LAURENCE V. PARNOFF *v.* TOWN OF STRATFORD ET AL.
(AC 44491)

Moll, Clark and DiPentima, Js.

Syllabus

The plaintiff sought to recover damages from the defendant town, its mayor, H, its former tax assessor, F, and its counsel, B Co., for violations of the Freedom of Information Act (§ 1-200 et seq.) and for negligent infliction of emotional distress and violations of the Connecticut Unfair Trade Practices Act (CUTPA) (§ 42-110a et seq.) stemming from the defendants' alleged failure to comply with the Freedom of Information Act. The plaintiff sent a letter to F requesting the complete assessor's file for his property located in the town. Two days later, B Co. replied to the request on the town's behalf, indicating that it would review the request to determine whether any exemptions to production applied and noting that the town was committed to providing prompt access to all records subject to disclosure. The plaintiff replied, seeking clarification as to which part of his request might be subject to exemption. Prior to receiving a response, he initiated this action. Approximately four months after receiving the initial request, B Co. provided the plaintiff with the requested records. Instead of withdrawing the action, the plaintiff then filed an amended complaint. The trial court granted the defendants' motions to dismiss the plaintiff's claims of Freedom of Information Act violations because he failed to exhaust his administrative remedies. The plaintiff then filed a second amended complaint, setting forth the same claims as the first amended complaint. The trial court again granted the defendants' motions to dismiss the Freedom of Information Act claims for failure to exhaust administrative remedies. Thereafter, the trial court granted the defendants' motions to strike the plaintiff's CUTPA and negligent infliction of emotional distress claims, concluding that F's and H's activities were exempt from CUTPA pursuant to the applicable statute (§ 42-110c (a) (1)) and that the defendants were not engaged in trade or commerce under CUTPA. The plaintiff then filed a substituted complaint, alleging that F, H and B Co. were liable for negligent infliction of emotional distress and had violated CUTPA. The substituted complaint did not include any claims against the town. The trial court granted the defendants' motions to strike with prejudice as to all CUTPA claims. Thereafter, the plaintiff filed a second substituted complaint asserting negligent infliction of emotional distress claims against all of the defendants, including the town. The trial court granted the defendants' motions to strike, determining that the plaintiff's claims failed because the defendants could not have reasonably foreseen that their behavior

would cause emotional distress, and it rendered judgment for the defendants. On the plaintiff's appeal to this court, *held*:

1. The plaintiff's allegations of CUTPA violations against the defendants in the first substituted complaint were insufficient:

   a. The trial court properly struck the CUTPA claims against F and H because the alleged conduct that served as the basis of those claims clearly fell within the scope of the exemption set forth in § 42-110c (a) (1): F's and H's conduct was authorized and regulated by state statute and regulations, as they were acting as representatives of the town at all times, F's role as tax assessor and H's role as mayor were governed by statute, and, in responding to the plaintiff's public records request, F and H were acting pursuant to the Freedom of Information Act; moreover, F's and H's decision to involve B Co. in their response to the plaintiff's request did not convert their authorized and regulated activity into activity outside the scope of the CUTPA exemption; furthermore, F and H were not engaged in trade or commerce within the meaning of § 42-110a (4) because the town's obligation to fulfill the records request served a purely governmental function and did not constitute trade or commerce.

   b. The trial court properly struck the CUTPA claims against B Co. because those claims did not involve the commercial or entrepreneurial aspect of the practice of law under *Haynes* v. *Yale-New Haven Hospital* (243 Conn. 17) and, instead, were directed at the manner in which B Co. provided legal representation to the town.

2. The plaintiff failed to allege facts in his second substituted complaint that, if true, would have created a reasonably foreseeable risk of severe emotional distress and, therefore, the trial court properly struck the plaintiff's claims for negligent infliction of emotional distress: it was not reasonably foreseeable that the plaintiff would suffer severe emotional distress as a result of B Co. allegedly providing an insufficient response to the plaintiff's records request or as a result of F and H allegedly wrongfully incurring legal expenses at the expense of the town's taxpayers; moreover, this court has previously held that claims of negligent infliction of emotional distress based on allegations of misconduct during the course of litigation were insufficient because that misconduct did not create a reasonably foreseeable risk that a plaintiff would suffer severe emotional distress, and the trial court extended that reasoning to the defendants' allegedly unsatisfactory response to the plaintiff's public records request.

3. The plaintiff's claim that the trial court violated his right to due process by granting the motions to strike with prejudice instead of requiring the defendants to move for summary judgment was inadequately briefed and deemed to be abandoned, as the plaintiff failed to cite to any authority in support of his claim or to provide any meaningful analysis.

Argued September 7—officially released November 15, 2022

Procedural History

Action to recover damages for, inter alia, violations of the Freedom of Information Act, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Hon. Dale W. Radcliffe*, judge trial referee, granted the defendants' motions to dismiss; thereafter, the court granted the defendants' motions to strike; subsequently, the plaintiff filed a substituted complaint; thereafter, the court granted the defendants' motions to strike; subsequently, the plaintiff filed a second substituted complaint; thereafter, the court, *Hon. Dale W. Radcliffe*, judge trial referee, granted the defendants' motions to strike with prejudice and rendered judgment for the defendants, from which the plaintiff appealed to this court. *Affirmed.*

Laurence V. Parnoff, self-represented, filed a brief as the appellant (plaintiff).

Ryan P. Driscoll, for the appellees (named defendant et al.).

Alexander J. Florek, for the appellee (defendant Melinda Fonda).

Opinion

CLARK, J. The plaintiff, Laurence V. Parnoff, appeals from the judgment of the trial court rendered following the granting of motions to strike filed by the defendants, the town of Stratford (town), Melinda Fonda, Berchem Moses PC (Berchem Moses), and Laura Hoydick. On appeal, the plaintiff argues that (1) his claims under the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq., and his negligent infliction of emotional distress claims, all stemming from a public records request he made pursuant to the Freedom of Information Act (act), General Statutes § 1-200 et seq., were improperly stricken because he pleaded allegations sufficient to support those claims,

and (2) the court improperly granted the motions to strike with prejudice. We affirm the judgment of the trial court.

We begin by setting forth the facts, as alleged in the plaintiff's operative complaints,[1] and the procedural history of this case. On April 2, 2019, the plaintiff sent a records request to Fonda, the then tax assessor of the town, regarding the plaintiff's real property located at 3392 Huntington Road in Stratford. The plaintiff requested, inter alia, "the complete [assessor's] file from 2014 through the date hereof, including all correspondence, tax disclosure forms, inspection reports, assessments, notes and records of the board of assessment appeals, tax bills and payment records." Two days later, on April 4, 2019, Berchem Moses, counsel for the town, replied to the plaintiff's letter with a letter stating that it would review the plaintiff's request and the records requested to determine whether any common-law or statutory exemptions to the act's production requirement apply. Berchem Moses indicated in its letter that the town was committed to providing prompt access to all records subject to disclosure under the law. The plaintiff replied to that letter on April 11, 2019, seeking clarification as to which requests might be exempt.

On or about July 13, 2019, the plaintiff commenced this action by way of a two count complaint against the town, Fonda, Berchem Moses, and Hoydick, the town's mayor. The plaintiff alleged in count one that the defendants failed to comply with the act. In count two, the plaintiff alleged that the defendants were liable for violations of CUTPA and for negligent infliction of emotional distress stemming from their failure to comply with the act.

[1] As set forth more fully herein, the operative complaints for purposes of this appeal are the first substituted complaint filed December 16, 2019, and the second substituted complaint dated February 20, 2020.

On July 29, 2019, Berchem Moses provided the plaintiff with the documents sought in the records request. Although the documents requested by the plaintiff were produced, the plaintiff did not withdraw the underlying action. Instead, on August 15, 2019, the plaintiff filed an amended complaint pursuant to Practice Book § 10-59, adding a few allegations but maintaining both counts. Soon thereafter, the town, Hoydick, and Berchem Moses (collectively, town defendants) and Fonda separately filed motions to dismiss directed to count one of the amended complaint, arguing that the plaintiff failed to exhaust his administrative remedies.

On September 4, 2019, before the court ruled on the defendants' motions to dismiss, the plaintiff filed a second amended complaint, which set forth the same claims that were contained in his prior amended complaint. On September 12, 2019, the town defendants and Fonda filed motions to dismiss directed to the first count of the second amended complaint, again asserting that the plaintiff failed to exhaust his administrative remedies.

