IN RE P. M.*
(AC 47076)

Alvord, Cradle and Suarez, Js.

Syllabus

The respondent father appealed to this court from the judgment of the trial court adjudicating his minor child, P, neglected and ordering a six month period of protective supervision. *Held*:

1. Contrary to the assertion of the petitioner, the Commissioner of Children and Families, that the respondent father's claim was moot, this court concluded that his claim was reviewable under the collateral consequences exception to the mootness doctrine; although the period of protective supervision had expired, there was a reasonable possibility that P's neglect adjudication would have prejudicial collateral consequences, as the Superior Court could, at some time in the future, rely on the neglect adjudication, pursuant to the applicable statute (§ 17a-112 (j) (3) (B) (i)), in granting a petition to terminate the father's parental rights as to P.
2. The respondent father could not prevail on his claim that there was insufficient evidence to support the trial court's determination that P was neglected; the court's factual findings, which were supported by sufficient evidence in the record, demonstrated that the homemade infant formula that the father had been feeding P caused P's severe malnutrition and his failure to thrive, and the father's failure to follow medical recommendations to regularly take P to a medical provider for well-baby checkups prevented detection of P's failure to thrive.

Argued April 8—officially released June 18, 2024**

Procedural History

Petition by the Commissioner of Children and Families to adjudicate the respondents' minor child neglected, brought to the Superior Court in the judicial district of Fairfield, Juvenile Matters, and tried to the court, *McLaughlin, J.*; judgment adjudicating the minor

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the court.

** June 18, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

child neglected, from which the respondent father appealed to this court. *Affirmed.*

David B. Rozwaski, assigned counsel, for the appellant (respondent father).

Albert J. Oneto IV, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Nisa Khan*, assistant attorney general, for the appellee (petitioner).

Catherine L. Williams, assigned counsel, for the minor child.

Opinion

CRADLE, J. The respondent father, I. M. (respondent), appeals from the judgment of the trial court adjudicating his minor child, P. M. (P), neglected.[1] On appeal, the respondent claims that the court erred in adjudicating P neglected because the evidence relied upon by the court is not sufficient to support its determination that P was denied proper care and attention and was permitted to live under conditions and circumstances injurious to his well-being. We affirm the judgment of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to our resolution of this appeal. P was born healthy and without complications in August, 2022, to T. T. (mother) and the respondent (collectively, parents). P's parents believe in an alkaline, plant-based diet for their family, so they created a homemade infant formula when their first child, C. M. (C), was born in May, 2021. Neha Kaushik, a naturopathic doctor, first met the family and became C's primary care provider when C was approximately six months old. Kaushik had no information about C's growth

[1] The respondent mother, T. T., also was named in the neglect petition and appeared in the trial court, but she did not file an appeal. We therefore refer in this opinion to the respondent father as the respondent.

before that time but subsequently worked with the respondent to help him alter the homemade infant formula to ensure that C received necessary nutrients.

About six days after P was born, his parents took him to see Kaushik for his first well-baby visit. At his initial visit in August, 2022, Kaushik spoke to P's parents about their homemade infant formula, and they provided her with a list of ingredients in the formula. Kaushik reviewed the list and made a recommendation to add certain nutrients to the formula. Although P is the youngest patient Kaushik had treated in her career and she did not have experience or specialized training in treating infants, Kaushik indicated that she had no concerns that the homemade infant formula would provide P with the nutrients that he, as an infant, needed in order to develop.

Kaushik followed up with P's parents about the need to bring him in for monthly infant wellness checkups, but they failed to do so. Kaushik did not see P again until December, 2022, when he was ill and present for a virtual appointment during which she diagnosed him with respiratory syncytial virus (RSV) and provided his parents with some naturopathic treatments.

Kaushik next saw P virtually on January 27, 2023. At that visit, P's parents told Kaushik that he had been having breathing difficulties starting on January 25, 2023, and that he was not eating. His parents also indicated that they had provided him with ginger and cucumber water along with other naturopathic treatments. Kaushik gave the parents treatment advice and further explained that they would need to bring him to an urgent care facility if his breathing did not improve in the following two to three hours. When she called P's parents a few hours later, his condition had not improved, and they had not taken him to urgent care. Kaushik told them that she would call the authorities

if they did not take him. Later that evening, P's parents brought him to St. Vincent's Medical Center (St. Vincent's). By the time P arrived at St. Vincent's, he was critically ill, and St. Vincent's transferred him to Yale New Haven Children's Hospital (Yale), where the Yale medical team admitted him and diagnosed him with croup, COVID-19, anemia, and severe metabolic acidosis. The Yale medical team also noted that, despite being five and one-half months old, he presented, in weight, length, and head circumference, as a two month old.

