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SHERI SPEER *v.* DANJON CAPITAL, INC.
(AC 45774)

Bright, C. J., and Cradle and Sheldon, Js.

Syllabus

The plaintiff sought to extinguish a mortgage on and to quiet title to certain real property located in Norwich, alleging that the defendant had acquired a lien on the property in bad faith. The plaintiff filed a notice of service of discovery, certifying that she had served the defendant, via first-class mail, with a discovery package that included interrogatories, requests for production, and requests for admissions. Subsequently, the plaintiff filed a motion for order requesting that all facts as to which she had served the defendant with requests for admissions be deemed admitted because the defendant had not timely responded to the requests. On the same day, she filed a motion for summary judgment on the basis of the facts she claimed that the defendant had admitted. The defendant filed an objection to the motion for order, representing through counsel that, although the plaintiff had served it with interrogatories and requests for production, she had not served any requests for admissions. The trial court denied the motion for order, finding that the plaintiff had not served the defendant with requests for admissions and that she had misled the court and the defendant by certifying that she had done so. In its sanctions order, the court concluded that the plaintiff's misleading filings constituted an abuse of discovery and that it would require the plaintiff to reimburse the defendant for all costs and attorney's fees it had incurred to defend itself against the plaintiff's claims. The defendant filed an affidavit in support of attorney's fees from its counsel, and the plaintiff filed a motion to reconsider the court's sanctions order and an objection to attorney's fees, alleging that the order had been issued in reliance on a mistake because the plaintiff had served the defendant with requests for admissions, although she had done so via email, rather than by first-class mail, as she had initially certified in her notice of service of discovery. The plaintiff suggested that the court's finding to the contrary resulted from the failure of the defendant's counsel to diligently check his email for the requests and from an unspecified error by the clerk's office in the filing of the requests, which she claimed to have filed as an attachment to her motion for order. The court thereafter denied the plaintiff's motions for reassignment and to reconsider. The court also dismissed the plaintiff's action as a sanction for her discovery abuse, which it found that she had engaged in by insisting repeatedly that she had served the defendant with requests for admissions to which the defendant had failed to respond, although the court file and her own records contradicted her claim. *Held:*

1. The trial court abused its discretion by dismissing the plaintiff's action as a sanction for her alleged abuse of discovery:
 - a. The plaintiff could not prevail on her claim that the trial court erred in finding that she had failed to serve the defendant with requests for admissions; there was ample evidence in the record, despite the plaintiff's insistence to the contrary, to support that finding, including the defendant's denial, through its counsel, that it had been served with such requests by first-class mail or by email, and no requests for admissions were included in the document that the plaintiff filed contemporaneously with her motion for order, which she represented was a true copy of the entire discovery package that she had served on the defendant.
 - b. The trial court's dismissal of the plaintiff's action was disproportionate to any violation by the plaintiff of its discovery rules and orders: although the plaintiff persisted in claiming that she had included requests for admission in the discovery package that she had served on the defendant, a claim that the court found to be factually inaccurate, the plaintiff was not disrespectful to the court, was not dismissive of its prior findings or orders, or otherwise contumacious, rather, the plaintiff attempted to explain why the court file did not contain the requests for admissions and why the claimed failure of the defendant's counsel to receive them by email was inaccurate; moreover, dismissal was not the only remedy

available to the court to protect the defendant's interests, as the court's order requiring the self-represented plaintiff to reimburse the defendant for the costs it incurred to defend itself was a more than adequate sanction.