On October 28, 2019, the court dismissed the first count of the second amended complaint as to all the defendants, concluding that it lacked subject matter jurisdiction over that count because the plaintiff had failed to exhaust his administrative remedies by filing a complaint with the Freedom of Information Commission before filing suit. The plaintiff has not appealed from that dismissal.

On November 6 and 14, 2019, the town defendants and Fonda, respectively, filed motions to strike directed to the second count of the second amended complaint. Both motions asserted that the defendants were exempt from CUTPA under General Statutes § 42-110c (a) (1)[2]

[2] General Statutes § 42-110c (a) provides in relevant part: "Nothing in this chapter shall apply to: (1) Transactions or actions otherwise permitted under law as administered by any regulatory board or officer acting under statutory authority of the state or of the United States . . . ."

and that the plaintiff had failed to allege that the defendants were engaged in trade or commerce, as is required in order to state a claim under CUTPA. Fonda's motion also argued that the plaintiff failed to sufficiently plead facts supporting a claim of negligent infliction of emotional distress. The plaintiff objected to the town defendants' motion to strike on November 21, 2019, and to Fonda's motion to strike on December 2, 2019. On December 9, 2019, the trial court granted both motions to strike. The court concluded that Fonda's and Hoydick's activities were exempt from CUTPA under § 42-110c (a) (1) and that the defendants were not engaged in trade or commerce. The trial court did not articulate its basis for granting Fonda's motion to strike as to the plaintiff's negligent infliction of emotional distress claim, which was set forth in the same count as the CUTPA claim against her.

The plaintiff filed a substituted complaint on December 16, 2019 (first substituted complaint), which included five counts but left the first count blank as a result of the previously granted motions to dismiss. The second count alleged that Hoydick and Fonda were liable for negligent infliction of emotional distress. The third count alleged that Hoydick and Fonda violated CUTPA. The fourth count was directed at Berchem Moses and alleged that the firm was liable for negligent infliction of emotional distress. The fifth count alleged that Berchem Moses violated CUTPA.[3]

[3] We note that, although the three prior complaints asserted that all the defendants violated CUTPA, the first substituted complaint filed on December 16, 2019, did not assert any claims against the town. Because the plaintiff did not assert a CUTPA claim against the town in the first substituted complaint—the complaint relevant to all CUTPA claims on which a final judgment was rendered—we consider the CUTPA claims asserted against the town in the earlier complaints to have been abandoned. See *Lund* v. *Milford Hospital, Inc.*, 326 Conn. 846, 850, 168 A.3d 479 (2017) ("When an amended pleading is filed, it operates as a waiver of the original pleading. The original pleading drops out of the case and although it remains in the file, it cannot serve as the basis for any future judgment, and previous rulings

The town defendants[4] and Fonda filed separate motions to strike on December 23, 2019. The town defendants sought to strike all counts of the first substituted complaint, arguing that the allegations merely restated allegations from previously stricken counts without addressing the deficiencies therein. Fonda sought to strike counts two and three of the first substituted complaint with prejudice on the same basis and also because the plaintiff asserted new causes of action in violation of Practice Book §§ 10-44 and 10-60. The plaintiff objected to both motions to strike on January 6, 2020. The trial court, *Hon. Dale W. Radcliffe*, judge trial referee, granted the motions to strike on February 10, 2020, and further ruled that the motions were granted with prejudice as to all CUTPA claims.

The plaintiff filed a second substituted complaint on February 20, 2020, expressly stating that the first, third, and fifth counts were not repleaded. On the basis of substantially the same factual allegations made in his previously filed complaints, he asserted negligent infliction of emotional distress claims against the town, Fonda, and Hoydick in the second count and against Berchem Moses in the fourth count.

The town defendants filed a motion to strike the second and fourth counts of the second substituted complaint on February 27, 2020. Fonda filed a motion to strike the entirety of the complaint on March 2, 2020. The town defendants argued that the challenged counts failed to state a cognizable cause of action and that the counts reasserted both the records request claims, which the court had dismissed, and the CUTPA claims, which the court had stricken with prejudice. Fonda

on the original pleading cannot be made the subject of appeal." (Internal quotation marks omitted.)).

[4] Although the town joined in the motion to strike that Berchem Moses and Hoydick filed, it did not need to do so because no claims were asserted against it in the first substituted complaint. See footnote 3 of this opinion.

argued that the second substituted complaint should be stricken in its entirety because the plaintiff had failed to address the pleading deficiencies that caused the trial court to strike the plaintiff's negligent infliction of emotional distress claims in the first substituted complaint and, as a result, failed to allege facts sufficient to support a claim of negligent infliction of emotional distress. The plaintiff objected to both motions on April 24, 2020.

On November 30, 2020, the trial court, *Hon. Dale W. Radcliffe*, judge trial referee, granted both motions to strike with prejudice in written orders citing the transcript of the hearing on the motions. In that transcript, the court characterized the conduct alleged as the act of responding to a public records request with the assistance of counsel. The court cited our decision in *Stancuna* v. *Schaffer*, 122 Conn. App. 484, 998 A.2d 1221 (2010), for the proposition that litigation alone is not enough to support a claim of negligent infliction of emotional distress and extended that reasoning to the public records request alleged in the plaintiff's second substituted complaint. The court concluded that the complaint failed to state a claim for negligent infliction of emotional distress because actors engaged in the conduct alleged could not reasonably "have foreseen that [their] behavior would likely cause a harm of a specific nature, emotional distress, and that that emotional distress would likely result in bodily harm."

On December 17, 2020, the court rendered judgment for the defendants pursuant to Practice Book § 10-44. This appeal followed.[5] Additional facts will be set forth as necessary.

[5] We note that the plaintiff, without giving this court prior written notice, did not appear at oral argument. Pursuant to Practice Book § 70-3 (b), we base our decision on the briefs, the record, and the oral arguments of the defendants.

We begin by setting forth our standard of review. "Because a motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court, our review of the court's ruling . . . 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. . . . Moreover, we note that [w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted. . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." (Internal quotation marks omitted.) *Geysen* v. *Securitas Security Services USA, Inc.*, 322 Conn. 385, 398, 142 A.3d 227 (2016).

I

The plaintiff argues on appeal that he sufficiently alleged CUTPA claims against all of the defendants in the first substituted complaint[6] because he alleged that the town made unnecessary payments to Berchem Moses for legal services in connection with the town's response to the plaintiff's records request. We disagree.

A

With respect to Fonda and Hoydick, the plaintiff claims that the trial court erred in striking the CUTPA claims against them because (1) they acted "in [abuse] of power and outside their authority" by consulting

[6] The plaintiff includes the town in this argument, but the record is clear that the plaintiff did not assert a CUTPA claim against the town in the first substituted complaint. See footnote 3 of this opinion.

Berchem Moses, which rendered the CUTPA exemption in § 42-110c (a) (1) inapplicable, and (2) they were engaged in trade or commerce. We find both contentions meritless.

Section 42-110c (a) provides in relevant part: "Nothing in this chapter shall apply to: (1) Transactions or actions otherwise permitted under law as administered by any regulatory board or officer acting under statutory authority of the state or of the United States . . . ." In addition, "[t]o successfully state a claim for a CUTPA violation, the [plaintiff] must allege that the defendant's acts occurred in the conduct of trade or commerce." *Cenatiempo* v. *Bank of America, N.A.*, 333 Conn. 769, 789, 219 A.3d 767 (2019). " 'Trade' and 'commerce' means the advertising, the sale or rent or lease, the offering for sale or rent or lease, or the distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value in this state." General Statutes § 42-110a (4).

The plaintiff alleged that Fonda and Hoydick violated CUTPA by referring the plaintiff's records request to Berchem Moses. The trial court struck these counts for failure to state a claim on the ground that Fonda and Hoydick were exempt from CUTPA pursuant to § 42-110c (a) (1). Our Supreme Court addressed this exemption in *Connelly* v. *Housing Authority*, 213 Conn. 354, 567 A.2d 1212 (1990), and in *Danbury* v. *Dana Investment Corp.*, 249 Conn. 1, 730 A.2d 1128 (1999). In *Connelly*, the court held that a municipal housing authority was exempt from CUTPA under § 42-110c (a) (1) when it leased subsidized rental units to low income tenants. *Connelly* v. *Housing Authority*, supra, 365. The court reasoned that the housing authority was exempt because the agency was a creature of statute, was regulated by the United States Department of Housing and Urban Development, and was acting pursuant to state

and federal statutes and regulations that "set forth in great detail the municipal landlord's responsibilities and provide[d] carefully balanced procedural and substantive remedies for public housing tenants in a variety of situations." Id., 360–63. Then, in *Dana Investment Corp.*, the court held that the city of Danbury's real estate tax collection practices were exempt from CUTPA under § 42-110c (a) (1) because the city's real estate assessment process, the assessment challenging process, and the tax collection process were all pervasively regulated by state statutes. *Danbury* v. *Dana Investment Corp.*, supra, 18–20.

