JANEL SIMPSON *v.* ROBERT R. SIMPSON
(AC 44705)

Alvord, Prescott and Clark, Js.*

Syllabus

The defendant, whose marriage to the plaintiff previously had been dissolved, appealed and the plaintiff cross appealed to this court from the judgment of the trial court denying, inter alia, the plaintiff's postjudgment motions for contempt and for modification of alimony and child support. The parties' separation agreement, which was incorporated into the judgment of dissolution, required the defendant to pay set amounts of weekly child support and monthly alimony to the plaintiff as well as additional payments calculated as a percentage of the defendant's annual bonus but provided that he make no additional support payments on his gross earned income in excess of $700,000 per calendar year. In the

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

plaintiff's motion for contempt, she alleged that the defendant had failed to pay her the proper amount of child support and alimony and also moved for an order regarding college education costs. She then filed a motion for modification of alimony and child support in which she alleged that there had been a substantial change in the defendant's compensation package since the date of the dissolution judgment and a motion for attorney's fees. The defendant filed a motion seeking a downward modification in child support on the basis that the older child of the parties' two children was reaching the age of eighteen. After a hearing on all of the motions, the trial court held that several portions of the separation agreement were unclear and ambiguous, calculated that the defendant owed the plaintiff more than $300,000 in arrearages, and ordered the defendant to pay the arrearages, awarded the plaintiff attorney's fees, and issued an educational support order in which it ordered the parties to share college education costs for their older child, with the defendant responsible for 90 percent of such costs, and concluded that such costs were not subject to the statutory (§ 46b-56c (g)) University of Connecticut in-state tuition cap. Following the parties' appeal and cross appeal, this court ordered the trial court to articulate how it calculated the additional child support and alimony payments it ordered the defendant to make under the provisions of the separation agreement, and the trial court issued an articulation, explaining its methodology of calculating such payments. On appeal, the defendant claimed, inter alia, that the court improperly interpreted the parties' separation agreement, improperly awarded attorney's fees to the plaintiff and exceeded its authority pursuant to § 46b-56c (g) in issuing its educational support order; on her cross appeal, the plaintiff claimed, inter alia, that the court improperly denied her motion for modification of alimony and child support. *Held*:

1. This court declined to address the merits of the parties' claim that the trial court's articulation improperly changed the calculation of the defendant's additional child support and alimony obligations as set forth in its original decision; having concluded on other grounds that the trial court misinterpreted the parties' separation agreement in both its original judgment and its articulation, this court remanded the case for a new hearing and new remedial orders, if warranted, and, thus, did not need to address further the parties' claim.

2. The trial court erred in determining that the language in several provisions of the parties' separation agreement, including for additional child support and alimony, was unclear and ambiguous: the separation agreement provided that the defendant's additional child support and alimony obligations did not extend to the defendant's gross earned income in excess of $700,000 and were not tied to the amount of his annual bonus, and the trial court's conclusion that the $700,000 cap applied only to the defendant's bonus was inconsistent with the plain meaning of the words

used by the parties in the separation agreement; moreover, the separation agreement as a whole reflected the parties' clear understanding that the defendant's compensation package could change in the future and provided for a remedy of renegotiation of alimony in the event that the defendant's compensation package materially changed, and the plaintiff failed to pursue that remedy; thus, the court's judgment denying the plaintiff's motion for contempt was reversed only with respect to its remedial orders, in particular its calculation of the arrearage owed by the defendant to the plaintiff and the case was remanded for further proceedings.

3. This court concluded that, because the trial court's postjudgment financial orders must be reversed and the trial court will reconsider such orders on remand, the trial court's award of attorney's fees must also be reversed.

4. The trial court's finding in its educational support order that the parties' agreed to exceed the costs of attendance at the University of Connecticut as provided in § 46b-56c (g) for their older child was clearly erroneous; although the plaintiff testified that the parties had agreed on the university that their older child would attend, there was no evidence in the record that they had ever agreed to provide educational support for the child in excess of the amount charged by the University of Connecticut for a full-time in-state student, and the plaintiff testified that she wanted the statutory cap followed.

5. This court, having reversed the trial court's other postjudgment financial orders, declined to reach the merits of the plaintiff's claim that the trial court improperly denied her motion for modification of alimony and child support, as the trial court's adjudication of that motion was interdependent with its other postjudgment orders, including its finding with respect to the child support and alimony arrearage and its educational support order; accordingly, the trial court's ruling on that motion was reversed, and a new hearing was ordered on remand.

(*One judge concurring in part and dissenting in part*)

Argued May 9—officially released November 28, 2023

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Albis*, *J.*, rendered judgment dissolving the marriage and granting certain other relief in accordance with the parties' separation agreement; thereafter, the court, *M. Murphy*, *J.*, rendered judgment denying the plaintiff's postjudgment motions for contempt and for modification of child support and alimony and the defendant's postjudment

motion for modification of child support and issued certain orders on the plaintiff's motions for order regarding college education costs and attorney's fees, from which the defendant appealed and the plaintiff cross appealed to this court; subsequently, the court, *M. Murphy*, *J.*, issued an articulation of its decision. *Reversed in part*; *further proceedings*.

Campbell D. Barrett, with whom were *Stacie L. Provencher*, and, on the brief, *Dana M. Hrelic*, for the appellant-cross appellee (defendant).

Steven R. Dembo, with whom were *Seth Conant*, and, on the brief, *Caitlin E. Kozloski* and *P. Jo Anne Burgh*, for the appellee-cross appellant (plaintiff).

Opinion

PRESCOTT, J. In this postjudgment dissolution matter, the defendant, Robert R. Simpson, appeals and the plaintiff, Janel Simpson, cross appeals from the judgment of the trial court resolving several postjudgment motions of the parties. Specifically, the defendant claims on appeal that the court improperly (1) modified its original decision on the postjudgment motions by way of a postappeal articulation, (2) construed provisions of the parties' separation agreement regarding child support and alimony, (3) awarded attorney's fees to the plaintiff, and (4) rendered an educational support order that failed to comply with General Statutes § 46b-56c. In her cross appeal, the plaintiff claims that the court improperly denied her motion seeking a modification of alimony and child support. Because we agree with the defendant's second claim that the court misinterpreted the parties' separation agreement regarding additional child support and alimony payments and rendered an improper educational support order, we conclude that it is unnecessary to resolve his first claim regarding the court's articulation. Furthermore, we conclude that, because the court's various financial orders

and postjudgment rulings are inextricably linked, these errors necessarily also require the reversal of the court's award of attorney's fees to the plaintiff and its denial of the plaintiff's motion for modification of alimony and child support. Accordingly, we reverse the court's remedial orders attendant to its denial of the plaintiff's motion for contempt as well as its rulings on the plaintiff's motion for order re college expenses and her motion for modification of alimony and child support. The judgment is affirmed in all other respects, and the case is remanded for further proceedings in accordance with this opinion.

The following facts and procedural history are relevant to our resolution of the claims on appeal. The court, *Albis*, *J.*, dissolved the parties' marriage on October 28, 2013. At the time of dissolution, the parties had two minor children.[1] The judgment of dissolution incorporated by reference the parties' separation agreement dated October 24, 2013, and the addendum to the separation agreement dated October 28, 2013 (agreement).

Article IV of the agreement governs child support. Section 4.1 of the agreement provides: "The [plaintiff] is presently earning $135,000 per year. The [defendant's] present bas[e] draw from his employment is $298,686 per year. The [defendant] shall pay to the [plaintiff] as child support effective with the date of Judgment the sum of $420 per week. If either party's base income changes ($298,686 presently for the [defendant] and $135,000 for the [plaintiff]) such that there is a 15 [percent] or more differential in the amount of child support that should be paid in accordance with the Child Support Guidelines, then the parties will recalculate the new amount of Child Support and modify the present amount."[2]

[1] The parties' children were born in October, 2000, and August, 2004.

[2] Although not at issue in the present appeal, we note that parties generally cannot agree to modify court-ordered child support obligations on their own without involving the court. See *Eldridge* v. *Eldridge*, 244 Conn. 523,

Section 4.2 of the agreement provides for the payment of additional child support as follows: "From the [defendant's] anticipated bonus or profit sharing from his employment received on or after January 1, 2016, which he usually receives in January of each year, once the back taxes for 2012 and 2013 are paid in full as described in this Agreement below, the [defendant] will pay to the [plaintiff] 9 percent of his gross bonus/profit sharing so long as the [defendant] is obligated to pay child support for two children; and, the sum of the 6 percent of his gross bonus/profit sharing when there is only one minor child for whom the [defendant] is obligated to pay child support. There will be no child support paid on the [defendant's] gross earned income in excess of $700,000 per calendar year. For the purposes of this paragraph, the bonus/profit sharing shall be considered as the total gross payment the [defendant] receives, less any portion that is part of his normal monthly draw and less any portion that is part of his normal quarterly tax payment draw he receives."

Article VI of the agreement governs alimony. Section 6.2 of the agreement provides: "Effective October 15, 2013, the [defendant] shall pay to the [plaintiff] as alimony the sum of $3,500 per month. Said alimony takes into the account that the [defendant] is presently paying $375 per month to the IRS for 2011 income taxes plus two 401 (k) loans against his 401 (k) plus moneys deducted from the [defendant's] regular or base paycheck for his 'capital account.' "[3] Section 6.3 of the

530–32, 710 A.2d 757 (1998) (reiterating general proposition that court orders must be complied with until modified by court and upholding trial court's determination that provision in dissolution decree providing for modification upon specified increase in defendant's income not self-executing); *Behrns* v. *Behrns*, 80 Conn. App. 286, 289–90, 292, 835 A.2d 68 (2003) (applying *Eldridge* holding to provision in separation agreement and concluding that "party seeking to alter payments must seek the assistance of the court" rather than engaging in self-help), cert. denied, 267 Conn. 914, 840 A.2d 1173 (2004).

[3] Section 6.5 of the agreement provides that the defendant's obligation to pay "the base sum of alimony" would end on September 30, 2022. The

agreement provides: "Once the family home . . . is sold (see provisions for the sale of the family home below), the [defendant] shall pay to the [plaintiff] as alimony the sum of $1,750 per month."

Section 6.4 of the agreement provides for the payment of additional alimony as follows: "Effective with his January 2016 bonus/profit sharing plan payment, the [defendant] shall pay to the [plaintiff] 20 percent of the [defendant's] gross bonus/profit sharing amount as additional alimony; however, there will be no alimony paid on the [defendant's] gross earned income in excess of $700,000 per calendar year. For the purposes of this paragraph, the bonus/profit sharing shall be considered as the total gross payment the [defendant] receives, less any portion that is part of his normal monthly draw and less any portion that is part of his normal quarterly tax payment draw he receives."

Finally, section 6.8 of the agreement provides: "If the [defendant's] compensation package materially changes, either because his base income and/or bonus/profit sharing structures changes within his present employment or at a future employment, the parties shall renegotiate the alimony and tax payment provisions in such a manner as to duplicate the alimony considerations and intentions contained in this Agreement. In determining the amounts of child support and alimony to be paid and received for so long as the [plaintiff] remains unmarried, it is the parties' intention that until the family home is sold, the [plaintiff] shall have 55 [percent] and the [defendant] shall have 45 [percent] of the net after tax income using only the [plaintiff's] salary and the [defendant's] base draw or regular paychecks. Once the family home is sold, the parties' intention that they each have 50 [percent] of the net after

additional alimony requirement as set forth in section 6.4, however, was to continue through 2024 and "the additional alimony term is non-modifiable."

tax income, using the [plaintiff's] salary and the [defendant's] base draw or regular paychecks, currently approximately $433,000 per annum in the aggregate."

On June 29, 2017, the plaintiff filed what she captioned a "motion to compel," in which she stated that the defendant had "neglected, refused and failed to pay the proper amount of his court-ordered percentage child support and alimony in direct contravention of the [dissolution] judgment" and asked the court "for an order compelling the defendant to pay all past due sums." Following extensive discovery disputes, the plaintiff withdrew the motion to compel on July 3, 2018.

On July 10, 2018, the plaintiff filed a motion for order regarding college education costs and a motion for contempt in which she reasserted her claim that the defendant had failed to pay her the proper amount of child support and alimony.[4] With respect to the plaintiff's motion for contempt, the defendant filed an objection arguing that the plaintiff "will not be able to sustain her burden of proof because she has not provided the defendant with information sufficient for him to determine why the plaintiff believes the defendant's calculation of support, pursuant to the formula described in the judgment, is allegedly erroneous."

On August 21, 2018, the plaintiff filed a motion for modification of child support and alimony, in which she alleged that "there has been a substantial change in the defendant's compensation package since the date of the [dissolution] judgment." The defendant objected to the plaintiff's motion for modification, arguing that his child support and alimony obligations should not be increased because there had not been a substantial change in circumstances of the parties. On October 24, 2018, the defendant filed his own motion seeking a downward modification in child support on the basis

[4] The plaintiff later amended her motion for contempt on July 5, 2019.

that the parties' older child was reaching the age of eighteen.

The court, *M. Murphy, J.*, held a hearing on these motions over the course of five dates in 2020, at which the parties and the defendant's accountant, Christopher Thomas Elliot, testified. On April 26, 2021, the court issued its memorandum of decision. In its findings of fact, the court found that, at the time of the dissolution judgment, the defendant was an equity partner at the law firm of Shipman & Goodwin, and his base annual draw as defined in the agreement was $298,686. The court found that, at the time of the postjudgment hearing, the defendant was a shareholder with the law firm of Carlton Fields, PA, and his income from the law firm in 2019 was $1,037,220.[5]

With respect to the defendant's bonuses, the court found that his 2015 gross bonus was $360,346, his 2016 gross bonus was $457,771, his 2017 gross bonus was $731,149, and his 2018 gross bonus was $626,836.[6] Although each bonus was paid in January of the following year, the court found that the bonuses were accrued and included in the defendant's taxable income for the prior calendar year, and the court considered each bonus to have been earned in the prior calendar year for purposes of determining additional child support and alimony. The court found "that the defendant did not provide credible evidence of what part, if any, of

[5] The court found that the defendant's gross earned income in the years following the dissolution judgment was as follows: $716,023 in 2014, $861,355 in 2015, $1,223,407 in 2016, $1,716,777 in 2017, $1,904,710 in 2018, and $1,037,220 in 2019.

[6] If we utilize the figures found by the court and subtract gross bonus from gross earned income, this yields the defendant's approximate base income, which indisputably increased yearly from $501,009 in 2015, $765,636 in 2016, $985,628 in 2017, to $1,277,874 in 2018. Exhibits submitted by the parties show that in 2019, after the defendant had moved to Carlton Fields, PA, his base income (regular pay plus quarterly salary) had decreased to $732,219.80.

the January bonus payments in 2016 through 2019 were allocated to his monthly base draw or the January portion of the quarterly tax payments." Thus, the court found that "the entire amount of such bonus payments would be eligible for additional child support pursuant to section 4.2 and additional alimony pursuant to section 6.4."

The court determined that several provisions of the parties' agreement were unclear and ambiguous, including sections 4.2, 6.4, and 6.8, and, therefore, it declined to hold the defendant in contempt. The court nonetheless indicated that it had the authority to issue remedial orders in conjunction with its denial of the motion for contempt. Because it found the relevant portions of the agreement to be ambiguous, the court also stated that it would look to extrinsic evidence of the parties' intentions "when defining the conditions for the payments of additional child support and alimony." The court gave no indication in its written decision of what extrinsic evidence, if any, it credited or relied on in resolving the purported ambiguities in the separation agreement.[7] The court did, however, highlight the language contained in sections 4.2 and 6.4 of the agreement, which provides that "[t]here will be no child support paid on the [defendant's] gross earned income in excess of $700,000 per calendar year" and "there will be no alimony paid on the [defendant's] gross earned income in excess of $700,000 per calendar year."

The court next set forth the parties' competing interpretations of the agreement. It rejected the defendant's interpretation that the phrase there will be no child

[7] Our review of the transcripts from the hearing on the postjudgment motions reveals that the parties did not offer, and the court did not admit, any extrinsic evidence of why the parties' chose to bar additional alimony and child support on the defendant's gross earned income in excess of $700,000 or the parties' intent in drafting the relevant provisions of their agreement.

support or alimony "paid on the [defendant's] gross earned income in excess of $700,000 per calendar year" means that, "once the defendant's base income reaches $700,000, the agreement no longer requires him to share any of his bonus." The court found the plaintiff's interpretation more persuasive, stating: "The plaintiff interprets the limitations in sections 4.2 and 6.4 on the defendant's bonus for additional child support and alimony to mean that, at the time of the judgment, when the defendant's annual base draw was $298,686, that the share of the defendant's bonus was limited to the amount over $298,686 but not more than $700,000. Thus, the maximum amount of additional child support and alimony would be based on $700,000 less $298,686, which is equal to a maximum bonus of $401,314. Assuming the defendant's bonus was more than $401,314 (after reductions in the month the bonus was paid solely for any monthly base draw and the monthly share of the quarterly tax draw, if any), the plaintiff would be limited to additional child support and alimony based on $401,314. Thus, the maximum additional child support would be 9 percent of $401,314 (equal to $36,118.26) and the maximum additional alimony would be 20 percent of $401,314 (equal to $80,262.80). If the defendant's bonus was less than $401,314 (after reductions in the month the bonus was paid solely for any monthly base draw and monthly share of the quarterly tax draw, if any), the plaintiff would receive an additional 9 percent in child support and 20 percent in alimony of whatever the bonus was." Applying this formula, the court found an arrearage in the total amount of $332,692[8] and

[8] This amount reflects corrections that the court made to its original orders, in which it found an arrearage of $327,691, in response to a postjudgment motion to correct filed by the plaintiff. Specifically, and consistent with its corrected figures, the court found that the defendant owed the plaintiff $38,888 of additional alimony related to his January, 2016 bonus ($72,069 less $33,181 that he already had paid to the plaintiff). The court concluded no additional child support was due with respect to the January, 2016 bonus because the defendant had shown that he had an outstanding tax obligation of $26,000 in January, 2016, and section 4.2 of the agreement

ordered the defendant to begin paying that arrearage at a rate of $10,000 per month beginning on June 1, 2021.

The court supported its agreement with the plaintiff's interpretation of the agreement by relying on section 6.8 as expressing an intention to equalize the parties' incomes at the time the agreement was entered. Specifically, the court stated that it "relies in part on section 6.8 of the agreement that states the parties' intention to share equally their net after tax income based on their regular salaries. The current scenario where the defendant claims the plaintiff is not entitled to additional child support and alimony despite his significant increases in income do[es] not support the parties' intention in section 6.8."

The court also noted, in further support of its adoption of the plaintiff's interpretation of the agreement, the "requirement in section 6.8 that the parties renegotiate the alimony if the defendant's compensation package materially changes." The court rejected the defendant's interpretation that section 6.8 was triggered only upon a change in his compensation "structure" and that,

provides that the defendant did not owe additional child support from his bonus until the tax debt was paid in full. With respect to his January, 2017 bonus of $457,771, the court found that the maximum amount of the bonus subject to additional alimony and child support was $401,314 and that the defendant owed a total of $116,381 in additional alimony and child support ($80,263 plus $36,118). The court subtracted $43,300, which the defendant already had paid, for a total of $73,081 attributable to the January, 2017 bonus. The January, 2018 bonus was $731,149, and the court again found that the maximum amount of the bonus subject to additional alimony was $401,314, resulting in additional child support and alimony due of $116,381. The January, 2019 bonus was $626,836. Because one of the children was no longer a minor at the time the payment was due, the court used the 6 percent figure rather than 9 percent to calculate additional child support with respect to the January, 2019 bonus. The court again used $401,314 as the maximum amount subject to additional support payments and found that the plaintiff was owed $104,342 ($80,263 plus $24,079). In sum, the court concluded that the defendant owed the plaintiff a total arrearage of $332,692 for additional child support and alimony attributable to the defendant's bonuses from January, 2016, through January, 2019.

because his total compensation always had consisted of a base draw, tax payment draw, and bonus, his compensation structure had not materially changed. The court instead found that "a significant increase (or decrease) in the defendant's compensation alone could be a material change triggering section 6.8." Last, the court found that "the word 'structures' [in section 6.8] refers solely to the bonus/profit sharing as it is the singular form and right next to the words bonus/profit sharing. The word 'structures' does not refer to the word 'base income' in the sentence." Nevertheless, in interpreting the agreement, the court did not fully account for the parties' failure to comply with sections 4.1 and 6.8 by renegotiating the support orders and/or seeking court help in doing so in light of the clear increase in the defendant's compensation.[9]

With respect to the plaintiff's motion for modification, despite acknowledging the substantial increase in the defendant's total compensation, the court declined to modify the existing $420 per week child support payment or the $1750 per month alimony payment ordered at the time of dissolution. With respect to the plaintiff's motion for order regarding college education costs, the court ordered the parties to share such costs, with the defendant being responsible for 90 percent

[9] The court in fact made contradictory findings regarding efforts to comply with the agreement's provisions regarding renegotiation of support orders. As previously stated, the court found that a significant increase in the defendant's overall compensation should have been enough to trigger section 6.8 and that the plaintiff had failed to establish that the defendant had not provided her with required tax documentation, which would have provided her with notice of any increase in total compensation. Nevertheless, the court also found that the defendant had not provided the plaintiff with "sufficient" information about his bonus payments and that, "[i]f she had been given the correct information on a timely basis, she may have invoked section 6.8 and renegotiated the alimony." If the plaintiff believed that she was not receiving all necessary and required financial documentation from the defendant, it was incumbent on her to seek an order to compel compliance.

and the plaintiff being responsible for 10 percent. The court concluded that the costs were not subject to the University of Connecticut (UConn) in-state tuition cap and declined to make its educational support order retroactive. The court also ordered the defendant to pay $57,625 of the attorney's fees and costs incurred by the plaintiff. The defendant subsequently filed the present appeal.

The plaintiff filed a motion to correct certain scrivener's errors and to clarify the court's orders regarding the payment of child support and alimony arrearages by the defendant, among other orders.[10] The plaintiff then filed a cross appeal. On July 19, 2021, the court issued a memorandum of decision, wherein it granted in part the plaintiff's motion to correct and for clarification.

After filing her cross appeal, the plaintiff filed a motion for articulation of the court's original decision, which the court denied on March 1, 2022. On March 11, 2022, the plaintiff filed with this court a motion for review of the denial of her motion for articulation. On May 25, 2022, this court granted the plaintiff's motion for review and granted, in part, the relief requested therein. This court ordered the trial court "to articulate how the 'ongoing' payments[11] it ordered the [defendant] to make for additional child support and alimony under sections 4.2 and 6.4 of the parties' [agreement] are to be calculated." (Footnote added.)

On June 17, 2022, the court issued its articulation. After setting forth the arrearages as corrected by its

[10] The plaintiff also filed a motion for reargument, to which the defendant objected. The court denied the motion for reargument.

[11] In its original decision, the court stated that its orders "have resulted in significant arrearages and ongoing income sharing by the defendant until child support and alimony have run their course as defined by the agreement."

July 19, 2021 decision, the court articulated the methodology of calculating the additional child support and alimony. Specifically, it stated that the additional child support and alimony amounts were to be calculated by taking the lesser of $700,000 or the actual bonus amount, subtracting $298,686, and multiplying by the appropriate percentage. The court provided two examples. The first example stated: "[I]f the [defendant] earned $1,000,000 salary and a bonus of $800,000 for a taxable year, the [plaintiff] shall receive her usual $1750 per month alimony pursuant to section 6.3. In addition, the [defendant] shall pay additional alimony of $80,263 (($700,000-$298,686) x 20 [percent] = $80,263)." The second example stated: "If the [defendant] earned $1,000,000 salary and a bonus of $400,000 for a taxable year, the [plaintiff] would receive her usual $1750 per month alimony pursuant to section 6.3. In addition, the [defendant] shall pay additional alimony of $20,263 (($400,000-$298,686) x 20 [percent] = $20,263)." Additional facts and procedural history will be set forth as necessary.

I

Both the defendant and the plaintiff claim on appeal that the court's June 17, 2022 articulation improperly changed the calculation of his additional child support and alimony obligations as set forth by the court in its original decision. Because, as we discuss in part II of this opinion, we conclude that the court improperly interpreted the parties' separation agreement and reverse and remand on that basis for a new hearing, it is unnecessary to resolve this claim.

