DAVID KERVICK, EXECUTOR (ESTATE OF RUTH FARRELL) *v.* SILVER HILL HOSPITAL ET AL.
(SC 18805)
(SC 18806)

Norcott, Palmer, Zarella, Eveleigh and Sheldon, Js.

Argued December 3, 2012—officially released August 13, 2013

Robert C. E. Laney, with whom, on the brief, was *Lauren E. Abbate*, for the appellant in Docket No. SC 18805 (named defendant).

David J. Robertson, with whom, on the brief, were *Madonna A. Sacco* and *Rachel E. Katz*, for the appellant in Docket No. SC 18806 (defendant Ellyn Shander).

Sandra J. Akoury, for the appellee in both cases (plaintiff).

Opinion

EVELEIGH, J. The primary issue in this certified appeal is whether, in a civil case, the trial court was required to grant a party's request to poll the jury to determine if the jurors had read or otherwise been exposed to a newspaper article concerning the subject matter of the case that was published prior to trial. The defendants, Silver Hill Hospital (hospital) and Ellyn Shander, appeal, following our grant of their petitions for certification,[1] from the judgment of the Appellate Court reversing the judgment of the trial court that was rendered in their favor after a jury trial. On appeal,[2] the defendants claim that the Appellate Court improperly concluded that the trial court abused its discretion in declining the request by the plaintiff, David Kervick, the executor of the estate of Ruth Farrell (decedent),[3] to poll the jury in order to determine whether any of the jurors had read an article concerning the subject matter of the case that was published in The New York Times (article) prior to trial. In response, the plaintiff claims that the Appellate Court properly concluded that the trial court abused its discretion when it declined to poll the jury. We agree with the defendants and, accordingly, reverse the judgment of the Appellate Court.

The opinion of the Appellate Court sets forth the following facts and procedural history. "On January 21, 2002, the decedent admitted herself to the hospital for treatment for numerous illnesses, including major depression and personality disorder. At the time of her admission, the decedent was diagnosed with extremely high suicide ideation and had previously attempted suicide by hanging herself over the bathroom door of her hospital room. As such, the admitting [physician] ordered that the decedent's bathroom door remain locked. Nonetheless, the day after the decedent's admission, Shander, the decedent's treating psychiatrist, ordered that the bathroom door be unlocked and reduced supervision of the decedent from full time to fifteen minute intervals. On January 28, 2002, the decedent committed suicide by hanging herself over the unlocked bathroom door in the same hospital room in which she had previously attempted to do so.

"On February 6, 2004, [the plaintiff] filed this medical malpractice action, claiming that the defendants had failed to meet the standard of care owed to the decedent as a patient of the hospital and that this failure resulted in the decedent's death. In June, 2004, the defendants filed apportionment complaints against Kervick, alleging that his negligence, 'abuse and hostile behavior' toward the decedent were the proximate causes of her suicide. Subsequently, Kervick moved to preclude the defendants from presenting expert testimony as to the possible causal connection between his alleged behavior and the decedent's suicide. On November 14, 2007,

the court granted Kervick's motion to preclude, finding that the defendants had failed to disclose their proffered experts in a timely manner. Then, on November 19, 2007, [the plaintiff] moved for summary judgment on the apportionment complaints arguing that, without expert testimony as to the possible causal link between [Kervick's] alleged behavior and the decedent's suicide, the defendants would be unable to prevail in their apportionment claims against him. Thereafter, the court denied [the plaintiff's] motion for summary judgment as untimely without considering further the merits thereof." (Footnotes altered.) *Kervick* v. *Silver Hill Hospital*, 128 Conn. App. 341, 343–45, 18 A.3d 622 (2011).

Evidence was scheduled to begin in the present case on November 27, 2007. On November 14, 2007, counsel for the plaintiff notified the trial court that his associate had received a telephone call from The New York Times, notifying her that an article regarding the case was going to be published shortly and, most likely, prior to trial. After bringing the imminent publication of the article to the court's attention, the following colloquy ensued:

"[The Plaintiff's Counsel]: . . . We are all concerned I think because the jury, *unless it was instructed in the opening remarks by whomever greeted them down there on the first day when they show up about not reading things*—

"[The Hospital's Counsel]: She did. . . . [F]irst of all, we voir dired everyone. And it is part of [the court clerk's] introduction not to expose yourself—remember—to any media.

"[The Plaintiff's Counsel]: Yeah. I just bring it to the court's attention. I don't know what we can do about it but it is out there.

"The Court: Well, let's see. We could think about citing The New York Times and putting a gag order on them. Now that might violate the constitution. I'm not sure what we really can or should do. *If counsel agreed that there ought to be some communication made to the jurors then I would be happy to consider that. If it is coming out this weekend, then since today is Wednesday, that means we've got time.*

* * *

"The Court: . . . *If counsel feel[s] that something ought to be done vis-á-vis the jurors, even to the point of calling them in for some sort of an instruction, but sometimes I wonder whether that is more harmful than it is worth. Please do not read your New York Times and go looking for articles about this upcoming case.*

"[The Plaintiff's Counsel]: Go out and buy it.

"The Court: You know. It is almost an invitation to—

or a temptation to ignore the court's order. So I think everyone has got the same stake in this. Since nobody knows what the article is going to say, it could be helpful, it could be harmful to anybody. In any event they will be told not to do it and to ignore it when I give my opening statement. *But if there is a sense that that is too late I will be happy to consider some sort of a prophylactic measure in advance if counsel can agree upon what that is or can make an appropriate application to the court.*" (Emphasis added.)

On November 23, 2007, the Friday immediately following Thanksgiving, the article appeared in The New York Times. A. Cowan, "Lawsuit Over a Suicide At a Hospital For the Elite," N.Y. Times, November 23, 2007, p. B1. The article was extensive, and contained facts concerning the decedent's suicide and the upcoming trial.[4] Id., pp. B1, B5. At the time the article was published, the jury had been impaneled, but evidence had not yet begun. Despite the trial court's offer to deliver a more specific instruction regarding the article or to take some other type of remedial action prior to trial, the plaintiff's counsel never requested that the court do so before trial.

On November 27, 2007, on the date that evidence was scheduled to begin, counsel for the plaintiff requested that the trial court poll the jury to determine whether any of the jurors had read the article and, if so, whether they had been unduly influenced thereby. The following colloquy ensued:

"[The Plaintiff's Counsel]: Your Honor, I would appreciate it if you would ask the jury when they come in if they read the article in The New York Times.

"The Court: Well, why would I do that?

"[The Plaintiff's Counsel]: To find if anyone has been influenced by it.

