ONEWEST BANK, N.A. *v.* STEPHEN M. CESLIK, JR. (AC 41720)

Prescott, Suarez and DiPentima, Js.

Syllabus

The plaintiff bank O Co. sought to foreclose a mortgage on certain real property owned by the defendant. In its complaint, O Co. alleged, inter alia, that it was the holder of the mortgage by virtue of a series of assignments of mortgage recorded on the town land records, that it was the holder of the promissory note that secured the mortgage and that the defendant had defaulted on the note. The defendant raised as a special defense that O Co. was barred by laches from claiming a default on the note. Thereafter, O Co. filed a motion for summary judgment as to liability. In support of its motion, O Co. submitted the note endorsed in blank and an affidavit from R, an assistant secretary for C Co. into which O Co. had merged, who averred concerning the accuracy of the mortgage assignments, copies of which were attached to his affidavit. The trial court granted O Co.'s motion for summary judgment as to liability, concluding that O Co. had established its prima facie case and that the defendant had failed to demonstrate a genuine issue of material fact. The court further concluded that the defendant's special defense of laches was a mere conclusory statement that lacked specificity as to the facts giving rise to laches, and, therefore, the defense was legally insufficient. Thereafter, the defendant filed a motion to dismiss the action on the ground that O Co. had initiated and later withdrew a prior foreclosure action against him, which the court denied. Subsequently, C Co. was substituted as the plaintiff, and the trial court granted its motion for a judgment of strict foreclosure and rendered judgment thereon, from which the defendant appealed to this court. Thereafter, the trial court denied the defendant's motion for judgment. *Held*:

1. This court declined to reach the merits of the defendant's claim that the trial court erred in rejecting his special defense of laches; because the defendant did not challenge the trial court's legal conclusion that his special defense was not properly pleaded, his claim was irrelevant as to that court's determination that his special defense of laches was legally insufficient; moreover, this court did not address whether O Co.'s motion for summary judgment was properly used to challenge the legal sufficiency of the special defense of laches, as the defendant did not raise such a claim on appeal.
2. The defendant could not prevail on his claim that the trial court erred in denying his postappeal motion for judgment in which he asserted that C Co. lacked standing; that court properly determined that C Co. had standing to foreclose on the mortgage, as O Co. proffered evidence that it possessed the note endorsed in blank at the time it commenced the action and the defendant did not produce any evidence to rebut the presumption that O Co. was the owner of the debt.
3. The defendant's claim that the trial court erred in crediting obviously fraudulent and defective assignments of mortgage was unavailing; the defendant failed to proffer evidence that demonstrated fraud or defects in the assignments of mortgage and did not, in the proceedings before that court, proffer admissible evidence that called into question the validity of those documents.
4. Contrary to the defendant's claim, the trial court did not err in denying his motion to dismiss the action on the ground that O Co. had initiated and later withdrew a prior foreclosure action against him; the defendant did not cite any authority to support his assertion that O Co. should have been prohibited from commencing the present action, and, in the absence of a showing that O Co. abused its right of withdrawal when it withdrew the prior action, O Co. was permitted to commence the present action.
5. This court declined to review the defendant's claim that he was denied due process in connection with his postappeal motion for judgment: that claim was not properly before this court, as the defendant failed to comply with the applicable rule of practice (§ 61-9) because he did not appeal from or amend his appeal to include the trial court's denial of his motion for judgment; moreover, even if the defendant's claim was properly before this court, it was not reviewable, as it was inadequately briefed.

Submitted on briefs September 22, 2020—officially released February 2, 2021

Procedural History

Action to foreclose a mortgage on certain real property owned by the defendant, and for other relief, brought to the Superior Court in the judicial district of Ansonia-Milford, where the court, *Hon. John W. Moran*,

judge trial referee, granted the plaintiff's motion for summary judgment as to liability; thereafter, the court denied the defendant's motion to dismiss; subsequently, CIT Bank, N.A., was substituted as the plaintiff; thereafter, the court, *Hon. John W. Moran*, judge trial referee, granted the substitute plaintiff's motion for a judgment of strict foreclosure and rendered judgment thereon, from which the defendant appealed to this court; subsequently, the court, *Hon. John W. Moran*, judge trial referee, denied the defendant's motion for judgment. *Affirmed.*

Stephen M. Ceslik, Jr., self-represented, filed a brief as the appellant (defendant).

Benjamin T. Staskiewicz, filed a brief for the appellee (substitute plaintiff).

Opinion

SUAREZ, J. The self-represented defendant, Stephen M. Ceslik, Jr.,[1] appeals from the judgment of strict foreclosure rendered by the trial court in favor of the substitute plaintiff, CIT Bank, N.A.[2] On appeal, the defendant claims that the court erred by (1) rejecting his defense of laches when it granted the motion of OneWest Bank, N.A. (OneWest), for summary judgment as to liability, (2) rejecting his postjudgment claim that the plaintiff lacked standing, (3) crediting obviously fraudulent and defective assignments of the mortgage, (4) denying his motion to dismiss the present action on the ground that OneWest initiated a prior identical foreclosure action against the defendant that it subsequently withdrew,

[1] We note that the complaint lists Stephen M. Cesik, Jr., Stephen Cesik, and Stephen Ceslik as alternative names for the defendant.

[2] The named plaintiff, OneWest Bank, N.A. (OneWest), which commenced the underlying action, merged into CIT Bank, N.A., during the proceedings in the trial court. Pursuant to Practice Book § 9-16, OneWest moved to substitute CIT Bank, N.A., as the plaintiff on January 17, 2018, and the court granted this motion on April 13, 2018. We therefore refer in this opinion to CIT Bank, N.A., as the plaintiff and to OneWest by name.

and (5) denying him due process in connection with his motion for judgment. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. OneWest commenced the underlying foreclosure action by writ of summons and complaint on July 23, 2015. In the complaint, OneWest alleged that in 2007, the defendant executed and delivered to Financial Freedom Senior Funding Corporation, a subsidiary of IndyMac Bank, F.S.B., a note for a loan not to exceed a maximum principal amount of $440,700. To secure the note, the defendant executed and delivered to Financial Freedom Senior Funding Corporation a reverse annuity mortgage on his home located in Milford (property). OneWest alleged that it was the holder of the mortgage by virtue of a series of assignments recorded on the Milford land records and that it was also the holder of the note. It further alleged that the note was in default and that, as the holder of the note, it elected to accelerate the balance due on the note, to declare the note to be due in full, and to foreclose on the mortgage securing the note.

The defendant filed an appearance as a self-represented party on August 24, 2015. The parties entered the court-supervised mediation program upon the defendant's request. The mediator filed a final report on March 28, 2016, in which she stated that the case was not settled and terminated the mediation.

The defendant filed an answer on April 25, 2016, in which he admitted that he owned, possessed, and lived at the property. He denied that the note was in default and due in full, and that he was the owner of the equity of redemption of the property. He left OneWest to its proof for the remaining allegations in the complaint. He then raised by way of special defenses that (1) OneWest was barred on the basis of laches from claiming a default on the note, (2) he was never given a right

of rescission, which meant the loan remained rescindable, and (3) the mortgage loan was induced by fraud and misrepresentations regarding its terms.

OneWest filed a motion for summary judgment on September 29, 2016, in which it argued that there was no genuine issue of material fact regarding the defendant's liability under the loan documents. It further argued that the defendant's special defenses were not valid, recognized defenses to a foreclosure action or, alternatively, that they were mere conclusions of law that were unsupported by facts. A hearing on the motion was held on March 13, 2017, at which both parties filed submissions supporting their arguments.

The court granted OneWest's motion for summary judgment as to liability on April 20, 2017. The court issued a memorandum of decision in which it concluded that OneWest had established its prima facie case and that the defendant had failed to demonstrate that there was a genuine issue of material fact. The court determined that an affidavit submitted by OneWest in support of its motion for summary judgment from Justin Roland, an assistant secretary for the plaintiff,[3] supported a finding that OneWest was the holder and in possession of the note, which was endorsed in blank. The court further concluded, on the basis of the affidavit, that no genuine issue of material fact existed with respect to whether OneWest was the owner of the mortgage by virtue of a series of assignments of the original note and mortgage. OneWest attached copies of these assignments to Roland's affidavit and presented them with its motion for summary judgment.

The court rejected the defendant's three special defenses, concluding that they were naked, conclusory

[3] The affidavit states that Roland was an assistant secretary for the plaintiff, which was formerly known as OneWest. See footnote 2 of this opinion. At the time OneWest filed the affidavit, however, it had not yet moved to substitute the plaintiff as the plaintiff.

statements.[4] With respect to the defense of laches, which we will discuss in greater detail in part I of this opinion, the court concluded that the defendant's statement lacked specificity as to the facts giving rise to this defense, and, therefore, the defense was legally insufficient. The court further concluded that the second and third defenses did not attack the making, validity, or enforcement of either the note or the mortgage and, thus, were "legally invalid."[5]

The defendant, on May 9, 2017, filed a motion to reargue the granting of the motion for summary judgment, which the court denied on May 14, 2018. On July 12, 2017, the defendant filed a motion to dismiss based on OneWest's filing and subsequent withdrawal of a prior foreclosure action against him. The court denied this motion on February 20, 2018. On February 27, 2018, the defendant filed a motion to vacate the ruling on OneWest's motion for summary judgment, which the court denied on March 26, 2018.

The plaintiff filed a motion for judgment of strict foreclosure on April 17, 2018. The court granted the motion and rendered a judgment of strict foreclosure on May 14, 2018, setting the law day for July 16, 2018. The defendant filed the present appeal on May 31, 2018. On October 30, 2018, during the pendency of this appeal, the defendant filed a motion for judgment with the trial court in which he argued that the plaintiff lacked standing. The court held a hearing on the motion on January 8, 2019, and denied it on the same date. The defendant did not amend his appeal to include a claim chal-

[4] On appeal, the defendant challenges the court's rejection of his special defense of laches but does not challenge its rejection of his other two special defenses.

[5] We note that a special defense that is based on fraud and misrepresentation does attack the making, validity, or enforcement of the note or mortgage. See *U.S. Bank National Assn.* v. *Blowers*, 332 Conn. 656, 658, 212 A.3d 226 (2019) (holding that mortgagor's allegations that mortgagee engaged in pattern of misrepresentation were properly asserted in action as special defenses and counterclaims because they attacked making, validity, or

lenging the denial of this motion. Additional facts and procedural history will be set forth as necessary.

I

The defendant's first claim is that the court erred in rejecting his special defense of laches when it granted OneWest's motion for summary judgment. For the reasons set forth herein, we decline to reach the merits of this claim.

The following procedural history is relevant to the defendant's claim. As we stated previously in this opinion, in his answer, the defendant alleged three special defenses. At issue in the present claim is the special defense of laches, which the defendant alleged as follows: "[OneWest] is barred in claiming a default based on laches." In its reply to the defendant's answer and special defenses, OneWest denied this special defense.[6]

In its memorandum of law in supported of its motion for summary judgment, OneWest argued that, in light of the materials that it submitted in support of its motion and relevant law, it was entitled to judgment in its favor with respect to liability because it had proved its prima facie case and that a genuine issue of fact with respect to liability did not exist.[7] OneWest also argued that all

enforcement of note or mortgage). On appeal, however, the defendant has not raised a claim of error in this regard.

[6] We observe that "[t]he defense of laches, if proven, bars a plaintiff from seeking equitable relief . . . . First, there must have been a delay that was inexcusable, and, second, that delay must have prejudiced the defendant. . . . *The burden is on the party alleging laches to establish that defense.* . . . The mere lapse of time does not constitute laches . . . unless it results in prejudice to the [opposing party] . . . as where, for example, the [opposing party] is led to change his position with respect to the matter in question." (Emphasis in original; internal quotation marks omitted.) *Wells Fargo Bank, N.A.* v. *Fitzpatrick*, 190 Conn. App. 231, 244, 210 A.3d 88, cert. denied, 332 Conn. 912, 209 A.3d 1232 (2019).

[7] OneWest submitted with its motion for summary judgment a note endorsed in blank that was executed and delivered by the defendant in favor of Financial Freedom Senior Funding Corporation. OneWest also presented a mortgage deed signed by the defendant that showed that the defendant secured his obligations under the note by executing a mortgage on the

of the special defenses raised by the defendant did not preclude summary judgment in its favor. In its memorandum of law, OneWest made clear that, by way of its motion for summary judgment, it was challenging the legal sufficiency of the special defenses. OneWest argued that "[a] motion for summary judgment may in certain circumstances be used to challenge the legal sufficiency of a pleading" and that "[s]pecial defenses [alleging] mere conclusions of law that are unsupported by the facts . . . are legally insufficient." (Internal quotation marks omitted.)

With respect to the special defense of laches, OneWest argued as follows: "The first special defense asserts that '[OneWest] is barred in claiming a default based on laches.' [OneWest] respectfully submits that this defense is invalid since it is a mere conclusory statement that has no bearing on the making, validity or enforcement of the note/mortgage. Additionally, the burden is on the defendant to establish a laches defense. . . . Quite simply, the defendant has not pleaded any facts that would satisfy the elements of laches. Accordingly, the defense is legally insufficient and cannot bar summary judgment in favor of [OneWest]." (Citations omitted.)

In his memorandum of law in opposition to OneWest's motion for summary judgment, the defendant argued in broad terms that the materials that he had submitted to the court in opposition to the motion gave

property in favor of Financial Freedom Senior Funding Corporation. The note and the mortgage obligated the defendant to pay property taxes and hazard insurance on the property to secure the lender's interest. The note stated that the lender had the right to make such payments if the defendant did not do so and that any payments the lender made would be treated as an advance and added to the balance of his account. The note further stated that the defendant's failure to make these payments constituted a default, which entitled the lender to foreclose on the property in accordance with all requirements of state law. OneWest also presented evidence showing that Financial Freedom, a division of OneWest, made annual property tax and insurance payments on the property each year from 2011 to 2014.

rise to genuine issues of material fact.[8] He did not attempt to demonstrate that he had paid property taxes and homeowners insurance premiums, as was required by the terms of his mortgage. Specifically, with respect to laches, he argued that the submissions "show that [OneWest and its predecessors in interest] for many years sent the defendant monthly statements showing no balance due and did not send [him] any notices that he was in default, or was required to pay the real estate taxes until shortly before [OneWest] began [its] foreclosure action." The defendant, however, did not respond to the arguments made by OneWest concerning the legal sufficiency of his special defenses. Specifically, he did not argue that the special defense of laches was legally sufficient in that it set forth necessary facts or that it was improper for the court to evaluate the legal sufficiency of his special defenses in the context of ruling on OneWest's motion for summary judgment. The defendant did not attempt to amend the pleading to rectify the pleading defect asserted by OneWest. Rather, the defendant's arguments were related entirely to the evidence that he proffered in support of his special defense of laches. The defendant argued that he had raised a genuine issue of material fact "that there [was] a delay that [was] inexcusable" and that he was prejudiced thereby. He argued in relevant part: "First, with every debt or every mortgage I ever had, if I were late even by a few weeks, I would receive phone calls and

[8] The defendant submitted his own affidavit as well as an affidavit of Ronald Steger, who averred that he had known the defendant for fifty years. He also submitted as exhibits monthly account summaries for the loan from periods between November, 2010 and November, 2016. Each account summary had a section stating that his "Amount of Monthly Payment" was zero dollars. He also included as exhibits letters that Financial Freedom sent him from 2013 and 2014 about his hazard insurance policy. One of the letters notified him that Financial Freedom had not received proof that he had purchased the required insurance on his property. A subsequent letter stated that, because the defendant had still not provided proof of insurance, Financial Freedom purchased this insurance policy on his behalf and that he was responsible for the cost of this insurance.

letters telling me what I failed to do and how much I owed. In this case, to the contrary, I received monthly statements for years showing a zero balance owed and making no reference to any default or amount I should send them or anyone else. . . . I have been severely prejudiced by the delay because [OneWest and its predecessors in interest] allowed the arrearage to accumulate and grow so big, there is no way I can pay it. If they had notified me way back at the beginning, any amount I owed would be manageable. Instead, [OneWest] let the arrearage accumulate for years, never notifying me, so that now the amount is so large [that] I have no way to pay it."