We subsequently applied this exemption in *Neighborhood Builders, Inc.* v. *Madison*, 142 Conn. App. 326, 331–32, 64 A.3d 800, cert. denied, 309 Conn. 905, 68 A.3d 660 (2013), concluding that the town of Madison's practice of setting and collecting building permit fees was exempt from CUTPA under § 42-110c (a) (1). We found that case indistinguishable from *Connelly* and *Dana Investment Corp.* because Madison's building official was statutorily appointed and because "the entire system of issuing building permits and collecting fees followed by [Madison was] authorized and regulated by state statute and regulation." Id., 331.

Here, Fonda and Hoydick were acting as representatives of the town at all relevant times, and Fonda's role as tax assessor is governed by statute; see General Statutes §§ 7-100k and 7-105; as is Hoydick's role as mayor. See General Statutes § 7-193 (a) (2). In responding to a public records request, Fonda and Hoydick were acting pursuant to the act. See General Statutes §§ 1-210 (a) and 1-212 (a). Like the defendants in *Neighborhood Builders, Inc.*, their conduct was "authorized and regulated by state statute and regulation." *Neighborhood Builders, Inc.* v. *Madison*, supra, 142 Conn. App. 331; see General Statutes § 1-200 et seq.

Although the plaintiff takes issue with Fonda and Hoydick's decision to involve Berchem Moses, municipalities carrying out their statutory obligations may, and often do, utilize the services of legal counsel. Doing so does not convert the authorized and regulated activity—here, responding to a public records request—into an activity outside the scope of the CUTPA exemption set forth in § 42-110c (a) (1). Thus, we conclude that the trial court properly struck the CUTPA claims against Hoydick and Fonda because the alleged conduct that serves as the basis of the plaintiff's CUTPA claim against them clearly falls within the scope of the exemption set forth in § 42-110c (a) (1).

Moreover, as the trial court correctly noted, even if Fonda and Hoydick were not exempt from CUTPA pursuant to § 42-110c (a) (1), they were not engaged in "trade or commerce" as defined in § 42-110a (4). A municipality's obligation to fulfill a public records request pursuant to Connecticut law clearly does not constitute "trade or commerce." On the contrary, that activity serves a purely governmental function. We therefore agree with the trial court's conclusion that Hoydick and Fonda did not engage in "trade or commerce" within the meaning of CUTPA.

B

With respect to Berchem Moses, the plaintiff claims that the trial court erred when it struck the CUTPA claims against the law firm because he alleged that it had engaged in trade or commerce. In granting the motion to strike with prejudice, the trial court stated that the claims against Berchem Moses "[did] not involve the commercial or entrepreneurial aspect [of the practice of law] under *Haynes* v. *Yale-New Haven Hospital*, [243 Conn. 17, 699 A.2d 964 (1997)]." We agree with the trial court.

Our Supreme Court "has stated that, in general, CUTPA applies to the conduct of attorneys. . . . The statute's regulation of the conduct of any trade or commerce does not totally exclude all conduct of the profession of law. . . . Nevertheless, [the court has] declined to hold that every provision of CUTPA permits regulation of every aspect of the practice of law . . . . [The court has] stated, instead, that, only the entrepreneurial aspects of the practice of law are covered by CUTPA." (Citations omitted; internal quotation marks omitted.) *Suffield Development Associates Ltd. Partnership* v. *National Loan Investors, L.P.*, 260 Conn. 766, 781, 802 A.2d 44 (2002). "[A]lthough all lawyers are subject to CUTPA, most of the practice of law is not. The 'entrepreneurial' exception is just that, a specific exception from CUTPA immunity for a well-defined set of activities—advertising and bill collection, for example." Id., 782. "[T]he most significant question in considering a CUTPA claim against an attorney is whether the allegedly improper conduct is part of the attorney's professional representation of a client or is part of the entrepreneurial aspect of practicing law." Id., 781.

The plaintiff argues that his claims against Berchem Moses were based on allegations arising from conduct that was commercial or entrepreneurial in nature. That argument is belied by a simple review of the first substituted complaint. The complaint alleged that Hoydick and/or Fonda "retained" Berchem Moses to assist the town in complying with his records request and that Berchem Moses provided unnecessary legal services to the town. Those allegations were directed at the manner in which Berchem Moses provided legal representation to the town, not the commercial or entrepreneurial aspects of practicing law. See *Haynes* v. *Yale-New Haven Hospital*, supra, 243 Conn. 35 ("[t]he noncommercial aspects of lawyering—that is, the representation of the client in a legal capacity—should be

excluded [from CUTPA] for public policy reasons" (internal quotation marks omitted)). As a result, the trial court properly struck the CUTPA claim against Berchem Moses.

II

The plaintiff next argues that he sufficiently pleaded claims of negligent infliction of emotional distress against the defendants in the second substituted complaint. Specifically, he claims that the trial court's November 30, 2020 ruling incorrectly concluded that the emotional distress he alleged was not a reasonably foreseeable consequence of the defendants' alleged conduct. We disagree.[7]

"[I]n order to prevail on a claim of negligent infliction of emotional distress, the plaintiff must prove that the defendant should have realized that its conduct involved an unreasonable risk of causing emotional distress and that that distress, if it were caused, might result in illness or bodily harm." (Internal quotation marks omitted.) *Larobina* v. *McDonald*, 274 Conn. 394, 410, 876 A.2d 522 (2005); see also *Carrol* v. *Allstate Ins. Co.*, 262 Conn. 433, 444, 815 A.2d 119 (2003) (defendant contended there was insufficient evidence to prove elements of negligent infliction of emotional distress claim, namely, "(1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress").

[7] The plaintiff also argues that the court should not have struck the second substituted complaint in its entirety because the remaining counts also contained "allegations of financial damage and irreparable harm" and because "the allegation of negligent infliction of emotional distress . . . was but one of the elements of damages claimed therein . . . ." (Citations omitted.) That claim has no merit and we decline to address it.

In the present case, the plaintiff alleges that Berchem Moses provided an insufficient response to the plaintiff's records request on the town's behalf and that Fonda and Hoydick wrongfully incurred legal expenses at the expense of the town's taxpayers, including him. Even taking the allegations in the complaint as true, as we must on a motion to strike; *Geysen* v. *Securitas Security Services USA*, *Inc.*, supra, 322 Conn. 398; it was not reasonably foreseeable that the plaintiff would suffer severe emotional distress as a result of this conduct.

In striking these counts, the trial court noted that this court has previously held that negligent infliction of emotional distress claims based on allegations of misconduct during the course of litigation are insufficient because the misconduct did not create a reasonably foreseeable risk that a plaintiff would suffer severe emotional distress. See *Stancuna* v. *Schaffer*, supra, 122 Conn. App. 490–91 (allegations that defendant intentionally forced mistrial in prior litigation were insufficient to state claim for negligent infliction of emotional distress); *Wilson* v. *Jefferson*, 98 Conn. App. 147, 162–63, 908 A.2d 13 (2006) (allegations that defendant previously had brought meritless summary process actions were insufficient to state claim for negligent infliction of emotional distress). The court extended the reasoning of those decisions to the allegedly unsatisfactory public records request in the present case and concluded that such conduct did not create a reasonably foreseeable risk of severe emotional distress.

We agree with the trial court that the plaintiff failed to allege facts that, if true, would create a reasonably foreseeable risk of severe emotional distress and, therefore, conclude that the court properly struck the plaintiff's claims for negligent infliction of emotional distress.

III

The plaintiff's last contention on appeal is that the trial court violated his right to due process by granting the motions to strike with prejudice instead of requiring the defendants to move for summary judgment.