The Yale medical team worked diligently and urgently to stabilize him. On January 28, 2023, the Yale medical team intubated P to treat acute hypoxemia. The Yale medical team later told P's parents that a blood transfusion would be medically necessary to save his life. At first, P's parents would not consent. Even after P's mother consented, the respondent, who was disruptive and aggressive at the hospital, refused to consent. The Yale medical team notified P's parents that they were initiating legal action to obtain a court order to allow the blood transfusion, and the respondent eventually consented to the blood transfusion without a court order being issued. Following the blood transfusion, P started to stabilize.

On January 29, 2023, the petitioner, the Commissioner of Children and Families, invoked a ninety-six hour hold on P and C due to concerns regarding the children's nutritional status.[2] On January 30, 2023, additional members of the Yale medical team became involved with P as it related to his growth and nutrition. Sharon Bertrand, a registered, board-certified dietician

[2] The petitioner released the ninety-six hour hold on C when it was determined that he was not malnourished. The petitioner also filed a neglect petition on behalf of C, but the court later granted the respondent's motion to strike the neglect petition. Because the petitioner did not file an amended petition after the court granted the motion to strike, the court dismissed the neglect petition relating to C.

with a specialty certification in pediatric critical care nutrition, diagnosed P as severely malnourished based on his " 'z-scores,' "[3] which were considerably below the standard and placed him barely at the first percentile for growth. In addition, P's lab results revealed that he was deficient in vitamin A, carnitine, and seven essential amino acids.

Bertrand met with the respondent to discuss the ingredients in the homemade infant formula. Although the respondent had given the Yale medical team a list of the formula's ingredients, the list did not provide the measurement of each ingredient or the sources that produced the ingredients. It was also unclear to the Yale medical team how the respondent was making the formula, so there was no way of knowing if the homemade infant formula was contaminated. It was later determined that the homemade infant formula was nutritionally deficient. Bertrand, who found that P's homemade infant formula lacked amino acids, fatty acids, and vitamins, attempted to speak to the respondent about her concerns, but he refused to engage in conversation, talked over her, and was combative. The Yale medical team made the decision to stop using the homemade infant formula and switched to Neocate, a commercially made, vegan, non-soy formula.[4]

On February 2, 2023, the petitioner filed the present neglect petition, alleging that P was neglected in that he

[3] Z-scores, which "measure the growth and nutritional status of infants and children based on weight, length, and head circumference," are "plotted on a standard growth chart provided by the [World Health Organization] and/or the [Centers for Disease Control]." P's z-scores upon his admission to Yale were -3 or -3.4 for weight, -3.45 for length, and -2.6 for head circumference.

[4] At first, the Yale medical team provided P with the homemade infant formula, but it was too thick to pass through the feeding tube once P was intubated. They consulted with Kaushik about possible ways to dilute the formula. The Yale medical team then began feeding P both Neocate and the homemade infant formula but switched exclusively to Neocate in light of their increasing concerns about the homemade infant formula.

had been denied proper care and attention, physically, educationally, emotionally or morally, or that he had been permitted to live under conditions, circumstances or associations injurious to his well-being.[5] On the same day, the court, *Maronich*, *J.*, granted the petitioner's motion for an ex parte order of temporary custody (OTC), vesting temporary custody of P in the petitioner, and vacated the ninety-six hour hold. On February 22, 2023, the court, *Hon. William Holden*, judge trial referee, sustained the OTC until further order of the court.

On February 10, 2023, the Yale medical team extubated P, but he remained in critical condition, in part, due to his malnutrition. He was steadily gaining weight on the Neocate and his iron and vitamin numbers were stabilizing. On February 27, 2023, the Yale medical team discharged P from the hospital, and the petitioner placed him in the care of his paternal grandmother.

