NINA BUXENBAUM *v.* BRIAN S. JONES
(AC 40255)

Prescott, Bright and Norcott, Js.

Syllabus

The plaintiff appealed to this court from the judgment of the trial court dissolving her marriage to the defendant and making certain orders regarding custody of the parties' two minor children and the parties' finances. *Held*:

1. The plaintiff could not prevail on her claim that the trial court failed to consider the best interests of her minor children in deciding custody, which she claimed was demonstrated by its alleged predetermination of that issue before the close of evidence in its preparation of a child support guidelines worksheet; the plaintiff failed to provide any legal authority that would suggest that a court is prohibited from working on the case pending before it until the close of evidence, and the fact that the trial court input data into a worksheet before the close of evidence did not evince a premature determination of the issues and merely demonstrated that it was considering and working on the case before it, as the court was well within its authority to take notes, research, and begin working on a decision during the trial, knowing that additional evidence might require changes in the work it already had done.
2. The plaintiff's claim that the trial court improperly failed to consider and rely on the defendant's earning capacity when it issued its financial orders was unavailing: the plaintiff's claim that the defendant should have been ordered to pay her alimony and child support based on his earning capacity was largely inconsistent with the position she took at trial, where she argued that neither party should be required to pay the other any type of support, and this court typically will not consider an argument raised on appeal that is contrary to the position taken by the party in the trial court; moreover, although a court can base its financial orders on the parties' earning capacities, it is not required to do so, and the court did not abuse its discretion in making its financial orders, as it crafted its financial orders taking all of the facts into consideration, including the requests of the plaintiff, and balanced the equities in the case, including a shared physical custody arrangement.
3. The plaintiff could not prevail on her claim that the trial court lacked evidentiary support for its findings on the court prepared worksheet as to the defendant's net weekly income; where, as here, the plaintiff had submitted her own guidelines worksheet to the court and asked the court to rely on her representation of the defendant's net income, the court calculated a net income of the parties that was even more favorable to the plaintiff than what she had proposed, and the court's alimony and support orders gave the plaintiff exactly what she had requested,

to permit the plaintiff to challenge the trial court's financial orders because they did not rely on evidence of the defendant's net income after the plaintiff asked the court to rely on her calculation of that income and the court entered the very orders the plaintiff requested, would have amounted to sanctioning a trial by ambuscade, which this court would not do, and in the specific factual and procedural context of this case, there was no error in the trial court's reliance on the net income information provided to it by the plaintiff.

Argued January 14—officially released May 14, 2019

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Danbury and tried to the court, *Winslow*, *J.*; judgment dissolving the marriage and granting certain other relief, from which the plaintiff appealed to this court. *Affirmed.*

Logan A. Carducci, for the appellant (plaintiff).

Douglas J. Lewis, for the appellee (defendant).

Opinion

BRIGHT, J. The present appeal arises following the trial court's judgment dissolving the marriage of the plaintiff, Nina Buxenbaum, and the defendant, Brian S. Jones. On appeal, the plaintiff claims that the trial court (1) failed to consider the best interests of the children, as demonstrated by its predetermination of custody before the close of evidence, (2) failed to consider the defendant's earning capacity and, therefore, rendered logically inconsistent financial orders, and (3) lacked evidentiary support for its findings regarding the defendant's net weekly income. We affirm the judgment of the trial court.

The record reveals the following relevant facts, which were found by the trial court or are uncontested. The parties were married in 2007, and have two minor children. After approximately eight years of marriage, the

plaintiff sought a judgment dissolving the parties' marriage. In her complaint, she requested, inter alia, joint legal custody of the children, with primary physical custody vested in her. During the pendency of the dissolution, the parties shared physical and legal custody of their children, in what is called a 5-2-2-5 plan, with the plaintiff having physical custody of the children every Monday and Tuesday, the defendant having physical custody of the children every Wednesday and Thursday, and the parties alternating physical custody of the children every Friday through Sunday. On November 18, 2015, the court entered temporary orders requiring the plaintiff to pay child support to the defendant in the amount of $243 per week and alimony in the amount of $150 per week.

On September 27, 2016, the defendant filed a notice of bankruptcy with the court. On November 21, 2016, the parties entered into a pendente lite agreement, which the court accepted, terminating alimony and child support, and agreeing, on the basis of the parties' shared physical custody of the children, that neither party would be obligated to pay support.

On February 1, 2017, the plaintiff submitted her proposed orders, in which she requested: joint legal custody of the children, with primarily physical custody vested in her; a finding that the defendant's earning capacity is $140,000 or more, but a deviation from the guidelines on the basis of the defendant's self-employment and "the coordination of total family support," and an order that the defendant pay only $1 per year in child support until he finds gainful employment; a waiver of alimony by both parties; a transfer of the defendant's interest in the marital home to the plaintiff for the sale of the home by the plaintiff and use and possession of it by the defendant until February 28, 2017; and that each party retain their own retirement

accounts, bank accounts, and personal effects, including artwork.

On February 8, 2017, the defendant submitted a set of third amended proposed orders, requesting, inter alia, joint legal and shared physical custody of the children, a waiver of alimony by both parties, child support in accordance with the guidelines, exclusive possession of the marital home, a fair distribution of the parties' retirement accounts, and that each party retain their own bank accounts and personal property, but that the defendant be entitled to one half of the plaintiff's artwork produced during the marriage.

On February 22, 2017, following a trial, the court rendered a judgment of dissolution, in which it ordered: the parties shall share joint legal custody of the children, with no parent having the right to act unilaterally with respect to important decisions affecting the children, but, ultimately, the plaintiff has final say on treatment concerning the children's physical or emotional health; the parties shall share physical custody of the children under a 5-2-2-5 plan; neither party shall be responsible to pay child support to the other, but each party shall share the expenses of extracurricular activities, school supplies, and school trips; the plaintiff shall maintain the children on her medical and dental plans; unreimbursed medical and dental expenses shall be paid in accordance with the plan set forth by the court; and neither party shall be entitled to alimony. This appeal followed. Additional facts will be set forth as necessary.

"An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the [evidence] presented. . . . It is within the province of the trial court to find facts and draw proper inferences from the evidence presented. . . . In determining whether a

trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action . . . . [T]o conclude that the trial court abused its discretion, we must find that the court either incorrectly applied the law or could not reasonably conclude as it did. . . . Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when 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. . . . As has often been explained, the foundation for this standard is that the trial court is in a clearly advantageous position to assess the personal factors significant to a domestic relations case . . . ." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Kirwan* v. *Kirwan*, 185 Conn. App. 713, 726, 197 A.3d 1000 (2018).

"Individual financial orders in a dissolution action are part of the carefully crafted mosaic that comprises the entire asset reallocation plan. . . . Under the mosaic doctrine, financial orders should not be viewed as a collection of single disconnected occurrences, but rather as a seamless collection of interdependent elements. Consistent with that approach, our courts have utilized the mosaic doctrine as a remedial device that allows reviewing courts to remand cases for reconsideration of all financial orders even though the review process might reveal a flaw only in the alimony, property distribution or child support awards." (Internal quotation marks omitted.) *Keusch* v. *Keusch*, 184 Conn. App. 822, 825–26, 195 A.3d 1136 (2018).

I

The plaintiff first claims that the court failed to consider the best interests of the children in deciding custody, as demonstrated by its alleged predetermination

of that issue before the close of evidence. The plaintiff argues that custody of the two minor children was a contested issue at trial, but that the court had prepared a child support guidelines worksheet (worksheet), dated February 10, 2017, "prior to the conclusion of the plaintiff's testimony and the close of evidence, based on a predetermination that the parties will *split custody*."[1] (Emphasis in original.) The defendant argues that the court began preparation of the worksheet before the close of evidence, that the plaintiff misrepresents the date on the worksheet, which was February 15, 2017,[2] and that the court gave that worksheet to the parties to review for accuracy before rendering judgment.[3] He argues that there is no evidence that the court predetermined custody, and, further, that the evidence demonstrates that the court weighed all the evidence, including the then current shared custody arrangement that the parties had been following, and it considered the best interests of the children. We conclude that the plaintiff's claim lacks merit.

[1] We note that the worksheet prepared by the court stated that it was based on a "split custody" determination. The court, however, did not order "split custody" in this case. Rather, the court ordered shared legal and physical custody. As defined in § 46b-215a-1 (24) of the Regulations of Connecticut State Agencies, "[s]plit custody" is "a situation in which there is more than one child in common and each parent is the custodial parent of at least one of the children." (Internal quotation marks omitted.) Rather, the court ordered in this case that the parties have "shared physical custody," which means "a situation in which the physical residence of the child is shared by the parents in a manner that ensures the child has substantially equal time and contact with both parents. An exactly equal sharing of physical care and control of the child is not required for a finding of shared physical custody." Regs., Conn. State Agencies § 46b-215a-1 (23).

[2] The date on the court's worksheet is February 15, 2017; the date on the court's data sheets is February 10, 2017.

[3] The defendant's attorney, who also was trial counsel, represented at oral argument before this court that the trial court had given each attorney a copy of this worksheet to review for accuracy. When asked whether that occurred on the record, he explained that it happened in chambers. We have no record to verify the accuracy of this statement and, therefore, do not consider it in our analysis.

"It is statutorily incumbent upon a court entering orders concerning custody or visitation . . . to be guided by the best interests of the child. . . . In reaching a decision as to what is in the best interests of a child, the court is vested with broad discretion and its ruling will be reversed only upon a showing that some legal principle or right has been violated or that the discretion has been abused." (Internal quotation marks omitted.) *D'Amato* v. *Hart-D'Amato*, 169 Conn. App. 669, 678, 152 A.3d 546 (2016). "The best interests of the child, the standard by which custody decisions are measured, does not permit . . . a predetermined weighing of evidence." *Yontef* v. *Yontef*, 185 Conn. 275, 282, 440 A.2d 899 (1981). A claim that the court predetermined the outcome of a contested issue implicates the court's impartiality. See *Havis-Carbone* v. *Carbone*, 155 Conn. App. 848, 866–67, 112 A.3d 779 (2015) (court's predetermination of relocation issue implicated court's required impartiality and constituted plain error); *Bank of America, N.A.* v. *Thomas*, 151 Conn. App. 790, 802, 96 A.3d 624 (2014) (allegation that court predetermined outcome of motion "implicate[d] the court's impartiality").

To obtain appellate review, a claim of judicial bias or lack of impartiality typically must be raised before the trial court. See *Zilkha* v. *Zilkha*, 167 Conn. App. 480, 486, 144 A.3d 447 (2016) ("[I]t is well settled that courts will not review a claim of judicial bias on appeal unless that claim was properly presented to the trial court . . . . Absent plain error, a claim of judicial bias cannot be reviewed on appeal unless preserved in the trial court." [Internal quotation marks omitted.]); *Jazlowiecki* v. *Cyr*, 4 Conn. App. 76, 78–79, 492 A.2d 516 (1985) (plaintiff claiming he became aware of judicial bias after court rendered decision should have preserved issue in motion to open and set aside judgment). Because of the seriousness of such an allegation, however, in the interest of justice, we may invoke our

authority to review "plain error" not properly preserved in the trial court. See *Cameron* v. *Cameron*, 187 Conn. 163, 168, 444 A.2d 915 (1982); Practice Book § 60-5.

In the present case, the record contains a worksheet prepared by the court, bearing the date February 15, 2017, and the time 5:06 p.m. The balance of the plaintiff's testimony in this case did not conclude until February 17, 2017.[4] The court uploaded this worksheet into the court file on February 22, 2017, the same day it issued its memorandum of decision in which it rendered judgment. The plaintiff alleges that this, alone, proves that the court predetermined custody. Because of the seriousness of the allegation, and because it is unclear to us whether the plaintiff was aware of this issue before the court entered judgment, we invoke our authority to review whether the court's action constituted plain error. We conclude that the plaintiff's claim lacks substantiation and wholly is without merit.

The court's worksheet sets forth the parties' gross and net incomes, which are quite similar to those set forth in the plaintiff's worksheet, and it determines the appropriate amount of child support on the basis of, what it called, a "split custody" determination. The court, however, ultimately, awarded shared legal and physical custody. See footnote 1 of this opinion. Nevertheless, the fact that the court input data into a worksheet before the close of evidence does not evince a premature determination of the issues. Certainly, the court was well within its authority to take notes, research, and begin working on a decision during the trial, knowing that additional evidence may require changes in the work it already had done. The fact that the court input data into a worksheet before the close of evidence merely demonstrates that the court was considering and working on the case that was before it. The plaintiff fails to provide any legal authorities that

[4] There was no testimony taken on February 16, 2017.

would suggest that a court is prohibited from working on the case pending before it until the close of evidence. This issue warrants no further review. The plaintiff has failed to demonstrate any error.

II

The plaintiff next claims that the trial court failed to consider and rely on the defendant's earning capacity when it issued its financial orders pursuant to General Statutes §§ 46b-81, 46b-82, and 46b-84, which caused it to render logically inconsistent financial orders.[5] Specifically, the plaintiff argues: "[T]he trial court inequitably

[5] General Statutes § 46b-81 provides in relevant part: "(a) At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 46b-45, the Superior Court may assign to either spouse all or any part of the estate of the other spouse. The court may pass title to real property to either party or to a third person or may order the sale of such real property, without any act by either spouse, when in the judgment of the court it is the proper mode to carry the decree into effect. . . .

"(c) In fixing the nature and value of the property, if any, to be assigned, the court, after considering all the evidence presented by each party, shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates."

General Statutes § 46b-82 (a) provides in relevant part: "At the time of entering the decree, the Superior Court may order either of the parties to pay alimony to the other, in addition to or in lieu of an award pursuant to section 46b-81. . . . In determining whether alimony shall be awarded, and the duration and amount of the award, the court shall consider the evidence presented by each party and shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate and needs of each of the parties and the award, if any, which the court may make pursuant to section 46b-81, and, in the case of a parent to whom the custody of minor children has been awarded, the desirability and feasibility of such parent's securing employment."

General Statutes § 46b-84 provides in relevant part: "(a) Upon or subsequent to the annulment or dissolution of any marriage or the entry of a

declined to award the plaintiff alimony or child support and awarded the defendant a portion of the plaintiff's retirement account despite its express findings that the defendant has a history of substantial earnings and possesses the education and skills to return to those earnings in the future." The defendant responds that "there was no basis in fact for the court to look to the earning capacity of either party in fashioning its financial orders. Both parties, at the time of trial, were employed and their earnings reported. The fact that the defendant was earning . . . less than what he had once earned is not the standard by which to look to his earning capacity. Bear in mind that the defendant, once terminated from his job [in March, 2014,] took on additional parenting responsibilities, and, at the time of trial, was under a court approved shared custody arrangement."[6] We agree with the defendant.

"It is well established that the trial court may under appropriate circumstances in a marital dissolution proceeding base financial awards . . . on the earning capacity of the parties rather than on actual earned income. . . . Earning capacity, in this context, is not an amount which a person can theoretically earn, nor is it confined to actual income, but rather it is an amount which a person can realistically be expected to earn . . . .

decree of legal separation or divorce, the parents of a minor child of the marriage, shall maintain the child according to their respective abilities, if the child is in need of maintenance. . . .

* * *

"(d) In determining whether a child is in need of maintenance and, if in need, the respective abilities of the parents to provide such maintenance and the amount thereof, the court shall consider the age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills and employability of each of the parents, and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child. . . ."

[6] The defendant also argues that the court neither found nor articulated the earning capacity of either party, and, if the plaintiff wanted such a finding, she should have requested that the court provide one.

