****

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.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

****

KAREN INCARDONA, ADMINISTRATRIX
(ESTATE OF HAZEL SMART), ET AL.
v. DAVID ROER ET AL.

KAREN INCARDONA, ADMINISTRATRIX
(ESTATE OF HAZEL SMART), ET AL.
v. SAINT MARY'S HOSPITAL ET AL.
(SC 18925)

Rogers, C. J., and Norcott, Palmer, Zarella, McDonald and Espinosa, Js.

Argued May 13—officially released August 20, 2013

Karen L. Dowd, with whom were *Brendon P. Levesque* and, on the brief, *Michael A. D'Amico*, for the appellants (plaintiffs).

Augustus R. Southworth III, with whom was *Todd R. Michaelis*, for the appellees (defendant Medical Components, Inc., et al.).

Opinion

ESPINOSA, J. The sole issue presented in this certified appeal is whether the Appellate Court properly dismissed, for lack of subject matter jurisdiction, the plaintiffs' interlocutory appeal from the trial court's order imposing monetary sanctions on the plaintiffs, Karen Incardona, in her capacity as the executrix[1] of the estate of Hazel Smart, and in her capacity as the executrix of the estate of Harold Smart,[2] for failure to comply with a discovery order.[3] The plaintiffs argue that because the imposition of the monetary sanctions will deplete the funds available to them to prosecute their case, the order constitutes an appealable final judgment under both prongs of *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983). Because we conclude that the trial court's order is not a final judgment, we affirm the judgment of the Appellate Court dismissing the appeal for lack of subject matter jurisdiction.

The record reveals the following relevant facts and procedural history. The plaintiffs initially brought two separate actions,[4] alleging that the plaintiffs' decedent, Hazel Smart, died as a result of a defective catheter used in her dialysis treatment at Greater Waterbury Gambro HealthCare, subsequently known as Davita Greater Waterbury Dialysis center. The trial court subsequently consolidated the two actions, which bring claims sounding in negligence, medical malpractice, loss of consortium and products liability, and name the following as defendants: David Roer, Gregory Buller, Marilyn Olsen, Nephrology & Hypertension Associates, P.C., Gregory David Gersten, Greater Waterbury-Gambro Healthcare, Gambro Healthcare, Inc., Davita Greater Waterbury Dialysis, Davita, Inc., DVA Renal Healthcare, Inc., Saint Mary's Hospital, AngioDynamics, Inc., and Medical Components, Inc.

The trial court's initial scheduling order set a January 31, 2011 deadline for completion of fact witness depositions. The court subsequently granted the motion of the defendants Roer, Buller, Olsen, and Nephrology & Hypertension Associates, P.C., to modify the scheduling order, extending the deadline for fact witness depositions to June 1, 2011. On August 10, 2011, the plaintiffs filed notices of deposition, seeking to schedule depositions of various fact witnesses in September, 2011. The defendants AngioDynamics, Inc., and Medical Components, Inc. (product liability defendants), objected to the noticed depositions on the ground that they were scheduled for dates subsequent to the June 1, 2011 deadline.

Ruling on the product liability defendants' objection, the court first found that the noticed depositions were beyond the deadline established by the modified scheduling order, and that the delay prejudiced the defendants, but the court determined that precluding the

depositions would not be an appropriate remedy. Accordingly, the court ordered that the plaintiffs could proceed with the depositions, on the condition that they "shall pay all costs and expenses associated with the depositions, including [the] defendants' attorney's fees for both the preparation for and attendance at each noticed deposition . . . ." The court further scheduled a status conference for October 11, 2011, "to determine whether the depositions have been completed and to consider whether any additional remedies should be crafted by the court." The plaintiffs' subsequent motion to reargue was denied. The plaintiffs appealed from the order of the trial court to the Appellate Court. Relying on this court's decision in *Green Rock Ridge, Inc.* v. *Kobernat*, 250 Conn. 488, 736 A.2d 851 (1999), the product liability defendants filed a motion to dismiss the appeal for lack of subject matter jurisdiction, arguing that the trial court's discovery order was not an appealable final judgment. The Appellate Court granted the motion to dismiss in an order dated January 11, 2012. This certified appeal followed.