"As a general rule, [a]n articulation is appropriate [if] the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification. . . . An articulation may be necessary [if] the trial court fails completely to state any basis for its decision . . . or

where the basis, although stated, is unclear. . . . The purpose of an articulation is to dispel any . . . ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal. . . . An articulation is not an opportunity for a trial court to substitute a new decision nor to change the reasoning or basis of a prior decision. . . . If, on appeal, this court cannot reconcile an articulation with the original decision, a remand for a new trial is the appropriate remedy. . . . Such a remedy, however, is appropriate only [if] [t]he crucial findings of fact in the memorandum of decision are inconsistent and irreconcilable, and the articulation obfuscates rather than clarifies the court's reasoning." (Internal quotation marks omitted.) *Sabrina C.* v. *Fortin*, 176 Conn. App. 730, 750, 170 A.3d 100 (2017). "Insofar as we must construe the dissolution judgment and the court's articulations, our review is plenary." *C. D.* v. *C. D.*, 218 Conn. App. 818, 828, 293 A.3d 86 (2023).

In their appellate briefs, the parties point to an apparent inconsistency between the court's original decision and its articulation with respect to the calculation of additional child support and alimony. Specifically, the formula to calculate the maximum additional child support and alimony on the defendant's bonus/profit sharing (bonus), as set forth in the court's original decision, was $700,000 less the separation agreement's base draw of $298,686 to arrive at $401,314, which, according to the court, was the maximum bonus amount to which the additional child support and alimony percentages would apply. The analysis and formula set forth in the court's articulation yields the same result when the defendant's bonus exceeds $401,314. If the defendant's bonus is less than $401,314, however, application of the formula as set forth in the example provided by the court in its articulation yields a different result because

the court effectively subtracted the defendant's base salary from the bonus amount a second time.

Here, the claims regarding the articulation do not alter our conclusion that the court fundamentally misinterpreted the relevant provisions of the separation agreement in both its original judgment and its articulation. Because we remand for a new hearing and new remedial orders, if warranted, we do not need to address further whether the court's articulation materially altered the original judgment in a manner that rendered them irreconcilable or what remedy would be appropriate in this case in the absence of our reversal on other grounds.

II

We turn next to the defendant's claim that, in crafting remedial orders in response to the plaintiff's motion for contempt, the court improperly interpreted the separation agreement. Specifically, he contends that the plain and unambiguous language of the agreement provides that he "does not pay supplemental child support or alimony on 'gross earned income' in excess of $700,000 per calendar year," and that the trial court improperly misapplied the $700,000 cap to his bonus only. The plaintiff responds that the trial court correctly rejected the defendant's proposed interpretation of the agreement. We agree with the defendant.

We first set forth our standard of review. "Our interpretation of a separation agreement that is incorporated into a dissolution decree is guided by the general principles governing the construction of contracts. . . . A contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words

and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity . . . . Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms. . . . Moreover, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous. . . . If the language of a contract is clear and unambiguous, the intent of the parties is a question of law, subject to plenary review." (Citations omitted; internal quotation marks omitted.) *Eckert* v. *Eckert*, 285 Conn. 687, 692, 941 A.2d 301 (2008). A court's determination as to whether a contract is ambiguous also raises a question of law over which our review is plenary. See *Amica Mutual Ins. Co.* v. *Welch Enterprises, Inc.*, 114 Conn. App. 290, 294, 970 A.2d 730 (2009).

"It is hornbook law that courts do not rewrite contracts for parties. . . . Put another way, [a] court simply cannot disregard the words used by the parties or revise, add to, or create a new agreement." (Citation omitted; internal quotation marks omitted.) *Nassra* v. *Nassra*, 139 Conn. App. 661, 669, 56 A.3d 970 (2012). "[C]ourts do not unmake bargains unwisely made. Absent other infirmities, bargains moved on calculated considerations, and whether provident or improvident, are entitled nevertheless to sanctions of the law. . . . Although parties might prefer to have the court decide the plain effect of their contract contrary to the agreement, it is not within its power to make a new and different agreement; contracts voluntarily and fairly

made should be held valid and enforced in the courts." (Internal quotation marks omitted.) *Nation-Bailey* v. *Bailey*, 316 Conn. 182, 200, 112 A.3d 144 (2015).

Applying the foregoing principles to the present matter, we conclude, and both parties agree, that the language of the relevant provisions is clear and unambiguous. As noted previously, section 4.2 of the agreement provides for the payment of additional child support, and expressly states that "[t]here will be no child support paid on the [defendant's] gross earned income in excess of $700,000 per calendar year." Section 6.4 of the agreement provides for the payment of additional alimony and expressly states that "there will be no alimony paid on the [defendant's] gross earned income in excess of $700,000 per calendar year."

The agreement, thus, provides in clear and unequivocal language that any additional child support and alimony obligations do not extend to the defendant's "*gross earned income* in excess of $700,000 per calendar year." Although the parties could have directly and expressly tied the defendant's obligation to make additional support payments to all or a portion of his *annual bonus*, the parties instead expressly agreed to tie the income cap to his *gross earned income*.

The term "gross earned income," although not expressly defined in the agreement, is a term that is readily understood in the context of the agreement as a whole. The parties in fact agree that the term encompasses all income earned by the defendant, including but not limited to both his base draw and his annual bonus. Because we conclude that the language at issue is clear and unambiguous, and the court did not rely on any extrinsic evidence of the parties' intent, our review of the trial court's interpretation of what the parties' intended by this language is plenary.

The trial court determined that "portions of the agreement are not clear and unambiguous, particularly parts of sections 4.2 and 6.4." In so determining, the court stated that "[t]he defendant would have the court believe that the phrase: there will be no child support or alimony 'paid on the [defendant's] gross earned income in excess of $700,000 per calendar year' to mean that, [if] the defendant's *base income* reaches $700,000, the agreement no longer requires him to share any of his bonus. Under the defendant's logic, the support obligations that he owed when his income and bonuses were less would disappear once his income and bonuses increased beyond $700,000. This interpretation is nonsensical, and the court will not adopt the defendant's interpretation of sections 4.2 and 6.4." (Emphasis added.)

It is axiomatic, however, that "[a] court cannot ignore or disregard the language of the agreement because in hindsight an additional or more expansive term would have been better for one of the parties." (Internal quotation marks omitted.) *Brown* v. *Brown*, 199 Conn. App. 134, 151, 235 A.3d 555 (2020). In other words, the mere fact that one party is unhappy with the results that flow from the language they agreed to incorporate into an agreement, or the court now determines that the agreed upon language is no longer equitable under the circumstance as they have evolved, is not grounds for the court to rewrite the contract to provide what it determines to be a more equitable outcome.

In accepting the plaintiff's contention that the $700,000 cap applied only to the defendant's bonus, the court reached a conclusion that was inconsistent with the plain meaning of the words used by the parties in the agreement. The bar on additional support payments was expressly tied to the defendant's "gross earned income," which includes both his base income and any bonus, exceeding $700,000. The defendant's alimony

and child support obligation with respect to the defendant's base pay was set at a defined amount based in part on the defendant's base pay of $298,686, and the parties could have agreed on different language that would have required the defendant to pay some portion of his annual bonus as additional alimony and child support *irrespective of any fluctuation in his base pay*. That is not, however, the language to which the parties agreed.

Furthermore, we disagree with the court that section 6.8 of the agreement supports the plaintiff's interpretation of the relevant provisions of the agreement. To the contrary, in our view, that provision supports an entirely different construction of the agreement. We recognize that, when we interpret individual provisions of the agreement, we are mindful of its " 'construction as a whole.' " *Tannenbaum* v. *Tannenbaum*, 208 Conn. App. 16, 25, 263 A.3d 998 (2021). Section 6.8 uses language that reflects the parties' clear understanding that the defendant's overall compensation package could change in the future as a result of his changing jobs and/or a change in the composition or structure of his compensation package. It provides for the remedy of renegotiation of alimony in the event that the defendant's compensation package materially changes. It is the plaintiff's failure to pursue the remedy set forth in this agreed upon provision, and its analogue in section 4.1 regarding child support, that has caused any real or perceived inequity that has resulted from the increase in the defendant's base pay; see footnote 6 of this opinion; not the clear and unambiguous $700,000 gross income cap for purposes of additional support.

The plain language of the agreement addresses the defendant's additional child support and alimony obligations relating to his bonus. The bonus was identified in the agreement as "the total gross payment the [defendant] receives, less any portion that is part of his normal

monthly draw and less any portion that is part of his normal quarterly tax payment draw he receives." The evidence at the hearing focused on these three types of income—normal monthly draw, quarterly tax payments, and bonus. The agreement expressly provides that the defendant would not pay child support or alimony on any gross earned income in excess of $700,000. Because the agreement set a fixed amount of alimony and child support tied to a defined base pay amount, once the defendant's base pay reached $700,000, any additional support payments would be in excess of the $700,000 cap.

The defendant argues, and we agree, that, in the absence of a modification of the additional alimony and child support provisions, as expressly provided for in the agreement, in any year in which his base income—normal monthly draw and quarterly tax payments—exceeded $700,000, his gross earned income reached the agreed upon cap, and he would not have accrued any obligation for additional child support or alimony. In years in which his base income is less than $700,000, and he received a bonus, he would have accrued an obligation to pay the agreement's specified percentage of additional child support and alimony on that portion of the bonus that is less than or equal to $700,000 minus his base income. Although, in hindsight, the plaintiff may wish that she had agreed to different language in crafting the additional support requirements, the court cannot remedy this by adopting a construction that has no basis in the language bargained for by the parties.

We reverse the judgment of the trial court denying the plaintiff's motion for contempt only with respect to the court's remedial orders, in particular its calculation of the arrearage owed by the defendant to the plaintiff, and remand for further proceedings consistent with this opinion. The scope of those proceedings will

involve application of the clear and unambiguous language of the agreement to calculate any additional alimony or child support obligation.[12]

III

The defendant next claims on appeal that the court improperly awarded attorney's fees to the plaintiff. The plaintiff responds that the court properly exercised its discretion in awarding attorney's fees. We conclude that, because we reverse the court's financial orders challenged on appeal, under the facts of this case, we necessarily also must reverse the court's award of attorney's fees.

The following additional procedural history is relevant. In its memorandum of decision, the court stated: "Although the court finds that the defendant breached the agreement, the court did not find him in civil contempt because the parties' agreement incorporated into the judgment was not clear and unambiguous. However, the court finds that the plaintiff was required to file motions to enforce the support provisions of the parties' agreement, and, ultimately, the plaintiff's interpretation of the agreement was deemed correct by the court. The court ordered the defendant to pay substantial arrearages of child support and alimony. The plaintiff has submitted a motion for attorney's fees. The court finds the attorney's fees of $68,180 and costs of $3851 (for a total equal to $72,031) submitted with the attorney's affidavit are reasonable for this lengthy postjudgment hearing, which was required to enforce the plaintiff's right to support for herself and the minor children. The court has reviewed the parties' financial affidavits and

[12] We note that, in his appellate brief, the defendant provides calculations with respect to an amount that he contends should be found as an alimony arrearage, noting an improper calculation made by his accountant with respect to his 2016 profit sharing income. In other words, the defendant concedes that some arrearage exists.

finds that, while the plaintiff has income and assets of her own, the plaintiff's income and assets are a small fraction in comparison to the defendant's. In addition, the plaintiff's assets consist mainly of retirement type assets that are not easily liquidated without penalty or taxes. Finally, the court finds that the failure to award attorney's fees to the plaintiff in this case would undermine the court's orders."

The court then issued the following order: "After considering the . . . respective abilities of the parties to pay attorney's fees pursuant to General Statutes § 46b-62 (a), the criteria of General Statutes § 46b-82 and relevant case law, the court orders the defendant to pay 80 percent (in the amount of $57,625) and the plaintiff to pay 20 percent ($14,406) of the plaintiff's attorney's fees and costs. The defendant shall pay such fees within ninety days of this decision."

We first set forth the relevant principles of law. "In dissolution and other family court proceedings, pursuant to § 46b-62 (a), the court may order either [spouse] to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the equitable criteria set forth in . . . § 46b-82, the alimony statute. . . . That statute provides in relevant part that the court shall consider the length of the marriage, the causes for the . . . dissolution of the marriage . . . the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate and needs of each of the parties and the award, if any, which the court may make pursuant to section 46b-81 . . . . General Statutes § 46b-82. Section 46b-62 (a) applies to post-dissolution proceedings because the jurisdiction of the court to enforce or to modify its decree is a continuing one and the court has the power, whether inherent or statutory, to make allowance for fees. . . .

"Our Supreme Court has articulated three broad principles by which these statutory criteria are to be applied. First, such awards should not be made merely because the obligor has demonstrated an ability to pay. Second, where both parties are financially able to pay their own fees and expenses, they should be permitted to do so. Third, where, because of other orders, the potential obligee has ample liquid funds, an allowance of [attorney's] fees is not justified. . . .

"[A]n award of attorney's fees in a marital dissolution case is warranted only when at least one of two circumstances is present: (1) one party does not have ample liquid assets to pay for attorney's fees; or (2) the failure to award attorney's fees will undermine the court's other financial orders." (Citations omitted; internal quotation marks omitted.) *Zakko* v. *Kasir*, 209 Conn. App. 619, 625–26, 269 A.3d 220 (2022).

In the present case, the court stated that its award of attorney's fees was made pursuant to § 46b-62. In making its award, the court referenced the parties' financial circumstances and determined that a failure to award attorney's fees to the plaintiff would undermine the court's financial orders. Because we reverse the court's postjudgment financial orders, we necessarily also must reverse the court's award of attorney's fees.[13] See *O'Brien* v. *O'Brien*, 138 Conn. App. 544, 557, 53 A.3d 1039 (2012) (reversing award of attorney's fees pursuant to § 46b-62 after reversing court's financial orders and remanding matter to trial court because "[n]ot until the parties' assets are finally divided and their respective rights and obligations to give or receive financial support to or from each other are finally determined can the parties' ability to pay for their own attorney's fees be ascertained; nor, if it is determined that

[13] Because we reverse the award of attorney's fees on this basis, we need not address the defendant's arguments that the court's award of attorney's fees constituted an abuse of its discretion.

the parties do have the ability to pay their own attorney's fees, can it finally be determined if the failure to award appellate attorney's fees to the defendant would undermine the court's other financial orders for her maintenance and support"), cert. denied, 308 Conn. 937, 66 A.3d 500 (2013); see also *McTiernan* v. *McTiernan*, 164 Conn. App. 805, 831, 138 A.3d 935 (2016) (setting aside award of attorney's fees after reversing court's ruling on motion for contempt). Accordingly, because the court's postjudgment orders will be reconsidered on remand, its award of attorney's fees also must be reversed. "As always, the propriety of such an award is entrusted to the discretion of the trial court on remand." *McTiernan* v. *McTiernan*, supra, 831.

IV

The defendant's final claim on appeal is that the court's ruling on the plaintiff's motion for order with respect to college expenses was improper. He argues that the court exceeded its authority pursuant to § 46b-56c (g). Specifically, he contends, inter alia, that "there is no evidence in the record to support the trial court's finding that the parties agreed to exceed the cost of attendance at UConn . . . ." The plaintiff responds that the court's order was appropriate and supported by the record. We agree with the defendant.

The following additional facts and procedural history are relevant to this claim. Article V of the agreement contains an educational support provision, which provides: "The parties agree that this Court shall retain jurisdiction under the Connecticut Educational Support Act to enter an order regarding each child's four-year undergraduate college education as provided for in [§] 46b-56c . . . if the parties are unable to reach an agreement by themselves."

On July 3, 2018, the plaintiff filed a motion for order regarding college education costs. She alleged that the

parties were unable to agree on "a fair and equitable division" of college costs for the parties' children, and she requested that the court determine "the extent to which each party should pay toward these expenses."

At the hearing, the plaintiff testified that the parties agreed that their older child would attend Clemson University (Clemson), the child began attending college at Clemson in August, 2018, and the defendant had paid the full tuition, including room and board, for the child's first two years of college. The plaintiff testified that she was seeking an order, retroactive to the date of her motion, that the parties divide the child's college costs based on their pro rata income, up to the UConn cap.[14] She acknowledged that Clemson tuition was $55,000, which was higher than the UConn tuition.

In its memorandum of decision, the court found that the parties agreed that their older child would attend Clemson and that the child began attending Clemson in fall, 2018. The court found that the cost of attending Clemson exceeded the cost of attending UConn and that the defendant paid the costs of tuition, room, and board for the child's freshman and sophomore years at Clemson. The court took "judicial notice that the judgment reserves the jurisdiction of the court to determine whether to enter an educational support order and the terms thereof pursuant to . . . § 46b-56c."

The court ordered: "Based on the significant disparities in the parties' incomes and the court's findings that

[14] The UConn cap is mentioned throughout the proceedings. For example, the plaintiff's testimony included the following exchange:

"[The Plaintiff's Counsel]: Now, your judgment calls for your respective obligations to be governed by a statute that's referenced in your judgment. Correct?

"[The Plaintiff]: Right, right. By the—

"[The Plaintiff's Counsel]: You're aware that that incorporates a UConn cap. Is that right?

"[The Plaintiff]: Exactly. Right, right, it's the UConn."

the defendant has not paid the additional alimony as required by the agreement, the court orders the defendant to pay 90 percent of [the child's] college expenses and the [plaintiff][15] shall pay 10 percent of such expenses pursuant to . . . § 46b-56c. The court finds that splitting college costs with a simple ratio of the plaintiff's and the defendant's incomes would not be equitable. A certain level of income is needed before the extra expense of college education can be afforded by parents.

"In addition, the court finds that the parties agreed to [the child's] attendance at Clemson University and they were aware that the college expenses exceeded the expenses of the cost of an in-state resident attendance at [UConn] as defined in . . . § 46b-56c (g). As a result, the court finds the parties agreed to exceed the cost of attendance at UConn and shall split such excess expenses 90 percent paid by the defendant and 10 percent paid by the plaintiff. The court shall not make this educational support order retroactive. Prior to this order the defendant is responsible for 100 percent of the college costs for [the child]. This order shall take effect for the next semester that starts after the date of this decision when the semester currently underway is finished."

We first set forth the relevant principles of law and our standard of review. Section 46b-56c provides in relevant part: "(a) For purposes of this section, an educational support order is an order entered by a court requiring a parent to provide support for a child or children to attend for up to a total of four full academic years an institution of higher education or a private career school for the purpose of attaining a bachelor's

[15] In its July 19, 2021 memorandum of decision granting in part the plaintiff's request for clarification, the court, inter alia, corrected a typographical error in its order.

or other undergraduate degree, or other appropriate vocational instruction. An educational support order may be entered with respect to any child who has not attained twenty-three years of age and shall terminate not later than the date on which the child attains twenty-three years of age. . . . (g) The educational support order may include support for any necessary educational expense, including room, board, dues, tuition, fees, registration and application costs, *but such expenses shall not be more than the amount charged by The University of Connecticut for a full-time in-state student* at the time the child for whom educational support is being ordered matriculates, except this limit may be exceeded by agreement of the parents. . . .'' (Emphasis added.)

''Appellate review of a trial court's finding of fact is governed by the clearly erroneous standard of review. The trial court's findings are binding on this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . .'' (Internal quotation marks omitted.) *Tobet* v. *Tobet*, 119 Conn. App. 63, 70, 986 A.2d 329 (2010).

In the present case, we agree with the defendant that the court's finding that ''the parties agreed to exceed the cost of attendance at UConn'' is clearly erroneous. Our review of the transcript reveals no evidence that either of the parties agreed to provide educational support for the child in excess of the amount charged by UConn for a full-time in-state student. Although the plaintiff testified that the parties agreed that their child would *attend* Clemson, this agreement as to the selection of a school to attend does not amount to an agreement to provide educational support in excess of the

statutory cap.[16] In other words, although the parties agreed that their child should go to Clemson, there is no evidence that they ever discussed their respective financial willingness to pay for the costs of attendance in any percentage or beyond the UConn cap. Moreover, when asked during the hearing on her request for educational support whether she "want[ed] the UConn cap followed," the plaintiff responded in the affirmative. The court's finding, therefore, is clearly erroneous.

In the absence of an agreement to exceed the statutory cap, the court's order runs afoul of § 46b-56c.[17] Accordingly, we remand the matter for a new hearing on the plaintiff's motion for order regarding college education costs.

V

In her cross appeal, the plaintiff claims that the court improperly denied her motion for modification of alimony and child support. In his briefing to this court, the defendant argues, inter alia, that, "because this issue challenges the trial court's financial orders, and because the parties agree that the trial court's articulation improperly modified those orders, this court need not reach this issue should it reverse the matter and remand for new proceedings on that ground." We conclude that we must reverse the court's denial of the plaintiff's motion for modification of child support and alimony

[16] We note the following exchange between the plaintiff's counsel and the plaintiff:

"Q. Now, you agreed that [the child] could go to Clemson. Is that right?

"A. Yes.

"Q. Okay. Did you agree that you would pay for Clemson?

"A. No."

[17] Because we reverse the court's educational support order and remand for a new hearing, we need not address the defendant's additional arguments, including his argument raised pursuant to General Statutes § 46b-66, and his contention that the court improperly failed to make its educational support order retroactive.

on the basis of our reversal of the court's other postjudgment financial orders challenged on appeal. Accordingly, we need not reach the merits of the plaintiff's claim.[18]

The following additional procedural history is relevant. After adjudicating the plaintiff's motion for contempt, the court addressed the plaintiff's request to modify alimony and child support. It stated: "The court finds that a substantial change in circumstances has occurred because the defendant's income has increased substantially since the last court orders. The court has reviewed the child support guidelines, and the parties' combined net incomes continue to exceed the $4000 maximum support obligation amount as they did at the time of judgment. The court declines to modify child support from $420 per week because the difference in child support (even when the court considered the parties having two minor children or only one minor child) does not exceed a 15 percent differential required by section 4.1.

"The court considered the criteria in . . . § 46b-82. The court orders the defendant to pay additional child support and alimony based on the court's analysis of sections 4.2 and 6.4. The court's orders have resulted in significant arrearages and ongoing income sharing by the defendant until child support and alimony have run their course as defined by the agreement. The court has also made orders below regarding post high school education that reflect the disparity in the parties'

[18] In her reply brief, the plaintiff asserts that "it is likely that the issues presented in this cross appeal will arise upon retrial," and asks that we address them. We consider it speculative that the concerns raised by the plaintiff will arise on remand, and we decline to address them. See *Harrington* v. *Freedom of Information Commission*, 323 Conn. 1, 11 n.6, 144 A.3d 405 (2016); see also *Zheng* v. *Xia*, 204 Conn. App. 302, 308 n.10, 253 A.3d 69 (2021) (reversing judgment on basis that reason given for deviation from child support guidelines was improper and declining to reach plaintiff's remaining claims because they were not likely to arise on remand).

incomes as well as the failure of the defendant to pay additional child support and alimony as required pursuant to sections 4.2 and 6.4. Because of the mosaic the court has created to provide equity for the plaintiff, the court will not modify the periodic alimony or other alimony provisions at this time.

"The court denies the plaintiff's and the defendant's requests to modify alimony or child support at this time. This order is made without prejudice unless and until such time as the parties experience a future substantial change in circumstances." The court also denied the defendant's motion to modify child support based on the parties' older child attaining the age of eighteen.

"[Section] 46b-86 governs the modification or termination of an alimony or support order after the date of a dissolution judgment. When, as in this case, the disputed issue is alimony [or child support], the applicable provision of the statute is § 46b-86 (a), which provides that a final order for alimony may be modified by the trial court upon a showing of a substantial change in the circumstances of either party. . . . Under that statutory provision, the party seeking the modification bears the burden of demonstrating that such a change has occurred. . . . To obtain a modification, the moving party must demonstrate that circumstances have changed since the last court order such that it would be unjust or inequitable to hold either party to it. Because the establishment of changed circumstances is a condition precedent to a party's relief, it is pertinent for the trial court to inquire as to what, if any, new circumstance warrants a modification of the existing order." (Footnote omitted; internal quotation marks omitted.) *Malpeso* v. *Malpeso*, 189 Conn. App. 486, 499, 207 A.3d 1085 (2019).

