

Synopsis of *Traylor v. Awwa*, Docket No. KNL-CV-06-5001159-S

The case of *Traylor v. Awwa*,¹ with a lengthy procedural history and filings in excess of 400 items, defies easy summary. The following is an attempt at offering a fair general overview of the proceedings. It is based on the various decisions issued by the court as well as some of the case documents that have been electronically filed since 2010.

The plaintiff, Sylvester Traylor, initially appearing pro se, commenced this action against the defendants, Bassam Awwa, M.D., and Connecticut Behavioral Health Associates, in June, 2006, by a writ of summons bearing a return date of July 3, 2006. The original complaint, setting forth allegations of medical malpractice, wrongful death, and loss of spousal consortium arising from the suicide of the plaintiff's wife, Roberta M. Traylor, was brought by the plaintiff in both his personal capacity and as administrator of the decedent's estate. Several defects in the original service of process as well as in the process itself, including a return date that was not a Tuesday, were corrected, resulting in a December 14, 2006 decision (#142) of the court, *Hurley, J.T.R.*, denying a motion to dismiss the action. While the plaintiff did not submit a good faith certificate and medical opinion letter of a similar healthcare provider pursuant to General Statutes § 52-190a in support of the original complaint, on October 19, 2006, he did file what was purportedly such a document (#132), in response to which the defendants filed a motion to dismiss (#146) on January 8, 2007. The court, *Hurley, J.T.R.*, denied the motion to dismiss on June 1, 2007 (#157), concluding that the plaintiff's noncompliance with Practice Book § 10-60 was excusable in light of the plaintiff's pro se status and that the plaintiff had adequately complied with § 52-190a in light of the defendants' delay in raising any issue of noncompliance.

After two years of further proceedings before several different judges and over 150 additional filings, the matter eventually came before Judge Parker. On December 1, 2009, the court, *Parker, J.T.R.*, issued an order (#384) for the plaintiff to show cause why the plaintiff should not be prohibited from appearing on behalf of the estate, in light of the Appellate Court's opinion in *Ellis v. Cohen*, 118 Conn. App. 211, 982 A.2d 1130 (2009), holding that a nonlawyer administrator or executor of a decedent's estate may not appear pro se on behalf of the estate. Following a hearing on December 21, 2009, the court, *Parker, J.T.R.*, issued an order, memorialized in a filing on February 5, 2010 (#354), that the parties were not to file anything or take any further action until such time as an appearance of counsel was filed on behalf of the plaintiff in his capacity as the estate's administrator. The "no filing order" applied also to the plaintiff in his individual capacity. The plaintiff was given until April 21, 2010, for an appearance to be filed. Ultimately, an appearance of counsel was filed on April 21, 2010. Notwithstanding the appearance of counsel, the plaintiff on occasion continued to file papers pro se.

On June 21, 2010, the court, *Parker, J.T.R.*, issued a detailed scheduling order (#357). The plaintiff subsequently filed an amended complaint on July 12, 2010 (#362), and the defendants filed a motion to dismiss (#366), again on the basis of noncompliance with § 52-

¹ The case caption on some of the court's memoranda identify the first-named defendant as Bassam "Awwam." This is an apparent typographical error by the court, as the parties appear to consistently spell the name as "Awwa."

190a, on July 16, 2010. In a memorandum of decision (#366.04) issued on August 11, 2010, the court, *Parker, J.T.R.*, concluded that Judge Hurley's previous denial of a motion on the same ground was not law of the case, nor did it collaterally estop the court from considering the new motion. The court went on to conclude, several years after the action had been commenced and notwithstanding the defendants' delay of more than two months in initially raising the issue in 2006,² that the medical malpractice counts (1-6) must be dismissed for noncompliance with § 52-190a, and further concluded that count four should be dismissed on the additional ground of noncompliance with a jurisdictional statute of limitations. In so ruling, the court opined that Judge Hurley had been "clearly smitten by plaintiff's being pro se." The court's ruling left two counts pending in the case: spoliation of evidence (count seven) and violation of the Connecticut Unfair Trade Practices Act (CUTPA) (count eight).