In its memorandum of decision granting OneWest's motion for summary judgment, the court determined that OneWest had proffered evidence that it was the holder of the defendant's note, which was endorsed in blank, that it owned the mortgage by virtue of a series of assignments, and that, as a consequence of his failure to pay real estate taxes on the subject property, the defendant was in default on the note and mortgage. The court concluded that OneWest had met its burden to establish that there was no genuine issue of material fact as to its prima facie case as to liability. The court then turned to the defendant's special defenses. The court began its analysis of the special defenses by indicating that "[a] valid special defense at law to a foreclosure proceeding must be legally sufficient and address the making, validity or enforcement of the mortgage, the note or both . . . ." (Internal quotation marks omitted.) The court's analysis focused on the legal sufficiency of the special defenses. Addressing the special defense of laches, the court stated in relevant part: "This [special defense] is nothing other than a mere naked conclusory statement which lacks specificity as to facts giving rise to laches. Therefore, this special defense is legally insufficient and invalid. As a practical matter, the court submits that a property owner knows that he is obligated

to pay his real estate taxes unless otherwise excused. The note and mortgage . . . obligated the defendant to pay his real estate taxes as a condition of the note and mortgage. The defendant is charged with knowing and understanding his obligations under the note and mortgage, which he signed and executed."

By way of a motion to reargue, the defendant argued that the court improperly determined that a genuine issue of material fact did not exist. In his motion, the defendant devoted a great deal of his argument to his special defense of laches. Although the defendant recognized that the court, in its decision, had characterized his special defense as being "conclusory" in nature, the defendant appears to have interpreted the court's characterization of his special defense as being directed to the proof he submitted, not to his pleading. The defendant did not address the pleading defect on which the court relied. Instead, the defendant argued that he had presented ample evidence, which the court "ignored," in support of the special defense. Among other things, the defendant relied on mortgage statements that he submitted in opposition to OneWest's motion for summary judgment. He argued: "How is it possible that laches is a naked conclusory statement when the defendant presented many years of monthly mortgage statements, generated by the lender, showing no taxes owed, no delinquencies and no balances owed?" As we stated previously in this opinion, the court denied the motion to reargue.

Before this court, the defendant's arguments are materially identical to the arguments that he raised in opposition to the motion for summary judgment and in his motion to reargue. The defendant's analysis of this claim focuses exclusively on the evidence that he presented in opposing OneWest's motion for summary judgment and his belief that he supported his special defense of laches with ample evidence. The defendant

argues that, "[a]ssuming the [he] was obligated to pay the taxes and homeowners insurance premiums, [OneWest's] conduct for many years in not asserting that right, or notifying [him], or claiming any default, with the result that the claimed balance grew so large [that he] could not pay it, is clearly a case of laches." He also argues that, "by this delay . . . the arrearage grew so large, without [him] even knowing that it was happening, that, when he eventually learned about it, he had no way to pay it." As was the case before the trial court, the defendant's arguments in no way focus on the language used in his pleading or the sufficiency thereof. He has cited no authority with respect to the issue of whether his pleading was legally sufficient and does not attempt to demonstrate that the court should not have focused on the sufficiency of his pleading or that the court improperly concluded that his pleading was insufficient.

Although the defendant claims that the court improperly rejected his special defense of laches, his appellate arguments overlook the legal ground on which the court relied. In moving for summary judgment, OneWest unambiguously argued that the special defense of laches was devoid of necessary facts and, thus, was legally insufficient. In granting the motion for summary judgment, the court did not reject the special defense because the defendant failed to present evidence to support it, but because it agreed with OneWest's argument that the special defense, as pleaded, was legally insufficient. The defendant's claim is not persuasive because, even if it has merit, it does not undermine the ground on which the court based its decision. Stated otherwise, the substance of the defendant's claim reflects that it is irrelevant to the trial court's determination that his special defense of laches was legally insufficient. Accordingly, we decline to reach the merits of the defendant's claim. See, e.g., *State* v. *Diaz*, 109

Conn. App. 519, 559, 952 A.2d 124 (court declined to reach merits of appellant's fourth amendment claim related to validity of initial search because trial court's fourth amendment analysis was based on independent source doctrine and, thus, claim raised on appeal was "irrelevant to the judgment from which the defendant appeal[ed]"), cert. denied, 289 Conn. 930, 958 A.2d 161 (2008); *Ingels* v. *Saldana*, 103 Conn. App. 724, 728–29, 930 A.2d 774 (2007) (court declined to address merits of appellant's breach of contract claim because trial court based its decision on breach of fiduciary duty and, thus, claim was "irrelevant to the judgment from which the defendant appeal[ed]").

As we have stated previously, the defendant failed to address OneWest's legal argument, which was related to the sufficiency of his pleading, during the proceedings before the trial court but, instead, argued that the evidence that he presented to the court supported the special defense of laches. Because the defendant does not challenge on appeal the propriety of the court's granting of OneWest's motion for summary judgment on the grounds that the motion improperly challenged the legal sufficiency of the special defense of laches and that he was not given an opportunity to replead, we do not address whether the motion for summary judgment properly was used to challenge the legal sufficiency of the special defense of laches. See *Carrico* v. *Mill Rock Leasing, LLC*, 199 Conn. App. 252, 255 n.3, 235 A.3d 626 (2020) ("On appeal, the plaintiff does not challenge the propriety of the court's granting of the defendant's motion for summary judgment on the grounds that the motion improperly challenged the sufficiency of the complaint and that the plaintiff was not given an opportunity to replead. Accordingly, we do not address whether the motion for summary judgment properly was used to challenge the legal sufficiency of

[the relevant] counts . . . of the complaint.").[9] Likewise, because the defendant does not challenge the court's legal conclusion that his special defense of laches was not properly pleaded and, thus, the court improperly concluded that the defense was legally insufficient, we do not consider such claim on appeal.

[9] Although the defendant does not argue before this court that the trial court improperly considered the legal sufficiency of his special defense or that he should be afforded an opportunity to replead, the procedural history of this case reflects that the defendant has waived a right to replead. "In *Larobina* v. *McDonald*, 274 Conn. 394, 399–403, 876 A.2d 522 (2005), the Supreme Court considered . . . whether a motion for summary judgment, rather than a motion to strike, properly could be used to challenge the legal sufficiency of a complaint. . . . [A] plaintiff is not entitled to replead following the granting of a motion for summary judgment. . . . [U]se of a motion for summary judgment instead of a motion to strike may be unfair to the nonmoving party because [t]he granting of a defendant's motion for summary judgment puts the plaintiff out of court . . . [while the] granting of a motion to strike allows the plaintiff to replead his or her case . . . . The Supreme Court nonetheless held that [it would] not reverse the trial court's ruling on a motion for summary judgment that was used to challenge the legal sufficiency of the complaint when it is clear that the motion was being used for that purpose and the nonmoving party, by failing to object to the procedure before the trial court, cannot demonstrate prejudice." (Citations omitted; internal quotation marks omitted.) *Godbout* v. *Attanasio*, 199 Conn. App. 88, 109–10, 234 A.3d 1031 (2020).

"To avoid waiving a right to replead, a nonmoving party must, before the trial court decides the summary judgment motion, either object to the trial court's deciding the case through summary judgment and argue that it should instead decide the motion as a motion to strike to afford it the opportunity to replead a legally sufficient cause of action or, in the alternative, the nonmoving party may maintain that its pleading is legally sufficient, but it must offer to amend the pleading if the court concludes otherwise." *Streifel* v. *Bulkley*, 195 Conn. App. 294, 302, 224 A.3d 539, cert. denied, 335 Conn. 911, 228 A.3d 375 (2020). "[A] party does not waive its right to replead by arguing that the pleading is legally sufficient, but offering, if the court were to conclude otherwise, to amend the pleading." *American Progressive Life & Health Ins. Co. of New York* v. *Better Benefits, LLC*, 292 Conn. 111, 124, 971 A.2d 17 (2009).

Our rules of practice provide that a party may challenge by way of a motion to strike the legal sufficiency of special defenses. See Practice Book §§ 10-6 and 10-39. In *GMAC Mortgage, LLC* v. *Ford*, 144 Conn. App. 165, 179–80, 73 A.3d 742 (2013), this court extended the holding of *Larobina* and its progeny to situations in which a motion for summary judgment is utilized to challenge the legal sufficiency of a special defense.

Although the defendant has raised a claim related to the court's granting of the motion for summary judgment, his argument is not related to the sufficiency of his pleading, and it is not the proper role of this court to transform the argument into something that it is not. Accordingly, we decline to reach the merits of this claim.

II

Next, the defendant claims that the court erred in denying his postappeal motion for judgment in which he asserted that the plaintiff lacked standing. We disagree.

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . A determination regarding a trial court's subject matter jurisdiction is a question of law. When . . . the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Citation omitted; internal quotation marks omitted.) *Wells Fargo Bank, N.A.* v. *Caldrello*, 192 Conn. App. 1, 20, 219 A.3d 858, cert. denied, 334 Conn. 905, 220 A.3d 37 (2019).

"To make out a prima facie case in a mortgage foreclosure action, the foreclosing party must show that it is the owner of the note and mortgage, that the defendant mortgagor has defaulted on the note and that any conditions precedent to foreclosure, as established by the note and mortgage, have been satisfied." (Internal quotation marks omitted.) Id.

OneWest sought foreclosure of the mortgage pursuant to General Statutes § 49-17, which applies when

an owner of debt without legal title forecloses on a mortgage. "[Section] 49-17 codifies the well established common-law principle that the mortgage follows the note, pursuant to which only the rightful owner of the note has the right to enforce the mortgage. . . . Therefore, [a] mortgagee that seeks summary judgment in a foreclosure action has the evidentiary burden of showing that there is no genuine issue of material fact as to any of the prima facie elements, including that it is the owner of the debt. Appellate courts in this state have held that [the evidentiary burden of establishing ownership of the note] is satisfied when the mortgagee includes in its submissions to the court a sworn affidavit averring that the mortgagee is the holder of the promissory note in question at the time it commenced the action. . . .

"Being the holder of a note satisfies the plaintiff's burden of demonstrating that it is the owner of the note because under our law, the note holder is presumed to be the owner of the debt, and unless the presumption is rebutted, may foreclose the mortgage under § 49-17. The possession by the bearer of a note [e]ndorsed in blank imports prima facie [evidence] that he acquired the note in good faith for value and in the course of business, before maturity and without notice of any circumstances impeaching its validity. The production of the note [endorsed in blank] establishes his case prima facie against the makers and he may rest there. . . . It [is] for the defendant to set up and prove the facts which limit or change the plaintiff's rights. . . . If the defendant rebuts the presumption that the plaintiff was the owner of the debt at the time that the action commenced, then the burden would shift back to the plaintiff to demonstrate that the owner has vested it with the right to receive the money secured by the note." (Citations omitted; footnotes omitted; internal quotation marks omitted.) *American Home Mortgage Servicing, Inc.* v. *Reilly*, 157 Conn. App. 127, 132–34,

117 A.3d 500, cert. denied, 317 Conn. 915, 117 A.3d 854 (2015).

As discussed previously in this opinion, five months after filing this appeal, the defendant filed a motion for judgment in which he argued that the plaintiff did not have standing to bring a foreclosure action against him. The trial court heard oral arguments on this motion and denied it. In his claim on appeal, which appears to challenge the court's denial of his motion for judgment, the defendant argues that the court ignored evidence he attempted to present at the hearing that would have shown that the plaintiff did not own the mortgage and that the plaintiff deceived the court by producing fraudulent assignments of mortgage. However, he does not cite legal authority to support this claim.

Moreover, the defendant did not amend this appeal to include a challenge to the court's January 8, 2019 denial of his motion for judgment. Instead, he raises the present claim, which is related to the standing issue that he raised in the motion, for the first time in his principal appellate brief. This claim is properly before us, however, because it raises the issue of standing. See, e.g., *Perez-Dickson* v. *Bridgeport*, 304 Conn. 483, 506, 43 A.3d 69 (2012) ("If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause. . . . [A] claim that a court lacks subject matter jurisdiction may be raised at any time during the proceedings . . . including on appeal . . . ." (Citation omitted; internal quotation marks omitted.)).

At the hearing on the postappeal motion for judgment, the defendant claimed that the plaintiff did not have standing because it was not the true owner of the mortgage. Rather, he argued that Black Reef Trust was the current owner of the mortgage and had owned the mortgage since its origination. In support of this claim, the defendant sought to introduce a compact disc containing a purported conversation he had with a repre-

sentative of Celink, a loan servicer. The court sustained an objection from the plaintiff on hearsay grounds. The defendant does not challenge on appeal the court's evidentiary ruling, and there is no other evidence to support the claim.

Here, the defendant advances the same arguments that the trial court rejected. He reasserts that he had conversations with Celink proving that Black Reef Trust owns the mortgage. However, he does not point to any evidence properly submitted to the court to show that OneWest was not the holder of the note or the owner of the mortgage at the time it commenced the foreclosure action. Because OneWest proffered evidence that it possessed the note endorsed in blank and because the defendant did not produce any evidence to rebut the presumption that OneWest was the owner of the debt, we conclude that the court properly determined that the plaintiff had standing to foreclose on the mortgage.

III

Next, the defendant claims that the court erred in crediting "obviously fraudulent and defective assignments of mortgage." He does not, however, identify how the assignments of mortgage are either fraudulent or defective. OneWest produced a series of mortgage assignments that were recorded on the Milford land records, along with a sworn affidavit in which the plaintiff's representative attested to the accuracy of these documents. Despite a lack of clarity in his appellate brief with respect to this claim, we nonetheless reject it on its merits because the defendant failed to proffer evidence that demonstrated fraud or defects in the assignments of mortgage. The defendant did not, at any time in the proceedings before the trial court, proffer admissible evidence that called into question the validity of these documents. Accordingly, we conclude that the defendant's claim is without merit.

IV

Next, the defendant claims that the court erred in denying his motion to dismiss the present action on the ground that OneWest had initiated a prior identical foreclosure action against the defendant that it subsequently withdrew. We disagree.

To resolve this claim, we must first set forth the procedural history related to it. Prior to the present action, OneWest commenced a foreclosure action against the defendant with a return date of November 25, 2014. OneWest voluntarily withdrew this prior action on April 30, 2015, while it was still in the mediation phase. At the time the action was withdrawn, a hearing on the merits had not yet occurred. On May 4, 2015, in connection with the prior action, a mediator filed a final report indicating that it was settled. The present action was commenced on July 23, 2015.