2. The trial court improperly denied the plaintiff's motion for reassignment of all matters concerning the amount of attorney's fees to which the defendant was entitled, that court having failed to decide that matter within 120 days of the parties' final court-ordered submissions thereon: because the court's sanctions order set specific deadlines for the parties to submit materials in response to the order and did not contemplate any further submissions on the issue, the court was required to timely decide what sum of attorney's fees should be paid by the plaintiff to the defendant to compensate it for the expenses it incurred to defend itself against the plaintiff's unfounded motion for order; accordingly, on remand to the trial court, the issue can be finally adjudicated by another judicial authority on the basis of the parties' prior submissions.
3. This court declined to review the plaintiff's claim that the trial court erred in denying her motion for summary judgment: this court concluded that it lacked jurisdiction to decide the plaintiff's claim because the plaintiff's motion for summary judgment was not, in fact, denied, or otherwise finally adjudicated; moreover, the denial of a motion for summary judgment, except under limited circumstances that did not exist in the present case, was not an appealable final judgment over which this court would have jurisdiction.

Argued October 12—officially released December 5, 2023

Procedural History

Action, inter alia, seeking to quiet title to certain real property, and for other relief, brought to the Superior Court in the judicial district of New London, where the court, *O'Hanlan, J.*, denied the plaintiff's motion for reassignment; thereafter, the court, *O'Hanlan, J.*, rendered judgment dismissing the action, from which the plaintiff appealed to this court. *Appeal dismissed in part; reversed in part; further proceedings.*

Sheri Speer, self-represented, the appellant (plaintiff).

Opinion

PER CURIAM. The self-represented plaintiff, Sheri Speer, appeals from the judgment of the trial court dismissing her present action against the defendant, Danjon Capital, Inc., as a sanction for abuse of discovery. On appeal, she claims that the court (1) abused its discretion by dismissing this action as a sanction for her alleged discovery abuse, which it found that she had engaged in by insisting repeatedly that she had served the defendant with requests for admissions to which the defendant had failed to respond although the court file and her own records contradicted her claim that requests for admissions had been served; (2) improperly denied her timely motion for reassignment of all matters concerning the amount of attorney's fees she should be ordered to pay the defendant as a sanction for her discovery abuse after the court failed to decide that matter within 120 days of the parties' final court-ordered submission thereon; and (3) erred in denying her motion for summary judgment. We agree with the plaintiff that the court improperly dismissed this action as a sanction for her alleged abuse of discovery and that it improperly denied her motion for reassignment of the pending matter concerning the amount of attorney's fees that should be awarded to the defendant as a sanction for her discovery abuse, which the court failed to decide within 120 days of the last court-ordered submission on that matter. We dismiss that portion of the plaintiff's appeal challenging the purported denial of her motion for summary judgment.

The case arises against the following factual and procedural background. In February, 2021, the plaintiff, representing herself, commenced this action against the defendant to extinguish a mortgage on and quiet title to a parcel of real property in Norwich, alleging that the defendant had acquired a lien on the property in bad faith as a result of usurious practices. The plaintiff thereafter filed a notice of service of discovery, in which she certified that, on or before November 17, 2021, she had served the defendant, via first-class mail, with a discovery package that included interrogatories, requests for production, and requests for admissions.¹ On December 23, 2021, the plaintiff filed a motion for order requesting that all facts as to which she had served the defendant with requests for admissions be deemed admitted because the defendant had not answered or objected to such requests, as required by law, within thirty days after the filing of her notice of service of discovery.² On that same date, she also filed a motion for summary judgment and a memorandum in support of that motion on the basis of the facts she claimed to have been admitted by the defendant due to its alleged failure to respond to her requests for admissions.

The defendant filed an objection to the plaintiff's motion for order, representing through counsel that,

although the plaintiff had served it with interrogatories and requests for production in the present case, she had not served it with any requests for admissions. The defendant further stated in its objection, without requesting that sanctions of any kind be imposed on the plaintiff for her unfounded claim, that, when the plaintiff did ultimately serve it with requests for admissions, it “[would] promptly respond to the same.”

On March 3, 2022, the court heard oral argument on the motion for order, which the plaintiff had further supported before the hearing with a notice of supplemental authority. In the course of that hearing, the court reviewed with the plaintiff an electronic copy of a document in the court file, which the plaintiff had described as a copy of the entire discovery package, including requests for admissions, that she had served on the defendant in this case. This review revealed that the document in question contained no requests for admissions.