During the neglect trial, which took place on September 21, 25 and 27, 2023, the court, *McLaughlin*, *J.*, admitted into evidence, inter alia, Yale medical records dated January 28 and February 27, 2023, the affidavits of Chelsea Lepus, an attending physician at the Department of Pediatric Gastroenterology, Hepatology and Nutrition at Yale, and Lisa Pavlovic, the attending pediatrician with the child abuse program at Yale, and a chart made by Kaushik comparing the nutritional content of infant formulas, including the homemade infant formula and Neocate. The petitioner offered the testimony of, among others, Bertrand, Lepus, and Pavlovic. P's mother offered the testimony of Kaushik, and the

[5] The petitioner also alleged that P had been abused in that he had physical injuries inflicted by other than accidental means or that he was in a condition that was the result of maltreatment including but not limited to malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment. The court did not find that P was abused or maltreated, and the abuse allegation is not at issue in this appeal.

respondent offered the testimony of P's paternal grandmother. The court issued a memorandum of decision, dated September 29, 2023, in which it held that "[t]he overwhelming credible evidence established by more than a fair preponderance that, as of the filing of the neglect petition on February 2, 2023, [P] was neglected in that he was denied proper care and attention physically and medically and in that he was permitted to live under conditions or circumstances injurious to his well-being."

In so holding, the court credited the testimony of Bertrand, Lepus, and Pavlovic. Specifically, the court credited their testimony that, based on the severity of P's condition when he was admitted to Yale, he had been malnourished for at least three months prior to his hospitalization. Moreover, the court found Kaushik's testimony unpersuasive and unreliable as to the adequacy of P's growth and found equally unreliable her comparison of the respondent's homemade infant formula with Neocate. The court further found that P was critically ill when he arrived at Yale, had been malnourished well before his admission, and was failing to thrive. The court then concluded that the petitioner had established by more than a fair preponderance of the evidence that P was malnourished because he was not receiving necessary nutrients from the homemade infant formula supplied by his parents.

The court also found that P's parents failed to comply with Kaushik's recommendation of monthly visits as a part of a well-baby care plan. It found that P's parents "simply did not follow up. No doctor saw [P] during the early months of his life. It was not until [P] was sick with RSV that [his] parents reached out to . . . Kaushik. Thereafter, [P's] parents did not seek out medical care for [him] until he was so critically ill that he stayed in the hospital for a month after being intubated and received a blood transfusion." The court concluded

that the evidence established "by more than a fair preponderance that, as of the filing of the neglect petition, [P] had not seen a doctor for at least three months despite repeated attempts by . . . Kaushik to have [his] parents bring [him] in for a required visit." On the basis of these conclusions, the court adjudicated P neglected in that he was denied proper care and attention physically and medically and in that he was permitted to live under conditions or circumstances injurious to his well-being. The court then found, by a fair preponderance of the evidence, that it was "in [P's] best interest to return to his parents' care under a period of six months of protective supervision." This appeal followed.[6]

On appeal, the respondent claims that, in light of the record as a whole, the evidence relied upon by the trial court is not sufficient to support the court's adjudication of neglect.[7] As a preliminary matter, the petitioner

[6] The attorney for the minor child, P, filed a statement adopting the petitioner's brief.

[7] The respondent also cites, in his principal appellate brief, cases that he contends stand for the proposition that parents have a constitutional right to maintain the integrity of their family without state interference. See *Santosky* v. *Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *In re Teagan K.-O.*, 335 Conn. 745, 755–56, 242 A.3d 59 (2020); *In re Delilah G.*, 214 Conn. App. 604, 613–14, 280 A.3d 1168, cert. denied, 345 Conn. 911, 282 A.3d 1277 (2022). Because the respondent does not engage in any substantive discussion or clearly set forth any argument as to a constitutional violation, we decline to review any such claim. See *C. B.* v. *S. B.*, 211 Conn. App. 628, 630, 273 A.3d 271 (2022) ("[f]or a reviewing court to judiciously and efficiently . . . consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs" (internal quotation marks omitted)). The respondent's efforts, in his reply brief and at oral argument before this court, to further address a potential constitutional claim do not remedy his failure to raise the claim in his principal appellate brief. *Burton* v. *Dept. of Environmental Protection*, 337 Conn. 781, 797 n.12, 256 A.3d 655 (2021) ("[i]t is well settled that a claim cannot be raised for the first time at oral argument" (internal quotation marks omitted)); *Doctor's Associates, Inc.* v. *Keating*, 72 Conn. App. 310, 316, 805 A.2d 120 (2002) ("a reply brief is not the proper vehicle for curing an omission in the appellant's brief"), aff'd, 266 Conn. 851, 836 A.2d 412 (2003).

challenges this court's subject matter jurisdiction by asserting that the respondent's claim is moot now that the period of protective supervision has expired. The respondent counters that the court's adjudication of neglect has prejudicial collateral consequences that nonetheless entitle his claim to appellate review. We agree with the respondent that his claim is reviewable under the collateral consequences exception to the mootness doctrine, but we nonetheless conclude that the evidence is sufficient to support the court's neglect adjudication.

