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VERTEFEUILLE, J., concurring and dissenting. I agree with and join in part I of the majority opinion, which concludes that the plaintiff, Mary H. Kortner, acquired standing to bring this action after she was substituted as the administratrix of the estate of her daughter, Caroline Kendall Kortner, pursuant to General Statutes § 52-109. I further agree with and join in part III of the majority opinion, which concludes that the issue of Caroline Kendall Kortner's capacity to consent to sexual conduct with the defendant, Craig L. Martise, was a question of fact properly submitted to the jury.

I also agree with and join the reasoning and conclusion of part II of the concurring and dissenting opinion by Justice McDonald that despite the plaintiff's waiver of any objection to the submission of plaintiff's exhibit 7<sup>1</sup> as a full exhibit to the jury, the subsequent failure of the court clerk to bring to the trial court the jury's written note questioning the propriety of its consideration of plaintiff's exhibit 7, together with the concession in this court by the defendant's counsel that it should not have been submitted to the jury, rendered the admission of plaintiff's exhibit 7 improper. I further agree with Justice McDonald that we should nevertheless affirm the judgment of the trial court because, on the record as a whole, the admission of plaintiff's exhibit 7 was harmless and the trial court properly denied the motion to set aside the verdict and for a new trial.

I therefore respectfully concur and dissent.

<sup>1</sup> See part II of the majority opinion for the text of plaintiff's exhibit 7.

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