"The Court: I saw the article that appeared in The New York Times on Friday, the Friday after Thanksgiving, which I would expect for a lot of working people who get The [New York] Times at their office or read it on the train or whatever, would have been a day when they maybe failed to pick it up, because while it's not a holiday, nevertheless, it's a . . . day when a lot of business activities closed. The stock market was only opened for half a day. I read the article. It seemed to be, it didn't seem to be pro plaintiff or pro defendant. There were some factual matters in there. *Rather than asking the jury and calling their attention to the* [*article*] *. . . wouldn't it be more prudent simply to instruct them to ignore anything in the press or on the media?*

"[The Plaintiff's Counsel]: I think that would be prudent, but I think I would like to have the court find out if anyone has read it. *Because I don't know how people interpret what they read. I don't know if it was influen-*

tial or not. And if it is, we all want a fair trial. So if somebody violated—

"The Court: What is your authority for my interrogating the jury on this one particular reference in the media?

"[The Plaintiff's Counsel]: *They were instructed not to read it.*

"The Court: *They were. Okay.* Well, I expect that if it comes to their attention that somebody has read it, then we'll be hearing about it.

"[The Plaintiff's Counsel]: Well, how are we going to hear about it, unless we ask?

"The Court: I would expect that any jurors might report misconduct. That's usually the way we hear about it.

"[The Plaintiff's Counsel]: So the court is not going to ask them if they've—

"The Court: I'm not inclined to do so, but you're standing up here as the plaintiff's attorney and you're not representing to me that everybody has suggested that this is the proper thing to do. . . . Now, look, if you have an agreement and you came to me and you said: 'We've agreed upon this procedure. This is what we want to do with respect to the article.' Then I might be willing to listen. But the jurors are here. We're ready to hear evidence. If you don't have a plan, we're not [putting] one together at the last moment. . . .

"[The Plaintiff's Counsel]: Judge, [with] all deference to you, I don't think we need agreement of counsel on—

"The Court: Well, you haven't convinced me that in light of the nature of the article, that there's any need to make an inquiry." (Emphasis added.)

The trial court then declined to inquire further into whether the jury had read or otherwise been exposed to the article.[5] "The jury then returned a verdict in favor of the defendants without considering the merits of the defendants' apportionment complaints. On February 25, 2008, the court denied [the plaintiff's] motions to set aside and to impeach the verdict, rendering judgment in favor of the defendants on November 5, 2008." *Kervick* v. *Silver Hill Hospital*, supra, 128 Conn. App. 345.

The plaintiff appealed from the judgment of the trial court to the Appellate Court claiming, inter alia, that the trial court improperly declined to poll the jury to determine whether any of the jurors had read the article and the possible influence the article may have had on the jury's impartiality. The Appellate Court agreed with the plaintiff and concluded that, in light of the inflammatory nature of the article, the trial court abused its discretion in declining the plaintiff's request to poll the jury. Thus, the Appellate Court remanded the case for a new trial. Id., 351–52. The defendants thereafter filed

separate petitions for certification, which we granted. See *Kervick* v. *Silver Hill Hospital*, 301 Conn. 922, 22 A.3d 1279 (2011).

I

On appeal, the defendants claim that the Appellate Court improperly concluded that the trial court abused its discretion in declining to poll the jury to determine whether any of the jurors had read the article. Specifically, the defendants claim that the plaintiff failed to present any evidence of juror misconduct to the trial court. Thus, the defendants contend that the judge had no obligation to conduct any inquiry to determine whether any of the jurors had read the article. In response, the plaintiff claims that the Appellate Court properly concluded that the trial court abused its discretion in declining to poll the jury because of the inflammatory nature of the article and the potential prejudice that exposure to the article would have had on the jury. Specifically, the plaintiff claims that the trial judge abused his discretion in declining the plaintiff's request to poll the jury, because polling the jury was the only way that the plaintiff could have possibly shown that any of the jurors had read the article. We agree with the defendants.

The trial court declined to poll the jury on the day that evidence was scheduled to begin partly because it was concerned that polling the jury had the potential to delay trial. Thus, the trial court's decision involved an exercise of the court's discretion in managing a trial. Accordingly, the parties agree that our review of the trial court's decision to refuse to poll the jury is limited to whether the trial court abused its discretion. See, *State* v. *Merriam*, 264 Conn. 617, 674–75, 835 A.2d 895 (2003). "In determining whether the trial court [has] abused its discretion, this court must make every reasonable presumption in favor of [the correctness] of its action. . . . Our review of a trial court's exercise of the legal discretion vested in it is limited to the questions of whether the trial court correctly applied the law and could reasonably have reached the conclusion that it did." (Internal quotation marks omitted.) *State* v. *Mullins*, 288 Conn. 345, 372, 952 A.2d 784 (2008).

Our review of allegations of jury misconduct has occurred primarily in the context of criminal cases. When reviewing claims of juror misconduct in the context of a criminal trial, we have employed the following standard of review. "[T]he right to a jury trial guarantees to the criminally accused a fair trial by a panel of impartial, indifferent jurors. . . . The modern jury is regarded as an institution in our justice system that determines the case solely on the basis of the evidence and arguments given [it] in the adversary arena after proper instructions on the law by the court. . . . To ensure that the jury will decide the case free from external influences that might interfere with the exercise of

deliberate and unbiased judgment [we previously have held, pursuant to our supervisory authority over the administration of justice, that] a trial court is required to conduct a preliminary inquiry, on the record, whenever it is presented with information tending to indicate the possibility of juror misconduct or partiality. . . .

"Th[e] form and scope [of that preliminary inquiry] may vary from a preliminary inquiry of counsel, at one end of the spectrum, to a full evidentiary hearing at the other end of the spectrum, and, of course, all points in between. Whether a preliminary inquiry of counsel, or some other limited form of proceeding, will lead to further, more extensive, proceedings will depend on what is disclosed during the initial limited proceedings and on the exercise of the trial court's sound discretion with respect thereto. . . .

"Any assessment of the form and scope of the inquiry that a trial court must undertake when it is presented with allegations of jur[or] [bias or] misconduct will necessarily be fact specific. No one factor is determinative as to the proper form and scope of a proceeding. It is the trial court that must, in the exercise of its discretion, weigh the relevant factors and determine the proper balance between them. . . . Consequently, the trial court has wide latitude in fashioning the proper response to allegations of juror bias. . . . We [therefore] have limited our role, on appeal, to a consideration of whether the trial court's review of alleged jur[or] misconduct can fairly be characterized as an abuse of its discretion." (Citations omitted; internal quotation marks omitted.) *State* v. *Merriam*, supra, 264 Conn. 672–73; see also *State* v. *Brown*, 235 Conn. 502, 524, 668 A.2d 1288 (1995) (abuse of discretion only occurs in highly unusual cases).

Whether a trial judge in a civil case abused his discretion by declining to poll the jury prior to trial based on the existence of an article concerning the subject matter of the action is an issue of first impression. We have, however, previously addressed the issue in the context of a criminal case. See *State* v. *Merriam*, supra, 264 Conn. 617. In *Merriam*, the defendant claimed that his federal and state constitutional rights were violated because of the trial court's failure to poll the jurors regarding their possible exposure to media coverage of the trial. Id., 672. After completion of jury selection, but before the jury had been sworn, the defendant informed the trial court that two newspaper articles regarding the case had been published in two local newspapers. Id., 674. The defendant believed that the articles contained some "disturbing" details and, therefore, he requested that the trial court poll the jury to determine if they had read anything about the case in a local newspaper and warn the members of the jury not to do so. (Internal quotation marks omitted.) Id. The defendant, however, did not request that the court

make a specific inquiry as to whether any juror had read either of the two articles. Id. The defendant also did not indicate that he had any reason to believe that any juror had actually seen or read one or both of the two articles. Id.

