and to modify or to vacate the order placing Jeffrey M. in an out-of-state facility and remanded the case with direction to grant the department's motion, to vacate the placement order and to conduct further proceedings consistent with its opinion. Id., 44. On April 25, 2012, this court granted the respondent's petition for certification to appeal, limited to the following question: "Did the Appellate Court properly determine that . . . § 46b-140 (f) does not authorize a trial judge to order the direct placement of a child committed to the [department] to an out-of-state residential facility?" *In re Jeffrey M.*, 304 Conn. 927, 41 A.3d 1051 (2012).

In June, 2012, after this court had granted the respondent's petition for certification to appeal, the legislature amended § 46b-140 (b). See Public Acts, Spec. Sess., June 2012, No. 12-1, § 271 (June Spec. Sess., P.A. 21-1). Prior to this amendment, that statute provided in relevant part as follows: "Upon conviction of a child as delinquent, the court: (1) May (A) place the child in the care of any institution or agency which is permitted by law to care for children . . . ." General Statutes (Sup. 2012) § 46b-140 (b). In June, 2012, prior to the parties filing their briefs in this court, the legislature repealed that portion of § 46b-140 (b). June Spec. Sess., P.A. 21-1, § 271.

Subsequently, after this court heard oral arguments in the present case, the legislature amended § 46b-140 again. Specifically, on December 19, 2012, the legislature passed, and the governor thereafter signed, an act amending § 46b-140 (f) and (j). See Public Acts, Spec. Sess., December 2012, No. 12-1, § 48 (December Spec. Sess., P.A. 21-1). Prior to the passage of this act, § 46b-140 (f) provided as follows: "If the court further finds that its probation services or other services available to the court are not adequate for such child, the court shall commit such child to the Department of Children and Families in accordance with the provisions of section 46b-141. *Prior to making such commitment, the court shall consult with the department to determine the placement which will be in the best interest of such child.*" (Emphasis added.) General Statutes (Sup. 2012) § 46b-140 (f). The passage of this act removed the final sentence of § 46b-140 (f), causing that subsection to provide in its entirety: "If the court further finds that its probation services or other services available to the court are not adequate for such child, the court shall

commit such child to the Department of Children and Families in accordance with the provisions of section 46b-141." General Statutes (Sup. 2012) § 46b-140 (f), as amended by December Spec. Sess., P.A. 21-1, § 48. Moreover, the act amended § 46b-140 (j) to provide as follows: "Except as otherwise provided in this section, the court may order that a child be (1) committed to the Department of Children and Families and, after consultation with said department, the court may order that the child be placed directly in a residential facility within this state and under contract with said department, or (2) committed to the Commissioner of Children and Families for placement by the commissioner, in said commissioner's discretion . . . ." General Statutes (Sup. 2012) § 46b-140 (f), as amended by December Spec. Sess., P.A. 21-1, §48.

Senator Toni Harp made the following statement in favor of this bill during the legislature's special session in December: "I also wanted just for the record—and this has not come up in the debate, but just for legislative intent—[§] 48 clarifies the dispositional authority of [the] [C]ommissioner of the Department of Children and Families. And the purpose for that language is to make clear that the court does not have the authority to direct the [C]ommissioner of the Department of Children and Families to place delinquent children in an out-of-state facility." 55 S. Proc., Pt. 16, 2012 Sess., p. 4885. Senator Harp continued: "[S]o [we have] heard a lot about what has not worked in the budget. One of the things that has worked and it was one of the cries that we heard in a bipartisan way is that we bring kids back. We have brought kids back. It has saved us millions of dollars and basically this section is to assure that we can continue those savings." Id.

"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. . . . 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." (Internal quotation marks omitted.) *Earl B.* v. *Commissioner of Children & Families*, 288 Conn. 163, 170, 952 A.2d 32 (2008). The present case is such a case. While the appeal to this court was pending, the trial court modified the respondent's probation to permit him to return to this state from his placement at Glenn Mills School. In their briefs to this court, the parties agreed that the respondent's claim had been rendered moot.

Nevertheless, in their briefs to this court, both parties urged this court to review the claim on the ground that it fell within the "capable of repetition, yet evading

review" exception to the mootness doctrine. 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 challenged 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." (Internal quotation marks omitted.) *Earl B.* v. *Commissioner of Children & Families*, supra, 288 Conn. 170.

After the legislature passed Public Act 12-1 in December's special session, the department withdrew its agreement that the respondent's claim fell within the "capable of repetition, yet evading review" exception to the mootness doctrine. Instead, the department asserted that the exception no longer applies to this case because "[a]ny future orders a trial court might consider under . . . § 46b-140 will be controlled by these [statutory] amendments along with the statement of legislative intent."

Under the circumstances of the present case, we conclude that the appeal in this case should be dismissed as moot and not capable of repetition, yet evading review. We are persuaded that the legislature's most recent amendment to § 46b-140, along with the clear statement of legislative intent that accompanied its enactment, firmly establishes that § 46b-140 (f) does not authorize the Superior Court to order the direct placement of a child committed to the department in an out-of-state residential facility. As Senator Harp clearly explained, "the purpose for that language [in the amendment] is to make clear that the court does not have the authority to direct the [C]ommissioner of the Department of Children and Families to place delinquent children in an out-of-state facility." 55 S. Proc., supra, p. 4885. Based on this amendment and the clear statement of legislative intent, we are not persuaded that there is "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"; (internal quotation marks omitted.) *Earl B.* v. *Commissioner of Children & Families*, supra, 288 Conn. 170; particularly because the legislature's amendment took effect immediately upon signature by the governor. December Spec. Sess., P.A. 21-1, § 48. Moreover, because the amendment clarifies

the authority of the Superior Court for the direct placement of a child committed to the department in an out-of-state residential facility, the certified question is no longer a matter of "public importance." *Earl B.* v. *Commissioner of Children & Families*, supra, 170. Therefore, we dismiss this case as moot and not capable of repetition, yet evading review.

The appeal is dismissed.

In this opinion the other justices concurred.

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79-3, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.

** The listing of justices reflects their seniority status on this court as of the date of oral argument.

This case was argued before a panel of this court consisting of Chief Justice Rogers and Justices Norcott, Palmer, Zarella, Eveleigh and Harper. Although Senior Justice Vertefeuille was not present when the case was argued before this court, she read the record and briefs and reviewed the proceedings in this court before participating in this decision.

[1] Because the commissioner of children and families acts of behalf of the department of children and families, references in this opinion to the department include the commissioner.