On August 17, 2010, the plaintiff filed a motion (#392) to reargue the motion to dismiss, arguing that the court had ignored the time limitations for raising an objection to the plaintiff's noncompliance with § 52-190a. See footnote 2. The court, *Parker, J.T.R.*, denied the motion to reargue on August 24, 2010. In doing so, the court issued a memorandum of decision (#397) addressing what it called "themes present in the motion to reargue." Among other observations of the court in that memorandum were that the plaintiffs, who were now represented by counsel, "are confused. Plaintiffs are just plain mistaken. Their unfamiliarity with litigation practice is lamentable; their misrepresentation of the facts shown in the record can hardly be condoned or tolerated." The court also referred to the plaintiff's late filing of a medical certificate "a contrivance of plaintiffs to try to obfuscate plaintiffs' not having filed a medical opinion of similar health care provider as required by General Statutes § 52-190a."

Meanwhile, on August 16, 2010, the court, *Parker, J.T.R.*, issued a memorandum of decision (#383.01) granting the defendants' motion to strike count seven of the complaint alleging spoliation of evidence. On September 13, 2010, the court, *Parker, J.T.R.*, issued an order (#422) stating that the plaintiff's attempt to file a revised complaint on August 30, 2010 was "a nullity" because it was in direct contravention of the court's order that the plaintiff not represent himself. Nevertheless, the plaintiff also filed another revised complaint (#414) through counsel on September 8, 2010, repleading count seven alleging spoliation of evidence.

On October 14, 2010, the court, *Parker, J.T.R.*, apparently acting sua sponte, issued an order (#437) that the plaintiff appear and show cause why the court should not dismiss the two remaining counts of the complaint. Following a hearing on that order, the court, *Parker, J.T.R.*, issued a memorandum of decision (#469) on February 15, 2011, dismissing, again apparently sua sponte, the remaining two counts of the complaint. The court dismissed the spoliation of evidence count (count seven) on the basis that the court's own dismissal of the first six counts "conclusively establishes that the plaintiff would not have prevailed in the underlying action even if the lost or destroyed evidence had been available." (Internal quotation marks omitted.) The court dismissed the CUTPA count (count eight) on the basis that it was "predicated upon a successful prosecution of the spoliation of evidence claim in the seventh count."

² The Connecticut Supreme Court has subsequently concluded that noncompliance with § 52-190a implicates the court's personal jurisdiction and, thus, is waived if not raised by a motion to dismiss filed within thirty days of the defendant's appearance in the case. See *Morgan v. Hartford Hospital*, 301 Conn. 388, 21 A.3d 451 (2011).

In October, 2010, the plaintiff filed both a motion to transfer the case to another judicial district (#439) and a motion to disqualify Judge Parker (#444). The motions were premised on Judge Parker's alleged bias against the plaintiff as allegedly evidenced by, among other things, Judge Parker's overruling of Judge Hurley's denial of the motion to dismiss, and various alleged comments and actions of Judge Parker, including Judge Parker allegedly making a "hip-hop rapper's hand and facial gesture . . . to taunt . . . the plaintiff."³ Judge Parker denied both motions.

Various appeals taken by the plaintiff in this case and in related proceedings have been resolved unfavorably to the plaintiff. A search of the Judicial Branch case lookup for appellate cases reveals no active appeals involving the plaintiff at this time.

³ The plaintiff also cited the pendency of a separate writ of mandamus action that he had filed against, inter alia, then Chief Court Administrator Quinn, and in which he had alleged bias on the part of New London judges. The Appellate Court ultimately affirmed the trial court's dismissal of the mandamus action. See *Traylor v. State*, 128 Conn. App. 182, 15 A.3d, cert. denied, 301 Conn. 927, 22 A.3d 1276 (2011).