The defendants argue that the plaintiff failed to adequately brief this claim on appeal because he failed to cite any authority in support of his due process argument. The plaintiff's argument on this point is less than one page long with no citations or meaningful analysis. We agree with the defendants that this claim is inadequately briefed and, thus, deem it to be abandoned. *Bongiorno* v. *J & G Realty, LLC*, 211 Conn. App. 311, 323, 272 A.3d 700 (2022) ("[when] an issue is merely mentioned, but not briefed beyond a bare assertion of the claim, it is deemed to have been waived" (internal quotation marks omitted)); see also *MacDermid, Inc.* v. *Leonetti*, 328 Conn. 726, 748, 183 A.3d 611 (2018) ("[w]e are not required to review issues that have been improperly presented to this court through an inadequate brief" (internal quotation marks omitted)).

The judgment is affirmed.

In this opinion the other judges concurred.

SHERI SPEER *v.* U.S. BANK TRUST, N.A., ET AL.
(AC 44902)

Alvord, Moll and Harper, Js.

Syllabus

The plaintiff sought to recover damages from the defendant bank for, inter alia, slander of title stemming from the bank's recording of a certificate of foreclosure on the land records relating to certain real property of which she was the record owner. The trial court granted the bank's motion to strike, concluding that count one, alleging slander of title, was insufficiently pleaded and that the other counts were time barred.

The plaintiff subsequently filed a revised complaint, repleading her allegations of slander of title and violations of the Connecticut Unfair Trade Practices Act (CUTPA) (§ 42-110a et seq.). The plaintiff appealed to this court from the order granting the motion to strike, which dismissed the appeal for lack of a final judgment. The trial court thereafter granted the defendant's motion for judgment and rendered judgment thereon, concluding that the revised complaint did not include any new facts distinguishing the plaintiff's repleaded claims for slander of title and violations of CUTPA from the stricken ones. On the plaintiff's amended appeal, *held* that the plaintiff waived her right to appeal from the trial court's order striking the original complaint: the plaintiff's claim on appeal focused exclusively on alleged procedural infirmities in the motion to strike, alleging that it did not comply with Practice Book (2013) § 10-41 and was not directed to the operative complaint but did not claim that the revised complaint was materially different from the original complaint,, the repeated claims in the revised complaint were nearly identical to, and contained no materially different allegations in support of, those claims as set forth in the original complaint, and merely reiterating claims previously disposed of by the court did not constitute a material change; moreover, notwithstanding the plaintiff's claim that the trial court erred in granting the motion for judgment because an automatic appellate stay was in effect, no enforceable appellate stay of execution resulted from the filing of a jurisdictionally infirm appeal.

Argued October 5—officially released November 15, 2022

Procedural History

Action for, inter alia, slander of title, and for other relief, brought to the Superior Court in the judicial district of New London, where the action was withdrawn as to the defendant JPMorgan Chase Bank, N.A.; thereafter, the court, *Calmar*, *J.*, granted the named defendant's motion to strike; subsequently, the plaintiff filed a revised complaint; thereafter, the plaintiff appealed to this court, which dismissed the appeal for lack of a final judgment; subsequently, the court, *Calmar*, *J.*, granted the named defendant's motion for judgment and rendered judgment thereon, and the plaintiff filed an amended appeal; thereafter, the plaintiff withdrew the appeal as to the defendant Bendett & McHugh, P.C. *Affirmed.*

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

Thomas N. Abbott, pro hac vice, with whom were *John J. Radshaw III*, and *Sean P. Clark*, for the appellee (named defendant).

Opinion

MOLL, J. The self-represented plaintiff, Sheri Speer, appeals[1] from the judgment of the trial court rendered in favor of the defendant U.S. Bank Trust, N.A. (U.S. Bank).[2] The plaintiff claims on appeal that the trial court (1) erred in granting U.S. Bank's motion to strike dated February 26, 2021, because the motion to strike (a) "did not comply with Practice Book § 10-41"[3] and (b) was not directed to the operative complaint and (2) erred in granting U.S. Bank's motion for judgment dated September 21, 2021, because it was filed while an automatic appellate stay was in effect. For the reasons that follow, we affirm the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of this appeal. In February, 2020, the plaintiff commenced the present action by way of a complaint dated February 3, 2020, containing allegations stemming from the recording of a certificate of foreclosure on the Norwich land records relating to certain real property of which the plaintiff was the record owner. The plaintiff's complaint asserted, as to U.S. Bank, four counts: (1) slander of title (count one); (2) declaratory judgment (count two); (3) violation of an automatic bankruptcy stay (count three); and (4) violations of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq. (count four). On March 11, 2020, the defendant JPMorgan Chase Bank, N.A., filed a "notice of filing notice of

[1] The plaintiff waived her right to appear for oral argument.

[2] Although the plaintiff's complaint also named Bendett & McHugh, P.C., and JPMorgan Chase, N.A., as defendants, they are not participating in this appeal.

[3] We note that Practice Book (2013) § 10-41 was repealed, effective January 1, 2014, seven years prior to the filing of U.S. Bank's motion to strike.

removal" indicating the removal of the case to the United States District Court for the District of Connecticut pursuant to 28 U.S.C. § 1446 (d). On November 3, 2020, the federal District Court dismissed count three of the complaint. On December 10, 2020, the plaintiff filed in the Superior Court a request to amend the complaint, appending a proposed amended complaint, which reflected amendments (1) removing JPMorgan Chase Bank, N.A., as a defendant and (2) omitting count three of the original complaint.[4] On December 15, 2020, the case was remanded from the federal District Court to the Superior Court.

On February 26, 2021, U.S. Bank filed a motion to strike with an accompanying memorandum of law directed to counts one, two, and four of the plaintiff's original complaint dated February 3, 2020. U.S. Bank argued that those counts should be stricken on the basis that the claims were time barred and/or because the plaintiff failed to allege valid causes of action. On March 4, 2021, the plaintiff filed a memorandum of law in opposition and, on March 10, 2021, U.S. Bank filed its reply memorandum. On August 5, 2021, the court granted U.S. Bank's motion to strike, concluding that count one was insufficiently pleaded and that counts one, two, and four were time barred. On August 11, 2021, the plaintiff filed a revised complaint, repleading her claim for slander of title as count one and her claim for violations of CUTPA as count two (revised complaint).

Shortly thereafter, on August 18, 2021, the plaintiff filed an original appeal from the court's August 5, 2021 decision granting, inter alia, U.S. Bank's motion to strike. On September 20, 2021, this court ordered the parties to file memoranda addressing whether the portion of the original appeal challenging the trial court's

[4] Because the Superior Court had not yet reacquired jurisdiction, this filing is a nullity. See *Wells Fargo Bank, N.A.* v. *Tarzia*, 186 Conn. App. 800, 804–805 n.4, 201 A.3d 511 (2019).

granting of U.S. Bank's motion to strike should be dismissed for lack of a final judgment because judgment had not been rendered in favor of U.S. Bank on the stricken complaint. On September 21, 2021, U.S. Bank filed a motion for judgment pursuant to Practice Book § 10-44,[5] contending that the plaintiff (1) failed to allege any materially different facts in support of her repleaded claims and (2) did not replead her claims for declaratory judgment and violation of the automatic bankruptcy stay within the time permitted by § 10-44. On October 6, 2021, while the motion for judgment was still pending in the trial court, this court granted its own motion to dismiss the plaintiff's original appeal with respect to U.S. Bank.[6]

On November 1, 2021, the trial court granted U.S. Bank's motion for judgment, stating that the plaintiff's revised complaint "does not include any new facts that distinguish her repleaded claims for slander of title and violation[s] of [CUTPA] from the stricken ones. Additionally, the plaintiff has waived the previously [pleaded] claims for declaratory judgment and violation of the automatic bankruptcy stay by not repleading them." This amended appeal followed.

The plaintiff principally claims that the trial court erred in granting U.S. Bank's motion to strike because the motion "did not comply with Practice Book § 10-

[5] Practice Book § 10-44 provides in relevant part: "Within fifteen days after the granting of any motion to strike, the party whose pleading has been stricken may file a new pleading; provided that in those instances where an entire complaint, counterclaim or cross complaint, or any count in a complaint, counterclaim or cross complaint has been stricken, and the party whose pleading or a count thereof has been so stricken fails to file a new pleading within that fifteen day period, the judicial authority may, upon motion, enter judgment against said party on said stricken complaint, counterclaim or cross complaint, or count thereof. . . ."