Four days after the hearing, on March 7, 2022, the court denied the motion for order by issuing a written order (March 7 sanctions order), in which it not only found that the plaintiff had not served the defendant with any requests for admissions in the present case but that she had misled the court and the defendant by certifying that she had done so. Noting that the plaintiff had continued to maintain her position on the motion for order even after the incorrectness of her position had been clearly demonstrated at the hearing, the court ruled that the plaintiff’s “inaccurate/misleading filings” constituted an abuse of discovery that it would redress by requiring the plaintiff to reimburse the defendant for all costs and attorney’s fees it had incurred to defend itself against the plaintiff’s claims. Finally, after setting a schedule for the parties to file written submissions concerning the amount of money the plaintiff should pay to the defendant to reimburse it for the expenses it had incurred to defend itself against the plaintiff’s discovery abuse, the court declared that it reserved the right to impose additional sanctions on the plaintiff, including dismissal of the present action, if the plaintiff failed to obey its orders or engaged in “further deceptive or misleading conduct”

In the month following the issuance of the March 7 sanctions order, the parties filed several additional submissions concerning whether and how that order should be implemented. Initially, on March 15, 2022, the defendant filed an affidavit in support of attorney’s fees from its counsel, detailing the time he had spent in opposing the plaintiff’s motion for order. On the basis of that affidavit, the defendant requested that the plaintiff be ordered to reimburse it in the amount of \$660 for the attorney’s fees that it had incurred to defend itself against the motion for order. The plaintiff responded to counsel’s affidavit by filing both a motion

to reconsider the March 7 sanctions order, dated March 17, 2022, and an objection to paying any attorney's fees pursuant to that order, dated March 23, 2022. The basis for those pleadings was the plaintiff's modified claim that the March 7 sanctions order had been issued in reliance on a mistake because she had, in fact, served the defendant with requests for admissions, although she had done so via email, rather than by first-class mail, as she had initially certified in her notice of service of discovery. The plaintiff suggested that the court's initial finding to the contrary had resulted both from the failure of the defendant's counsel to diligently check his email for the requests for admissions that she had sent him by that means and from an apparent, but unspecified, "coding/scanning/filing error" by the clerk's office in filing her motion for order, from which it unaccountably omitted the requests for admissions that she had attached to the motion. The plaintiff further claims that the requests for admissions were also attached to the memorandum of law that she filed in support of her motion for summary judgment. The defendant filed an objection to the plaintiff's motion to reconsider on March 18, 2022, in which the defendant's counsel once again denied that the plaintiff had ever served him with any requests for admissions in this case, either by first-class mail, as she initially certified, or by email, as she later claimed.

The court did not hear argument on or adjudicate any of the parties' motions, submissions or requests concerning the amount of money awardable to the defendant under the March 7 sanctions order before July 25, 2022, when the plaintiff called the continuing pendency of that matter to its attention by filing a motion for reassignment pursuant to Practice Book § 11-19. The plaintiff pleaded in her motion for reassignment that the motion was being filed in a timely fashion, less than fourteen days after the expiration of the 120 day time period after March 23, 2022, when her most recent submission on that matter was filed, as ordered by the court in the March 7 sanctions order.

One month later, on August 23, 2022, without scheduling either matter for oral argument, the court issued written orders denying both the plaintiff's motion to reconsider and her motion for reassignment. It denied the motion to reconsider on the basis of the repeated representation by the defendant's counsel that the plaintiff had not served him with any requests for admissions in the present case, at any time or by any means. It denied the motion for reassignment on the ground that the plaintiff had never marked her motion to reconsider ready for argument or otherwise sought to have it adjudicated within the 120 day time period after it was filed. On August 24, 2022, moreover, also without scheduling the matter for argument or otherwise notifying the parties of its intent to do so, the court issued two new orders sanctioning the plaintiff for abuse of discovery.

