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CENTRIX MANAGEMENT COMPANY, LLC
v. DONALD FOSBERG
(AC 45880)

Bright, C. J., and Suarez and Seeley, Js.

Syllabus

The plaintiff landlord sought, by way of summary process, to regain possession of certain premises leased to the defendant tenant. The plaintiff served the defendant with a notice to quit possession for violations of statutory provisions (§ 47a-11 (c) and (g)) relating to the responsibilities of tenants and, thereafter, served him with a summons and complaint, seeking immediate possession of the premises. Following a trial, the trial court rendered judgment of possession in favor of the defendant, concluding, inter alia, that the plaintiff failed to meet its burden of proof as to the alleged violations. The defendant subsequently filed a motion for attorney's fees pursuant to the statute (§ 42-150bb) that allows a consumer to recover attorney's fees from a commercial party when the consumer successfully defends an action based on a lease that provides for attorney's fees for the commercial party. The trial court granted the motion and awarded the defendant \$3500 in attorney's fees. Following the denial of its motion to reargue, the plaintiff appealed to this court, challenging the trial court's postjudgment award of attorney's fees. The defendant moved to dismiss the appeal for lack of subject matter jurisdiction on the ground that it was untimely. *Held* that this court had subject matter jurisdiction over the plaintiff's appeal, and, therefore, the defendant's motion to dismiss was denied; contrary to the defendant's assertion that the plaintiff's appeal was untimely because it was not filed within the five day appeal period set forth in the statute (§ 47a-35) that pertains to appeals in summary process actions, this court concluded that, when, as here, there has been no challenge to the underlying judgment of possession, an appeal taken from a postjudgment award of attorney's fees does not affect the underlying judgment of possession in any way, and the twenty day appeal period set forth in the applicable rule of practice (§ 63-1) applies; accordingly, because the plaintiff appealed from the trial court's award of attorney's fees within the applicable twenty day period, its appeal was timely, and this court had jurisdiction over it.

Considered January 11—officially released March 14, 2023

Procedural History

Summary process action brought to the Superior Court in the judicial district of New Britain, Housing Session, and tried to the court, *Baio, J.*; judgment for the defendant; thereafter, the court granted the defendant's motion for attorney's fees; subsequently, the court denied the plaintiff's motion to reargue, and the plaintiff appealed to this court; thereafter, the defendant filed a motion to dismiss the appeal. *Motion to dismiss denied.*

Jeffrey Gentes and *Anika Singh Lemar*, in support of the motion.

Robert J. Shluger, in opposition to the motion.

Opinion

BRIGHT, C. J. In this summary process action, the plaintiff landlord, Centrix Management Company, LLC, appeals from the trial court's postjudgment award of attorney's fees to the defendant tenant, Donald Fosberg, pursuant to General Statutes § 42-150bb. The defendant moves to dismiss this appeal for lack of subject matter jurisdiction on the ground that the plaintiff failed to timely appeal pursuant to General Statutes § 47a-35. The plaintiff opposes the motion, arguing that the applicable appeal period is not five days under § 47a-35 but, rather, twenty days under Practice Book § 63-1, as it is not challenging the judgment of possession. We conclude that the twenty day appeal period set forth in Practice Book § 63-1 applies to a postjudgment award of attorney's fees in the summary process context. We therefore deny the motion to dismiss.

The following undisputed facts and procedural history are relevant to our review of the defendant's motion. The plaintiff leased the property located at 55 Spring Street, Unit 308, in New Britain (premises) to the defendant. The defendant occupied the premises and agreed to pay \$795 per month for rent. When the plaintiff instituted the underlying action, the parties were in a one year lease of the premises. On August 19, 2021, the plaintiff sent the defendant a pretermination notice for violations of General Statutes § 47a-11 (c) and (g).¹ The defendant attempted to remedy the violations. On September 17, 2021, the plaintiff served the defendant with a notice to quit possession for violations of § 47a-11 (c) and (g), namely, his refusal or failure to remove garbage that created a smell that "disturb[ed] [his] neighbor's peaceful enjoyment of the premises or constitute[d] a nuisance"

The defendant did not quit possession. On September 28, 2021, the plaintiff served the defendant with a summary process summons and complaint, seeking immediate possession of the premises. The defendant filed an answer and special defenses to the complaint on October 13, 2021.²

After a virtual trial held on January 20 and 21, 2022, the court rendered judgment of possession in favor of the defendant on May 12, 2022, on the basis of the plaintiff's failure to meet its burden of proof as to the alleged violations and the defendant's having established the applicability of the equitable doctrine of non-forfeiture.