"Factors that a court may consider in calculating a party's earning capacity include evidence of that party's previous earnings . . . [l]ifestyle and personal expenses . . . and whether the defendant has wilfully restricted his earning capacity to avoid support obligations, although we never have required a finding of bad faith before imputing income based on earning capacity." (Citations omitted; internal quotation marks omitted.) *Fox* v. *Fox*, 152 Conn. App. 611, 634, 99 A.3d 1206, cert. denied, 314 Conn. 945, 103 A.3d 977 (2014); see also *Schmidt* v. *Schmidt*, 180 Conn. 184, 189–90, 429 A.2d 470 (1980) ("[i]t is especially appropriate for the trial court to base its award on earning capacity rather than actual earned income where . . . there is evidence before the court that the person to be charged has wilfully depleted his or her earnings with a view toward denying or limiting the amount of alimony to be paid to a former spouse").

"Dependent spouses frequently fear that the wage-earner spouse will voluntarily reduce or deplete his or her earnings in order to reduce or eliminate the alimony award, and in many cases such a concern is entirely justified. There is at least some protection against such a practice in that financial awards may sometimes be based upon earning capacity rather than on the party's actual earned income. In general an alimony award may be based on the payor spouse's earning capacity rather than on actual earned income where it appears that the payor willfully or voluntarily depleted earnings with a view toward denying or limiting alimony. Conversely, present income rather than claimed earning capacity may be used where there is no indication that the payor spouse had willfully depleted his earnings . . . . [A] parent's child-care responsibilities are a factor which [also] may affect earning capacity. . . . [The court, however, does not require a finding of] bad faith or willful depletion of earnings . . . before [basing its] orders on earning capacity." (Footnotes omitted.) A.

Rutkin, S. Oldham & K. Hogan, 8 Connecticut Practice Series: Family Law and Practice with Forms (3d Ed. 2010) § 33:11, pp. 55–56; see also id., § 38:21 (discussing use of earning capacity in child support determinations and reaching same conclusion as use in alimony determinations). The fact that a court may consider a party's earning capacity does not mean that it is required to do so. Whether to base its financial orders on the parties' actual net income or their earning capacities is left to the sound discretion of the trial court.

In the present case, the court specifically found that the parties married in 2007. The plaintiff had obtained a master's degree in painting from the Maryland Institute College of Art in 2001. In 2002, she began teaching at York College in New York, where she later became a tenured associate professor. She earns a salary of $96,185. The plaintiff also teaches for two weeks each summer at a program in Utah, where she earns $3300. The plaintiff's total gross weekly income is $1913.17. After deductions, her net income is $1177 per week. The court also found that the plaintiff does not aggressively market her drawings and paintings, but, rather, she sporadically receives income from the sale of her artwork; the last drawing she sold, resulted in a payment of $1600.[7] The court, however, declined to attribute income to the plaintiff's occasional sale of artwork.

The court also found that the plaintiff had $64,106 in her retirement account at the time of the parties' marriage. At the time of the dissolution, that account had grown to approximately $220,699, with the annuity portion containing $78,066, and the 401 (a) portion containing $142,633. The plaintiff has three outstanding loans from that account, with a combined outstanding balance of $9887.

[7] The court also explained that this was a point of contention between the parties because the defendant believed that the plaintiff could "achiev[e] fame" and earn considerably more money if she more aggressively marketed her work and made efforts to show her art at prestigious galleries.

As to the defendant, the court found that, at the time the parties married, the defendant worked at Lyra Research, where he earned approximately $60,000 annually. He also pursued a staging business, estimating he earned approximately $100,000 in that business. Following a layoff, the defendant worked at ORC International in New York, where he earned a base annual salary of $90,000, plus commissions. The defendant, at that time, also pursued a master's degree in marketing management from Harvard University. He graduated in 2010. In 2012, the defendant left ORC International and began employment with Pluris. His base salary was $150,000, with some incentives. After leaving Pluris in the summer of 2013, he was employed at Ogilvy, an advertising agency in New York, where he earned $180,000, but his position was eliminated in March, 2014.

The court further found that the defendant is an entrepreneur at heart, who wanted to open his own business. In 2014, using his savings and credit card loans, he began that quest by opening a juice bar. The defendant filed for Chapter 7 personal bankruptcy in September, 2016, and his debts were discharged in January, 2017. The defendant also closed the juice bar in January, 2017. The defendant then began a new business, KBC Ventures, LLC, doing business as Beyond Medical Solutions. He has an investor in his business, who is paying him $1200 per week plus expenses. He expects his income will increase in time. The defendant also has a tenant living in his home, who pays $100 per week in rent; he expects to increase the rent to $1000 per month once the tenant can afford the increase.

The court further found that the defendant had cashed out $90,755 of his retirement in 2015, and sold his stocks, realizing a gain of $4808. The only retirement money he has left is $3500 in an individual retirement account. The defendant owes the Internal Revenue Service $10,127 for the 2015 tax year, and, at the time of

judgment, he was in discussions with it concerning a payment plan. He also owes money to the state and federal government for the 2016 tax year.

The court stated that the guidelines provided for the plaintiff to pay $186 per week for child support and the defendant to pay $166 per week. The court ruled, however, that "[g]iven the shared physical custody and similarity of the parties' net incomes . . . [it would be] inappropriate for either party to pay basic child support to the other." In addition to considering the guidelines, the court also stated that it had considered "all the criteria in General Statutes §§ 46b-56, 46b-56c, 46b-62, 46b-81, 46b-82 and 46b-84 in light of the evidence presented." The court further found that the defendant had an advantage over the plaintiff in terms of "income earning capacity."

The court then stated that it was rendering orders, taking "into consideration all of the claims and requested orders of the parties," in a manner that it "deemed most equitable and workable in the eyes of the court." The court proceeded to set forth its specific orders. These orders included: neither party would pay alimony to the other; the defendant would be the sole owner of the marital home and would be responsible for the mortgage and bills associated therewith, and the plaintiff would be held harmless; the defendant would make every effort to remove the plaintiff from the promissory note and the mortgage, but if he failed to do so by December 31, 2017, he must list the home for sale at or below fair market value and must sell the residence expeditiously;[8] each party would keep his or her own vehicle, own bank accounts, and certificates of deposit; the plaintiff would continue to own all of her artwork;

[8] The plaintiff's attorney had argued to the trial court that her client had no objection to giving the defendant the opportunity to refinance or restructure the mortgage. The concern was in getting the plaintiff's name off of the obligation.

the defendant would continue to own the assets of his businesses; the defendant would keep his retirement account, which was valued at approximately $3500; the plaintiff would transfer to the defendant $30,000 from her 401 (a) account, which was valued at approximately $220,700, as of the dissolution; and the plaintiff would retain the balance of her 401 (a) account.

The plaintiff now claims that the court failed to take into consideration the earning capacity of the defendant when it issued its financial orders, including its support orders, and that the orders, therefore, were inconsistent with the court's findings that the defendant had a higher earning capacity than did the plaintiff. We are not persuaded.

First, we note that the plaintiff's claim is largely inconsistent with the position she took at trial. Despite her argument on appeal that the defendant should have been ordered to pay her alimony and child support based on his earning capacity, she argued to the trial court that neither party should be required to pay the other any type of support. In her February 1, 2017 proposed orders, she requested that the court deviate from the guidelines and order that the defendant pay $1 per year in child support, and she requested that both parties waive alimony. Additionally, during final argument before the trial court on February 17, 2017, the plaintiff's trial attorney argued in relevant part: "I don't believe that this is a case where support should be awarded. Regardless of what the parenting plan is, because they're under the child support guidelines, their income is substantially equal. If you take out the deductions for the taxes, the mortgage interest, and the taxes on the marital home, I think they're within 5 percent or 10 percent of each other. . . . So, I don't think this is a case that warrants any type of support payment." As set forth in part III of this opinion, we typically will not

consider an argument raised on appeal that is contrary to the position taken by the party in the trial court.

In addition, as noted previously, although a court can base its financial orders on the parties' earning capacities, it is not required to do so. In the present case, although the court found that the defendant had a higher "income earning capacity" than did the plaintiff, the court also found that the parties were in an equal position: "The parties are in equipoise as to age, health, station, estate, needs, vocational skills, education, employability, and opportunity . . . ." The record also reveals that the court carefully considered the status of the parties before the marriage, during the marriage, and at the time of trial, including the fact that the defendant is an entrepreneur at heart who wanted to pursue a career path different than the one that, in the past, had produced a higher income. Significantly, the plaintiff did not claim, nor did the court find, that the defendant's decision to change careers was done wilfully to restrict his earning capacity to avoid support obligations. Overall, the court crafted its financial orders taking all of the facts into consideration, including the requests of the plaintiff, and balanced the equities in the case, including a shared physical custody arrangement. We have examined the record in this case and are not persuaded that the court abused its discretion.

III

The plaintiff's final claim is that trial court lacked evidentiary support for its findings on the court prepared worksheet as to the defendant's net weekly income. She argues that the figures on the court's worksheet do not match the figures on the defendant's financial affidavit, and that there is no evidence in the record to support the tax calculations that the court used for the defendant.[9] The defendant argues that the court

[9] The defendant's February 2, 2017 financial affidavit showed a gross weekly income of $1300 but listed no deductions, whatsoever, for taxes.

gave the parties a copy of this worksheet before the close of evidence so that they could review it and make objections or suggestions to the court, and that they had none. During oral argument before this court, the panel asked the defendant's attorney, who also was trial counsel for the defendant, whether this was done on the record, and he responded in the negative. The plaintiff's appellate attorney was not the same attorney who represented her at trial, and she did not know whether the parties had been given a copy of the document upon which to comment. Because there is nothing in the record to substantiate the defendant's assertion, we are unable to conclude that the parties were given copies of the court's worksheet. Nevertheless, on the basis of the record before us, we are not persuaded by the plaintiff's claim.

"Pursuant to Practice Book § 25-30, each party is required to file certain statements during a dissolution or child support matter. The guidelines worksheet is based on net income; weekly gross income is listed on the first line on the worksheet, and the subsequent lines list various deductions, including federal income tax withheld and social security tax. . . . The guidelines are used by the court to determine a presumptive child support payment, which is to be deviated from only under extraordinary circumstances." (Citation omitted; footnote omitted.) *Golden* v. *Mandel*, 110 Conn. App. 376, 386, 955 A.2d 115 (2008). The plaintiff, relying on this court's decision in *Ferraro* v. *Ferraro*, 168 Conn. App. 723, 730, 147 A.3d 188 (2016), argues that the trial court abused its discretion by basing its decision on income information on a worksheet as to which there was no evidentiary support.

In *Ferraro*, the trial court rendered a judgment of dissolution and issued financial orders, and the defendant thereafter filed a motion for reconsideration and

His previous financial affidavits, however, showed various deductions for taxes and health insurance, but were based on different sources of income.

reargument, claiming in relevant part that the court's findings as to his net income were inconsistent with the evidence. Id., 724–25. After the court summarily denied this motion, the defendant filed an appeal and a motion for articulation. Id., 726. The defendant requested, inter alia, that the trial court articulate "the evidential sources for the court's 'figures used for taxes and deductions' . . . ." Id. In responding to that request, the court stated in relevant part: " '[T]he court based all of its findings on evidence and testimony provided at trial, including the financial affidavits provided by the parties . . . and used family law software provided by the Judicial Branch' as sources for the figures on the worksheet for taxes and deductions . . . ." Id.

On appeal in *Ferraro*, this court stated that "[a]lthough the child support guidelines create a legal presumption as to the amount of child support payments . . . the figures going into that calculation on the worksheet must be based on some underlying evidence. . . . A court may not rely on a worksheet unless it is based on some underlying evidence." (Citation omitted; internal quotation marks omitted.) Id., 730. This court then noted that the figures used by the trial court did not match the figures provided by the defendant on his financial affidavit and that the trial court failed to articulate how it arrived at its figures. Id., 729. This court stated, "it appear[ed] that the court sua sponte made various assumptions regarding standard and itemized deductions, medical expenses and child credits"; id.; and that "there was no testimony or other evidence presented at trial with respect to alternate federal and state tax calculations, exemptions, deductions or credits." Id., 730.

This court went on to explain that the trial court had articulated that it had relied on evidence and testimony provided at the trial, but that "[t]he figures [used by the court] do not match [the evidence] and, although the court is free to credit or discredit some or all of a

witness' evidence . . . the court still must provide a basis for the determinations that it makes as supported by the underlying evidence." (Citation omitted.) Id., 731. This court also explained that the trial court was free to take judicial notice of certain facts, including tax tables, where appropriate, but that there was no indication in this case that the court had done so. Id., 732. On this basis, this court reversed the judgment as to the financial orders and remanded the case for a new hearing. Id., 734–35. We conclude that *Ferraro* is distinguishable from the present case.

In the present case, unlike in *Ferraro*, the plaintiff asked the court to rely on her representation of the defendant's net income. Furthermore, unlike in *Ferraro*, the court calculated a net income of the parties that was even more favorable to the plaintiff than what she had proposed. Finally, unlike in *Ferraro*, the court's alimony and support orders gave the plaintiff exactly what she had requested. In fact, the manner in which the information regarding net income was provided to, and used by, the court makes clear why the plaintiff's reliance on *Ferraro* is misplaced.

During the defendant's testimony on February 8, 2017, he explained that he recently had been receiving $1200 per week from an investor in his medical device business, which he began in January, 2017, and that he also was receiving $100 per week in rental income. In light of this testimony, the court asked the plaintiff's attorney if she was going to submit a substitute worksheet, to which she answered in the affirmative, stating that she first wanted to "flush out the testimony." The plaintiff later submitted this updated worksheet, which was dated February 13, 2017.

On that worksheet, the plaintiff listed her own gross income as $1912, and her net weekly income as $1258. She asserted that the defendant's gross weekly income was $1300, and she listed three deductions for him:

federal income tax of $108, social security tax of $170, and state income tax of $53.[10] The plaintiff's net weekly income calculation for the defendant was $969, and the difference in the parties' net weekly income, as set forth on the plaintiff's worksheet, was $289 per week. According to the plaintiff's worksheet, the parties' combined net weekly income was $2230, rounded to the nearest $10.

The court's worksheet listed the plaintiff's gross weekly income as $1913, and it calculated her net weekly income as $1177. The court listed the defendant's gross weekly income as $1300, and it also listed three deductions: federal income tax of $12, social security tax of $184, and state income tax of $54. The court's net weekly income calculation for the defendant was $1050. Accordingly, the court found that the defendant's net weekly income was $81 more than what the plaintiff had asserted on her worksheet, and the difference in the parties' net weekly income was $127, less than one half of the difference calculated by the plaintiff. The court found the combined weekly net income of the parties to be exactly the same as the plaintiff's calculation, namely $2230, rounded to the nearest $10. Because the parties were sharing physical custody of the children and their net incomes were similar, the court found that a deviation from the guidelines was in order, and it concluded that no support should be paid by either party, as had been the position of the plaintiff during closing argument.

The plaintiff's argument on appeal that there was no evidence or testimony with respect to the defendant's

[10] The plaintiff argues on appeal that there was no evidence or testimony with respect to the defendant's tax obligations. She, nevertheless, arrived at her own calculations, which, with the exception of federal income tax liability, nearly are identical to the court's calculations. She has not addressed her methodology in her brief.

tax obligations notwithstanding,[11] the record reveals that she submitted her own guidelines worksheet to the court, which contained calculations for the defendant's taxes. See footnote 10 of this opinion. Additionally, the record reveals that the plaintiff's attorney argued during closing argument before the trial court that the parties' net incomes were "within 5 percent or 10 percent of each other" and that this is not a case "that warrants any type of support payment."

