GRAYSON v. WOFSEY

231 Conn. 168 (1994) | Cited 40 times | Supreme Court of Connecticut | August 23, 1994

The principal issue raised by this appealis whether a client who has agreed to the settlementof a marital dissolution action on the advice of his orher attorney may then recover against the attorney forthe negligent handling of her case. The plaintiff, ElynK. Grayson, brought this action against the defendants,Edward M. Kweskin, Emanuel Margolis, and their lawfirm, Wofsey, Rosen, Kweskin and Kuriansky, allegingthat they had committed legal malpractice in thepreparation and settlement of her dissolution action.[1]

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After trial, a jury returned a verdict in the amount of$1,500,000 against the defendants. The trial court,Ballen, J., rendered judgment for the plaintiff inaccordance with the jury verdict, and this appeal followed.[2]The defendants claim that: (1) the plaintiff failedto establish, as a matter of law, that she was entitledto a recovery against them; (2) the evidence was insufficientto support the jury's verdict; (3) the trial court'srulings on certain evidentiary issues constituted anabuse of discretion; and (4) the trial court's instructionsto the jury were improper. We affirm the judgment ofthe trial court.

The relevant facts and procedural history are as follows.In 1981, Arthur I. Grayson (husband) brought anaction against the plaintiff for the dissolution of theirmarriage. On May 28, 1981, the third day of the dissolutiontrial before Hon. William L. Tierney, Jr., statetrial referee, the plaintiff, on the advice of the defendants,agreed to a settlement of the case that had beennegotiated by the defendants and counsel for her husband.The agreement provided, inter alia, that the plaintiffwould receive lump sum alimony of $150,000 andperiodic alimony of $12,000 per year. Judge Tierneyfound that the agreement was fair and reasonable and,accordingly, rendered a judgment of dissolution incorporatingthe agreement.[3]

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On September 23, 1981, the plaintiff moved to openthe judgment on the ground that the settlement agreementhad been based on a fraudulent affidavit submittedto the court and to the plaintiff by her husband.[4]The trial court, Jacobson, J.,[5] denied the plaintiff'smotion to open the judgment and the plaintiff appealedto the Appellate Court, which affirmed the judgment.Grayson v. Grayson, 4 Conn. App. 275, 494 A.2d 576(1985), appeal dismissed, 202 Conn. 221, 520 A.2d 225(1987).

The plaintiff also brought this legal malpractice actionagainst the defendants. Her complaint alleged that shehad agreed to the settlement of the dissolution actionon the advice of the defendants who,

she claimed, hadfailed properly to prepare her case. The plaintiff furtheralleged that as a result of the defendants' negligence,she had agreed to a settlement that "`was notreflective of her legal entitlement" and that she had"thereby sustained an actual economic loss."

At trial, the plaintiff introduced evidence concerningher thirty year marriage, its breakdown due to herhusband's affair with another woman, and the couple's

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financial circumstances. After a detailed recounting ofthe history of the divorce litigation, the plaintiff presentedthe testimony of two expert witnesses, ThomasHupp, a certified public accountant, and Donald Cantor,an attorney who specialized in the practice of familylaw.

Hupp testified that the defendants had failed properlyto value the marital estate and, in particular, thehusband's various business interests. Cantor gave hisopinion that the defendants' representation of the plaintifffell below the standard of care required of attorneysin marital dissolution cases. Specifically, Cantortestified that: (1) the defendants had not conducted anadequate investigation and evaluation of the husband'sbusiness interests and assets; (2) they had not properlyprepared for trial; (3) as a result of the defendants'negligence, the plaintiff had agreed to a distributionof the marital estate and an alimony award that werenot fair and equitable under the law; see General Statutes§§ 46b-81 (c)[6] and 46b-82;[7] and (4) the plaintiff

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would have received a greater distribution of the maritalestate and additional alimony had she been competentlyrepresented. The trial court, Ballen, J., deniedthe defendants' motion for a directed verdict at theclose of the plaintiff's case.

In their case in defense, the defendants testified concerningtheir handling of the plaintiff's case, and theyalso presented the expert testimony of two attorneys,James Stapleton and James Greenfield. These expertsexpressed the opinion that the defendants' representationof the plaintiff comported with the standard ofcare required of attorneys conducting dissolution litigation.

The jury returned a verdict for the plaintiff in theamount of $1,500,000. The defendants thereafter filedmotions to set aside the verdict and for judgmentnotwithstanding the verdict. The trial court denied thosemotions and rendered judgment in accordance with theverdict. Additional facts are set forth as relevant.

I

The defendants first claim that the trial court improperlydenied their motions for a directed verdict

and forjudgment notwithstanding the verdict on the groundthat the plaintiff was barred from recovering againstthem, as a matter of law, due to her agreement to settlethe marital dissolution action. We conclude that theplaintiff was not so barred.

The defendants urge us to adopt a common law rulewhereby an attorney may not be held liable for negligentlyadvising a client to enter into a settlement agreement.See Muhammad v. Strassburger, McKenna,Messer, Shilobod & Gutnick, 526 Pa. 541, 587 A.2d 1346(1991). They argue that, as a matter of public policy,an attorney should not be held accountable for improperlyadvising a client to settle a case unless that advice

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is the product of fraudulent or egregious misconductby the attorney. See id. The defendants contend thatthe adoption of such a rule is necessary in order to promotesettlements, to protect the integrity of stipulatedjudgments, and to avoid the inevitable flood of litigationthat they claim will otherwise result. They claimthat such a rule is particularly appropriate if, as here,the court has reviewed and approved the settlementagreement.