[6] In addition to appealing from the granting of U.S. Bank's motion to strike, the plaintiff appealed from the granting of a motion to dismiss filed by the defendant Bendett & McHugh, P.C. The portion of the original appeal challenging the judgment of dismissal was not encompassed by this court's

41"[7] and/or was not directed to the operative complaint. This claim fails.

We begin by setting forth the applicable standard of review and governing principles of law. "Our review of the court's ruling on the defendant['s] motion to strike is plenary." *St. Denis* v. *de Toledo*, 90 Conn. App. 690, 694, 879 A.2d 503, cert. denied, 276 Conn. 907, 884 A.2d 1028 (2005). "In ruling on a motion to strike, we take the facts alleged in the complaint as true." Id., 691. "After a court has granted a motion to strike, the plaintiff may either amend his pleading [pursuant to Practice Book § 10-44] or, on the rendering of judgment, file an appeal. . . . The choices are mutually exclusive [as] [t]he filing of an amended pleading operates as a waiver of the right to claim that there was error in the sustaining of the [motion to strike] the original pleading. . . . If the allegations in [the plaintiff's] substitute complaint are not materially different from those in his original complaint . . . the waiver rule applies, and the plaintiff cannot now challenge the merits of the court's ruling striking the amended complaint." (Citations omitted; internal quotation marks omitted.) Id., 693–94; see also *Lund* v. *Milford Hospital, Inc.*, 326 Conn. 846, 851, 168 A.3d 479 (2017) ("if the allegations in a complaint filed subsequent to one that has been stricken are not materially different than those in the earlier, stricken complaint, the party bringing the subsequent complaint cannot be heard to appeal from the action of the trial court striking the subsequent complaint" (internal quotation marks omitted)); *Parker* v. *Ginsburg Development CT, LLC*, 85 Conn. App. 777, 782, 859 A.2d 46 (2004) (plaintiff bound to court's judgment striking amended complaint because amended complaint was not materially different).

October 6, 2021 order. On April 19, 2022, the plaintiff withdrew the portion of the original appeal directed to the defendant Bendett & McHugh, P.C.

[7] See footnote 3 of this opinion.

"If the plaintiff elects to replead following the granting of a motion to strike, the defendant may take advantage of this waiver rule by challenging the amended complaint as not materially different than the [stricken] . . . pleading that the court had determined to be legally insufficient. That is, the issue [on appeal becomes] whether the court properly determined that the [plaintiff] had failed to remedy the pleading deficiencies that gave rise to the granting of the [motion] to strike or, in the alternative, set forth an entirely new cause of action. It is proper for a court to dispose of the substance of a complaint merely repetitive of one to which a demurrer had earlier been sustained." (Internal quotation marks omitted.) *Lund* v. *Milford Hospital, Inc.*, supra, 326 Conn. 850. "The law in this area requires the court to compare the two complaints to determine whether the amended complaint advanced the pleadings by remedying the defects identified by the trial court in granting the earlier motion to strike. . . . In determining whether the amended pleading is materially different, we read it in the light most favorable to the plaintiff." (Citation omitted; footnote omitted; internal quotation marks omitted.) Id., 851. Our Supreme Court has explained that "[c]hanges in the amended pleading are material if they reflect a good faith effort to file a complaint that states a cause of action in a manner responsive to the defects identified by the trial court in its grant of the motion to strike the earlier pleading. . . . Factual revisions or additions are necessary; mere rewording that basically restate[s] the prior allegations is insufficient to render a complaint new following the granting of a previous motion to strike. . . . The changes in the allegations need not, however, be extensive to be material." (Citations omitted; internal quotation marks omitted.) Id., 852–53.

To determine whether the revised complaint was "materially different" from the original complaint, "we

first examine the ruling striking the first . . . complaint." *St. Denis* v. *de Toledo*, supra, 90 Conn. App. 694. In the ruling granting U.S. Bank's motion to strike, the court concluded that count one was insufficiently pleaded and that counts one, two, and four were time barred. In the ruling granting U.S. Bank's motion for judgment, the court stated that the plaintiff's revised complaint "does not include any new facts that distinguish her repleaded claims for slander of title and violation[s] of [CUTPA] from the stricken ones. Additionally, the plaintiff has waived the previously [pleaded] claims for declaratory judgment and violation of the automatic bankruptcy stay by not repleading them." Notably, the plaintiff does not claim on appeal that the revised complaint was materially different from the original complaint stricken by the court; instead, with respect to the motion to strike, the plaintiff focuses exclusively on its alleged procedural infirmities. In any event, on the basis of our review of the court's decision striking the original complaint and our comparison of the two complaints, we conclude that the repleaded claims in the revised complaint are nearly identical to, and contain no materially different allegations in support of, those claims as set forth in the original complaint. Because the plaintiff does not attempt to persuade us otherwise, we decline to expand on this conclusion. It suffices to state that merely reiterating claims previously disposed of by the court does not constitute a material change. See, e.g., *St. Denis* v. *de Toledo*, supra, 696. Accordingly, applying the principles recited previously in this opinion, we conclude that the plaintiff has waived her right to appeal from the court's order striking the original complaint.[8]

[8] The plaintiff also claims that the court erred in granting the motion for judgment because the motion was filed at a time when an automatic appellate stay was in effect pursuant to Practice Book § 61-11 (a) by virtue of the plaintiff's filing of the original appeal. This claim is without merit. See *Cunniffe* v. *Cunniffe*, 150 Conn. App. 419, 430, 91 A.3d 497 (holding that "no enforceable appellate stay of execution results from the filing of a

The judgment is affirmed.

In this opinion the other judges concurred.

GABRIELLE CERUZZI HEALEY ET AL. *v.* CHARLES MANTELL ET AL.
(AC 44878)

Bright, C. J., and Prescott and Moll, Js.

Syllabus

The defendants, coexecutors of the decedent's will and cotrustees of all trusts created under the will, appealed from the judgment of the trial court rendered in their favor. The decedent left a will leaving the majority of his estate to a marital trust for his surviving spouse, with the residuary estate passing to a trust (residual trust) for the benefit of the plaintiffs, the decedent's two children. The residual trust was to be divided equally between two trusts, one for the benefit of each child. The terms of the separate trusts provided for mandatory distributions of trust principal when the primary beneficiary reached specific ages. The plaintiffs alleged in their complaint that the defendants had improperly failed to fund the residual trust and to pay the required distributions pursuant to the trust terms and, in so doing, had breached their fiduciary duty to the plaintiffs as beneficiaries of the estate and of the residual trust, committed legal malpractice, and engaged in negligent misrepresentation. The trial court granted the defendants' motion to dismiss the complaint in its entirety, finding that, although the plaintiffs as beneficiaries of the residual trust had standing to sue the defendants in their capacities as both coexecutors and cotrustees, the court lacked subject matter jurisdiction over the first and third claims because administration of the estate was not yet completed and, therefore, such claims were not ripe for adjudication, and the second claim, sounding in legal malpractice, failed because the plaintiffs were neither clients of the named defendant or his law firm nor intended third-party beneficiaries of such defendants' legal services. On appeal, the defendants argued that they were aggrieved by the trial court's determination that the plaintiffs had standing as beneficiaries of the residual trust to bring claims against the defendants for their actions as coexecutors of the estate and that the defendants could be collaterally estopped in a subsequent proceeding from challenging the plaintiffs' standing to sue the defendants as coexecutors. *Held* that this court did not have subject matter jurisdiction over the appeal because the defendants were not aggrieved by the trial court's

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jurisdictionally infirm appeal"), cert. denied, 314 Conn. 935, 102 A.3d 1112 (2014).

decision; in the present case, the defendants were granted the exact relief they sought—dismissal of the action in its entirety—and, because the trial court's determination regarding the plaintiffs' standing to bring counts one and three was dictum, it therefore could not have any preclusive effect in a later proceeding.

Argued October 3—officially released November 15, 2022

Procedural History

Action to recover damages for, inter alia, the defendants' alleged breach of fiduciary duty, and for other relief, brought to the Superior Court in the judicial district of Fairfield, and transferred to the judicial district of Waterbury, Complex Litigation Docket, where the court, *Bellis*, *J.*, granted the defendants' motion to dismiss and rendered judgment thereon, from which the plaintiffs appealed to this court. *Appeal dismissed.*

Damian K. Gunningsmith, with whom, were *Frank J. Silvestri*, *Jr.*, and, on the brief, *John Horvack*, *Jr.*, *Matthew R. Peterson*, and *Kristen G. Rossetti*, for the appellants (named defendant et al.).