First, it ordered the plaintiff to reimburse the defendant in the amount of \$660 for all attorney's fees it had incurred to defend itself against her motion for order. Second, it ordered the dismissal of the present action. As the basis for issuing its order of dismissal, the court declared that, after reviewing the plaintiff's motions, including her motion to reconsider, it had concluded that her persistence in making inaccurate statements regarding discovery demonstrated a "disturbing lack of candor" that constituted a further abuse of the discovery process under Practice Book § 13-14.³ This appeal followed.⁴

I

The plaintiff first claims that the court (a) erred in finding that she failed to serve the defendant with any requests for admissions and (b) abused its discretion by dismissing the case as a sanction for her alleged abuse of discovery in pressing her claim, despite evidence to the contrary, that the defendant had failed to respond to requests for admissions that she repeatedly claimed to have served on it in this case. We disagree with the plaintiff's first argument, but we agree with the second.

The following relevant legal principles guide our analysis of these claims. "[A] court may, either under its inherent power to impose sanctions in order to compel observance of its rules and orders, or under the provisions of [Practice Book] § 13-14, impose sanctions, including the sanction of dismissal.

* * *

"In order for a trial court's order of sanctions for violation of a discovery order to withstand scrutiny, three requirements must be met. First, the order to be complied with must be reasonably clear. . . . This requirement poses a legal question that we will review de novo. Second, the record must establish that the order was in fact violated. This requirement poses a question of fact that we will review using a clearly erroneous standard of review. Third, the sanction imposed must be proportional to the violation. This requirement poses a question of the discretion of the trial court that we will review for abuse of that discretion." (Citations omitted; internal quotation marks omitted.) *Millbrook Owners Assn., Inc. v. Hamilton Standard*, 257 Conn. 1, 14–18, 776 A.2d 1115 (2001) (*Millbrook*).

A

As to the plaintiff's first argument, which challenges the court's central factual finding that she did not, in fact, serve the defendant with requests for admissions in this case, the plaintiff bears the burden of establishing that that finding is clearly erroneous, in the sense that "there is no evidence in the record to support it . . . or . . . although there is evidence to support it, the

reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” (Internal quotation marks omitted.) *Gervais v. Gervais*, 91 Conn. App. 840, 844, 882 A.2d 731, cert. denied, 276 Conn. 919, 888 A.2d 88 (2005). The plaintiff cannot prevail on this argument because there is ample evidence of record that, despite the plaintiff’s insistence and alleged efforts to the contrary, she did not, in fact, succeed in serving the defendant with requests for admissions in this case. The defendant, through its counsel, initially denied that it was served with such requests for admissions by United States mail, as the plaintiff had certified in her notice of service of discovery. Moreover, as the court expressly noted in its March 7, 2022 sanctions order, no requests for admissions were included in the document she had filed contemporaneously with her motion for order, representing it to be a true copy of the entire discovery package she had served on the defendant in this case. Such evidence gave the court a substantial basis for the finding underlying its dismissal order that the plaintiff had not, in fact, served the defendant with requests for admissions in this case. That finding was therefore not clearly erroneous.

B

Turning next to the plaintiff’s argument that the court’s imposition of the sanction of dismissal upon her was disproportionate to any proven violation by her of the court’s rules and orders regarding discovery, we must begin by reiterating that our standard of review on this issue is whether the trial court abused its discretion. In addressing *Millbrook’s* proportionality factor, we are mindful that “[t]he primary purpose of a sanction for violation of a discovery order is to ensure that the defendant’s rights are protected, not to exact punishment on the [plaintiff] for [her] allegedly improper conduct.” (Internal quotation marks omitted.) *Usowski v. Jacobson*, 267 Conn. 73, 85, 836 A.2d 1167 (2003). Additionally, we must remember that a “[trial] court’s discretion should be exercised mindful of the policy preference to bring about a trial on the merits of a dispute whenever possible and to secure for the litigant [her] day in court. . . . Our practice does not favor the termination of proceedings without a determination of the merits of the controversy where that can be brought about with due regard to necessary rules of procedure. . . . Therefore, although dismissal of an action is not an abuse of discretion where a party shows a deliberate, contumacious or unwarranted disregard for the court’s authority . . . the court should be reluctant to employ the sanction of dismissal except as a last resort. . . . [T]he sanction of dismissal should be imposed only as a last resort, and where it would be the only reasonable remedy available to vindicate the legitimate interests of the other party and the court.” (Citations omitted; internal quotation marks omitted.) *Millbrook Owners*