We have long recognized that the pretrial settlementof claims is to be encouraged because, in the vast numberof cases, an amicable resolution of the dispute isin the best interests of all concerned. "The efficientadministration of the courts> is subserved by the endingof disputes without the delay and expense of a trial,and the philosophy or ideal of justice is served in theamicable solution of controversies." Krattenstein v. G.Fox & Co., 155 Conn. 609, 614, 236 A.2d 466 (1967).We have also acknowledged that, with appropriate judicialsupervision, the "private settlement of the financialaffairs of estranged marital partners is a goal thatcourts> should support rather than undermine." Hayesv. Beresford, 184 Conn. 558, 568, 440 A.2d 224 (1981);Baker v. Baker, 187 Conn. 315, 321-22, 445 A.2d 912(1982). At a time when our courts> confront anunprecedented volume of litigation, we reaffirm ourstrong support for the implementation of policies andprocedures that encourage fair and amicable pretrialsettlements.

We reject the invitation of the defendants, however,to adopt a rule that promotes the finality of settlementsand judgments at the expense of a client who, in reasonablereliance on the advice of his or her attorney,agrees to a settlement only to discover that the attorneyhad failed to exercise the degree of skill and learningrequired of attorneys in the circumstances. "Althoughwe encourage settlements, we recognize that litigants

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rely heavily on the professional advice of counsel whenthey decide whether to accept or reject offers of settlement,and we insist that the lawyers of our stateadvise clients with respect to settlements with the sameskill, knowledge, and diligence with which they pursueall other legal tasks."

Ziegelheim v. Apollo, 128 N.J. 250,263, 607 A.2d 1298 (1992). Therefore, when it hasbeen established that an attorney, in advising a clientconcerning the settlement of an action, has failed to"exercise that degree of skill and learning commonlyapplied under all the circumstances in the communityby the average prudent reputable member of the [legal]profession . . . [and that conduct has] result[ed in]injury, loss, or damage to the [client]"; (internal quotationmarks omitted) Davis v. Margolis, 215 Conn. 408,415, 576 A.2d 489 (1990); the client is entitled toa recovery against the attorney. Accordingly, like themajority of courts> that have addressed this issue, wedecline to adopt a rule that insulates attorneys fromexposure to malpractice claims arising from their negligencein settled cases if the attorney's conduct hasdamaged the client. See Edmondson v. Dressman,469 So.2d 571 (Ala. 1985); Bill Branch Chevrolet, Inc. v.Burnett, 555 So.2d 455 (Fla. App. 1990); McCarthy v.Pedersen & Houpt, 250 Ill. App.3d 166,621 N.E.2d 97 (1993); Braud v. New England Ins. Co., 534 So.2d 13(La. App. 1988); Fishman v. Brooks, 396 Mass. 643,487 N.E.2d 1377 (1986); Lowman v. Karp, 190 Mich. App. 448,476 N.W.2d 428 (1991); Ziegelheim v. Apollo,supra, 250; Cohen v. Lipsig, 92 App. Div.2d 536,459 N.Y.S.2d 98 (1983); but see Muhammad v. Strassburger,McKenna, Messer, Shilobod & Gutnick, supra,526 Pa. 541.

Furthermore, we do not believe that a different resultis required because a judge had approved the settlementof the plaintiff's marital dissolution action.Although in dissolution cases "[t]he presiding judge has

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the obligation to conduct a searching inquiry to makesure that the settlement agreement is substantively fairand has been knowingly negotiated"; Hayes v. Beresford,supra, 184 Conn. 568; Baker v. Baker, supra,187 Conn. 321; see General Statutes § 46b-66; the court'sinquiry does not serve as a substitute for the diligentinvestigation and preparation for which counsel isresponsible. See Monroe v. Monroe, 177 Conn. 173, 183,413 A.2d 819, appeal dismissed, 444 U.S. 801, 100S.Ct. 20, 62 L.Ed.2d 14 (1979) ("lawyers who representclients in matrimonial dissolutions have a specialresponsibility for full and fair disclosure, for a searchingdialogue, about all of the facts that materially affectthe client's rights and interests"). Indeed, the dissolutioncourt may be unable to elicit the information necessaryto make a fully informed evaluation of thesettlement agreement if counsel for either of the partieshas failed properly to discover and analyze the factsthat are relevant to a fair and equitable settlement.

Finally, we do not share the concern expressed bythe defendants about the impact that our resolution ofthis issue will have on settlements, stipulated judgments,and the volume of litigation. Indeed, the defendantsdo not suggest that attorneys have heretofore beenunwilling to recommend settlements out of concernover possible malpractice suits, for attorneys in thisstate have never been insulated from negligence claimsby the protectional rule urged by the defendants.Because settlements will often be in their clients' bestinterests, we harbor no doubt that attorneys will continueto give advice concerning the resolution of casesin a manner consistent with their professional and

ethicalresponsibilities.

We similarly reject the defendants' prediction of adramatic increase in legal malpractice claims by partiesto marital dissolution actions who, after judgment,have become disenchanted with the settlement

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agreements negotiated by their attorneys. Again, we haveno reason to believe that our resolution of the defendants'claim will prompt an increase in malpractice suitsagainst attorneys because, in declining to narrow theexisting common law remedy for attorney malpractice,we create no new claim or theory of recovery. Moreover,as the New Jersey Supreme Court has recentlystated in response to the same concern expressed bythe defendants here, "plaintiffs must allege particularfacts in support of their claims of attorney incompetenceand may not litigate complaints containing meregeneralized assertions of malpractice. We are mindfulthat attorneys cannot be held liable simply because theyare not successful in persuading an opposing party toaccept certain terms. Similarly, we acknowledge thatattorneys who pursue reasonable strategies in handlingtheir cases and who render reasonable advice to theirclients cannot be held liable for the failure of theirstrategies or for any unprofitable outcomes that resultbecause their clients took their advice. The lawdemands that attorneys handle their cases with knowledge,skill, and diligence, but it does not demand thatthey be perfect or infallible, and it does not demandthat they always secure optimum outcomes for theirclients." Ziegelheim v. Apollo, supra, 128 N.J. 267.