The plaintiffs claim that the Appellate Court improperly dismissed the appeal, contending that the trial court's discovery order satisfies both prongs of *State* v. *Curcio*, supra, 191 Conn. 31, because the order terminated a separate and distinct proceeding and because the order so concluded the rights of the parties that further proceedings could not affect them. The product liability defendants respond that the court's discovery and sanctions order is a classic interlocutory order that is "merely a step along the road to final judgment . . . ." (Internal quotation marks omitted.) *Abreu* v. *Leone*, 291 Conn. 332, 339, 968 A.2d 385 (2009). Therefore, the product liability defendants contend, the trial court's order does not constitute an appealable final judgment. We agree with the product liability defendants.

"The statutory right to appeal is limited to appeals by aggrieved parties from final judgments." *State* v. *Curcio*, supra, 191 Conn. 30. Accordingly, in the absence of a final judgment, this court lacks subject matter jurisdiction over the appeal. Id. In *Green Rock Ridge, Inc.* v. *Kobernat*, supra, 250 Conn. 498, we summarized the well established general rule that discovery orders are not appealable final judgments: "An order issued upon a motion for discovery is ordinarily not appealable because it does not constitute a final judgment, at least in civil actions. *Chrysler Credit Corp.* v. *Fairfield Chrysler-Plymouth, Inc.*, 180 Conn. 223, 226, 429 A.2d 478 (1980); see also *Presidential Capital Corp.* v. *Reale*, 240 Conn. 623, 625, 692 A.2d 794 (1997) ([t]he general rule established by our case law is that an interlocutory order requiring a witness to submit to discovery is not a final judgment and, therefore, is not immediately appealable). [W]e require that those ordered to comply with discovery be found in contempt of court before

we consider an appeal . . . .” (Internal quotation marks omitted.)

The underlying order in *Green Rock Ridge, Inc.* v. *Kobernat*, supra, 250 Conn. 495, had imposed sanctions for failure to comply with a discovery order. In considering whether we had jurisdiction over the writ of error filed seeking review of the sanctions, we recognized that our prior decisions had only expressly considered the finality of discovery orders themselves and had not directly addressed the finality of any accompanying or related sanctions orders,[5] but we explained: “We can perceive no reason or policy why we should treat the sanctions order differently, for purposes of finality of judgment, from the discovery procedure of which it is a part. We, therefore, regard it as governed by the same principles of finality as discovery orders.” Id., 498. Accordingly, prior to final judgment, we have jurisdiction to hear a challenge to an interlocutory order sanctioning a party for failure to comply with a discovery order only upon a finding of contempt for failure to comply with the order.

In light of the fact specific nature of discovery disputes, however, we have since elaborated on the application of the final judgment doctrine in this context, identifying three considerations that guide our analysis. “First, the court’s focus in determining whether there is a final judgment is on the order immediately appealed, not [on] the underlying action that prompted the discovery dispute. . . . Second, determining whether an otherwise nonappealable discovery order may be appealed is a fact specific inquiry, and the court should treat each appeal accordingly. . . . Third, although the appellate final judgment rule is based partly on the policy against piecemeal appeals and the conservation of judicial resources . . . there [may be] a counterbalancing factor that militates against requiring a party to be held in contempt in order to bring an appeal from a discovery order.” (Citations omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.) *Woodbury Knoll, LLC* v. *Shipman & Goodwin, LLP*, 305 Conn. 750, 760–61, 48 A.3d 16 (2012).