In the present case, the court's adjudication of the plaintiff's motion for modification of child support and

alimony was interdependent with its other postjudgment orders. Specifically, the court expressly stated that it would not modify alimony "[b]ecause of the mosaic the court has created to provide equity for the plaintiff," referencing its findings with respect to the child support and alimony arrearages and its educational support order. Moreover, any determination as to a substantial change in circumstances for purposes of modifying child support would be based on factors underlying the court's other postjudgment financial orders, which this court has reversed and remanded. Accordingly, we conclude that the court's ruling on the plaintiff's motion for modification of child support and alimony also must be reversed and remanded for a new hearing.

The judgment is reversed with respect to the postdissolution orders as to the plaintiff's motion for contempt, motion for order with respect to college expenses, request for attorney's fees, and motion for modification of child support and alimony, and the case is remanded for further proceedings consistent with this opinion; the judgment is affirmed in all other respects.

In this opinion, CLARK, J., concurred.

ALVORD, J., concurring in part and dissenting in part. Although I agree with the majority's conclusions in parts I, III, IV and V of its opinion, I respectfully disagree with its conclusion in part II, that the parties' separation agreement (agreement) is clear and unambiguous regarding the terms of the obligation of the defendant, Robert R. Simpson, to pay child support and alimony. Specifically, I do not believe that the majority's reading of the relevant provisions of the agreement is the only reasonable reading of the parties' agreement with respect to the defendant's obligation to pay child support and alimony.

Although the trial court determined that the agreement was ambiguous, it went on to ascertain the meaning of the agreement without having been presented with extrinsic evidence of the parties' intent. Consequently, I would reverse the court's judgment denying the motion for contempt filed by the plaintiff, Janel Simpson, with regard to the defendant's child support and alimony responsibilities and I would remand the matter for a new hearing on the motion.

Because the majority's holding in part II of its opinion rests on its conclusion that the agreement is clear and unambiguous, I will focus my analysis on the language of the agreement and the applicable law to explain why I disagree with the majority's conclusion.

As a preliminary matter, I agree with the majority's statement as to the applicable law as set forth by our Supreme Court in *Eckert* v. *Eckert*, 285 Conn. 687, 692, 941 A.2d 301 (2008). See part II of the majority opinion. The following principles are also relevant. "When construing a contract, we seek to determine the intent of the parties from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract. . . . Extrinsic evidence is always admissible, however, to explain an ambiguity appearing in the instrument. . . . When the language of a contract is ambiguous, the determination of the parties' intent is a question of fact. . . . When the language is clear and unambiguous, however, the contract must be given effect according to its terms, and the determination

of the parties' intent is a question of law." (Emphasis omitted; internal quotation marks omitted.) *Parisi* v. *Parisi*, 315 Conn. 370, 383, 107 A.3d 920 (2015). "[A] contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . [A]ny ambiguity in a contract must emanate from the language used by the parties. . . . The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous." (Internal quotation marks omitted.) Id., 383–84.

In the present case, the parties' dispute revolves around the agreement's familial support provisions. First, there are provisions setting forth fixed child support and alimony obligations. With respect to child support, section 4.1 of the agreement provides, after setting forth the plaintiff's then present earnings of $135,000 and the defendant's then present base draw from employment of $298,686, that the defendant would pay the plaintiff as child support effective with the date of the judgment the sum of $420 per week. With respect to alimony, section 6.3 of the agreement provides in relevant part that the defendant would pay the sum of $1750 per month. Second, the agreement contains provisions setting forth percentage based additional child support and alimony obligations in relation to the defendant's bonus/profit sharing compensation. Then, the agreement, in sections 4.2 and 6.4, provides a limitation that the defendant will not pay child support or alimony on his gross earned income in excess of $700,000.

The threshold determination in this case is whether the language of the agreement is ambiguous. That determination requires consideration of whether the intent

of the parties is clear and certain from the language of the agreement or whether the relevant provisions can be "understood in more ways than one." (Internal quotation marks omitted.) *Thomasi* v. *Thomasi*, 181 Conn. App. 822, 831, 188 A.3d 743 (2018). As noted previously, we must examine "the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction." (Emphasis omitted; internal quotation marks omitted.) *Parisi* v. *Parisi*, supra, 315 Conn. 383.

I am convinced that each party has set forth a plausible construction of the child support and alimony provisions. Because the plausibility of the defendant's construction is fully set forth in the majority opinion, I need not repeat it here. Instead, I focus on why the plaintiff has set forth a reasonable construction, as illustrated herein by the child support provisions of the agreement. The defendant's familial support obligations were crafted in 2013 when the defendant's base annual draw was $298,686. Indeed, his base draw of $298,686 was identified in section 4.1 of the agreement, resulting in his child support obligation of $420 per week. In 2018, however, the defendant's base draw had increased to $1,277,874. He also received $626,836 in a 2018 bonus payment, which, when added to the 2018 base draw, resulted in the defendant's total earned income in 2018 of $1,904,710.[1] Under the plaintiff's construction of the agreement, the $700,000 earned income cap would continue to be applicable. The defendant's child support obligation would be calculated as follows: The $420 per week child support payment established in 2013 and reflected in the agreement would continue; the defendant's additional child support obligation would be calculated by subtracting from the $700,000 cap the

[1] The court found that the defendant's gross earned income in the years following the dissolution judgment was as follows: $716,023 in 2014, $861,355 in 2015, $1,223,407 in 2016, $1,716,777 in 2017, $1,904,710 in 2018, and $1,037,220 in 2019.

$298,686 base pay in 2013, which was used to arrive at the $420 per week primary obligation, leaving $401,314 of the defendant's $626,836 bonus subject to the additional child support terms of the agreement. That is, this $401,314 portion of the defendant's bonus would be multiplied by the appropriate percentage[2] to determine the defendant's additional child support obligation.

I cannot say that the plaintiff's construction is implausible, as it would give effect to the defendant's $700,000 earned income cap agreed to by the parties in their agreement at the time of their divorce. In other words, the defendant would pay child support on the $700,000 portion of his substantially greater amount of earned income. This construction is especially plausible when contrasted with the result of the defendant's construction, pursuant to which the defendant would pay $420 per week in child support, calculated using the agreement's base pay of $298,686, whether he earned a base pay of $298,686 or a total income of $1,904,710. The defendant's earning $1,904,710, but paying child support calculated only with reference to the artificial base pay of $298,686, reasonably could be viewed as failing to give effect to the agreement's provision for additional child support calculated with respect to his bonus/profit sharing subject to the $700,000 earned income cap.

I recognize the well established principle, relied on by the majority and the defendant in his briefing to this court, that "[a] court simply cannot disregard the words

[2] Section 4.2 of the agreement provides in relevant part: "From the [defendant's] anticipated bonus or profit sharing from his employment received on or after January 1, 2016, which he usually receives in January of each year . . . the [defendant] will pay to the [plaintiff] 9 percent of his gross bonus/profit sharing so long as the [defendant] is obligated to pay child support for two children; and, the sum of the 6 percent of his gross bonus/profit sharing when there is only one minor child for whom the [defendant] is obligated to pay child support. . . ."

used by the parties or revise, add to, or create a new agreement." (Internal quotation marks omitted.) *Nassra* v. *Nassra*, 139 Conn. App. 661, 669, 56 A.3d 970 (2012). My conclusion that the plaintiff has set forth a plausible construction of the agreement does not run afoul of that principle because the plaintiff's construction finds support in "the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction." (Emphasis omitted; internal quotation marks omitted.) *Parisi* v. *Parisi*, supra, 315 Conn. 383.

In sum, the provisions governing the defendant's child support and alimony obligations do not convey a definite and precise intent. See *Russell* v. *Russell*, 95 Conn. App. 219, 222–23, 895 A.2d 862 (2006) (language did not convey definite and precise intent where provision required defendant to pay expenses for completion of treatment program rather than all expenses associated with treatment program). To the contrary, each of the parties has set forth a plausible construction of the provisions, "with both constructions having bases in the language used in the separation agreement." *Parisi* v. *Parisi*, supra, 315 Conn. 385. Because the agreement is ambiguous, its meaning presents "a question of fact that the trial court should have fully considered and resolved." Id.; see also *Hirschfeld* v. *Machinist*, 181 Conn. App. 309, 328, 186 A.3d 771 (court was required to resolve ambiguity by considering extrinsic evidence and making factual findings as to parties' intent), cert. denied, 329 Conn. 913, 186 A.3d 1170 (2018). As recognized by the majority, "the parties did not offer, and the court did not admit, any extrinsic evidence of . . . the parties' intent in drafting the relevant provisions of their agreement." This court cannot find facts in the first instance. See *Fazio* v. *Fazio*, 162 Conn. App. 236, 251, 131 A.3d 1162, cert. denied, 320 Conn. 922, 132 A.3d 1095 (2016). Accordingly, I would remand this case

to the trial court to hold a new hearing on the plaintiff's motion for contempt and to "determine the intent of the parties after consideration of all the available extrinsic evidence and the circumstances surrounding the entering of the agreement." (Internal quotation marks omitted.) *Casablanca* v. *Casablanca*, 190 Conn. App. 606, 622–23, 212 A.3d 1278, cert. denied, 333 Conn. 913, 215 A.3d 1210 (2019).

Accordingly, although I concur in parts I, III, IV and V of the majority opinion, I respectfully dissent from part II of the opinion.

RIVER FRONT DEVELOPMENT, LLC, ET AL. *v.* NEW HAVEN POLICE DEPARTMENT ET AL.
(AC 44732)

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

Syllabus

The plaintiff property owners sought damages from the defendant city and the defendant police officer, C, resulting from C's negligence in initiating and maintaining a police pursuit. C, operating a police vehicle and acting within the scope of his employment, pursued another vehicle traveling at a high rate of speed, which struck a utility pole and ignited a fire that caused extensive damage to the plaintiffs' property. The trial court granted the motion for summary judgment filed by C and the city, concluding that the plaintiffs' negligence claims were barred by governmental immunity pursuant to statute ((Rev. to 2013) § 52-557n (a) (2) (B)) because C was entitled to qualified immunity for his discretionary actions and the identifiable person, imminent harm exception did not apply when the only harm alleged by the plaintiffs was to property. The trial court rendered judgment for the defendants, and the plaintiffs appealed to this court. While this appeal was pending, the Supreme Court released its decision in *Adesokan* v. *Bloomfield* (347 Conn. 416), which held that the defense of discretionary immunity provided by § 52-557n (a) (2) (B) does not apply as a matter of law to claims arising from the manner in which an emergency vehicle is operated under the privileges provided by statute (§ 14-283). The Supreme Court concluded that the duty to drive with due regard mandated by § 14-283 (d) functioned as an exception provided by law under the savings clause applicable to discretionary act immunity in § 52-557n (a) (2) (B). *Held* that,

because the plaintiffs' claims in this case arose from the manner in which an emergency vehicle was operated under § 14-283, on the basis of our Supreme Court's reasoning in *Adesokan*, the trial court's judgment for the defendants must be reversed.

Argued April 10—officially released November 28, 2023

Procedural History

Action to recover damages for the defendants' alleged negligence, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Wilson*, *J.*, dismissed the action as to the named defendant et al.; thereafter, the court, *Wahla*, *J.*, granted in part the motion for summary judgment filed by the defendant city of New Haven et al. and rendered judgment thereon, from which the plaintiffs appealed to this court. *Reversed in part*; *further proceedings*.

Kyle R. Barrett, for the appellants (plaintiffs).

Proloy K. Das, with whom was *Roderick R. Williams*, deputy corporation counsel, for the appellees (defendant city of New Haven et al.).

Opinion

PER CURIAM. In this negligence action arising out of a police pursuit, the plaintiffs, River Front Development, LLC, and Ferehteh Bekhrad, appeal from the judgment rendered by the trial court in favor of the defendants Officer Michael Criscuolo of the New Haven Police Department and the city of New Haven (city) on the basis of discretionary act immunity.[1] On appeal, the

[1] The plaintiffs also named "City of New Haven Police Department," "City of New Haven Fire Department," and Police Chief Dean Esserman as defendants. The court, *Wilson*, *J.*, dismissed the action as to both departments for lack of subject matter jurisdiction because they "are entities that cannot be sued . . . ." Thereafter, the court, *Wahla*, *J.*, granted Esserman's motion for summary judgment and rendered judgment for him on the only count brought against him. In their appeal, the plaintiffs have not challenged the judgment as to the police and fire departments, and, during oral argument before this court, counsel for the plaintiffs expressly abandoned their appeal from the judgment as to Esserman. Accordingly, all references to the defendants in this opinion are to Criscuolo and the city only.

plaintiffs claim that the court improperly concluded that qualified immunity barred the defendants from being held liable for the plaintiffs' alleged damages. We agree and, accordingly, reverse the judgment of the trial court with respect to the defendants.

The record reveals the following relevant facts, viewed in the light most favorable to the plaintiffs, and procedural history. On May 7, 2014, at approximately 12:06 a.m., Criscuolo was operating a police cruiser and acting within the scope of his employment when he attempted to stop a vehicle operated by Gerald Haag, Jr., which was traveling at a high rate of speed near Front Street in the city. When Haag refused to stop the vehicle, Criscuolo followed him. During the pursuit, Haag's vehicle struck a utility pole, and the collision ignited a fire that caused extensive damage to the plaintiffs' property. The plaintiffs subsequently brought the underlying action against the defendants.

In the operative third revised complaint dated October 17, 2018, the plaintiffs asserted two counts sounding in negligence against Criscuolo, alleging, among other things, that he was negligent in initiating and maintaining his pursuit of Haag's vehicle (first and second counts)[2] and that, at the time of the pursuit and collision, the plaintiffs were identifiable victims "in imminent harm as [their] property had been the site of at least one and potentially multiple motor vehicle collisions in the years leading up to May 7, 2014." The plaintiffs also asserted three counts against the city, one pursuant to

[2] In the first count, the plaintiffs alleged that Criscuolo violated (1) General Statutes § 14-283a, which authorizes a uniform, statewide policy for handling police pursuits, (2) General Statutes § 14-240, which prohibits drivers from following another vehicle too closely, and (3) General Statutes § 14-218a, which provides that drivers shall not operate motor vehicles on public highways at a rate of speed greater than that which is reasonable. In the second count, the plaintiffs alleged that Criscuolo was negligent in engaging in a motor vehicle pursuit in violation of the police department's policies and procedures.

General Statutes § 7-465 (third count) and two pursuant to General Statutes (Rev. to 2013) § 52-557n[3] (fourth and fifth counts). The defendants moved for summary judgment on the basis of governmental immunity for discretionary acts under § 52-557n (a) (2) (B). The trial court granted the defendants' motion for summary judgment and rendered judgment in their favor, concluding that Criscuolo was entitled to qualified immunity for his discretionary actions and that the identifiable person, imminent harm exception did not apply because the plaintiffs alleged harm only to property. On the basis of that conclusion, the court rendered judgment for the city on all three counts directed against it. This appeal followed.

On appeal, the plaintiffs claim, inter alia, that the court improperly concluded that the defendants were entitled to judgment based on discretionary act immunity pursuant to § 52-557n (a) (2) (B). After the parties appeared for oral argument before this court in April,

[3] "Section 52-557n allows an action to be brought directly against a municipality for the negligent actions of its agents. Section 7-465 allows an action for indemnification against a municipality in conjunction with a common-law action against a municipal employee." *Gaudino* v. *East Hartford*, 87 Conn. App. 353, 356, 865 A.2d 470 (2005). Pursuant to subsection (a) (1) of General Statutes (Rev. to 2013) § 52-557n, "a political subdivision of the state shall be liable for damages to person or property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties . . . ." The statute provides further, however, that "a political subdivision of the state shall not be liable for damages to person or property caused by . . . (B) negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." General Statutes (Rev. to 2013) § 52-557n (a) (2) (B).

Although § 52-557n (a) (2) (B) was amended in 2023; see Public Acts 2023, No. 23-83, § 1 (P.A. 23-83); because the legislature did not expressly provide that P.A. 23-83 should apply retroactively, all references to § 52-557n (a) (2) (B) are to the 2013 revision of the statute, which was in effect at the time of the events giving rise to the underlying action. See *Adesokan* v. *Bloomfield*, 347 Conn. 416, 423–24, 297 A.3d 983 (2023).

2023, we stayed consideration of the appeal until our Supreme Court's final disposition of *Adesokan* v. *Bloomfield*, 347 Conn. 416, 297 A.3d 983 (2023), which was argued in January, 2023. In *Adesokan*, a municipal police officer was operating a police cruiser with the emergency lights activated when the cruiser collided with a vehicle operated by the plaintiff Marlene Adesokan. Id., 421–22. Adesokan brought a negligence action against the defendants, the police officer, the municipality, and its police department, and the defendants subsequently moved for summary judgment. Id., 422. The trial court rendered judgment for the defendants, concluding that they prevailed on their special defense of governmental immunity for discretionary acts under § 52-557n (a) (2) (B). Id. After Adesokan appealed to this court, our Supreme Court transferred the appeal to itself.

On appeal, Adesokan argued "that [General Statutes] § 14-283 (d) imposes a ministerial rather than a discretionary duty on emergency vehicle operators 'to drive with due regard for the safety of all persons and property.' " Id., 422–23. Our Supreme Court, however, held "that the defense of discretionary act immunity provided by § 52-557n (a) (2) (B) does not apply as a matter of law to claims arising from the manner in which an emergency vehicle is operated under the privileges provided by § 14-283." Id., 424. More specifically, the court concluded "that 'the duty to drive with due regard' mandated by § 14-283 (d) functions as an exception 'provided by law' under the savings clause applicable to discretionary act immunity in § 52-557n (a) (2) (B)."[4] Id., 432.

[4] Our Supreme Court relied on its prior decision in *Tetro* v. *Stratford*, 189 Conn. 601, 458 A.2d 5 (1983), in which "two police officers . . . conducted a high-speed pursuit of another vehicle, which then crashed into the plaintiff's car. . . . [Our Supreme Court in *Tetro*] held that, because the plaintiff's injury may have fallen within the scope of the risk created by the officers' act of conducting a police pursuit at high speeds while traveling in the wrong direction on a busy one-way street, the defendant municipality was vicariously liable for the negligence of its officers pursuant to § 7-465. . . .

The court explained that, in light of its conclusion, it did "not need to address whether the duty to drive with due regard is ministerial or discretionary in nature, or the related question of whether the imminent harm to identifiable persons exception to discretionary act immunity applie[d] . . . ." (Internal quotation marks omitted.) Id., 428.

After the court issued its decision in *Adesokan*, this court ordered the parties in the present case to file supplemental briefs addressing the effect of that decision on the plaintiffs' appeal. In their supplemental briefs, the parties agreed that the judgment of the trial court as to the defendants must be reversed in light of our Supreme Court's holding in *Adesokan*. This court then ordered the parties to specify whether they agreed as to the disposition of each count of the plaintiffs' complaint. In response, the parties filed a notice in which they agreed that this court should reverse the judgment on counts one through five of the plaintiffs' complaint and requested that we remand the case to allow the parties to raise all relevant claims and defenses.[5]

Because the plaintiffs' claims in the present case arise from the manner in which an emergency vehicle was operated under § 14-283, we agree with the parties that the judgment for the defendants must be reversed. See

In the course of [the court's] analysis [in *Tetro*] . . . [it] rejected the defendants' argument that § 14-283 limited the scope of the duty to drive with due regard to incidents involving collisions with the emergency vehicle itself. . . . [The court explained] that, because [t]he effect of [§ 14-283 was] merely to displace the conclusive presumption of negligence that ordinarily [arose] from the violation of traffic rules, the statute did not relieve operators of emergency vehicles from their general duty to exercise due care for the safety of others." (Citations omitted; internal quotation marks omitted.) *Adesokan* v. *Bloomfield*, supra, 347 Conn. 436.

[5] The parties also agreed that we should affirm the judgment as to count six of the plaintiffs' complaint directed against Police Chief Dean Esserman. See footnote 1 of this opinion.

Adesokan v. *Bloomfield*, supra, 347 Conn. 424 ("discretionary act immunity provided by § 52-557n (a) (2) (B) does not apply as a matter of law to claims arising from the manner in which an emergency vehicle is operated").

The judgment is reversed as to counts one through five of the plaintiffs' third revised complaint, and the case is remanded for further proceedings according to law; the judgment is affirmed in all other respects.

ANGELO REYES *v.* STATE OF CONNECTICUT (AC 45529)

Alvord, Prescott and Bishop, Js.

Syllabus

The petitioner, who had been convicted of various crimes in connection with two arsons, filed a petition for a new trial, claiming that newly discovered third-party culpability evidence showed that another individual, V, had been responsible for the arsons of which the petitioner was convicted and that the state had failed to disclose to the petitioner certain impeachment evidence prior to his underlying criminal trial in violation of *Brady* v. *Maryland* (373 U.S. 83). The petitioner had paid O and S to set fire to a residential property, which the petitioner previously had sold to L, after the petitioner became angry when L would not sell the property back to him. The petitioner also enlisted O and S to set fire to a car that belonged to M, an employee of a substance abuse services agency with whom the petitioner had a dispute. Before the petitioner's underlying criminal trial, the petitioner and O and S were tried in federal court on unrelated arson charges. Prior to the federal trial, the petitioner's trial counsel, who also represented the petitioner at the state trial, was provided with a copy of a Federal Bureau of Investigation (FBI) report that referenced a search warrant, a copy of which the state could not locate, that had been executed at L's residential property ten months prior to the arson there where law enforcement personnel seized a cache of weapons. The petitioner alleged in his petition for a new trial, inter alia, that the state had improperly failed to disclose to him both the existence of the search warrant and the search warrant itself, and that the evidence that a cache of weapons had been found at L's property could have been used to impeach L at trial. The trial court, analyzing the petitioner's claims under the standard set forth in *Asherman* v. *State* (202 Conn. 429), concluded that the

newly discovered third-party culpability evidence failed to establish the requisite nexus between V and the fires at issue and, accordingly, the result of a new trial would not have been different. The court reasoned that, because it was undisputed that the petitioner's criminal trial counsel had been provided with the FBI report prior to the petitioner's federal trial, and because the report gave notice to the petitioner that a search had been conducted and contraband had been seized by law enforcement personnel, the existence of the search was not newly discovered evidence and the impeachment of L through the existence of contraband at his property sixteen months earlier was not likely to change the result at a new trial. The trial court rendered judgment denying the new trial petition and thereafter denied the petitioner's petition for certification to appeal. On the petitioner's appeal to this court, *held*:

1. The trial court did not abuse its discretion in denying the petition for certification to appeal, the petitioner having failed to demonstrate that his claims involved issues that were debatable among jurists of reason, that a court could resolve the issues in a different manner or that the questions raised were adequate to deserve encouragement to proceed further; the trial court properly concluded that the petitioner's newly discovered third-party culpability evidence failed to establish that the result of a new trial probably would have been different, and, although the court applied an improper legal standard in resolving the petitioner's impeachment evidence claim, the court's undisputed factual findings established that the state did not suppress evidence of the search warrant in violation of *Brady*.
2. The trial court properly determined that the petitioner's newly discovered third-party culpability evidence would probably not have produced a different result in a new trial: the petitioner failed to present any evidence to directly connect V or anyone else to both fire scenes, and the fact that V may have ordered the commission of other arsons in the area during the same time frame did not raise even a bare suspicion that V had committed the arsons at issue; moreover, the petitioner could not prevail on his assertion that V's utilization of S to commit the other arsons was part of a criminal enterprise to exact revenge against V's enemies, which constituted a signature tactic, as there was no evidence that V had any animus to warrant revenge against L or M, and, even if there were such animus, the arsons V purportedly ordered to be committed and the arsons at issue are merely in the same class and did not constitute a signature sufficient to establish that V had ordered the burning of L's and M's property, as there was nothing sufficiently unique about arsons using gasoline; furthermore, the state presented direct evidence that the petitioner had hired O and S to set the fires at issue, that O and S did set those fires and that the petitioner had the motivation to burn L's residence and M's car.
3. The petitioner could not prevail on his claim that the trial court incorrectly determined that the state did not fail to disclose to him the search

warrant for L's property and that the reference to the search warrant in the FBI report was sufficient to satisfy the state's disclosure obligations under *Brady*:

a. The trial court incorrectly applied the *Asherman* standard, instead of the *Brady* standard, in resolving the petitioner's impeachment evidence claim; although the legal basis of the petitioner's claim was initially unclear from his new trial petition, the court recognized during the hearing on the petition and in its decision denying the petition that the petitioner's impeachment evidence claim was founded on *Brady* but nevertheless applied the *Asherman* standard, and, because the parties did not dispute that this court could resolve the issues as a matter of law based on the trial court's undisputed factual findings, it was not necessary to remand the case to the trial court for further proceedings, the trial court having been presented with evidence on the *Brady* claim and both parties having addressed it in their appellate briefs.

b. The state's failure to locate and disclose the search warrant to the petitioner did not amount to a violation of *Brady*, as it was undisputed that the petitioner's criminal trial counsel, prior to the federal trial, had been provided with the FBI report that identified the existence of the warrant, which was sufficient to satisfy the state's obligations under *Brady*; because counsel possessed the FBI report prior to the underlying criminal trial, counsel could have used it to question L or other witnesses, or to further investigate the circumstances surrounding the warrant, and the fact that the reference to the warrant had been made in a mass of other discovery materials the state had disclosed to the petitioner did not compel a different outcome.