In *Merriam*, the trial court denied the defendant's request to poll the jury. Id. In doing so, the trial court noted that the jurors had previously been instructed to avoid media coverage pertaining to the subject matter of the case and that there had been no indication that the jurors had failed to obey that instruction. Id. The court also stated that the two articles identified by the defendant were brief and "not notorious or anything." (Internal quotation marks omitted.) Id. The court further observed that, during the voir dire of prospective jurors, counsel had asked the prospective jurors whether they had had any exposure to the case and that each prospective juror had answered in the negative. Id. Finally, the court expressed its concern that "bringing these things to light [sometimes] is more harmful than letting [them] be . . . ." (Internal quotation marks omitted.) Id., 674–75. Thus, the court declined to poll the jury, but indicated that it was open to the possibility of taking further action in the event that the defendant presented specific information in support of his request. Id., 675. The jury ultimately found the defendant guilty of the crimes charged, and the trial court rendered judgment in accordance with the jury verdict. Id., 621–22. The defendant thereafter appealed, claiming, inter alia, that the trial court abused its discretion in failing to poll the jurors to determine whether they had been exposed to media coverage of the trial. Id., 674.

On appeal in *Merriam*, this court concluded that the defendant did not present facts that indicated the possibility of juror misconduct and, thus, the trial court did not have a duty to conduct even a preliminary inquiry. Id., 675. Specifically, we noted that the defendant in that case did not present any evidence that any juror had actually read or discussed either of the two articles, but rather claimed that the "mere existence of the articles required the court to poll the jury." Id. The court declined to poll the jury based on the mere existence of the articles "in light of the fact that the [trial] court previously had instructed the jurors, as they each had been selected to serve on the jury in the defendant's case, to avoid exposure to any media accounts of the case." Id. Accordingly, because there was no indication that the jurors failed to follow the trial court's instruction to avoid media coverage, this court presumed that the instruction was, in fact, followed. Id. Thus, we concluded that the trial court did not abuse its discretion in declining to poll the jury or otherwise take further action regarding the matter. Id.

We have also considered other civil actions that presented clear evidence of clear juror misconduct. See

Connecticut Light & Power Co. v. *Gilmore*, 289 Conn. 88, 101–106, 956 A.2d 1145 (2008) (jurors considered exhibit marked for identification only); *Brodie* v. *Connecticut Co.*, 87 Conn. 363, 367, 87 A. 798 (1913) (jurors viewed scene of the accident); *Williams* v. *Salamone*, 192 Conn. 116, 120, 470 A.2d 694 (1984) (when jurors improperly discussed case contrary to court's instructions we stated that "the burden is on the moving party in a civil proceeding to establish that juror misconduct denied him a fair trial"). We have, however, never had the occasion, in the context of a civil action, to rule on the propriety of a court exercising its discretion and refusing to poll a jury in the absence of an indication of juror misconduct.

The facts in the present case are analogous to those in *Merriam*. In both cases, the trial judge was presented with a request from counsel to poll the jury, prior to trial, based on the mere existence of an article concerning the subject matter of the action. See *State* v. *Merriam*, supra, 264 Conn. 674–75. We recognize, however, that *Merriam* involved a criminal case and that this court has never decided whether the rule requiring a trial judge to conduct an inquiry on the record when presented with allegations of juror misconduct in a criminal case must extend to the context of a civil action as well. See *State* v. *Brown*, supra, 235 Conn. 526 n.27. We similarly decline to decide that issue today. Moreover, even if this court was to assume that the rule applied in criminal cases would extend to a civil action, the trial judge in the present case would not have been required to conduct an inquiry on the record because, as in *Merriam*, the trial judge was *not* presented with an allegation of juror misconduct. Rather, as in *Merriam*, the issue in the present case is whether the trial court abused its discretion in declining to poll the jury based on the mere existence of an article. See *State* v. *Merriam*, supra, 675. Accordingly, we find this court's analysis in *Merriam* instructive in the present case.

The defendants claim that our analysis of the present case should follow this court's analysis in *Merriam*. Specifically, the defendants claim that, unlike in a criminal case, voir dire in civil cases is traditionally conducted off of the record and without the continuous presence of a judge. The defendants therefore claim that, because the present case is a civil case, the judge was not required to be present during voir dire and, thus, the instruction to avoid media coverage given by the court clerk was adequate. The defendants further claim that the plaintiff conceded at trial that the jurors were instructed to avoid media coverage and, therefore, the fact that voir dire was conducted off of the record is not detrimental to their claim. Thus, the defendants contend that, because there is no evidence that the jury disregarded the court's instruction to avoid media coverage, we should conclude, as this court did in *Merriam*, that the trial judge was not required to poll the

jury.

In response, the plaintiff claims that the Appellate Court properly concluded that, in the present case, "none of the safeguards of jury impartiality identified in *Merriam* are present"; *Kervick* v. *Silver Hill Hospital*, supra, 128 Conn. App. 350; and, thus, the trial court abused its discretion in declining to poll the jury. The plaintiff claims that the facts in the present case are distinguishable from those in *Merriam* because, in the present case, there is no evidence in the record that the prospective jurors were instructed to avoid media coverage during voir dire. Furthermore, the plaintiff claims that if the jurors were, in fact, instructed to avoid media coverage that instruction would have been given by a court clerk and not by a judge. The plaintiff therefore contends that an instruction given by a court staff member does not rise to the level of an instruction given by a judge and is thus inadequate. We agree with the defendants.

Although we have concluded that a judge is required to be continuously present on the bench during voir dire in a criminal case; see *State* v. *Patterson*, 230 Conn. 385, 397, 645 A.2d 535 (1994); it has long been the practice in this state for a judge to be absent during voir dire in a civil case unless he is called by the parties to rule on a challenge for cause or a disagreement about the propriety of questions being posed to the potential jurors. Voir dire in civil cases is also traditionally conducted off of the record. The principal reason for these practices is to advance the interest of judicial economy. Furthermore, money is saved by conducting voir dire without a court reporter present. Thus, this long-standing practice, whereby the judge is absent and voir dire is conducted off of the record, allows for the "efficient use of scarce judicial resources . . . ."[6] Id., 399.