Neal L. Moskow, with whom, was *Deborah M. Garskof*, for the appellees (plaintiffs).

Opinion

PRESCOTT, J. This appeal arises out of an action brought by the plaintiffs, Gabrielle Ceruzzi Healey and James Ceruzzi, against the defendants Charles Mantell and David Novicki for claims originating out of the defendants' administration of the estate of Louis L. Ceruzzi, Jr. (decedent), the plaintiffs' father.[1] The defendants were the coexecutors of the will and the cotrustees of trusts created by the will, and the plaintiffs were beneficiaries of one of these trusts.

[1] Weiner, Mantell & Fornes, P.C. (law firm) additionally was named as a defendant but is not participating in the present appeal. All references in this opinion to the defendants are to Mantell and Novicki only.

The defendants appeal from the trial court's judgment granting their motion to dismiss the plaintiffs' action in its entirety. The defendants do not challenge the judgment of dismissal itself[2] but, rather, they claim that, although the court properly granted their motion to dismiss, they nevertheless are aggrieved by certain additional determinations the court made that, although not necessary to the court's decision, could have a preclusive effect in a subsequent proceeding between the parties. Specifically, the defendants claim that the court improperly concluded that the plaintiffs had standing, as beneficiaries, to sue the defendants for their actions as coexecutors of the estate.[3] We conclude that, because the court ultimately concluded that it lacked subject matter jurisdiction over the entire action because counts one and three were not ripe and the plaintiffs lacked standing to bring count two, its determination regarding standing to bring counts one and three was not essential to the court's decision and is dictum. Consequently, because the determination regarding standing is dictum and cannot have a preclusive effect in

[2] The defendants do not challenge the court's dismissal of counts one and three for a lack of ripeness and also do not challenge the court's dismissal of count two for a lack of standing.

[3] The defendants' principal brief does not specify which counts are implicated in their challenge of the court's conclusion that the plaintiffs had standing, as trust beneficiaries, to sue the defendants for their actions as coexecutors of the estate. Rather, the defendant's brief discusses the matter generally stating that, "the plaintiffs, as beneficiaries of the residuary trust, failed to meet their burden of establishing that they have standing to pursue their claims on behalf of or arising under the residuary trust against Mantell and Novicki as the coexecutors of the estate and this court should reverse the trial court's decision to the contrary." Although the defendants do not specify whether they challenge this determination as it pertains to count one, three, or both, we interpret their claim as challenging the court's determination that the plaintiffs had standing, as beneficiaries, to sue the defendants for their actions as coexecutors of the estate as it pertains to both counts one and three. Count one, alleging breach of fiduciary duty by Mantell and Novicki, and count three, alleging negligent misrepresentation by Mantell, both require the plaintiffs to have standing as beneficiaries to challenge the actions taken by the coexecutors of the estate.

subsequent proceedings between the parties, the defendants are not aggrieved. Accordingly, we dismiss the appeal.

The record reveals the following relevant facts and procedural history. The decedent died testate on August 31, 2017. On September 11, 2017, the decedent's will was admitted to the Fairfield Probate Court and the defendants were appointed as the will's coexecutors. The will, inter alia, created two trusts, a marital deduction terminable interest trust (marital trust) and a residual trust for the benefit of the plaintiffs, the decedent's children (residual trust). Novicki and David Mack, a friend of the decedent, were named in the will as the cotrustees of all trusts created by the will. Mack declined to serve as a trustee, however, and Novicki appointed Mantell as cotrustee in Mack's place.

As provided in the will, the intended corpus of the residual trust was the residue of the decedent's estate, including all real, personal, and mixed property. After all expenses incident to the administration of the residual trust were deducted, the corpus of the residual trust was to be divided equally among the decedent's then living children and placed in separate trusts, one for the benefit of each child.[4]

[4] The will directed the trustees to distribute the property of each child's trust as follows: "(a) During the term of the trust, my Trustees shall distribute so much of the income as they shall determine to be advisable to or for the benefit of said child and said child's descendants living from time to time for their maintenance, education, and support. My Trustees shall consider foremost the needs of said child and shall consult said child in making such distributions; PROVIDED, HOWEVER, that my Trustees shall not be bound to follow the advice of said child in making such distributions. Any income not so distributed shall be accumulated and added to principal; (b) Upon said child's attaining the age of twenty-five (25) years, my Trustees shall pay over to said child one-fourth (1/4) of the then remaining principal of said trust; (c) Upon said child's attaining the age of thirty (30) years, my Trustees shall pay over to said child one-third (1/3) of the then remaining principal of said trust; (d) Upon said child's attaining the age of thirty-five (35) years, my Trustees shall pay over to said child the principal then remaining, absolutely; (e) PROVIDED, HOWEVER, that should the trust for

On January 18, 2021, the plaintiffs commenced the underlying action, asserting that the defendants had improperly declined to fund the residual trust and pay the required distributions. The complaint contained three counts. Count one alleged that the defendants breached their fiduciary duties as coexecutors and cotrustees. Count two alleged that Mantell and the law firm committed legal malpractice. Count three alleged that Mantell engaged in negligent misrepresentation.

According to the complaint, the residue of the decedent's estate totaled $5.2 million at the time of the decedent's death. According to the distribution schedule set forth in the will, each plaintiff was entitled to an equal one-half share of the total corpus of the residual trust. Each plaintiff's $2.6 million share of the principal was to be invested, reinvested, and held in a separate trust for such plaintiff's benefit.

such child be established after an age when said child is entitled to a mandatory payment of any of the principal of said trust, the payment of principal hereinabove provided at such age shall be made immediately, as if said trust had been established prior to said time; (f) PROVIDED FURTHER, HOWEVER, that my Trustees, other than said child if said child shall be so acting as a Trustee, shall have the power in their sole, absolute, and uncontrolled discretion to distribute the principal of said trust to said child from time to time, even to the extent of terminating said trust, if my said Trustees determine such distribution or termination to be in the best interests of said child, but nothing herein contained shall entitle said child to require such distribution or termination; (g) PROVIDED FURTHER, HOWEVER, that should such child die before receiving full distribution from said trust, then I give, devise, and bequeath the remaining principal and undistributed income of said trust fund to those of my descendants as said child shall appoint in said child's Last Will and Testament, either outright or in trust; but if said child shall not so appoint, the remaining principal and undistributed income shall pass to the descendants then living of said child, per stirpes, absolutely; and in default of such descendants then living of such child, to my descendants then living, per stirpes, absolutely. In the event none of my descendants is then living, the remaining principal and undistributed income [of] my residue shall pass to my spouse, TERESE M. CERUZZI, if she is then living, but if she is not then living, the same shall pass to my then living siblings, in equal shares, per stirpes; (h) PROVIDED FURTHER, HOWEVER, that in case a portion of my estate is then being held in trust for the benefit of any of my children or descendants, said

On the basis of their respective ages, the plaintiffs claimed that they were entitled to certain mandatory distributions of a percentage of their separate trust's principal. Specifically, Healey, who was thirty-seven at the time her father died, claimed that, per the distribution schedule set forth in the will, she was entitled to a distribution of the full amount of her trust's principal or $2.6 million. Ceruzzi, who was twenty-five at the time of the decedent's death, claimed that he was entitled to one quarter of his trust's principal or $650,000. Despite a claimed entitlement to distributions in these amounts, Healey received a distribution in the amount of only $50,000 from the defendants and Ceruzzi received no distribution.

The complaint further alleged that, although Mantell had made prior assurances that the plaintiffs would receive their distributions from the residual trust, the defendants failed to create and fund the residual trust and distribute its principal. On July 30, 2019, the defendants informed the plaintiffs that they would not be making any further distributions from the estate.[5] The defendants explained that no distributions could be made because of contractual agreements with lenders that the defendants had entered into as a part of their efforts to continue the decedent's business operations.[6]

beneficiary's share under the immediately preceding Subparagraph shall be added to the principal of such trust instead of its being paid to said beneficiary absolutely." (Emphasis in original.)

[5] On March 25, 2019, Mantell emailed Healey: "Our plan is to make a distribution to you before the end of 2019 of $2,600,000." Several months later, Mantell's intentions changed. In an email on July 30, 2019, Mantell stated that, "[a]s to the distributions of the residue to [Healey] and [Ceruzzi], we have also agreed with [our lenders] to not make any distributions from the estate property. In addition to these direct restrictions, we have liquidity covenants with [our lenders] which prevent us from making these distributions." The record is unclear as to the justification for the $50,000 that was distributed to Healey.

