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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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ZARELLA, J., with whom SULLIVAN, C. J., joins, dissenting. The majority in the present case first concludes that, ''[b]ecause this court can render no practical relief from a pendente lite order that is no longer in effect, the defendant's appeal is moot.'' The majority goes on to conclude, however, that this case falls within the capable of repetition yet evading review exception to the mootness doctrine. I disagree with that conclusion and, accordingly, respectfully dissent from the majority opinion.[1]

The sole issue in this certified appeal is whether the Appellate Court properly concluded that a pendente lite order relating to the religious and educational upbringing of the parties' minor child was not a final judgment. See *Sweeney* v. *Sweeney*, 263 Conn. 915, 821 A.2d 769 (2003). The majority properly concludes that, prior to reaching the merits of the defendant's appeal, this court must address whether it has jurisdiction to hear the appeal in light of the fact that a final dissolution order was entered pending the appeal. In addition, I agree with the majority that, because '' '[p]endente lite orders necessarily cease to exist once a final judgment in the dispute has been rendered,' '' the present case is moot.

The majority nevertheless concludes that, although this appeal is rendered moot by virtue of the superseding final dissolution order, it falls within the capable of repetition yet evading review exception to the mootness doctrine. As the majority explains, in order for a moot appeal to qualify for review, it must meet three requirements: ''First, the challenged action, or the effect of the challenged action, by its very nature must be of a limited duration so that there is a strong likelihood that the substantial majority of cases raising a question about its validity will become moot before appellate litigation can be concluded. Second, there must be a reasonable likelihood that the question presented in the pending case will arise again in the future, and that it will affect either the same complaining party or a reasonably identifiable group for whom that party can be said to act as surrogate. Third, the question must have some public importance. Unless all three requirements are met, [the appeal] must be dismissed as moot.'' (Internal quotation marks omitted.) *Tappin* v. *Homecomings Financial Network, Inc.*, 265 Conn. 741, 747, 830 A.2d 711 (2003); see part I of the majority opinion. The majority concludes that the first requirement of the exception, namely, that the challenged action must be of an inherently limited duration, is satisfied because ''there is a strong likelihood that, as compared to the time necessary to conclude appellate litigation, a substantial majority of cases raising a challenge to a pendente lite

order entered in the course of dissolution proceedings will become moot prior to final appellate resolution.'' I disagree.

This court previously has interpreted the first element of this particular mootness exception to require that the challenged action be of an ''inherently limited duration''; *Tappin* v. *Homecomings Financial Network, Inc.*, supra, 265 Conn. 763 (*Zarella, J.*, concurring in part and dissenting in part); or involve ''functionally insurmountable time constraints''; *Loisel* v. *Rowe*, 233 Conn. 370, 383, 660 A.2d 323 (1995); or ''an intrinsically limited lifespan.'' Id. This case simply does not fit within these narrow requirements. Although, in the present case, the final dissolution order was entered prior to our consideration of the merits of the defendant's appeal, I do not agree that ''a substantial majority of cases'' that raise the particular issue that the defendant raises in this appeal will become moot prior to the conclusion of appellate proceedings. In the present case, the parties' agreement as to the terms of the dissolution of their marriage, including those relating to the custody of their child, led to the entry of the final dissolution order before this court could determine whether the Appellate Court properly concluded that a pendente lite order regarding the religious and educational upbringing of the parties' child constitutes a final judgment. This case, however, is not representative of the majority of dissolution cases, especially considering the protracted nature of highly contested dissolution proceedings that involve disputes over the custody of children.[2]

Indeed, in a case on which the majority relies heavily in part II of its opinion, in which the majority addresses the merits of the defendant's appeal, the parties to the custody dispute had not yet reached a final decision before the appeal regarding the temporary custody order made its way through the Appellate Court and this court. See *Madigan* v. *Madigan*, 224 Conn. 749, 750–52, 620 A.2d 1276 (1993). Specifically, in *Madigan*, the plaintiff filed a dissolution action on August 27, 1991. Id., 751. During the pendency of the dissolution proceedings, both parties sought temporary custody and visitation orders with respect to two of the parties' three children. See id. After a hearing, the trial court temporarily ordered joint custody, but also temporarily ordered that the children reside primarily with the defendant. Id., 752. The plaintiff thereafter appealed from the trial court's temporary custody order. Id. As in the present case, the Appellate Court in *Madigan* dismissed the appeal for lack of a final judgment. Id. We reversed the judgment of the Appellate Court in *Madigan*, however, concluding that ''temporary custody orders are immediately appealable because an immediate appeal is the only reasonable method of ensuring that the important rights surrounding the parent-child relationship are adequately protected.'' Id.,

757.