In light of the fact that a judge is typically absent during voir dire in a civil case, we disagree with the plaintiff's assertion that an instruction given by a court clerk during voir dire in a civil case is always inadequate to convey the import of an instruction to the jurors. If a judge was required to deliver every instruction during voir dire in a civil case he would be required to spend much more time in the courtroom and far less time on other judicial matters. Moreover, if counsel believes that an instruction given by a court clerk is inadequate, he or she can request that the judge enter and give the instruction, just as counsel typically calls the judge in to rule on certain challenges and objections that occur during voir dire. Counsel can also object on the record if he or she believes that a court clerk's instructions are insufficient and, thus, preserve their claim for appeal. See *Bernier* v. *National Fence Co.*, 176 Conn. 622, 627–28, 410 A.2d 1007 (1979) (if party believes that court's cautionary instructions given to jury regarding exposure to media coverage are inadequate, party must

object at time instructions are given, and cannot reserve possible objections until after adverse verdict is rendered). We see no reason why such an instruction should be considered insufficient where a court clerk delivers an instruction to the jurors during voir dire and counsel does not object to the manner in which the instruction is given. As a result, we decline to conclude that instructions given by a court clerk during voir dire in a civil case are per se inadequate.

In the present case, the plaintiff did not claim, either prior to or during trial, that the jurors were never instructed to avoid media coverage or that the instructions the jurors did receive were inadequate because they were not delivered by a judge. Rather, the record shows that there was an understanding between the court and counsel that the jurors had been adequately instructed by the court clerk to avoid media coverage of the case. On the day that the plaintiff's counsel initially notified the trial court about the article, counsel did not state that his concern about the article would only be alleviated if the jurors received an instruction to avoid media coverage from a judge, but rather stated that he was concerned about the potential influence that the article could have on the jurors unless the jurors had received an instruction not to do so by "whomever greeted them" during voir dire. In response, counsel for the hospital stated that the prospective jurors were, in fact, instructed during voir dire by the court clerk not to expose themselves to any media coverage of the case. Counsel for the plaintiff did not object to this statement and, instead, appeared to agree that the court clerk gave the instruction.

Additionally, after being notified that the article was likely to be published before trial, the trial judge offered to give a more specific instruction to the jurors regarding the article in advance of trial if the parties agreed upon what should be said or, in the alternative, if any party made an appropriate application to the court.[7] Despite the trial judge's willingness to "consider some sort of a prophylactic measure in advance [of trial]," the plaintiff's counsel never requested that the trial judge take any action regarding the article prior to trial. Thus, at no point before trial did the plaintiff's counsel express any concern regarding the instructions given to the prospective jurors during voir dire.

Furthermore, when counsel for the plaintiff requested that the court poll the jury immediately prior to the start of trial, counsel never expressed any concern that it was the court clerk, rather than the judge, who had given the instruction to avoid media coverage during voir dire, nor did counsel express a concern as to whether such an instruction had, in fact, been given. To the contrary, the plaintiff's counsel represented to the court that the jurors had been instructed during voir dire to avoid media coverage of the subject matter

of the case. For example, when asked by the court why it should poll the jury to determine if any of the jurors had read the article, the plaintiff's counsel responded, "they were instructed not to read it." The court then responded, "they were. Okay." Thus, the plaintiff's counsel did not claim that the jurors had disobeyed the instruction to avoid media coverage or that the instruction was inadequate; rather, counsel's only concern was that, without polling the jury, it would be impossible to know whether the jurors had obeyed the instruction to avoid media coverage. On the basis of these facts, we conclude that all of the parties agreed at trial that the jurors were instructed by the court clerk to avoid media coverage during voir dire. If counsel for the plaintiff was concerned that the jurors had not been instructed to avoid media coverage of the case prior to the article's publication, or thought that the instruction was inadequate because it was not given by a judge, he surely would have made that claim to the trial court. Accordingly, we conclude that the instruction given by the court clerk in the present case was adequate to convey to the jury the importance of avoiding media coverage of the trial.

Having concluded that the court clerk's instruction to the prospective jurors to avoid media coverage has not been proven to be inadequate, we conclude that the trial judge did not abuse his discretion in declining to poll the jury. This court concluded in *Merriam* that the mere existence of an article concerning the subject matter of the case did not require the court to poll the jury in light of the fact that there was no evidence that the jurors had failed to follow the court's instruction to avoid media coverage of the case. See *State* v. *Merriam*, supra, 264 Conn. 675. As we have previously stated herein, the parties in the present case agreed at trial, and represented to the trial judge, that the jurors were instructed during voir dire to avoid media coverage of the case.[8] The plaintiff did not present any evidence tending to show or raising a possibility to the trial judge that any of the jurors had read or discussed the article. Thus, because there is not a clear indication to the contrary, we must presume that the jurors followed the instruction to avoid media coverage. See *State* v. *Raguseo*, 225 Conn. 114, 131, 622 A.2d 519 (1993). Furthermore, despite the fact that the parties represented that the jurors had been instructed to avoid media coverage of the case, the trial judge nevertheless offered to take remedial action regarding the article prior to trial. The plaintiff's counsel, however, declined to ask the court to do so until the morning on which trial was scheduled to begin. At that point, the trial judge declined the plaintiff's request because he was concerned that polling the jurors would delay trial.[9] Finally, the trial judge reasonably believed that bringing the article to the jury's attention could have caused the jurors to read the article and, thus, become prejudiced by it when

they otherwise would not have.[10] Accordingly, on the basis of the foregoing factors, we conclude that the Appellate Court improperly determined that the trial judge abused his discretion in declining to poll the jury.

II

Although there is no showing in the present case that any juror was exposed to the article, we consider the issue of potential juror exposure to media coverage of a case extremely important, particularly in light of the twenty-four hour news cycle of today's world. Accordingly, we conclude that the important issue presented in this case warrants the use of this court's supervisory authority in order to minimize the probability of juror exposure to media coverage of a case.

"It is well settled that [a]ppellate courts possess an inherent supervisory authority over the administration of justice. . . . Supervisory powers are exercised to direct trial courts to adopt judicial procedures that will address matters that are of utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole." (Internal quotation marks omitted.) *State* v. *Rose*, 305 Conn. 594, 607, 46 A.3d 146 (2012). "Under our supervisory authority, we have adopted rules intended to guide the lower courts in the administration of justice in all aspects of the criminal process . . . and on the civil side, as well. Thus, this court has exercised its supervisory authority over a wide variety of matters . . . ." (Citation omitted; internal quotation marks omitted.) *State* v. *Lockhart*, 298 Conn. 537, 601, 4 A.3d 1176 (2010). "We ordinarily invoke our supervisory powers to enunciate a rule that is not constitutionally required but that we think is preferable as a matter of policy." (Internal quotation marks omitted.) *State* v. *Marquez*, 291 Conn. 122, 166, 967 A.2d 56, cert. denied, 558 U.S. 895, 130 S. Ct. 237, 175 L. Ed. 2d 163 (2009).