Finally, although the plaintiff argues that this case is similar to *Ferraro*, the alleged discrepancy between the evidence and the figures used by the trial court was brought to the court's attention in *Ferraro* in a motion for reconsideration and reargument, which the court summarily denied. *Ferraro* v. *Ferraro*, supra, 168 Conn. App. 725–26. Additionally, the court then was requested to articulate the precise sources for the court's figures used to calculate the plaintiff's taxes and deductions, and it failed to do so adequately, stating only that it relied on the evidence. Id., 731. In the present case, any alleged discrepancy was not brought to the attention of the court, and, in fact, the court's worksheet was similar to the plaintiff's worksheet, and its support orders nearly mimicked those requested by both parties.

On appeal, the plaintiff's position apparently has changed. Whereas she asked the trial court to rely on

[11] We recognize that the defendant had started a new self-employment venture in January, 2017, for which he had an investor who was paying him $1200 per week. The defendant provided no information on his financial affidavit as to an estimate for federal and state taxes. Nevertheless, the defendant had submitted financial information in the form of financial affidavits and tax returns, based on other employment opportunities he had undertaken, that had both federal and state tax information, evincing varying tax rates and deductions, ranging from 19 percent to more than 30 percent.

In *Utz* v. *Utz*, 112 Conn. App. 631, 637, 963 A.2d 1049, cert. denied, 291 Conn. 908, 969 A.2d 173 (2009), this court briefly discussed the difficulty a trial court can encounter when calculating a net income if a party has various financial documents that evince different tax rates, in that case, ranging from 10 to 20 percent.

her representations of the parties' net income, and further asked the court to use that information to conclude that neither party should pay child support or alimony to the other, she now claims that the trial court should not have entered the financial orders that she requested because the court lacked evidence regarding the defendant's net income. We do not look favorably on the plaintiff's efforts to change positions on appeal. "As we have expressed on a number of occasions, we generally disfavor permitting an appellant to take one legal position at trial and then take a contradictory position on appeal." *Kirwan* v. *Kirwan*, supra, 185 Conn. App. 724 n.11. "[A] party cannot be permitted to adopt one position at trial and then . . . adopt a different position on appeal." *Szymonik* v. *Szymonik*, 167 Conn. App. 641, 650, 144 A.3d 457, cert. denied, 323 Conn. 931, 150 A.3d 232 (2016). Similarly, this court has stated that "[o]rdinarily appellate review is not available to a party who follows one strategic path at trial and another on appeal, when the original strategy does not produce the desired result. . . . To allow the [party] to seek reversal now that his trial strategy has failed would amount to allowing him to induce potentially harmful error, and then ambush the [opposing party and the court] with that claim on appeal." (Internal quotation marks omitted.) *Nweeia* v. *Nweeia*, 142 Conn. App. 613, 620, 64 A.3d 1251 (2013). In this case, to permit the plaintiff to challenge the trial court's financial orders because they did not rely on evidence of the defendant's net income after the plaintiff asked the court to rely on her calculation of that income, and the court entered the very orders the plaintiff requested, would amount to sanctioning a trial by ambuscade, which we will not do.

"[A] court must base its child support and alimony orders on the available net income of the parties . . . . Whether . . . an order falls within this prescription must be analyzed on a case-by-case basis. Thus, while

our decisional law in this regard consistently affirms the basic tenet that support and alimony orders must be based on net income, the proper application of this principle is context specific. . . . [T]he trial court is not required to make specific reference to the criteria that it considered in making its decision." (Internal quotation marks omitted.) *Ray* v. *Ray*, 177 Conn. App. 544, 557, 173 A.3d 464 (2017). In the specific factual and procedural context of this case, we find no error in the trial court's reliance on the net income information provided to it by the plaintiff.

The judgment is affirmed.

In this opinion the other judges concurred.

WACHOVIA MORTGAGE, FSB *v.* PAWEL TOCZEK ET AL.
(AC 42225)

Alvord, Keller, Elgo, Bright and Moll, Js.

Syllabus

The plaintiff W Co. sought to foreclose a mortgage on certain real property owned by the defendant T. After T quitclaimed his interest in the property to A, the trial court granted A's motion to intervene as a defendant. Thereafter, F Co. was substituted as the plaintiff, and the trial court rendered a judgment of strict foreclosure in favor of F Co., from which A appealed to this court, which affirmed the judgment and remanded the case to the trial court for the purpose of setting new law days. Subsequently, the trial court granted F Co.'s motion to reset the law days in accordance with this court's remand order and set new law days, and A appealed to this court. Following the trial court's issuance of an order terminating the appellate stay for any subsequent appeals, this court dismissed A's appeal as frivolous and granted her motion for review of the trial court's order terminating the appellate stay but denied the relief requested therein. A then timely filed motions for reconsideration en banc of the dismissal of the appeal and the denial of relief from the termination of the appellate stay. While A's motions for reconsideration en banc were still pending before this court, the trial court granted F Co.'s motion to reset the law days and set the first law day for December 4, 2018. Thereafter, A appealed to this court challenging the trial court's order resetting the law days, this court denied her motions

for reconsideration en banc, and F Co. filed a motion to dismiss the appeal. A subsequently filed a motion to open the judgment of strict foreclosure and to extend the law days, which the trial court denied. The trial court thereafter denied A's motion to reargue, and A amended her appeal to challenge the denial of those motions. This court then ordered, sua sponte, the parties to file memoranda addressing the issue of whether the trial court's order resetting the law days should be summarily reversed as being in contravention of the appellate stay. Thereafter, F Co. filed a motion to dismiss the fourth appeal and the amended appeal as moot and the amended appeal as frivolous. *Held* that the trial court acted in contravention of the appellate stay when it granted F Co.'s motion to reset the law days and set the law days: pursuant to the binding authority of *RAL Management, Inc.* v. *Valley View Associates* (278 Conn. 672), our Supreme Court held that resetting law days while an appellate stay is in effect violates the stay and cannot be given any legal effect because doing so is an action to carry out or to enforce the judgment pending appeal, the record revealed that the appellate stay here was in effect on October 15, 2018, when the trial court granted F Co.'s motion and set the law days, and although the trial court had granted F Co.'s motion to terminate the appellate stay, A filed a timely motion for review on July 16, 2018, which continued the appellate stay, and, therefore, the trial court violated the stay when it reset the law days during the period of time when A's motion for reconsideration of this court's denial of the relief requested in her motion for review was still pending; moreover, F Co. could not prevail on its claim that because this court denied A's motion for reconsideration, the stay that had terminated when this court initially denied the relief requested in A's motion for review was never revived or brought back to life, as that claim ignored the plain language of the rule of practice (§ 71-6) that provides that any stay of proceedings remains in effect during the period of time for filing a motion for reconsideration and, if such a motion is filed, until it is denied, and it was clear pursuant to *RAL Management, Inc.*, that resetting the law days while the stay was pending was in contravention of the stay, regardless of whether this court ultimately granted the motion for reconsideration; accordingly, the motion to dismiss the appeal was denied and the judgment granting the F Co.'s motion to reset the law days and setting the law days could not stand, and the motion to dismiss the amended appeal as frivolous was granted.

Argued March 6—officially released May 14, 2019

Procedural History

Action to foreclose a mortgage on certain real property owned by the named defendant, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Mintz, J.*, granted

the motion to intervene as a party defendant filed by Aleksandra Toczek; thereafter, Wells Fargo Bank, N.A., was substituted as the plaintiff; subsequently, the court rendered a judgment of strict foreclosure, from which the defendant Aleksandra Toczek appealed to this court, which dismissed the appeal; thereafter, the court, *Mintz*, *J.*, granted the substitute plaintiff's motion to open the judgment and to extend the law days and rendered a judgment of strict foreclosure, from which the defendant Aleksandra Toczek appealed to this court, which affirmed the judgment and remanded the case for the purpose of setting new law days; subsequently, the court, *Genuario*, *J.*, granted the substitute plaintiff's motion to reset the law days and set new law days, and the defendant Aleksandra Toczek appealed to this court; thereafter, the court, *Genuario*, *J.*, issued an order terminating the automatic appellate stay for any subsequent appeals; subsequently, this court dismissed the appeal and granted the motion for review filed by the defendant Aleksandra Toczek but denied the relief requested therein; thereafter, the defendant Aleksandra Toczek filed motions for reconsideration en banc; subsequently, the court, *Genuario*, *J.*, granted the substitute plaintiff's motion to reset the law days and set new law days, and the defendant Aleksandra Toczek appealed to this court; thereafter, this court denied the defendant Aleksandra Toczek motions for reconsideration en banc; subsequently, the substitute plaintiff filed a motion to dismiss the appeal; thereafter, the court, *Genuario*, *J.*, denied the motion to open the judgment and to extend the law days filed by the defendant Aleksandra Toczek; subsequently, the court, *Genuario*, *J.*, denied the motion to reargue filed by the defendant Aleksandra Toczek, and the defendant Aleksandra Toczek filed an amended appeal; thereafter, the substitute plaintiff filed a motion to dismiss the appeal and the amended appeal. *Reversed; further proceedings; motion to dismiss appeal denied; amended appeal dismissed.*

Aleksandra Toczek, self-represented, the appellant (intervening defendant).

David M. Bizar, with whom, on the memorandum, was *J. Patrick Kennedy*, for the appellee (substitute plaintiff).

Opinion

BRIGHT, J. In this foreclosure action, the self-represented defendant, Aleksandra Toczek,[1] appeals from the judgments of the trial court granting the motion of the plaintiff Wells Fargo Bank, N.A.,[2] to reset the law days and denying her motions to open the judgment of strict foreclosure and extend the law days and to reargue. On November 2, 2018, the plaintiff filed a motion to dismiss the appeal as frivolous. On February 14, 2019, the plaintiff filed a second motion to dismiss this appeal as moot and the amended appeal as moot and frivolous. That motion followed this court's order of February 4, 2019, in which we raised the question of whether the trial court's order resetting the law days should be summarily reversed as being in contravention of the appellate stay. After considering the parties' written submissions on that question and hearing oral argument on the matter, we conclude that, under binding authority from our Supreme Court, the trial court acted in contravention of the appellate stay when it reset the law days. We, therefore, deny the plaintiff's motion to dismiss the appeal and reverse the court's judgment granting the plaintiff's motion to reset the law days and setting the law days. We agree, however, that the defendant's amended appeal is frivolous and, therefore,

[1] The complaint named Pawel Toczek and National City Bank as the defendants. After Pawel Toczek quitclaimed his interest in the property to her, Aleksandra Toczek filed a motion to intervene, which the court granted. We refer in this opinion to Aleksandra Toczek as the defendant.

[2] Wachovia Mortgage, FSB (Wachovia), commenced this foreclosure action. In June, 2013, the court granted Wachovia's motion to substitute Wells Fargo Bank, N.A. (Wells Fargo), as the plaintiff after Wachovia merged into Wells Fargo. We refer in this opinion to Wells Fargo as the plaintiff.

grant the plaintiff's motion to dismiss the amended appeal.

The following procedural history is relevant to our analysis. In November, 2008, the original plaintiff, Wachovia Mortgage, FSB, filed this action seeking to foreclose a mortgage on real property located at 15 Kenilworth Drive West in Stamford. In February, 2014, the court, *Mintz*, *J.*, rendered a judgment of strict foreclosure. The defendant appealed to this court, which dismissed her appeal for lack of diligence.

The trial court then reentered the judgment of strict foreclosure in February, 2015. On appeal, this court affirmed the judgment and remanded the case to the trial court for the purpose of setting new law days. *Wachovia Bank*, *FSB* v. *Toczek*, 170 Conn. App. 904, 155 A.3d 830 (2017), cert. denied, 328 Conn. 914, 180 A.3d 961 (2018). The plaintiff filed a motion for order to reset the law days in accordance with this court's remand order, which the court, *Genuario*, *J.*, granted, setting the first law day for July 24, 2018.

On May 18, 2018, pursuant to Practice Book § 61-11 (d) and (e), the plaintiff filed a motion to terminate the automatic appellate stay in § 61-11 (a) prospectively for any subsequent appeals filed,[3] which the court granted. On July 10, 2018, the defendant filed a third appeal from the court's resetting the law days. On July 16, 2018, the defendant filed a timely motion for review of the order of the trial court terminating the appellate stay. The plaintiff thereafter filed a motion to dismiss the third appeal as frivolous.

[3] "It is axiomatic that, with limited exceptions, an appellate stay of execution arises from the time a judgment is rendered until the time to file an appeal has expired. Practice Book § 61-11 (a). If an appeal is filed, any appellate stay of execution in place during the pendency of the appeal period continues until there is a final disposition of the appeal or the stay is terminated. Practice Book § 61-11 (a) and (e)." *Sovereign Bank* v. *Licata*, 178 Conn. App. 82, 99, 172 A.3d 1263 (2017).

On September 6, 2018, a panel of this court granted the plaintiff's motion to dismiss the third appeal as frivolous and granted the defendant's motion for review but denied the relief requested therein. On Monday, September 17, 2018, the defendant filed timely motions for reconsideration en banc of the September 6, 2018 decisions dismissing the third appeal as frivolous and denying relief from the termination of the appellate stay. On October 31, 2018, this court en banc denied the defendant's motions for reconsideration of the dismissal of the third appeal and the defendant's motion for review.

On September 14, 2018, before the period for seeking reconsideration under Practice Book § 71-5 had expired, the plaintiff filed in the trial court a motion to reset the law days following this court's dismissal of the third appeal as frivolous. The defendant filed an objection, arguing that the trial court could not reset the law days during the pendency of her motions for reconsideration en banc of the dismissal of the third appeal and the prospective termination of the appellate stay. On October 15, 2018, while the defendant's motions for reconsideration en banc were still pending before this court, the trial court granted the plaintiff's motion to reset the law days and set the first law day for December 4, 2018. The defendant filed the present, and fourth, appeal on October 25, 2018, challenging the October 15, 2018 order of the trial court resetting the law days, and, thereafter, the plaintiff filed a motion to dismiss the appeal as frivolous.

On November 26, 2018, the defendant filed a motion to open the judgment of strict foreclosure and extend the law days, which the trial court denied. The defendant filed a motion to reargue, which the court denied. The defendant amended her fourth appeal to add the trial court's denial of her motions to open and to reargue. The plaintiff then filed a motion to dismiss the

original fourth appeal and the amended appeal as moot and the amended appeal as frivolous.

On February 4, 2019, this court issued the following order: "[T]he parties are hereby ordered, sua sponte, to file memoranda not to exceed ten pages, on or before February 14, 2019, to give reasons, if any, why the trial court's October 15, 2018 order resetting the law days should not be summarily reversed and the matter remanded to the trial court to set new law days, as the trial court's order was in contravention of the appellate stay in effect while the defendant Aleksandra Toczek's September 17, 2018 timely motion to reconsider the motion for review of the termination of stay was pending. See *RAL Management, Inc.* v. *Valley View Associates*, [278 Conn. 672, 682–85, 899 A.2d 586 (2006)]; Practice Book §§ 71-5 and 71-6." Both parties filed the requested memoranda, and we heard argument on the issue on March 6, 2019.

We set forth the following legal principles that guide our review. "Mootness implicates [the] court's subject matter jurisdiction and is thus a threshold matter for us to resolve. . . . It is a well-settled general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . An actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal. . . . When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot. . . . Because mootness implicates subject matter jurisdiction, it presents a question of law over which our review is plenary." (Citation omitted; internal quotation marks omitted.) *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 502, 506–507, 970 A.2d 578 (2009).