On July 12, 2017, the defendant filed a motion to dismiss in which he argued that OneWest "withdrew the case after the mediator agreed that the case was resolved by laches." There is nothing in the record to support this assertion. He further contended that the resolution of the prior action was "dispositive" because the mediator's report marked the matter as settled. The court denied the defendant's motion on February 20, 2018. The record does not disclose any information about why the mediator marked the matter as settled, nor does the defendant attempt to provide further explanation in this regard.

"Our standard of review of a trial court's findings of fact and conclusions of law in connection with a motion to dismiss is well settled. A finding of fact will not be disturbed unless it is clearly erroneous. . . . [If] the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts. . . . Thus,

our review of the trial court's ultimate legal conclusion and resulting [denial] of the motion to dismiss will be de novo." (Internal quotation marks omitted.) *Nationstar Mortgage, LLC* v. *Gabriel*, 201 Conn. App. 39, 43, 241 A.3d 763 (2020).

Pursuant to General Statutes § 52-80, a plaintiff "may withdraw any action . . . returned to and entered in the docket of any court, before the commencement of a hearing on the merits thereof." "The right of a plaintiff to withdraw his action before a hearing on the merits, as allowed by . . . § 52-80, is absolute and unconditional. Under [the] law, the effect of a withdrawal, so far as the pendency of the action is concerned, is strictly analogous to that presented after the rendition of a final judgment or the erasure of the case from the docket." (Internal quotation marks omitted.) *Travelers Property Casualty Co. of America* v. *Twine*, 120 Conn. App. 823, 826–27, 993 A.2d 470 (2010).

Although the right to unilaterally withdraw an action is absolute, a party cannot abuse this right by bringing a second, identical action to avoid consequences stemming from the first action. In *Palumbo* v. *Barbadimos*, 163 Conn. App. 100, 105, 134 A.3d 696 (2016), a plaintiff unilaterally withdrew an action after she missed the statutorily prescribed deadline for claiming the action to a jury trial list. She then filed a second, identical action in order to restart the clock and request a jury trial within the statutory time frame. Id., 106–107. This court held that, as a matter of first impression, the defendant was entitled to have the first action restored to the docket because the plaintiff abused her right of unilateral withdrawal to avoid a bench trial. Id., 103–104. The court noted that "the procedural chicanery engaged in by the plaintiff . . . [could not] be sanctioned because it offend[ed] the orderly and due administration of justice." Id., 103.

Here, the defendant does not cite any authority to support his claim that OneWest should have been prohibited from commencing the present action. Unlike in *Palumbo*, the defendant does not attempt to show that OneWest withdrew the prior action for an improper purpose because that action had been resolved by way of a settlement. Instead, the only information he presented about the prior action is the mediator's final report, which does not provide any explanation as to why OneWest withdrew the prior action. In the absence of a showing that OneWest abused its right of withdrawal when it withdrew the prior action, OneWest was permitted to commence the present foreclosure action. We conclude therefore that the court did not err in denying the defendant's motion to dismiss on the ground that OneWest withdrew a prior foreclosure action.

V

Lastly, the defendant claims he was "denied due process" in connection with his motion for judgment. We decline to review this claim because the defendant failed to comply with Practice Book § 61-9 by appealing from the court's denial of this motion and, alternatively, because it is inadequately briefed and lacks an adequate record.

Our rules of practice govern the filing of amended appeals. Practice Book § 61-9 provides in relevant part: "Should the trial court, subsequent to the filing of a pending appeal, make a decision that the appellant desires to have reviewed, the appellant shall file an amended appeal within twenty days from the issuance of notice of the decision as provided for in Section 63-1. . . ." Further, Practice Book § 63-4 (b) provides in relevant part: "Except as otherwise provided, a party may as of right file amendments to the preliminary statement of issues at any time until that party's brief is filed. . . ."

"Although we are solicitous of the rights of [self-represented] litigants . . . [s]uch a litigant is bound by the same rules . . . and procedure as those qualified to practice law. . . . [W]e are not required to review claims that are inadequately briefed. . . . We consistently have held that [a]nalysis, 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.) *Wells Fargo Bank, N.A.* v. *Caldrello*, supra, 192 Conn. App. 34. "Claims 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.) Id., 35.

The defendant asserts that at the January 8, 2019 hearing on his motion for judgment, the plaintiff "made complicated arguments" and presented copies of cases in support of these arguments. He argues that he was denied due process because he was not able to review these arguments and cases prior to the hearing, which limited his ability to rebut them.

The defendant's due process claim related to the January 8, 2019 hearing is not properly before us, however, because he did not appeal from or amend his appeal to include the court's denial of his motion for judgment and claims related thereto.[10] See, e.g., *Aquarion Water Co. of Connecticut* v. *Beck Law Products & Forms, LLC*, 98 Conn. App. 234, 236 n.1, 907 A.2d 1274 (2006) (declining to review claim that defendants raised on appeal because they did not amend appeal pursuant to Practice Book § 61-9 to include claim). Moreover, even

[10] As we explained in part II of this opinion, although the defendant did not amend the appeal to include the court's denial of his motion for judgment on the issue of standing, we nevertheless reached the merits of his standing claim, which he raised in his motion for judgment, because a challenge related to standing may be raised at any time. See, e.g., *Perez-Dickson* v. *Bridgeport*, supra, 304 Conn. 506. This rationale does not apply to the present claim, as it does not implicate subject matter jurisdiction.

if we could overlook that defect, his due process claim is unreviewable because it is inadequately briefed. In his brief, the defendant merely makes conclusory statements without providing any analysis or citing legal authority to support his claim. Therefore, even if properly before us, we would decline to address this claim.

The judgment is affirmed and the case is remanded for the purpose of setting a new law day.

In this opinion the other judges concurred.

SERAMONTE ASSOCIATES, LLC *v.* TOWN OF HAMDEN
(AC 42770)

Bright, C. J., and Alvord and Oliver, Js.

Syllabus

Pursuant to statute (§ 12-63c (a)), the owner of real property used primarily for the purpose of producing rental income may be required to "annually submit to the assessor not later than the first day of June" certain rental income and expense information.

Pursuant further to statute (§ 12-63c (d)), an owner who fails to submit the information required by § 12-63c (a), shall be subject to a penalty "equal to a ten per cent increase in the assessed value of such property for such assessment year."

The plaintiff, an owner of several rental properties in the defendant town of Hamden, appealed from the judgment of the trial court, which upheld the decision of the defendant's Board of Assessment Appeals affirming a 10 percent penalty imposed by the defendant's assessor on the tax assessments of the plaintiff's properties pursuant to § 12-63c (d), as a result of the plaintiff's submission of required tax forms after June 1. The plaintiff sent the tax forms by first class mail to the assessor on May 31. It was undisputed that the assessor failed to receive the required forms by the June 1 deadline set forth in § 12-63c (a). The plaintiff claimed that the word "submit" as used in § 12-63c (a) was ambiguous and that the trial court was required, as a matter of law, to rule in its favor on the basis of the statute's ambiguity and also claimed that the imposition of the assessor's penalty violated the excessive fines clauses of both the federal and state constitutions. *Held*:

1. The trial court properly rendered summary judgment in favor of the defendant on the count of the complaint that alleged that the board

improperly upheld the 10 percent penalty: the plaintiff could not prevail on its claim that the word "submit," as used in § 12-63c (a), essentially means "to mail," as the word "submit," when viewed in the context of other tax statutes, was unambiguous and meant that the assessor must receive the forms by June 1; the legislature's decision not to include the phrase "or postmarked" in § 12-63c (a) was dispositive, meaning that those forms must be delivered to the assessor's office by June 1 in order to comply with the statute..

2. The trial court properly granted the defendant's motion to strike the plaintiff's constitutional claims: the excessive fines clause of the eighth amendment to the United States constitution did not apply to the 10 percent penalty in § 12-63c (d), as that penalty was not punitive within the meaning of the eighth amendment, and, accordingly, the plaintiff's alleged violations of the eighth amendment necessarily failed; moreover, under the state constitution, the 10 percent penalty in § 12-63c (d) was not a fine that subjected it to the excessive fines clause and, even if this court assumed that the clause applied, the court was not persuaded that the 10 penalty was unconstitutionally excessive under the facts of the case and controlling Connecticut precedent.

Argued October 15, 2020—officially released February 2, 2021

Procedural History

Appeal from the decision of the defendant's Board of Assessment Appeals denying the plaintiff's appeal of a penalty imposed by the defendant's assessor and added to tax assessments on certain of the plaintiff's real properties, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *S. Richards*, *J.*, granted the defendant's motions for summary judgment and to strike, and rendered judgment for the defendant, from which the plaintiff appealed to this court. *Affirmed.*

Brenden P. Leydon, for the appellant (plaintiff).

Zachary J. Phillips, with whom was *Adam J. Blank*, for the appellee (defendant).

Opinion

OLIVER, J. The plaintiff, Seramonte Associates, LLC, appeals from the judgment of the trial court granting summary judgment in favor of the defendant, the town of Hamden, as to count one of the plaintiff's complaint

and granting the defendant's motion to strike the plaintiff's constitutional claims in count two. On appeal, the plaintiff claims, with respect to count one, that the court erred in holding that the word "submit" as used in General Statutes § 12-63c requires that certain tax forms have to be *received* by the defendant by June 1, and, with respect to count two, that the court erred in granting the defendant's motion to strike, because the penalty imposed for the plaintiff's late submission of the tax forms amounts to a fine that violates the excessive fines clauses of the federal and the state constitutions. We disagree and, accordingly, affirm the judgment of the trial court.

The following undisputed facts and procedural history, as set forth by the trial court in its memorandum of decision and otherwise gleaned from the record, are relevant to the plaintiff's claims on appeal. The plaintiff was the owner of certain parcels of rental property located in Hamden known as 520 Mix Avenue, 609 Mix Avenue, and 617 Mix Avenue (properties). On February 1, 2016, the assessor for the defendant assessed those properties at $15,683,080 for 520 Mix Avenue, $2,927,890 for 609 Mix Avenue, and $10,521,560 for 617 Mix Avenue. Pursuant to § 12-63c (a), the plaintiff was required to "submit to the assessor not later than the first day of June" certain tax forms.[1] The assessor sent the required

[1] General Statutes § 12-63c provides in relevant part: "(a) In determining the present true and actual value in any town of real property used primarily for purposes of producing rental income, the assessor, which term whenever used in this section shall include assessor or board of assessors, may require in the conduct of any appraisal of such property pursuant to the capitalization of net income method, as provided in section 12-63b, that the owner of such property annually submit to the assessor not later than the first day of June, on a form provided by the assessor not later than forty-five days before said first day of June, the best available information disclosing the actual rental and rental-related income and operating expenses applicable to such property. Submission of such information may be required whether or not the town is conducting a revaluation of all real property pursuant to section 12-62. Upon determination that there is good cause, the assessor may grant an extension of not more than thirty days to submit such information, if

forms to the plaintiff, and the cover letter to those forms stated: "It should be clearly understood that if the attached report is not completed and submitted to the [a]ssessor's [o]ffice by June 1, 2016, it will result in a 10 [percent] penalty being applied to your assessment per [§ 12-63c]." Additionally, the cover letter stated that "[s]ubmission means this form is physically in the [a]ssessor's office by 4:30 on June 1, 2016, faxes, e-mails and postmarks will not be accepted." The plaintiff sent the required forms to the assessor by first class mail on May 31, 2016, and it is undisputed that the assessor received them on June 2, 2016. Because the required forms were not received on or before June 1, the assessor, pursuant to § 12-63c (d), imposed a 10 percent penalty, amounting to $132,145.16, that was added to the assessments of the properties.

On September 28, 2016, pursuant to General Statutes § 12-119,[2] the plaintiff commenced by service of process

the owner of such property files a request for an extension with the assessor not later than May first. . . .

"(c) . . . Any person claiming to be aggrieved by the action of the assessor hereunder may appeal the actions of the assessor to the board of assessment appeals and the Superior Court as otherwise provided in this chapter.

"(d) Any owner of such real property required to submit information to the assessor in accordance with subsection (a) of this section for any assessment year, who fails to submit such information as required under said subsection (a) or who submits information in incomplete or false form with intent to defraud, shall be subject to a penalty equal to a ten per cent increase in the assessed value of such property for such assessment year. . . ."

[2] General Statutes § 12-119 provides in relevant part: "When it is claimed that a tax has been laid on property . . . [that] was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property, the owner thereof . . . prior to the payment of such tax, may, in addition to the other remedies provided by law, make application for relief to the superior court for the judicial district in which such town or city is situated. Such application may be made within one year from the date as of which the property was last evaluated for purposes of taxation and shall be served and returned in the same manner as is required in the case of a summons in a civil action, and the pendency of such application shall not suspend action upon the tax

an appeal in the Superior Court claiming that the valuation of the properties, which included the 10 percent penalty, was excessive. Pursuant to General Statutes § 12-111,[3] the plaintiff also timely appealed to the defendant's Board of Assessment Appeals (board) the assessor's imposition of the 10 percent penalty. The plaintiff appeared before the board on March 2, 2017, and, on March 21, 2017, the board issued its decision denying the plaintiff's appeal.

On February 27, 2017, the plaintiff filed a withdrawal form in the Superior Court, stating that it was withdrawing its claim insofar as it alleged excessive assessments,

against the applicant. In all such actions, the Superior Court shall have power to grant such relief upon such terms and in such manner and form as to justice and equity appertains, and costs may be taxed at the discretion of the court. If such assessment is reduced by said court, the applicant shall be reimbursed by the town or city for any overpayment of taxes in accordance with the judgment of said court."

[3] General Statutes § 12-111 provides in relevant part: "(a) Any person . . . claiming to be aggrieved by the doings of the assessors of such town may appeal therefrom to the board of assessment appeals. Such appeal shall be filed, in writing, on or before February twentieth. The written appeal shall include, but is not limited to, the property owner's name, name and position of the signer, description of the property which is the subject of the appeal, name and mailing address of the party to be sent all correspondence by the board of assessment appeals, reason for the appeal, appellant's estimate of value, signature of property owner, or duly authorized agent of the property owner, and date of signature. The board shall notify each aggrieved taxpayer who filed a written appeal in the proper form and in a timely manner, no later than March first immediately following the assessment date, of the date, time and place of the appeal hearing. Such notice shall be sent no later than seven calendar days preceding the hearing date except that the board may elect not to conduct an appeal hearing for any commercial, industrial, utility or apartment property with an assessed value greater than one million dollars. The board shall, not later than March first, notify the appellant that the board has elected not to conduct an appeal hearing. An appellant whose appeal will not be heard by the board may appeal directly to the Superior Court pursuant to section 12-117a. The board shall determine all appeals for which the board conducts an appeal hearing and send written notification of the final determination of such appeals to each such person within one week after such determination has been made. Such written notification shall include information describing the property owner's right to appeal the determination of such board. . . ."

and that it was proceeding with its claim insofar as it concerned the impropriety of the 10 percent penalty added to the assessments. On March 27, 2017, the defendant filed a motion for summary judgment, and, on April 26, 2017, the plaintiff filed a motion for summary judgment.