Pursuant to our supervisory authority, we now direct all trial judges in this state to enforce the following policy when presiding over a jury trial: immediately after each juror is selected, he or she must be instructed by the court, either orally or in a written order from the presiding judge, which the juror must read and sign before leaving the courthouse, that: (1) his or her sworn duty as a juror will be to decide the factual issues of the case for which he or she has been selected based only upon the evidence presented at trial; (2) consistent with that duty, he or she must avoid all publicity about the case and all communications to or from anyone about the case or any issues arising in it; and (3) if he or she is exposed to any such publicity or communications despite his or her best efforts to follow this instruction to avoid it, he or she must immediately inform the court about the exposure in writing, without advising any other jurors about the fact or the nature of the exposure, so that the court can follow up, as necessary, with him

or her and/or other jurors, to protect the parties' right to a fair trial.

By giving the threshold instruction set forth in the previous paragraph, either orally or in writing, the trial court can assure itself that an order to avoid publicity and outside communications about the case has been given before any likely exposure to such publicity or communications has occurred. Additionally, ordering jurors to report any exposure to publicity or communications about the case will underscore the ongoing importance of the instruction and substantially increase the probability that instances of inadvertent juror exposure to prejudicial information will be brought to the attention of the court.[11]

III

The plaintiff also claims that the judgment of the Appellate Court should be affirmed on the following alternative grounds: (1) the trial court abused its discretion in denying the plaintiff's motion to strike and motion for summary judgment regarding the defendants' apportionment complaints; (2) the trial court abused its discretion in denying the plaintiff's motion to bifurcate the trial; (3) the trial court abused its discretion in denying the plaintiff's motion to set aside the verdict; (4) the trial court abused its discretion in denying the plaintiff's motion to impeach the verdict; and (5) the trial court abused its discretion in allowing counsel for Shander to engage in inappropriate conduct which denied the plaintiff a fair trial. We address each of the plaintiff's claims in turn.

A

The plaintiff first claims that the judgment of the Appellate Court should be affirmed on the ground that the trial court abused its discretion in denying the plaintiff's motion to strike the apportionment complaints and motion for summary judgment on the apportionment complaints as untimely. The plaintiff claims that the motion to strike was timely because it was brought pursuant to Practice Book § 11-3, which does not contain a time restriction. The plaintiff further contends that his motion for summary judgment was timely because it was based on court rulings that had occurred only five days prior to the date that the motion was filed. In response, the defendants claim that the trial court properly denied the plaintiff's motions, and that, even if the trial court did abuse its discretion in denying the motions, any error was harmless. We agree with the defendants.

The following facts are relevant to our resolution of this issue. Pursuant to General Statutes §§ 52-572h and 52-102b, the defendants filed apportionment complaints against Kervick. In their respective apportionment complaints, the defendants[12] claimed that the suicide of the decedent was proximately caused by Kervick's alleged

abusive relationship with the decedent. Kervick answered both apportionment complaints in April, 2007, seven months before trial was scheduled to begin. Thereafter, on July 30, 2007, the plaintiff moved to strike both apportionment complaints on the ground that Kervick had been misjoined. The defendants objected to the plaintiff's motion to strike and claimed, inter alia, that the plaintiff had waived his right to file a motion to strike because he had done so after the pleadings were closed. The trial court agreed with the defendants and refused to hear the plaintiff's motion on its merits because the plaintiff had failed to plead in the order and time required by Practice Book §§ 10-6 and 10-7.

Additionally, on November 14, 2007, the trial court issued a ruling precluding the defendants' experts from testifying as to the causal connection between Kervick's allegedly abusive relationship with the decedent and the decedent's suicide. On November 19, 2007, the plaintiff filed a motion for permission to file a motion for summary judgment, as well as a motion for summary judgment on the defendants' apportionment complaints. The plaintiff argued that, because the defendants would not be able to offer expert testimony at trial as to whether Kervick had caused the decedent's suicide, it was not possible for the defendants to meet their burden of showing any causal connection between Kervick's alleged conduct and the decedent's suicide. The trial court subsequently denied the plaintiff's motion for summary judgment as untimely because it was filed too close to trial.

Our review of the trial court's decision to deny the plaintiff's motions because they were untimely is limited to whether the trial court abused its discretion. See *Bloom* v. *Miklovich*, 111 Conn. App. 323, 327 n.3, 958 A.2d 1283 (2008).

We conclude that we need not consider the merits of the trial court's ruling on the motion to strike or the motion for summary judgment because, even if we assume that the rulings were improper, they were harmless. The jury was not required to reach the issue of whether Kervick's allegedly negligent conduct caused the decedent to commit suicide because, as evidenced by its answers to the jury interrogatories, it first determined that the defendants had not breached the standard of care. See *Kalams* v. *Giacchetto*, 268 Conn. 244, 249–50, 842 A.2d 1100 (2004) ("[i]n the absence of a showing that the [excluded] evidence would have affected the final result, its exclusion is harmless" [internal quotation marks omitted]). Accordingly, we conclude that it is not reasonably probable that the result would have been different if the trial court granted the plaintiff's motion to strike or motion for summary judgment.

The plaintiff next claims that the trial court abused its discretion in denying his motion to bifurcate the trial. Specifically, the plaintiff claims that, because Kervick was both the executor of the decedent's estate and the apportionment defendant, the jury was confused because it appeared as if Kervick was suing himself. Thus, the plaintiff claims that the trial court should have bifurcated the trial because bifurcation would have reduced the possibility of unfair prejudice and would have resulted in greater judicial efficiency. In response, the defendants claim that the plaintiff abandoned his claim that the trial court improperly denied his motion to bifurcate the trial and that, even if the issue is not abandoned, any alleged error was harmless. We agree with the defendants.

We review the trial court's decision to deny the plaintiff's motion to bifurcate the trial for an abuse of discretion. *Barry* v. *Quality Steel Products, Inc.*, 263 Conn. 424, 449, 820 A.2d 258 (2003).

We conclude, once again, that any alleged error by the trial court was harmless. The jury found that the defendants were not negligent and, therefore, as evidenced by its answers to the jury interrogatories, it did not reach the issue of whether Kervick's alleged negligence caused the decedent to commit suicide. Any evidence that was submitted concerning Kervick's negligence, therefore, was not considered by the jury during deliberations. Moreover, in support of his claim that the jury was confused by the apportionment complaint, the plaintiff points only to the verdict that the jury returned in favor of the defendants. Without more, there is no basis upon which to conclude that a jury verdict adverse to one party is the result of the jury being confused by the facts. See *Daley* v. *Aetna Life & Casualty Co.*, 249 Conn. 766, 796, 734 A.2d 112 (1999). Accordingly, we conclude that any alleged error by the trial court did not likely affect the result.

C

The plaintiff next claims that the trial court abused its discretion in denying the plaintiff's motion to set aside the verdict. Specifically, the plaintiff claims that, even if the jury rejected the opinions of his expert witnesses, the conduct of the defendants when the decedent was in their care constituted such an apparent deviation from the standard of care that no expert testimony was needed to support the conclusion that the defendants were negligent and, thus, the jury was required to find in the plaintiff's favor. Furthermore, the plaintiff claims that the defendants attempted to discredit the plaintiff by presenting evidence regarding the relationship that Kervick had with the decedent, and that such evidence was designed to distract the jury from the defendants' failure to meet the required standard of care. Thus, the plaintiff claims that the

evidence that was admitted concerning Kervick's relationship with the decedent was so prejudicial that the verdict must be set aside. In response, the defendants claim that there was substantial evidence to support the jury's verdict in their favor and, therefore, the trial court properly denied the plaintiff's motion to set aside the verdict. We agree with the defendants.