Argued September 13—officially released November 28, 2023

Procedural History

Petition for a new trial following the petitioner's conviction of the crimes of arson in the second degree, conspiracy to commit criminal mischief in the first degree and conspiracy to commit burglary in the first degree, brought to the Superior Court in the judicial district of New Haven and tried to the court, *Alander*, *J.*; judgment denying the petition; thereafter, the court granted the petitioner's request for leave to file a late petition for certification to appeal and denied the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

Norman A. Pattis, with whom, on the brief, were *Kevin Smith* and *Zachary E. Reiland*, for the appellant (petitioner).

Jonathan M. Sousa, assistant state's attorney, with whom, on the brief, were *John P. Doyle, Jr.*, state's attorney, and *Craig P. Nowak*, senior assistant state's attorney, for the appellee (respondent).

Opinion

BISHOP, J. The petitioner, Angelo Reyes, appeals following the denial of his petition for certification to appeal from the trial court's judgment denying his petition for a new trial. On appeal, the petitioner claims that the trial court (1) abused its discretion in denying his petition for certification to appeal, (2) improperly determined that his newly discovered third-party culpability evidence would probably not produce a different result in a new trial, and (3) improperly determined that the state did not suppress his newly discovered impeachment evidence in violation of *Brady* v. *Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). We disagree and, therefore, dismiss the appeal.

Our Supreme Court's decision in the petitioner's direct appeal sets forth the following relevant facts, which the jury in his criminal trial reasonably could have found.

"At the time of the events in question, the [petitioner] owned a Laundromat and several investment properties in the Fair Haven section of the city of New Haven. In October, 2008, the [petitioner] paid two employees, Osvaldo Segui, Sr., and Osvaldo Segui, Jr., to set fire to 95 Downing Street in New Haven, a single-family residence that the [petitioner] had sold to Robert Lopez [Lopez] and his mother, Carmen Lopez, in 2002. The [petitioner] was angry that [Lopez] would not sell the property back to him and informed Segui, Sr., that, after the fire, he intended to purchase the lot of land on which the residence had stood before the fire. Segui, Sr., and Segui, Jr., both of whom lived rent free in one of the [petitioner's] properties, agreed to set the fire,

and, in the early morning hours of October 9, 2008, they did so.

"In May, 2009, the [petitioner] enlisted Segui, Sr., and Segui, Jr., to set another fire, this time to a vehicle belonging to Madeline Vargas, a local businesswoman and employee of a nonprofit substance abuse services agency operating in Fair Haven. Although the [petitioner] did not tell Segui, Sr., why he had had him set fire to Vargas' car, the evidence adduced at trial indicated that the [petitioner] was motivated by spite—the result of an ongoing dispute between him and Vargas over Vargas' attempts, in 2008, to run an outreach program for local drug addicts in an empty parking lot near the [petitioner's] Laundromat.

"The [petitioner], Segui, Sr., and Segui, Jr., were subsequently charged with various offenses related to the 2008 and 2009 arsons. Prior to being tried in state court, the [petitioner] was tried in federal court on unrelated arson charges. Segui, Sr., and Segui, Jr., also were charged in that federal case but agreed to testify against the [petitioner] in exchange for reduced sentences. In the present case, Segui, Sr., and Segui, Jr., entered into plea agreements pursuant to which, in exchange for their testimony, they received . . . sentence[s] that did not require them to serve any more time than they were required to serve in connection with the federal case." *State* v. *Reyes*, 325 Conn. 815, 818–19, 160 A.3d 323 (2017).

Following a jury trial, the petitioner was convicted of two counts of arson in the second degree in violation of General Statutes § 53a-112 (a) (2), two counts of conspiracy to commit criminal mischief in the first degree in violation of General Statutes §§ 53a-48 (a) and 53a-115 (a) (1), and one count of conspiracy to commit burglary in the first degree in violation of General Statutes §§ 53a-48 (a) and 53a-101 (a) (1). On January 8, 2015, the court sentenced the petitioner to a total

effective term of twenty-five years of incarceration, execution suspended after fifteen years, followed by five years of probation. Our Supreme Court affirmed the judgments of conviction on direct appeal. Id., 833.

On June 23, 2017, the petitioner filed the present petition for a new trial on two grounds.[1] First, he claimed that he discovered new third-party culpability evidence that demonstrated that another individual, Saul Valentin, ordered Segui, Sr., and Segui, Jr., to set fire to 95 Downing Street and Vargas' vehicle, a green BMW. Second, he claimed that the state failed to disclose the existence of a search warrant that was executed at 95 Downing Street months before the fire pursuant to which the police allegedly seized a cache of weapons, which evidence could have been used to impeach Lopez at trial.

More specifically, the petitioner alleged that, in June, 2015, his counsel received an unsolicited letter from an individual residing in Puerto Rico, detailing the involvement of the author's cousin, Valentin, in the fires for which the petitioner was convicted. The petitioner

[1] On July 31, 2020, the petitioner filed a separate petition for a new trial in which he claimed that he discovered new material evidence establishing that, (1) just prior to the 95 Downing Street fire, Lopez had met with an unlicensed broker and had a physical altercation with another individual, (2) the petitioner had extended a line of credit to Lopez for improvements to 95 Downing Street, and (3) there were improprieties with the chain of custody of several cans containing accelerant samples that were collected from 95 Downing Street. On May 31, 2022, the court dismissed this petition for a new trial for lack of subject matter jurisdiction because it was filed beyond the three year limitation period of General Statutes § 52-582, and no exception to the limitation period or tolling doctrine applied. In a separate decision also released today, we affirmed in part and reversed in part the trial court's judgment dismissing the petitioner's July 31, 2020 petition, and we remanded the case to the trial court for a new evidentiary hearing before a different judge to determine whether the petitioner had established that the three year limitation period of § 52-582 was tolled by General Statutes § 52-595 and for further proceedings according to law. See *Reyes* v. *State*, 222 Conn. App. 538, A.3d (2023).

alleged that the letter, as well as subsequent inquiry by his private investigator, revealed that Valentin had ordered Segui, Sr., and Segui, Jr., to set fire to two automobiles belonging to Yeis Kol Leon for Leon's failure to take responsibility for narcotics seized by police at the home of Valentin's mother. The petitioner additionally alleged that Valentin repeatedly admitted this misconduct to his acquaintances and to his fellow inmate while he was in federal prison in New Jersey in September, 2015. The petitioner also alleged that Valentin did not want to return to New Haven to face questioning about crimes that Segui, Sr., and Segui, Jr., had committed for him and that Valentin was worried that Segui, Sr., would testify against him for ordering the burning of the cars belonging to Leon and his mother.

Furthermore, the petitioner alleged that, months before the fire at 95 Downing Street, state and federal law enforcement executed a search warrant and seized a cache of weapons from 95 Downing Street. He alleged that the search warrant would have materially affected the credibility of Lopez, who would have had to explain to the jury why guns were seized from one of his properties. The petitioner claimed that all of this evidence was not discoverable or available at the time of the original trial and, additionally, that the state concealed the search warrant from the defense.[2] In response to the petition, the respondent, the state of Connecticut, denied all of the substantive allegations and left the petitioner to his proof.

The court held a hearing on the petition over the course of four days in October, 2019. The petitioner

[2] The petitioner also contended that he discovered an invoice from East Haven Building Supply that evinced that the petitioner had extended a line of credit to Lopez for improvements to 95 Downing Street. The petitioner abandoned this claim at the evidentiary hearing on the present petition, and, accordingly, it is not at issue in this appeal. We observe that the petitioner asserted a congruent claim in his subsequent July 31, 2020 petition for a new trial. See footnote 1 of this opinion.

called several witnesses to testify, including his former attorneys, Frank Antollino and John Williams; Leon and James Saldana, who both worked with Valentin selling narcotics in the Fair Haven area; then Senior Assistant State's Attorney John P. Doyle, Jr.; Adriene Sosa, an acquaintance of the petitioner; and Nulberto Sullivan, who was incarcerated in federal prison with Valentin. The respondent called multiple witnesses to testify, including Caroline Fargeorge, the deputy chief clerk at geographical area court number 23 in New Haven; former New Haven police Officer Michael Mastropetre; former police Detective Michael Hunter; and Kevin P. Grenier, an inspector for the Division of Criminal Justice. The parties introduced numerous exhibits into evidence, which generally consisted of letters, photographs of Leon's "burned car" and the individuals involved, past trial transcripts, and several reports.

On October 15, 2019, the court issued a memorandum of decision denying the petition for a new trial. The court began its analysis by stating that "[t]he consideration of a petition for a new trial is governed by the standard set forth in *Asherman* v. *State*, 202 Conn. 429, [521 A.2d 578] (1987)." As for the third-party culpability evidence, the court reasoned that "the sum total of the testimony of the petitioner's . . . witnesses is that, on one occasion in 2007 or 2008, Valentin and Segui, Sr., were involved in the burning [of] a white truck in New Haven, and Valentin may have been involved in the arson of [other cars in the same area]. No evidence was submitted that connected Valentin, directly or indirectly, to the burning of the property at 95 Downing Street or the green BMW owned by Vargas. . . .

"In order to offer evidence pointing to a third party's culpability, the defendant must establish a direct connection between the third party and the charged offense, rather than merely raising a bare suspicion that another could have committed the crime. *State* v.

Arroyo, 284 Conn. 597, 610, [935 A.2d 975] (2007). The fact[s] that Valentin, during the relevant time period, burned a separate motor vehicle with the assistance of Segui, Sr., and may have burned a second motor vehicle fail to connect him in any way to the arson of Vargas' vehicle or Lopez' property. The petitioner presented no evidence that Valentin knew Vargas or Lopez, had any motive to burn their property or was present at the scene of the fires. The evidence offered by the petitioner was not material to the issues at [the] petitioner's trial and . . . [un]likely to produce a different result in the event of a new trial."

As for the impeachment evidence, the court reasoned that, "[i]ntroduced into evidence at the hearing for a new trial was [a Federal Bureau of Investigation (FBI)] 302 report,[3] dated October 17, 2008, which stated that, approximately ten months previously, a search and seizure warrant had been executed on the property at 95 Downing Street and a cache of weapons was seized. The petitioner conceded that the FBI 302 report was provided prior to the federal trial to . . . Williams. . . . Williams also represented the petitioner at the state trial. The FBI 302 report gave notice to the petitioner that a search was conducted and contraband seized by law enforcement personnel at 95 Downing Street. Accordingly, the existence of the search is not newly discovered evidence. In addition, by the petitioner's own admission, the primary witnesses against him at trial were Segui, Sr., and Segui, Jr. The impeachment of Lopez through the existence of contraband at his property sixteen months earlier is not likely to change the result at a new trial."[4] (Footnote added.)

[3] An FBI 302 report generally is composed by an FBI agent to memorialize an interview with an individual and is designed to contain a record of statements made by the individual, not the FBI agent's opinion or contextual comments. See, e.g., *American Oversight* v. *United States Dept. of Justice*, 45 F.4th 579, 584 n.6 (2d Cir. 2022).

[4] The petitioner subsequently filed a habeas petition, claiming that his criminal trial counsel, Williams, rendered ineffective assistance by failing

On November 1, 2019, the petitioner filed an appeal from the trial court's denial of his petition for a new trial. On February 15, 2022, this court dismissed that appeal because the petitioner failed to seek certification to appeal pursuant to General Statutes § 54-95 (a). See *Reyes* v. *State*, 210 Conn. App. 714, 718, 270 A.3d 741, cert. denied, 343 Conn. 909, 273 A.3d 695 (2022). During the pendency of his prior appeal, on September 23, 2021, the petitioner filed a "combined request for leave to file [an] untimely petition for certification to appeal and [a] petition for certification to appeal." On September 30, 2021, the respondent filed a response in which it declined to take a position on the petitioner's request to file an untimely petition for certification and objected to the petition for certification itself. After this court dismissed the petitioner's prior appeal, on May 6, 2022, the trial court granted the petitioner's request to file an untimely petition for certification but denied the petitioner's petition for certification to appeal. This appeal followed. Additional facts will be set forth as necessary.

I

The petitioner first claims that the court abused its discretion in denying his petition for certification to appeal. We disagree.

We begin by setting forth the applicable standard of review. "It is well established that we apply the abuse of discretion standard when reviewing a court's decision to deny a request for certification to appeal from

to request and obtain pertinent documents, including, but not limited to, the search warrant that had been executed at 95 Downing Street. See *Reyes* v. *Commissioner of Correction*, Superior Court, judicial district of Tolland, Docket No. CV-19-4009918-S. The habeas court denied the petitioner's habeas petition, and his appeal therefrom currently is pending before this court. See *Reyes* v. *Commissioner of Correction*, Connecticut Appellate Court, Docket No. AC 46987 (appeal filed October 10, 2023). Nothing in this opinion should be construed to express any view on the merits of that appeal.

a denial of a petition for a new trial. . . . Therefore, the threshold issue that we must now decide is whether the court abused its discretion in denying the petition for certification to appeal." (Internal quotation marks omitted.) *Myers* v. *Commissioner of Correction*, 215 Conn. App. 592, 620, 284 A.3d 309 (2022), cert. denied, 346 Conn. 1021, 293 A.3d 897 (2023), and cert. denied, 346 Conn. 1021, 293 A.3d 897 (2023). "A petitioner satisfies that burden by demonstrating: [1] that the issues are debatable among jurists of reason; [2] that a court could resolve the issues [in a different manner]; or [3] that the questions are adequate to deserve encouragement to proceed further." (Internal quotation marks omitted.) *Mitchell* v. *State*, 338 Conn. 66, 96, 257 A.3d 259 (2021). "The petitioner must overcome a high hurdle to establish such an abuse of discretion." (Internal quotation marks omitted.) Id., 97; see also *Toccaline* v. *Commissioner of Correction*, 177 Conn. App. 480, 494, 172 A.3d 821 (habeas court did not abuse its discretion in denying certification to appeal, despite this court's conclusion on appeal that habeas court made improper conclusion, because judgment could be affirmed on alternative ground), cert. denied, 327 Conn. 986, 175 A.3d 45 (2017).

We conclude that the petitioner has failed to demonstrate that his claims involve issues that are debatable among jurists of reason, that a court could resolve the issues in a different manner, or that the questions he raised are adequate to deserve encouragement to proceed further. With respect to his third-party culpability claim, the court properly concluded that the petitioner's evidence failed to establish the requisite nexus between Valentin and the burning of 95 Downing Street and Vargas' green BMW and, accordingly, that the result of a new trial probably would not have been different. See, e.g., *Santana* v. *Commissioner of Correction*, 208 Conn. App. 460, 469–70, 264 A.3d 1056 (2021) (court

did not abuse its discretion in denying petitioner certification to appeal because he failed to establish that outcome of his trial would have been different if third-party culpability defense was presented at trial), cert. denied, 340 Conn. 920, 267 A.3d 857 (2022). With respect to his impeachment evidence claim, although the trial court applied an improper outcome-determinative legal standard, the court's undisputed factual findings, analyzed through the lens of well settled standards, established that the state did not suppress the warrant in violation of *Brady*. See, e.g., *Hines* v. *Commissioner of Correction*, 164 Conn. App. 712, 726–27, 138 A.3d 430 (2016) (court did not abuse its discretion in denying petitioner certification to appeal because his *Brady* claim was contingent on evidence that already was known to petitioner or his counsel). Therefore, on the basis of our conclusions in parts II and III of this opinion that the petitioner's claims are meritless, we determine that the court did not abuse its discretion in denying the petitioner's petition for certification to appeal.

II

The petitioner next claims that the court improperly determined that his newly discovered third-party culpability evidence would probably not produce a different result in a new trial. In particular, the petitioner argues that the testimony of Saldana and Leon established that there was a criminal enterprise between Valentin, Segui, Sr., and Segui, Jr., and that their "signature tactic" was arson. The petitioner contends that he is entitled to a new trial because the third-party culpability evidence of this criminal enterprise sufficiently demonstrated that Valentin, not the petitioner, ordered Segui, Sr., and Segui, Jr., to set fire to 95 Downing Street and Vargas' green BMW. We are not persuaded.

We begin with the standard of review and relevant legal principles governing the petitioner's claim. "[T]o

obtain a new trial on the basis of newly discovered evidence, the petitioner must establish that the newly proffered evidence (1) is actually newly discovered, (2) would be material in a new trial, (3) is not merely cumulative, and (4) would probably produce a different result in a new trial. *Asherman* v. *State*, supra, 202 Conn. 434. This standard is strict and is meant to effectuate the underlying equitable principle that once a judgment is rendered it is to be considered final, and should not be disturbed by posttrial [proceedings] except for a compelling reason." (Internal quotation marks omitted.) *Jones* v. *State*, 328 Conn. 84, 92–93, 177 A.3d 534 (2018).[5] "To meet the fourth element of *Asherman*, [t]he [petitioner] must persuade the court that the new evidence he submits will *probably*, not merely possibly, result in a different verdict at a new trial . . . . It is not sufficient for him to bring in new evidence from which a jury could find him not guilty—it must be evidence [that] persuades the judge that a jury *would* find him not guilty." (Emphasis altered; internal quotation marks omitted.) *Mitchell* v. *State*, supra, 338 Conn. 97. "This analysis requires the trial court hearing the petition to weigh the impact the new evidence might have on the original trial evidence." *Jones* v. *State*, supra, 93.

We apply de novo review to the trial court's conclusion on the fourth *Asherman* element. Customarily, "a trial court's decision granting or denying a petition for new trial, including on the ground of newly discovered evidence, is a matter of discretion for the trial court and is reviewable only for an abuse of discretion." Id., 93–94. An exception to this rule exists in which de novo review applies "when the judge deciding the new trial petition did not preside over the original trial and the

[5] The court in the present case concluded that the petitioner's newly discovered third-party culpability evidence failed under both the second and fourth *Asherman* elements. We need address only the fourth *Asherman* element because it is dispositive of this appeal.

likelihood of a different result does not depend on how credible the new evidence appears . . . .'' Id., 101. Under these circumstances, ''the fourth *Asherman* element becomes a mixed question of law and fact; we defer to any factual findings and credibility determinations made by the trial court, but we review the legal import of those findings de novo.'' Id. We apply de novo review in the present case because Judge Alander, who heard the petition for a new trial, did not preside at the original criminal trial, and the credibility of the new evidence is not at issue,[6] leaving as the only remaining question whether a new jury hearing the case would probably reach a different result. Compare id. (applying de novo review), with *Mitchell* v. *State*, supra, 338 Conn. 97 (applying abuse of discretion review because same judge presided over criminal trial and decided petition for new trial).

We next set forth the standards governing third-party culpability evidence. ''It is well established that a defendant has a right to introduce evidence that indicates that someone other than the defendant committed the crime with which the defendant has been charged. . . . The defendant must, however, present evidence that directly connects a third party to the crime. . . . It is not enough to show that another had the motive to commit the crime . . . nor is it enough to raise a bare suspicion that some other person may have committed the crime of which the defendant is accused.'' (Internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, 341 Conn. 279, 313, 267 A.3d 120 (2021).

To sufficiently constitute a direct connection for purposes of third-party culpability, our Supreme Court has determined, for instance, that ''proof of a third party's

[6] The respondent does not contend on appeal that the petitioner's newly discovered third-party culpability evidence was not credible; rather, it contends that, even assuming the maximum import of that evidence, it would not have produced a different result in a new trial.

physical presence at a crime scene, combined with evidence indicating that the third party would have had the opportunity to commit the crime with which the defendant has been charged, can be [sufficient] . . . . Similarly . . . the direct connection threshold [is] satisfied for purposes of [third-party] culpability when physical evidence links a third party to a crime scene and there is a lack of similar physical evidence linking the charged defendant to the scene. . . . Finally . . . statements by a victim that implicate the purported third party, combined with a lack of physical evidence linking the defendant to the crime with which he or she has been charged, can sufficiently establish a direct connection for [third-party] culpability purposes." (Internal quotation marks omitted.) *Johnson* v. *Commissioner of Correction*, 330 Conn. 520, 565, 198 A.3d 52 (2019).

To support his third-party culpability claim, the petitioner relies on the testimony of Saldana and Leon, each of whom worked with Valentin selling narcotics in the Fair Haven area. Saldana testified that, between 2006 and 2008, he sold drugs, burned cars, and committed "a lot of arson" on behalf of his "boss," Valentin, and that he used to steal cars and other illegal activities on behalf of his other "boss," Segui, Sr. Saldana further testified that, in 2007 or 2008, Valentin and Segui, Sr., picked him up, drove him to an area in proximity to Fair Haven, provided him with a container of gasoline, and directed him to burn a white truck. Saldana burned the white truck as Valentin and Segui, Sr., directed. Saldana was not aware of the identity of the owner of the truck, but he did know that the truck was burned because of money owed as a result of a drug transaction. Saldana testified that this was the only arson he committed for Valentin but that he was aware Valentin had been involved with burning other cars.

Leon testified that he used to deal drugs for Valentin in approximately 2008 and that he knew Segui, Sr., and Segui Jr., also were in Valentin's "circle . . . ." Leon asserted that he got into a dispute with Valentin because Leon refused to falsely tell the police that drugs in his possession did not belong to Valentin. Leon testified that, approximately four to six months after their disagreement, his car and his mother's car were burned. Leon testified that he did not know who burned the cars, but he did see Valentin walking to Segui, Sr.'s Jeep parked in the vicinity of his car shortly after the fire had been extinguished.

Applying the foregoing, we agree with the court that the petitioner failed to establish that his third-party culpability evidence would probably produce a different result in a new trial because his evidence failed to directly connect Valentin to the burning of Lopez' property at 95 Downing Street fire or to the burning of Vargas' green BMW. The petitioner's evidence, at best, demonstrates that Valentin, with the help of Segui, Sr., committed various arsons in New Haven to intimidate or retaliate against antagonists to Valentin's drug operation. The petitioner did not present any evidence to connect Valentin to Lopez or Vargas, including that Valentin knew Lopez or Vargas, that Lopez or Vargas wronged Valentin or his drug operation, or that Valentin had any animus toward Lopez or Vargas that motivated Valentin to burn their property. The petitioner also failed to present any evidence to connect Valentin to the burned property at 95 Downing Street and Vargas' green BMW, including any eyewitness who saw Valentin in the vicinity, any physical evidence connecting Valentin or his associates to both fire scenes, or any other monetary interest Valentin had in the burned property. The fact that Valentin may have ordered the commission of other arsons in the area during the same time frame fails to even raise a bare suspicion that he committed

or ordered the commission of the arsons at 95 Downing Street and of Vargas' green BMW. Without any nexus between Valentin and the present fires, the petitioner's third-party evidence would probably not result in an acquittal at a new trial.