On May 1, 2017, the plaintiff filed an amended complaint (operative complaint) to clarify, in part, its February 27, 2017 withdrawal form. In the operative complaint, the plaintiff alleged, in count one, that the board improperly had upheld the assessor's imposition of the 10 percent penalty and, in count two, that the penalty was unconstitutional under the excessive fines clauses of both the federal and the state constitutions. See U.S. Const., amend VIII; Conn. Const., art. I, § 8. On July 3, 2017, the defendant filed a motion to strike count two of the plaintiff's operative complaint on the ground that it failed to state a claim on which relief could be granted, arguing that the excessive fines clauses of both the federal and the state constitutions do not apply to tax penalties.

On December 21, 2017, the defendant filed a new motion for summary judgment as to count one of the plaintiff's operative complaint. The defendant argued that it properly had imposed the 10 percent penalty pursuant to § 12-63c, because the plaintiff failed to submit its income and expense report to the defendant by June 1, 2016. The plaintiff argued in its own motion for summary judgment that the defendant's interpretation of § 12-63c was legally incorrect. On February 5, 2019, the court denied the plaintiff's April 26, 2017 motion for summary judgment, and it granted the defendant's December 21, 2017 motion for summary judgment as to count one of the plaintiff's operative complaint. In its memorandum of decision on the motions for summary judgment, the court recognized that the word "submit" is not defined in § 12-63c, and it reasoned that, because

different dictionary definitions of "submit" could support either party's interpretation, the term was ambiguous. The court also determined that the statute's legislative history did not clarify the meaning of the word "submit." The court, however, explained that in *MSK Properties, LLC* v. *Hartford*, Superior Court, judicial district of New Britain, Docket No. CV-15-6029158-S (July 3, 2017) (64 Conn. L. Rptr. 747, 753–54), the Superior Court interpreted the language of the statute to mean that a town must *receive* the tax forms by June 1. Additionally, the court noted that, "in interpreting another tax statute, General Statutes § 12-41 (e) (1), [the] Superior Court [has] held that 'file' [by November 1] as used in that statute, meant that the tax information had to be received by the town by November 1." See *SBC Internet Services, Inc.* v. *Bridgeport*, Superior Court, judicial district of Fairfield, Docket No. CV-06-6000408-S (February 14, 2008) (44 Conn. L. Rptr. 870, 871). Accordingly, the court granted the defendant's motion for summary judgment, holding that the word "submit," as used in § 12-63c, "means that the town must receive the tax forms by June 1 of each year."

Also on February 5, 2019, in a separate memorandum of decision, the court granted the defendant's motion to strike count two of the plaintiff's operative complaint, agreeing with the defendant that the excessive fines clauses of both the federal and the state constitutions do not apply to tax penalties. With respect to the federal constitution, the court held that the tax penalty in § 12-63c is remedial, rather than punitive, because "it is imposed to ensure compliance with the timely payment of taxes and to deter delinquent payment of taxes, which could harm the government with additional expenses of ensuring compliance in collecting those taxes." Accordingly, because the federal excessive fines clause applies only to those forfeitures that may be characterized as "punitive"; see *United States* v. *Viloski*, 814 F.3d 104, 109 (2d Cir. 2016), cert. denied,

U.S. , 137 S. Ct. 1223, 197 L. Ed. 2d 462 (2017); the court held that the federal excessive fines clause did not apply.

With respect to the state constitution, the court held that the 10 percent penalty in § 12-63c is not a "fine" within the meaning of the excessive fines clause. The court relied on the definition of "fine" set forth in *Bankers Trust Co.* v. *Blodgett*, 96 Conn. 361, 368, 114 A. 104 (1921), aff'd, 260 U.S. 647, 43 S. Ct. 233, 67 L. Ed. 439 (1923), in which our Supreme Court stated that "[a] fine is a pecuniary punishment imposed by a lawful tribunal upon a person convicted of crime or misdemeanor." (Internal quotation marks omitted.) The court explained that the tax penalty in § 12-63c "is not punishment imposed due to conviction of a felony or a misdemeanor. Rather, it is a tool to ensure payment of the tax and punish evasion or neglect." Accordingly, the court concluded that the tax penalty is not a violation of the excessive fines clause of the state constitution.[4] The court rendered judgment on the second count of the plaintiff's operative complaint on March 18, 2019. This appeal followed.

I

The plaintiff first challenges the summary judgment rendered in favor of the defendant as to count one of its operative complaint and claims that the trial court erred when it held that the word "submit" as used in § 12-63c means that the defendant must receive the tax forms by June 1 of each year. Specifically, the plaintiff argues that (1) the ordinary meaning of "submit" is "to

[4] In its memorandum of decision on the defendant's motion to strike, the trial court stated: "Similar to the penalty in *Bankers Trust Co.*, this tax, although a penalty, is a 'fine.' " It is clear, however, on review of the memorandum of decision and its reliance on *Bankers Trust Co.*, that the trial court intended to conclude that the tax penalty was *not* a fine within the meaning of the Connecticut constitution, and that its omission of the word "not" was a scrivener's error.

send," and that, in the tax context, "timely mailing is timely filing," (2) the rule of lenity applies to civil penalties for alleged lateness, and, therefore, the statute should be strictly construed "and not extended by implication," and (3) because the court found that the word "submit" was ambiguous, a decision in favor of the taxpayer was compelled as a matter of law.

The defendant counters that "submit" means present, file, or formally deliver, arguing that "[i]n some tax settings the legislature has intended for the date of sending to be considered the date of filing or submission. Crucially, however, when the legislature so intends, it expresses that intent explicitly by adding words such as 'or postmarked' to the statute." With respect to the rule of lenity, the defendant argues that it applies "only if the statute remains ambiguous after all sources of legislative intent have been explored . . . [and that] [w]here, as here, after full resort to the process of statutory construction, there is no reasonable doubt as to the meaning of the statute, [the court] need not resort to the rule of lenity." Finally, the defendant argues that "strict construction neither requires nor permits the contravention of the true intent and purpose of the statute as expressed in the language used." The defendant claims that the statute is not ambiguous and, therefore, strict construction is inapplicable, arguing that the "plaintiff urges a construction that rewrites the statute and eschews its plain language by adding the words 'or [postmarked]' when the legislature intended to leave those words out." We agree with the defendant.

We begin with our standard of review. "The standard of review of motions for summary judgment is well settled. Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the

moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law. . . .

"On appeal, we must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court. . . . Our review of the trial court's decision to grant [a moving party's] motion for summary judgment is plenary." (Internal quotation marks omitted.) *Smigelski* v. *Dubois*, 153 Conn. App. 186, 197, 100 A.3d 954, cert. denied, 314 Conn. 948, 103 A.3d 975 (2014).

Initially, we are called upon to determine the meaning of the word "submit" in § 12-63c, which presents us with a question of statutory interpretation. "[I]ssues of statutory construction raise questions of law, over which we exercise plenary review. . . . The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of whether the language does so apply. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and

does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Ugrin* v. *Cheshire*, 307 Conn. 364, 379–80, 54 A.3d 532 (2012).

The text of § 12-63c (a) provides in relevant part: "In determining the present true and actual value in any town of real property used primarily for purposes of producing rental income, the assessor . . . may require . . . that the owner of such property annually submit to the assessor not later than the first day of June, on a form provided by the assessor . . . the best available information disclosing the actual rental and rental-related income and operating expenses applicable to such property."

In the present case, the trial court concluded that, because the statute does not define "submit" and because dictionary definitions of "submit" could support either party's position, the word "submit," therefore, is ambiguous. In making that determination, the court discussed the statute's legislative history and certain Superior Court decisions. Pursuant to § 1-2z, however, we must consider both the text of a statute *and its relationship to other statutes* to determine whether it is ambiguous. See General Statutes § 1-2z ("[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes").

An examination of our tax statutes reveals that our legislature frequently includes the phrase "or postmarked" when it intends for the date of mailing to be considered the date of filing or submission. For example, General Statutes § 12-129 provides in relevant part that "[a]ny person, firm or corporation who pays any property tax in excess of the principal of such tax . . . may make application in writing to the collector of taxes for the refund of such amount. Such application

shall be delivered *or postmarked* by the later of [three events] . . . .'' (Emphasis added). Similarly, General Statutes § 12-146 provides in relevant part that ''[n]o tax or installment thereof shall be construed to be delinquent under the provisions of this section if . . . (B) the envelope containing the amount due as such tax or installment, as received by the tax collector of the municipality to which such tax is payable, *bears a postmark* showing a date within the time allowed by statute for the payment of such tax or installment.'' (Emphasis added). General Statutes § 12-41 (e) provides in relevant part: ''(1) Any person who fails to file a declaration of personal property on or before the first day of November . . . shall be subject to a penalty equal to twenty-five per cent of the assessment of such . . . property . . . and (3) any declaration received by the municipality to which it is due that is in an envelope *bearing a postmark* . . . showing a date within the allowed filing period shall not be deemed to be delinquent.'' (Emphasis added). Other tax statutes contain similar language.[5]

Those statutes guide our conclusion that when the date of mailing is to be considered the date of filing or submission, our legislature includes language to that effect in the statute. At oral argument before this court, however, the plaintiff argued that those statutes are distinguishable because they use the word ''file'' as opposed

[5] See, e.g., General Statutes § 12-39aa (a) (1) (''If any return . . . required to be filed with or any payment required to be made to the Department of Revenue Services within a prescribed period on or before a prescribed date under authority of any provision of the general statutes is, after such period or such date, delivered by United States mail to the Department of Revenue Services, *the date of the United States postmark* stamped on the cover in which such return . . . is mailed *shall be deemed to be the date of delivery or the date of payment* . . . .'' (Emphasis added.)); General Statutes § 12-42 (a) (''Any person required by law to file an annual declaration of personal property may request a filing extension with the assessor of the municipality. Such request shall be made on or before the first day of November in writing. . . . When the first day of November is a Saturday or Sunday, the declaration or extension request may be filed *or postmarked* the next business day following.'' (Emphasis added.)).

to "submit." The plaintiff claims that the word "submit" essentially means "to mail," and, therefore, that the tax statutes that include the phrase "or postmarked" do not compel the conclusion that "submit," as used in § 12-63c, means that the defendant must *receive* the forms by June 1. We disagree.

Our legislature's use of the word "file" or the word "submit" does not bear on whether the forms to be filed or submitted must arrive at their destination, or merely be postmarked, by any certain date. Rather, the legislature's decision not to include the phrase "or postmarked", or other similar language that would define submit to include mailing, is dispositive. "[I]t is well settled that the legislature is always presumed to have created a harmonious and consistent body of law . . . . [T]his tenet of statutory construction . . . requires [this court] to read statutes together when they relate to the same subject matter . . . . Accordingly, [i]n determining the meaning of a statute . . . we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction." (Internal quotation marks omitted.) *Felician Sisters of St. Francis of Connecticut, Inc.* v. *Historic District Commission*, 284 Conn. 838, 850, 937 A.2d 39 (2008). Accordingly, we conclude that, when viewed in the context of other tax statutes, all of which appear in title 12 of the General Statutes, the word "submit" as used in § 12-63c is unambiguous.[6] Section 12-63c provides that the forms must be submitted by June 1, which means that, in the absence of any language to

[6] The plaintiff claims that, because the trial court held that the word "submit" was ambiguous, judgment for the taxpayer was compelled as a matter of law. Because we conclude that "submit" as used in § 12-63c is unambiguous, the plaintiff's claim fails. Likewise, we agree with the defendant that the rule of lenity applies only if the statute remains ambiguous after all sources of legislative intent have been explored. Here, because the statute is unambiguous in the context of other tax statutes, the rule does not apply.

the contrary, those forms must be delivered to the assessor's office by that date in order to comply with the statute. There is no dispute in this case that the plaintiff's tax forms were not delivered to the defendant's assessor by the June 1 deadline.

Therefore, the trial court properly rendered summary judgment in favor of the defendant as to count one of the plaintiff's operative complaint.

II

Next, the plaintiff claims that the trial court improperly granted the defendant's motion to strike its constitutional claims in count two of the operative complaint and rendered judgment thereon. Specifically, the plaintiff argues that, "[a]s a matter of proportionality and fundamental fairness, a penalty of over $130,000 for at worst being one day late with an ambiguous statutory time is grossly excessive" and, thus, the imposition of that penalty was a violation of both the federal and the state constitutions. With respect to the federal constitution, the plaintiff argues that the penalty was imposed, in part, to deter the delinquent payment of taxes. Citing *Austin* v. *United States*, 509 U.S. 602, 610, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993), the plaintiff claims that "United States Supreme Court precedent has been clear that if civil sanctions are even in part serving a deterrent purpose they are subject to excessive fine analysis." With respect to the state constitution, the plaintiff characterizes the trial court's decision as hinging on whether the penalty was imposed due to conviction of a felony or a misdemeanor. The plaintiff argues that "[t]his analysis is incorrect and the Connecticut Supreme Court itself recognized in 1936 that an excessive 'fine' could include civil penalties." See *Second National Bank of New Haven* v. *Loftus*, 121 Conn. 454, 459–60, 185 A. 423 (1936). We are not persuaded by either of the plaintiff's arguments.

We begin with our standard of review. "The standard of review in an appeal from the granting of a motion to strike is well established. Because a motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court, our review . . . is plenary. . . . We take the facts to be those alleged in the complaint that has been stricken and we construe the complaint in the manner most favorable to sustaining its legal sufficiency. . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . [A] motion to strike is essentially a procedural motion that focuses solely on the pleadings. . . . It is, therefore, improper for the court to consider material outside of the pleading that is being challenged by the motion." (Citation omitted; internal quotation marks omitted.) *Dlugokecki* v. *Vieira*, 98 Conn. App. 252, 256, 907 A.2d 1269, cert. denied, 280 Conn. 951, 912 A.2d 483 (2006). "For the purpose of ruling upon a motion to strike, the facts alleged in a complaint, though not the legal conclusions it may contain, are deemed to be admitted. . . . A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Citation omitted; internal quotation marks omitted.) *Metcoff* v. *Lebovics*, 123 Conn. App. 512, 516, 2 A.3d 942 (2010).

A

Federal Excessive Fines Clause

In order to determine whether a financial penalty is unconstitutional under the excessive fines clause of the eighth amendment to the federal constitution, courts rely on the two step inquiry established in *United States* v. *Bajakajian*, 524 U.S. 321, 328, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). At the first step, a court must determine whether the financial penalty constitutes a punishment and is, thus, a " 'fine' " within the meaning of the excessive fines clause. Id., 334. If it is determined

that the penalty constitutes a punishment, the court then must proceed to the second step of the analysis and determine whether the challenged forfeiture is unconstitutionally excessive. Id.

With respect to the first step, the trial court, relying on *United States* v. *Viloski*, supra, 814 F.3d 109, noted that the excessive fines clause "applies only to those forfeitures that may be characterized, at least in part, as 'punitive'—i.e., forfeitures for which a defendant is personally liable." "In contrast, purely 'remedial' forfeitures—i.e., those in rem forfeitures intended not to punish the defendant but to compensate the [g]overnment for a loss or to restore property to its rightful owner—fall outside the scope of the [e]xcessive [f]ines [c]lause." *United States* v. *Viloski*, supra, 109. Additionally, the trial court explained that "[a] forfeiture does not constitute 'punishment' to the extent that it is remedial, such as where the amount of forfeiture is rationally related to the costs of enforcing the law and societal costs of the proscribed conduct . . . ."