We believe, therefore, that the rule proposed by thedefendants is neither necessary nor advisable. Accordingly,we conclude that a client who has agreed to thesettlement of an action is not barred from recoveringagainst his or her attorney for malpractice if the clientcan establish that the settlement agreement wasthe product of the attorney's negligence.

II

The defendants next claim that the evidence wasinsufficient to support the jury's verdict with respectto both liability and damages and, therefore, that the

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trial court improperly denied their motions to set asidethe verdict and for judgment notwithstanding the verdict.We disagree.

It is well established that "[w]e undertake only limitedappellate review of a trial court's denial of a motionfor judgment notwithstanding the verdict and of amotion to set aside the verdict. In each case, we accordgreat deference to the trial court's superior opportunityto view the trial in its entirety.

In reviewing thedecision of the trial court, we consider the evidence inthe light most favorable to the sustaining of the verdict. . . .Our function is to determine whether thetrial court abused its discretion in denying [either]motion. . . . The trial court's [denial of each motion]is entitled to great weight and every reasonable presumptionshould be indulged in favor of its correctness. . . ."(Citations omitted; internal quotationmarks omitted.) Blanchette v. Barrett, 229 Conn. 256,264, 640 A.2d 74 (1994). With these principles in mind,we address the defendants' claims of evidentiaryinsufficiency.

A

The defendants contend that the evidence does notsupport a determination that they were deficient intheir representation of the plaintiff. They also claimthat the plaintiff's evidence was so speculative that ajury reasonably could not have concluded that thedefendants' conduct was the proximate cause of anyeconomic harm to the plaintiff. We disagree.

The following evidence, which the jury could havecredited, is relevant to these claims. At the time of thetrial of the marital dissolution action, the plaintiff andher husband had been married for thirty years. Theplaintiff, fifty-three years old, was a graduate of SimmonsCollege, and for eight years had owned and operatedher own real estate business. Prior to opening her

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real estate office, the plaintiff had remained at hometo raise the couple's three daughters. Her husband, afifty-six year old graduate of the Wharton School ofFinance and Columbia Law School, was a successfulentrepreneur.

Among her husband's business interests were severalbowling alleys. He held a 20 percent general partnershipinterest in Nutmeg Bowl, Colonial Lanes andLaurel Lanes, and was in charge of their management.In addition, he owned 100 percent of the stock in threelounges that served food and beverages to patrons ofthe bowling alleys. The husband also had a beneficialinterest in the Grayson Associates Pension and ProfitSharing Plan, which in turn was a limited partner inthe three bowling alleys.

Grayson Associates, Inc., a management companyin which the husband was the sole shareholder, receivedmanagement fees from the three bowling alleys.Although Grayson Associates had a fair market valueof $487,000, the husband's financial affidavit listed onlyits book value of $14,951. The husband's financial affidavitalso listed a $46,080 limited partnership interestin Georgetown at Enfield Associates (Georgetown partnership),and a future general partnership interest inthat partnership of $959.76. The husband's affidavitfailed to disclose, however, that he intended to take a$185,000 partnership distribution from the Georgetownpartnership and that he was entitled to $45,000 inmanagement fees from that partnership.[8] To the contrary,the affidavit affirmatively represented that thehusband would receive no future income from the Georgetownpartnership.

Finally, the husband's affidavitindicated an annual income of approximately $62,000.

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The plaintiff's financial affidavit, which was preparedby the defendants in consultation with the plaintiff, indicatedthat she had no income. The plaintiff had testifiedat her deposition prior to the dissolution trial,however, that she earned approximately $25,000 annuallyfrom her real estate business, and that she expectedto receive commissions in excess of $34,000 in 1981.

The plaintiff's expert witness Cantor expressed hisopinion that the defendants had been negligent in failingproperly to discover and evaluate certain assets ofthe marital estate.[9] Specifically, Cantor testified thatthe defendants had improperly failed to: (1) ascertainthe full value of the Georgetown partnership; (2) discoverthe $165,000 anticipated distribution to the husbandby that partnership; and (3) discover the $45,000management fee owed to the husband by the partnership.Cantor also testified that because the defendantshad failed to obtain appraisals for several of the assets,including 636 Kings Highway and Grayson Associates,Inc., the defendants were unable to challenge variousinconsistencies in the husband's financial affidavit. Cantorfurther testified that the defendants had failed properlyto establish the husband's "residual interest in thebowling alleys . . . as a general partner," an assetnot expressly valued in the husband's affidavit.

Cantor also explained that, in his opinion, the defendantshad failed to exercise due care in the preparationof the plaintiff's financial affidavit. In Cantor's judgment,the plaintiff's credibility had been seriously andunnecessarily compromised because her financial affidavitdid not include the income from her real estatebusiness. Cantor also noted that the plaintiff's credibilitymay have been further undermined by virtue of

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the defendants' submission of three separate documentscontaining three different valuations of anothermarital asset, the Daniel Oil Company.

Cantor expressed his opinion that at the end of thetwo days of trial, there was not enough financial informationavailable to the lawyers to permit them toresponsibly recommend settlement to the plaintiff. Hefurther concluded that the defendants' failure to satisfythe standard of skill and care required of attorneys insuch cases was the cause of economic damage to theplaintiff because, in his view, she would have receiveda larger distribution of the marital estate had thedefendants represented her competently.