The law in this state is well settled regarding a motion to set aside a jury verdict. "Our review of a trial court's decision denying a motion for a directed verdict, or refusing to set aside a verdict, requires us to consider the evidence in the light most favorable to the prevailing party, according particular weight to the congruence of the judgment of the trial judge and the jury, who saw the witnesses and heard their testimony . . . . The verdict will be set aside and judgment directed only if we find that the jury could not reasonably and legally have reached their conclusion. . . . A jury verdict should not be disturbed unless it is against [the weight of the] evidence or its manifest injustice is so plain as to justify the belief that the jury or some of its members were influenced by ignorance, prejudice, corruption or partiality. . . . [T]he evidence must be given the most favorable construction in support of the verdict of which it is reasonably capable." (Citations omitted; internal quotation marks omitted.) *Fink* v. *Golenbock*, 238 Conn. 183, 207–208, 680 A.2d 1243 (1996).

Furthermore, "[t]he sifting and weighing of evidence is peculiarly the function of the trier. [N]othing in our law is more elementary than that the trier is the final judge of the credibility of witnesses and of the weight to be accorded their testimony. . . . The trier has the witnesses before it and is in the position to analyze all the evidence. The trier is free to accept or reject, in whole or in part, the testimony offered by either party." (Citations omitted; internal quotation marks omitted.) *Smith* v. *Smith*, 183 Conn. 121, 123, 438 A.2d 842 (1981).

We disagree with the plaintiff's assertion that, because the defendants' conduct clearly fell below the standard of care, the jury was required to find for the plaintiff. The plaintiff cites no authority for this proposition. Moreover, the record reveals that there was sufficient evidence for the jury to decide the case as it did. For example, Douglas Jacobs, a board certified psychiatrist with expertise in the field of suicide, testified on behalf of the hospital. When asked whether, in his opinion, the hospital fell below the standard of care, Jacobs responded, "my opinion is that [the hospital] did not fall beneath the standard of care. And in fact, complied with the standard of care for [a] psychiatric facility in assessing and treating a patient like [the decedent] . . . ." Jacobs further testified that the decedent was going to commit suicide at some point in time and that hospitals cannot prevent all suicides. Jacobs additionally testified that "no action or inaction" by the

hospital's staff contributed to the decedent's suicide. Furthermore, the jury also heard expert testimony from David L. Fink, a psychiatrist, that one-to-one observation of a patient is generally not necessary because it is intrusive and embarrassing, and "does not meet the therapeutic goals." Although the plaintiff's experts testified that the defendants failed to meet the standard of care, the jury was free to reject the expert testimony presented by the plaintiff and accept the expert testimony presented by the defendants. See *Smith* v. *Smith*, supra, 183 Conn. 123; see also *Lidman* v. *Nugent*, 59 Conn. App. 43, 46, 755 A.2d 378 (2000). Thus, we conclude that the evidence presented by the defendants was sufficient for the jury to find in the defendants' favor.

Additionally, to the extent that the plaintiff claims that evidence concerning Kervick's relationship with the decedent was improperly admitted because it was overly prejudicial to the plaintiff, we conclude that the plaintiff has failed to adequately brief the issue. "We are not obligated to consider issues that are not adequately briefed. . . . Whe[n] an issue is merely mentioned, but not briefed beyond a bare assertion of the claim, it is deemed to have been waived. . . . In addition, mere conclusory assertions regarding a claim, with no mention of relevant authority and minimal or no citations from the record, will not suffice." (Citations omitted; internal quotation marks omitted.) *Connecticut Coalition Against Millstone* v. *Connecticut Siting Council*, 286 Conn. 57, 87, 942 A.2d 345 (2008). The plaintiff fails to indicate where in the record the allegedly improper evidence was admitted. Additionally, the plaintiff provides no evidence supporting his assertion that the jury was prejudiced or confused by the allegedly improper evidence, nor does the plaintiff cite to any authority to support his claim. Thus, the plaintiff's claim that evidence concerning Kervick's relationship with the decedent was improperly admitted is merely a conclusory assertion, and we therefore decline to consider it. Accordingly, we conclude that the trial court did not abuse its discretion in denying the plaintiff's motion to set aside the verdict.

D

The plaintiff next claims that the trial court abused its discretion in denying his motion to impeach the verdict. Specifically, the plaintiff claims that the jury acted improperly because it reached its verdict based upon reasons extrinsic to the permissible evidence. As support for his claim, the plaintiff points to a statement that appeared in the comment section of an online news article on the day that the verdict in the present case was announced. The plaintiff claims that this comment was authored by one of the jurors in the present case, and that the juror stated "we made sure that Kervick would get nothing." The plaintiff contends that, because

the comment referred to "Kervick" rather than "the estate," the comment proves that the jurors were unduly prejudiced by the evidence concerning Kervick's relationship with the decedent because Kervick, in his individual capacity, was not a party to the main action, but rather was only a party to the apportionment complaint. Thus, the plaintiff claims that the comment proves that the jury was influenced by the pretrial publicity concerning Kervick's role in the decedent's estate, and that Kervick's role as executor in the decedent's estate was improperly considered by the jury and used as a basis for its decision. The plaintiff also claims that defense counsel referred to Shander as "an expert" in opening argument, despite the fact that the defendants were precluded from offering Shander as an expert witness. The plaintiff therefore claims that the reference to Shander as an expert could have influenced the jury to improperly treat Shander as an expert. In response, the defendants claim that the trial judge did not abuse its discretion in concluding that the plaintiff's claim was unsubstantiated. We agree with the defendants.

In reviewing such a decision, "[w]e are concerned primarily with whether the court has abused its discretion. . . . In determining this the unquestioned rule is that great weight is due to the action of the trial court and every reasonable presumption should be given in favor of its correctness. . . . It must always be borne in mind that litigants have a constitutional right to have issues of fact decided by the jury and not by the court." (Internal quotation marks omitted.) *Cicero* v. *E.B.K., Inc.*, 166 Conn. 490, 494, 352 A.2d 309 (1974).

Even if the author of the comment was actually a juror in the case,[13] we do not agree with the plaintiff that the comment is tantamount to an admission that the jury was influenced by the pretrial publicity surrounding the case. First, the plaintiff mischaracterizes the comment. Although the plaintiff claims that the author stated "we made sure that Kervick would get nothing," the author actually stated that "[w]e've just decided. David Kervick will get nothing." Topix, "Woman's Estate Sues Over Suicide," comments, available at http://www.topix.com/forum/city/danbury-ct/T8J545GPO364J7CMM (last visited August 1, 2013) (copy contained in the file of this case in the Supreme Court clerk's office). Thus, while the plaintiff claims that the comment proves that the jurors were influenced by the pretrial publicity surrounding the case and, therefore, had preconceived notions against Kervick, the comment clearly belies this assertion. Rather, the comment, which the plaintiff concedes was posted after the verdict was delivered,[14] simply states that the jury had returned a verdict in favor of the defendants.