The plaintiff argues that the penalty in the present case serves, in part, a deterrent purpose, and that under *Austin* v. *United States*, supra, 509 U.S. 602, a civil sanction is subject to the excessive fines clause if it is retributive or has a deterrent purpose. As the defendant correctly notes, however, that method of analysis was drawn from *United States* v. *Halper*, 490 U.S. 435, 448, 109 S. Ct. 1892, 104 L. Ed. 2d 487 (1989), which was abrogated by *Hudson* v. *United States*, 522 U.S. 93, 118 S. Ct. 488, 139 L. Ed. 2d 450 (1997). Indeed, in *Dept. of Revenue of Montana* v. *Kurth Ranch*, 511 U.S. 767, 114 S. Ct. 1937, 128 L. Ed. 2d 767 (1994), the United States Supreme Court held that "*Halper*'s method of determining whether the exaction was remedial or punitive simply does not work in the case of a tax statute. . . . Subjecting [the tax] to *Halper*'s test for civil penalties is therefore inappropriate." (Citation omitted; internal quotation marks omitted.) Id., 784. The court noted that

"neither a high rate of taxation nor an obvious deterrent purpose automatically marks this tax as a form of punishment." Id., 780. Nevertheless, it concluded that the tax at issue in that case *was* punitive. That conclusion, however, was compelled by the nature of the tax at issue. *Kurth Ranch* concerned a Montana statute that imposed a tax "on the possession and storage of dangerous drugs." Mont. Code Ann. § 15-25-111 (1987). The court explained that "this so-called tax is conditioned on the commission of a crime. That condition is significant of penal and prohibitory intent rather than the gathering of revenue . . . the tax assessment not only hinges on the commission of a crime, it also is exacted only after the taxpayer has been arrested for the precise conduct that gives rise to the tax obligation in the first place. Persons who have been arrested for possessing marijuana constitute the entire class of taxpayers subject to the Montana tax." (Internal quotation marks omitted.) *Dept. of Revenue of Montana* v. *Kurth Ranch*, supra, 781–82.

The 10 percent tax penalty in the present case lacks the obvious punitive and penal nature of the tax at issue in *Kurth Ranch*. It was not imposed during a criminal proceeding, and it does not require any conviction for imposition. Rather, as the trial court stated, "it is imposed to ensure compliance with the timely payment of taxes and to deter delinquent payment of taxes, which could harm the government with additional expenses of ensuring compliance in collecting those taxes." We conclude that the 10 percent penalty in § 12-63c is not punitive within the meaning of the eighth amendment to the federal constitution, and, therefore, it is not subject to the second step of the excessive fines clause analysis. The trial court properly did not reach the second step of *Bajakajian*, and the plaintiff's arguments to the contrary fail. Therefore, because the eighth amendment does not apply, the plaintiff's alleged violations of it in count two necessarily fail, and the

granting of the motion to strike those claims in count two was proper.

B

Connecticut Excessive Fines Clause

Article first, § 8, of the Connecticut constitution provides that "[n]o person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law, nor shall excessive bail be required nor excessive fines imposed. . . ." Similar to its federal counterpart, Connecticut courts generally interpret the state constitution's excessive fines clause not to apply to tax penalties. See *Bankers Trust Co.* v. *Blodgett*, supra, 96 Conn. 369.

In *Bankers Trust Co.*, our Supreme Court held that a succession tax was not a "fine" such that it would be subject to the excessive fines clause. The court stated that "[t]he necessities of government give the [s]tate the right to tax property for such purposes and in such amounts as it may determine, subject only to such restrictions as may be imposed by the [c]onstitution, and with the power to tax must go the power to enforce collection of the tax by all summary means not contrary to the [c]onstitution, and one of those means is the right to impose penalties in order to compel payment and as a punishment for evasion or neglect of this duty owed the public." Id., 366. The court then concluded that the succession tax "does not impose an excessive fine in violation of [the excessive fines clause]. The term penalty in its broadest sense includes all punishment of whatever kind. . . . A fine is always a penalty, but a penalty may not always be a fine. . . . A fine is a pecuniary punishment imposed by a lawful tribunal upon a person convicted of crime or misdemeanor. . . . The offense here punished is neither a crime nor a misdemeanor, and the constitutional provision invoked has no possible relation to it." (Citations omitted; internal quotation marks omitted.) Id., 368. Likewise, in the

present case, late submission of the tax forms required under § 12-63c is not a crime. Timely and accurate compliance with our taxation statutes is, rather, a duty owed the public, for which the legislature imposed a penalty in order to compel compliance and as a punishment for evasion or neglect of that duty. See *PJM & Associates, LC* v. *Bridgeport*, 292 Conn. 125, 145, 971 A.2d 24 (2009). Accordingly, the 10 percent penalty in § 12-63c is best construed as a penalty and not as a fine.

The plaintiff relies on *Second National Bank of New Haven* v. *Loftus*, supra, 121 Conn. 454, for the proposition that excessive fines can include civil penalties. In that case, our Supreme Court quoted *Bankers Trust Co.* v. *Blodgett*, supra, 96 Conn. 368, to define a fine as a "pecuniary punishment imposed by a lawful tribunal upon a person convicted of [a] crime or misdemeanor." (Internal quotation marks omitted.) *Second National Bank of New Haven* v. *Loftus*, supra, 459. It then stated that "[t]he meaning of the term ['fine'] in any connotation may not be extended, at most, further than to include a pecuniary penalty or forfeiture recoverable in a civil or criminal action." Id. However, the court explained that "the amount of the fine which the legislature may properly impose depends largely upon the object designed to be accomplished by the imposition of the fine, and the widest latitude is to be given to the discretion and judgment of the legislature in determining the amount of the fine necessary to accomplish that object." (Internal quotation marks omitted.) Id., 460 The court concluded that "[w]e would be very reluctant to say that the legislature had exceeded its powers in imposing excessive penalties, and ought not to do so except in a very clear case." (Internal quotation marks omitted.) Id. This is not such a case.

The plaintiff argues that the tax penalty in the present case is grossly excessive and disproportionate to any

harm the defendant suffered. Our Supreme Court, however, explicitly addressed that proportionality argument in *PJM & Associates, LC* v. *Bridgeport*, supra, 292 Conn. 145. While interpreting the same statute at issue in the present case, § 12-63c, our Supreme Court stated that "[t]he purpose of the penalty [in § 12-63c] is to compel the submission of information to assist the assessor in performing his duties. The fact that some property owners are subjected to a higher penalty than others is not unreasonable. . . . Finally, with respect to the magnitude of the penalty, we have stated that penalty provisions in taxing statutes are quite common and . . . such provisions, though often attacked as confiscatory, are almost always upheld by the courts." (Internal quotation marks omitted.) Id. The court noted that it previously had "upheld the validity of a statute [that] resulted in a penalty of $320,000 for a tax payment that was made one or two days late." (Internal quotation marks omitted.) Id., quoting *Brittany Farms Health Center, Inc.* v. *Administrator, Unemployment Compensation Act*, 177 Conn. 384, 387, 418 A.2d 52 (1979); see also *Hartford Fire Ins. Co.* v. *Brown*, 164 Conn. 497, 501, 325 A.2d 228 (1973).

We conclude that, under article first, § 8, of the Connecticut constitution, the 10 percent penalty in § 12-63c is not a "fine" that subjects it to our excessive fines clause. Indeed, we are not persuaded that the 10 percent penalty would be unconstitutionally excessive under the facts of this case and controlling Connecticut precedent even if we assume that our excessive fines clause applied. Accordingly, with respect to the allegations in count two of the operative complaint that the penalty was unconstitutional under article first, § 8, of the Connecticut constitution, the trial court's granting of the defendant's motion to strike count two was proper.

The judgment is affirmed.

In this opinion the other judges concurred.

SEAPORT CAPITAL PARTNERS, LLC *v.* SHERI SPEER (AC 43467)

Prescott, Moll and Suarez, Js.

Syllabus

The plaintiff in error, who had been appointed the receiver of rents in certain foreclosure actions, filed a writ of error, claiming that the court improperly granted a motion for a protective order filed by the defendant in error, S Co., to preclude certain of his discovery requests and held him liable to pay a certain sum to S Co. The plaintiff in error filed the writ of error in the Supreme Court, which transferred it to this court. *Held* that because the plaintiff in error failed to brief his claims adequately and to comport his brief and appendix with the appellate rules of practice, this court declined to review his claims and dismissed the writ of error; any meaningful comprehension or review of the plaintiff in error's claims was made virtually impossible because of the significant deficiencies in his appellate brief and sprawling appendix, which was not appropriately limited in accordance with the rules of practice and appeared to contain materials that were not part of the proceedings at issue.

Argued January 7—officially released February 2, 2021

Procedural History

Writ of error from the orders of the Superior Court in the judicial district of New London, *Cosgrove*, *J.*, granting the motion filed by the defendant in error, Seaport Capital Partners, LLC, for a protective order to preclude certain discovery requests and holding the plaintiff in error personally liable for certain sums, brought to the Supreme Court, which transferred the matter to this court. *Writ of error dismissed.*

Edward Bona, self-represented, the plaintiff in error.

Lloyd L. Langhammer, with whom, on the brief, was *Donna R. Skaats*, for the defendant in error (Seaport Capital Partners, LLC).

Opinion

PER CURIAM. In this writ of error,[1] the plaintiff in error, Edward Bona, an attorney appointed by the court to act as a receiver of rents in the underlying foreclosure action, challenges the judgment of the court granting a motion for a protective order filed by the defendant in error, Seaport Capital Partners, LLC (Seaport), to preclude certain discovery requests Bona made to Seaport and holding Bona personally liable to Seaport for $11,903.47.[2]

According to Bona, the court improperly (1) failed to account for certain evidence he offered, (2) ordered him to pay Seaport despite the fact that "he never had and never collected" the money at issue, (3) denied a motion to disqualify Seaport's counsel, Donna R.

[1] The writ of error originally was filed with our Supreme Court, which transferred the matter to this court in accordance with General Statutes § 51-199 (c) and Practice Book § 65-1.

[2] By way of background, in 2012, Seaport commenced nine foreclosure actions against Sheri Speer with respect to certain rental properties that she owned in Norwich and New London. See *Seaport Capital Partners, LLC* v. *Speer*, 177 Conn. App. 1, 3, 171 A.3d 472 (2017), cert. denied, 331 Conn. 931, 207 A.3d 1052 (2019). In each action, Seaport filed motions for the appointment of a receiver of rents. Id. The court granted Seaport's motions over Speer's objection and, by agreement of the parties, appointed Bona as the receiver of rents. Id., 3–4. When first appointed, Bona represented Speer in the foreclosure actions, but soon thereafter he withdrew from representing her. Id., 4 n.3. A substitute receiver later was appointed in place of Bona, and Bona was ordered to file reports detailing a final accounting for each property and to pay over to Seaport any amounts collected for which he could not account. Id., 4–6. The court refused to accept Bona's reports and granted a motion by Seaport for an order of payment regarding missing funds. Id. Bona challenged those decisions in a prior writ of error, which this court dismissed on the merits. Id., 3. Following the dismissal of that writ of error, the trial court, *Cosgrove, J.*, granted Seaport's motion for a protective order to preclude Bona from making discovery requests without leave of the court. The court also denied Bona's motions to disqualify Seaport's counsel and Judge Koletsky, who, in addition to other rulings, had rendered the judgment of foreclosure in this matter. It is these latest rulings by Judge Cosgrove that are the subject of the present writ of error.

Skaats,(4) denied a motion to disqualify Judge Koletsky, who previously had ruled in this matter against him, (5) denied him due process because notice of the hearing was inadequate and the court acted without a proper motion filed by a party, and (6) "engaged in plain error by ratifying an open and notorious fraud upon the court . . . ." Seaport responds, inter alia, that this court should decline to review Bona's claims because his appellate brief and accompanying appendix are "virtually incomprehensible," difficult to respond to, and "not in accordance with appellate practice." We agree with Seaport, decline to review Bona's claims, and dismiss the writ of error because his claims are inadequately briefed and Bona has failed to comport his brief and appendix with our rules of appellate practice.

Practice Book § 67-4 sets forth detailed requirements regarding the contents and organization of an appellant's brief. Among its provisions is the requirement that an appellant's brief contain "[a] statement of the nature of the proceedings and of the facts of the case *bearing on the issues raised*," and that this statement "shall be supported by appropriate references to the [record] and shall not be *unnecessarily detailed* or voluminous." (Emphasis added.) Practice Book § 67-4 (d). As to each claim of error, the argument section of the brief must include a "brief statement of the standard of review . . . ." Practice Book § 67-4 (e). The contents and organization of the appendix are governed by Practice Book § 67-8. The commentary to Practice Book § 67-8 expressly cautions that an appellant should not include anything in the appendix that "is not necessary for the proper presentation of the issues and was not part of the proceedings below."

Both this court and our Supreme Court "repeatedly have stated 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 *Parnoff* v. *Mooney*, 132 Conn. App. 512, 518, 35 A.3d 283 (2011) ("[i]t is not the role of this court to undertake the legal research and analyze the facts in support of a claim or argument when it has not been briefed adequately" (internal quotation marks omitted)).

In the present case, any meaningful comprehension or review by this court of the claims that Bona attempts to raise in the present writ of error is made virtually impossible because of the significant deficiencies in his appellate brief. The brief first fails to provide a cogent narrative of the underlying proceedings necessary to place into context the factual and legal bases of the claims raised. The argument section is difficult to comprehend and contains little to no relevant legal citations or citations to relevant portions of the record. The sprawling appendix is not appropriately limited in accordance with our rules of practice and appears to contain materials that were not part of the proceedings at issue. Adequate briefing is necessary in order to avoid abandoning an issue on appeal. See, e.g., *Connecticut Light & Power Co.* v. *Dept. of Public Utility Control*, 266 Conn. 108, 120, 830 A.2d 1121 (2003). Because we conclude that Bona has failed to meet this burden with respect to any of the claims he seeks to advance in the present writ of error, we deem his claims abandoned and dismiss the writ.

The writ of error is dismissed.

STATE OF CONNECTICUT *v.* EDWIN NJOKU (AC 42308)

Lavine, Elgo and Palmer, Js.*

Syllabus

Convicted of the crimes of sexual assault in the fourth degree and of tampering with a witness, the defendant appealed to this court, claiming that the trial court improperly denied his motion to modify the terms and conditions of his probation because the conditions were overbroad and not reasonably related to his crimes, did not satisfy the purposes of probation and violated his free speech rights. *Held*:

1. This court declined to review the defendant's claim that the trial court abused its discretion by denying his motion to modify the probationary condition that he not have an authoritative position over females or access to their personal information because no cognizable dispute existed; the court found that the defendant did not demonstrate the deprivation he alleged, and the defendant did not challenge those findings on appeal.
2. This court declined to review the defendant's claim that the trial court abused its discretion by denying his motion to modify the probationary condition barring him from the use of social media of any kind because his objection to the condition was premature and speculative and it lacked a factual basis; the court found that the defendant had not submitted any specific requests to the Office of Adult Probation for an exception to use social media for business related purposes and that that office had expressed a willingness to consider exceptions to the condition if the defendant followed the procedures outlined in the conditions of his probation.