Finally, Cantor testified to his opinion that the plaintiffreasonably could have anticipated receiving 40 to60 percent of the total marital estate,[10] which, accordingto the plaintiff's witnesses, had a value of approximately$2,400,000. Cantor also opined that the plaintiffreasonably could have anticipated

receiving periodicmodifiable alimony of approximately 35 to 50 percentof the parties' combined incomes.[11]

We conclude that the evidence adduced at trial wassufficient to support the jury's determination that thedefendants were negligent in their representation ofthe plaintiff. The jury reasonably could have determined,on the basis of the testimony of the plaintiff'sexpert, that the defendants had negligently failed to

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discover and value the husband's business interests andrelated assets, and that the terms of the settlementagreement did not represent a fair and equitable distributionof the true marital estate. Moreover, the jurywas entitled to credit Cantor's testimony that thedefendants' advice to accept the settlement agreementwas the product of their inadequate investigation andpreparation.

We further conclude that the evidence supported thejury's determination that the defendants' negligencewas the proximate cause of economic damage to theplaintiff. "[T]he test of proximate cause is whether thedefendant's conduct is a substantial factor in bringingabout the plaintiff's injuries. . . . The existence ofthe proximate cause of an injury is determined by lookingfrom the injury to the negligent act complained offor the necessary causal connection." (Citations omitted;internal quotation marks omitted.) Wu v. Fairfield,204 Conn. 435, 438, 528 A.2d 364 (1987). Cantor testifiedthat competent counsel would not have advised theplaintiff to enter into the settlement agreement, andthat she would have received a significantly greaterdistribution of the marital estate had she been properlyrepresented. Although the defendants vigorously contestedthis testimony, the jury was entitled to creditit. In view of that testimony, we cannot say that thejury necessarily resorted to conjecture, surmise orspeculation in reaching its verdict. Id.; Pisel v. StamfordHospital, 180 Conn. 314, 340, 430 A.2d 1 (1980);Slepski v. Williams Ford, Inc., 170 Conn. 18, 22,364 A.2d 175 (1975). The jury reasonably could have concluded,therefore, that the defendants' negligence wasthe proximate cause of economic harm to the plaintiff.

B

The defendants further claim that the jury's verdictwas excessive as a matter of law. We do not agree.

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The jury could have credited the testimony of theplaintiffs witnesses that the value of the marital estate,at the time of the divorce, was approximately $2,400,000,and that the value of the plaintiff's distribution, underthe terms of the stipulated judgment, was approximately$450,000. Because the jury could have concluded,as Cantor testified, that the plaintiff reasonablycould have expected to receive up to 60 percent of thevalue of the marital estate, namely, $1,400,000, the juryalso could have

determined that the plaintiff, had shebeen competently represented, would have receivedapproximately $1,000,000 more of the estate's assetsthan she had been awarded pursuant to the stipulatedjudgment. In addition, on the basis of Cantor'stestimony that the plaintiff could have expected toreceive alimony of between 35 and 50 percent of theparties' combined annual income, the jury reasonablycould have concluded that the plaintiff would havereceived alimony of up to $35,000 more per year thanshe had agreed to in settlement of the marital dissolutionaction.[12] Furthermore, the jury was free to havecalculated the economic damage to the plaintiff in lostalimony from the date of the marital dissolution actionin 1981 indefinitely in to the plaintiff's future. Viewedin the light most favorable to the plaintiff, therefore,the evidence supported the jury's verdict of $1,500,000.

"Litigants have a constitutional right to have factualissues resolved by the jury. . . . This right embracesthe determination of damages when there is room fora reasonable difference of opinion among fair-mindedpersons as to the amount that should be awarded. . . .The amount of a damage award is a matter peculiarlywithin the province of the trier of fact, in this case, the

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jury. . . . The size of the verdict alone does not determinewhether it is excessive. The only practical testto apply to this verdict is whether the size of the verdictso shocks the sense of justice as to compel the conclusionthat the jury was influenced by partiality,prejudice, mistake or corruption." (Citations omitted;internal quotation marks omitted.) Mather v. GriffinHospital, 207 Conn. 125, 138-39, 540 A.2d 666 (1988);see also Bartholomew v. Schweizer, 217 Conn. 671, 687,587 A.2d 1014 (1991).

Because the jury reasonably could have concludedthat the defendants' negligence caused economic damageto the plaintiff in the amount of $1,500,000, theverdict was not excessive as a matter of law. Therefore,the defendants' claim that the trial court improperlydenied their motions to set aside the verdict andfor judgment notwithstanding the verdict must fail.

III

The defendants also claim that the trial court's rulingson several evidentiary issues require reversal ofthe judgment against them. Specifically, the defendantscontend that the trial court improperly permittedthe plaintiff to introduce: (1) testimony concerningthe defendants' failure to seek an order of alimonypendente lite; (2) testimony concerning the attitudetoward women held by the dissolution court; (3) experttestimony concerning the defendants' failure to discovercertain of the husband's undisclosed assets; and(4) certain decisions issued by the trial court, Jacobson,J., the Appellate Court and this court.[13]

Our role in reviewing evidentiary rulings of the trialcourt is settled. "This court has consistently held that

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trial courts> are vested with broad discretion in rulingson relevancy and every reasonable presumption mustbe given in favor of the court's ruling. . . . Evidenceis relevant if it tends to establish a fact in issue or corroboratesother direct evidence. . . . Rulings on suchmatters will be disturbed on appeal only upon a showingof a clear abuse of discretion." (Citations omitted;internal quotation marks omitted.) Holy Trinity Churchof God in Christ v. Aetna Casualty & Surety Co.,214 Conn. 216, 222, 571 A.2d 107 (1990). We conclude thatthe trial court acted within its discretion in permittingthe introduction of the challenged evidence.