[6] The defendants allegedly were unable to make distributions due to their failure to secure language within the lender agreements entered into on behalf of the estate that would have enabled the estate to make distributions

The defendants' efforts to continue to carry out the decedent's business operations, an action that allegedly was not required by the will, resulted in the estate becoming illiquid. After the estate became illiquid, it was no longer able to fund the residual trust or pay the residual trust's mandated distributions.[7]

In response to the plaintiffs' complaint, the defendants moved to dismiss the action in its entirety and filed a memorandum in support of the motion along with supporting exhibits. The motion to dismiss raised three jurisdictional defects. First, the defendants alleged that the plaintiffs, as beneficiaries of the residual trust, lacked standing to sue the defendants because only trustees have standing to pursue damages on behalf of a trust. Second, the defendants alleged that the plaintiffs' claims were not ripe because the administration of the estate was not complete. Third, the defendants alleged that, in regard to the second count sounding in legal malpractice, the plaintiffs lacked standing because they were neither clients of the law firm or Mantell, nor intended third-party beneficiaries of their legal services.

The plaintiffs subsequently filed an objection to the motion to dismiss with supporting exhibits. In opposing the defendants' motion to dismiss, the plaintiffs responded to each of the defendants' jurisdictional challenges in turn. The plaintiffs first argued that, because the defendants acted in bad faith in their administration of the estate by prioritizing their own interests over the

from the residual trust. Instead, such distributions were prohibited by the lender agreements.

[7] The defendants failed to create and fund the residual trust prior to the estate becoming illiquid. The estate's illiquidity was the result of several business decisions the defendants made. Specifically, the defendants used nearly $7 million of the estate's assets to purchase insurance policies. On behalf of the estate, the defendants also took on significant obligations through their transactions with lenders.

beneficiaries' best interests, the plaintiffs had standing as beneficiaries of the residual trust to sue the defendants for breaching their fiduciary duties as coexecutors and cotrustees. The plaintiffs next argued that their claims were ripe because the plaintiffs' injury was clear, and the amount due to the plaintiffs was "known and within the coexecutors' ability to be satisfied." Finally, the plaintiffs argued that they had an attorney-client relationship with Mantell and the law firm because of representations made to the plaintiffs that Mantell was their attorney. Alternatively, the plaintiffs argued that they were third-party beneficiaries of the legal services provided by Mantell and the law firm.

On June 14, 2021, the court heard oral argument on the defendants' motion to dismiss. On July 16, 2021, the court issued a memorandum of decision that granted the defendants' motion and dismissed all three counts brought by the plaintiffs. In dismissing the second count, the court held that the plaintiffs lacked standing to allege legal malpractice because the plaintiffs did not allege in the complaint that they were clients of Mantell, nor did the allegations in the complaint support any inference that they were intended third-party beneficiaries of Mantell's or the law firm's legal services. In dismissing counts one and three, the court held that those counts were not ripe for adjudication because the decedent's estate was still being probated and therefore the plaintiffs had yet to experience any injury. For these reasons, the court granted the motion to dismiss in its entirety.

Despite the court's finding that it did not have jurisdiction over the plaintiffs' claims because they were not justiciable, it nevertheless concluded that the plaintiffs had standing as beneficiaries of the residual trust to bring the first and third counts of the complaint. The

court first determined that the allegations in the plaintiffs' complaint properly asserted causes of action arising out of the defendants' conduct both as coexecutors and as cotrustees. Thus, in order to establish that the plaintiffs lacked standing to bring the first and third counts of the complaint, the plaintiffs would need to lack standing as beneficiaries of the residual trust to sue the defendants for their actions as both coexecutors and cotrustees. The court found that the plaintiffs had standing as beneficiaries of the residual trust to bring their claims against the defendants in their capacity as coexecutors. Specifically, the court noted that the plaintiffs' complaint alleged sufficient facts to support that the defendants acted in bad faith and, consequently, the plaintiffs' claim fell within an exception to the general rule that beneficiaries lack standing to sue on behalf of the estate. The court also found that the plaintiffs had standing as beneficiaries to bring claims against the defendants in their role as cotrustees. The court found that the plaintiffs alleged sufficient facts to support that the plaintiffs had standing, as the residual trust's beneficiaries, to sue the defendants for a breach of trust.

Following the court's ruling, the defendants appealed. On appeal, the defendants challenge the court's determination with respect to counts one and three that the plaintiffs had standing as trust beneficiaries to sue the defendants in their capacity as coexecutors of the estate despite the plaintiffs' status as beneficiaries of the will.[8] The plaintiffs have not cross appealed and do not challenge the court's rulings that they lacked standing to bring the second count and that the claims asserted in the first and third counts were not ripe for adjudication.

[8] The defendants' principal brief states: "The trial court erred in concluding that the plaintiffs have standing to sue [the defendants] as the coexecutors of the estate for claims brought on behalf of the residuary trust." The defendants do not challenge on appeal the court's conclusion that the plaintiffs had standing to sue the defendants as cotrustees of the residual trust.

Thereafter, the plaintiffs filed a motion to dismiss the appeal, arguing that the defendants were not aggrieved by the judgment and, thus, lacked standing to appeal. This court denied the motion to dismiss the appeal, without prejudice, and ordered the parties to address, along with the merits of the appeal, "(1) whether the aggrievement issue in this appeal is justiciable by the Appellate Court; [and] (2) whether the [defendants] have standing to appeal when they claim to be aggrieved by the 'collateral estoppel effect' of the trial court's judgment . . . ."

In their principal brief, the defendants argue that this court has jurisdiction over the appeal because they were aggrieved by the trial court's determination that the plaintiffs had standing as beneficiaries of the residual trust to bring claims against the defendants for their actions as the coexecutors of the estate. Specifically, the defendants argue that they could be collaterally estopped in a subsequent proceeding from challenging the plaintiffs' standing to sue the defendants. The defendants further argue that the court improperly concluded that the plaintiffs had standing as beneficiaries of the residual trust to sue them for their actions as coexecutors of the will. The plaintiffs argue in their principal brief that this court lacked subject matter jurisdiction over the appeal because the defendants were not aggrieved by the judgment of the court, which granted them the very relief they sought in their motion to dismiss. Alternatively, the plaintiffs argue that the court properly concluded that the plaintiffs had standing as beneficiaries of the residual trust to bring the first and third counts of the complaint.

Because it implicates the jurisdiction of this court to hear the appeal, we first consider whether the defendants were aggrieved by the court's determination that the plaintiffs had standing as trust beneficiaries to sue the defendants for their conduct as coexecutors of the

estate, despite the court ultimately holding that it lacked subject matter jurisdiction over the plaintiffs' complaint in its entirety. We conclude that, because the court's determination regarding the plaintiffs' standing to bring counts one and three was dictum and thus could not have any preclusive effect in a later proceeding, the defendants are not aggrieved.

We begin by setting forth the well established legal principles. "Aggrievement, in essence, is appellate standing. . . . It is axiomatic that aggrievement is a basic requirement of standing, just as standing is a fundamental requirement of jurisdiction. . . . There are two general types of aggrievement, namely, classical and statutory; either type will establish standing, and each has its own unique features. . . . The test for determining [classical] aggrievement encompasses a well settled twofold determination: first, the party claiming aggrievement must demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest shared by the community as a whole; second, the party claiming aggrievement must establish that this specific personal and legal interest has been specially and injuriously affected by the decision." (Citations omitted; internal quotation marks omitted.) *In re Ava W.*, 336 Conn. 545, 554–55, 248 A.3d 675 (2020); see also General Statutes § 52-263 (establishing as prerequisite to party filing appeal that "party is aggrieved by the decision of the court or judge upon any question or questions of law").

"Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Internal quotation marks omitted.) *Avon* v. *Freedom of Information Commission*, 210 Conn. App. 225, 235, 269 A.3d 852 (2022). "Ordinarily, a party that prevails in the trial court is not aggrieved. . . . Moreover, [a] party cannot be aggrieved by a decision that grants the

very relief sought. . . . Such a party cannot establish that a specific personal and legal interest has been specially and injuriously affected by the decision." (Citations omitted; internal quotation marks omitted.) *Seymour* v. *Seymour*, 262 Conn. 107, 110–11, 809 A.2d 1114 (2002).