The petitioner also contends that Valentin's utilization of Segui, Sr., to commit arsons as part of their criminal enterprise to exact revenge against his enemies, constituted a signature crime sufficient to establish that it was Valentin who ordered the burning of 95 Downing Street and Vargas' green BMW. This argument requires little discussion. To use this evidence to prove identity,[7] it must be established that "the factual characteristics shared by the charged and uncharged crimes were sufficiently distinctive and unique as to be like a signature and, therefore, it logically could be inferred that if the defendant is guilty of one [crime] he must be guilty of the other." (Internal quotation marks omitted.) *State* v. *DeJesus*, 288 Conn. 418, 464, 953 A.2d 45 (2008). "Evidence of other crimes or misconduct of an accused is admissible on the issue of identity where the methods used are sufficiently unique to warrant a reasonable inference that the person who performed one misdeed also did the other. Much more is required than the fact that the offenses fall into the same class. The device used must be so unusual and distinctive as to be like a signature." (Internal quotation marks omitted.) *State*

[7] The petitioner has not directed us to any case in which the signature crime theory was used in support of a third-party culpability defense. See *State* v. *Randolph*, 284 Conn. 328, 351, 933 A.2d 1158 (2007) ("The signature test ordinarily is used to determine whether evidence of uncharged misconduct is admissible under an evidentiary exception separate and distinct from the common scheme or plan exception, namely, the identity exception. . . . Specifically, the test is used to discern whether evidence of uncharged misconduct is admissible to prove the identity of the defendant as the perpetrator of the crime charged." (Citation omitted.)); see also Conn. Code Evid. § 4-5 (c). We thus assume, without deciding, for purposes of our analysis, that the signature test applies in the third-party culpability context.

v. *Campbell*, 328 Conn. 444, 521, 180 A.3d 882 (2018). The petitioner's signature crime argument fails because there was no evidence that Valentin had any animus to warrant revenge against Lopez or Vargas. In short, there is no basis to conclude that those arsons were part of a criminal enterprise on the part of Valentin. Even if we assume that there was such an animus, the arsons Valentin purportedly ordered to be committed and the arsons at issue in the present case are merely in the same class. There is nothing sufficiently unique about arsons using gasoline. This is particularly true in the present case because the FBI 302 report, which describes the "rash of arson fires" since the mid-1990s in Fair Haven; see part III B of this opinion; suggests that there was nothing unusual about an arson in the area during the same time frame.

Our conclusion is further supported by the evidence that the state presented at the criminal trial. See *Jones* v. *State*, supra, 328 Conn. 93, 107. Unlike the speculative third-party culpability evidence advanced by the petitioner, the state at the criminal trial presented direct evidence from Segui, Sr., and Segui, Jr., that they were hired by the petitioner and did set fire to 95 Downing Street and Vargas' green BMW. See *State* v. *Reyes*, supra, 325 Conn. 818–19. Likewise, the state presented evidence at the criminal trial that the petitioner was motivated to burn 95 Downing Street because Lopez would not sell the property back to him and that he was motivated to burn Vargas' green BMW because of their dispute as to her intention to run an outreach program for local drug addicts in a parking lot near the petitioner's Laundromat. Id. In sum, we conclude that the court properly determined that the petitioner's newly discovered third-party culpability evidence would probably not produce a different result in a new trial and that this conclusion is not debatable among jurists of reason.

III

The petitioner finally claims that the court incorrectly determined that the state did not withhold his newly discovered impeachment evidence. Specifically, the petitioner contends that the court incorrectly applied the *Asherman* standard, instead of the *Brady* standard, to his claim founded on the newly discovered impeachment evidence. He alternatively argues that, even if this court applied the *Brady* standard to the undisputed facts, the trial court's judgment should be reversed because the reference to the 95 Downing Street search warrant in the FBI 302 report provided to Williams in connection with the prior federal prosecution was not sufficient to satisfy the state's disclosure obligations under *Brady*. We agree with the petitioner that the court incorrectly applied the *Asherman* standard to his *Brady* claim. Nevertheless, applying *Brady* to the undisputed facts found by the trial court, we conclude that the petitioner's *Brady* claim fails.

A

We first address the petitioner's contention that the court incorrectly applied the *Asherman* standard to his *Brady* claim. The respondent on appeal acknowledges that the petitioner sufficiently raised a *Brady* claim and that the court improperly failed to apply the *Brady* standard to resolve that claim. We agree with the parties that the court applied an incorrect legal standard, but, for the reasons we will discuss, we reach the merits of the petitioner's *Brady* claim on appeal.

We begin with the standard of review and relevant legal principles. The issue of whether the trial court applied the correct legal standard is a question of law subject to plenary review. See, e.g., *State* v. *Manuel T.*, 337 Conn. 429, 453, 254 A.3d 278 (2020). As outlined previously, "to obtain a new trial on the basis of newly discovered evidence, the petitioner must establish that

the newly proffered evidence (1) is actually newly discovered, (2) would be material in a new trial, (3) is not merely cumulative, and (4) would probably produce a different result in a new trial." *Jones* v. *State*, supra, 328 Conn. 92. On the other hand, "[i]n order to prove a *Brady* violation, the defendant must show: (1) that the prosecution suppressed evidence after a request by the defense; (2) that the evidence was favorable to the defense; and (3) that the evidence was material." (Internal quotation marks omitted.) *State* v. *Guilbert*, 306 Conn. 218, 271, 49 A.3d 705 (2012). Additionally, "newly discovered *Brady* claims may also be brought by way of a petition for a new trial up to three years after sentencing." *State* v. *McCoy*, 331 Conn. 561, 598, 206 A.3d 725 (2019); see also *Randolph* v. *Mambrino*, 216 Conn. App. 126, 154 n.15, 284 A.3d 645 (2022).

The following additional facts are relevant to our resolution of this claim. In his petition, the petitioner did not clearly delineate the legal basis for his claim contingent on the 95 Downing Street search warrant, and he did not expressly state whether his claim was governed by *Asherman* and/or *Brady*. For instance, the petitioner alleged, tracking the language of *Brady*, that the warrant was "concealed from trial counsel in the underlying state prosecution" by the state. On the other hand, the petitioner alleged, tracking the language of *Asherman*, that the information of the warrant was "newly discovered evidence" and "was not discoverable or available at the time of the original trial and is material to a new trial." At the subsequent hearing on his petition, it became clear that the petitioner's claim was made pursuant to *Brady*. The petitioner's counsel repeatedly stated that his claim in the petition was that the state withheld the warrant evidence in violation of *Brady*. The respondent's counsel also recognized that the petitioner's warrant claim was founded on *Brady* but argued that the petitioner could not prevail because

the warrant was not newly discovered evidence. Indeed, the court itself acknowledged, with respect to the petitioner's warrant claim, that "I think it is a *Brady* issue." In its memorandum of decision, the court described the petitioner's warrant claim as a failure by the state "to disclose evidence which would materially impeach the credibility of a significant witness who testified against him at trial," which is congruent to the standard for a *Brady* claim. Nevertheless, the court, in its memorandum of decision, applied *Asherman* to the petitioner's warrant claim and did not analyze the issues under *Brady*. In its subsequent memorandum of decision denying his petition for certification to appeal, the court stated that, "[a]pparently, in his now dismissed appeal, the petitioner asserted that this court improperly denied this claim by failing to use the appropriate standard in determining claims under *Brady* . . . . The petitioner never asserted orally or in writing before this court regarding his petition for a new trial that he was asserting a *Brady* claim."

On the basis of the foregoing, we conclude that the court incorrectly failed to apply the *Brady* standard to the petitioner's newly discovered *Brady* claim. Although it was initially unclear from the petition, it became apparent from the parties' contentions at the hearing—as confirmed by the court's characterization of the claim at the hearing and in its memorandum of decision denying the petition—that the petitioner's warrant claim was founded on *Brady*. The court, however, did not analyze whether the petitioner's newly discovered evidence satisfied the *Brady* standard. Therefore, we conclude that the court applied an incorrect legal standard.

Ordinarily, "[w]hen an incorrect legal standard is applied, the appropriate remedy is to reverse the judgment of the trial court and to remand the matter for

further proceedings." (Internal quotation marks omitted.) *Turner* v. *Commissioner of Correction*, 181 Conn. App. 743, 759, 187 A.3d 1163 (2018). The respondent nonetheless asserts that this court should not remand the matter and, instead, requests that we reject the petitioner's *Brady* claim as a matter of law on appeal. The respondent contends that the petitioner's *Brady* claim fails under the suppression prong on the basis of the court's undisputed factual finding that the petitioner had actual notice of the search warrant. The petitioner does not dispute that this court has the ability to resolve his *Brady* claim as a matter of law on appeal, and he analyzed in both his principal and reply briefs to this court whether the state suppressed the warrant evidence under *Brady* as a matter of law.[8]

In accordance with the parties' submissions, we will determine whether the court's undisputed factual findings satisfy the suppression prong of *Brady*. A remand to the trial court for a legal determination is not necessary if an appellate court can resolve that issue as a matter of law on appeal on the basis of the undisputed factual record. See, e.g., *Lopez* v. *William Raveis Real Estate, Inc.*, 343 Conn. 31, 57, 272 A.3d 150 (2022) ("if the evidence necessary for resolution is undisputed, then this court can decide the issue as a matter of law without need for a remand for factual findings"); *McDermott* v. *State*, 316 Conn. 601, 611, 113 A.3d 419 (2015) (although remand is generally required when trial court applies incorrect legal standard, remand is not necessary if appellate court concludes, on basis of record, remand "would be pointless"); *State* v. *Ebron*, 219 Conn. App. 228, 240, 295 A.3d 112 ("we conclude

[8] The petitioner did not file a motion to reargue, a motion for clarification, or a motion for articulation seeking to have the trial court expressly rule on his *Brady* claim. See, e.g., *D2E Holdings, LLC* v. *Corp. for Urban Home Ownership of New Haven*, 212 Conn. App. 694, 715, 277 A.3d 261, cert. denied, 345 Conn. 904, 282 A.3d 981 (2022).

that the defendant's claims in this case fail as a matter of law and that a remand for consideration of the merits of those claims would serve no useful purpose"), cert. denied, 347 Conn. 902, 296 A.3d 840 (2023); *State* v. *Turner*, 214 Conn. App. 584, 591 n.5, 280 A.3d 1278 (2022) ("because the defendant's claim fails as a matter of law, a remand for further consideration of the merits would serve no useful purpose"); *Designs for Health, Inc.* v. *Miller*, 187 Conn. App. 1, 14 n.9, 201 A.3d 1125 (2019) ("remand unnecessary where record on appeal sufficient to make determination as matter of law").

Here, the question of whether the petitioner satisfied *Brady*'s suppression prong is a pure legal question that we can resolve on appeal on the basis of the court's undisputed factual findings. See, e.g., *Jones* v. *Commissioner of Correction*, 212 Conn. App. 117, 142, 274 A.3d 237 (" '[w]hether the [defendant] was deprived of his due process rights due to a *Brady* violation is a question of law, to which we grant plenary review' "), cert. denied, 343 Conn. 933, 276 A.3d 975 (2022); *State* v. *Rosa*, 196 Conn. App. 490, 500, 230 A.3d 677 (resolving petitioner's unpreserved *Brady* claim on appeal on basis of undisputed facts), cert. denied, 335 Conn. 920, 231 A.3d 1169 (2020). Although not dispositive, additional considerations support our conclusion that a remand is not necessary, particularly the fact that both parties understood the petitioner's claim to be founded on *Brady*, presented evidence with respect to the petitioner's *Brady* claim before the trial court, and extensively addressed the merits of the petitioner's *Brady* claim in their appellate briefs. Accordingly, we conclude that, although the court applied an incorrect legal standard, we need not remand the matter to the trial court.

B

We now address the merits of the petitioner's *Brady* claim. The petitioner argues that the court's decision

should be reversed because the reference to the 95 Downing Street search warrant in the FBI 302 report provided to Williams in connection with the prior federal prosecution was not sufficient to satisfy the state's disclosure obligations under *Brady*. The petitioner further argues that the state violated *Brady* by not affirmatively disclosing the actual search warrant referenced in the FBI 302 report to the petitioner. We are not persuaded.

We begin with the standard of review and relevant legal principles. "In *Brady* . . . the United States Supreme Court held that the suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. . . . [T]he *Brady* rule applies not just to exculpatory evidence, but also to impeachment evidence . . . which, broadly defined, is evidence having the potential to alter the jury's assessment of the credibility of a significant prosecution witness. . . . In order to prove a *Brady* violation, the defendant must show: (1) that the prosecution suppressed evidence after a request by the defense; (2) that the suppressed evidence was favorable to the defense; and (3) that the evidence was material." (Internal quotation marks omitted.) *State* v. *Gray*, 212 Conn. App. 193, 225, 274 A.3d 870, cert. denied, 343 Conn. 929, 281 A.3d 1188 (2022). The petitioner has the burden to establish each of the three essential components of a *Brady* claim. See *State* v. *Rosa*, supra, 196 Conn. App. 497–98.

With respect to the second *Brady* component, "it is well established that evidence is not considered to have been suppressed within the meaning of *the Brady doctrine if the defendant or his attorney either knew, or should have known, of the essential facts permitting him to take advantage of* [*that*] *evidence*." (Emphasis

in original; internal quotation marks omitted.) *State* v. *Skakel*, 276 Conn. 633, 701, 888 A.2d 985, cert. denied, 549 U.S. 1030, 127 S. Ct. 578, 166 L. Ed. 2d 428 (2006); see also *State* v. *Guilbert*, supra, 306 Conn. 272 (same); *Young* v. *Commissioner of Correction*, 219 Conn. App. 171, 189, 294 A.3d 29 (same), cert. denied, 347 Conn. 905, 297 A.3d 567 (2023). "The rationale underlying this exception to the state's disclosure obligation under *Brady* is obvious: *Brady* is designed to assure that the defendant is not denied access to exculpatory evidence known or available to the state but unknown or unavailable to him. . . . It is not intended either to relieve the defense of its obligation diligently to seek evidence favorable to it or to permit the defense to close its eyes to information likely to lead to the discovery of such evidence." (Citations omitted; internal quotation marks omitted.) *State* v. *Skakel*, supra, 702. Thus, evidence "will not be deemed to have been suppressed by the state . . . if the [petitioner] or the [petitioner's] trial counsel reasonably was on notice of [its] existence but nevertheless failed to take appropriate steps to obtain it." Id. "In other words, the state must disclose the [evidence] which is potentially exculpatory but is not constitutionally obligated to connect the dots for the defense." *Lopez* v. *Warden*, Superior Court, judicial district of Tolland, Docket No. CV-12-4004836-S (May 1, 2019) (reprinted at 208 Conn. App. 519, 536, 264 A.3d 1111 (2021), aff'd, 208 Conn. App. 515, 264 A.3d 1097 (2021), cert. denied, 340 Conn. 922, 268 A.3d 77, cert. denied sub nom. *Lopez* v. *Quiros*, U.S. , 142 S. Ct. 2730, 212 L. Ed. 2d 790 (2022).

In the present case, the petitioner's *Brady* claim was that the state suppressed a search warrant that was executed at 95 Downing Street months before the fire pursuant to which the police allegedly seized a cache of weapons. The petitioner became aware of this warrant from a statement contained in the FBI 302 report, which

was authored by Mastropetre and admitted into evidence at the hearing. The FBI 302 report is titled "information regarding arsons in the Fair Haven section" and generally provides a summary of the status of investigations of fires that occurred in that area since the mid-1990s. In the section describing the investigation of the fire at 95 Downing Street, the FBI 302 report stated that "[New Haven Police Officer Joseph] Pettola, was approached by New Haven Police Department Lieutenant, Luis Casanova, who told Pettola that approximately ten months ago, members of the ATF,[9] FBI, and State Wide Narcotics Task Force . . . executed a search and seizure warrant on the vacant property located at 95 Downing Street. Casanova said as a result of the search warrant and seizure warrant there was a cache of weapons that were seized from the property." (Footnote added.)

The trial court found, and the petitioner does not contest on appeal, that the petitioner's criminal trial counsel, Williams, was provided the FBI 302 report prior to trial. In particular, the court found that the FBI 302 report "was provided prior to the federal trial to . . . Williams," who "also represented the petitioner at the state trial," and that "the FBI 302 report gave notice to the petitioner that a search was conducted and contraband seized by law enforcement personnel at 95 Downing Street." This finding is dispositive of the petitioner's *Brady* claim because it establishes that the petitioner's criminal trial counsel had possession, prior to trial, of the information he claimed was suppressed. See, e.g., *Hines* v. *Commissioner of Correction*, supra, 164 Conn. App. 726–27 (concluding that state did not suppress evidence in violation of *Brady* on basis of court's factual finding that petitioner's counsel was informed of that

[9] Although the initialism ATF is not clearly defined by the FBI 302 report, we presume it refers to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives.

material evidence prior to trial). Because the petitioner's counsel had the FBI 302 report, he could have taken advantage of the representation that a search warrant was executed at 95 Downing Street to question the officers or Lopez regarding the warrant, to engage in a search for a copy of the search warrant itself, or to investigate the circumstances of the warrant further. See, e.g., *State* v. *Skakel*, supra, 276 Conn. 701–703 (state did not suppress composite drawing of potential suspect in violation of *Brady* because petitioner was on notice drawing existed from references in state's investigative reports and failed to take steps to obtain it); *Lopez* v. *Commissioner of Correction*, supra, 208 Conn. App. 534–36 (state did not suppress evidence of investigative file materials of earlier shootings in violation of *Brady* because state provided to petitioner list of specific incidents and case numbers identifying existence of those earlier shootings). The fact that the reference to the warrant was made in a mass of other discovery materials does not compel a different outcome. See, e.g., *State* v. *Skakel*, supra, 704 (rejecting claim that state violated *Brady* because evidence was "buried" in 1806 pages of other documents produced by state). Therefore, because it is not disputed that the petitioner's criminal trial counsel had been provided information identifying the existence of the warrant, the state did not suppress that evidence in violation of *Brady*.

The petitioner further contends that *Brady* imposed an affirmative duty on the state to disclose a copy of the actual warrant to the petitioner[10] and that the reference to the warrant in the FBI 302 report was not

[10] The respondent contends that the petitioner failed to establish that the warrant ever existed because neither party has been able to locate a copy of it, and, accordingly, the state could not have violated *Brady* by failing to produce a warrant that does not exist. In response, the petitioner corroborated the existence of the search warrant by introducing into evidence an exhibit constituting a press release issued by the Department of Emergency Services and Public Protection on May 25, 2007, which the petitioner's counsel discovered through a Google search conducted in between hearing

sufficient to absolve the state of its *Brady* obligations. To support his argument, the petitioner relies on a statement from the United States Supreme Court in *Banks* v. *Dretke*, 540 U.S. 668, 696, 124 S. Ct. 1256, 157 L. Ed. 2d 1166 (2004), that "[a] rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process." We do not agree that *Banks* is applicable to this case for both legal and factual reasons.

Legally, the general proposition in *Banks* that a prosecutor cannot hide exculpatory evidence is not contrary to the established rule that *Brady* is not violated when the petitioner previously had been informed of the information he claimed was suppressed. Indeed, our Supreme Court in *Skakel* recognized the propriety of this exact quotation from *Banks*, but held that, "[n]evertheless, when, as in the present case, a defendant is on notice of the existence of *Brady* material that the state has failed to turn over, the defendant is required to make reasonable efforts to obtain the exculpatory evidence. . . . [A]ny other rule would create a strong incentive for the defendant to await the outcome of the trial before seeking the evidence from the state." *State* v. *Skakel*, supra, 276 Conn. 706 n.73. Factually, the claim

dates on his petition. The press release states, in part, that "[t]he State Police Urban Violence Task Force working with New Haven Police Officers simultaneously executed three separate search warrants at 124 East Pearl Street . . . two residential homes located at 95 Downing Street and 422 Bletchley Avenue all in the City of New Haven. A combined seizure from all three search warrant locations consisted of cocaine, marijuana, cash, a rifle and drug paraphernalia."

We do not resolve this issue because there are no factual findings by the trial court on this point; see part III A of this opinion; and it is not necessary for the resolution of the petitioner's claim on appeal. To be clear, the petitioner raised a *Brady* claim that the state suppressed the existence of the warrant, not a *Morales* claim that the state failed to preserve a copy of the warrant. See *State* v. *Morales*, 232 Conn. 707, 726–27, 657 A.2d 585 (1995) (outlining legal standards governing claim that state destroyed or lost evidence).

at issue in *Banks* was that the state suppressed evidence that one of its witnesses was a paid police informant, and that the witnesses' testimony was coached by prosecutors and law enforcement officers. *Banks* v. *Dretke*, supra, 540 U.S. 675. The court concluded that the state's withholding of these facts violated *Brady* and that, in light of the state's persistent representations that it had complied in full with its *Brady* obligations, it was not incumbent on the petitioner in *Banks* to investigate the witnesses' backgrounds. Id., 692–96. Here, in contrast, the petitioner's trial counsel was in possession of the FBI 302 report identifying the search warrant, and, thus, he had the ability to investigate the circumstances surrounding the search warrant and to attempt to locate it. In other words, the state in the present case did not play hide-and-seek with the disclosure of the warrant because the petitioner indisputably had a report that asserted the existence of the warrant. In contrast to the petitioner's argument, the state's failure to locate and disclose the actual warrant referenced in the FBI 302 report does not amount to a violation of *Brady*. In sum, we conclude, on the basis of the court's undisputed factual findings, that the petitioner's *Brady* claim fails and is not debatable among jurists of reason.

The appeal is dismissed.

In this opinion the other judges concurred.

ANGELO L. REYES *v.* STATE OF CONNECTICUT (AC 45634)

Alvord, Prescott and Bishop, Js.

Syllabus

The petitioner, who had been convicted of various crimes in connection with a house fire and a motor vehicle fire caused by arson, appealed from the trial court's judgment dismissing his petition for a new trial. The petitioner was sentenced in January, 2015. More than five years

later, in July, 2020, he filed a petition for a new trial, alleging that he had obtained evidence that was not discoverable or available at the time of his criminal trial that would likely produce a different result in a new trial. Although the petitioner acknowledged that the applicable statute (§ 52-582) contained a three year limitation period from the date he was sentenced, he contended that the court had subject matter jurisdiction over his petition because the exception to the limitation period applicable to newly discovered forensic scientific evidence pursuant to § 52-582 (a) applied to his petition due to the nature of the proffered evidence and the limitation period was tolled by the fraudulent concealment statute (§ 52-595) because the respondent, the state of Connecticut, intentionally withheld all of the newly discovered evidence supporting his petition. The proffered forensic scientific evidence included a discrepancy between the police report and the evidence receipt from the state forensic science laboratory as to the size of the cans that the police used to collect samples of potential accelerant from the scene of the house fire; a Federal Bureau of Investigation (FBI) report from which it could be inferred that the samples were collected in connection with an unrelated fire that occurred five days before the house fire; and a chain of custody report showing that the state forensic science laboratory scientist who had tested the contents of the cans retained the cans for two months after he had completed his testing of the samples, which would have permitted an investigator from a state or federal agency to visit and view the samples during those additional two months, thus allowing for an inference that the chain of custody had been broken. The petitioner also presented testimony from C, a former state police detective and K-9 handler who assisted with the investigation of the house fire, and B, a state forensic science laboratory evidence intake coordinator, who explained the discrepancies in the reports. The trial court granted the respondent's motion to dismiss the petition for a new trial, concluding that it lacked subject matter jurisdiction over the petition because there was no dispute that the petition had been filed after the expiration of the three year limitation period of § 52-582 and that the action was not saved by the exception for newly discovered forensic scientific evidence pursuant to § 52-582 (a) or by the tolling doctrine for fraudulent concealment pursuant to § 52-595 on the basis of applicable appellate authority at the time of the trial court's decision. *Held*:

1. In light of this court's decision in *Randolph* v. *Mambrino* (216 Conn. App. 126), which was issued approximately five months after the trial court in the present case issued its decision granting the respondent's motion to dismiss and in which this court made clear that the three year limitation period of § 52-582 may be tolled upon a showing of fraudulent concealment in accordance with § 52-595, the trial court incorrectly concluded, as a matter of law, that the three year limitation period of § 52-582 cannot be tolled by application of § 52-595; accordingly, the

case was remanded for a new evidentiary hearing to determine whether the petitioner had established that the three year limitation period of § 52-582 was tolled by § 52-595.