A

The defendants first claim that the trial court improperlypermitted the plaintiff to testify that the defendantshad failed to seek an order of alimony pendentelite notwithstanding her request that they do so. Thedefendants contend that the testimony was not relevantto any of the plaintiff's claims because Cantor didnot testify that the defendants' failure to seek temporaryalimony constituted a breach of their duty ofcare to the plaintiff. We do not agree.

The trial court could reasonably have concluded thatthe plaintiff's testimony bore sufficient relevance to therelationship between the plaintiff and the defendants,and, in particular, the manner in which the defendants'had responded to her requests, to allow its admission.In that regard, we have noted that "the fiduciaryresponsibility of a lawyer to his client, particularly inmatrimonial settlements, requires reasonable inquiryinto the wishes as well as the objective best interestsof the client." (Emphasis added.) Monroe v. Monroe,supra, 177 Conn. 183. In addition, a motion for temporaryalimony that had been filed, but not pressed,by the defendants, was admitted into evidence withoutobjection. Finally, the defendants have failed to

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demonstrate that the plaintiff's testimony was likelyto have been unduly prejudicial, particularly in viewof the fact that plaintiff's counsel did not seek to exploitit.[14] Therefore, we conclude that the trial court did notabuse its discretion in allowing the plaintiff's testimonyconcerning the defendants' failure to pursue herrequest for alimony pendente lite.

B

The defendants also claim that the trial court shouldnot have required the defendant Kweskin to testify oncross-examination as to whether he believed that JudgeTierney held the view that the proper role of a wifewas in the home. In view of other related defense testimony,we disagree.

The defendants' expert Greenfield testified that inhis opinion, Judge Tierney believed that women

shouldbe "modestly taken care of." Greenfield further testifiedthat he considered it to be the responsibility of amatrimonial lawyer to be aware of any bias, to theextent possible, of the dissolution court that might havea bearing on the court's handling of the marital dissolutionaction. Moreover, the defendant Margolis hadtestified that he believed that Judge Tierney was morelikely to believe the husband's testimony than the plaintiff's.In light of this testimony, Kweskin's beliefsconcerning Judge Tierney's views toward women generally,and working women in particular, were relevantto the issue of how the defendants intended to addressany perceived bias he may have held toward women.[15]Under the circumstances presented, therefore, we

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conclude that the trial court did not abuse its discretionin overruling the defendants' objection to the plaintiff'sinquiry.

C

The defendants next claim that the trial court improperlyallowed the plaintiff's expert to testify concerningthe defendants' failure to bring to the attention ofthe dissolution court certain financial information concerningthe Georgetown partnership. The defendantsargue that the expert testimony should have beenexcluded in view of the fact that (1) testimony aboutthose assets might have been elicited by the defendantshad the marital dissolution trial proceeded to conclusion,but that, in any event, (2) the defendants'failure to bring the husband's expectancy interest inthe Georgetown partnership to the attention of the dissolutioncourt did not, as a matter of law, constitutea breach of the standard of care owed by the defendantsto the plaintiff. We disagree.

We briefly reiterate the facts relevant to this claim.On the first day of the marital dissolution trial, the husbandfiled an affidavit with the court purporting to identifyhis assets. The affidavit stated that the plaintiffexpected no future income from the Georgetown partnership.In fact, at the time of the trial, the husbandplanned to take a distribution of approximately$185,000 from the Georgetown partnership, and thepartnership owed him $45,000 in management fees.The husband's affidavit did not contain this information.

The plaintiff's expert, Cantor, testified that thedefendants would have uncovered these interests hadthey engaged in proper discovery and conducted a reasonablydiligent pretrial investigation. Cantor furthertestified that the revelation of the husband's interestin these payments was critically important to the

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dissolution court's evaluation of the husband's credibilityand to the court's determination of the fair and equitabledistribution of the marital estate. The defendantsclaim that these payments, as mere

"expectancies,"were irrelevant as a matter of law to any issue in themarital dissolution action. On the basis of this premise,the defendants argue that the dissolution courtcould not have considered these anticipated paymentsfor any reason and, therefore, that the testimony ofthe plaintiff's expert on the subject was improper.

First, we do not agree with the defendants that theexpert testimony was improperly admitted becausethere might have been testimony about the paymentsif the trial of the marital dissolution action had continued.The trial did not proceed, and Judge Tierneywas not otherwise made aware of the expected paymentswhen he approved the parties' settlement agreement.The jury in this case reasonably could haveconcluded that the dissolution court would not haveapproved the agreement had it been fully and properlyapprised of the husband's true financial circumstances.

Furthermore, we do not believe that the dissolutioncourt was necessarily precluded from consideration ofthe Georgetown partnership distribution and managementfees. In view of the clear and unequivocal testimonythat the husband would receive the partnershipdistribution and management fees, we cannot concludethat his receipt of the payments was so speculative orcontingent that the trial judge could not have consideredthem. See Eslami v. Eslami, 218 Conn. 801,806-808, 591 A.2d 411 (1991). Moreover, the issue ofthe relevance and significance of those anticipated paymentswas properly the subject of expert testimony,and the jury was free to credit the testimony of Cantoron the issue.

"The requirement of expert testimony in malpracticecases serves to assist lay people, such as members

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of the jury and the presiding judge, to understand theapplicable standard of care and to evaluate the defendant'sactions in light of that standard. Fitzmaurice v.Flynn, 167 Conn. 609, 617, 356 A.2d 887 (1975); Dechov. Shutkin, 144 Conn. 102, 106, 127 A.2d 618 (1956);Bent v. Green, [39 Conn. Sup. 416, 420, 466 A.2d 322(1983)]." Davis v. Margolis, supra, 215 Conn. 416.