"Mootness is an exception to the general rule that jurisdiction, once acquired, is not lost by the occurrence of subsequent events. . . . Because mootness goes to the power of this court to entertain an appeal, we address the issue as a threshold matter." (Citation omitted.) *In re Alba P.-V.*, 135 Conn. App. 744, 747, 42 A.3d 393, cert. denied, 305 Conn. 917, 46 A.3d 170 (2012). "Since mootness implicates subject matter jurisdiction . . . [and] raises a question of law . . . our review of that issue is plenary. . . .

"When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot. . . . It is a well-settled general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . Nevertheless, the court may retain jurisdiction when a litigant shows that there is a reasonable possibility that prejudicial collateral consequences will occur. . . . Accordingly, the litigant must establish these consequences by more than mere conjecture, but need not demonstrate that these conse-

quences are more probable than not. This standard provides the necessary limitations on justiciability underlying the mootness doctrine itself. Whe[n] there is no direct practical relief available from the reversal of the judgment . . . the collateral consequences doctrine acts as a surrogate, calling for a determination whether a decision in the case can afford the litigant some practical relief in the future." (Citations omitted; internal quotation marks omitted.) *In re Claudia F.*, 93 Conn. App. 343, 345–46, 888 A.2d 1138, cert. denied, 277 Conn. 924, 895 A.2d 796 (2006); see also *Williams* v. *Ragaglia*, 261 Conn. 219, 226–27, 802 A.2d 778 (2002).

In the present case, there is a reasonable possibility that P's neglect adjudication will have prejudicial collateral consequences. Specifically, the Superior Court, at some time in the future, could rely on the present adjudication of neglect in granting a petition to terminate the respondent's parental rights as to P. See *In re Alba P.-V.*, supra, 135 Conn. App. 750 ("[General Statutes § 17a-112 (j) (3) (B) (i)] requires only a single prior adjudication of neglect as to the child who is the subject of a termination of parental rights petition"); see also General Statutes § 17a-112 (j) (3) (B) (i).

The present case is distinguishable from cases in which this court has concluded that a challenge to a neglect adjudication was moot where the parent or guardian of the neglected or uncared for child argued that the adjudication would have collateral consequences for the status of *other* children. See, e.g., *In re Tiarra O.*, 160 Conn. App. 807, 812–13, 125 A.3d 1094 (2015); *In re Claudia F.*, supra, 93 Conn. App. 348. Here, the neglect adjudication could reasonably have collateral consequences for the respondent's parental rights as to the neglected child himself. The present case is also distinguishable from cases in which the neglected child soon would reach the age of majority. See, e.g., *In re Rabia K.*, 212 Conn. App. 556, 562, 275

A.3d 249 (2022) ("the respondent fails to address why there is a reasonable possibility that a future child protection proceeding would be initiated" given that child would turn eighteen in matter of months). Here, P is a toddler, so there exists a reasonable possibility that the neglect adjudication would yield prejudicial consequences before he reaches the age of majority. Last, the present case is distinguishable from cases in which there had been a previous adjudication of neglect of the same child. See, e.g., *In re Alba P.-V.*, supra, 135 Conn. App. 750 ("review of the present [neglect adjudication] would provide the respondent with no practical relief" from collateral consequences for future proceedings because neglected children "would be exposed to a subsequent termination of parental rights proceeding predicated on [earlier neglect adjudications]"). Before September 29, 2023, P had not been adjudicated neglected.[8] Because a court may grant a petition for the termination of parental rights if it finds, among other things, that "the child . . . has been found by the Superior Court or the Probate Court to have been neglected . . . in a prior proceeding"; General Statutes § 17a-112 (j) (3) (B);[9] the present adjudication constitutes a step toward

[8] There is evidence in the record of two previous reports of medical neglect involving this family: one related to C in 2021, and another related to P in August, 2022. Both reports raised medical and nutritional concerns, but the petitioner closed its case in September, 2022, and neither child was adjudicated neglected.