2. The petitioner could not prevail on his claim that the trial court incorrectly concluded that the exception to the three year limitation period for newly discovered forensic scientific evidence pursuant to § 52-582 (a) was not applicable, as this court found that the petitioner's proffered evidence cumulatively amounted to chain of custody evidence that challenged the manner in which the police documented their handling of the cans containing the accelerant samples and not forensic scientific evidence: police documentation of the sizes of the cans, the origin of the cans, and the duration of time that individuals had access to the cans did not constitute forensic scientific evidence within the meaning of § 52-582 because it did not involve the application of scientific or technical practices to the recognition, collection, analysis and interpretation of evidence, and the petitioner did not contest the forensic science that was applied to the samples within the cans; moreover, contrary to the petitioner's claim that the police report, the FBI report, the evidence receipt from the state forensic science laboratory, and the chain of custody report constituted forensic scientific evidence because they were reports by forensic analysts pursuant to § 52-582 (d), this court concluded that the documents did not qualify as forensic scientific evidence because they did not include any scientific or forensic analysis, none of their contents required the application of scientific standards or a scientific method, and scientific knowledge was not required to reveal any discrepancies resulting from the documents; furthermore, the testimony of C and B explaining the discrepancies in the reports did not constitute testimony by forensic analysts pursuant to § 52-582 (d), as C's testimony that he was not aware of any discrepancies with respect to the size of the cans had nothing to do with forensic science and the record contained no indication that he had any experience as a forensic analyst or expert, and B's testimony regarding who could visit the state laboratory did not involve any scientific analysis and was not contingent on a scientific method or technique but, rather, was limited to her personal knowledge of the access individuals would have had to the state laboratory.

Argued September 13—officially released November 28, 2023

Procedural History

Petition for a new trial following the petitioner's conviction of the crimes of arson in the second degree, conspiracy to commit criminal mischief in the first degree and conspiracy to commit burglary in the first degree, brought to the Superior Court in the judicial

district of New Haven, where the court, *Wilson, J.*, granted the respondent's motion to dismiss and rendered judgment thereon, from which the petitioner, on the granting of certification, appealed to this court. *Reversed in part*; *further proceedings*.

Alexander T. Taubes, for the appellant (petitioner).

Nancy L. Chupak, senior assistant state's attorney, with whom, on the brief, were *John P. Doyle, Jr.*, state's attorney, and *Lisa Maria Proscino*, former supervisory assistant state's attorney, for the appellee (respondent).

Opinion

BISHOP, J. The petitioner, Angelo L. Reyes, appeals, following the granting of his petition for certification to appeal, from the judgment of the trial court dismissing his petition for a new trial for lack of subject matter jurisdiction because it was time barred by the three year limitation period of General Statutes § 52-582.[1] On appeal, the petitioner claims that the trial court improperly (1) concluded, as a matter of law, that the three year limitation period of § 52-582 cannot be tolled by application of the fraudulent concealment statute, General Statutes § 52-595,[2] and (2) determined that the exception to the three year limitation period for newly discovered forensic scientific evidence pursuant to

[1] General Statutes § 52-582 (a) provides in relevant part: "No petition for a new trial in any civil or criminal proceeding shall be brought but within three years next after the rendition of the judgment or decree complained of, except that a petition for a new trial in a criminal proceeding based on DNA (deoxyribonucleic acid) evidence or other newly discovered evidence, as described in subsection (b) of this section, that was not discoverable or available at the time of the original trial or at the time of any previous petition under this section, may be brought at any time after the discovery or availability of such new evidence . . . ."

[2] General Statutes § 52-595 provides: "If any person, liable to an action by another, fraudulently conceals from him the existence of the cause of such action, such cause of action shall be deemed to accrue against such person so liable therefor at the time when the person entitled to sue thereon first discovers its existence."

§ 52-582 (a) was not applicable to the present case. We agree with the petitioner's first claim but disagree with his second claim. Accordingly, we affirm in part and reverse in part the judgment of the trial court, and we remand the case to the trial court for a new evidentiary hearing before a different judge to determine whether the three year limitation period of § 52-582 was tolled by § 52-595.

Our Supreme Court's decision in the petitioner's direct appeal sets forth the following relevant facts, which the jury in his criminal trial reasonably could have found.

"At the time of the events in question, the [petitioner] owned a Laundromat and several investment properties in the Fair Haven section of the city of New Haven. In October, 2008, the [petitioner] paid two employees, Osvaldo Segui, Sr., and Osvaldo Segui, Jr., to set fire to 95 Downing Street in New Haven, a single-family residence that the [petitioner] had sold to Robert Lopez [Lopez] and his mother, Carmen Lopez, in 2002. The [petitioner] was angry that [Lopez] would not sell the property back to him and informed Segui, Sr., that, after the fire, he intended to purchase the lot of land on which the residence had stood before the fire. Segui, Sr., and Segui, Jr., both of whom lived rent free in one of the [petitioner's] properties, agreed to set the fire, and, in the early morning hours of October 9, 2008, they did so.

"In May, 2009, the [petitioner] enlisted Segui, Sr., and Segui, Jr., to set another fire, this time to a vehicle belonging to Madeline Vargas, a local businesswoman and employee of a nonprofit substance abuse services agency operating in Fair Haven. Although the [petitioner] did not tell Segui, Sr., why he had had him set fire to Vargas' car, the evidence adduced at trial indicated that the [petitioner] was motivated by spite—

the result of an ongoing dispute between him and Vargas over Vargas' attempts, in 2008, to run an outreach program for local drug addicts in an empty parking lot near the [petitioner's] Laundromat.

"The [petitioner], Segui, Sr., and Segui, Jr., were subsequently charged with various offenses related to the 2008 and 2009 arsons. Prior to being tried in state court, the [petitioner] was tried in federal court on unrelated arson charges. Segui, Sr., and Segui, Jr., also were charged in that federal case but agreed to testify against the [petitioner] in exchange for reduced sentences. In the present case, Segui, Sr., and Segui, Jr., entered into plea agreements pursuant to which, in exchange for their testimony, they received . . . sentence[s] that did not require them to serve any more time than they were required to serve in connection with the federal case." *State* v. *Reyes*, 325 Conn. 815, 818–19, 160 A.3d 323 (2017).

Following a jury trial, the petitioner was convicted of two counts of arson in the second degree in violation of General Statutes § 53a-112 (a) (2), two counts of conspiracy to commit criminal mischief in the first degree in violation of General Statutes §§ 53a-48 (a) and 53a-115 (a) (1), and one count of conspiracy to commit burglary in the first degree in violation of General Statutes §§ 53a-48 (a) and 53a-101 (a) (1). On January 8, 2015, the court sentenced the petitioner to a total effective sentence of twenty-five years of incarceration, execution suspended after fifteen years, followed by five years of probation. On June 6, 2017, our Supreme Court affirmed the petitioner's judgments of conviction on direct appeal. Id., 833.

More than five years after the imposition of his sentence, on July 31, 2020, the petitioner filed the present

petition for a new trial.[3] The petitioner alleged that he had obtained evidence of four material facts that were not discoverable or available at the time of his criminal trial that would likely produce a different result in a new trial: (1) one day before the 95 Downing Street fire, Lopez met with an "unlicensed broker," Hector Cortes, who was facing legal and financial trouble; (2) several days before the 95 Downing Street fire, Lopez was involved in a physical altercation at a café with Charles Ruggierrio, who later was admitted to the hospital for severe injuries; (3) the existence of a December 29, 2005 invoice from East Haven Building Supply that was signed by Lopez but paid by the petitioner that purportedly evinced that the petitioner had extended a line of credit to Lopez for improvements to the property at 95 Downing Street; and (4) evidence collected from 95 Downing Street was tampered with while en route from 95 Downing Street to the state forensic science laboratory (state laboratory). The petitioner alleged that the first three facts were especially material because they contradicted Lopez' testimony at the petitioner's criminal trial that he did not meet with Cortes, that he was not in an altercation with Ruggierrio, and that the petitioner had not extended a line of credit to him.

On August 25, 2020, the respondent, the state of Connecticut, filed a motion to dismiss the petition for lack

[3] On June 23, 2017, the petitioner filed a separate petition for a new trial in which he claimed that he recently discovered new evidence of third-party culpability establishing that a different individual, Saul Valentin, ordered Segui, Sr., and Segui, Jr., to set fire to 95 Downing Street and Vargas' automobile and that the state suppressed a search warrant executed at 95 Downing Street months before the fire pursuant to which the police seized a cache of weapons. On October 15, 2019, the trial court denied that petition and subsequently denied the petitioner's petition for certification to appeal. In a separate decision also released today, we dismissed that appeal after concluding that the court properly denied the petitioner certification to appeal. See *Reyes* v. *State*, 222 Conn. App. 510, A.3d (2023).

of subject matter jurisdiction on the ground that the petition was time barred by § 52-582 because it was filed more than three years after the date the petitioner had been sentenced. In its memorandum of law in support, the respondent explained that the petitioner was sentenced on January 8, 2015, and he filed his petition for a new trial on July 31, 2020, which was well beyond the three year limitation period of § 52-582.

On November 1, 2020, the petitioner filed an objection to the respondent's motion to dismiss in which the petitioner conceded that his petition was filed outside the three year limitation period in § 52-582 but asserted that it was not time barred. He contended that the court had subject matter jurisdiction over his petition for two principal reasons. First, he argued that the exception to the three year limitation period applicable to newly discovered forensic scientific evidence pursuant to § 52-582 (a) saved his petition because his petition was partially contingent on "gasoline evidence." Second, he argued that the three year limitation period was tolled by the fraudulent concealment statute, § 52-595, because the state intentionally withheld all of the newly discovered evidence supporting his petition.

On July 1, 2021, the court ordered an evidentiary hearing to resolve the factual issues raised by the respondent's motion to dismiss, and, on October 5 and November 23, 2021, the court held the hearing. The respondent called multiple witnesses to testify, including Executive Assistant State's Attorney John P. Doyle, Jr., who had prosecuted the petitioner; a former Connecticut state police detective, Kenneth Christensen; a state laboratory evidence intake coordinator, Jessica Best; and a former New Haven police officer, Michael Mastropetre. The petitioner testified and called former Connecticut State Trooper Michael F. Pendleton to testify. The petitioner introduced six exhibits into evidence, and the respondent introduced twenty-seven

exhibits into evidence, all of which the court considered in its decision.

In his posthearing memorandum, the petitioner claimed that there were three aspects of "newly discovered forensic scientific evidence" relating to the state's handling of cans used to store accelerant samples collected from the scene of the 95 Downing Street fire. First, the petitioner contended that there was a discrepancy as to the size of the cans that the police used to collect samples of potential accelerant from the scene of the fire at 95 Downing Street. The petitioner relied on the testimony of Christiansen that he was a K-9 handler assisting with the investigation of the cause and origin of the fire at 95 Downing Street when his police dog, Presley, alerted to the presence of accelerant on wood debris. Christiansen testified that the lead investigator collected three samples of wood debris with the potential accelerant and placed them into three different cans. Exhibit 1, the police report authored by Christiansen, stated that there were three, one gallon cans, whereas exhibit 4, the evidence receipt from the state laboratory, stated that there were two, one gallon cans and one, one quart can. When asked about this inconsistency, Christiansen testified that he was not aware of any discrepancies with respect to the size of the cans at the petitioner's criminal trial but that it was his mistake that the police report identified three, one gallon cans and that, in actuality, the samples were contained in two, one gallon cans and one, one quart can.

Second, the petitioner contended that the samples contained in the three cans were not collected from the scene of the fire at 95 Downing Street. The petitioner buttressed his claim with exhibit 2, a Federal Bureau of Investigation (FBI) report that compiled a list of potential arsons in the Fair Haven section of New Haven from the mid-1990s to 2010. The FBI report detailed

the following for each potential arson: the address of the fire; the date and time of the fire; a list of evidence that was submitted to the state laboratory in connection with the fire; and the details of any Connecticut state police involvement. One of the potential arsons contained in the report was a fire at 211 Lloyd Street in New Haven that occurred five days prior to the fire at 95 Downing Street. In the list of evidence submitted to the state laboratory for the fire at 211 Lloyd Street, there were three samples of floorboards with an indication to test for accelerants attributed to the laboratory ID number associated with the fire at 95 Downing Street (ID-08-003627).

Third, the petitioner claimed that John Hubball, the state laboratory scientist who had tested the contents of the cans, retained the evidence for two months after he had completed his testing. To support this claim, the petitioner relied on exhibit 5, a chain of custody report, that showed that Hubball originally obtained the three cans on October 14, 2008, from an evidence control officer at the state laboratory and that Hubball returned the three cans on March 2, 2009, to the evidence control officer—which was two months after his January 11, 2009 chemistry report in which he opined that the sample in the one quart can revealed the presence of a petroleum product consistent with gasoline. The petitioner further relied on the testimony of Best that it was possible for an investigator from a state or federal agency to visit Hubball during the two additional months that he possessed the three cans, which the petitioner asserted allowed "for a break in the chain of custody."

In its posthearing memorandum, the respondent contended, inter alia, that the documents and testimony proffered by the petitioner did not constitute newly discovered forensic scientific evidence under § 52-582 because such evidence did not concern the manner in

which the scientific tests were performed on the samples contained in the cans but, instead, amounted to a challenge to the chain of custody of the cans. The respondent further argued that the doctrine of fraudulent concealment pursuant to § 52-595 did not apply to the petitioner's petition for a new trial and, even if it did, the evidence proffered at the hearing demonstrated that the evidence was not fraudulently concealed.

On May 31, 2022, the court issued a memorandum of decision granting the respondent's motion to dismiss. The court concluded that it lacked subject matter jurisdiction over the petition because there was no dispute that the petition was filed after the expiration of the three year limitation period in § 52-582 and that the action was not saved by the exception for newly discovered forensic scientific evidence pursuant to § 52-582 (a) or the tolling doctrine for fraudulent concealment pursuant to § 52-595. With respect to the newly discovered forensic scientific evidence exception, the court concluded that § 52-582 was ambiguous and, after analyzing the pertinent legislative history, held that "[t]he [petitioner's] assertion regarding [the petitioner's] exhibit 5 is that it demonstrates that there was a possible break in the chain of custody, his assertion regarding [the petitioner's] exhibit 2 is that it demonstrates that the ID number associated with evidence presented at the original trial was associated with evidence from another fire at a different address, and his assertion regarding Christensen's testimony is that it demonstrates that there was an inconsistency in documenting the size of the containers, as the report and the lab evidence receipt differ in this regard. None of the [petitioner's] assertions pertain to improvements in science and technology that resulted in newly discovered forensic scientific evidence; rather, his assertions pertain to inconsistencies with chain of custody and documentation. Therefore, the court concludes that the forensic

[scientific] evidence exception pursuant to § 52-582 . . . is inapplicable." (Footnote omitted.) With respect to the tolling doctrine of fraudulent concealment, the court held that, although there was no directly applicable appellate authority at the time, other decisions, including *Fichera* v. *Mine Hill Corp.*, 207 Conn. 204, 541 A.2d 472 (1988), and *Turner* v. *State*, 172 Conn. App. 352, 160 A.3d 398 (2017), were instructive. Surveying these cases, the court held, as a matter of law, that § 52-595 does not toll the statute of limitations in § 52-582.[4]

On June 3, 2022, the petitioner filed a petition for certification to appeal from the court's judgment, which the court granted. This appeal followed.

I

The petitioner first claims that the court incorrectly concluded, as a matter of law, that the three year limitation period of § 52-582 cannot be tolled by application of the fraudulent concealment statute, § 52-595. The petitioner primarily relies on *Randolph* v. *Mambrino*, 216 Conn. App. 126, 284 A.3d 645 (2022),[5] in which this court recently held that § 52-582 may be tolled by application of § 52-595. Id., 145. The respondent on appeal concedes, in light of *Randolph*, that the court incorrectly concluded that § 52-582 cannot be tolled by application of § 52-595.[6] Although the parties agree on

[4] As a result of its legal determination that § 52-595 does not apply to § 52-582, the trial court did not reach the factual question of whether the petitioner had established that the state fraudulently concealed the evidence supporting his petition.

[5] We emphasize that the trial court in the present case did not have the benefit of this court's decision in *Randolph* v. *Mambrino*, supra, 216 Conn. App. 126, because it was officially released approximately five months after the trial court in the present case issued its decision granting the respondent's motion to dismiss.

[6] Although the respondent acknowledges that this court is bound by the *Randolph* decision, it expressly reserves its ability to challenge "the correctness of the *Randolph* decision" in our Supreme Court.

this issue, it bears some discussion in order for this court to make its independent assessment.

We begin with the standard of review and relevant legal principles. We exercise plenary review over the question of whether the court properly granted the respondent's motion to dismiss on the basis of its ultimate legal conclusion that § 52-582 cannot be tolled by application of § 52-595. See, e.g., *Priore* v. *Haig*, 344 Conn. 636, 644–45, 280 A.3d 402 (2022).

"Pursuant to [General Statutes] § 52-270, a convicted criminal defendant may petition the Superior Court for a new trial on the basis of newly discovered evidence." *Skakel* v. *State*, 295 Conn. 447, 466, 991 A.2d 414 (2010). Section 52-582, which contains the statute of limitations applicable to petitions for a new trial, provides in relevant part that "[n]o petition for a new trial in any civil or criminal proceeding shall be brought but within three years next after the rendition of the judgment or decree complained of . . . ." "The three year period [of § 52-582] begins to run from the date of rendition of judgment by the trial court . . . which, in a criminal case, is the date of imposition of the sentence by the trial court." (Citation omitted.) *Summerville* v. *Warden*, 229 Conn. 397, 426, 641 A.2d 1356 (1994). Additionally, the three year limitation period pursuant to § 52-582 is a jurisdictional bar and, in the absence of any applicable exception or tolling doctrine, a trial court lacks subject matter jurisdiction over an untimely petition for a new trial. See *Turner* v. *State*, supra, 172 Conn. App. 370.

The tolling doctrine of fraudulent concealment is codified in § 52-595, which provides: "If any person, liable to an action by another, fraudulently conceals from him the existence of the cause of such action, such cause of action shall be deemed to accrue against such person so liable therefor at the time when the person entitled to sue thereon first discovers its existence." With

respect to fraudulent concealment under § 52-595, "[t]he question . . . is whether the [petitioner] [has] adduced any credible evidence that [the respondent] fraudulently concealed the existence of the [petitioner's] cause of action. . . . Under our case law, to prove fraudulent concealment, the [petitioner] [was] required to show: (1) [the respondent's] actual awareness, rather than imputed knowledge, of the facts necessary to establish the [petitioner's] cause of action; (2) [the respondent's] intentional concealment of these facts from the [petitioner]; and (3) [the respondent's] concealment of the facts for the purpose of obtaining delay on the [petitioner's] part in filing a complaint on [his] cause of action." (Internal quotation marks omitted.) *Medical Device Solutions, LLC* v. *Aferzon*, 207 Conn. App. 707, 745–46, 264 A.3d 130, cert. denied, 340 Conn. 911, 264 A.3d 94 (2021).

We agree with the parties that our analysis of this claim is controlled by *Randolph* v. *Mambrino*, supra, 216 Conn. App. 126, in which this court "conclude[d] that the three year limitation period of § 52-582 may be tolled by a showing of fraudulent concealment pursuant to § 52-595." Id., 132. To support this conclusion, this court reasoned, in part, that "the intent of the legislature that § 52-595 applies to § 52-582 is apparent from the straightforward language and evident purpose of those statutory sections. . . . [T]here is no language in § 52-595 to indicate that its application is restricted only to certain statutes of limitations and not to others. Rather, § 52-595 provides, in broadly applicable terms, for the tolling of the limitation period applicable to a cause of action '[i]f *any* person' who is liable to such an action by another 'fraudulently conceals from him the existence of' that cause of action. . . . Moreover, there is nothing in the wording of § 52-582 to indicate that the legislature intended to exempt that limitation period from the operation of § 52-595 and thereby reward a

respondent for his own misconduct in fraudulently concealing evidence that would warrant a new trial." (Emphasis in original; footnote omitted.) Id., 142–43. In short, this court held that, "given the plain and encompassing language of § 52-595, it must be deemed to apply to *any* limitation period that does not expressly disclaim its applicability. Because § 52-582 contains no such disclaimer, its three year limitation period may be tolled upon a showing of fraudulent concealment in accordance with § 52-595." (Emphasis in original.) Id., 145.

In the present case, the trial court concluded, as a matter of law, that § 52-595 does not operate to toll the statute of limitations in § 52-582. Conversely, *Randolph* makes clear that the three year limitation period of § 52-582 may be tolled upon a showing of fraudulent concealment in accordance with § 52-595. Id. The respondent concedes, and the petitioner agrees, that we are bound to apply *Randolph*. In sum, we conclude, in light of *Randolph*, that the court's conclusion that the three year limitation period of § 52-582 cannot be tolled by application of § 52-595 cannot stand. Consequently, we reverse the court's judgment in this regard and remand the case for a new evidentiary hearing before a different judge to determine whether the petitioner had established that the three year limitation period of § 52-582 was tolled by § 52-595.

II

The petitioner next claims that the court incorrectly concluded that the exception to the three year limitation period for newly discovered forensic scientific evidence pursuant to § 52-582 (a) was not applicable.[7] Specifically, the petitioner argues that his proffered evidence—including the police report, the FBI report, the

[7] Although our resolution of the petitioner's first claim is dispositive of this appeal, we also address the petitioner's second claim because it is likely to arise on remand. See, e.g., *Budlong & Budlong, LLC* v. *Zakko*, 213 Conn. App. 697, 714 n.14, 278 A.3d 1122 (2022).

evidence receipt from the state laboratory, the chain of custody report, and the supporting testimony of Christiansen and Best—constituted newly discovered forensic scientific evidence. He contends that the four exhibits constituted "reports . . . by forensic analysts" and that the testimony of Christiansen and Best explaining the discrepancies of the exhibits constituted "testimony by forensic analysts" as defined by § 52-582. We are not persuaded.

We begin with the applicable standard of review and relevant legal principles. "Whether the court had subject matter jurisdiction to consider the petitioner's petition for a new trial on the basis of newly discovered evidence is an issue of statutory construction over which our review is plenary." *Myers* v. *Commissioner of Correction*, 215 Conn. App. 592, 620–21, 284 A.3d 309 (2022), cert. denied, 346 Conn. 1021, 293 A.3d 897 (2023), and cert. denied sub nom. *Myers* v. *State*, 346 Conn. 1021, 293 A.3d 897 (2023). "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." (Internal quotation marks omitted.) *State* v. *Dupigney*, 295 Conn. 50, 58, 988 A.2d 851 (2010). Our decisional law in this regard instructs us that, when challenged with the task of statutory interpretation, we first consider the text of the statute itself and its relationship to other statutes and that, if this examination leads us to conclude that the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, it is inappropriate to consult extratextual evidence of the meaning of the statute. See *Mattatuck Museum-Mattatuck Historical Society* v. *Administrator*, 238 Conn. 273, 278–79, 679 A.2d 347 (1996). But, when a statute

is not plain and unambiguous, we also look 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 in order to properly glean the meaning of the statutory language at issue. See *Bender* v. *Bender*, 258 Conn. 733, 741, 785 A.2d 197 (2001).

We next turn to the relevant language of § 52-582. Section 52-582 (a) provides: "No petition for a new trial in any civil or criminal proceeding shall be brought but within three years next after the rendition of the judgment or decree complained of, except that a petition for a new trial in a criminal proceeding based on DNA (deoxyribonucleic acid) evidence or other newly discovered evidence, as described in subsection (b) of this section, that was not discoverable or available at the time of the original trial or at the time of any previous petition under this section, may be brought at any time after the discovery or availability of such new evidence, and the court may grant the petition if the court finds that had such evidence been presented at trial, there is a reasonable likelihood there would have been a different outcome at the trial."

Section 52-582 (b) (1) provides in relevant part: "Such newly discovered evidence in support of a petition for a new trial may include newly discovered forensic scientific evidence that was not discoverable or available at the time of the original trial or original or previous petition for a new trial . . . including that which might undermine any forensic scientific evidence presented at the original trial." Section 52-582 (d) provides: "For purposes of this section, 'forensic' means the application of scientific or technical practices to the recognition, collection, analysis and interpretation of evidence for criminal and civil law or regulatory issues, 'forensic

scientific evidence' includes scientific knowledge or technical knowledge, reports or testimony by forensic analysts or experts, and scientific standards or a scientific method or technique upon which the relevant scientific evidence is based, and 'scientific knowledge' includes knowledge of the general scientific community and all fields of scientific knowledge upon which those fields or disciplines rely."

