STATE OF CONNECTICUT *v.* CHARLOTTE HUNGERFORD HOSPITAL
(SC 18947)

Rogers, C. J., and Norcott, Palmer, Zarella and Eveleigh, Js.

*Considered December 18, 2012—officially released March 4, 2013**

Steven V. Manning and *Donna R. Zito*, in support of the motion for the appellant (defendant).

George Jepsen, attorney general, and *Jane R. Rosenberg* and *Lynn D. Wittenbrink*, assistant attorneys general, in opposition to the motion for the appellee

(plaintiff).

Opinion

PER CURIAM. This matter comes before us on a motion for vacatur by the defendant, Charlotte Hungerford Hospital (hospital). The plaintiff, the state of Connecticut, opposes the hospital's motion. We dismiss the case as moot, sua sponte, and vacate the judgments of the Appellate Court and the trial court.

The record reveals the following relevant facts and procedural history. The present case arises from a claim before the claims commissioner (commissioner) wherein the claimant, who is not a party in this action, sought damages from the state as the coadministrator of the estate of her deceased daughter, who had died while confined at the York correctional institution. In the course of the claimant's case, the commissioner issued subpoenas to the hospital requesting information about the decedent's treatment there, pursuant to General Statutes § 4-151 (c).[1] The hospital refused to comply with the subpoena, arguing, inter alia, that the commissioner had no authority to issue subpoenas to nonparties. Consequently, the state applied to the trial court for an order to compel the hospital's compliance with the subpoena pursuant to § 4-151 (e).[2] The trial court rejected the hospital's contention that, inter alia, the commissioner does not have the statutory authority to issue subpoenas to nonparties to the claims before him, and ordered the hospital to comply with the subpoena. The hospital appealed from the judgment of the trial court to the Appellate Court, which affirmed the trial court's decision enforcing the commissioner's subpoena. *State* v. *Charlotte Hungerford Hospital*, 133 Conn. App. 479, 36 A.3d 252 (2012).

We subsequently granted the hospital's petition for certification to appeal, limited to the following question: "Did the Appellate Court properly determine that the subpoena power conferred upon the [commissioner] by . . . § 4-151 (c) permits him to subpoena documents from a respondent that has not been named as a party to the suit that the [commissioner] has been asked to authorize?" *State* v. *Charlotte Hungerford Hospital*, 304 Conn. 916, 40 A.3d 784 (2012). Subsequent to our certification of the hospital's appeal, the claimant settled the underlying case, releasing the state from any liability. As a result, the state no longer sought to enforce the subpoenas. Because this court no longer can grant any relief, both parties now agree that the hospital's certified appeal is moot.

"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." (Internal quotation marks omitted.) *Connecticut Coalition Against Millstone* v. *Rocque*, 267 Conn. 116, 126, 836 A.2d 414 (2003). Because mootness implicates this court's sub-

ject matter jurisdiction, it may be raised at any time, including by this court sua sponte. See, e.g., *Lyon* v. *Jones*, 291 Conn. 384, 391, 968 A.2d 416 (2009); see also Practice Book § 66-8. Because both parties agree that this certified appeal is moot, we dismiss the appeal sua sponte.

We further agree with the hospital that the judgments of the Appellate Court and the trial court should be vacated, for two reasons. First, the hospital is not responsible for the mootness of its certified appeal. Second, the Appellate Court's unreviewable judgment may have preclusive effects against the hospital in subsequent litigation. Accordingly, we vacate both the Appellate Court and the trial court judgments in this case.[3]

Although the equitable remedy of vacatur is rooted in our supervisory authority, we have generally followed the federal courts' approach in applying that doctrine. See, e.g., *In re Jessica M.*, 250 Conn. 747, 749, 738 A.2d 1087 (1999). In *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 40, 71 S. Ct. 104, 95 L. Ed. 36 (1950), the United States Supreme Court explained that vacatur of a mooted case "clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance." Subsequently, that court limited the application of vacatur in settled cases, noting that "when mootness results from settlement . . . the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the equitable remedy of vacatur." *U.S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, 513 U.S. 18, 25, 115 S. Ct. 386, 130 L. Ed. 2d 233 (1994) (*Bancorp*). The court, however, reiterated its support for the use of vacatur when a case is mooted by the "vagaries of circumstance" or the "unilateral action of the party who prevailed below." Id. We previously have cited the court's analysis in *Bancorp* with approval. See, e.g., *Private Healthcare Systems, Inc.* v. *Torres*, 278 Conn. 291, 303, 898 A.2d 768 (2006); *Commissioner of Motor Vehicles* v. *DeMilo & Co.*, 233 Conn. 254, 271, 659 A.2d 148 (1995).