[9] General Statutes § 17a-112 (j) provides in relevant part: "The Superior Court, upon notice and hearing as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that (1) the Department of Children and Families has made reasonable efforts to locate the parent and to reunify the child with the parent in accordance with subsection (a) of section 17a-111b, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts, except that such finding is not required if the court has determined at a hearing pursuant to section 17a-111b, or determines at trial on the petition, that such efforts are not required, (2) termination is in the best interest of the child, and (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, abused or uncared for in a prior proceeding . . . ."

the termination of the respondent's parental rights as to P that had not previously been taken. Accordingly, we conclude that the respondent's claim is reviewable.[10]

To support his claim on appeal that the evidence was not sufficient to support the court's neglect adjudication, the respondent argues that (1) P did, in fact, receive medical care between the time of his birth and his admission to Yale,(2) the respondent's behavior at Yale reflected his concern for P's treatment and did not interfere with the implementation of medical procedures, (3) P's condition upon admission to Yale was due to "an unfortunate confluence of events starting with the RSV, leading into the COVID-19 and croup infections, and the consequent lack of eating by the child,"; (4) P's family has a history of "small growth" and P's older brother, C, was found to be healthy despite living in the same home and sharing the same diet, and (5) P is progressing well in his overall development. We are not persuaded.

"Neglect proceedings, under . . . [General Statutes] § 46b-129, are comprised of two parts, adjudication and disposition. . . . The standard of proof applicable to nonpermanent custody proceedings, such as neglect proceedings, is a fair preponderance of the evidence. . . .

[10] In addition to raising the mootness issue in her appellate brief, the petitioner filed, with this court, a motion to dismiss the appeal as moot. The respondent filed an opposing memorandum in which he argued, inter alia, that his claim is reviewable under the "capable of repetition, yet evading review" exception to the mootness doctrine. This court issued an order for the parties to argue the issue of mootness before this court during oral argument. Counsel for the respondent argued, during oral argument before this court, that the respondent's claim was not moot under the "capable of repetition, yet evading review" exception. Because we determine that the respondent's claim is reviewable under the collateral consequences exception to mootness, we need not address the respondent's "capable of repetition, yet evading review" argument. Accordingly, we deny the petitioner's motion to dismiss.

"During the adjudicatory phase, the court determines if the child was neglected. Practice Book § 35a-7 (a) provides in relevant part: In the adjudicatory phase, the judicial authority is limited to evidence of events preceding the filing of the petition or the latest amendment. . . . [General Statutes § 46b-120 (4)] provides that a child may be found neglected if the child is being denied proper care and attention, physically, educationally, emotionally or morally, or is being permitted to live under conditions, circumstances, or associations injurious to the well-being of the child or youth . . . .

"When considering a challenge to the sufficiency of the evidence, the function of an appellate court is to review the findings of the trial court, not to retry the case. . . . [W]e must determine whether the facts set out in the memorandum of decision are supported by the evidence or whether, in light of the evidence and the pleadings in the whole record, those facts are clearly erroneous. . . . We also must determine whether those facts correctly found are, as a matter of law, sufficient to support the judgment. . . . [W]e give great deference to the findings of the trial court because of its function to weigh and interpret the evidence before it and to pass upon the credibility of witnesses . . . ." (Citation omitted; internal quotation marks omitted.) *In re Olivia W.*, 223 Conn. App. 173, 183–84, 308 A.3d 571 (2024).

We conclude that the court's factual findings with regard to its neglect determination were supported by sufficient evidence in the record, including, but not limited to, the testimony of witnesses that the court found credible. Contrary to the respondent's assertion that P's malnutrition was related to his RSV, COVID-19, and croup infections, the court credited the testimony of Bertrand, Lepus, and Pavlovic that P's malnourishment began well before his illnesses and credited

Bertrand's assessment that the homemade infant formula that P's parents had been feeding him prior to his admission to Yale was nutritionally deficient. The Yale medical records in evidence support the court's findings that P's weight, height, and head circumference at the time of the filing of the neglect petition were considerably below the standard for an infant of his age, in contrast with Kaushik's testimony that P's growth was adequate in the early months of his life, which the court explicitly discredited. Moreover, the respondent's assertion that P's older brother, C, had been healthy when being fed a similar diet is belied by the court's discrediting of Kaushik's testimony to that end. The court did, however, credit Kaushik's testimony that she repeatedly recommended to P's parents that they bring him to her office for medical care, and her testimony supports the court's finding that, nonetheless, P had not seen a doctor for months prior to his admission to Yale. Because this court does not retry the facts or pass upon the credibility of witnesses; *In re Niya B.*, 223 Conn. App. 471, 499, 308 A.3d 604, cert. denied, 348 Conn. 958, 310 A.3d 960 (2024); we conclude that there was sufficient evidence to support the court's findings of fact.