"Connecticut follows the title theory of mortgages, which provides that on the execution of a mortgage on real property, the mortgagee holds legal title and the mortgagor holds equitable title to the property. . . . As the holder of equitable title, also called the equity of redemption, the mortgagor has the right to redeem the legal title on the performance of certain conditions contained within the mortgage instrument. . . . The equity of redemption gives the mortgagor the right to redeem the legal title previously conveyed by performing whatever conditions are specified in the mortgage, the most important of which is usually the payment of money. . . .

"Generally, foreclosure means to cut off the equity of redemption, the equitable owner's right to redeem the property. . . . The equity of redemption can be cut off either by sale or by strict foreclosure. . . . In Connecticut, strict foreclosure is the rule, foreclosure by sale the exception." (Citations omitted; internal quotation marks omitted.) *Ocwen Federal Bank, FSB* v. *Charles*, 95 Conn. App. 315, 322–23, 898 A.2d 197, cert. denied, 279 Conn. 909, 902 A.2d 1069 (2006). "Under our law, an action for strict foreclosure is brought by a mortgagee who, holding legal title, seeks not to enforce a forfeiture but rather to foreclose an equity of redemption unless the mortgagor satisfies the debt on or before his law day. . . . Accordingly, [if] a foreclosure decree has become absolute by the passing of the law days, the outstanding rights of redemption have been cut off and the title has become unconditional in the plaintiff, with a consequent and accompanying right to possession. The qualified title which the plaintiff had previously held under his mortgage had become an absolute one. . . . In other words, if the defendant's equity of redemption was extinguished by the passing of the law days, we can afford no practical relief by reviewing the rulings of the trial court now challenged on appeal, as doing so would have no practical effect or alter the substantive rights of the parties." (Citations

omitted; internal quotation marks omitted.) *Sovereign Bank* v. *Licata*, 178 Conn. App. 82, 97, 172 A.3d 1263 (2017).

There is no question that the December 4, 2018 law day set by the court on October 15, 2018, passed without the defendant redeeming her interest in the property. Thus, unless the running of the law day was stayed, title to the property has passed to the plaintiff and the defendant's appeal from the judgment granting the motion to reset the law days is moot. There also is no question that an appellate stay was in effect on October 15, 2018, when the trial court set the new law day of December 4, 2018. Although the trial court granted the plaintiff's motion to terminate the appellate stay, the defendant filed a timely motion for review on July 16, 2018, which continued the appellate stay. See Practice Book § 61-14.[4] Following this court's denial of the relief requested in that motion, the defendant filed, on September 17, 2018, a timely motion for reconsideration en banc of the denial of the relief requested in her motion for review, and, therefore, an appellate stay was in effect when the trial court reset the law days on October 15, 2018. See Practice Book § 71-6.[5] This court

[4] Practice Book § 61-14 provides in relevant part: "The sole remedy of any party desiring the court to review an order concerning a stay of execution shall be by motion for review under Section 66-6. Execution of an order of the court terminating a stay of execution shall be stayed for ten days from the issuance of notice of the order, and if a motion for review is filed within that period, the order shall be stayed pending decision of the motion, unless the court having appellate jurisdiction rules otherwise. . . ."

[5] The plaintiff argues that pursuant to Practice Book § 61-14, any appellate stay ended when the court denied the defendant's motion for review. According to the plaintiff, because § 61-14 provides that a motion for review is a party's *sole* remedy from a trial court's decision terminating an appellate stay, a motion for reconsideration pursuant to Practice Book § 71-5, does not extend the stay. The plaintiff's argument is without merit. Practice Book § 71-6 expressly provides in relevant part that "[u]nless the chief justice or chief judge shall otherwise direct, *any* stay of proceedings which was in effect during the pendency of the appeal shall continue until the time for filing a motion for reconsideration has expired, and, if a motion is filed, until twenty days after its disposition, and, if it is granted, until the appeal is finally determined. . . ." (Emphasis added.) Because § 71-6 applies to any stay of proceedings, it necessarily applies to a stay under § 61-14.

denied the motion for reconsideration en banc on October 31, 2018, and notice issued that same day. The stay remained in effect for twenty days, until November 20, 2018. See Practice Book §§ 63-2 and 71-6.

The question, therefore, is whether the trial court's order resetting the law days violated the appellate stay. On the basis of our Supreme Court's decision in *RAL Management, Inc.* v. *Valley View Associates*, supra, 278 Conn. 672, we conclude that it did. In *RAL Management, Inc.*, the court addressed whether the opening of a judgment of strict foreclosure to reset the law days violated the appellate stay that was in effect. In particular, the court stated that the threshold issue in the case was "whether the trial court properly opened the judgment while the appellate stay was in effect merely to change the law days" and concluded "that such an action was improper . . . ." Id., 682. The court reasoned that "the law days are ineffective pending the stay because to treat them otherwise would carry out the judgment in violation of the stay. It necessarily follows, therefore, that if the law days have no legal effect and necessarily will lapse pending the appeal . . . any change to those dates pending the appeal similarly has no effect. Indeed, the rules of practice anticipate such a circumstance by providing specific authority for the trial court to set new law days if the court's judgment is affirmed on appeal. See Practice Book § 17-10." (Citation omitted; footnotes omitted.) *RAL Management, Inc.* v. *Valley View Associates*, supra, 683–84.

The plaintiff argues that *RAL Management, Inc.*, is inapplicable to this case for two reasons. First, the plaintiff correctly notes that in *RAL Management, Inc.*, this court granted the defendants' motion for reconsideration and vacated the trial court's order terminating the appellate stay. Thus, the law days set by the trial court

in *RAL Management, Inc.*, could not have any effect because of this court's order reimposing the stay. In fact, our Supreme Court in *RAL Management, Inc.*, noted that the trial court's order resetting the law days "could not be given effect, however, because the Appellate Court's order vacated that order, thus reviving the stay. Therefore, the trial court's action must be viewed as either a legal nullity or an action in contravention to the appellate stay barring actions to carry out or to enforce the judgment pending appeal." Id., 684–85. According to the plaintiff, this language should be read to mean that, had this court denied the motion for reconsideration, which happened in the present case, the action of the trial court resetting the law days would have been proper.

We disagree with the plaintiff's reading of *RAL Management, Inc.* This court's decision in that case vacating the trial court's termination of the appellate stay provided an additional reason why the law days set by the trial court were ineffective. The language used by our Supreme Court in *RAL Management, Inc.*, makes clear, however, that the court viewed the resetting of the law days itself, which occurred well before this court ruled on the motion for reconsideration, as violative of the appellate stay. The court reinforced this conclusion in a footnote that immediately follows the language relied on by the plaintiff in the present case. Regarding the actions of the trial court in resetting the law days, the court stated: "We surmise that the trial court did not act knowingly in violation of the stay. The record indicates that the defendants filed their motion for reconsideration of the Appellate Court's denial of their motion for review of the trial court's decision terminating the stay on the last day permitted for filing that motion. The plaintiff represented to this court that it had received a copy of the motion for reconsideration the following

business day, after the trial court had held the hearing on the motion to open the judgment, the same day the court granted the motion." Id., 685 n.12. Accordingly, the trial court violated the stay when it opened the judgment and reset the law days during the period of time when the defendants could still seek reconsideration of this court's denial of the motion for review. That is the exact scenario that confronts us in this case.

Second, the plaintiff argues that by stating in *RAL Management, Inc.*, that this court's decision vacating the trial court's termination of the stay had the effect of "reviving" the stay, our Supreme Court necessarily implied that the stay ceased to exist until this court brought it back to life. Consequently, the plaintiff argues that because in this case we denied the defendant's motion for reconsideration, we never revived or brought back to life the stay that terminated when we initially denied the relief requested in the defendant's motion for review. We are not persuaded. First, this argument ignores the plain language of Practice Book § 71-6, which provides that any stay of proceedings remains in effect during the period of time for filing a motion for reconsideration, and, if such a motion is filed, until it is denied. See footnote 5 of this opinion. Second, the plaintiff's reliance on this one word in the Supreme Court's opinion ignores all of the other language noted previously in this opinion, which clearly provides that resetting the law days while the stay was in effect was in contravention of the stay, regardless of whether this court ultimately granted the motion for reconsideration.

We agree that the actions that are prohibited during the appellate stay are only those that in some way execute or effectuate the judgment. See *Ruiz* v. *Victory Properties, LLC*, 180 Conn. App. 818, 832–33, 184 A.3d 1254 (2018) ("trial courts in this state continue to have the power to conduct proceedings and to act on motions

filed during the pendency of an appeal provided they take no action to enforce or carry out a judgment while an appellate stay is in effect"). Consequently, our Supreme Court repeatedly has held that the law days set in a judgment of strict foreclosure cannot be given any legal effect while the appellate stay is in effect. See, e.g., *Farmers & Mechanics Savings Bank* v. *Sullivan*, 216 Conn. 341, 347–48, 579 A.2d 1054 (1990), and cases cited therein. In *RAL Management, Inc.*, the court extended this principle to resetting law days while the appellate stay is in effect because doing so is an action to carry out or to enforce the judgment pending appeal. *RAL Management, Inc.*, v. *Valley View Associates*, supra, 278 Conn. 685. Applying this holding to the facts of this case, we conclude that the trial court's October 15, 2018 order resetting the law days was in contravention of the appellate stay then in place. Consequently, the judgment of the trial court is reversed. Furthermore, because we conclude that the trial court erred in resetting the law days while the appellate stay was in effect, we also deny the plaintiff's motion to dismiss this appeal but grant the motion to dismiss the amended appeal as frivolous. The case is remanded to the trial court for the setting of new law days now that (1) the defendant's third appeal has been finally disposed of, and (2) we have denied the defendant's motion for reconsideration en banc of our denial of relief on her motion to review the trial court's order prospectively terminating any future appellate stays in this matter.

The motion to dismiss the appeal is denied, the motion to dismiss the amended appeal as frivolous is granted and the judgment granting the plaintiff's motion to set new law days is reversed and the case is remanded for the purpose of setting new law days.

In this opinion the other judges concurred.

RANIA NAHLAWI *v.* MOHAMAD NAHLAWI
(AC 40793)

Lavine, Bright and Bear, Js.

Syllabus

The defendant appealed to this court from the judgment of the trial court dissolving his marriage to the plaintiff and issuing certain financial and child custody orders. The defendant claimed that the trial court improperly awarded periodic alimony to the plaintiff and ordered him to transfer certain real property to her, and that the court improperly entered a final child custody and visitation order in its judgment that referenced a pendente lite parenting plan that the parties had agreed on, but which had been superseded by a subsequent pendente lite parenting plan that the parties and a different trial court had intended would become the final order of the court. *Held* that the trial court erred in entering a final child custody and visitation order that incorporated the pendente lite parenting plan stipulation that had been superseded by the subsequent pendente lite parenting plan, as there was no dispute that the parties had agreed that the later parenting plan would be incorporated into the final judgment, and the plaintiff indicated that she would not object to a correction of that mistake; moreover, the defendant's claims that challenged the trial court's alimony and property orders were inadequately briefed and, thus, were not reviewable.

Argued March 4—officially released May 14, 2019

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Hon. Howard T. Owens, Jr.*, judge trial referee, entered an order in accordance with the parties' pendente lite parenting plan stipulation; thereafter, the court, *Maureen M. Murphy, J.*, entered an order in accordance with the parties' pendente lite parenting plan stipulation; subsequently, the matter was tried to the court, *Sommer, J.*; judgment dissolving the marriage and granting certain other relief in accordance with the parties' pendente lite parenting plan stipulation, from which the defendant appealed to this court. *Reversed in part; judgment directed.*

Roy W. Moss, for the appellant (defendant).

George J. Markley, for the appellee (plaintiff).

Opinion

BEAR, J. The defendant, Mohamad Nahlawi, appeals from the judgment of the trial court dissolving his marriage to the plaintiff, Rania Nahlawi. On appeal, the defendant claims that the court erred in (1) awarding periodic alimony in the absence of any finding as to the actual amount of the parties' incomes, expenses and liabilities, or the value of their respective assets, (2) ordering the transfer of real property without any finding as to the actual value thereof, and (3) entering a final child custody and visitation order that referenced a pendente lite parenting plan stipulation that had been superseded by a subsequent pendente lite parenting plan stipulation that the parties and the court had intended would become the final order. The plaintiff concedes that the court's child custody and visitation order should have referred to the February 28, 2017 parenting plan stipulation rather than the December 8, 2016 stipulation that was referenced in the judgment. We reverse the judgment of the court with respect to the child custody and visitation order. We affirm the judgment in all other respects.

The defendant, in his brief before this court, presents no facts and virtually no legal analysis in support of his first two claims. With respect to the alimony claim, the defendant's entire analysis and argument is that "[t]he court made no findings as to the amount of income or value of the parties' assets. It should be noted [that] the court did not find any concealment or misrepresentation of income, assets, or other financial circumstances on the part of the defendant. The court has broad discretion only so long as it considers all relevant statutory criteria. . . . Under the foregoing circumstances, the award of periodic alimony was unsupported by the record, failed to adhere to the above comprehensive statutory criteria [in General Statutes § 46b-82], and therefore constituted an abuse of discre-

tion."[1] (Citation omitted.) His analysis of his real property claim is similarly limited.

It is well established that "[w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited." (Citation omitted; internal quotation marks omitted.) *State* v. *Buhl*, 321 Conn. 688, 724, 138 A.3d 868 (2016); see also *Estate of Rock* v. *University of Connecticut*, 323 Conn. 26, 33, 144 A.3d 420 (2016) ("[c]laims are inadequately briefed when they . . . consist of conclusory assertions . . . with no mention of relevant authority and minimal or no citations from the record" [internal quotation marks omitted]). Accordingly, we decline to address the defendant's first two claims on the ground that they are inadequately briefed.

The defendant next claims that the court erred in entering a final child custody and visitation order that referenced a pendente lite parenting plan stipulation that had been superseded by a subsequent pendente lite parenting plan stipulation that the parties and the court had intended would become the final order. The plaintiff concedes that the court incorrectly incorporated the earlier stipulation in its order, and indicated both in her brief and during oral argument before this court that she would not object to a correction of this mistake.

[1] In its memorandum of decision the court set forth the § 46b-82 factors and considered those factors in determining the amount and duration of the alimony.

In its memorandum of decision filed August 9, 2017, the court incorporated a parenting plan that had been agreed to by the parties and made an order of the court, *Hon. Howard T. Owens, Jr.*, judge trial referee, on December 8, 2016. Pursuant to this plan, the parties were to share joint legal custody of the minor children who resided with the plaintiff, the defendant was to have visitation rights as arranged by the parties, and neither party was to take the children outside the state of Connecticut without the agreement of the other parent or an order of the court. Although the parties initially had agreed to that plan, there is no dispute that the parties subsequently agreed that the later parenting plan dated and made an order of the court, *Maureen M. Murphy, J.*, on February 28, 2017, would be incorporated into the final judgment. The court, however, incorrectly incorporated the earlier stipulation when rendering its final judgment.

The judgment is reversed only as to the child custody and visitation order and the case is remanded with direction to render judgment that incorporates the February 28, 2017 stipulation rather than the December 8, 2016 stipulation. The judgment is affirmed in all other respects.

In this opinion the other judges concurred.

COMMISSIONER OF TRANSPORTATION *v.* TERESA B. LAGOSZ ET AL.