On June 10, 2022, twenty-nine days after the court rendered its judgment, the defendant, relying on § 42-150bb, filed a motion for attorney's fees and requested \$6622.15 for 30.6 hours of work by his counsel. The plaintiff filed an objection on June 20, 2022, arguing that, because the amount of legal fees the plaintiff could recover was capped in the lease at \$750, that was the

most the defendant could recover pursuant to the reciprocal attorney's fees language of § 42-150bb.³ On September 13, 2022, the court granted the defendant's motion and awarded \$3500 in attorney's fees. On September 19, 2022, the plaintiff filed a motion to reargue the court's award of attorney's fees, which the court denied on September 21, 2022.

The plaintiff filed the present appeal on October 7, 2022, challenging only the court's postjudgment award of attorney's fees. On October 17, 2022, the defendant moved to dismiss the appeal for lack of subject matter jurisdiction, arguing that it was untimely under § 47a-35. The plaintiff filed an objection to the motion on October 19, 2022.

The issue before this court is whether the five day appeal period applicable to summary process actions or the twenty day appeal period set forth in Practice Book § 63-1 is applicable to the plaintiff's appeal from the trial court's award of attorney's fees. In particular, we must decide whether the five day appeal period set forth in § 47a-35 for judgments in summary process actions applies to a postjudgment award of attorney's fees issued pursuant to § 42-150bb.

The defendant's motion to dismiss raises a question of statutory interpretation. "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Jobe v. Commissioner of Correction*, 334 Conn. 636, 648, 224 A.3d 147 (2020).

"A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Dominguez v. New York Sports Club*, 198 Conn. App. 854, 861, 234 A.3d 1017 (2020). When a statute is not plain and unambiguous, among other things, we "look for interpretive guidance . . . to the legislative policy [the statute] was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter" (Internal quotation marks omitted.) *Kinsey v. Pacific Employers Ins. Co.*, 277 Conn. 398, 405, 891 A.2d 959 (2006).

We begin our analysis with the language of § 47a-35,

which provides: “(a) Execution shall be stayed for five days from the date judgment has been rendered, provided any Sunday or legal holiday intervening shall be excluded in computing such five days.

“(b) No appeal shall be taken except within such five-day period. If an appeal is taken within such period, execution shall be stayed until the final determination of the cause, unless it appears to the judge who tried the case that the appeal was taken solely for the purpose of delay or unless the defendant fails to give bond, as provided in section 47a-35a. If execution has not been stayed, as provided in this subsection, execution may then issue, except as otherwise provided in 47a-36 to 47a-41, inclusive.”

In the present case, the dispositive issue is whether the phrase “[n]o appeal shall be taken except within such five-day period” in § 47a-35 applies to the defendant’s appeal from the postjudgment attorney’s fees award. We initially note that, by its plain language, § 47a-35 clearly is directed to appeals from judgments of possession. Subsection (b) of the statute requires that a party appeal within five days after the judgment was rendered, during the automatic stay of execution provided in subsection (a). General Statutes § 47a-35 (a) and (b). Although § 47a-35 does not specify the type of executions to which it applies, the exceptions it identifies in subsection (b) all relate to executions of judgments of possession. General Statutes § 47a-36 lists the types of occupancies to which a stay of execution does not apply. General Statutes § 47a-37 provides that a defendant against whom judgment was rendered for nonpayment of rent may apply for a stay if he deposits the full amount of the rent arrearage with the court. General Statutes § 47a-39 sets forth reasons for which a court can grant a stay of execution, all of which relate to the defendant’s need for possession of the premises. In addition, the bond provided for in General Statutes § 47a-35a, which is required in connection with a stay of execution, is “to guarantee payment for all rents that may accrue during the pendency of the appeal” Finally, General Statutes § 47a-42 (a) provides in relevant part that, “upon expiration of any stay of execution, the plaintiff may obtain an execution upon such summary process judgment, and the defendant or other occupant bound by the judgment . . . may be removed by a state marshal, pursuant to such execution”