Finally, to the extent that the respondent claims that the court's findings were insufficient to support an adjudication of neglect, we disagree. We conclude that the facts properly found by the court, which demonstrate that (1) the homemade infant formula that P's parents had been feeding him was the cause of his severe malnutrition and his failure to thrive and (2) the respondent's failure to follow medical recommendations prevented the detection of P's failure to thrive, were sufficient to support the court's neglect determination. See, e.g., *In re Amber B.*, Docket Nos. CP-16-016537-A, CP-16-6016538-A, 2017 WL 1239470, *6 (Conn. Super. February 8, 2017) (adjudicating child neglected on basis of, in

part, findings that child was diagnosed with failure to thrive due to malnutrition and that parent failed to follow through with medical recommendations); see also 2 Dept. of Children & Families, Policy Manual (effective April 12, 2023) § 22-3 ("[e]vidence of physical neglect includes . . . malnutrition . . . [or] action/inaction resulting in the child's failure to thrive"). The respondent's arguments regarding his own behavior at Yale and P's progress after being discharged from Yale are of no moment to the court's adjudication determination, given that "[a] judgment of neglect is not directed at the respondent as a parent, but rather is directed at the condition of the [child]"; *In re Claudia F.*, supra, 93 Conn. App. 347; and that the court considered only "evidence of events preceding the filing of the petition," as it was required to do. Practice Book § 35a-7 (a).

The judgment is affirmed.

In this opinion the other judges concurred.

DANIEL A. MARTIN *v.* CHRISTOPHER R. OLSON, EXECUTOR (ESTATE OF ROBERT K. OLSON) (AC 46483)

Alvord, Cradle and Westbrook, Js.

Syllabus

The plaintiff appealed to this court from the judgment of the trial court rendered for the defendant on his claims of, inter alia, breach of contract. The plaintiff had been living with his grandfather, R, for approximately thirteen years prior to R's death, during which time he provided certain caregiving services to R. After R's death, the defendant was appointed the executor of R's estate. The plaintiff sent a claim to the defendant for compensation for his caregiving services, which the defendant rejected by filing a return of claims with the Probate Court and sending the return to the plaintiff in July, 2020. The plaintiff commenced this action in December, 2020, and the defendant raised several special defenses including, inter alia, that the plaintiff's claims were barred by the statute of limitations (§ 45a-363) because he did not commence this action within 120 days of receiving the return of claims. *Held*:

1. The plaintiff could not prevail on his claim that the trial court improperly instructed the jury regarding the effect of the return of claims and the defendant's statute of limitations defense; this court concluded that, even if it assumed that the jury instruction should have been more detailed, any error arising from the jury instructions was harmless and did not affect the verdict, as the trial court instructed the jury to answer the interrogatories in the order in which they were presented on the jury form, and the jury found that the plaintiff had failed to prove an essential element of each of his claims prior to addressing the defendant's special defense.
2. The trial court did not abuse its discretion by admitting into evidence testimony regarding the fair rental value of R's real property and evidence of the emotional effect of the plaintiff's claims on the defendant and the plaintiff's mother: the plaintiff failed to demonstrate that the defendant's testimony regarding the fair rental value of the property constituted hearsay, as the defendant, in describing his efforts to determine the fair rental value, did not testify to any specific out-of-court statements made to him, and, in his capacity as executor, the defendant was reasonably qualified to talk about the fair rental value; moreover, the court reasonably could have determined that the testimony provided by the defendant and the plaintiff's mother regarding their reactions to the plaintiff's claim against R's estate was relevant because it was offered to assist the jury in determining whether it found credible the plaintiff's testimony that R promised to compensate him for his caregiving services.
3. The trial court did not abuse its discretion in allowing the defendant to present the testimony of two "surrebuttal" witnesses during his case-in-chief; regardless of the descriptor attached to the witnesses' testimony by the plaintiff, the court's findings that it would allow the evidence so as not to delay the trial and because it did not surprise the plaintiff reasonably justified its decision to allow the defendant to present this evidence during his case-in-chief.

Argued March 13—officially released June 25, 2024

Procedural History

Action to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Budzik*, *J.*; verdict and judgment for the defendant, from which the plaintiff appealed to this court. *Affirmed.*

Thomas A. Amato, for the appellant (plaintiff).