Submitted on briefs October 6, 2020—officially released February 2, 2021

Procedural History

Substitute information charging the defendant with the crimes of sexual assault in the first degree, sexual assault in the fourth degree and tampering with a witness, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Vitale, J.*; verdict and judgment of guilty of sexual assault in the fourth degree and tampering with a witness; thereafter, the court denied the defendant's motion to modify the

* The listing of judges reflects their seniority status on this court as of the date of oral argument.

conditions of his probation, and the defendant appealed to this court. *Affirmed.*

Edwin Njoku, self-represented, filed a brief as the appellant (defendant).

Samantha L. Oden, deputy assistant state's attorney, *Gail P. Hardy*, former state's attorney, and *Vicki Melchiorre*, supervisory assistant state's attorney, filed a brief for the appellee (state).

Opinion

LAVINE, J. The defendant, Edwin Njoku, appeals from the judgment of the trial court denying his motion to modify the conditions of his probation under General Statutes § 53a-30 (c). On appeal, the defendant claims that the trial court abused its discretion in refusing to modify his probationary conditions with respect to his job related activity and use of social media. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. In 2013, the defendant, formerly a licensed physician, was found guilty by a jury of fourth degree sexual assault of a patient in his medical office and of tampering with a witness. The court accepted the jury's verdict and imposed a total effective sentence of ten years of imprisonment, execution suspended after five years, with five years of probation consecutive to the ten year term of imprisonment. On December 8, 2017, the defendant was released from prison and began serving his period of probation.

At the time of sentencing, the trial court imposed the following special conditions of probation on the defendant: (1) have no contact by person, phone, mail, or any other means, including social media, directly or indirectly with the victim of his sexual assault and her family, (2) partake in sex offender evaluation as deemed necessary by his probation officer and sex offender

treatment provider, (3) obtain approval of all employment from his probation officer and sex offender treatment provider, (4) do not engage in employment that places him in a position of authority over females or grants access to their personal information, (5) abide by sex offender conditions required by law, and (6) do not engage in the practice of medicine during the time his medical license is suspended. The defendant also signed a computer access agreement (agreement) as a condition of his probation. The agreement, in relevant part, required the defendant to refrain entirely from using social media "of any kind."[1] Thereafter, on August 23, 2018, the defendant's probation officer, Kellie DeCapua, imposed an additional condition that he have no contact with former female patients.

On September 4, 2018, the defendant filed a "Motion to Clarify and/or Modify Special Order of Probation,"[2] pursuant to § 53a-30 (c),[3] challenging two of the court imposed conditions of probation, namely (1) the condition that he have no employment in which he has author-

[1] The agreement contained nineteen conditions. The final condition, that the defendant refrain from using social media "of any kind," was inserted in handwriting by the probation office as an additional condition under "Other."

[2] We agree with the state that this motion is best characterized as a motion to modify the conditions of probation. "Motions for clarification may not . . . be used to modify or to alter the substantive terms of a prior judgment . . . and we look to the substance of the relief sought by the motion rather than the form to determine whether a motion is properly characterized as one seeking a clarification or a modification." (Internal quotation marks omitted.) *State* v. *Denya*, 294 Conn. 516, 528–29, 986 A.2d 260 (2010). The defendant challenged the propriety of the conditions of probation, citing § 53a-30 and asserting that the terms of his probation were improperly imposed.

[3] General Statutes § 53a-30 (c) provides: "At any time during the period of probation or conditional discharge, after hearing and for good cause shown, the court may modify or enlarge the conditions, whether originally imposed by the court under this section or otherwise, and may extend the period, provided the original period with any extensions shall not exceed the periods authorized by section 53a-29. The court shall cause a copy of any such order to be delivered to the defendant and to the probation officer, if any."

ity over females or have access to their personal information, and (2) the condition that he not access social media of any kind.[4] The court heard arguments on the motion to modify over two days, November 6 and 19, 2018. The court addressed the defendant's claims individually on separate days.

On November 6, 2018, the defendant challenged DeCapua's construction of the condition that he not be in a position of authority over females or have access to their personal information. The defendant characterized DeCapua's construction of that condition as prohibiting him from (a) acting as a landlord, by barring him from entering into lease agreements with potential tenants, collecting rent from tenants, and performing any maintenance or cleaning, or mowing lawns, on his properties, and (b) engaging in any economic activity of his own, either as part owner or as an investor in a business, given the likelihood that he would be in a position of authority over females as well as males. In his motion, he challenged the propriety of the conditions imposed on him on the grounds that they lacked a nexus to the crimes of which he was convicted, detracted from the state's probation goal of rehabilitation, and were cruel and unusual in violation of the eighth amendment to the United States constitution. He also argued that DeCapua violated his due process rights by consulting the Office of the State's Attorney to clarify whether the business plan he had submitted to her conformed to his probation conditions and then prohibiting him from pursuing that plan without affording him a hearing.

The court rejected the defendant's claims, crediting DeCapua's testimony that she had not banned the

[4] DeCapua filed a letter with the court in response to the defendant's motion the following day, on September 5, 2018, explaining her enforcement of the conditions of probation at issue and contesting the defendant's characterization of the facts.

defendant from all employment.[5] The court found, rather, that DeCapua had permitted the defendant to proceed with his described business plan as long as he provided the Office of Adult Probation with the required paperwork. The court also found that the defendant had acknowledged that he was required to have a property manager to handle his affairs as a landlord in order that he not come in unpermitted contact with females. The court therefore denied the motion with regard to employment, finding that the defendant agreed that the challenged conditions were proper.

On November 19, 2018, the defendant challenged the condition of probation restricting him from using social media. He argued that that condition was unduly restrictive, and therefore unlawful, because there was no reasonable relationship between the crimes of which he had been convicted, which occurred in a medical office, and the broad prohibition against his use of social media. The defendant argued that a valid condition of probation requires a nexus between the condition and the crime for which it was imposed, because § 53a-30 (a) (17) requires that the condition be reasonably related to his rehabilitation. The defendant further argued that a blanket ban on the use of social media was unconstitutional under *Packingham* v. *North Carolina*, U.S. , 137 S. Ct. 1730, 1737, 198 L. Ed. 2d 273 (2017), in which the United States Supreme Court struck down, on first amendment grounds, a statute making it a felony for registered sex offenders to access a wide variety of social media websites.

[5] At the conclusion of the first day, the court asked the defendant if there was any need for a ruling given that, during the hearing, the defendant had described a probation compliant business plan to the court and had conceded that he needed to have a property manager in order to comply with his probationary terms. The defendant maintained his position that DeCapua had told him he could not "engage in any of these things" or "start a business." The court found DeCapua's testimony credible, and thus determined that the defendant had not demonstrated that the Office of Adult Probation had overreached in any way. See part I of this opinion.

The court rejected the defendant's argument, citing the wide discretion given to the Office of Adult Probation to impose conditions in the interest of protecting public safety and the fact that the defendant was still serving his sentence. The court further found that the social media sites to which the defendant wants access "are not currently in controversy" because he had either failed to make requests for access to DeCapua, or had failed to demonstrate that he had been prevented from their use. The court also found that, in any event, the conditions of the agreement the defendant signed for his sex offender treatment[6] entirely prohibited the use of social media. In fact, the court found that the defendant had been using social media to contact his former patients while he was on probation. The court denied the defendant's motion to modify on the grounds that the defendant had not presented a controversy that the court could properly resolve at that time, and that, in any case, the defendant's sex offender treatment provider did not permit him to use social media and public safety interests supported the condition. This appeal followed.

The defendant claims on appeal that the trial court's denial of his motion to modify the conditions of his probation was improper, because the conditions were overbroad and lacked a "direct nexus" to the crimes of which he had been convicted, did not satisfy the purposes of probation, and violated his free speech rights. We do not agree.

The standard of review for the denial of a motion to modify probation is well established. "Probation is the product of statute. . . . Statutes authorizing probation, while setting parameters for doing so, have been

[6] DeCapua testified that the defendant had signed a standard agreement with his sex offender treatment provider, the Connecticut Association for the Treatment of Sex Offenders, which broadly prohibited him from accessing social media, due to general concerns about public safety given the anonymity inherent in social media.

very often construed to give the court broad discretion in imposing conditions. . . . Section 53a-30 (c) authorizes a court to modify the terms of probation for good cause. . . . It is well settled that the denial of a motion to modify probation will be upheld so long as the trial court did not abuse its discretion. . . . On appeal, a defendant bears a heavy burden because every reasonable presumption should be given in favor of the correctness of the court's ruling. . . . The mere fact that the denial of a motion to modify probation leaves a defendant facing a lengthy probationary period with strict conditions is not an abuse of discretion. Rather, [r]eversal is required only where an abuse of discretion is manifest or where injustice appears to have been done." (Citations omitted; internal quotation marks omitted.) *State* v. *Baldwin*, 183 Conn. App. 167, 174–75, 191 A.3d 1096, cert. denied, 330 Conn. 922, 194 A.3d 288 (2018).

Section 53a-30 (a) (17) provides in relevant part: "When imposing sentence of probation . . . the court may, as a condition of the sentence, order that the defendant . . . satisfy any other conditions reasonably related to the defendant's rehabilitation. . . ." Section 53a-30 (b) additionally "expressly allows the [O]ffice of [A]dult [P]robation to impose reasonable conditions on probation." *State* v. *Thorp*, 57 Conn. App. 112, 116, 747 A.2d 537, cert. denied, 253 Conn. 913, 754 A.2d 162 (2000). "[I]n determining whether a condition of probation [is proper] a reviewing court should evaluate the condition imposed under our Adult Probation Act in the following context: The conditions must be reasonably related to the purposes of the [Adult Probation] Act." (Internal quotation marks omitted.) *State* v. *Crouch*, 105 Conn. App. 693, 698, 939 A.2d 632 (2008).

I

The defendant first claims that the trial court abused its discretion by denying his motion to modify the probationary condition that he not have an authoritative posi-

tion over females or access to their personal information. He argues that the condition was overbroad and not reasonably related to the crimes of which he was convicted or the purposes probation serves. We decline to review his claim because no cognizable dispute existed for the trial court or this court to address.

The following additional facts are relevant to this issue. At the hearing, the defendant claimed that DeCapua had prohibited him from pursuing a diagnostic testing laboratory business he was planning to start, which he described to the court as compliant with the condition that he not be in a position of authority over females or have access to their personal information. The defendant attested to the court that his business partners would be in charge of all employee related aspects of the business and that he would form a separate limited liability company and focus on marketing. He would be insulated from all employee records and would not be in a supervisory decision-making capacity regarding employees. DeCapua testified that the defendant had never previously proposed an employment solution that conformed to the condition that he not be in a position of authority over female employees. Rather, he had failed to disclose his prospective business partners, had told her that he wished to be "in charge," and had taken the position that he would comply by not hiring women at all, which DeCapua considered untenable in light of federal antidiscrimination law. The court found DeCapua's position to be that she had rejected the defendant's then proposed business plan only because it did not comply with the defendant's conditions of probation at the time he presented it to her. She had never taken the position that the conditions of the defendant's probation prohibited him from starting a business of his own. The Office of Adult Probation was not opposed to the defendant investing in a business as long as (a) his participation in the business complied with the conditions of his probation, and (b) he fully documented

his compliance with the conditions of probation for probation office verification by supplying any relevant paperwork concerning the business's structure, employees, and his role, such as the business's operating agreement. The court credited DeCapua's testimony in making those findings. With respect to the defendant's activity as a landlord, the court found that he had conceded the necessity of having a property manager to collect rents, manage leases, interact with tenants, and maintain apartments in order to comply with the condition of probation limiting his contact with females.[7]

At trial and on appeal, the defendant has mischaracterized the conditions of probation imposed on him. The defendant contended at trial that DeCapua had prohibited him from starting a business. On appeal, he continues to characterize the condition as a complete bar on "start[ing] or invest[ing] in any business." The court expressly credited DeCapua's testimony that she had *not* taken that position and that the Office of Adult Probation would permit the defendant to pursue a business venture, as long as he fully complied with his probationary conditions and provided documentation of how his venture was structured.[8] We defer to the trial court's determination of credibility, and we thus reject the defendant's characterization of the nature and extent of the condition imposed on him by DeCapua. See *State* v. *Joseph*, 194 Conn. App. 684, 689, 222 A.3d 137 (2019) ("It is the [fact finder] . . . [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences

[7] The defendant argued that it was financially burdensome to continue paying his current property manager but acknowledged that he was subject to that requirement.

[8] The defendant claims that the trial court "agreed" with the Office of Adult Probation that the defendant should be barred from owning or investing in any business where he might obtain the personal information of females. To the contrary, the trial court explicitly agreed with DeCapua that the defendant *could* own or invest in a business, provided he was insulated from access to the personal information of females.

therefrom. . . . As a practical matter, it is inappropriate to assess credibility without having watched a witness testify, because the demeanor, conduct and other factors are not fully reflected in the cold, printed record." (Internal quotation marks omitted.)), cert. denied, 334 Conn. 915, 221 A.3d 809 (2020). The court also stated that the defendant was not, in fact, prevented from carrying on his business as a landlord, provided that he utilized a property manager to handle his affairs. Thus, no dispute existed for the court to review given its finding that the defendant had not demonstrated the deprivation he alleged. The defendant has not challenged those findings of the trial court with respect to the condition's application. We thus reject the defendant's characterization of the nature and extent of the condition imposed on him by DeCapua. Because our conclusion on this point resolves the issue presented by the defendant, we need not reach the legal merits of his claim.[9]

II

The defendant next claims that the trial court abused its discretion by denying his motion to modify the conditions of his probation relating to social media. He claims that the condition barring him from the use of social media was overbroad, was not reasonably related to

[9] We note that the defendant has raised a claim that his due process rights were violated when DeCapua consulted with the Office of the State's Attorney to confirm her interpretation that the defendant's then proposed business plan and landlord activity did not comply with the conditions of his probation. He claims that the Adult Probation Act is a "creation of statute" and the statute "did not explicitly or implicitly authorize [the Office of Adult Probation] to consult the [Office of the State's Attorney], [which] prosecuted the case, to resolve issues of ambiguity . . . . This is to be addressed by the courts, [which] have broad discretion to do so." This claim is meritless. "[I]f an individual on probation believes that the [O]ffice of [A]dult [P]robation imposed an unreasonable condition, he may request a hearing pursuant to . . . § 53a-30 (c)." *State* v. *Smith*, 255 Conn. 830, 840, 769 A.2d 698 (2001). In the present case, the defendant requested and received a hearing before the court.

the crime for which he was convicted, was imposed beyond the power of the probation office, and was unconstitutional. We do not agree.

The following additional facts are relevant to this issue. The court asked the defendant to clearly articulate the scope of his social media access request. The defendant testified that he wanted to use Snapchat to communicate with his mother and Facebook and LinkedIn for advertising and other business related purposes.[10] He stated that, apart from communicating with his mother, his primary purpose in seeking social media access was for business related advertising purposes. He, however, testified that he had discussed Snapchat with DeCapua and she had been "reasonable."[11] The court found that Snapchat was not at issue. The defendant further admitted that he had not made any requests to DeCapua regarding the use of Facebook or LinkedIn for advertising. The court found that the defendant's request to access Facebook and LinkedIn was not an issue for the court because the defendant had not yet raised the question with DeCapua. DeCapua indicated to the court that there may be an avenue for the defendant to make requests regarding advertising. The court concluded that "as it turns out according to probation . . . you would have permission potentially to use social media for business purposes as long as you comply with making a request in writing and setting forth the basis for which you'd be using it for business purposes and the business model for which it would be used through. If

[10] Facebook and LinkedIn are commonly used social media platforms, the latter of which focuses primarily on networking in the employment sphere. Snapchat is a widely used mobile application that allows users to text and send pictures and videos.