Assn., Inc. v. Hamilton Standard, supra, 257 Conn. 16–17. “[I]n assessing proportionality, a trial court must consider the totality of the circumstances, including, most importantly, the nature of the conduct itself.” *Ridgeway v. Mount Vernon Fire Ins. Co.*, 328 Conn. 60, 76, 176 A.3d 1167 (2018).

The court dismissed the plaintiff’s action on the ground that she had persisted, at and after the hearing on her motion for order, in making what the court found to be the factually inaccurate claim that she had included requests for admissions in the discovery package she had served on the defendant, “despite statements and clear evidence to the contrary from her adversary and from the clerk at the hearing, using documents the plaintiff herself had filed with the clerk’s office and which have been in the court file since, as noted in the court’s initial order”⁵ The court initially concluded in the March 7 sanctions order that such conduct constituted an abuse of discovery because the plaintiff knew or should have known, based on an examination of her own files and the court file, that this claim was incorrect. The court also faulted the plaintiff in its ultimate dismissal order for her conduct following the issuance of the March 7 sanctions order, specifically, for continuing to claim that she had served the defendant with requests for admissions before filing her motion for order, even though she claimed that she had done so by email instead of by United States mail, and then offering possible explanations for the inconsistency between that claim and both the contents of the court file, which, before she filed the motion for order, had contained no such requests, and the statement of the defendant’s counsel that he never received them. As for the court file, the plaintiff asserted in her motion to reconsider that the fact that the requests for admissions were not attached to her motion for order must have resulted from an unspecified clerical error in the filing or coding of her motion for order. As for the denial by the defendant’s counsel that the plaintiff had sent him her requests for admissions by email, she suggested that the defendant’s counsel had performed an inadequate search of his own email records for the missing requests for admissions.

Although the plaintiff’s proposed explanations for the inconsistencies between her claim that she had served her requests for admissions on the defendant and the lack of such requests for admissions in the contents of the court file and the denial by the defendant’s counsel that he had received such requests for admissions by any means were not supported by independent evidence, the offering of such explanations was not disrespectful to the court, dismissive of its prior findings or orders, or otherwise contumacious. Rather than ignoring the court’s initial findings and sanctions order or the contents of the court file that had led the court to issue that order, the plaintiff attempted to explain why

the court file did not contain the requests for admissions and why the claimed failure of the defendant's counsel to receive them by email was inaccurate. A party so claiming should not be punished by the court with dismissal of her action simply for making such claims.

Dismissal, moreover, is a sanction of last resort, which was not the only remedy available to the court to protect the defendant's interests in the circumstances at issue in the present case. Requiring the self-represented plaintiff to reimburse the defendant for all expenses it had incurred to defend itself against her erroneous claim that several facts should be deemed admitted because the defendant had not answered requests for admissions as to those facts was not only an available sanction for such conduct but also was a more than adequate sanction to satisfy the defendant's interests in defending this case. The plaintiff's erroneous claim surely caused the defendant to incur expenses to defend itself against it, particularly attorney's fees to have its counsel review all relevant records concerning discovery in the case and prepare submissions to file with the court in order to set the record straight. Although such expenses were directly traceable to the plaintiff's careless pleading, service, and recordkeeping practices, the defendant made no initial request for sanctions despite the cost and inconvenience it experienced as a result of such conduct. Later, moreover, the defendant showed apparent satisfaction with the court's proposed sanction of reimbursement by supplying the court with all the information that was necessary to fashion a proper reimbursement order. Logically and reasonably, the defendant requested no additional sanctions of any kind because the sanction of reimbursement was sufficient to make it whole.