Steven L. Katz, for the appellee (defendant).

Opinion

ALVORD, J. The plaintiff, Daniel A. Martin, appeals from the judgment of the trial court rendered after a jury verdict in favor of the defendant, Christopher R. Olson, executor of the estate of Robert K. Olson (decedent). On appeal, the plaintiff claims that the court improperly (1) instructed the jury regarding the defendant's statute of limitations defense, (2) admitted into evidence certain testimony, and (3) permitted the defendant to present the testimony of undisclosed witnesses during his case-in-chief.[1] We affirm the judgment of the trial court.

[1] We have consolidated certain of the plaintiff's issues on appeal for ease of discussion.

The plaintiff raises three additional claims on appeal, which warrant little discussion. The plaintiff first claims that the court improperly instructed the jury that the applicable burden of proof it was to apply to his claims was clear and convincing evidence rather than clear and satisfactory evidence. The court instructed the jury that clear and convincing evidence is a heightened burden of proof greater than a preponderance of the evidence and less than beyond a reasonable doubt. See footnote 6 of this opinion. Our jurisprudence provides that "[c]lear and satisfactory evidence is the equivalent to clear and convincing evidence." (Internal quotation marks omitted.) *Wallenta* v. *Moscowitz*, 81 Conn. App. 213, 220, 839 A.2d 641, cert. denied, 268 Conn. 909, 845 A.2d 414 (2004). We conclude that the court's instruction was proper and, therefore, we reject the plaintiff's claim.

The plaintiff also asserts, in his statement of issues, that the court improperly denied his motion to set aside the verdict. Aside from that statement, the only other mention of this claim is in the nature of a conclusion in the plaintiff's brief. "[When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.) *Darin* v. *Cais*, 161 Conn. App. 475, 483, 129 A.3d 716 (2015). We conclude that this claim is inadequately briefed and, accordingly, we decline to address it.

Finally, the plaintiff raises an evidentiary claim that the court improperly permitted the defendant to testify regarding the estate's financial transactions. In his appellate brief, the plaintiff devotes one sentence to his argument that the admission of this testimony was harmful. The plaintiff bears the burden of establishing not only the existence of an erroneous evidentiary ruling but that the evidentiary ruling was harmful. See *LM Ins. Corp.* v. *Connecticut Dismanteling, LLC*, 172 Conn. App. 622, 628, 161 A.3d 562 (2017). "[W]e are not required to review issues that have been improperly

The following facts, as reasonably could have been found by the jury, and procedural history are relevant to this appeal. In October, 2007, the plaintiff moved into the home of the decedent, his grandfather, at 65 Andreis Trail, South Windsor (property). The plaintiff continued to reside at the property with the decedent until the decedent's death in March, 2020. During this thirteen year period, the plaintiff provided certain caregiving services to the decedent in the form of (1) assisting the decedent with completing errands, (2) completing general household chores and cooking, (3) providing the decedent with his medications, (4) driving the decedent to doctor's appointments, (5) providing care to the decedent when he was ill, and (6) serving as a daily presence at the property in the event of an emergency. The decedent's children, including the defendant, also frequently provided care for their father.

After the decedent's death, the defendant was appointed executor of the decedent's estate. The decedent's last will and testament did not include the plaintiff as a beneficiary. On May 29, 2020, the plaintiff sent a claim to the defendant requesting $741,048 for the caregiving services the plaintiff provided to the decedent. On June 5, 2020, the plaintiff sent a supplemental claim to the defendant requesting an increased amount of $1,106,175 for the services he provided to the decedent. On July 10, 2020, the defendant filed with the Probate Court a form titled "Return of Claims and List of Notified Creditors" (return of claims), wherein the defendant rejected the plaintiff's claim by identifying the "date of

presented to this court through an inadequate brief. . . . [W]ithout adequate briefing on the harmfulness of an alleged error, the [plaintiff] is not entitled to review of [the] claim on the merits." (Citation omitted; internal quotation marks omitted.) *MacDermid, Inc.* v. *Leonetti*, 328 Conn. 726, 748, 183 A.3d 611 (2018). We conclude that the plaintiff has inadequately briefed whether the claimed error was harmful and, accordingly, we decline to address it. See id., 749 (defendant's harm analysis consisted of only cursory statements and therefore was inadequately briefed).