(AC 40885)

Lavine, Moll and Bear, Js.

Syllabus

The defendant T appealed to the trial court, pursuant to statute (§ 13a-76), from the assessment of damages by the plaintiff, the Commissioner of Transportation, in connection with the taking, by condemnation, of certain of T's real property, on which her husband, J, operated a business. The plaintiff had deposited with the court $420,000 as compensation

for the taking of T's real property, but T claimed that the amount of compensation was inadequate. Thereafter, the parties met to mediate a settlement of the amount of the compensation to be paid to T for the taking. The plaintiff claimed that, during the third mediation session, the parties entered into an oral agreement in which T would receive a total of $600,000, less the $420,000 already paid by the plaintiff, as compensation for the taking of her real property. The plaintiff further claimed that the court spoke to T and J to ensure that they understood and accepted the terms of that agreement, and that the court then informed the plaintiff that T had agreed to those terms. Thereafter, T refused to sign the final version of the written settlement agreement, discharged her counsel, and elected to represent herself at the trial. The court held a hearing pursuant to *Audubon Parking Associates Ltd. Partnership* v. *Barclay & Stubbs, Inc.* (225 Conn. 804), to determine if the parties had reached an enforceable settlement agreement. Subsequently, the trial court rendered judgment finding that a settlement agreement was reached in the amount of $600,000, from which T appealed to this court. *Held*:

1. T could not prevail on her claim that the trial court, following the *Audubon* hearing, improperly enforced a purported settlement agreement because the agreement was not inclusive of the essential terms of the parties' agreement, namely, the relocation expenses for J's business; the issue of reimbursement expenses was not an essential term of the settlement agreement, as the only essential term of the agreement within the context of T's appeal from the plaintiff's assessment of damages pursuant to § 13a-76 was the amount of compensation to be paid to T for the taking of her real property, T did not dispute that the parties agreed to a sum of $600,000 as compensation for the taking of her real property, and compensation for business relocation expenses did not fall under the purview of § 13a-76.
2. T could not prevail on her claim that the testimony elicited during the *Audubon* hearing, including the testimony regarding relocation expenses for J's business, was unclear and ambiguous as to what the terms of the settlement agreement were and, as a result, the trial court's finding that an enforceable agreement was entered into was clearly erroneous: the testimony of T's former attorneys, the plaintiff's representatives, and J confirmed that the parties had agreed to a sum of $600,000 in compensation for the taking of T's real property, and although there was extensive testimony and discussion at the *Audubon* hearing regarding the relocation expenses of the business, those expenses were outside the scope of the § 13a-76 proceeding, which properly concerned only the issue of whether there was an agreed upon sum of $600,000 as compensation for the real property; accordingly, the trial court's findings of fact as to the terms of the settlement agreement were not clearly erroneous, and the court properly concluded that there was a legally enforceable settlement agreement between the parties in the amount of $600,000 as just compensation for the taking of T's real property.

Argued February 7—officially released May 14, 2019

Procedural History

Appeal from the plaintiff's assessment of damages filed in connection with the taking by condemnation of certain of the named defendant's real property, brought to the Superior Court in the judicial district of New Britain, where the court, *Abrams*, *J.*, rendered judgment in accordance with the parties' settlement agreement; thereafter, the court denied the named defendant's motion to reargue, and the named defendant appealed to this court. *Affirmed.*

Teresa B. Lagosz, self-represented, the appellant (named defendant).

Raul A. Rodriguez, assistant attorney general, with whom, on the brief, was *George Jepsen*, former attorney general, for the appellee (plaintiff).

Opinion

BEAR, J. The defendant Teresa B. Lagosz[1] appeals from the judgment of the trial court reassessing damages in the sum of $600,000 for the taking of her property by the plaintiff, the Commissioner of Transportation, on May 4, 2015, in connection with the improvement of the New Haven-Hartford-Springfield rail corridor. The defendant's primary claim on appeal is that the court improperly found and summarily enforced, after conducting a hearing pursuant to *Audubon Parking Associates Ltd. Partnership* v. *Barclay & Stubbs, Inc.*, 225 Conn. 804, 626 A.2d 729 (1993) (*Audubon*), an oral settlement agreement in the amount of $600,000 as just compensation for the taking by eminent domain of the

[1] The other named defendants, Bank of America, Webster Bank, MERS, the Berlin Revenue Collector, and Richard P. Healey of Rome McGuigan, P.C., did not participate in this appeal. For clarity, we refer to Teresa Lagosz as the defendant.

defendant's real property. Specifically, the defendant claims that (1) the settlement agreement was not inclusive of all the essential terms of the parties' agreement and (2) the court's finding that an enforceable agreement existed was clearly erroneous because it was based on unclear and ambiguous testimony elicited at the *Audubon* hearing.[2] Conversely, the plaintiff claims that the court, after the *Audubon* hearing, correctly concluded that there was a settlement agreement in the

[2] The defendant also raises three additional claims in her principal appellate brief.

First, without citing to any relevant legal authority, the defendant argues that the trial court improperly ordered, sua sponte, an *Audubon* hearing in lieu of commencing a trial that was scheduled, "without evidence that the parties' terms for a stipulation [agreement] had been settled on." Because the defendant does not provide any relevant case law or legal analysis to support her assertion, we consider this claim to be inadequately briefed and, therefore, we decline to address her claim. "Claims are inadequately briefed when they are merely mentioned and not briefed beyond a bare assertion. . . . Claims are also inadequately briefed when they . . . consist of conclusory assertions . . . with no mention of relevant authority and minimal or no citations from the record . . . ." (Internal quotation marks omitted.) *Estate of Rock* v. *University of Connecticut*, 323 Conn. 26, 33, 144 A.3d 420 (2016).

Second, the defendant claims that she was deprived of her right to due process as a result of the *Audubon* hearing and the subsequent judgment of the court because she was entitled to a trial to determine just compensation for the taking of her property. Our law, however, is that no trial is necessary under the circumstances of this case: "To hold that a jury trial is a necessary predicate to enforcement of a settlement agreement would undermine the very purpose of the agreement." *Audubon*, supra, 225 Conn. 812. "When parties agree to settle a case, they are effectively contracting for the right to avoid a trial." (Emphasis omitted.) Id.

In *Bragg* v. *Weaver*, 251 U.S. 57, 59, 40 S. Ct. 62, 64 L. Ed. 135 (1919), the United States Supreme Court noted that "it is essential to due process that the mode of determining the compensation be such as to afford the owner an opportunity to be heard." In the present case, the defendant had an opportunity to be heard in the *Audubon* hearing and to offer evidence to the court in support of her positions, which occurred. "It is fundamental that property cannot be taken without procedural due process as guaranteed by the fourteenth amendment to the constitution of the United States and article first, § 10, of the constitution of Connecticut. . . . Due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner . . . but does not mandate any specific form of proce-

amount of $600,000 that was just compensation for the taking of the defendant's real property. We agree with the plaintiff and, accordingly, affirm the judgment of the trial court.

The following facts and procedural history are undisputed or uncontested. On May 4, 2015, pursuant to General Statutes § 13b-36[3] and General Statutes (Rev. to 2015) § 13a-73,[4] the plaintiff took by eminent domain

dure; rather, it protects substantive rights." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Fermont Division* v. *Smith*, 178 Conn. 393, 397, 423 A.2d 80 (1979).

Third, the defendant also appears to claim that she was deprived of her right to due process because of a supposed lack of notice of the taking. To the extent that the defendant claims a defect in the taking itself, we note that "[i]f a condemnee wants to challenge the validity of the condemnation, he or she must bring a separate action for injunctive relief." *Commissioner of Transportation* v. *Larobina*, 92 Conn. App. 15, 29, 882 A.2d 1265, cert. denied, 276 Conn. 931, 889 A.2d 816 (2005). As a result, we conclude that the defendant's claim that she was deprived of due process is without merit.

[3] General Statutes § 13b-36 (a) provides: "The commissioner may purchase or take and, in the name of the state, may acquire title in fee simple to, or any lesser estate, interest or right in, any land, buildings, equipment or facilities which the commissioner finds necessary for the operation or improvement of transportation services. The determination by the commissioner that such purchase or taking is necessary shall be conclusive. Such taking shall be in the manner prescribed in subsection (b) of section 13a-73 for the taking of land for state highways." Although subsection (c) of § 13b-36 was amended in 2018, that amendment has no bearing on this appeal. For purposes of clarity, we refer to the current revision of the statute.

[4] Subsections (a) and (b) of General Statutes (Rev. to 2015) § 13a-73 govern the taking of land for state highways and provide in relevant part: "(a) 'Real property,' as used in this section, includes land and buildings and any estate, interest or right in land.

"(b) The commissioner may take any land he finds necessary for the layout, alteration, extension, widening, change of grade or other improvement . . . and the owner of such land shall be paid by the state for all damages, and the state shall receive from such owner the amount or value of all benefits, resulting from such taking, layout, alteration, extension, widening, change of grade or other improvement. The use of any site acquired . . . by condemnation shall conform to any zoning ordinance or development plan in effect for the area in which such site is located, provided the commissioner may be granted any variance or special exception as may be made pursuant to the zoning ordinances and regulations of the town in which any such site is to be acquired. The assessment of such damages and of such benefits

real property owned by the defendant located at 468 Norton Lane in Berlin. The real property consisted of approximately 11.64 acres, including all buildings, improvements and appurtenances thereon. The defendant's husband, Joseph Lagosz, also operated a business in one of the buildings on the real property. On the date of the taking, the plaintiff deposited with the court $420,000 in compensation for the taking.

On September 28, 2015, the defendant appealed to the court from the plaintiff's assessment of damages.

shall be made by the commissioner and filed by him with the clerk of the superior court for the judicial district in which the land affected is located. The commissioner shall give notice of such assessment to each person having an interest of record therein by mailing to each a copy of the same, postage prepaid, and, at any time after such assessment has been made by the commissioner, the physical construction of such layout, alteration, extension, widening, maintenance storage area or garage, change of grade or other improvement may be made. If notice cannot be given to any person entitled thereto because his whereabouts or existence is unknown, notice may be given by publishing a notice at least twice in a newspaper published in the judicial district and having a daily or weekly circulation in the town in which the property affected is located. Any such published notice shall state that it is a notice to the last owner of record or his surviving spouse, heirs, administrators, assigns, representatives or creditors if he is deceased, and shall contain a brief description of the property taken. Notice shall also be given by mailing to each such person at his last-known address, by registered or certified mail, a copy of such notice. If, after a search of the land and probate records, the address of any interested party cannot be found, an affidavit stating such facts and reciting the steps taken to establish the address of any such person shall be filed with the clerk of the court and accepted in lieu of service of such notice by mailing the same to the last known address of such person. Upon filing an assessment with the clerk of the court, the commissioner shall forthwith sign and file for record with the town clerk of the town in which such real property is located a certificate setting forth the fact of such taking, a description of the real property so taken and the names and residences of the owners from whom it was taken. Upon the filing of such certificate, title to such real property in fee simple shall vest in the state of Connecticut, except that, if it is so specified in such certificate, a lesser estate, interest or right shall vest in the state. The commissioner shall permit the last owner of record of such real property upon which a residence is situated to remain in such residence, rent free, for a period of one hundred twenty days after the filing of such certificate."

See General Statutes § 13a-76.[5] In that appeal, she stated that she was "aggrieved by [the $420,000] assessment of damages because the same is inadequate." No other claims were set forth in her appeal.

On November 3, 2015, the plaintiff filed his answer denying that the assessment was inadequate. On November 6, 2015, a certificate of closed pleadings and a claim to the trial list were filed. The defendant subsequently was ordered to provide an appraisal of the real property to the plaintiff on or before April 1, 2016. The parties met on three occasions in June, 2016, in an attempt to mediate a settlement on the amount of the compensation to be paid to the defendant for the taking.

The plaintiff asserts that, during the third of those mediation sessions, the parties entered into an oral agreement in which the defendant would receive a total of $600,000, less the $420,000 already paid by the plaintiff, as compensation for the taking of her real property and, in turn, the defendant and her husband would vacate the property by August 15, 2016, without having to pay any postcondemnation use and occupancy charges.[6] The plaintiff further states that the court, during the third mediation session, spoke to the defendant and her husband to ensure that they understood and accepted the terms of that agreement. The court then informed the plaintiff that the defendant had agreed to those terms. After the reported settlement, the plaintiff and the defendant's counsel prepared drafts of a written settlement agreement memorializing the agreement reached through the mediation, but the defendant

[5] General Statutes § 13a-76 provides in relevant part: "Any person claiming to be aggrieved by the assessment of such special damages or such special benefits by the commissioner may . . . apply to the superior court . . . for a reassessment of such damages or such benefits so far as the same affect such applicant. . . ."

[6] The defendant and her husband vacated the property on September 16, 2016, without having to pay any postcondemnation use and occupancy charges.

refused to sign the final version of the agreement, and the case was scheduled for trial.[7] The defendant subsequently discharged her counsel and elected to represent herself at the trial. Her former counsel filed a motion to withdraw and requested a status conference.

On July 21, 2017, the court, after the status conference, ordered, sua sponte, that an *Audubon* hearing take place to determine if the parties had reached an enforceable settlement agreement, and the court postponed any trial until after it made its determination. On August 14, 2017, the court commenced the *Audubon* hearing. The defendant, her husband, and the defendant's former attorneys were present at the hearing. During the hearing, the following colloquy between the court and Richard P. Healey, one of the defendant's former attorneys, occurred:

"The Court: Is it your position that there was no settlement agreement?

"[Attorney Healey]: No.

"The Court: Okay.

"[Attorney Healey]: No, not at all."

Attorney Healey's cocounsel, John Bradley, and the court had the following colloquy:

"[Attorney Bradley]: I definitely agree, Your Honor . . . that the settlement was for—they were going to pay an additional $180,000 over what they—

"The Court: In addition to the [$420,000] that was already on deposit.

"[Attorney Bradley]: Right. . . . So the essential terms, in my view, was the additional [$180,000], waiver of the use and occupancy [which occurred]."

[7] We note that "the fact that the settlement agreement was not reduced to writing or signed by the parties does not preclude it from binding the parties." *Nanni* v. *Dino Corp.*, 117 Conn. App. 61, 67, 978 A.2d 531 (2009).

Attorney Healey told the court that the only obligation of the defendant and her husband under the settlement agreement "was to vacate the [real] property at a date that was acceptable to the state; they have done that."

The court also stated the following:

"The Court: My memories have come flying back and comport with everyone's here; is that we did reach an agreement as to the money. The other stuff was a little—a little more amorphous, but the other stuff is off the table now.

"[Attorney Healey]: Right.

"The Court: I mean, that has been completed. The agreement was $600,000 . . . . I don't think I can reopen negotiations. The only thing I'm allowed to determine is whether there was a deal. And I'm being told there was a deal. I remember there was a deal."

The defendant's husband testified in the defendant's presence and on her behalf at the *Audubon* hearing. In response to a question by the court, he stated that the $600,000 in total payment for the real property was agreed to by the parties.

On August 14, 2017, after the *Audubon* hearing concluded, the court rendered judgment finding that a settlement agreement was reached in the amount of $600,000: "The court finds that a settlement was reached in this matter in the amount of $600,000. Any settlement funds as yet unpaid to the defendant are hereby ordered to be paid." On September 5, 2017, the defendant filed a motion to reargue, which was denied by the court on September 7, 2017. On September 27, 2017, the defendant filed the present appeal. Additional facts will be set forth as necessary.