Second, we disagree with the plaintiff's claim that the fact that the author of the comment referred to "Kervick," rather than "the estate," proves that the

jurors had been exposed to pretrial publicity. As the trial court noted, Kervick was the only party plaintiff. It was not unusual, therefore, for the jury to refer to the plaintiff in the present case as "Kervick." Thus, we agree with the trial court's conclusion that the author's reference to "Kervick" rather than to "the estate" does not indicate that the jury considered inappropriate evidence in its deliberations. We therefore conclude that the plaintiff has not established that any juror had engaged in misconduct.

We also disagree with the plaintiff's claim that the trial court abused its discretion in denying the motion to impeach the verdict because of the references to Shander as an expert during opening argument. In its amended motion to impeach the verdict filed in the trial court, the plaintiff did not claim that any references to Shander as an expert were improper or prejudiced the jury, nor did the plaintiff's counsel make that claim when arguing the motion before the court. Rather, the plaintiff's motion focused solely on the jury's possible exposure to pretrial publicity. Thus, the plaintiff has in effect raised this claim for the first time on appeal, which has "denied the trial court the opportunity to act and correct any potential errors with respect to this issue." (Internal quotation marks omitted.) *Alexandre* v. *Commissioner of Revenue Services*, 300 Conn. 566, 585, 22 A.3d 518 (2011). Accordingly, we decline to engage in ambuscade of the trial judge by considering on appeal the plaintiff's claim that the references to Shander as an "expert" during opening argument prejudiced the jury. See id., 586; Practice Book § 60-5 ("[t]he court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial").

E

Lastly, the plaintiff claims that he was denied a fair trial on the basis of the conduct of Shander's counsel. Specifically, the plaintiff claims that counsel for Shander engaged in improper examination of witnesses on numerous occasions and that counsel for Shander made inappropriate gestures and facial expressions to the jury. The plaintiff contends that, although each alleged instance of misconduct is not sufficient by itself to warrant a new trial, when all of the circumstances are taken together counsel's conduct was so disruptive to the jury that it denied the plaintiff a fair trial. We disagree.

The plaintiff cites no legal authority to support his claim that he is entitled to a new trial on the basis of Shander's alleged improper examination of witnesses. Rather, the plaintiff simply claims that a new trial is warranted because the trial was unfair. Despite the plaintiff's claim on appeal that Shander's counsel's conduct was so improper as to require a new trial, at no point during trial did the plaintiff move for a mistrial.

In the context of a criminal trial, we have stated that it is "highly significant that defense counsel failed to object to any of the improper remarks, request curative instructions, or move for a mistrial. . . . A failure to object demonstrates that defense counsel presumably [did] not view the alleged impropriety as prejudicial enough to jeopardize seriously the defendant's right to a fair trial." (Citation omitted; internal quotation marks omitted.) *State* v. *Luster*, 279 Conn. 414, 443, 902 A.2d 636 (2006). Moreover, the plaintiff did not include this claim in any of his post-trial motions. The plaintiff, therefore, is essentially asking this court to declare a mistrial when he never moved for one at the trial court. Thus, we conclude that the plaintiff has raised this issue for the first time on appeal and, accordingly, we decline to review it. See *Alexandre* v. *Commissioner of Revenue Services*, supra, 300 Conn. 585–86.

Furthermore, although counsel for the plaintiff notified the trial judge that he believed that Shander had been mouthing answers to the jury, the judge responded that he was not in a position to see, and that he "[would] look for it." The plaintiff, however, did not move for a mistrial based on this alleged misconduct. Such claims of misconduct, which cannot be fully captured in a transcript, are particularly ill suited for judicial review when they are not raised initially at the trial court. We have stated that "[t]he trial judge is the arbiter of the many circumstances which may arise during the trial in which his function is to assure a fair and just outcome. . . . The trial court is better positioned than we are to evaluate in the first instance whether a certain occurrence is prejudicial to the defendant and, if so, what remedy is necessary to cure that prejudice." (Internal quotation marks omitted.) *State* v. *Gary*, 273 Conn. 393, 413, 869 A.2d 1236 (2005). Accordingly, we decline to review this claim because it has not been preserved properly. See *Alexandre* v. *Commissioner of Revenue Services*, supra, 300 Conn. 585–86.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion NORCOTT, ZARELLA and SHELDON, Js., concurred.

[1] We granted the defendants' separate petitions for certification to appeal limited to the following issue: "Did the Appellate Court properly determine that the trial court abused its discretion when it denied the plaintiff's request to poll the jury regarding an article published in The New York Times concerning the subject matter of the suit?" *Kervick* v. *Silver Hill Hospital*, 301 Conn. 922, 22 A.3d 1279 (2011).

[2] The defendants' appeals were consolidated for the record and oral argument.

[3] All references to Kervick are to Kervick in his individual capacity, while references to the plaintiff are to Kervick in his role as the executor of the decedent's estate.

[4] After reading the article, the trial judge stated that "it didn't seem to be pro plaintiff or pro defendant." For example, the article stated that the hospital has "typically attracted those with [c]hampagne tastes—or at a minimum, good insurance. Costs are usually more than [$1000] a day, and

patients are often expected to put up hefty deposits." A. Cowan, supra, New York Times, p. B1. Moreover, the article quoted an attorney, who had previously sued the hospital, who stated that "[i]t's heartbreaking when someone goes in because they need help at a place like [this hospital], and they come out worse than when they went in." (Internal quotation marks omitted.) Id., pp. B1 and B5. The article also referenced one case that the hospital had settled after being sued because one of its employees had allegedly sexually assaulted a patient while she slept. Id., p. B5. Additionally, the article detailed the decedent's emotional problems and included an argument from one of the plaintiff's attorneys that the hospital "should have known that [the decedent's] problems were dire, especially since she had tried to hang herself a few years earlier in the same room." Id., p. B5

Furthermore, the article stated that the decedent had directed that Kervick inherit one half of her estate. Kervick's personal relationship with the decedent was also described, including an alleged incident where Kervick "used drugs in [the decedent's] presence . . . tied her to a bed and forced her to watch pornography." Id. The article also noted that evidence concerning Kervick's relationship with the decedent had the possibility of prejudicing the jury and quoted an attorney as saying, "[i]f the jury actually followed the law . . . [the plaintiff would win] because even if you might not like the fact that he's the one in the will, [the defendants are] the ones charged with her care." (Internal quotation marks omitted.) Id.

[5] Although we conclude that the instruction given by the court clerk was sufficient, we also note that, in his initial instruction to the jury on the day that trial began, the trial judge instructed the jury as follows: "[D]o not read any news stories or articles or listen to any radio or television reports about this case or about anyone or anything having to do with this case. . . . I'm going to ask you to be scrupulous in that regard. If you see any article bearing upon this case in the newspapers, don't read it. If you hear anything coming over the radio about this case, turn off the radio." Additionally, the trial judge instructed the jury to avoid media coverage of the case prior to dismissing the jury at the end of each day of the trial.