"The general standard for admissibility of expert testimonyin Connecticut is simply that the expert mustdemonstrate a `special skill or knowledge, beyond theken of the average juror, that, as properly applied,would be helpful to the determination of an ultimateissue.' Siladi v. McNamara, 164 Conn. 510, 513,325 A.2d 277 (1973); see State v. George, 194 Conn. 361,373, 481 A.2d 1068 (1984), cert. denied, 469 U.S. 1191,105 S.Ct. 963, 83 L.Ed.2d 968 (1985). In malpracticecases, the expert's testimony must be evaluated interms of its helpfulness to the trier of fact on the specificissues of the standard of care and the allegedbreach of that standard. Fitzmaurice v. Flynn, supra,616-18. . . . Once the threshold question of usefulnessto the jury has been satisfied, any other questionsregarding the expert's qualifications properly go to theweight, and not to the admissibility, of his testimony.Sanderson v. Bob's Coaster Corporation, 133 Conn. 677,682, 54 A.2d 270 (1947)." (Citations omitted.) Davisv.

Margolis, supra, 215 Conn. 416. Because the trialcourt reasonably concluded that the expert testimonywould assist the jury to understand the nature of thedefendants' duty to the plaintiff in the circumstances,the defendants' contention that the trial court improperlypermitted the challenged testimony is withoutmerit.[16]

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D

The defendants further claim that the trial courtimproperly allowed the plaintiff to introduce certainwritten opinions of the trial court, Jacobson, J., theAppellate Court and this court concerning the plaintiff'smotion to open the marital dissolution judgment.Under the circumstances of their introduction, we arenot persuaded that the admission of these opinions constitutedan abuse of discretion.

The judicial opinions introduced by the plaintiff consistedof the memorandum of decision of the trial court,Jacobson, J., dated September 19, 1983, denying theplaintiff's motion to open the marital dissolution decree;the opinion of the Appellate Court affirming the judgmentof the trial court;[17] and the opinion of this courtdismissing, as improvidently granted, the plaintiff'spetition for certification to appeal from the judgmentof the Appellate Court.[18] The plaintiff sought the admissionof these opinions in response to the opening statementto the jury of counsel for Gervasoni,[19] theaccountant who had assisted the defendants in preparingthe marital dissolution case. In his opening statement,[20] Gervasoni's counsel attacked the plaintiff for

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seeking to open the marital dissolution decree and forappealing the denial of her motion to the Appellate

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Court and to this court. The statement, which includedcounsel's characterization of the reasons why the courts>had rejected the plaintiff's claim, strongly suggestedthat each of the decisions constituted a ratification ofthe settlement agreement and a rejection of the plaintiff'sclaim that she had been ill-advised to enter intoit. The trial court did not abuse its discretion inconcluding that the judicial opinions in question wereadmissible as a relevant response to Gervasoni's openingstatement to the jury.[21]

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Although relevant, evidence may be excluded by thetrial court if the court determines that the

prejudicialeffect of the evidence outweighs its probative value.Berry v. Loiseau, 223 Conn. 786, 804, 614 A.2d 414(1992); Russell v. Dean Witter Reynolds Inc., 200 Conn. 172,191-92, 510 A.2d 972 (1986). We have identifiedat least four circumstances where the prejudicial effectof otherwise admissible evidence may outweigh itsprobative value: "(1) where the facts offered mayunduly arouse the jury's emotions, hostility or sympathy,(2) where the proof and answering evidence it provokesmay create a side issue that will unduly distractthe jury from the main issues, (3) where the evidenceoffered and the counterproof will consume an undueamount of time, and (4) where the [party against whomthe evidence has been offered], having no reasonableground to anticipate the evidence, is unfairly surprisedand unprepared to meet it." State v. DeMatteo,186 Conn. 696, 702-703, 443 A.2d 915 (1982); State v.Greene, 209 Conn. 458, 478-79, 551 A.2d 1231 (1988).The defendants claim that the judicial opinions shouldhave been excluded because they tended to create a sideissue that was likely to have distracted the jury. Theyhave articulated no reason, however, why the admissionof the opinions was likely to have caused such adistraction. Moreover, the defendants have providedno explanation of which specific statements or referencesin the opinions were likely to have caused themprejudice, or why. We will not speculate concerning theprejudicial effect of otherwise relevant evidence whenthe party challenging the admission of the evidence onthe ground of undue prejudice has failed to identify,with reasonable particularity, the source of the allegedprejudice and the reason why the evidence was likelyto have been prejudicial. See Pet v. Dept. of Health Services,228 Conn. 651, 675-76, 638 A.2d 6 (1994).Accordingly, the defendants' claim must fail.

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IV

The defendants also challenge the trial court'sinstructions to the jury, claiming that they were fundamentallyinadequate because the court improperlyfailed to relate the facts of the case to the applicablelaw. The defendants, however, did not request that thetrial court refer to any specific facts in its jury charge,[22]and they similarly failed to except to the court's instructionon that ground. We therefore do not reach themerits of the defendants' claim. See Practice Book§ 315.[23]

We also decline the defendants' invitation to affordplain error review to this claim. "Review under theplain error doctrine . . . is reserved for truly extraordinarysituations where the existence of the error isso obvious that it affects the fairness and integrity ofand public confidence in the judicial proceedings." (Citationsomitted; internal quotation marks omitted.) Statev. Hinckley, 198 Conn. 77, 87-88, 502 A.2d 388 (1985);Williamson v. Commissioner of Transportation,209 Conn. 310, 317, 551 A.2d 704 (1988); see Practice Book§ 4185. On the basis of our careful review of the trialcourt's thorough jury instructions,[24] we conclude that

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the defendants' claim of error does not merit considerationunder the plain error doctrine.

The judgment is affirmed.

In this opinion the other justices concurred.