Before we address the defendant's claims, we first set forth the applicable standard of review and relevant

legal principles. "Because the [defendant challenges] the trial court's legal conclusion that the agreement was summarily enforceable, we must determine whether that conclusion is legally and logically correct and whether [it finds] support in the facts set out in the [record]." (Internal quotation marks omitted.) *Kidder* v. *Read*, 150 Conn. App. 720, 733, 93 A.3d 599 (2014). Our standard of review of legal questions is plenary. See *State* v. *Hanisko*, 187 Conn. App. 237, 245, 202 A.3d 375 (2019).

In *Audubon*, our Supreme Court determined that a settlement agreement resolving the issues in a pending case may be enforced prior to and without the necessity of a trial: "A trial court has the inherent power to enforce summarily a settlement agreement as a matter of law when the terms of the agreement are clear and unambiguous. . . . Agreements that end lawsuits are contracts, sometimes enforceable in a subsequent suit, but in many situations enforceable by entry of a judgment in the original suit. A court's authority to enforce a settlement by entry of judgment in the underlying action is especially clear where the settlement is reported to the court during the course of a trial or other significant courtroom proceedings.[8] . . .

[8] The rule also includes agreements reached outside of formal court proceedings, but during pending litigation before the court. See *Ackerman* v. *Sobol Family Partnership, LLP*, 298 Conn. 495, 499–501, 4 A.3d 288 (2010) (settlement agreement reached after mediation session through out-of-court letters and phone calls); see also *Matos* v. *Ortiz*, 166 Conn. App. 775, 806–807, 144 A.3d 425 (2016) ("In the majority of cases where settlement agreements have been summarily enforced pursuant to *Audubon*, the agreement at issue was either read directly into the record or otherwise reported to the court. In the cases where a settlement agreement was not directly presented to the court in full, it nevertheless was in some sense placed before the court during pending litigation." [Footnote omitted.]); *Tirreno* v. *The Hartford*, 161 Conn. App. 678, 681, 129 A.3d 735 (2015) (terms of oral settlement agreement memorialized outside of court in series of e-mails between parties and testified to by counsel).

"In *Janus Films, Inc.* v. *Miller*, [801 F.2d 578, 583 (2d Cir. 1986)], Judge Newman, writing for the majority of the Second Circuit Court of Appeals, noted the important policy behind a court's power to enforce summarily a settlement agreement: Due regard for the proper use of judicial resources requires that a trial judge proceed with entry of a settlement judgment after affording the parties an opportunity to be heard as to the precise content and wording of the judgment, rather than resume the trial and precipitate an additional lawsuit for breach of a settlement agreement. This authority should normally be exercised whenever settlements are announced in the midst of a trial.

"Summary enforcement is not only essential to the efficient use of judicial resources, but also preserves the integrity of settlement as a meaningful way to resolve legal disputes. When parties agree to settle a case, they are effectively contracting for the right to avoid a trial. The asserted right not to go to trial can appropriately be based on a contract between the parties. . . . The essence of that right [cannot] be vindicated effectively after the trial has occurred. . . . To hold that a jury trial is a necessary predicate to enforcement of a settlement agreement would undermine the very purpose of the agreement." (Citations omitted; emphasis omitted; footnote added; internal quotation marks omitted.) *Audubon*, supra, 225 Conn. 811–12.

I

We first address the defendant's claim that the court, following the *Audubon* hearing, improperly enforced a purported settlement agreement because the agreement was not inclusive of the essential terms of the parties' agreement.[9] Specifically, the defendant argues that the settlement agreement did not include relocation

[9] We acknowledge that "[n]umerous Connecticut cases require definite agreement on the essential terms of an enforceable agreement." (Internal quotation marks omitted.) *Santos* v. *Massad-Zion Motor Sales Co.*, 160 Conn. App. 12, 19, 123 A.3d 883, cert. denied, 319 Conn. 959, 125 A.3d 1013 (2015).

expenses for her husband's business, which the defendant implicitly asserts is an essential term of the agreement.[10] We disagree.

In the present matter, the defendant stated at oral argument before this court that the only agreement reached between the parties was that the defendant would pay $600,000 as compensation for the taking of the home and the real property. Although the defendant primarily claims that the settlement agreement does not include reimbursement for expenses incurred to relocate her husband's business,[11] the business expense claims were beyond the scope of the eminent domain proceeding, and they were not barred from resolution in any appropriate forum even if the question of just compensation was resolved.[12] Pursuant to § 13a-76, the

[10] The defendant also claims that the settlement agreement did not address the issue of whether she and her husband could return to the property to retrieve plants that remained there. At the *Audubon* hearing, Attorney Healey testified that, although the parties had discussed the possibility of allowing the defendant to retrieve certain plants with the permission of the Department of Transportation after the defendant vacated the premises, it was outside the scope of the agreement. The defendant's husband testified that he and the defendant went to retrieve the plants in April, 2017, but that they were no longer there.

[11] At the *Audubon* hearing, Steven Degen, who worked for the Department of Transportation, testified that the defendant was entitled to reimbursement for the relocation of the business once a new location for the business was selected. Moreover, Bradley, one of the defendant's former attorneys, testified that relocation benefits were still available to the defendant and her husband if they sought them and that those benefits were outside the scope of the stipulation for judgment. All written drafts of the stipulation for judgment contained provisions that stated that the defendant was entitled to pursue moving and relocation expenses for her husband's business.

[12] "Under the state relocation act, businesses are eligible to receive compensation for relocation expenses and losses when they are forced to remove personal property as a result of the state's acquisition of real property. General Statutes § 8-268. If a business seeks to contest the amount of compensation offered by the state, the state relocation act requires an appeal to the acquiring agency; General Statutes § 8-278; followed by an administrative appeal to the Superior Court pursuant to the [Uniform Administrative Procedure Act]." *Commissioner of Transportation* v. *Rocky Mountain, LLC*, 277 Conn. 696, 709–10, 894 A.2d 259 (2006).

Additionally, § 8-273-1 (a) of the Regulations of Connecticut State Agencies provides: "Any person aggrieved as to the provisions of Chapter 135 of the [General Statutes], as revised, should first request reconsideration by the

just compensation proceedings were limited to the reassessment of damages. "It is well established by our case law that the scope of a § 13a-76 proceeding is limited to a reassessment of the damages offered by the [C]ommissioner [of Transportation] for a taking." *Commissioner of Transportation* v. *Larobina*, 92 Conn. App. 15, 29, 882 A.2d 1265, cert. denied, 276 Conn. 931, 889 A.2d 816 (2005). "It is fundamental that the state government or any properly designated agency thereof may take private property under its power of eminent domain, if the taking is for a public use and if just compensation is paid therefor. . . . The single objective of an eminent domain proceeding is to ensure that the property owner shall receive, and that the state shall only be required to pay, the just compensation which the fundamental law promises the owner for the property which the state has seen fit to take for public use." (Citations omitted; internal quotation marks omitted.) *Russo* v. *East Hartford*, 4 Conn. App. 271, 273–74, 493 A.2d 914 (1985). Moreover, this court has repeatedly "recognize[d] the limited scope of an appeal from a statement of compensation in an eminent domain proceeding . . . ." (Citation omitted.) Id., 274 n.2; see also *Albahary* v. *Bristol*, 276 Conn. 426, 435 n.6, 886 A.2d 802 (2005).

In the present case, the only essential term of the settlement agreement within the context of the defendant's appeal from the plaintiff's assessment of damages pursuant to § 13a-76 was the amount of compensation to be paid to the defendant for the taking of her real property. The defendant does not dispute that the parties agreed to a sum of $600,000 as compensation for the taking of her real property. Rather, the defendant

State agency of the decision initially received as to relocation assistance. If the person aggrieved is not satisfied by the decision rendered by the State agency upon reconsideration, he then may request a hearing before the Relocation Advisory Assistance Appeals Board."

takes issue with the compensation for business relocation expenses, which fall under the purview of General Statutes §§ 8-268 and 8-278, not § 13a-76. See footnote 12 of this opinion. Because the issue of reimbursement expenses is outside the scope of compensation for the taking of the real property, it is not an essential term of the agreement. Accordingly, we reject the defendant's claim.

II

The defendant next claims that the testimony elicited during the *Audubon* hearing was unclear and ambiguous as to what the terms of the agreement were and, as a result, the court's finding that an enforceable agreement was entered into was clearly erroneous. Specifically, the defendant appears to argue that the testimony regarding relocation expenses for the business was unclear and ambiguous and, therefore, the agreement was not enforceable. We disagree.

We begin our analysis with the applicable standard of review. "[T]o the extent that the defendant['s] claim implicates the court's factual findings, our review is limited to deciding whether such findings were clearly erroneous. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when 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. . . . In making this determination, every reasonable presumption must be given in favor of the trial court's ruling." (Internal quotation marks omitted.) *Kidder* v. *Read*, supra, 150 Conn. App. 733.

The testimony of the defendant's former attorneys, the plaintiff's representatives, and the defendant's husband confirmed that the parties had agreed to a sum of $600,000 in compensation for the taking of the defendant's real property. Although there was extensive testimony and discussion at the *Audubon* hearing regarding

the relocation expenses of the business, those expenses were outside the scope of the § 13a-76 proceeding, which properly concerned only the issue of whether there was an agreed upon sum of $600,000 as compensation for the *real property*. See *Commissioner of Transportation* v. *Larobina*, supra, 92 Conn. App. 29.

On the basis of our review of the representations and admissions by the defendant's former attorneys and her husband and the statements of the plaintiff's representatives at the *Audubon* hearing concerning the $600,000 agreed to as just compensation, the court's findings of fact as to the terms of that agreement were not clearly erroneous. The court, applying those facts, properly concluded that there was a legally enforceable settlement agreement between the parties in the amount of $600,000 as just compensation for the taking of the defendant's real property.

The judgment is affirmed.

In this opinion the other judges concurred.

MICHAEL ARONOW *v.* FREEDOM OF INFORMATION COMMISSION
(AC 41297)

Alvord, Sheldon and Bishop, Js.

Syllabus

The plaintiff appealed to this court from the judgment of the trial court dismissing his appeal from the final decision of the defendant Freedom of Information Commission. In connection with a whistleblower retaliation complaint he had filed against his former employer, a health center, the plaintiff had requested certain records from the health center under the Freedom of Information Act (act) (§ 1-200 et seq.). After a delay in receiving the records, the plaintiff filed a complaint in 2014 with the commission, which was dismissed for lack of jurisdiction on the ground it had not been timely filed. The plaintiff resubmitted his request for the records and filed a second complaint with the commission in 2015, alleging that the health center had violated the act by failing to promptly provide him with all of the documents he had requested. Thereafter,

the plaintiff appealed from the commission's decision regarding his 2014 complaint to the Superior Court, which dismissed the plaintiff's 2014 complaint as moot on the ground that a hearing in the 2015 complaint, in which he sought the same records, was pending before the commission. Subsequently, the commission granted the plaintiff's 2015 complaint in part and concluded that the health center had violated the act by failing to comply promptly with the plaintiff's records requests, and the plaintiff appealed to the Superior Court, which granted in part the commission's motion to dismiss the plaintiff's appeal as to his first and second claims and, after further considering the plaintiff's remaining claims, rendered judgment dismissing the plaintiff's appeal. *Held*:

1. The plaintiff could not prevail on his claim that the trial court improperly concluded that he was not aggrieved by the commission's decision not to impose a civil penalty against the health center; although the plaintiff acknowledged that this court was bound by *Burton* v. *Freedom of Information Commission* (161 Conn. App. 654), which addressed the precise issue raised in this case and held that the plaintiff in that case was neither classically nor statutorily aggrieved by the commission's decision not to impose a civil penalty because the decision did not violate a legal interest of the plaintiff and there was no statutory authority that provided the plaintiff with standing to appeal to the trial court from the commission's failure to impose such a penalty, the plaintiff here attempted to distinguish *Burton*, but his claim was speculative and lacked an evidentiary foundation, and, therefore, the trial court did not err in granting the commission's motion to dismiss the plaintiff's civil penalty claim for lack of standing.
2. The trial court properly dismissed the plaintiff's claim that his 2014 complaint was improperly dismissed on the ground that he was not aggrieved because the issues raised in that complaint were addressed in his 2015 complaint, the underlying matter in which he ultimately prevailed; contrary to the plaintiff's assertion, the record indicated that the commission did take the relevant facts of his 2014 complaint into consideration when making its decision that the health center had violated the act, as the commission not only found that the plaintiff's requests for records were identical, but it explicitly took administrative notice of the findings of fact in the 2014 complaint that were relevant to its determination as to whether the health center had promptly complied, and, therefore, the plaintiff did not demonstrate how he was aggrieved.
3. The trial court erred in concluding that there was substantial evidence in the record to support the commission's finding that the plaintiff had narrowed the scope of his request under the act with respect to paragraph eleven of his complaint; there was no basis for the commission's order narrowing the plaintiff's request for records as described in the commission's final decision, which was inconsistent with the record and contravened the general policy of openness expressed within the act, as the record revealed that the plaintiff had requested the health center to expedite the most time sensitive portion of his request without excluding the remainder of the records requested.

Argued February 6—officially released May 14, 2019

Procedural History

Appeal from the decision of the defendant, brought to the Superior Court in the judicial district of New Britain, where the court, *Huddleston, J.*, granted in part the defendant's motion to dismiss; thereafter, the court, *Young, J.*, dismissed the plaintiff's appeal, from which the plaintiff appealed to this court. *Dismissed in part; reversed in part; judgment directed.*

Michael Aronow, self-represented, the appellant (plaintiff).

Kathleen K. Ross, commission counsel, with whom, on the brief, was *Colleen M. Murphy*, general counsel, for the appellee (defendant).

Opinion

BISHOP, J. The self-represented plaintiff, Michael Aronow,[1] appeals from the dismissal by the trial court of his appeal from the final decision of the defendant Freedom of Information Commission (commission). Although, after a hearing, the commission concluded that the University of Connecticut Health Center (health center)[2] had violated the Freedom of Information Act (FOIA), General Statutes § 1-200 et seq., in regard to document requests made by the plaintiff, the plaintiff appealed to the trial court from the orders and subordinate findings made by the commission. On appeal from the judgment of the court dismissing his appeal from the commission, the plaintiff claims that the court erred in (1) concluding that he was not aggrieved by the commission's decision to decline to impose a civil penalty against the health center for the FOIA violation, (2) dismissing his claim that the commission improperly

[1] The plaintiff also represented himself before the trial court and the commission.

[2] The health center and its freedom of information officer are not parties to this action.

dismissed a previous FOIA complaint filed by the plaintiff regarding an earlier document request made to the health center, (3) concluding that there was substantial evidence in the record to support the commission's finding that the plaintiff had narrowed the scope of his FOIA request, and (4) concluding that the commission did not abuse its discretion by affording the health center nine months to comply with its document production order.

We agree with the court's conclusions regarding the plaintiff's first and second claims, and, accordingly, affirm the judgment as to those claims. We conclude, however, that the trial court erred in concluding that there was substantial evidence to support the commission's finding that the plaintiff had narrowed the scope of his original FOIA request in regard to paragraph eleven of the commission's final decision.[3] Accordingly, the judgment is reversed in part, and the case is remanded to the trial court with direction to remand to the commission with direction to order that the health center comply expeditiously with the plaintiff's original request, as narrowed only by paragraph ten of the commission's final decision.