In interpreting § 52-582, we do not write on a clean slate. Rather, we are bound by our previous judicial interpretations of the language and purpose of the statute. See, e.g., *State* v. *Douglas C.*, 345 Conn. 421, 465, 285 A.3d 1067 (2022). Accordingly, we turn to *Myers*, in which this court previously interpreted the newly discovered forensic scientific evidence exception in § 52-582.[8] See *Myers* v. *Commissioner of Correction*, supra, 215 Conn. App. 592. In *Myers*, the petitioner, who previously was convicted of murder and assault; id., 597–99; filed a petition for a new trial asserting that new evidence became available establishing that one of the victim's friends identified a third party as the shooter, not the petitioner. Id., 618–19. The trial court dismissed his petition for a new trial for lack of subject matter jurisdiction on the grounds that the petition was filed outside the three year limitation period and that the petitioner's evidence did not fit within the exception for newly discovered forensic scientific evidence in § 52-582. Id., 619–20. On appeal, this court affirmed the judgment of the trial court and held that the petition properly was dismissed because § 52-582 permits a petition for a new trial to be filed outside of the statute's

[8] This court's decision in *Myers* is, to the best of our knowledge, the only appellate decision to interpret § 52-582 since it was revised in 2018 to create the exception for newly discovered forensic scientific evidence. See Public Acts 2018, No. 18-61, § 1. *Myers* is instructive as to the legislative purpose of § 52-582; however, that decision did not squarely address whether the evidence at issue constituted forensic scientific evidence, as that term is defined by § 52-582 (d), because that issue was not disputed.

limitation period *only* if the petition is based on newly discovered DNA or forensic scientific evidence, neither of which was the basis for the petitioner's petition. Id., 623–27. To reach this conclusion, this court first determined that it was not clear from the plain language of § 52-582 (b) (1) whether the word "may" in the phrase "may include newly discovered forensic scientific evidence" was mandatory or permissive. Id., 624–25. After surveying the legislative history, this court concluded that the legislature intended that phrase to be mandatory. Id., 625–27. In the end, this court concluded "that the legislature intended for newly discovered evidence under § 52-582 to include only newly discovered forensic evidence. Consequently, because the petitioner's untimely petition for a new trial was not based on such evidence, the court correctly concluded that it lacked subject matter jurisdiction over the petition and properly dismissed the petition on that basis." Id., 627.

As applied to the present case, the paramount holding of *Myers* is that, in order to satisfy the exception in § 52-582, any purported new evidence in support of a petition must be newly discovered forensic scientific evidence and not merely newly discovered evidence of any type or form. Indeed, the petitioner on appeal recognizes that this is the holding of *Myers*, as he does not dispute that the plain language of § 52-582 requires that the newly discovered evidence be forensic scientific evidence. Rather, he asserts that his evidence falls within the legislative framework of newly discovered forensic scientific evidence. Accordingly, the issue presented is whether the petitioner's proffered evidence with respect to the state's handling of cans containing accelerant samples collected from the scene of the 95 Downing Street fire constituted "forensic scientific evidence," as defined by § 52-582 (d).[9]

[9] The trial court did not determine whether the petitioner's evidence "was not discoverable or available at the time of the original trial or original or previous petition for a new trial" under § 52-582 (b). On the basis of our

As outlined previously, the petitioner's newly discovered evidence is in three parts. First, he contends that there was a discrepancy as to the size of the cans that the police used to collect samples of potential accelerant from the scene of the fire at 95 Downing Street because the police report (exhibit 1) stated that there were three, one gallon cans, but the evidence receipt from the state laboratory (exhibit 4) stated that there were two, one gallon cans and one, one quart can. Second, he argues that the samples were not collected from the fire at 95 Downing Street because it can be inferred from the FBI report (exhibit 2) that the samples were collected in connection with an unrelated fire at 211 Lloyd Street that occurred five days earlier. Third, he argues that the chain of custody report (exhibit 5) shows that Hubball retained the cans for two months after he had completed his testing of the samples, which would have permitted an investigator from a state or federal agency to visit and view the samples during those additional two months, thus allowing for an inference that the chain of custody had been broken.

We conclude that the definition of forensic scientific evidence pursuant to § 52-582 (d) unambiguously does not apply to the petitioner's evidence. The petitioner's evidence cumulatively amounts to chain of custody evidence that challenges the manner in which the police documented their handling of the cans containing the accelerant samples.[10] Police documentation of the sizes of the cans, the origin of the cans, and the duration of time that individuals had access to the cans does not

conclusion that the petitioner's evidence was not forensic scientific evidence, and because neither party raises this claim on appeal, we likewise do not reach this issue.

[10] The petitioner on appeal does not contest the characterization of his newly discovered evidence as "chain of custody evidence." In fact, the petitioner used the same phrase to describe this evidence in his principal appellate brief, his appellate reply brief, and at oral argument before this court.

constitute forensic scientific evidence within the meaning of § 52-582. This evidence does not involve "the application of scientific or technical practices to the recognition, collection, analysis and interpretation of evidence"; General Statutes § 52-582 (d); because it exclusively bears on the details of the size and whereabouts of the cans, which does not involve the evidence contained within those cans. Scientific knowledge is not required to reveal any discrepancies resulting from the police report, the evidence intake report, the FBI report, and the chain of custody report. To be clear, the petitioner does not contest the forensic science that was applied to the samples within the cans, namely, the propriety of the scientific tests performed on the samples, the analysis and interpretation of the results of those tests by forensic analysts, the scientific standards or methods used by those analysts, or whether accelerant actually was present on the samples. Thus, the determination of whether the police properly documented the location and custodians of the cans does not involve the application of scientific or technical practices.

Nevertheless, the petitioner contends that the four exhibits constituted forensic scientific evidence because they are "reports . . . by forensic analysts" pursuant to § 52-582 (d). We agree with the respondent that this argument incorrectly seeks to expand the exception in § 52-582. Exhibit 1, the police report, is a standard report detailing the important details of the incident, including the date, time, and location, the investigation undertaken, and a description of any evidence collected from the scene. The police report does not contain any scientific analysis. Likewise, exhibit 2, the FBI report, is a mere compilation and list of potential arsons in the Fair Haven section of New Haven, including details specific to each fire and a description of the evidence

that was sent to the state laboratory. There is no forensic analysis contained in the FBI report and none of its contents required the application of scientific standards or a scientific method. Exhibit 4, the evidence receipt from the state laboratory, contains no information, scientific or otherwise, other than an abbreviated description of the cans received from the scene of the fire. Exhibit 5, the chain of custody report, contains only information as to the time, location, and custodian of the cans since they were received by the state laboratory. The report is devoid of any scientific analysis of the contents of the cans or any other forensic information.

The petitioner also contends that the testimony of Christiansen and Best explaining the discrepancies in the reports constituted "testimony by forensic analysts" pursuant to § 52-582 (d). We do not agree. Christiansen, the author of the police report, testified that he was not aware of any discrepancies with respect to the size of the cans at the petitioner's criminal trial but that it was his mistake that the police report listed three, one gallon cans. This testimony by Christiansen has nothing to do with forensic science, and the record is devoid of any indication that he had any experience as a forensic analyst or expert. Likewise, Best testified that it was possible that an investigator from a state or federal agency could have visited Hubball during the two additional months that he possessed the three cans. Best's title, a forensic laboratory evidence intake coordinator, by itself, does not render her a forensic analyst because her presupposition as to who could visit the state laboratory obviously does not involve any scientific analysis. Her testimony is not contingent on a scientific method or technique; rather, it was limited to her personal knowledge of the access individuals would have had to the state laboratory. Under the present circumstances, and in light of the proffered evidence in this matter, we conclude that the police officer and the

evidence intake coordinator were not acting as forensic analysts under § 52-582. In sum, we conclude that the court correctly determined that the exception to the three year limitation period for newly discovered forensic scientific evidence pursuant to § 52-582 (a) was not applicable.

The judgment is reversed only with respect to the determination that § 52-582 cannot be tolled by application of § 52-595, and the case is remanded for a new evidentiary hearing before a different judge to determine whether the three year limitation period of § 52-582 was tolled by § 52-595 and for further proceedings according to law; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

CHERYL L. GRAHAM *v.* WILLIAM GRAHAM
(AC 45657)

Moll, Cradle and Suarez, Js.

Syllabus

The defendant, whose marriage to the plaintiff previously had been dissolved, appealed to this court from certain postjudgment orders of the trial court finding him in contempt for his wilful violations of a court order and awarding attorney's fees to the plaintiff, and the plaintiff cross appealed from the trial court's dismissal of the offer of compromise that she filed to resolve her claim that the defendant had violated the trial court's postjudgment order relating to his alimony and child support obligation. Under the parties' separation agreement, which was incorporated into the trial court's judgment of dissolution, the defendant was required to pay the plaintiff unallocated alimony and child support until the earliest of nine years, the death of either party, or the remarriage of the plaintiff. He also was required to pay 60 percent of the uninsured or unreimbursed medical expenses of the parties' children. Approximately eight years after the marriage was dissolved, the defendant filed a motion to modify the dissolution judgment, seeking to terminate or reduce his support obligation on the ground that the plaintiff was cohabitating with another individual, to whom she was engaged to be married, and was financially benefitting from that cohabitation. In July, 2019, the parties

entered into a stipulation, which was approved by and made an order of the trial court. It provided that the defendant's obligation to pay unallocated alimony and child support terminated immediately, "subject to" him making lump sum payments in 2019 and 2020 to satisfy his outstanding alimony and child support obligations for the years 2018 and 2019. The stipulation also required the defendant to pay 100 percent of the children's future, unreimbursed medical expenses. In February, 2020, the plaintiff filed a motion for contempt, alleging that the defendant had wilfully violated the stipulation by failing to make the first payment related to his 2019 alimony and child support obligation and by informing her that he did not intend to make the second payment. The defendant claimed that he was not required to make these payments because the termination of his alimony obligation was contingent upon the payment of the lump sums set forth in the stipulation, and, because he had not yet made those payments, the provision of the parties' separation agreement that provided for the termination of his alimony obligation upon the plaintiff's remarriage, which occurred in November, 2019, was still in effect. In May, 2020, the plaintiff filed a second motion for contempt, alleging that the defendant had failed to pay 100 percent of their children's medical expenses, as required by the stipulation, because he refused to reimburse her for a $5000 concierge fee charged by a physician, G, who was treating the parties' eldest child. Thereafter, the plaintiff filed an offer of compromise, offering to resolve her claim against the defendant for his violation of the provision of the stipulation requiring him to make payments to satisfy his 2019 alimony and child support obligation. In May, 2022, the trial court granted the plaintiff's motions for contempt and dismissed the plaintiff's offer of compromise, and the defendant appealed and the plaintiff cross appealed to this court. Thereafter, the plaintiff filed a motion for attorney's fees, which the trial court granted. Subsequently, the defendant amended his appeal to include a challenge to that award of attorney's fees. *Held*:

1. The trial court's determination that the defendant was in contempt for wilfully violating the stipulation was not improper:

a. The trial court's finding of contempt with respect to the defendant's refusal to make the lump sum payments to the plaintiff to satisfy his 2019 alimony and child support obligation was not improper: contrary to the defendant's claim, the trial court did not err in determining that the stipulation modified the separation agreement by unconditionally terminating the defendant's alimony and child support obligation and substituting a lump sum obligation to the plaintiff that was payable over time; moreover, although the language of the stipulation relating to the termination of the defendant's obligation to pay alimony and child support could have been construed as ambiguous, the circumstances surrounding its execution rendered its meaning clear and unambiguous because, when the stipulation was presented to the court for its approval, both parties agreed that the obligation terminated immediately with the

execution of the stipulation; furthermore, the defendant's claim was undermined by the purpose of the payments, namely, to satisfy obligations that had already accrued, which was unambiguously set forth in the stipulation; accordingly, the lump sum payments were not subject to termination on the basis of the plaintiff's remarriage, and the defendant wilfully failed to comply with the stipulation when he refused to make them.

b. The trial court did not abuse its discretion in granting the motion for contempt with respect to the defendant's failure to pay 100 percent of the medical expenses of the parties' children: at the contempt hearing, the defendant acknowledged that he was obligated to pay for all of his children's unreimbursed medical expenses, and, although he claimed that the concierge fee was an access fee and not a medical expense, G clearly stated in an email to the plaintiff that the fee was based on the cost of the medical treatment that was provided and not paid for by insurance, and that email had been forwarded to the defendant; accordingly, by refusing to pay the fee, the defendant wilfully violated his obligation to pay 100 percent of the medical expenses of the parties' children.

2. This court declined to review the defendant's claim that the trial court's award of attorney's fees to the plaintiff was improper: the defendant's argument that the plaintiff's postjudgment motion for attorney's fees was barred by res judicata and collateral estoppel was not properly preserved, as he raised it for the first time on appeal; moreover, the defendant's argument was inadequately briefed, as he failed to provide any legal analysis pertaining to the applicability of the doctrines of res judicata and collateral estoppel to the plaintiff's claim.

3. Although the trial court properly declined to award the plaintiff offer of compromise interest on the ground that the applicable statute (§ 52-192a) did not apply to marital dissolution cases, the form of judgment dismissing the offer of compromise was improper: this court was not persuaded by the plaintiff's argument that her contempt claim arising out of the postjudgment marital dissolution action constituted a civil action based on contract under § 52-192a because such an interpretation would allow offers of compromise to be filed as to motions and proceedings instead of as to actions, and the plain language of the statute did not support the plaintiff's argument; moreover, the trial court erroneously dismissed the plaintiff's offer because it did not conclude that it lacked jurisdiction to hear and decide the plaintiff's request; accordingly, this court remanded the case with direction to strike the plaintiff's offer of compromise.

Argued September 11—officially released November 28, 2023

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Solomon*,

J., rendered judgment dissolving the marriage and granting certain other relief in accordance with the parties' separation agreement; thereafter, the court, *M. Moore, J.*, issued an order approving the parties' stipulation modifying the dissolution judgment; subsequently, the court, *Hon. Michael E. Shay*, judge trial referee, granted two motions for contempt and dismissed an offer of compromise filed by the plaintiff, from which the defendant appealed and the plaintiff cross appealed to this court; thereafter, the court, *Hon. Michael E. Shay*, judge trial referee, granted the plaintiff's motion for additional attorney's fees, and the defendant amended his appeal. *Improper form of judgment*; *reversed in part*; *judgment directed.*

David F. Sherwood, for the appellant-cross appellee (defendant).

Andrew P. Nemiroff, for the appellee-cross appellant (plaintiff).

Opinion

CRADLE, J. In this postjudgment marital dissolution matter, the defendant, William Graham, appeals, and the plaintiff, Cheryl L. Graham, cross appeals, from the judgment of the trial court rendered with respect to two postjudgment motions for contempt filed by the plaintiff. The defendant claims that the court improperly found him in contempt for wilfully violating postjudgment orders pertaining to his obligations to pay alimony to the plaintiff and the medical expenses of the parties' children. The defendant also challenges the court's award of attorney's fees to the plaintiff. The plaintiff claims that the court erred in dismissing an offer of compromise that she filed to resolve her claim that the defendant violated the court's postjudgment order relating to his alimony obligation. We conclude that the court properly declined to award interest pursuant to the plaintiff's offer of compromise, but the form

of the judgment with respect thereto is improper and we remand the case with direction to strike the plaintiff's offer of compromise.[1] We affirm the judgment of the trial court in all other respects.

The following facts and procedural history are relevant to the claims on appeal. The parties' marriage was dissolved on April 7, 2011. At the time of judgment, the parties had two minor children. The parties entered into a separation agreement that was incorporated into the judgment of the court and provided, inter alia, that the defendant would pay to the plaintiff a certain sum of unallocated alimony and child support[2] for a nonmodifiable period of nine years, or until the death of either party or the remarriage of the plaintiff. Pursuant to the formula set forth in the separation agreement, the maximum amount the defendant would be obligated to pay to the plaintiff each year was $504,000. The separation agreement also specified that the provisions of

[1] A judgment of dismissal pertains to the jurisdiction of the court, not to whether the claim was legally sufficient or cognizable. See *Godbout* v. *Attanasio*, 199 Conn. App. 88, 95, 234 A.3d 1031 (2020). Because the court did not conclude that it lacked jurisdiction to hear and decide the plaintiff's request for offer of compromise interest, it erroneously dismissed the plaintiff's offer of compromise.

[2] Specifically, article 3.1 of the separation agreement provided:

"The [defendant] shall pay to the [plaintiff unallocated alimony and child support] according to the following schedule as income is received by the [defendant] for each calendar year on or after April 15, 2011:

"a) 50 [percent] of all of the [defendant's] income from employment, which income shall consist of cash and noncash compensation, up to a maximum of $400,000.

"b) For all of the [defendant's] income from employment, which shall consist of cash and noncash compensation, between $400,001–$800,000, the [plaintiff] shall receive 45 [percent].

"c) For all of the [defendant's] income from employment, which income shall consist of cash and noncash compensation, between $800,001–$1,200,000, the [plaintiff] shall receive 31 [percent].

"d) For all of the [defendant's] income from employment, which income shall consist of cash and noncash compensation, over $1,200,000, the [plaintiff] shall receive 0 [percent]."

General Statutes § 46b-86 (b) would apply to the defendant's alimony obligation.[3]

The separation agreement also obligated the defendant to pay 60 percent of the uninsured or unreimbursed reasonably necessary medical, optical, surgical, hospital, dental and orthodontic expenses of the parties' children, including the cost of prescription drugs, and 100 percent of "mutually agreed upon psychiatric or psychological services . . . ."

On April 25, 2019, the defendant filed a motion to modify the dissolution judgment, seeking the immediate termination, suspension or reduction of his periodic support obligation, on the ground that the plaintiff was cohabitating with another individual, was benefiting financially from that cohabitation, and was engaged to be married to that same individual. On July 22, 2019, the parties entered into a stipulation that was approved by and made an order of the court. The stipulation modified the dissolution judgment in relevant part[4] as

[3] General Statutes § 46b-86 (b) provides: "In an action for divorce, dissolution of marriage, legal separation or annulment brought by a spouse, in which a final judgment has been entered providing for the payment of periodic alimony by one party to the other spouse, the Superior Court may, in its discretion and upon notice and hearing, modify such judgment and suspend, reduce or terminate the payment of periodic alimony upon a showing that the party receiving the periodic alimony is living with another person under circumstances which the court finds should result in the modification, suspension, reduction or termination of alimony because the living arrangements cause such a change of circumstances as to alter the financial needs of that party. In the event that a final judgment incorporates a provision of an agreement in which the parties agree to circumstances, other than as provided in this subsection, under which alimony will be modified, including suspension, reduction, or termination of alimony, the court shall enforce the provision of such agreement and enter orders in accordance therewith."

Although § 46b-86 has been amended since the parties entered into the separation agreement; see, e.g., Public Acts 2013, No. 13-213; those amendments have no bearing on the merits of this appeal. For purposes of clarity, we refer to the current revision of the statute.

[4] The parties' stipulation resolved the following postjudgment motions: (1) docket entry #211.01 Defendant's Motion for Modification, Suspension and/or Termination of Unallocated Alimony and to Fix Child Support and

follows: "The defendant's obligation to pay unallocated alimony and child support, pursuant to the parties' separation agreement, dated April 7, 2011, shall terminate immediately, subject to him making the following payments: (a) $217,000 within two weeks of this stipulation as payment in full for his 2018 unallocated alimony and child support obligation; and (b) $504,000 payable as follows (in two parts) in full satisfaction of his 2019 unallocated alimony and child support obligation: (i) $300,000 payable on or before January 31, 2020; and (ii) $204,000 payable on or before April 30, 2020." The stipulation also modified the separation agreement by obligating the defendant to pay 100 percent of the children's unreimbursed medical expenses going forward. The stipulation further stated: "Except as provided herein, the parties' separation agreement and parenting plan remain in full force and effect to the extent there are remaining obligations thereunder."

On February 20, 2020, the plaintiff filed a motion for contempt, alleging that the defendant wilfully violated the terms of the July 22, 2019 stipulation. The plaintiff alleged that, although the defendant paid the $217,000 to satisfy the 2018 alimony and child support obligation

Educational Support, Postjudgment, filed April 26, 2019; (2) docket entry #214.00 Plaintiff's Motion for Contempt and/or Order of Compliance re: Family Photos, Postjudgment, filed June 3, 2019; (3) docket entry #215.00 Plaintiff's Motion for Counsel Fees, Postjudgment, filed June 3, 2019; (4) docket entry #216.00 Plaintiff's Motion for Contempt and/or Order of Compliance re: Children's Passports, Postjudgment, filed June 3, 2019; (5) docket entry #217.00 Plaintiff's Motion for Contempt and/or Order of Compliance re: Failure to Provide Proof of Income, Postjudgment, filed June 3, 2019; (6) docket entry #219.00 Plaintiff's Motion for Contempt re: Failure to Pay Alimony, Postjudgment, filed June 3, 2019; (7) docket entry #224.01 Defendant's Application for Ex Parte Temporary Injunction, Postjudgment filed July 18, 2019, and Order (*Heller*, *J.*) dated July 18, 2019; (8) docket entry #225.00 Defendant's Motion for Contempt and/or Orders re: Final Parenting Plan, Postjudgment, filed July 19, 2019; and (9) docket entry #228.00 Defendant's Motion for Appointment of Counsel for the Minor Children, Postjudgment, filed July 19, 2019.

within two weeks of the July 22, 2019 stipulation, the defendant's attorney had informed her attorney, by letter dated January 29, 2020, that the defendant would not be making the two payments that were due on January 31 and April 30, 2020, because his alimony obligation had terminated upon the plaintiff's remarriage pursuant to the separation agreement. The defendant did not make either of those payments, which totaled $504,000, to satisfy his 2019 alimony and child support obligation.

On May 8, 2020, the plaintiff filed another motion for contempt, alleging that the defendant failed to pay 100 percent of their daughters' medical expenses, as required under the July 22, 2019 stipulation, in that he refused to reimburse her for a $5000 concierge fee charged by a physician, Sarah Gamble, who was treating the parties' older daughter.

On August 24, 2020, the plaintiff filed an offer of compromise, pursuant to General Statutes § 52-192a[5]

[5] General Statutes § 52-192a (a) provides: "Except as provided in subsection (b) of this section, after commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may, not earlier than one hundred eighty days after service of process is made upon the defendant in such action but not later than thirty days before trial, file with the clerk of the court a written offer of compromise signed by the plaintiff or the plaintiff's attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying the action for a sum certain. For the purposes of this section, such plaintiff includes a counterclaim plaintiff under section 8-132. The plaintiff shall give notice of the offer of compromise to the defendant's attorney or, if the defendant is not represented by an attorney, to the defendant himself or herself. Within thirty days after being notified of the filing of the offer of compromise and prior to the rendering of a verdict by the jury or an award by the court, the defendant or the defendant's attorney may file with the clerk of the court a written acceptance of the offer of compromise agreeing to settle the claim underlying the action for the sum certain specified in the plaintiff's offer of compromise. Upon such filing and the receipt by the plaintiff of such sum certain, the plaintiff shall file a withdrawal of the action with the clerk and the clerk shall record the withdrawal of the action against the defendant accordingly. If the offer of compromise is not accepted within thirty days and prior to the rendering

and Practice Book § 17-14,[6] offering to resolve her claim against the defendant for his alleged violation of the provision of the July 22, 2019 stipulation that required the defendant to make two payments to her in the total amount of $504,000 to satisfy his 2019 alimony and child support obligation.[7]

On May 24, 2022, the court held a hearing on the plaintiff's motions, at which both the plaintiff and the defendant testified and introduced into evidence numerous documents. The court filed a memorandum of decision dated June 29, 2022, in which it granted the plaintiff's motions for contempt. The court found that the defendant wilfully failed to make the two lump sum payments set forth in the July 22, 2019 stipulation. In so doing, the court set forth the following findings: "That as of January 31, 2020, there was legally due and owing to the [plaintiff] the sum of $300,000; that as of that date, the [defendant] wrongfully detained said sum; that as of April 30, 2020, there was legally owing to the [plaintiff] the sum of $204,000; that as of that date, the [defendant] wrongfully detained said sum; that said

of a verdict by the jury or an award by the court, the offer of compromise shall be considered rejected and not subject to acceptance unless refiled. Any such offer of compromise and any acceptance of the offer of compromise shall be included by the clerk in the record of the case."