[11] After the defendant testified that he wished to use Snapchat to communicate with his mother, the court asked the defendant, "You told me you mentioned Snapchat, but you worked out some sort of an agreement about the Snapchat with your mother, right?" The defendant responded, "That's correct."

that was done, they'd be able to work with you."[12] The court denied the motion with respect to the defendant's social media claims.

Our review of the record in the trial court reveals that the defendant's objection to the probationary condition placed on him is premature, speculative, and lacking a factual basis. The trial court found that the defendant had not submitted any specific requests to the Office of Adult Probation for an exception for him to use social media for business advertising purposes. The court further found that the Office of Adult Probation expressed a willingness to consider accommodating the defendant in that respect. Thus, we conclude that we need not reach the defendant's legal claims, including his first amendment argument.[13]

The judgment is affirmed.

In this opinion the other judges concurred.

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[12] The court did credit DeCapua's testimony and find that the defendant's sex offender treatment agreement with the Connecticut Association for the Treatment of Sex Offenders did not permit him to use social media. The court, however, also credited DeCapua's subsequent testimony concerning the possibility that she would entertain an advertising related request from the defendant. The court found, following her testimony, that the defendant's advertising request could be accommodated provided he submitted a written request, pursuant to the court's earlier findings made at the November 6, 2018 hearing.

[13] We understand, of course, that any limitation on free expression, including the ability to gather information in the Internet age, must be scrupulously evaluated in light of first amendment concerns. "The forces and directions of the Internet are so new, so protean, and so far reaching that courts must be conscious that what they say today might be obsolete tomorrow." *Packingham* v. *North Carolina*, supra, 137 S. Ct. 1736. But we also agree with Justice Kennedy's observation that "the [f]irst [a]mendment permits [states] to enact specific, narrowly tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime . . . ." Id., 1737.

BRUCE M. FELDER *v.* COMMISSIONER OF CORRECTION (AC 43214)

Alvord, Cradle and Alexander, Js.

Syllabus

The petitioner, who had been convicted of larceny in the first degree and larceny in the second degree, filed a second petition for a writ of habeas corpus. At the request of the respondent, the Commissioner of Correction, the habeas court issued an order, pursuant to statute (§ 52-470 (e)), directing the petitioner to show cause why the petition should be permitted to proceed in light of the fact that he filed it outside of the two year limitation period set forth in § 52-470 (d) for the filing of a successive petition challenging the same conviction. The court conducted an evidentiary hearing, during which the petitioner argued that his petition was timely because he filed it within two years of the final judgment that was rendered by a federal District Court denying a habeas petition that he previously had filed in that court. The petitioner claimed that the term "prior petition" in § 52-470 (d) was not limited to habeas petitions filed in state court and that, even if his second petition was untimely, he established good cause for the delay in filing it because he was not aware of the limitation period in § 52-470 (d), as his counsel in his first state habeas action terminated representation of the petitioner before § 52-470 (d) took effect and, thus, could not have advised him of the limitation period. The habeas court dismissed the petition under § 52-470 (e), concluding that it was untimely filed and that the petitioner failed to establish good cause for the delay. The court determined that the final judgment on the federal habeas petition did not reset the prescribed time limits in § 52-470 (d) to file a subsequent habeas petition, and that the petitioner failed to overcome the presumption of unreasonable delay in § 52-470 (e) because everyone is presumed to know the law and ignorance of it excuses no one. On the granting of certification, the petitioner appealed to this court. *Held*:

1. The petitioner's habeas petition was untimely, as the phrase "prior petition" in § 52-470 (d) is limited to habeas petitions that are filed in state court, and, thus, contrary to the petitioner's claim, the final judgment on his federal habeas petition did not reset the time limits prescribed in § 52-470 (d) to file a subsequent habeas petition challenging the same conviction: because the phrase "prior petition" occurs within a statutory framework that concerns state procedures for state habeas petitions, it must be read in the context of a body of laws that are limited to state habeas proceedings, and the statute's silence as to whether "prior petition" includes a federal habeas petition indicates that it does not; moreover, the phrase "prior petition" is plain and unambiguous, and,

although it is not defined in § 52-470 (d), the only reasonable interpretation of it is that it is limited to a prior state petition, and that construction would not produce an absurd or unworkable result, as it is consistent with the purpose of the legislature's habeas reforms in 2012 to expedite the resolution of habeas cases.

2. The habeas court did not abuse its discretion in determining that the petitioner failed to establish good cause for the delay in filing his second habeas petition and properly dismissed it pursuant to § 52-470 (d) and (e): the only evidence the petitioner presented to support his contention that he was unaware of the filing deadline in § 52-470 was his testimony that he lacked personal knowledge of the deadline and had never been informed of it by his previous habeas counsel, and, although it was unclear whether the habeas court credited the petitioner's assertion, the court properly concluded that a mere assertion of ignorance of the law, without more, was insufficient to compel a conclusion that the petitioner met his burden to establish good cause.

Argued October 20, 2020—officially released February 2, 2021

Procedural History

Petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the court, *Newson, J.*, rendered judgment dismissing the petition, from which the petitioner, on the granting of certification, appealed to this court. *Affirmed.*

Jennifer Bourn, supervisory assistant public defender, for the appellant (petitioner).

Laurie N. Feldman, deputy assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, former state's attorney, and *Leah Hawley*, senior assistant state's attorney, for the appellee (respondent).

Opinion

ALVORD, J. The petitioner, Bruce M. Felder, appeals from the judgment of the habeas court dismissing his successive petition for a writ of habeas corpus pursuant to General Statutes § 52-470 (d) and (e).[1] On appeal, the

[1] General Statutes § 52-470 provides in relevant part: "(a) The court or judge hearing any habeas corpus shall proceed in a summary way to determine the facts and issues of the case, by hearing the testimony and arguments in the case, and shall inquire fully into the cause of imprisonment and thereupon dispose of the case as law and justice require. . . .

"(d) In the case of a petition filed subsequent to a judgment on a prior petition challenging the same conviction, there shall be a rebuttable pre-

petitioner first claims that the habeas court improperly determined that his petition was untimely under § 52-470 (d) on the ground that it was not filed within the statutorily prescribed time limits, as measured from the date of the final judgment on his prior state court habeas petition, and that a habeas petition he previously had filed in federal court was not a "prior petition" within the meaning of § 52-470 (d) so as to reset the statutorily prescribed time limits to file a subsequent habeas petition challenging the same conviction. Alternatively, the petitioner claims that the habeas court improperly determined that his purported ignorance of the filing deadline set forth in § 52-470 (d) and his belief that he could litigate his federal habeas petition before returning to state court were insufficient to demonstrate good cause within the meaning of § 52-470 (e) to overcome the stat-

sumption that the filing of the subsequent petition has been delayed without good cause if such petition is filed after the later of the following: (1) Two years after the date on which the judgment in the prior petition is deemed to be a final judgment due to the conclusion of appellate review or the expiration of the time for seeking such review; (2) October 1, 2014; or (3) two years after the date on which the constitutional or statutory right asserted in the petition was initially recognized and made retroactive pursuant to a decision of the Supreme Court or Appellate Court of this state or the Supreme Court of the United States or by the enactment of any public or special act. For the purposes of this section, the withdrawal of a prior petition challenging the same conviction shall not constitute a judgment. The time periods set forth in this subsection shall not be tolled during the pendency of any other petition challenging the same conviction. Nothing in this subsection shall create or enlarge the right of the petitioner to file a subsequent petition under applicable law.

"(e) In a case in which the rebuttable presumption of delay . . . applies, the court, upon the request of the respondent, shall issue an order to show cause why the petition should be permitted to proceed. The petitioner or, if applicable, the petitioner's counsel, shall have a meaningful opportunity to investigate the basis for the delay and respond to the order. If, after such opportunity, the court finds that the petitioner has not demonstrated good cause for the delay, the court shall dismiss the petition. For the purposes of this subsection, good cause includes, but is not limited to, the discovery of new evidence which materially affects the merits of the case and which could not have been discovered by the exercise of due diligence in time to meet the requirements of subsection . . . (d) of this section. . . ."

utory presumption of unreasonable delay. We disagree with the petitioner and, accordingly, affirm the judgment of the habeas court.

The procedural background underlying this appeal is as follows. After a jury trial, the petitioner was convicted of one count of larceny in the first degree in violation of General Statutes § 53a-122 (a) (3), and one count of larceny in the second degree in violation of General Statutes § 53a-123 (a) (3). On June 16, 2004, the trial court, *Koletsky*, *J.*, sentenced the petitioner to a total effective term of thirty years of incarceration. On May 9, 2006, this court affirmed the judgment of conviction on direct appeal. *State* v. *Felder*, 95 Conn. App. 248, 250, 897 A.2d 614, cert. denied, 279 Conn. 905, 901 A.2d 1226 (2006). On June 29, 2006, our Supreme Court denied the petitioner certification to appeal from this court's decision. *State* v. *Felder*, 279 Conn. 905, 901 A.2d 1226 (2006).

After exhausting his direct appeal, the petitioner filed a state court petition for a writ of habeas corpus (first state habeas petition) on June 13, 2006, challenging his conviction.[2] On September 15, 2011, following a trial on the merits, the habeas court, *Nazzaro*, *J.*, denied the petition; *Felder* v. *Warden*, Superior Court, judicial district of Tolland, Docket No. CV-06-4001113-S (September 15, 2011); and the petitioner appealed to this court. On February 28, 2012, this court dismissed the petitioner's appeal by memorandum decision. *Felder* v. *Commissioner of Correction*, 133 Conn. App. 908, 36 A.3d 308, cert. denied, 304 Conn. 932, 43 A.3d 661 (2012). On May 9, 2012, our Supreme Court denied the petitioner certification to appeal.[3] *Felder* v. *Commissioner of Correction*, 304 Conn. 932, 43 A.3d 661 (2012).

[2] In his first state habeas petition, the petitioner claimed that his criminal trial counsel, Attorney Donald O'Brien, was ineffective for having failed to cross-examine a police officer about a particular line of inquiry.

[3] The petitioner submits that, on May 8, 2013, he filed a subsequent state petition for a writ of habeas corpus that may be relevant to the procedural history of this case. On July 1, 2013, the habeas court dismissed the petition

In 2012, the petitioner filed a petition for a writ of habeas corpus in the United States District Court for the District of Connecticut (federal habeas petition) pursuant to 28 U.S.C. § 2254.[4] On June 1, 2015, the District Court denied the federal habeas petition and declined to issue the petitioner a certificate of appealability. *Felder* v. *Commissioner of Correction*, United States District Court, Docket No. 3:12-cv-00650 (MPS) (D. Conn. June 1, 2015).

On May 18, 2017, the petitioner filed the present state court petition for a writ of habeas corpus (second state

for lack of jurisdiction. *Felder* v. *Warden*, Superior Court, judicial district of Tolland, Docket No. CV-13-4005417-S (July 1, 2013). The petitioner did not appeal from that dismissal, which rendered that judgment final as of July 21, 2013. See General Statutes § 52-470 (d) (1) (two year period for filing subsequent petition runs from conclusion of appellate review or "the expiration of the time for seeking such review"); Practice Book § 63-1 (providing twenty days within which to file appeal).

We are unable to determine from the record whether the petitioner's May 8, 2013 state habeas petition challenged the conviction at issue here or other convictions of the petitioner. It is immaterial, however, whether the May 8, 2013 state habeas petition challenged the same conviction at issue here because the present state habeas petition would be untimely whether the statutorily prescribed time limits are measured from either the date of final judgment on his first state habeas petition (May 9, 2012) or the date of final judgment on his May 8, 2013 state habeas petition (July 21, 2013). Therefore, for the purposes of determining the date of final judgment on the petitioner's prior state habeas petition, as required by § 52-470 (d), we consider the petitioner's present habeas petition to be successive to his first state habeas petition.

[4] Title 28 of the United States Code, § 2254 (a), provides: "The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States."

In his federal habeas petition, the petitioner claimed that the state had presented insufficient evidence to support his conviction of larceny in the first degree, and that his conviction of larceny in the first degree and larceny in the second degree violated the double jeopardy clause of the fifth amendment to the United States constitution. See *Felder* v. *Commissioner of Correction*, United States District Court, Docket No. 3:12-cv-00650 (MPS) (D. Conn. June 1, 2015).

habeas petition).[5] On December 20, 2018, the respondent, the Commissioner of Correction, filed a request with the habeas court pursuant to § 52-470 (e) for an order directing the petitioner to appear and to show cause why his second state habeas petition should be permitted to proceed in light of the fact that he filed it well outside of the deadline for successive habeas petitions set forth in § 52-470 (d). In his request, the respondent argued that the petitioner's second state habeas petition was untimely because the petitioner did not file it until May 18, 2017, far exceeding the October 1, 2014 statutory deadline as measured from the final judgment on his first *state* habeas petition.[6]

The habeas court, *Newson*, *J.*, issued an order to show cause and on March 8, 2019, conducted an evidentiary hearing. The only evidence presented at the hearing was the testimony of the petitioner. The respondent chose not to cross-examine the petitioner or to present any other evidence at the show cause hearing. The court also heard legal arguments from both parties.

The petitioner testified that his former state habeas counsel terminated their representation in 2012, after

[5] In his second state habeas petition, the petitioner claimed that his criminal trial counsel, Attorney Donald O'Brien, was ineffective in that he failed to seek a bill of particulars and to object to a jury instruction on a lesser included offense. Further, the petitioner claimed that his first state habeas counsel, Damon A. R. Kirschbaum, was ineffective in that he failed to raise an ineffectiveness claim regarding criminal trial counsel's failure to seek a bill of particulars, attempted to file a brief pursuant to *Anders* v. *California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and deprived the petitioner of his right to present a defense.

[6] Final judgment was rendered on the petitioner's first state habeas petition on May 9, 2012. See General Statutes § 52-470 (d) ("In the case of a petition filed subsequent to a judgment on a prior petition challenging the same conviction, there shall be a rebuttable presumption that the filing of the subsequent petition has been delayed without good cause if such petition is filed *after the later of the following*: (1) Two years after the date on which the judgment in the prior petition is deemed to be a final judgment due to the conclusion of appellate review or the expiration of the time for seeking such review; [or] (2) *October 1, 2014* . . . ." (Emphasis added.)).

final judgment on the first state habeas action. The petitioner testified that he filed a federal habeas petition in 2012 that came to final judgment in June, 2015. The petitioner further testified that, prior to having counsel appointed for him in the second state habeas action,[7] he was not aware of § 52-470 or the requirements set forth therein.

The petitioner's counsel first argued that the second state habeas petition was in fact timely because it was filed within two years of the final judgment on the *federal* habeas petition and, therefore, within the meaning of "prior petition" under § 52-470 (d). In support of his argument, the petitioner's counsel noted that § 52-470 (d) does not state that the phrase "prior petition" is limited to a state petition but, rather, that § 52-470 (d) states, two years "after the date on which the judgment in the prior petition is deemed to be a final judgment . . . ." Second, he argued that, if the petition was untimely, the petitioner showed good cause for the delay in that he was not aware of the deadline. Counsel maintained that, because the petitioner's former counsel in the first state habeas action terminated their representation before § 52-470 (d) took effect, the former counsel could not have advised the petitioner of the statutorily prescribed time limits, "[s]o, he either had to know about it on his own, or he would have no other way of knowing about it."