The following facts and procedural history are relevant to our resolution of this appeal. In his brief, the

[3] The record reflects that the commission's October 28, 2015 order afforded the health center an additional nine months to comply with the plaintiff's request as narrowed by paragraphs ten and eleven of its decision. Because we conclude that the commission incorrectly determined that the plaintiff had voluntarily narrowed his document request and we remand with direction that the commission formulate new orders for production, we need not reach the plaintiff's fourth claim that the commission gave the health center an unreasonable amount of time to comply with its document production order. In sum, as a consequence of this opinion, the issue of whether the commission abused its discretion by affording the health center an unreasonably long period of time to comply is moot. See, e.g., *Angersola* v. *Radiologic Associates of Middletown, P.C.*, 330 Conn. 251, 256 n.4, 193 A.3d 520 (2018); *Fisher* v. *Big Y Foods, Inc.*, 298 Conn. 414, 416 n.2, 3 A.3d 919 (2010).

plaintiff alleges that he "is an orthopaedic surgeon who formerly worked for [the health center], against whom he filed a whistleblower retaliation complaint before the Commission on Human Rights and Opportunities' Office of Public Hearings on November 14, 2012 (OPH/WBR No. 2012-208), which [has been] in the damages phase" since he received a favorable decision on liability. Additionally, on March 31, 2012, the plaintiff separated from the health center under disputed circumstances. In his whistleblower complaint against the health center pursuant to General Statutes § 4-61dd, the plaintiff alleged, inter alia, that the health center took retaliatory actions leading to his separation in response to certain actions he had previously taken that caused him to fall out of favor with health center supervisory personnel, such as his filing of a grievance.[4] These allegations are supported by proceedings from which we take judicial notice.[5]

On August 19, 2013, the plaintiff e-mailed a FOIA request to Scott Wetstone, a medical doctor employed

[4] While in the employ of the health center, the plaintiff filed a grievance with the Health Center Appeals Committee (committee) against his department head, in which he accused the department head of various acts of misconduct directed against the plaintiff and others. Once the committee heard the grievance, it forwarded its report to the Office of the Executive Vice President of Academic Affairs at the University of Connecticut. That report, in turn, was reviewed by Philip Austin, president emeritus of the university. Austin subsequently wrote a one page report on the matter. After the plaintiff's request for copies of the report was denied, he filed a complaint with the commission which, in turn, ordered that the copies be disseminated to him. On appeal, our Supreme Court affirmed the commission's decision. See *Lieberman* v. *Aronow*, 319 Conn 748, 751–53, 127 A.3d. 970 (2015).

[5] By order dated February 14, 2018, a hearing officer from the Office of Public Hearings issued a decision, after a bifurcated hearing, in favor of the plaintiff on the issues of liability and continued the hearing to a subsequent date for a hearing on damages. As of the date of oral argument in this appeal, the damages hearing by the Office of Public Hearings had not taken place. We take judicial notice of these proceedings in the Office of Public Hearings as permitted by law. See *Cannatelli* v. *Statewide Grievance Committee*, 186 Conn. App. 135, 136 n.1, 198 A.3d 716 (2018) (taking judicial notice of disciplinary proceeding despite fact that documents in proceeding not part of underlying record), cert. denied, 331 Conn. 903, 202 A. 3d 374 (2019).

by the health center who acted as its freedom of information (FOI) officer. The request was for production of all e-mails sent or received by Jay R. Lieberman, a medical doctor formerly employed by the health center, from July 1, 2009, to the date of the request; all Microsoft Word and PDF documents created or modified on Dr. Lieberman's health center computer from July 1, 2010, to the date of the request; and a list of all e-mails and documents that fell within this request but were exempt from disclosure, and reasons why they were exempt. On December 13, 2013, Dr. Wetstone e-mailed the plaintiff to notify him that the previous FOIA requests[6] that the plaintiff had made to the health center were "essentially completed" and that he would begin working on the plaintiff's August 19, 2013 request. Dr. Wetstone also suggested in this e-mail that, in light of the number and the nature of the documents he had requested and the fact that the plaintiff had already submitted an extensive discovery request to the health center in a separate matter, the plaintiff should narrow the scope of his request. The plaintiff subsequently agreed to exclude a number of categories of records from the scope of his request.

On March 17, 2014, the plaintiff filed a complaint with the commission; see *Aronow* v. *University of Connecticut Health Center*, Freedom of Information Commission, Docket No. FIC 2014-156 (February 4, 2015) (FIC 2014-156); alleging that he had not received the documents requested, and that there had been no activity regarding his request since December, 2013. On June 30, 2014, while that matter was pending, the plaintiff

[6] The plaintiff had made a number of additional FOIA requests to the health center. Specifically, in the three years from the plaintiff's departure from the health center until the hearing in *Aronow* v. *University of Connecticut Health Center*, Freedom of Information Commission, Docket No. FIC 2015-127 (October 28, 2015), Dr. Wetstone testified that the plaintiff had made twenty-seven requests to the health center.

sent an e-mail to Dr. Wetstone requesting that he expedite the release of certain requested documents that were relevant to the plaintiff's pending Health Center Appeals Committee (committee) appeal.[7] In July, 2014, the plaintiff and Dr. Wetstone exchanged further e-mails regarding the use of a Dropbox[8] account to provide the plaintiff with the documents that he had requested for his committee appeal. After having issues with obtaining the documents from the designated Dropbox folder, the plaintiff acknowledged the receipt of seventeen of the 139 requested documents that Dr. Wetstone had informed the plaintiff he was sending.

On December 16, 2014, over one year after acknowledging that he would begin working on the plaintiff's August 19, 2013 request, and several months after the plaintiff had filed his complaint in FIC 2014-156, Dr. Wetstone e-mailed the plaintiff the following message: "Per our discussion this morning, you have my personal commitment to get . . . the documents [at issue in FIC 2014-156] no later than the end of March 2015. . . . Later today, I will attempt to find the files that I initially put in the drop box last summer. I can't find them immediately and need to tend to other things right now."

On February 4, 2015, the commission adopted a final decision dismissing the plaintiff's FIC 2014-156 complaint for lack of jurisdiction on the ground that the complaint had not been timely filed pursuant to General Statutes § 1-206 (b) (1).[9] On that same day, the plaintiff

[7] See footnote 4 of this opinion.

[8] Dropbox is a "web-based file hosting service that uses cloud storage to enable users to store and share files with others across the Internet using file synchronization. When files are uploaded to Dropbox by a user, they automatically sync with another computer selected by the user, meaning that the files are transferred from one computer to another." (Internal quotation marks omitted.) *Frisco Medical Center, L.L.P.* v. *Bledsoe*, 147 F. Supp. 3d 646, 652 (E.D. Tex. 2015).

[9] General Statutes § 1-206 (b) (1) provides in relevant part that "[a]ny person denied the right to inspect or copy records under section 1-210 . . .

resubmitted to Dr. Wetstone the FOIA request that he had originally requested on August 19, 2013. On February 17, 2015, the plaintiff again filed a complaint with the commission; see *Aronow* v. *University of Connecticut Health Center*, Freedom of Information Commission, Docket No. FIC 2015-127 (October 28, 2015) (FIC 2015-127); alleging that the health center had violated the FOIA by failing to promptly provide him with all of the documents he had requested.

Subsequently, on March 17, 2015, the plaintiff filed an appeal from the commission's decision in FIC 2014-156 to the Superior Court. On June 18, 2015, the court dismissed that appeal as moot on the ground that the plaintiff's hearing in FIC 2015-127, in which he sought the same records, was pending before the commission. A hearing on FIC 2015-127 was held before a hearing officer on July 1, 2015. During the hearing, Dr. Wetstone testified regarding the factors that were crucial for determining how long it would take to comply with the plaintiff's particular FOIA request. Dr. Wetstone indicated that, at the time of the hearing, the health center had ten active requests from the plaintiff, nine of which would take a few months to resolve. He indicated, as well, that the plaintiff's February 4, 2015 request was "by far the largest" request he had encountered in his fifteen year history of handling FOIA requests. Additionally, Dr. Wetstone claimed that there was a possibility that multiple FOIA exemptions would apply to the requested documents and that each document needed to be reviewed to determine whether any of those exemptions applied. Dr. Wetstone also asserted that in

or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial . . . ." In the present case, the commission concluded that the plaintiff's March 17, 2014 complaint "was more than sixty days past the denial of the [plaintiff]'s request that is deemed to have occurred on December 20, 2013 . . . ."

addition to acting as the FOI officer for the health center, he had multiple other responsibilities that affected how long compliance with the plaintiff's request would take. Finally, Dr. Wetstone testified that many of the individuals employed by the health center who would be required to search for certain requested documents were also responsible for providing direct patient care or for educating medical students.

On October 1, 2015, the hearing officer issued a proposed final decision. On October 8, 2015, the health center provided the plaintiff with some of the documents he had requested together with a privilege log claiming exemptions as to certain other documents.

On October 28, 2015, the commission adopted the proposed final decision of the hearing officer. The commission found that the health center had violated General Statutes §§ 1-210 (a)[10] and 1-212 (a)[11] by failing to comply promptly with the plaintiff's records requests. In addition, the commission found that the plaintiff's February 4, 2015 request was identical to the August 19, 2013 request that had been at issue in FIC 2014-156, and took administrative notice of certain findings of fact in FIC 2014-156 that were relevant to the determination of whether the health center had violated the promptness requirement of the FOIA. In taking notice

[10] General Statutes § 1-210 (a) provides in relevant part that "[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency . . . shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212. . . ."

[11] General Statutes § 1-212 (a) provides in relevant part that "[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy. . . ."

of FIC 2014-156, the commission determined that the plaintiff had agreed to exclude broadcast e-mails, journal articles, and research data from his records request (paragraph ten). The commission found, as well, that the plaintiff had asked Dr. Wetstone, on June 30, 2014, to release "whatever material [he had] collected to date as well as the subset of documents that meet [certain enumerated] search criteria . . . between July 1, 2010, and August 14, 2012," which included his name and variations of his name, the words "FOI," "HCAC," "grievance," and "Appeals Committee," and excluded e-mails sent to his own e-mail at the health center (paragraph eleven). (Internal quotation marks omitted.) The commission ordered that the health center promptly comply with the plaintiff's request, as narrowed by paragraphs ten and eleven of its decision, that the health center make a good faith effort to provide the plaintiff with the requested records on a rolling basis, and that the health center work diligently to comply fully within nine months of its decision. The commission also suggested that the plaintiff refrain from making further requests until the health center complied with the commission's order.

On December 9, 2015, the plaintiff appealed from the commission's decision to the Superior Court, claiming that the commission (1) improperly declined to impose civil penalties on the health center, despite the length of the delay and the fact that the commission had found the health center to have violated the promptness requirement of the act in relation to other requests made by the plaintiff; (2) improperly suggested that the plaintiff refrain from making further requests until the commission's order in FIC 2015-127 had been satisfied; (3) improperly allowed the health center nine additional months to comply with the plaintiff's request; (4) improperly found that the plaintiff had narrowed the scope of his request, as stated in paragraph eleven of

its decision; (5) erred when it did not provide any mechanism for an in camera review of documents for which the health center claimed exemptions on October 8, 2015, after the proposed decision had been released; and (6) erred when it dismissed his FIC 2014-156 complaint for lack of jurisdiction.

On October 25, 2016, the commission filed a motion to dismiss the plaintiff's appeal, contending that the plaintiff was not aggrieved by the commission's decision in his favor. The commission also moved to strike certain claims for relief if any portion of the appeal survived the motion to dismiss. On May 8, 2017, the court granted the commission's motion to dismiss as to the plaintiff's first and second claims, but denied the motion as to the plaintiff's third and fourth claims. Additionally, the court ordered the parties to brief whether it lacked jurisdiction to consider the plaintiff's fifth claim, and declined to review the commission's inadequately briefed motion to strike as to the plaintiff's sixth claim. In this decision, the court made clear that the commission's October 28, 2015 order was not stayed pending the disposition of the appeal. Following this decision, the plaintiff alleged that the health center notified him that it would begin complying with his request, as narrowed pursuant to the commission's order. The plaintiff also alleged that in June, 2017, the health center had sent him two compact discs (CDs) containing requested documents in partial compliance with the order.[12]

On January 5, 2018, after further considering the plaintiff's third, fourth, fifth, and sixth claims, the court dismissed the plaintiff's appeal. Specifically, the court

[12] During oral argument, the plaintiff further represented to this court that, since receiving the CDs in June, 2017, he has not received any additional documents from the health center. He also is uncertain of how many of the documents falling within the scope of the narrowed request he did not receive in the nine months following the court's order.

concluded that the commission had not abused its discretion in giving the health center nine months to comply with the plaintiff's records request because there was substantial evidence before the commission to support the reasonableness of its decision to order a rolling out of information over a nine month period of time. The court found, as well, that the plaintiff had agreed to narrow his request, as described in paragraph eleven of the commission's decision. The court concluded, as well, that because the commission did not have the opportunity to consider whether there should have been an in camera review of the allegedly exempt documents, the plaintiff had not exhausted his administrative remedies, and, thus, that claim was not ripe for the court's consideration.

Finally, the court addressed the plaintiff's claim regarding his FIC 2014-156 complaint, which involved his earlier records request to the health center. The court understood this claim to be an assertion that the plaintiff had relied on representations made by the commission that his FIC 2014-156 complaint would be considered at the hearing in FIC 2015-127 and that, because of that representation, he did not timely appeal the court's disposition of his appeal with regard to his FIC 2014-156 complaint. Specifically, the plaintiff's claim was understood to be an assertion that he was aggrieved by the dismissal of FIC 2014-156 because the issues in that earlier records request were not addressed in FIC 2015-127 and the plaintiff had not received the records he had sought in FIC 2014-156, which were the same records as those had had requested in FIC 2015-127, and that the commission should have considered the health center's delay in compliance as being substantially longer than it had found in its disposition of FIC 2015-127. The court concluded that the plaintiff's claim was without merit after finding that the issues that were the basis of the FIC 2014-156 complaint were,

in fact, addressed by the commission in FIC 2015-127. The court also concluded that there was no evidence in the record that the commission's finding of a shorter time period of delay was an abuse of discretion or affected the outcome of the proceeding. This appeal followed.[13] Additional facts will be set forth as necessary.

I

We first address the plaintiff's claim that the court erred in concluding that he was not aggrieved by the commission's decision not to impose a civil penalty against the health center. Specifically, the plaintiff claims that the court's granting of the commission's motion to dismiss this claim for lack of standing was improper because he was aggrieved by the health center's noncompliance with his FOIA requests and, therefore, had a direct interest in his attempt to have the commission impose a civil penalty on the health center. We are not persuaded.

[13] On appeal, although the plaintiff notes in his appellate brief the commission's suggestion that he refrain from filing additional FOIA requests until the health center complied with the commission's order, the plaintiff does not appear to argue that this suggestion was improper. In fact, the plaintiff concedes in his brief that the court reasonably concluded that the commission's order that he refrain from further requests until the request at issue is satisfied was nonbinding. Because the plaintiff does not appear to challenge the trial court's determination in this regard, we need not address this issue further.

Additionally, in his brief, the plaintiff's only references to his request for an in camera review of documents that the health center claimed to be exempt from disclosure consist of a summary of the trial court's decision and a statement of his belief that he will need to file a new FOIA request for an in camera review of the contested records. Lacking any analysis or argumentation, we deem this claim to be abandoned. See *Connecticut Light & Power Co.* v. *Dept. of Public Utility Control*, 266 Conn. 108, 120, 830 A.2d 1121 (2003) ("[W]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." [Internal quotation marks omitted.]); *Walker* v. *Commissioner of Correction*, 176 Conn. App. 843, 856, 171 A.3d 525 (2017) (same).