Nevertheless, even if a party prevails in the trial court, if there has been an adverse ruling in the course of the proceeding that may aggrieve the party, the party may appeal. *Equitable Life Assurance Society of the United States* v. *Slade*, 122 Conn. 451, 465, 190 A. 616 (1937). For example, "[a] prevailing party . . . can be aggrieved . . . if the relief awarded to that party falls short of the relief sought." (Internal quotation marks omitted.) *In re Allison G.*, 276 Conn. 146, 158, 883 A.2d 1226 (2005). "[M]oreover . . . impairment of an agency's ability to carry out its responsibilities constitutes aggrievement for purposes of appeal [even when the agency prevailed in a lower court]." *Williams* v. *Commission on Human Rights & Opportunities*, 257 Conn. 258, 265, 777 A.2d 645 (2001). Finally, "should actual prejudice be likely to occur from an adverse finding in . . . a case, despite obtaining the full measure of relief, there is case law recognizing that such consequences may give rise to sufficient grounds to establish aggrievement." *In re Allison G.*, supra, 163; see also E. Prescott, Connecticut Appellate Practice & Procedure (7th Ed. 2021) § 2-2:1.3, p. 68 ("[i]njury by way of legal preclusion under the doctrines of res judicata and collateral estoppel may be sufficient to establish aggrievement").

A party is not aggrieved by a court's statements that are considered dicta. "Dicta are [o]pinions of a [court] [that] do not embody the resolution or determination of the specific case before the court [and] [e]xpressions in [the] court's opinion [that] go beyond the facts before [the] court . . . and [are] not binding in subsequent

cases as legal precedent." (Internal quotation marks omitted.) *Honulik* v. *Greenwich*, 293 Conn. 641, 645 n.5, 980 A.2d 845 (2009). "If an issue has been determined, but the judgment is not dependent upon the determination of the issue, *the parties may relitigate the issue in a subsequent action*. . . . Thus, statements by a court regarding a nonessential issue are treated as merely dicta." (Citations omitted; emphasis added; internal quotation marks omitted.) *Gladysz* v. *Planning & Zoning Commission*, 256 Conn. 249, 260–61, 773 A.2d 300 (2001). "Dictum includes those discussions that are merely passing commentary . . . those that go beyond the facts at issue . . . and those that are unnecessary to the holding in the case. . . . [I]t is not dictum [however] [if] a court . . . intentionally takes up, discusses, and decides a question *germane to*, though not necessarily decisive of, the controversy. . . . Rather, such action constitutes an act of the court [that] it will thereafter recognize as a binding decision." (Emphasis added; internal quotation marks omitted.) *Cruz* v. *Montanez*, 294 Conn. 357, 376–77, 984 A.2d 705 (2009).

In the present case, the defendants are not aggrieved by the court's determination regarding standing to bring the claims in counts one and three because their personal and legal interests have not been affected. First, the defendants were granted the exact relief they sought, dismissal of the action in its entirety. See *Seymour* v. *Seymour*, supra, 262 Conn. 111 ("[a] party cannot be aggrieved by a decision that grants the very relief sought" (internal quotation marks omitted)). The defendants provided two alternative theories for why the court lacked subject matter jurisdiction over the first and third counts of the complaint. The court did not agree with the defendants' argument that the plaintiffs lacked standing to bring the first and third counts. The court did, however, dismiss counts one and three for a

lack of subject matter jurisdiction under the defendants' second theory—that those counts were not ripe. *Jones* v. *Redding*, 296 Conn. 352, 366, 995 A.2d 51 (2010) ("a litigant has no right to appeal a judgment in his or her favor merely for the purpose of having the judgment based on a different legal ground than that relied upon by the trial court" (internal quotation marks omitted)). The court also dismissed the second count for a lack of standing because the plaintiffs were not third-party beneficiaries of Mantell's or the law firm's legal services. Because the complaint was dismissed in its entirety, the defendants were awarded the full relief they sought in the trial court.

Second, although we have recognized that there may be some instances in which a prevailing party may be aggrieved for purposes of appeal, this case does not fall within the exception on which the defendants rely. The defendants argue on appeal that they are aggrieved by the court's determination that the plaintiffs had standing as beneficiaries to bring counts one and three of the complaint. Specifically, the defendants argue that they are aggrieved because they could be collaterally estopped from challenging the plaintiffs' standing to sue the defendants for their actions as coexecutors in a subsequent proceeding. We conclude that the court's findings regarding the plaintiffs' standing to bring the first and third counts of the complaint are dicta, and, therefore, we are not persuaded that the defendants are aggrieved by the court's nonbinding conclusions.

Because current Connecticut law does not require that a court address alleged jurisdictional defects in any particular order, the statements that the court made regarding the plaintiffs' standing to bring counts one and three were not necessary prior to the court reaching the conclusion that those claims were not ripe and, thus, those statements were merely dicta and are not

binding.[9] See *Peterson* v. *iCare Management, LLC*, 203 Conn. App. 777, 793–94, 250 A.3d 720 (2021) (statements that are not essential to court's conclusion are dicta); see also *Avon* v. *Freedom of Information Commission*, supra, 210 Conn. App. 237 (determination of issue was not binding if court's judgment was not dependent on determination of that issue). Accordingly, the court's dicta regarding the plaintiffs' standing cannot have a preclusive effect in a later proceeding. See *Farmington Valley Recreational Park, Inc.* v. *Farmington Show Grounds, LLC*, 146 Conn. App. 580, 589, 79 A.3d 95 (2013) (parties were not collaterally estopped from relitigating issue that was determined in mere dicta). Once the court had concluded that it lacked subject matter jurisdiction over the plaintiffs' claims in counts one and three because the issues were not ripe for adjudication, the court need not have considered the plaintiffs' standing with respect to those claims.[10] See, e.g., *American Tax Funding, LLC* v. *Design Land Developers of Newtown, Inc.*, 200 Conn. App. 837, 848–49 n.13, 240 A.3d 678 (2020) ("[i]n light of our determination that the

[9] Furthermore, the court's conclusion regarding the plaintiffs' standing to bring counts one and three was not an alternative holding. See *United States* v. *Title Ins. & Trust Co.*, 265 U.S. 472, 486, 44 S. Ct. 621, 68 L. Ed. 1110 (1924) ("where there are two grounds, upon either of which [a court] may rest its decision, and it adopts both, 'the ruling on neither is obiter [dictum], but each is the judgment of the court, and of equal validity with the other' "); see also *Rosenthal Law Firm, LLC* v. *Cohen*, 190 Conn. App. 284, 291–93, 210 A.3d 579 (2019) (contrasting nonbinding dicta with alternative holdings that may be binding authority). The court's determination that the plaintiffs possessed standing was not an alternative ground upon which the court was able to rest its decision to dismiss counts one and three because it was a determination that militated in favor of jurisdiction and thus was in contradiction to the court's conclusion that it lacked subject matter jurisdiction over the action. Thus, the court's conclusion was neither necessary to the ultimate conclusion nor an alternative holding and, thus, was nonbinding dictum.

[10] The court considered the defendants' challenges to the court's subject matter jurisdiction in the order they were raised in the defendants' motion to dismiss. It is a better practice, however, to address first the issue that disposes of the case.

appeal must be dismissed for lack of jurisdiction due to mootness, we need not address the standing issue raised . . . which would provide an independent basis for the determination regarding jurisdiction"); see also *Carraway* v. *Commissioner of Correction*, 317 Conn. 594, 602 n.10, 119 A.3d 1153 (2015) ("We recognize that the mootness doctrine is implicated in this appeal and likely provides an independent basis for our subject matter jurisdiction determination. Because we decide the case on the basis of aggrievement, however, we need not reach the mootness issue.").

Because the court's conclusion that the plaintiffs had standing as beneficiaries of the residual trust was merely dictum and, thus, cannot have a preclusive effect in a later proceeding; see *Farmington Valley Recreational Park, Inc.* v. *Farmington Show Grounds, LLC*, supra, 146 Conn. App. 588–89; the defendants are not aggrieved for purposes of appeal. See *Avon* v. *Freedom of Information Commission*, supra, 210 Conn. App. 237–38 (holding that defendant was not aggrieved for purposes of appeal because court's decision on nondeterminative matter was merely dictum). Therefore, this court lacks subject matter jurisdiction over the defendants' appeal.

The appeal is dismissed.

In this opinion the other judges concurred.