As it relates to this case, the holding in *Madigan* is important for the practicalities that it implies. The court's holding in *Madigan* that the period between the entry of a temporary custody order and the entry of a final dissolution order is so lengthy that the temporary order must be treated as a final judgment necessarily implies that the issue before us in the present case, namely, whether a pendente lite order relating to the religious and educational upbringing of a child is appealable, will arise again in a case that will not be moot. Indeed, the fact that the dissolution proceedings in *Madigan* had not yet concluded prior to the close of appellate litigation confirms my belief that this case does not satisfy the narrow requirements of the capable of repetition yet evading review exception to the mootness doctrine. Rather, this case presents a challenge to an ''action [that] can be reviewed the next time it arises, when it will present an ongoing live controversy.'' *Loisel* v. *Rowe*, supra, 233 Conn. 384.

Moreover, the majority's justification for concluding that this case falls within the capable of repetition yet evading review exception is inconsistent with its conclusion regarding the merits of the defendant's appeal. See part II of the majority opinion. Specifically, in concluding that a pendente lite order, such as the one at issue in the present case, constitutes a final judgment, the majority notes that, ''such a pendente lite order may impact [a parent's right to make decisions regarding the religious and educational upbringing of his or her child] *over a significant period of time*, with the harm to the parental interest increasing exponentially as the . . . child spends more time in the educational institution at issue.'' (Emphasis added.) Furthermore, in *Madigan*, upon which the majority relies, this court explained that ''[a] contested custody case is often lengthy . . . . To deny immediate relief to an aggrieved parent interferes with the parent's custodial right over a *significant period* in a manner that cannot be redressed by a later appeal.'' (Emphasis added.) *Madigan* v. *Madigan*, supra, 224 Conn. 756.

I believe it is inconsistent for the majority to conclude, on the one hand, that the period of time between the entry of a pendente lite order and the entry of a final dissolution order is so short that a substantial majority of cases are bound to become moot before appellate proceedings can be concluded, and to conclude, on the other hand, that the identical period of time is so lengthy—and, therefore, that the potential injury to the appealing parent's rights is so substantial—that the treatment of an otherwise interlocutory order as a final judgment for purposes of an appeal is justified. I therefore would conclude that the present case is moot and that it does not fall within the capable of repetition yet evading review exception. Accordingly,

I respectfully dissent.

[1] Because I would conclude that the present case is moot, I would not address the merits of the defendant's appeal.

[2] The majority notes that I fail to address "the virtual certainty that the *effect* of this type of pendente lite order is of such limited duration that the question inevitably will evade review." (Emphasis in original.) Footnote 6 of the majority opinion. Specifically, the majority concludes that, "given the nature of the school calendar year and the unlikelihood that a trial court would issue a stay of a pendente lite order regarding a minor child's educational institution, if an aggrieved parent in the defendant's position wishes to avoid entirely the minor child's exposure to religious influences or to an inferior academic setting, it is hard to conceive of a scenario in which a challenge to such an order may be resolved through appellate proceedings prior to that exposure taking place." Id.

In my view, it is hard to conceive of any situation in which appellate proceedings would conclude prior to such exposure. Appellate proceedings, including a full briefing schedule and oral argument, occur over a longer period of time than the period of time that a child is not in school during a calendar year. Thus, even if it assumed that the challenge to an order regarding the child's education would become moot on the child's first day of school—a point I do not concede—the appellate proceedings likely would not have concluded prior to that point anyway. Thus, the majority's point regarding the effect of these types of orders lacks merit when considered in the context of the practicalities of civil appellate litigation.