We begin by setting forth the legal principles regarding motions to dismiss and standing. Because this claim "arises from a motion to dismiss, the question is whether the pleadings, if presumed true and construed in favor of the plaintiff, set forth sufficient facts to establish that the plaintiff had standing. . . . That question is one of law, over which our review is plenary." (Citation omitted.) *Burton* v. *Freedom of Information Commission*, 161 Conn. App. 654, 658, 129 A.3d 721 (2015), cert. denied, 321 Conn. 901, 136 A.3d 642 (2016). "It is a basic principle of law that a plaintiff must have standing for the court to have jurisdiction. Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he has . . . some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented. . . . These two objectives are ordinarily held to have been met when a complainant makes a colorable claim of [a] direct injury he has suffered or is likely to suffer, in an individual or representative capacity. Such a personal stake in the outcome of the controversy . . . provides the requisite assurance of concrete adverseness and diligent advocacy." (Citations omitted; internal quotation marks omitted.) *Rose* v. *Freedom of Information Commission*, 221 Conn. 217, 223–24, 602 A.2d 1019 (1992).

"Standing may derive from either classical or statutory aggrievement. . . . Aggrievement is also expressly required by the statutes that govern a FOIA appeal. See

General Statutes § 1-206 (d) ('[a]ny party aggrieved by the decision of said commission may appeal therefrom, in accordance with the provisions of section 4-183' . . .); General Statutes § 4-183 (a) ('[a] person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section' . . .)." (Citation omitted; emphasis omitted.) *Burton* v. *Freedom of Information Commission*, supra, 161 Conn. App. 659.

In *Burton*, this court addressed the precise issue raised in the case at hand, namely, whether a plaintiff had standing to challenge on appeal the commission's failure to impose a civil penalty as a remedy once the commission determined that a FOIA violation had occurred. See id., 662–67. This court concluded that the plaintiff in *Burton* was neither classically nor statutorily aggrieved by the commission's decision not to impose a civil penalty because the decision did not violate a legal interest of the plaintiff and there was no statutory authority that provided the plaintiff with standing to appeal to the trial court from the commission's failure to impose such a penalty. See id., 665–67. In reaching this conclusion, the panel in *Burton* relied in part on the language of § 1-206 (b) (2) to distinguish between forms of relief that a plaintiff could seek, such as injunctions, and discretionary tools that the commission may utilize, such as civil penalties. Id., 662–65.

The plaintiff acknowledges that *Burton* was binding on the trial court, but attempts to distinguish *Burton* from the present case by arguing that he was aggrieved by the commission's decision not to impose a civil penalty against the health center because that decision led to a subsequent denial of his right to receive records from the health center promptly pursuant to §§ 1-210 (a) and 1-212 (a). In making this claim, the plaintiff appears to argue that the commission's imposition of

a civil penalty to enforce compliance with its order would have deterred the health center from committing further FOIA violations. This argument, however, is speculative, as it lacks any evidentiary foundation. In short, there is no evidence in the record to support the plaintiff's contention that *Burton* is distinguishable from the present matter. Accordingly, we conclude that the court did not err in granting the commission's motion to dismiss the plaintiff's civil penalty claim for lack of standing.

II

The plaintiff next claims that the court erred in dismissing his claim that his FIC 2014-156 complaint was improperly dismissed on the basis that he was not aggrieved because the issues raised in that complaint were addressed in FIC 2015-127, the underlying matter in which he ultimately prevailed. The plaintiff claims that he did not appeal from the court's decision regarding his FIC 2014-156 complaint, because he relied to his detriment on the commission's guarantee during a hearing on that matter[14] that it would take his FIC 2014-156 complaint into consideration in making its decision

[14] In making this argument, the plaintiff relies on the following exchange that occurred between the court and the commission's counsel during the hearing:

"[The Court]: Right. How about [the plaintiff's] claim that the 2014 [case] is different than the 2015 case because it's more and more likely to result in an order of sanctions against the health center?

"[The Commission's Counsel]: Well—and I understand [the plaintiff]'s thinking in that regard but he is able when his case comes up, he is able to explain that it is a renewed complaint and the hearing officer who makes a recommendation to the commission will consider that. *It won't just look at the complaint in isolation.*

"[The Plaintiff] will be able to present evidence that this is, in fact, a renewed complaint that he had to file in order to come within the jurisdiction of the commission.

"[The Court]: But his claim is that the length of time that it's taken the health center to supply the records is longer in the 2014 case than in the 2015 case and therefore he is more likely to obtain sanctions.

"[The Commission's Counsel]: And again, he would be able to present that evidence at the hearing that this is a renewed complaint and his original

in regard to his later FIC 2015-127 complaint. The plaintiff asserts that he subsequently was aggrieved by the commission's failure in FIC 2015-127 to consider all of the relevant records from FIC 2014-156, as well as its decision in FIC 2015-127 to consider the February 4, 2015 request date in determining whether the health center had promptly complied, rather than the August 19, 2013 request date. We agree with the commission that the court properly dismissed this claim.

"Our resolution of this issue is guided by the limited scope of judicial review afforded by the Uniform Administrative Procedure Act; General Statutes § 4-166 et seq.; to the determinations made by an administrative agency. [W]e must decide, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily or illegally, or abused its discretion. . . . Even as to questions of law, [t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts." (Citation omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.) *Perkins* v. *Freedom of Information Commission*, 228 Conn. 158, 164–65, 635 A.2d 783 (1993). "Neither this court nor the trial court may retry the case or substitute its own judgment for that of the [administrative agency]." (Internal quotation marks omitted.) *Ottochian* v. *Freedom of Information Commission*, 221 Conn. 393, 397, 604 A.2d 351 (1992).

request was made over, I think it was [seventeen] months ago and the hearing officer and the commission will take that into consideration. *It won't view this new complaint, renewed complaint in isolation.* [*The plaintiff*] *will be able to present evidence that it was actually a renewed complaint.*" (Emphasis added.)

The plaintiff's argument appears to be that, because of representations made to him by counsel for the commission during the hearing concerning his appeal of FIC 2014-156, he did not appeal the court's disposition regarding his FIC 2014-156 complaint, and, as a result, the commission should be equitably estopped from later asserting any issues arising from his failure to appeal. We, however, agree with the court that the record reveals that the plaintiff's argument lacks merit.

Contrary to the plaintiff's assertion, the record indicates that the commission did take the relevant facts of FIC 2014-156 into consideration when making its decision that the health center had violated the FOIA. Not only did the commission find that the February 4, 2015 request was identical to the August 19, 2013 request, but, during the hearing in FIC 2015-127, the commission explicitly took administrative notice of the findings of fact in FIC 2014-156 that were relevant to its determination as to whether the health center had promptly complied. Because the commission actually did take the relevant facts of FIC 2014-156 into consideration in making its decision in FIC 2015-127, and the plaintiff's February 4, 2015 request is identical to his August 19, 2013 request, the plaintiff has not demonstrated how he was aggrieved by the statements of the commission's counsel or by the commission's reliance on the later request date in making its decision. Therefore, the plaintiff's claim is without merit, and, accordingly, we conclude that the court properly dismissed it.

III

The plaintiff next claims that the court erred in concluding that there was substantial evidence in the record to support the commission's finding that the plaintiff had narrowed the scope of his FOIA request, as described in paragraph eleven of the commission's final decision. Specifically, the plaintiff claims that he

had not agreed to permanently narrow his FOIA request to limit it to only the records described in an e-mail communication with Dr. Wetstone, the health center's FOI officer. Rather, the plaintiff claims that he had requested the health center to expedite the most time sensitive portion of his request without excluding the remainder of the records requested. The record supports the plaintiff's claim in this regard.

The record reveals the following additional facts that are relevant to this claim. After receiving the plaintiff's modified FOIA request, Dr. Wetstone e-mailed the plaintiff the following on December 13, 2013: "As I have already described, this request is likely to take a considerable amount of time to complete given the number [of] documents involved, the nature of the documents . . . and my office's capacity to review these documents . . . . To any degree that you are willing to narrow the scope of this [FOIA] request, it might help expedite you receiving the documents you are seeking."

The plaintiff responded as follows: "As I stated before you may exempt [b]roadcast news [e-mails], journal articles, and research data. Since I do not know what else is in [Dr.] Lieberman's computer and [e-mail] I am welcome to other suggestions. If you are able to send me a list of documents on the computers and or [e-mails] I would be happy to omit the ones I think are irrelevant." The plaintiff subsequently filed his complaint in FIC 2014-156 on March 17, 2014, alleging that the health center had failed to provide any of the requested documents.

On June 30, 2014, the plaintiff sent the following e-mail to Dr. Wetstone: "Quite some time has passed since [my] FOIA request was made. As you are aware from one of your other responsibilities at the Health Center I have an appeal due on or about July 21, 2014 with respect to my HCAC grievance against Dr. Lieberman. There is likely material extremely relevant to my

. . . appeal in [my] FOIA request that I would hope to receive by July 14, 2014 if possible so I have time to evaluate the information and incorporate it into my appeal. Therefore, I am asking you to consider releasing to me by July 14, 2014 whatever material you have collected to date [as] well as the subset of documents that meet the following criteria: ('Mike' OR 'Aronow' or 'ARANOW' or 'Arano' OR 'HCAC' OR 'grievance' or 'Appeals Committee' OR 'FOI' OR 'FOIA' OR 'Freedom of Information') between July 1, 2010 and August 14, 2012 and excluding [e-mails] directly sent or [cc'd] to Aronow@nso.uchc.edu."

As previously discussed, on February 4, 2015, the same date that the plaintiff's complaint in FIC 2014-156 was dismissed, the plaintiff submitted a FOIA request identical to his August 19, 2013 request. On February 17, 2015, the plaintiff filed his complaint in FIC 2015-127. During the hearing in that matter, Dr. Wetstone testified that he had negotiated with the plaintiff a "dramatic reduction" to his original August 19, 2013 request, but that the plaintiff's February 4, 2015 request restored the original, prenegotiation request. Other than Dr. Wetstone's testimony in this regard, there was no documentary evidence reflecting that the plaintiff had narrowed the scope of his records request. Moreover, the plaintiff testified that there was an "implicit assumption . . . that the same restrictions [regarding his original request] would be in place [regarding his February 4, 2015 request]" and that he "was always willing to work with Dr. Wetstone to narrow [his request] in any way before, and the implicit assumption was that . . . [Dr. Wetstone] would give [him] the documents he already had . . . ." The hearing officer also asked the plaintiff if he was still willing to reduce the number of documents he was requesting, to which the plaintiff replied in the affirmative.

As with the plaintiff's second claim, our review of this claim is limited to "whether the agency, in issuing its order, acted unreasonably, arbitrarily or illegally, or abused its discretion." (Internal quotation marks omitted.) *Perkins* v. *Freedom of Information Commission*, supra, 228 Conn. 164. Also in our review, we are mindful that "[t]he [FOIA] expresses a strong legislative policy in favor of the open conduct of government and free public access to government records." *Wilson* v. *Freedom of Information Commission*, 181 Conn. 324, 328, 435 A.2d 353 (1980); see also *Board of Education* v. *Freedom of Information Commission*, 208 Conn. 442, 450, 545 A.2d 1064 (1988) ("general policy of openness expressed in the FOIA legislation"); *Tompkins* v. *Freedom of Information Commission*, 136 Conn. App. 496, 507, 46 A.3d 291 (2012) ("We note initially that public policy favors the disclosure of public records. . . . [A]ny exception to that rule [therefore] will be narrowly construed in light of the general policy of openness expressed in the [FOIA] . . . ." [Citation omitted; internal quotation marks omitted.]). In addition, "[t]he burden of proving the applicability of an exception to the FOIA rests upon the party claiming it." *Rose* v. *Freedom of Information Commission*, supra, 221 Conn. 232.

The present case rests on the interpretation of the plaintiff's June 30, 2014 e-mail and his subsequent representations to the health center and the commission. The commission argues that it reasonably interpreted the June 30, 2014 e-mail as an agreement by the plaintiff to narrow the scope of his request to a particular subset of documents, and that there is no evidence in the record to support the plaintiff's assertion that he did not intend to permanently narrow his request to that subset. The record does not support that conclusion.

In the June 30, 2014 e-mail, the plaintiff clearly stated that he needed material that was relevant to his pending

committee appeal. He also asked Dr. Wetstone to forward any documents that had been collected up to that date, including documents that were relevant to his committee appeal. The plaintiff also explicitly excluded e-mails that had been sent to his own e-mail address at the health center. The plaintiff, however, did not state in the e-mail that he was in any way limiting his original August 19, 2013 request, or that he was excluding the remainder of the documents related to that request. The only reasonable reading of the plaintiff's e-mail is that he was attempting to expedite the receipt of certain documents for his upcoming committee appeal. Nowhere in the plaintiff's response to Dr. Wetstone did he evince an intent to permanently alter the scope of his pending FOIA request.

Moreover, the commission's view that the June 30, 2014 e-mail constituted an agreement by the plaintiff to narrow the scope of his request appears to conflate that e-mail with the plaintiff's December 16, 2013 e-mail in which he explicitly agreed to exclude "broadcast [e-mails], journal articles, and research data" from his original August 19, 2013 request.[15] (Internal quotation marks omitted.) The plaintiff does not dispute that he agreed to exclude these documents, as well as the e-mails sent to his e-mail address at the health center. The plaintiff's testimony before the commission reflects his assumption that these were the same exclusions that would be in place in his February 4, 2015 request, and that this request would otherwise remain the same as his original request.

Not only is the commission's order narrowing the plaintiff's request as described in paragraph eleven of its final decision inconsistent with the record, but it also contravenes the general policy of openness expressed within the FOIA. See *Ottochian* v. *Freedom of Information Commission*, supra, 221 Conn. 398; *Tompkins* v.

[15] This is the same exclusion recognized by the commission in paragraph ten of its final decision in FIC 2015-127.

Freedom of Information Commission, supra, 136 Conn. App. 507. Our application of this general policy is not hindered where neither the health center nor the commission has asserted that the restrictions enunciated in paragraph eleven were due to exemptions pursuant to § 1-210 (b). In sum, we conclude that there was no basis for the commission's order narrowing the plaintiff's request, as described in paragraph eleven. Accordingly, we conclude that the trial court erred in concluding that there was substantial evidence in the record to support the commission's finding that the plaintiff had narrowed the scope of his request with respect to paragraph eleven.[16]

The judgment is reversed in part with regard to the narrowing in scope of the plaintiff's document request and the case is remanded to the trial court with direction to remand to the commission to order that the health center comply with the plaintiff's original FOIA request, as narrowed only by paragraph ten of its final decision, in an expeditious manner. The portion of this appeal in regard to the plaintiff's fourth claim is dismissed, and the judgment is affirmed with respect to the plaintiff's remaining claims.

In this opinion the other judges concurred.

[16] Although we conclude that our resolution of the plaintiff's third claim renders his fourth claim moot; see footnote 3 of this opinion; on the basis of our review of the record, we do not understand the reasonableness of the commission's decision to afford the health center an additional nine months to comply with the plaintiff's records requests which, by then, were already long-standing, especially in light of the explicit promise made by Dr. Wetstone to complete the plaintiff's request by March, 2015. We also note the plaintiff's unrebutted assertion that the health center had failed to fully comply with the commission's October 28, 2015 order by the nine month deadline, which was not stayed following the trial court's May 8, 2017 decision on the commission's motion to dismiss. Under these circumstances, on remand we encourage the commission to put in place a procedure to adequately monitor and ensure the health center's compliance with the plaintiff's long-standing records requests.