Furthermore, as this court has stated: “The ultimate issue in a summary process action is the right to *possession* . . . and [t]he relief available in summary process actions is *possession* of the premises.” (Emphasis in original; internal quotation marks omitted.) *Centrix Management Co., LLC v. Valencia*, 145 Conn. App. 682, 691, 76 A.3d 694 (2013). “Summary process is a special statutory procedure designed to provide an expeditious remedy. . . . It enable[s] landlords to obtain posses-

sion of leased premises without suffering the delay, loss and expense to which, under the common-law actions, they might be subjected by tenants wrongfully holding over their terms. . . . Summary process statutes secure a prompt hearing and final determination. . . . Therefore, the statutes relating to summary process must be narrowly construed and strictly followed.” (Citations omitted; internal quotation marks omitted.) *Young v. Young*, 249 Conn. 482, 487–88, 733 A.2d 835 (1999). “The process is intended to be summary and is designed to provide an expeditious remedy to the landlord seeking possession.” (Internal quotation marks omitted.) *HUD/Barbour-Waverly v. Wilson*, 235 Conn. 650, 658, 668 A.2d 1309 (1995).

In *HUD/Barbour-Waverly*, our Supreme Court examined the plain meaning of § 47a-35 and the legislative policy surrounding the enactment of the statute. *Id.*, 656–59. In that case, the court concluded that, “[i]n light of the plain language of § 47a-35, the fact that the summary process statutes are in derogation of common law and *the legislative policy in favor of the swift resolution of disputes between landlords and tenants regarding rights of possession*, we conclude that an appeal pursuant to § 47a-35 must be brought within five days of the rendering of a summary process judgment.” (Emphasis added.) *Id.*, 659.

It is not just that the summary process statutes are designed to provide for prompt resolution of the issue of possession of the leased premises; that is their sole purpose. A plaintiff may not seek any remedy in a summary process action other than possession of the premises. In particular, it may not seek damages and it may not seek attorney’s fees provided for in the lease. See *Centrix Management Co., LLC v. Valencia*, *supra*, 145 Conn. App. 692 n.4 (“[p]ostjudgment claims for attorney’s fees by prevailing landlords can only be brought pursuant to a specific lease provision in a separate postjudgment civil action because they are not statutorily derived’ ”). Furthermore, it is clear that the legislature intended for remedies other than possession to be available through an action separate from the summary process proceeding. See General Statutes § 47a-34 (“[a]ll persons claiming title to premises concerning which any proceedings under this chapter have been had shall be entitled to any other legal remedy in the same manner as if such proceedings had not been had”). Consequently, we conclude that the phrase “[n]o appeal shall be taken except within such five-day period,” when read in the context of the rest of § 47a-35, the entire summary process chapter, and the decisions of our Supreme Court and this court, refers only to appeals from judgments of possession. Appeals from a postjudgment ruling like that at issue in the present case are properly governed by our general rules of practice.