Keeping these considerations in mind, we conclude that the trial court’s order in the present case falls squarely within the rule of *Green Rock Ridge, Inc.* v. *Kobernat*, supra, 250 Conn. 498, and does not satisfy either of the exceptions we set forth in *Curcio*. First, the order did not terminate a separate and distinct proceeding under the first prong of *Curcio*, which “requires that the order being appealed from be severable from the central cause of action so that the main action can proceed independent of the ancillary proceeding. . . . If the interlocutory ruling is merely a step along the road to final judgment then it does not satisfy the first prong of *Curcio*. . . . Obviously a ruling affecting the merits of the controversy would not pass the first part

of the *Curcio* test. The fact, however, that the interlocutory ruling does not implicate the merits of the principal issue at the trial . . . does not necessarily render that ruling appealable. It must appear that the interlocutory ruling will not impact directly on any aspect of the [action]." (Citations omitted; internal quotation marks omitted.) *Hartford Accident & Indemnity Co.* v. *Ace American Reinsurance Co.*, 279 Conn. 220, 225–26, 901 A.2d 1164 (2006). The court's order in the present case does not satisfy this test. Rather than terminating a separate and distinct proceeding from the underlying action, this order was "merely a step along the road to final judgment"; (internal quotation marks omitted) id., 226; because the order was part of the larger process of discovery, and actually moved the case along by allowing the plaintiffs to proceed with the noticed depositions. The mere fact that the order *also* imposed monetary sanctions on the plaintiffs does not render the order an appealable final judgment.[6]

Second, the order did not so conclude the rights of the parties that further proceedings could not affect them. "The second prong of the *Curcio* test focuses on the nature of the right involved. It requires the parties seeking to appeal to establish that the trial court's order threatens the preservation of a right already secured to them and that that right will be irretrievably lost and the [parties] irreparably harmed unless they may immediately appeal. . . . One must make at least a colorable claim that some recognized statutory or constitutional right is at risk." (Citation omitted; internal quotation marks omitted.) *Chadha* v. *Charlotte Hungerford Hospital*, 272 Conn. 776, 785–86, 865 A.2d 1163 (2005). The plaintiffs claim that the order implicates their right to put on their case, which they claim could be threatened by the depletion of their "war chest." From the outset, however, the court viewed its order as part of a discovery process that was still unfolding, and scheduled a status conference within one month of the order for the purpose of evaluating the progress of the depositions and considering "whether any additional remedies should be crafted by the court." Accordingly, the court indicated from the start that it was prepared to modify the order if later developments warranted the same. The court subsequently did exactly that, modifying the order to stay the imposition of the requirement that the plaintiffs pay the product liability defendants' costs and attorney's fees associated with the depositions. The court also granted the plaintiffs' motion for expanded discovery, and continued the start of the trial to a date to be determined in order to allow the plaintiffs time to conduct additional discovery. In light of these facts, it is clear that the order did not so conclude the rights of the parties that further proceedings could not affect them.

Finally, we observe that the present case is distinguishable from those in which we have concluded that

countervailing principles militated against requiring a party to be held in contempt in order to bring an appeal from a discovery order. The contrast between the present case and the two leading cases, *Abreu* v. *Leone*, supra, 291 Conn. 332, and *Woodbury Knoll, LLC* v. *Shipman & Goodwin, LLP*, supra, 305 Conn. 750, illustrates the point. Both of those appeals involved nonparties that had been ordered to comply with a discovery proceeding that was distinct and separate from the underlying actions, and in both decisions, we relied in part on public policy principles to conclude that the nonparties should not be required to be found in contempt before obtaining the jurisdiction of the court. In *Abreu*, the Department of Children and Families, the intervening plaintiff, appealed from an order compelling the plaintiff, a foster parent, to respond to certain deposition questions concerning a foster child within his care. *Abreu* v. *Leone*, supra, 334. We recognized that the plaintiff, as a foster parent, "play[s] a key role in the system of providing services to children who must live away from their family of origin when that family cannot provide a positive environment or meet the special needs of the children." Id., 347–48. In light of that role, we considered the possible effect of requiring a foster parent to choose between being found in contempt for a good faith attempt to comply with statutes protecting the confidentiality of a child in his care or being charged with violating those statutes and risking criminal sanctions by complying with the order. That risk, we reasoned, "would discourage participation by otherwise willing foster parents and thus undermine the goals of that system. Either option also puts the foster child in jeopardy." Id., 348.