1. The plaintiff also brought suit against Robert Gervasoni,an accountant who assisted the defendants in the preparation ofthe marital dissolution action, and Gervasoni's accounting firm,Edward Isaacs Co. (Isaacs). The jury returned a verdict in favorof Gervasoni and Isaacs. Because the plaintiff has not appealedfrom the judgment rendered for Gervasoni and Isaacs, they are notparties to this appeal.

2. The defendants appealed from the judgment of the trialcourt to the Appellate Court, and we transferred the appeal tothis court pursuant to Practice Book § 4023 and General Statutes§ 51-199 (c).

3. "The stipulated judgment ordered the [husband] to pay tothe [plaintiff] lump sum alimony of $150,000, payable ininstallments of $50,000 by June 28, 1981, $50,000 by August 28,1981 . . . and $50,000 by February 28, 1982 . . . together withnonmodifiable periodic alimony of $12,000 per year. The[husband] was also ordered to pay $15,000 as part of the[plaintiff's] attorney's fees and to maintain a $50,000 lifeinsurance policy on his life owned by the [plaintiff] and payableto her. The [plaintiff] was ordered to transfer her one halfinterest in a business building at 636 Kings Highway, Fairfield,to the [husband], the equity in which he claimed was $50,000. The[plaintiff] was required to relinquish her claim in the amount of$27,000 to a certificate of deposit managed by the [husband].The [plaintiff] was awarded full ownership of Daniel Oil[Company], `which the [husband's] affidavit claimed produced anincome of $18,000 per year. Works of art valued by the [husband]at $64,700 were ordered divided between the parties. Otherwise,each was to retain substantial other assets shown on theiraffidavits. The principal asset shown by the [husband's]affidavit [was] the valuation, after taxes due on liquidation, ofhis pension plan in Grayson Associates, Inc., at $340,152 and theprincipal asset shown by the [plaintiff's] affidavit [was] theformer family residence at 15 Berkeley Road, Westport, in whichthe claimed equity was $167,000." Grayson v. Grayson, 4 Conn. App. 275,277-78, 494 A.2d 576 (1985).

4. The pertinent portions of that affidavit, and other factsrelevant to the marital dissolution action, are set forth inGrayson v. Grayson, supra, 4 Conn. App. 275.

5. The plaintiff's motion to open the marital dissolutionjudgment was heard and decided by Judge Jacobson. Unlessotherwise indicated, references in this opinion to the trialcourt are to Judge Ballen.

6. General Statutes § 46b-81 (c) provides in relevant part: "Infixing the nature and value of the property, if any, to beassigned, the court, after hearing the witnesses, if any, of eachparty . . . shall consider the length of the marriage, the causesfor the annulment, dissolution of the marriage or legalseparation, the age, health, station, occupation, amount andsources of income, vocational skills, employability, estate,liabilities and needs of each of the parties and the opportunityof each for future acquisition of capital assets and income. Thecourt shall also consider the contribution of each of the partiesin the acquisition, preservation or appreciation in value oftheir respective estates."

7. General Statutes § 46b-82 provides in relevant part:. "Indetermining whether alimony shall be awarded, and the durationand amount of the award, the court shall hear the witnesses, ifany, of each party . . . shall consider the length of

themarriage, the causes for the annulment, dissolution of themarriage or legal separation, the age, health, station,occupation, amount and sources of income, vocational skills,employability, estate and needs of each of the parties and theaward, if any, which the court may make pursuant to section46b-81, and, in the case of a parent to whom the custody of minorchildren has been awarded, the desirability of such parent'ssecuring employment."

8. The husband's partner in the Georgetown partnership, LeslieBarth, testified that, at the time of the dissolution trial, thehusband planned to take a partnership distribution of $185,000from the Georgetown partnership, and that the partnership alsoowed the husband $45,000 in management fees.

9. Cantor testified that "[t]he value of the assets is theprime information that . . . [a lawyer] need[s] to have in orderto sit down and intelligently discuss how the assets will bedivided. If you don't have that information, you are crippledwhen you sit down to attempt to negotiate."

10. In support of his opinion, Cantor noted that: (1) theplaintiff and her husband had been married for thirty years; (2)the plaintiff was fifty-three years old; (3) the evidenceindicated that the husband had committed adultery; and (4) theplaintiff had contributed significantly to the marital estate. InCantor's view, these were all significant factors to beconsidered by a court in determining how the assets of theparties should be divided and whether alimony should be awarded.

11. Cantor testified that if the plaintiff had received adistribution of the marital estate that was at the high end ofthe 40 to 60 percent range, then she could have expected toreceive an alimony award that was at the low end of the 35 to 50percent range.

12. Although the husband's financial affidavit listed annualincome of approximately $62,000, the jury could have concluded,based on the testimony of the plaintiff's witnesses, that thehusband's annual income was as much as twice that amount.

13. The defendants also claim that the trial court improperlypermitted the plaintiff's expert to testify that the defendantshad negligently failed to bring to the attention of thedissolution court evidence of the husband's adultery. We do notaddress this claim because the defendants failed to object to thetestimony in the trial court. See Practice Book § 4185.

14. For example, plaintiff's counsel made no mention of thetestimony in her closing argument to the jury.

15. After the trial court overruled the defendants' objectionto the plaintiff's question, Kweskin responded that he did notknow whether Judge Tierney held any bias toward women, but thatif the judge did have such a bias, he would not have allowed itto affect the exercise of his judgment in the case.

16. The defendants make the same claim in arguing that thetrial court improperly failed to direct the jury, in itsinstructions at the conclusion of the evidence, to disregardCantor's testimony about the Georgetown partnership distributionand management fees. We reject that claim for the reasons statedabove.