In the present case, the state, which prevailed in the trial court and Appellate Court, caused this certified appeal to become moot by settling the claim of a third party that had been pending before the commissioner in a separate proceeding. In assessing responsibility for mooting an appeal, courts have been concerned with the manipulation of the judicial process in order to erase unfavorable precedent.[4] See, e.g., *U.S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, supra, 513 U.S. 26–27. This policy concern is not implicated here by the state's settlement with the claimant.[5] See, e.g., *Alvarez* v. *Smith*, 558 U.S. 87, 130 S. Ct. 576, 583, 175 L. Ed. 2d 447 (2009) (describing vacatur as "ordinary

practice" when mootness is not triggered by " 'voluntary forfeit[ure]' " of settlement). Because the hospital did not voluntarily forfeit its appeal by participating in the settlement between the state and the claimant, the settlement is "happenstance"; *U.S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, supra, 25; with respect to the hospital, and vacatur is appropriate in the present case.

In addition, the Appellate Court's unreviewable judgment could well have preclusive, as opposed to merely precedential, effect against the hospital in future litigation. We previously have recognized the importance of preclusion in determining whether to grant vacatur.[6] See *Private Healthcare Systems, Inc.* v. *Torres*, supra, 278 Conn. 303–304 (vacating Appellate Court judgment in favor of defendant physician, after he took unilateral action rendering plaintiff's certified appeal moot, to ensure that defendant could not use unreviewed judgment "as a sword" to seek reinstatement in plaintiff's preferred provider network or in subsequent wrongful termination action against plaintiff).[7] "Collateral estoppel, or issue preclusion, is that aspect of res judicata which prohibits the relitigation of an issue when that issue was *actually litigated* and *necessarily determined* in a prior action between the same parties upon a different claim. . . . For an issue to be subject to collateral estoppel, it must have been *fully and fairly litigated in the first action.* It also must have been actually decided and the decision must have been necessary to the judgment." (Emphasis in original; internal quotation marks omitted.) *R & R Pool & Patio, Inc.* v. *Zoning Board of Appeals*, 257 Conn. 456, 466, 778 A.2d 61 (2001). A party must receive one opportunity for appellate review before it will be subject to the application of collateral estoppel. *Commissioner of Motor Vehicles* v. *DeMilo & Co.*, supra, 233 Conn. 268. Because the parties fully and vigorously litigated the legal issues in the present case before the Appellate Court, the hospital could well be precluded from contesting the state's interpretation of § 4-151 (c) in any future litigation. On the facts of this case, the potential collateral estoppel consequences of an Appellate Court judgment, unreviewable because of mootness, provide additional support in favor of vacatur of the Appellate Court and the trial court judgments.[8]

The appeal is dismissed and the judgments of the Appellate Court and the trial court are vacated.

* March 4, 2013, the date that this decision was issued as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] General Statutes § 4-151 (c) provides in relevant part that "[t]he Claims Commissioner may . . . issue subpoenas . . . ."

[2] General Statutes § 4-151 (e) provides in relevant part: "If any person refuses . . . to produce any relevant, unprivileged . . . record or document, the Claims Commissioner shall certify such fact to the Attorney General, who shall apply to the superior court for the judicial district in which such person resides for an order compelling compliance. . . ."

[3] We express no opinion on the merits of the Appellate Court decision in *State* v. *Charlotte Hungerford Hospital*, supra, 133 Conn. App. 479.

[4] See, e.g., H. Slavitt, "Selling the Integrity of the System of Precedent: Selective Publication, DePublication, and Vacatur," 30 Harv. C.R.-C.L. L. Rev. 109, 138 (1995) ("[t]he ability to buy and sell judgments in several circuits prior to [*Bancorp*] assumed that decisions were the parties', not the public's property"); see also *U.S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, supra, 513 U.S. 26 ("Judicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur." [Internal quotation marks omitted.]).

[5] In noting these policy concerns, we do not mean to imply that the state's independent settlement with the claimant was motivated by any strategic purpose with respect to the issues raised in this certified appeal. Cf. *In re Jessica M.*, supra, 250 Conn. 749 (describing vacatur as appropriate when case is mooted through no fault of parties).

[6] The federal courts also have recognized the significance of issue preclusion in the vacatur determination. See, e.g., *Industrial Risk Insurers* v. *Port Authority of New York & New Jersey*, 493 F.3d 283, 289 (2d Cir. 2007) (collateral estoppel effect of judgment mitigates in favor of vacatur).

[7] Cf. *State* v. *Boyle*, 287 Conn. 478, 489–90, 949 A.2d 460 (2008) (vacating Appellate Court judgment because, inter alia, it would "spawn legal consequences because trial courts will be required to apply the Appellate Court's narrow construction of [General Statutes] § 53a-30 [a] [17] to future cases wherein the office of adult probation seeks to modify the conditions of a defendant's probation"); *In re Candace H.*, 259 Conn. 523, 526 and 527 n.5, 790 A.2d 1164 (2002) (vacating Appellate Court judgment that reversed trial court judgment "empowering the department [of children and families] and the foster parents to determine the propriety of any future visitation" to keep it from "spawning any legal consequences" [internal quotation marks omitted]).

[8] Vacatur of the trial court decision will further aid in the antipreclusionary aspect of the vacatur remedy. See *In re Jessica M.*, supra, 250 Conn. 749.