In *Woodbury Knoll, LLC* v. *Shipman & Goodwin, LLP*, supra, 305 Conn. 756–57, we relied on *Abreu* v. *Leone*, supra, 291 Conn. 332, to conclude that a trial court's order granting a motion to compel the custodian of a law firm's records to produce various documents and records relating to the firm's representation of the plaintiffs in a legal malpractice action against the defendants was a final judgment under the first prong of *Curcio*. In that case, just as in *Abreu*, we relied in part on public policy principles to conclude that the nonparty law firm should not be required to be found in contempt in order to obtain appellate jurisdiction, observing that, otherwise, the law firm would be required to choose between disclosing confidential information in violation of its obligation to its clients under rule 1.6 (a) and (c) (4) of the Rules of Professional Conduct[7] or to violate a court order in violation of rule 3.4 of the Rules of Professional Conduct.[8] Id., 763–65.

We emphasize that in both *Abreu* v. *Leone*, supra, 291 Conn. 341, and *Woodbury Knoll, LLC* v. *Shipman & Goodwin, LLP*, supra, 305 Conn. 757, we also concluded that the discovery orders in question had terminated separate and distinct proceedings and therefore satis-

fied the first prong of *Curcio*. Our consideration of countervailing policy concerns, we explained, does not add a new "factor under either prong of *Curcio*, and accordingly, it would be inappropriate to rely on policy alone to justify allowing an appeal under *Curcio*." *Woodbury Knoll, LLC* v. *Shipman & Goodwin, LLP*, supra, 762 n.10. To the extent, however, that public policy principles inform our analysis, we observe that the plaintiffs in the present case cite to no significant public policy principles that would justify a conclusion that they should not be required to be found in contempt before obtaining appellate jurisdiction. The plaintiffs merely state that if they were required to be found in contempt before appealing from the order, they would be subject to the potential negative consequences of that contempt finding. See Practice Book § 13-14. Understandably, no party relishes the prospect of a contempt finding, or its possible negative consequences. If we held, however, that those potential consequences constituted sufficient countervailing principles to militate against the requirement that a party be found in contempt before obtaining appellate jurisdiction to challenge a discovery order or related sanctions order, we would eviscerate the general rule that such orders do not constitute appealable final judgments.[9]

For the foregoing reasons, we conclude that the trial court's order in the present action did not constitute an appealable final judgment. Accordingly, the Appellate Court lacked subject matter jurisdiction over this appeal and properly dismissed the plaintiffs' appeal.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

[1] At the time the complaints were filed in both actions, Incardona was acting as the temporary administratrix of the estate of Hazel Smart. On November 5, 2007, subsequent to the commencement of the actions, Incardona was named as executrix of the estate of Hazel Smart and was substituted as a plaintiff in both actions.

[2] Harold Smart, originally a plaintiff in both actions, died on November 16, 2011. The court subsequently granted the motion to substitute Incardona, executrix of the estate of Harold Smart, as a plaintiff.

[3] We granted the plaintiffs' petition for certification to appeal from an order of the Appellate Court dismissing their appeal, limited to the following issue: "Did the Appellate Court properly dismiss the plaintiffs' appeal for lack of subject matter jurisdiction?" *Incardona* v. *Roer*, 304 Conn. 904, 37 A.3d 746 (2012).

[4] *Incardona* v. *Roer*, Superior Court, judicial district of Waterbury, Docket No. CV-07-6000811-S, and *Incardona* v. *Saint Mary's Hospital*, Superior Court, judicial district of Waterbury, Docket No. CV-07-6000812-S.

[5] In *Chrysler Credit Corp.* v. *Fairfield Chrysler-Plymouth, Inc.*, supra, 180 Conn. 224, on which we relied in *Green Rock Ridge, Inc.* v. *Kobernat*, supra, 250 Conn. 498, we did address whether an order that imposed sanctions for failure to comply with a discovery order was an appealable final judgment. Our focus in that case, however, was whether the general rule that discovery orders are not final judgments for purposes of appeal should apply when the discovery order at issue concerned the sanctioned party's challenge to the court's personal jurisdiction over him. *Chrysler Credit Corp.* v. *Fairfield Chrysler-Plymouth, Inc.*, supra, 226. We did not in that decision consider whether an order of sanctions arising from discovery procedures should be governed by the same rules of finality governing discovery orders.