For the foregoing reasons, we conclude that the sanction of dismissal was disproportionate to the conduct at issue. That order must therefore be reversed, and this case must be remanded for further proceedings consistent with this opinion.

II

The plaintiff's next claim on appeal is that the trial court erred in denying her motion for reassignment of the motions, requests, and submissions she had filed after the issuance of the March 7 sanctions order, concerning whether and how that order should be implemented, because the court did not rule on those matters within 120 days of the last court-ordered submission on that issue. As presented, the motion for reassignment concerned only the sanction of attorney's fees that the court had declared it would impose pursuant to the March 7 sanctions order to reimburse the defendant for attorney's fees it had incurred before the issuance of that order to defend itself against the plaintiff's unfounded claim that several facts should be deemed admitted because it had not responded to her requests

for admissions as to those facts. It did not, however, concern either the plaintiff's motion to reconsider the March 7 sanctions order, which was not filed in response to any court order, or the court's later sua sponte order dismissing this action for abuse of discovery on the basis of similar but separate findings of fact concerning continuing discovery abuse by the plaintiff.

We agree with the plaintiff that, because the court's March 7 sanctions order set specific deadlines for the parties to submit materials in response to the order and did not contemplate or suggest that the court anticipated any further submissions or oral argument on the sanctions issue, in the absence of waiver by the parties, the court was required by our rules of practice to decide timely what sum of attorney's fees should be paid by the plaintiff to the defendant as a sanction to compensate it for the expenses it incurred prior to March 7 to defend itself against the plaintiff's unfounded motion for order, which the court had found to be an abuse of discovery. Upon remand of this case to the trial court, that issue can be finally adjudicated by another judicial authority based on the prior submissions of the parties on the issue.

III

As for the plaintiff's third claim, alleging error in the denial of her motion for summary judgment, we lack jurisdiction to decide that claim because the plaintiff's motion was not, in fact, denied, or otherwise finally adjudicated. In addition, we note that the denial of a motion for summary judgment, except in limited circumstances that do not exist here, is not an appealable final judgment over which we would have jurisdiction. See, e.g., *Kellogg v. Middlesex Mutual Assurance Co.*, 211 Conn. App. 335, 346–47, 272 A.3d 677 (2022).

The judgment of dismissal, the order requiring the plaintiff to pay attorney's fees to the defendant, and the denial of the plaintiff's motion for reassignment are reversed, and the case is remanded for further proceedings consistent with this opinion; the portion of the appeal pertaining to the purported denial of the plaintiff's motion for summary judgment is dismissed.

¹ See Practice Book § 13-22 (b).

² See Practice Book § 13-23 (a) (“[e]ach matter of which an admission is requested is admitted unless, within thirty days after the filing of the notice required by Section 13-22 (b) . . . the party to whom the request is directed files and serves upon the party requesting the admission a written answer or objection”).

³ Practice Book § 13-14 provides in relevant part: “(a) If any party has failed . . . substantially to comply with any . . . discovery order made pursuant to Sections 13-6 through 13-11, the judicial authority may, on motion, make such order proportional to the noncompliance as the ends of justice require.

“(b) Such orders may include the following . . . (5) An order of dismissal, nonsuit or default. . . .”

⁴ The defendant did not file a brief in the present appeal.

⁵ The court noted in its order denying the plaintiff's motion for order that the defendant had stated in its objection that the discovery request attached as exhibit B to the motion for order, which did not contain any requests

for admissions, was the same discovery request that it had received from the plaintiff. The court further stated that, “[a]t the hearing, the plaintiff refused to concede this point, at least until the clerk put the court’s copy of the plaintiff’s motion [for order] on the screen, and the plaintiff was required to review all fifty-five pages before conceding that there were no requests for admissions in her requests.”