Our conclusion is consistent with this court’s reason-

ing in *Centrix Management Co., LLC*. In that case, this court addressed an argument made by the Connecticut Coalition of Property Owners, as amicus curiae, that the limited scope of summary process actions did not permit a defendant to file a postjudgment motion for attorney's fees pursuant to § 42-150bb. *Centrix Management Co., LLC v. Valencia*, supra, 145 Conn. App. 690–91. This court rejected that argument, noting that our Supreme Court had held that “claims for attorney’s fees under § 42-150bb must be brought by a motion under Practice Book § 11-21. That provision provides that the motion must be filed within thirty days after the final judgment of the trial court was rendered or within thirty days after an appellate decision on the underlying matter. Practice Book § 11-21. *We see no hindrance to preserving the expeditious nature of summary process cases in allowing such motions.*” (Emphasis added.) *Centrix Management Co., LLC v. Valencia*, supra, 692. Implicit in this holding is that the filing of such a motion would not delay any appeal from the judgment of possession. It would hinder the expeditious nature of a summary process action if a plaintiff could delay filing its appeal until after the court ruled on a defendant’s postjudgment motion for attorney’s fees. Generally, a posttrial hearing is scheduled for presentation of evidence in support of a claim for attorney’s fees. See *Landry v. Spitz*, 102 Conn. App. 34, 59–60, 925 A.2d 334 (2007). It is virtually certain that a defendant’s motion for attorney’s fees would not be resolved prior to the expiration of the five day appeal period in § 47a-35. Thus, this court necessarily recognized in *Centrix Management Co., LLC*, that a postjudgment motion for attorney’s fees pursuant to § 42-150bb is a separate ancillary proceeding distinct from the judgment of possession rendered pursuant to the summary process statutes; see *Centrix Management Co., LLC v. Valencia*, supra, 692 n.4; see also *Freeman v. A Better Way Wholesale Autos, Inc.*, 174 Conn. App. 649, 652 n.1, 166 A.3d 857 (“a trial court’s supplemental postjudgment order determining the amount of attorney’s fees to be awarded to a prevailing party may raise a collateral and independent claim that is separately appealable as a final judgment” (internal quotation marks omitted)), cert. denied, 327 Conn. 927, 171 A.3d 60 (2017); and that the procedure for resolving such a motion is that set forth in the rules of practice.⁴ See *Centrix Management Co., LLC v. Valencia*, supra, 692.

Similarly, we conclude that when, as in the present case, there has been no challenge to the underlying judgment of possession, an appeal from the award of attorney’s fees does not affect the judgment of possession in any way. Permitting the plaintiff to file its appeal from the award pursuant to the time periods set forth in Practice Book § 63-1 “will not thwart the purpose behind the summary process statutes.” *Id.* Accordingly, we are not persuaded that the plaintiff’s failure to file

this appeal within the appeal period set forth in § 47a-35 deprives this court of jurisdiction.

In sum, when an appeal is taken from a summary process judgment of possession, the five day appeal period prescribed in § 47a-35 applies. However, when an appeal is taken from a postjudgment award of attorney's fees made pursuant to § 42a-150bb, which does not go to the merits of the underlying judgment of possession, the applicable appeal period is twenty days as prescribed in Practice Book § 63-1. Because the plaintiff filed its appeal from the court's award of attorney's fees within that twenty day period, this court has jurisdiction over the appeal.

The motion to dismiss is denied.

In this opinion the other judges concurred.

¹ General Statutes § 47a-11 provides in relevant part: "A tenant shall . . . (c) remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner to the place provided by the landlord pursuant to subdivision (5) of subsection (a) of section 47a-7 . . . [and] (g) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises or constitute a nuisance, as defined in section 47a-32, or a serious nuisance, as defined in section 47a-15"

² On December 3, 2021, the defendant filed a request to amend his special defenses, which the trial court granted on the same date.

³ General Statutes § 42-150bb provides in relevant part: "Whenever any contract or lease entered into on or after October 1, 1979, to which a consumer is a party, provides for the attorney's fee of the commercial party to be paid by the consumer, an attorney's fee shall be awarded as a matter of law to the consumer who successfully prosecutes or defends an action or a counterclaim based upon the contract or lease. . . ."

⁴ Our conclusion is buttressed further by the fact that the defendant's motion for attorney's fees was not based on any summary process statute. In fact, the summary process statutes do not provide for such an award. The defendant's motion was based on § 42-150bb. Section 42-150bb is codified in title 42 of the General Statutes, under the heading "Business, Selling, Trading and Collection Practices," which is separate and apart from the summary process statutes, which appear in title 47a under the heading "Landlord and Tenant."