[6] The plaintiffs claim that the portion of the order imposing monetary sanctions on them is somehow "severable" from the remainder of the order and from the action itself, suggesting that the imposition of the monetary sanctions constitutes a distinct and separate proceeding. The plaintiffs contend that because the action has continued to proceed independently of the sanctions portion of the order, the imposition of the monetary sanctions constitutes a final judgment under *Curcio*'s first prong. Even if we presume that the order may be bisected in the manner that the plaintiffs suggest, the plaintiffs' argument is unavailing. Under the analysis they propose, virtually *every* order imposing monetary sanctions on a party would constitute a final judgment for purposes of appeal, since under only the most unusual circumstances would such orders necessarily interfere with the progress of the litigation.

In support of their claim that the monetary sanctions portion of the order should be treated as a final judgment, the plaintiffs also rely on *CFM of Connecticut, Inc.* v. *Chowdhury*, 239 Conn. 375, 376–77, 685 A.2d 1108 (1996), overruled in part on other grounds by *State* v. *Salmon*, 250 Conn. 147, 154–55, 735 A.2d 333 (1999), in which we held that an order imposing monetary sanctions against an attorney for bad faith pleadings constituted an appealable final judgment. In *Green Rock Ridge, Inc.* v. *Kobernat*, supra, 250 Conn. 499 n.13, however, we expressly distinguished *CFM of Connecticut, Inc.*, on the basis that the monetary sanctions order deemed a final judgment in that decision was not connected with discovery, and sanctioned an attorney for conduct as an attorney. Moreover, we specifically stated: "[T]o the extent that in *CFM of Connecticut, Inc.*, we suggested that any monetary sanctions order imposed by a trial court is a final judgment for the purposes of an appeal or a writ of error, we confine that case to its facts." (Emphasis omitted.) Id.

[7] Rule 1.6 of the Rules of Professional Conduct provides in relevant part: "(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by subsection (b), (c), or (d). . . .

"(c) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary to . . .

"(4) Comply with other law or a court order. . . ."

[8] Rule 3.4 of the Rules of Professional Conduct provides in relevant part: "A lawyer shall not . . .

"(3) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists . . . ."

[9] We observe that in arguing that we should consider the trial court's order in the present case to constitute a final judgment, the plaintiffs rely on various claims that go to the merits of their challenge to the court's imposition of sanctions. For example, the plaintiffs claim that it was the product liability defendants, not the plaintiffs, who were responsible for the delay in taking the depositions, that the product liability defendants had not sought attorney's fees in their motion for a protective order, that the court did not provide the plaintiffs with any notice that it was considering a sanction, and did not provide the plaintiffs with an opportunity to be heard before the court issued its order. The plaintiffs specifically rely on the trial court's subsequent decision granting their motion for expanded discovery. In that decision, the court concludes that the plaintiffs have established good cause for granting the motion because previous representations of the product liability defendants, on which the court relied in limiting the scope of discovery, "were either mistaken at best, or at worst, misleading." *Incardona* v. *Saint Mary's Hospital*, Superior Court, judicial district of Waterbury, Docket No. X02-CV-07-6000812-S (March 19, 2012).

These claims do not implicate the types of public policy principles that this court has considered in holding that a discovery order constitutes an appealable final judgment. Instead, these claims properly would be considered should the plaintiffs appeal from the trial court's order of sanctions following a final judgment. Additionally, the trial court's consideration of the mistaken or misleading representations of the product liability defendants in affording the plaintiffs relief provides further support for the conclusion that the court retains authority and fully intends to craft additional remedies depending on the evolution of the case.

Finally, we observe that the plaintiffs correctly assert that it is possible that they may prevail and nonetheless be required to appeal from the judgment in their favor in order to challenge the court's order sanctioning them. The

mere fact that the plaintiffs may find themselves in the unusual circumstance of appealing from an action in which they prevailed does not, however, justify an exception to the final judgment rules.