The respondent then reiterated his argument that the petitioner's second state habeas petition, as a petition successive to his first state habeas petition that reached final judgment on May 9, 2012, should have been filed no later than October 1, 2014, and was therefore untimely under § 52-470 (d). The respondent further argued that the petitioner's federal habeas petition was not a "prior petition" within the meaning of § 52-470 (d) and that

[7] The habeas court, on May 22, 2017, granted the petitioner's request that counsel be appointed for him.

final judgment on the federal habeas petition therefore did not reset the statutorily prescribed time limits to file a subsequent habeas petition challenging the same conviction. With respect to the petitioner's evidence of good cause for his delay, the respondent argued that any ignorance of the deadline on the part of the petitioner did not excuse noncompliance and that the petitioner's testimony as to his ignorance was self-serving.

On May 21, 2019, the habeas court issued a decision dismissing the petitioner's second state habeas action. In its decision, the court rejected both of the petitioner's arguments. First, it determined that the petition was untimely because final judgment on the petitioner's federal habeas petition did not reset the statutorily prescribed time limits to file a subsequent habeas petition under § 52-470 (d). The court stated: "The petitioner argues that the two year period in § 52-470 (d) should be calculated from June 1, 2015, when a federal habeas corpus petition he was litigating on this same conviction was disposed of, which would mean the applicable deadline did not run until June 1, 2017, fourteen days after this petition was filed. This argument, however, is explicitly contradicted by the statutory language in § 52-470 (d), which states in pertinent part: 'The time periods set forth in this subsection *shall not be tolled* during the pendency of *any other petition* challenging the same conviction' . . . .

"The term '*any other* petition' is not limited in any way within subsection (d) or elsewhere in § 52-470. To read an exception into that language tolling the two year time period while a petitioner was engaged in federal habeas litigation would be contradictory to the plain and unambiguous language of the statute and apparent intent of the legislature." (Citation omitted; emphasis in original.)

Second, the habeas court concluded that the petitioner failed to establish good cause for the delay within

the meaning of § 52-470 (e), stating that, " 'everyone is presumed to know the law, and that ignorance of the law excuses no one . . . .' *State* v. *Surette*, 90 Conn. App. 177, 182, 876 A.2d 582 (2005). On the meaning of 'good cause,' our Appellate Court has held that 'good cause has been defined as a substantial reason amounting in law to a legal excuse for failing to perform an act required by law . . . .' *Langston* v. *Commissioner of Correction*, 185 Conn. App. 528, 532, 197 A.3d 1034 (2018), appeal dismissed, 335 Conn. 1, 225 A.3d 282 (2020). The petitioner has failed to present any 'good cause' in the present case for filing this petition nearly three years beyond the [statutory] deadline."

Accordingly, the habeas court dismissed the petition. The court subsequently granted the petitioner certification to appeal, and this appeal followed.

I

The petitioner first claims that the habeas court improperly determined that his petition was untimely under § 52-470 (d). The petitioner does not dispute that the filing of his second state habeas petition would be considered untimely if the statutorily prescribed time limits were calculated from the final judgment on his first state habeas petition. Rather, the petitioner argues that his second state habeas petition was in fact timely because it was filed within two years of final judgment on his *federal* habeas petition, which, he contends, is included within the meaning of "prior petition" under § 52-470 (d). In support of his argument, the petitioner maintains that "the plain and unambiguous language of subsection (d) does not exclude a federal petition from constituting 'a prior petition challenging the same conviction' " and that the legislature could have used language specifying a "prior state petition" had it intended that limitation. He further argues that limiting "prior petitions" to state petitions would produce the absurd

and unworkable result of requiring petitioners to file subsequent state petitions while their federal petitions remain unresolved, which, he contends, would be inconsistent with the legislature's intent to reduce unnecessary litigation and to expeditiously resolve habeas cases. The respondent maintains that the petitioner's federal habeas petition was not a "prior petition" within the meaning of § 52-470 (d) and that the petitioner's second state habeas petition, as a petition successive to the first state habeas petition that reached final judgment on May 9, 2012, was therefore untimely. We agree with the respondent.

The issue before this court is whether the term "prior petition" in two phrases in § 52-470 (d) is limited to prior state petitions or includes prior federal petitions. This presents a question of statutory interpretation over which our review is always plenary. See, e.g., *Kelsey* v. *Commissioner of Correction*, 202 Conn. App. 21, 35, A.3d (2020). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case . . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes.[8] If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look

[8] General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and [common-law] principles governing the same general subject matter . . . .'' (Footnote added; internal quotation marks omitted.) *Kasica* v. *Columbia*, 309 Conn. 85, 93, 70 A.3d 1 (2013).

We begin our analysis by examining the text of § 52-470. Section 52-470 (d) provides in relevant part: ''In the case of a petition filed subsequent to a judgment on a *prior petition* challenging the same conviction, there shall be a rebuttable presumption that the filing of the subsequent petition has been delayed without good cause if such petition is filed after . . . [t]wo years after the date on which the judgment in the *prior petition* is deemed to be a final judgment due to the conclusion of appellate review or the expiration of the time for seeking such review . . . . The time periods set forth in this subsection shall not be tolled during the pendency of any other petition challenging the same conviction. Nothing in this subsection shall create or enlarge the right of the petitioner to file a subsequent petition under applicable law.'' (Emphasis added.)

The text of § 52-470 does not define ''prior petition.'' The petitioner argues that the statute's silence as to whether ''prior petition'' includes federal habeas petitions renders the statute ambiguous. ''It is well settled, however, that [statutory] silence does not necessarily equate to ambiguity. . . . Rather, [i]n determining whether legislative silence renders a statute ambiguous, we read the statute in context to determine whether the language is susceptible to more than one reasonable interpretation.'' (Citations omitted; internal quotation marks omitted). *State* v. *Ramos*, 306 Conn. 125, 136, 49 A.3d 197 (2012).

In light of the text of § 52-470 and its relationship to other statutes, we conclude that the term "prior petition" as used in § 52-470 (d) is plain and unambiguous, and that the only reasonable interpretation of the statutory language is that the term "prior petition" is limited to a prior state petition. The respondent argues on appeal that "§ 52-470 is part of a cohesive body of habeas corpus regulation that is entirely, albeit never explicitly, focused on state habeas processes." In support of his argument, the respondent notes that, "[t]his body of law is codified in title 52 of the Connecticut General Statutes, civil actions, which opens with the phrase, '[t]he *Superior Court* may administer legal and equitable rights . . . .' General Statutes § 52-1 . . . ." (Emphasis altered.) Thus, the respondent contends that these statutes are established within provisions governing Connecticut state court proceedings. With specific regard to habeas matters, the respondent notes that "General Statutes § 52-466 (a) (1) provides at the threshold that '[a]n application for a writ of habeas corpus . . . shall be made to the *superior court*, or to a judge thereof, for the judicial district in which the person whose custody is in question is claimed to be illegally confined or deprived of such person's liberty.' . . . Words such as 'state,' 'state habeas corpus' and 'state custody' do not appear in this provision." (Emphasis added.) Likewise, § 52-470 (a) provides in relevant part that "[t]he court or judge hearing any habeas corpus shall proceed in a summary way to determine the facts and issues of the case . . . ." The respondent argues that "[s]ubsection (a) does not and need not state that it regulates only state judges hearing state petitions regarding state habeas corpus of state prisoners, and does not purport to address how federal habeas courts should consider habeas petitions." We agree with the respondent that the phrase "prior petition" in subsection (d) therefore must be read in the context of a body of laws limited to state habeas proceedings alone, and

not including habeas proceedings in the federal court system.

In that vein, the respondent argues that "the statute [governing habeas corpus petitions] repeatedly uses a word at issue here, 'petition,' to mean a state petition, without so specifying." In support of his argument, the respondent references § 52-470 (b) (1), which provides that, after the close of the pleadings, the habeas court "shall determine whether there is good cause for trial for all or part of *the petition*." (Emphasis added.) See also General Statutes § 52-470 (b) (3) (if "the petition" and exhibits submitted by petitioner do not establish good cause to proceed, habeas court must hold hearing and, if it finds there is not good cause for trial, it must dismiss all or part of "the petition"); General Statutes § 52-470 (c) (rebuttable presumption that filing of "a petition challenging judgment of conviction" is delayed without good cause if "such petition" is filed after certain time periods). We agree with the respondent that the word "petition" in these provisions refers to a petition in a state habeas proceeding, the subject of the statute. The respondent further maintains that, "given the intrastate context of the statute, "the lack of specification [of the word 'petition'] in subsection (d) does not point toward a different treatment." "An identical term used in [statutory provisions] pertaining to the same subject matter should not be read to have differing meanings unless there is some indication from the legislature that it intended such a result." (Internal quotation marks omitted.) *State* v. *Reynolds*, 264 Conn. 1, 78, 836 A.2d 224 (2003), cert. denied, 541 U.S. 908, 124 S. Ct. 1614, 158 L. Ed. 2d 254 (2004). We agree with the respondent that, because § 52-470 (d) occurs within a statutory framework concerning state procedures for state habeas petitions, the statute's silence as to whether a "prior petition" includes a federal petition therefore indicates that it does not.

Contrary to the petitioner's argument, a statutory construction of § 52-470 (d) that limits "prior petitions" to state petitions would not produce an absurd and unworkable result. Rather, such a construction is consistent with the purpose of the legislature's 2012 habeas reforms to expedite the resolution of habeas cases. See *Kelsey* v. *Commissioner of Correction*, 329 Conn. 711, 717, 189 A.3d 578 (2018) (explaining that "[t]he 2012 amendments are significant . . . because they provide tools to effectuate the original purpose of ensuring expedient resolution of habeas cases"). The respondent argues that, "[g]iven the priority [that] the statute places on expedient resolution and finality where reasonably possible, it [logically can] be construed to promote an approach by which, if there is a need to bring a subsequent petition, it be brought as soon as the claim becomes apparent rather than after the conclusion of federal review of claims raised and denied in prior state petitions." We agree with the respondent that this statutory construction is consistent with the purpose of the statute and, therefore, would not produce an absurd or unworkable result.

We conclude that the term "prior petition" in § 52-470 (d) is limited to prior state petitions. Accordingly, final judgment on the petitioner's federal habeas petition did not reset the statutorily prescribed time limits to file a subsequent habeas petition challenging the same conviction, and his second state habeas petition was therefore untimely under § 52-470 (d).

II

The petitioner next claims that the habeas court improperly determined that he failed to present sufficient evidence to demonstrate good cause within the meaning of § 52-470 (e) to overcome the statutory presumption of unreasonable delay. The petitioner argues that he established good cause for the delay in light of his testimony that he was unaware of the statutorily pre-

scribed time limits and that there was "reasonable confusion" as to the impact of his federal habeas petition on the deadlines. The respondent contends that the petitioner has failed to meet his burden of demonstrating good cause to overcome the statutory presumption of unreasonable delay. We agree with the respondent.

"[T]o rebut successfully the presumption of unreasonable delay in § 52-470, a petitioner generally will be required to demonstrate that something outside of the control of the petitioner or habeas counsel caused or contributed to the delay. Although it is impossible to provide a comprehensive list of situations that could satisfy this good cause standard, a habeas court properly may elect to consider a number of factors in determining whether a petitioner has met his evidentiary burden of establishing good cause for filing an untimely petition. . . . [F]actors directly related to the good cause determination include, but are not limited to: (1) whether external forces outside the control of the petitioner had any bearing on the delay; (2) whether and to what extent the petitioner or his counsel bears any personal responsibility for any excuse proffered for the untimely filing; (3) whether the reasons proffered by the petitioner in support of a finding of good cause are credible and are supported by evidence in the record; and (4) how long after the expiration of the filing deadline did the petitioner file the petition. No single factor necessarily will be dispositive, and the court should evaluate all relevant factors in light of the totality of the facts and circumstances presented." *Kelsey* v. *Commissioner of Correction*, supra, 202 Conn. App. 34–35.

"[A] habeas court's determination of whether a petitioner has satisfied the good cause standard in a particular case requires a weighing of the various facts and circumstances offered to justify the delay, including an evaluation of the credibility of any witness testimony."

Id., 35–36. "[W]e will overturn a habeas court's determination regarding good cause under § 52-470 only if it has abused the considerable discretion afforded to it under the statute. In reviewing a claim of abuse of discretion, we have stated that [d]iscretion means a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice. . . . In general, abuse of discretion exists when a court could have chosen different alternatives but has decided the matter so arbitrarily as to vitiate logic, or has decided it based on improper or irrelevant factors. . . . [Reversal is required only] [i]n those cases in which an abuse of discretion is manifest or where injustice appears to have been done . . . ." (Internal quotation marks omitted.) Id., 38.

In *Kelsey* v. *Commissioner of Correction*, supra, 202 Conn. App. 27–28, this court concluded that the habeas court properly exercised its discretion in dismissing a successive petition for a writ of habeas corpus on the ground that the petitioner's alleged lack of knowledge of the filing deadline set forth in § 52-470 was insufficient to demonstrate good cause to overcome the statutory presumption of unreasonable delay. In that case, the habeas court conducted a show cause hearing pursuant to § 52-470 (e), during which the petitioner testified that his former habeas counsel failed "to inform him of the time limitations of § 52-470, he was unaware of the deadline for filing his second habeas petition, and this lack of knowledge necessarily established 'good cause' for any delay." Id., 40. This court held that "the petitioner has failed to demonstrate on appeal that the habeas court abused its discretion by dismissing his untimely successive petition." Id., 43. In support of our conclusion, we noted that, "[r]egardless of whether the court credited the petitioner's claim of ignorance of § 52-470, it nevertheless went on to conclude that the

petitioner's own ignorance of the law did not satisfy his burden to establish good cause for the untimely filing. This reasoning is legally sound. The familiar legal maxims, that [everyone] is presumed to know the law, and that ignorance of the law excuses no one, are founded upon public policy and in necessity, and the [principle underlying] them is that one's acts must be considered as having been done with knowledge of the law, for otherwise its evasion would be facilitated and the courts burdened with collateral inquiries into the content of men's minds." (Internal quotation marks omitted). Id., 41.

Here, as in *Kelsey* v. *Commissioner of Correction*, supra, 202 Conn. App. 41, we are not persuaded that the petitioner's alleged lack of knowledge of the deadlines contained in § 52-470 is sufficient to compel a conclusion that he met his burden of demonstrating good cause for the delay. The only evidence the petitioner presented to support his contention that he was unaware of the filing deadline in § 52-470 was his own testimony that he lacked personal knowledge of the deadline and that he was never informed of it by his previous habeas counsel. Although it is unclear whether the habeas court credited the petitioner's assertion, the habeas court properly concluded that a mere assertion of ignorance of the law, without more, is insufficient to establish good cause. We conclude that the habeas court did not abuse its discretion in determining that the petitioner failed to establish good cause for the delay in filing his successive habeas petition. Accordingly, we conclude that the habeas court properly dismissed the petitioner's second habeas petition pursuant to § 52-470 (d) and (e).

The judgment is affirmed.

In this opinion the other judges concurred.