[6] Practice Book § 17-14 provides: "After commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may, not earlier than one hundred eighty days after service of process is made upon the defendant in such action but not later than thirty days before the commencement of jury selection in a jury trial or the commencement of evidence in a court trial, file with the clerk of the court a written offer of compromise signed by the plaintiff or the plaintiff's attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying the action for a sum certain. For the purposes of this section, such plaintiff includes a counterclaim plaintiff under General Statutes § 8-132. The plaintiff shall give notice of such offer of compromise to the defendant's attorney, or if the defendant is not represented by an attorney, to the defendant."

[7] The offer of compromise pertained only to the alimony related contempt motion, not the motion related to the concierge fee.

sums remain due and owing as of the date hereof; and that, under all [of] the circumstances, the court finds it fair and equitable to award the [plaintiff] simple interest on each of said sums [pursuant to General Statutes § 37-3a][8] at the rate of 5 percent per annum from and including the date of wrongful detention to and including the date of payment in full." (Footnote added.) The court also found that the defendant wilfully violated the order requiring him to pay 100 percent of the unreimbursed medical expenses for the parties' daughters when he failed to pay the $5000 concierge fee charged by Dr. Gamble. The court ordered the defendant to pay those amounts within thirty days and awarded attorney's fees to the plaintiff in the amount of $22,590.50. The court dismissed the plaintiff's offer of compromise. This appeal and this cross appeal followed.

On July 19, 2022, the plaintiff filed a motion for additional attorney's fees for the time period from May 19, 2022, just before the hearing on the plaintiff's motions, through the filing of posthearing briefs on June 7, 2022, in the amount of $12,812.50.[9]

[8] General Statutes § 37-3a (a) provides: "Except as provided in sections 37-3b, 37-3c and 52-192a, interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions or arbitration proceedings under chapter 909, including actions to recover money loaned at a greater rate, as damages for the detention of money after it becomes payable. Judgment may be given for the recovery of taxes assessed and paid upon the loan, and the insurance upon the estate mortgaged to secure the loan, whenever the borrower has agreed in writing to pay such taxes or insurance or both. Whenever the maker of any contract is a resident of another state or the mortgage security is located in another state, any obligee or holder of such contract, residing in this state, may lawfully recover any agreed rate of interest or damages on such contract until it is fully performed, not exceeding the legal rate of interest in the state where such contract purports to have been made or such mortgage security is located."

[9] On July 28, 2022, the plaintiff filed a motion for attorney's fees to defend the appeal filed by the defendant. The court awarded the plaintiff $35,000 in attorney's fees to defend the defendant's appeal. The defendant has not challenged that award.

On November 1, 2022, the court held a hearing on, inter alia, the plaintiff's motions for attorney's fees, at which both parties testified. By way of a memorandum of decision filed November 16, 2022, the court granted both motions, ordering the defendant to pay to the plaintiff's counsel the sum of $12,812.50 for attorney's fees for the period from May 19 through June 7, 2022. The defendant thereafter amended his appeal to challenge this award of additional attorney's fees. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the court improperly found him in contempt for wilfully violating the July 22, 2019 stipulation by refusing to make the lump sum payments in satisfaction of his 2019 alimony and child support obligations and failing to pay 100 percent of the medical expenses of the parties' children. We disagree.

The following legal principles are applicable to the defendant's challenges to the court's judgment of contempt. "Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense. . . . A contempt judgment cannot stand when, inter alia, the order a contemnor is held to have violated is vague and indefinite, or when the contemnor, through no fault of his own, was unable to obey the court's order. . . .

"First, we must resolve the threshold question of whether the underlying order constituted a court order that was sufficiently clear and unambiguous so as to support a judgment of contempt. . . . This is a legal inquiry subject to de novo review. . . . Second, if we conclude that the underlying court order was sufficiently clear and unambiguous, we must then determine whether the trial court abused its discretion in issuing, or refusing to issue, a judgment of contempt, which

includes a review of the trial court's determination of whether the violation was wilful or excused by a good faith dispute or misunderstanding. . . . A finding of contempt is a question of fact, and our standard of review is to determine whether the court abused its discretion in [finding] that the actions or inactions of the [party] were in contempt of a court order. . . . In domestic relations cases, [a] judgment rendered in accordance with . . . a stipulation of the parties is to be regarded and construed as a contract. . . . Accordingly, our resolution of the plaintiff's claim is guided by the general principles governing the construction of contracts. . . .

"When construing a contract, we seek to determine the intent of the parties from the language used interpreted *in the light of the situation of the parties and the circumstances connected with the transaction*. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract. . . . When the language of a contract is ambiguous, the determination of the parties' intent is a question of fact. . . . When the language is clear and unambiguous, however, the contract must be given effect according to its terms, and the determination of the parties' intent is a question of law." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Magsig* v. *Magsig*, 183 Conn. App. 182, 190–91, 191 A.3d 1053 (2018).

"It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged

contemnor and the alleged contemnor's wilful noncompliance with that directive. . . . If the moving party establishes this twofold prima facie case, the burden of production shifts to the alleged contemnor to provide evidence in support of the defense of an inability to comply with the court order." (Citations omitted.) *Puff* v. *Puff*, 334 Conn. 341, 365, 222 A.3d 493 (2020). With these principles in mind, we turn to the defendant's challenges to the trial court's judgment of contempt.

A

The defendant claims that the court improperly found him in contempt for wilfully violating the July 22, 2019 stipulation by refusing to make the lump sum payments in satisfaction of his 2019 alimony and child support obligations. In finding the defendant in contempt, the court reasoned that, "taking into account the overall circumstances, including the context in which the stipulation was executed, a fair reading of the relevant provisions of the stipulation, regarding the payment of unallocated alimony and child support, is susceptible to only one meaning, and hence is unambiguous; that the intention of the parties was to modify the original order of the court to fix the remaining alimony obligation as a lump sum certain to be paid over time as specified therein; and that in making this finding, the court has considered the following: (1) the parties omitted the language relating to the termination of the [defendant's] obligation to pay unallocated alimony and child support in the event of the death of either party or the remarriage of the [plaintiff]; (2) the use of the phrase 'shall terminate immediately' is clear and self-evident; (3) a specific lump sum was agreed upon for 2019 (i.e., $504,000); (4) the [defendant's] obligation for both 2018 and 2019 had already accrued the maximum obligation as of the date of the stipulation and well before the remarriage of the [plaintiff] . . . (5) payment of alimony and child support was due upon receipt of the year-end bonus in

February . . . (6) by April, 2019, the [defendant] was made aware of the [plaintiff's] engagement to remarry . . . (7) if there was, as the [defendant] suggests, a continuing obligation to pay alimony, subject to earlier termination for death or remarriage, logic dictates that there would be no need to enter into a new agreement, as the basic obligation would have remained essentially unchanged, and the only change being the timing of the payments; (8) that the [defendant] had the means to make said payments . . . (9) the [defendant] wilfully failed and neglected to make the installment payments on January 31, 2020, and April 30, 2020 . . . and that, therefore, the [defendant's] failure to do so amounts to wilful contempt." (Citations omitted.)

On appeal, the defendant argues that the court "erred in ruling that the stipulation dated July 22, 2019, modified the underlying separation agreement dated April 7, 2011, by unconditionally terminating the defendant's alimony obligation as of that date and substituting a lump sum obligation to the plaintiff payable over time." The defendant contends that the termination of his alimony obligation was contingent on his payment of the lump sums set forth in the July 22, 2019 stipulation and, because he had not yet made those payments, the provision of the parties' separation agreement that provided for the termination of his alimony obligation upon the plaintiff's remarriage was still in effect, and his obligation to make those payments terminated upon the plaintiff's remarriage, which occurred on November 9, 2019.

In paragraph 2 of the July 22, 2019 stipulation, the parties agreed that "[t]he defendant's obligation to pay unallocated alimony and child support, pursuant to the parties' separation agreement, dated April 7, 2011, shall terminate immediately, subject to him making the following payments . . . ." Although the language of the

stipulation that states that the defendant's alimony obligation "shall terminate immediately, subject to" his payment of certain lump sums in the future could be construed as ambiguous in that it suggests an *immediate* termination of alimony, but then states that the termination is subject to the defendant making certain payments in the future, any possible ambiguity was clarified by the defendant and his attorney on July 22, 2019, when the stipulation was presented to the court for approval. When the parties' stipulation was presented to the court for its approval, both parties were present in court with their attorneys, and the defendant's attorney clarified: "I would just like both parties to acknowledge their understanding that *alimony is terminated today* and the only obligations payable are those set forth in paragraph 2." (Emphasis added.) Both parties agreed that alimony terminated on that date. The defendant's attorney subsequently reiterated: "[The defendant] has every intention of making the payments on time, if not early. But in the situation where there is some issue with the payment, [the plaintiff] cannot come back and ask that alimony be turned back on. She can collect the payments in this [stipulation], but she can't then try to restart or reawaken alimony. *Alimony is terminated*, but [the defendant] owes her these payments." (Emphasis added.) The clarification that the plaintiff's only recourse if the defendant did not make the lump sum payments was to move for contempt, not to have the periodic order recommence, is indicative of the parties' understanding that the defendant's alimony obligation terminated immediately with the execution of the July 22, 2019 stipulation.

The defendant nevertheless contends that the provision of the parties' separation agreement that provided for the termination of alimony upon the plaintiff's remarriage applied to the lump sum payments set forth in the July 22, 2019 stipulation and that, therefore, he

was not obligated to make those payments. This argument is belied by the purpose of those payments, which is unambiguously set forth in the July 22, 2019 stipulation as to satisfy the defendant's 2018 and 2019 alimony and child support obligations, which already had accrued by the time the parties entered into the agreement to modify the separation agreement by way of the July 22, 2019 stipulation. The defendant testified that, for every year since the date of dissolution, including 2019, he has made the maximum amount that is subject to the alimony computation—$1.2 million—within the first 60 days of the calendar year. Because the parties' separation agreement obligated the defendant to satisfy his alimony and child support obligations immediately on receipt of that income, those obligations accrued by the end of February each year, including 2019. Consequently, as the trial court aptly found, the lump sum amounts set forth in the July 22, 2019 stipulation were due to satisfy obligations that already had accrued. We do not agree that the lump sum payments required by the July 22, 2019 stipulation, which were due to satisfy the defendant's past due alimony and child support obligations, were subject to termination on the basis of the plaintiff's November, 2019 remarriage.[10]

On the basis of the foregoing, we conclude that the trial court properly found that the circumstances surrounding the execution of the July 22, 2019 stipulation rendered its meaning clear and unambiguous and that the defendant wilfully failed to comply with it when he refused to make the January and April, 2020 payments to the plaintiff. Because the defendant has not argued that he was unable to make those payments, the court's judgment of contempt was not improper.

[10] Even if the lump sum payments were subject to the termination provision of the parties' separation agreement, the defendant has not offered any explanation as to why that would excuse him from paying alimony until the November 9, 2019 date of the plaintiff's remarriage.

B

The defendant also claims that the court erred in finding him in contempt for failing to pay 100 percent of the medical expenses of the parties' children in that he refused to pay the $5000 concierge fee charged by Dr. Gamble. The defendant argues that the concierge fee was merely an access fee, not a medical expense for which he was responsible. We disagree.

The following additional facts, which are undisputed, are relevant to the resolution of this claim. The record reflects that, in September, 2018, the parties' older daughter became a patient of Dr. Gamble. At that time, the plaintiff paid Dr. Gamble a fee in the amount of $5000, which was billed as a "Concierge Services Membership Fee." On October 1, 2019, Dr. Gamble sent the plaintiff an email, which was admitted into evidence at the contempt hearing, pertaining to the concierge membership renewal for the year 2019–2020. In that email, Dr. Gamble explained, inter alia: "Each year the Concierge Services Membership Fee is subject to change as stated in your contract.[11] This change is in part, due to a systematic review of the previous years' uncompensated (by your healthcare insurance company) services and care coordination provided by Dr. Gamble. Based on this analysis of past utilization of services, we then attempt to predict what the upcoming year will bring. After extensive review of [your daughter's] chart, the Concierge Services Membership Fee stayed the same for the 2019–2020 year. If you would like to review and discuss the individual factors we used to make this decision, please do not hesitate to call and I will gladly provide both the documentation and explanation at your convenience." (Footnote added.) The plaintiff asked Dr. Gamble to forward that email to the defendant for payment of the concierge

[11] This contract was not admitted into evidence.

fee. Upon receipt of it, the defendant responded: "You can remove me from your email chain. I have no historical or going forward relationship with this service provider."

At the contempt hearing, the defendant acknowledged that, pursuant to the July 22, 2019 stipulation, he was obligated to pay for all unreimbursed medical expenses of the parties' daughters.[12] He testified that "[the plaintiff] paid the concierge access fee" charged by Dr. Gamble and he paid the "medical related bills." He stated that he did not pay the concierge fee because "it's not a medical bill." He elaborated: "[W]hen you look in the medical bills, they all have health codes for what they actually are. When I asked the doctor for the medical expense, she said it's not a medical expense. It's the concierge fee.[13] So . . . I didn't see a medical expense associated with a concierge fee." (Footnote added.) The defendant agreed with his attorney's characterization of a concierge doctor as "one of those doctors that you pay them a bunch of money up front and they are sort of at your beck and call" and that a concierge fee is "kind of like a retainer for a lawyer, but it's a similar thing with a doctor . . . ." The defendant testified that the plaintiff told him that the concierge fee was "just an access fee."

In finding that the defendant wilfully violated the July 22, 2019 stipulation when he refused to pay the concierge fee charged by Dr. Gamble, the trial court found "[t]hat the provisions of the stipulation regarding

[12] At the contempt hearing, the defendant's attorney repeatedly argued that he was not claiming that the provision of the July 22, 2019 stipulation obligating the defendant to pay 100 percent of unreimbursed medical expenses for the parties' daughters was ambiguous but, instead, argued that it is "common sense" that a concierge fee is not a medical expense.

[13] Although this testimony suggests that the defendant may have discussed the purpose of the concierge fee with Dr. Gamble, the defendant did not elaborate on this testimony and there is no evidence of any such discussion in the record.

the payment of unreimbursed medical expenses is clear and unambiguous . . . the [parties' older daughter] is treating with Dr. Sarah Gamble . . . [who] charges an annual concierge access fee as part of [her] practice [and] she has billed the sum of $5000 for the year 2019[–2020] . . . the [defendant] is aware of said charges and has refused and neglected to pay same . . . annual concierge fees are becoming increasingly common . . . said fee is a medical expense within the meaning of the [July 22, 2019] stipulation . . . the term medical expense, as used in dissolution decrees, must be interpreted broadly . . . and . . . the [defendant's] . . . failure to pay [the concierge fee] amounts to wilful contempt." (Citation omitted; internal quotation marks omitted.)

As the court aptly noted, "[t]he term 'medical expense,' as used in dissolution decrees, must be interpreted broadly because such decrees generally provide for the maintenance of the former wife and children." (Internal quotation marks omitted.) *Sheppard* v. *Sheppard*, 80 Conn. App. 202, 218, 834 A.2d 730 (2003). "[I]n order to determine whether certain expenses are medical in nature, the court must decide whether the services rendered are a necessary part of the overall treatment of the child. That conclusion comports with the established concept that the practice of medicine is an expansive one. Medicine is [t]he science of diagnosing, treating, or preventing disease or other damage to the body or mind." (Internal quotation marks omitted.) Id.

Here, it is evident from the email sent to the parties by Dr. Gamble that the annual concierge fee that she assesses her patients is based in part on a review of each patient's "uncompensated (by your healthcare insurance company) services and care coordination provided by Dr. Gamble." In other words, the concierge fee is based on the cost of medical treatment provided

to the parties' daughter that was not paid by their insurance.[14] Because the email from Dr. Gamble pertaining to the basis of the concierge fee clearly stated that the fee was based on a review of the unreimbursed costs of the medical treatment provided to the parties' daughter during the prior year, the defendant's argument that he had a good faith belief that the concierge fee charged by Dr. Gamble was merely an access fee is unfounded. We therefore conclude that the court properly found that the defendant wilfully violated his obligation, under the July 22, 2019 stipulation, to pay for 100 percent of the medical expenses of the parties' children. Accordingly, the court did not abuse its discretion in granting the motion for contempt.

C

Finally, the defendant challenges the trial court's award of additional attorney's fees to the plaintiff for the period from May 19 to June 7, 2022. In granting the plaintiff's motion, the court set forth the following additional procedural history. On July 19, 2022, the plaintiff filed a motion for additional attorney's fees, accompanied by an affidavit of services bearing that same date, for the time period of May 19 to June 7, 2022. On November 1, 2022, the court held a hearing on, inter alia,[15] the plaintiff's motion for additional attorney's fees, at which both parties testified. By way of a memorandum of decision dated November 16, 2022, the court granted the plaintiff's motion for additional attorney's fees, finding "[t]hat the [plaintiff] lacks ample liquid assets to pay attorney's fees to defend the appeal;

[14] Moreover, without paying that fee, the parties' daughter would have been denied treatment by Dr. Gamble, which ultimately occurred in 2021 when the fee was not paid.

[15] The court also heard the parties on the plaintiff's motions for attorney's fees to defend the defendant's appeal and to terminate the appellate stay at that time. The court's rulings on those motions have not been challenged on appeal.

that she owes a substantial amount of attorney's fees for legal representation to date . . . that the [defendant] has expended considerable sums in connection with this litigation; that the [defendant] has substantial assets available to him; that the [plaintiff] is unlikely to be able to adequately defend the [defendant's] appeal without some contribution toward her fees by the [defendant]; and that it is equitable and appropriate that the [defendant] make some contribution thereto." (Citation omitted.)

The court further found "that the [defendant] herein was found in contempt; that, in addition, the court found that it was equitable and appropriate to award the [plaintiff] attorney's fees; that the [plaintiff's] affidavit of fees dated May 19, 2022, filed prior to the hearing, did not include any fees and costs for the hearing itself; the court has reviewed the affidavit of services dated July 19, 2022, which covers the period May 19, 2022 through June 7, 2022 . . . and it finds the fees claimed therein to be fair and reasonable and relate to the issue of contempt; and that it is equitable and appropriate to grant that portion of the [plaintiff's] claim for additional fees related to the period May 19, 2022, through June 7, 2022, in the amount of $12,812.50." (Citation omitted.)

The defendant argues that "[t]he plaintiff's postjudgment motion for [additional] attorney's fees seeking to alter or amend the original judgment was barred by the principles of res judicata (claim preclusion) and collateral estoppel (issue preclusion)." Because the defendant did not assert this argument to the trial court but, rather, raises it for the first time on appeal, it is not properly preserved. See Practice Book § 60-5 ("[t]he court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial"); see also *USAA Federal Savings Bank* v. *Gianetti*, 197 Conn. App. 814, 819, 232 A.3d 1275 (2020). Additionally, aside from defining the concepts of claim

preclusion and issue preclusion, the defendant does not provide any legal analysis pertaining to the applicability of those doctrines to the plaintiff's supplemental claim for attorney's fees. Accordingly, the defendant's claim is inadequately briefed. See, e.g., *Robb* v. *Connecticut Board of Veterinary Medicine*, 204 Conn. App. 595, 611, 254 A.3d 915 ("We 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." (Internal quotation marks omitted.)), cert. denied, 338 Conn. 911, 259 A.3d 654 (2021). For those reasons, we decline to review this claim.

II

On cross appeal, the plaintiff claims that the court improperly dismissed her offer of compromise, which she filed pursuant to § 52-192a and Practice Book § 17-14, offering to resolve her claim against the defendant for his alleged violation of the provision of the July 22, 2019 stipulation that required the defendant to make two payments to her in the amount of $504,000 to satisfy his 2019 alimony and child support obligation. She contends that the court erred in finding that § 52-192a did not apply to her claim because it was not based upon contract and/or did not seek money damages.[16] We are not persuaded.

[16] The plaintiff also claims that the court erred in holding that Practice Book § 17-14 did not apply to her claim. Because the language of Practice Book § 17-14 mirrors the language of § 52-192a, our analysis of § 52-192a is dispositive of the plaintiff's claim regarding the application of Practice Book § 17-14.

Because our resolution of the plaintiff's claim requires us to construe § 52-192a, we begin with the general principles of statutory construction that guide our analysis. "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. . . . Issues of statutory construction . . . are also matters of law subject to our plenary review. . . .

"In the construction of statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly." (Citations omitted; internal quotation marks omitted.) *Rutter* v. *Janis*, 334 Conn. 722, 730, 224 A.3d 525 (2020). "[W]hen construing a statute, we do not interpret some clauses in a manner that nullifies others, but rather read the statute as a whole and so as to reconcile all parts as far as possible. . . . Consequently, we look to the language of the statute in its entirety." (Citation omitted.) *Vibert* v. *Board of Education*, 260 Conn. 167, 171, 793 A.2d 1076 (2002).

The relevant language of § 52-192a (a) provides: "[A]fter commencement of *any civil action based upon contract or seeking the recovery of money damages*, whether or not other relief is sought, the plaintiff may,

not earlier than one hundred eighty days after service of process is made upon the defendant in such action but not later than thirty days before trial, file with the clerk of the court a written offer of compromise signed by the plaintiff or the plaintiff's attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying the action for a sum certain. . . ." (Emphasis added.)

In rejecting the plaintiff's claim for offer of compromise interest, the court acknowledged that a dissolution of marriage action is a civil action, but is not one based upon contract or one that seeks the recovery of money damages.[17] The plaintiff contends that § 52-192a applies in this case because a dissolution of marriage action is a civil action, the parties' separation agreement and the stipulation filed on July 22, 2019, were contracts, and the plaintiff's postjudgment motion for contempt sought a recovery of money damages for an alleged breach of contract by the defendant. We agree with the trial court's conclusion that, although a dissolution action is a civil action; see *Charles* v. *Charles*, 243 Conn. 255, 257, 701 A.2d 650 (1997) ("[a]n action for dissolution of a marriage 'obviously is a civil action' "), cert. denied, 523 U.S. 1136, 118 S. Ct. 1838, 140 L. Ed. 2d 1089 (1998); it is not an action based upon contract or an action seeking money damages. It is well established that "an action for divorce or dissolution of marriage is a creature of statute [and] it is essentially equitable in its nature." *Pasquariello* v. *Pasquariello*, 168 Conn. 579, 584, 362 A.2d 835 (1975). Indeed, the plaintiff does not argue that a dissolution of marriage action is "based

[17] The court noted that Practice Book § 17-14 mirrors the language of § 52-192a, and further reasoned that it was not applicable to dissolution of marriage actions because "the provisions of Practice Book § 17-14 have not been adopted for use in Chapter 25 of the Practice Book (see [Practice Book §§ 25-23, 25-31 and 25-39]) in dealing with Family Matters . . . ." As noted in footnote 16 of this opinion, we need not engage in a separate analysis of Practice Book § 17-14.

upon contract" or that it "seek[s] the recovery of money damages . . . ." General Statutes § 52-192a (a). Instead, she argues that her contempt claim constituted such an "action" in that it was based on the defendant's violation of the July 22, 2019 stipulation. We are not persuaded by the plaintiff's argument that a contempt claim arising out of a postjudgment marital dissolution action constitutes a civil action based upon contract. To employ the plaintiff's interpretation would allow offers of compromise to be filed as to motions or proceedings, not to actions themselves. Because the plain language of the statute does not support the plaintiff's argument, it is unavailing. Accordingly, we conclude that the court properly declined to award offer of compromise interest on the ground that § 52-192a does not apply to marital dissolution cases.

The form of the judgment with respect to the plaintiff's offer of compromise is improper, that portion of the judgment is reversed, and the case is remanded with direction to strike the offer of compromise; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.