17. Grayson v. Grayson, supra, 4 Conn. App. 275.

18. Grayson v. Grayson, supra, 202 Conn. 221.

19. See footnote 1.

20. The relevant portions of the opening statement of counselfor Gervasoni are as follows: "[After reaching a settlement, the parties] said this is whatwe have decided, they read [the agreement] into the record and[the trial judge,] Judge Tierney, said, I approve it, because hetoo knew that it was a favorable settlement for Mrs. Grayson. "And the evidence will show that the court put its stamp ofapproval on it, and the evidence will show that that dissolutionaction then became a matter of record. And the settlement becamefinal. "Now, that didn't satisfy Mrs. Grayson. She wasn't really evenat this point satisfied with what she had managed to get in thesettlement. She decided at this point that she didn't getenough, that she should have had more, and the evidence will showthat she then went back into this court, not now yet against herattorneys or her accountants, but she went back into the courtseeking to overthrow the settlement, seeking to set it aside, andthe evidence will show that that's a very rare occurrence, andthat's where Judge Burton Jacobson comes in. . . . "Judge Jacobson, again, a respected judge . . . had this casebrought before him when he was sitting in this very courthouse asa judge, and the claim there by Mrs. Grayson was that this caseshould be, that this settlement should be overturned because shedidn't know, she didn't get enough, she was unhappy with it, herhusband was too wealthy, he got too good a deal, it should bestarted all over again. "Judge Jacobson heard the case, as he was obligated to do.Whether he thought it was a bad case or a good case, everybodyhas a right to bring a suit in court and have it decided, andanother trial took place, this time without a jury before JudgeJacobson, in this very building. The evidence will show that helistened to that trial and refused to reopen the case or doanything about it. Because he felt that, as he decided finally,that the settlement was a fair settlement and that there was noreason to disturb this settlement, throw it out, start all over,do anything about it. "So, again, this heating again from the Superior Court atStamford, again before Judge — Superior Court JudgeJacobson who says, no, it stands. And the evidence will thenshow that now we have two judges, Judge Tierney, Judge Jacobsonputting their stamp of approval on the settlement. But Mrs.Grayson still wasn't happy. It went on yet. She appealed JudgeJacobson's decision. Didn't like it. And the appeal then wentup to Hartford to the court known as the Appellate Court, whichthe evidence will show is the immediate appeal court over theSuperior Court — we are now in the Superior Court —the court known as the Appellate Court, and the Appellate Courtis the next level. "So she doesn't like what Judge Jacobson does, up she goes tothe Appellate Court. The Appellate Court held another hearing,the attorneys had to go up, the attorneys had to write briefs andfile briefs, then they had to go up to the Appellate Court, andthe evidence will show that that's exactly what happened, theywrote the briefs on both sides, they rehashed what happenedbefore Judge Tierney, they rehashed what happened before JudgeJacobson, they made their claims back and forth again and theywent up to the [Appellate] Court, which consists of three judgeswho sit on the bench in a trio really to decide the case, andthese are judges who have appellate experience, who are selectedreally to exercise appeal jurisdiction over the Superior Court.And these three judges, three of them, looked at the case andheard it, heard the arguments, and the court ruled, there is onlyone decision, and one majority decision there, and the courtruled in that majority decision that, again, there was no fraud,there was no hiding, there was nothing unfair, there was nooverreaching. So, in effect the Appellate Court sanctioned andaffirmed and approved of what Judge Tierney had done and whatJudge Jacobson had done. "Still Mrs. Grayson wasn't satisfied. Mrs. Grayson then askedfor permission to appeal the Appellate Court ruling, to gofurther to the Connecticut Supreme Court. In this type of casethe Connecticut Supreme

Court has to grant permission to argue,to take an appeal. The appeal is not automatic as it is for theAppellate Court. She wasn't going to let it go then. She wantedit to go to the Supreme Court of the State of Connecticut. "The Supreme Court of the State of Connecticut, the evidencewill show, after the filing of some papers and the request tohear it and the asking for arguments, refused to hear it on afactual basis. They, in effect, said we are not going to hearit; the Appellate Court decision stands. All right. "So now we have the trial before Judge Tierney, the trialbefore Judge Jacobson, the Appellate Court, the Supreme Court,nobody will touch this divorce agreement. Mrs. Grayson stillisn't happy, she is still looking for more money. So then sheturns on her attorneys and her accountants — not going toget anymore money through the divorce action, not going to getanything more from her husband, the court systems says, okay,okay, okay. "So her next bet, the next level is, now I think I'll sue theattorneys and I think I'll sue the accountants, I may get somemoney that way. And that's what this case is about, and that'swhy we are here in court and I think that when you listen to thecase, bear in mind the evidence that is going to be coming out ofthe case. The evidence will demonstrate that her case aboutbeing misled or not told or somehow defrauded is as weak andinsignificant now as it was before Judge Tierney and JudgeJacobson and the Appellate Court. The fact of the matter is thatthe attorneys and the accountants acted well, they actedfaithfully, they acted loyally and they went the last mile forher. They do not deserve this fate, ladies and gentlemen, and Iwould urge that you listen to the evidence carefully, keep anopen mind until both sides are heard and I think that you willsee this case and you'll find favorably in favor of thedefendants."

21. We note that the defendants made no objection to theopening statement of counsel for Gervasoni.

22. The defendants initially excepted to the trial court's failureto instruct the jury on the Georgetown partnership with greater factualspecificity. During the colloquy following the court's instructions,however, the defendants expressly withdrew their exception.

23. Practice Book § 315 provides in relevant part: "The supremecourt shall not be bound to consider error as to the giving of, orthe failure to give, an instruction unless the matter is covered by awritten request to charge or exception has been taken by the partyappealing immediately after the charge is delivered. Counsel takingthe exception shall state distinctly the matter objected to and theground of objection. . . ."

24. Although we do not reach the merits of the defendants' unpreservedjury instruction claim, we note that the trial