[6] Additionally, although a judge is traditionally absent during voir dire in a civil case, the parties' rights are not disregarded. Counsel for each party is generally present during the entirety of voir dire and, if a problem arises, counsel may request that the judge appear and resolve it. We have stated that "[i]t may well be true that, in some instances, a trial judge can adequately discharge these responsibilities solely by responding when called by the parties, making appropriate inquiries, listening to the tape or reading the transcript, and initiating further inquiries, including inquiries of the veniremember, when necessary. Such a process may sufficiently protect the accuracy of the fact-finding process involved in making these determinations. We recognize, also, that permitting the judge to be absent from voir dire unless called by the parties may contribute to judicial economy and to the efficient use of scarce judicial resources by freeing the judge to work on opinions and perform other judicial duties." *State* v. *Patterson*, supra, 230 Conn. 399.

[7] The plaintiff also claims that the trial court abused its discretion in insisting that both parties agree that some communication be made to the jurors prior to trial, rather than allowing either party to request that an instruction be given without agreement from the other party. We consider this claim to be part of the central issue which we hold is governed by the *Merriam* decision.

[8] Thus, this is not a case where the trial judge was aware that the jurors had not been instructed to avoid media coverage and still declined to take further action to determine whether any jurors had read an article concerning the subject matter of the case. In such a situation, it may well be advisable for the trial judge to conduct an inquiry on the record to determine whether the jurors are impartial and thus able to decide the case free from external influences.

[9] This court has recognized that "the judge must actively establish and enforce the pace of litigation coming before the court, rather than allowing the parties to do so. Judges must be firm and create the expectation that a case will go forward on the specific day that it is assigned." *In re Mongillo*, 190 Conn. 686, 691, 461 A.2d 1387 (1983), overruled in part on other grounds by *State* v. *Salmon*, 250 Conn. 147, 154–55, 735 A.2d 333 (1999). Thus, it was well within the trial judge's discretion to decline to poll the jurors immediately before evidence was scheduled to begin.

[10] We recognize that, in exercising his discretion, the trial judge could have responded differently to the plaintiff's request to poll the jury. The

trial judge could have, for example, chosen to poll the jury to determine whether any juror had read the article. Additionally, the trial judge could have more generally inquired as to whether any juror had been exposed to any publicity about the case, and then followed up if any juror had admitted to reading the article. We conclude, however, that, although the trial judge's response to the plaintiff's request to poll the jury surely was not the *only* reasonable approach, it was, nevertheless, a reasonable course of conduct.

[11] We note that the judicial district of Hartford has a standing order that reads as follows:

"ORDER: SELECTED JURORS

Rules of Juror Conduct

"You have been selected to serve as a juror in a civil case in the Judicial District of Hartford. To ensure that the parties will have a fair and impartial trial that is based only on the evidence introduced at the trial, you must follow these **Rules of Juror Conduct**. Any violation of these rules could result in the declaration of a mistrial or an order setting aside the jury's verdict. In both instances, another trial will have to be conducted.

"**1. Prohibited communications and discussions.**

"You may tell others that you have been selected to serve as a juror on a civil case. You cannot tell anyone the name of the case or discuss, describe or communicate any information about the case or related to the case with anyone, including the other selected jurors, until the court releases you from this obligation at the end of the trial. The terms 'discuss, describe and communicate' mean **all** types of oral and written communications, including electronic communications such as e-mailing, blogging, texting, Twittering, and posting on Facebook and other social networking sites.

"Do not talk to anyone about this case including the other selected jurors. Do not allow anyone to talk to you about this case.

"**2. No research or investigation.**

"You must not perform any investigation or research of any kind concerning this case or any issue of law or fact that you may believe is involved in this case. This prohibition includes, but is not limited to, looking up any information in reference books or on the Internet, seeking out information about the lawyers or parties, visiting the location involved in this case or conducting research about trials and trial procedure in general.

"**3. Avoid media coverage.**

"Do not read, watch or listen to any reports or articles about this case, anyone connected with the case or any issue that you believe may be involved in this case that you may happen to come across in any form of media, including on-line media, or from any other source. The information may not be accurate or may not have any bearing on what is relevant to this case. You must decide this case based only on the evidence presented at the trial and the instructions on the law you will receive from the court.

"**4. Reporting requirement.**

"You must promptly report to the court if anyone makes any comment to you about this case or any specific issue involved in it or contacts you or attempts to contact you regarding this case. If this occurs when you are in the courthouse, write a note and promptly give it to the courtroom clerk. If this occurs when you are not in the courthouse, write a note and give it to the clerk upon your arrival in court on the next day the trial is in session. In either case, do not speak to the other jurors or reveal any specific information to them or anyone else about what has occurred. Please follow the same procedure if you believe you may have violated, even inadvertently, any of these Rules of Juror Conduct.

"**5. Open mind.**

"Keep an open mind about this case. Do not make up your mind until you have had the opportunity to deliberate with the other jurors at the proper time, which will occur after the evidence has been presented in court and you have received the court's instructions on the law.

"**6. Restrictions on use of electronic devices.**

"Do not use cell phones, smart phones, netbooks, laptops, pdas or any other electronic communication devices in the courtroom. Keep all devices turned off while you are in the courtroom. You are permitted to use such devices during the official recesses, but you must follow the instructions set forth in paragraphs 1, 2 and 3 of this Order.

"This is an **order of the court** and it may be enforced by the court in any appropriate manner." (Emphasis in original.)

We encourage all judicial districts to adopt the language of this standing order.

[12] Although Shander and the hospital are the apportionment plaintiffs, for the sake of consistency, we continue to refer to them collectively as the defendants.

[13] We note that we agree with the trial court that the plaintiff has not offered any evidence that authenticates the authorship of the comment. Although the name of the author of the comment was "Juror" and the author stated that "I was on the jury for this case," the plaintiff has not offered any evidence that those statements are reliable. The comment at issue appears in the comment section of an online article concerning the case, where each author can choose his or her own name that will be attributed to the comment. Other comments appearing in the comment section were authored by "sick of stupid people," "Maddiegirl," and "news." Thus, the plaintiff has not offered any reason for us to conclude that, in a forum where anonymity is the norm, the comment at issue was actually posted by a juror in the case.

[14] If the comment was in fact posted by a juror in the case, the fact that the comment was posted after the verdict had been delivered is significant. The trial court aptly stated that "if we had someone identifying [themselves] as a juror engaging in blogging during the course of the trial, that's one thing." In the present case, however, the judge had released the jurors from their obligation to their oath, and thus the jurors were free to discuss the case in public. Accordingly, because the comment was posted after the verdict had been delivered, the comment is not evidence that the jury had disregarded the court's instructions to avoid premature deliberation of the case.