written disallowance" as July 10, 2020, and stating that the "amount allowed" to the plaintiff was zero dollars. The defendant sent via certified mail the return of claims to the plaintiff. On July 13, 2020, the postal return receipt card was signed. The defendant subsequently received the signed return receipt card.[2]

On October 19, 2020, the plaintiff sent a letter to the defendant by certified mail stating in relevant part: "I understand that you are the executor of [the decedent's estate]. On May 29, 2020 I presented a claim, and on June 6, 2020 an amended claim, to you in your capacity as such executor. You thus far have failed to give notice under [General Statutes §] 45a-360 (a)[3] of your action on said claim. Since at least ninety days have elapsed since May 29, 2020 please consider this correspondence my request under [§] 45a-360 (c)[4] that you take action on said claims." (Footnotes added.)

The defendant received the plaintiff's letter on October 24, 2020. On November 23, 2020, the defendant's counsel sent an email to the plaintiff's counsel stating in relevant part: "I have received a letter from your client to the [defendant] requesting action on his claim for caretake[r] services. The claim was denied by virtue

[2] The plaintiff testified that he did not receive the return of claims. The return receipt card that was signed and returned to the defendant had an illegible signature on the "signature" line and did not contain a printed name of the signatory.

[3] General Statutes § 45a-360 (a) provides: "The fiduciary shall: (1) Give notice to a person presenting a claim of the rejection of all or any part of his claim, (2) give notice to any such claimant of the allowance of his claim, or (3) pay the claim."

[4] General Statutes § 45a-360 (c) provides: "If the fiduciary fails to reject, allow or pay the claim within ninety days from the date that it was presented to the fiduciary as provided by section 45a-358, the claimant may give notice to the fiduciary to act upon the claim as provided by subsection (a) of this section. If the fiduciary fails to reject, allow or pay the claim within thirty days from the date of such notice, the claim shall be deemed to have been rejected on the expiration of such thirty-day period."

of the [return of claims] filed on July 9, 2020.[5] On that form, the claim was denied in its entirety. At this time, we consider the claim to be dismissed as no legal action was commenced within 120 days per Connecticut law." (Footnote added.)

In December, 2020, the plaintiff commenced this action against the defendant. In the plaintiff's operative amended complaint, he alleged five causes of action, captioned breach of express oral contract, breach of implied-in-fact contract, quantum meruit, unjust enrichment, and "breach of promise to nominate as beneficiary." The defendant filed an answer to the plaintiff's amended complaint and raised several special defenses. Relevant to this appeal, the defendant asserted, inter alia, that the plaintiff's causes of action were barred by the statute of limitations set forth in General Statutes § 45a-363[6] because the plaintiff did not commence this action within 120 days of receiving the return of claims.

A jury trial was held over several days in September, 2022. In addition to his own testimony, the plaintiff presented the testimony of Gabrielle Duah, an expert in the rates for caregiving services; Jami Somero, his friend; and Jeffrey J. Martin, his father. The plaintiff testified, inter alia, that he had several conversations with the decedent wherein the decedent offered to pay the plaintiff for his caregiving services, offered him the

[5] We note that, although the return of claims was dated July 9, 2020, records from the Probate Court reflect that the return of claims was filed with the court on July 10, 2020.

[6] General Statutes § 45a-363 provides in relevant part: "(a) No person who has presented a claim shall be entitled to commence suit unless and until such claim has been rejected, in whole or in part, as provided in section 45a-360.

"(b) Unless a person whose claim has been rejected (1) commences suit within one hundred twenty days from the date of the rejection of his claim, in whole or in part . . . he shall be barred from asserting or recovering on such claim from the fiduciary, the estate of the decedent or any creditor or beneficiary of the estate, except for such part as has not been rejected. . . ."

property as compensation for his services, and stated that he would name the plaintiff as a beneficiary in his will.

In addition to his own testimony, the defendant presented the testimony of his siblings. The defendant also presented the testimony of Audrey Carson, a caregiver hired by the defendant and his siblings to provide assistance to the decedent. Finally, the defendant presented, during his case-in-chief, the testimony of Debra Olson, the defendant's wife, and Mark Longo, the plaintiff's stepfather. The plaintiff objected to the defendant presenting this testimonial evidence during his case-in-chief, arguing that it was impermissible "surrebuttal" evidence. The court overruled the plaintiff's objection and permitted the defendant's wife to testify so as not to delay the trial and found that the plaintiff was not unfairly surprised by the testimony of his stepfather.

After the close of evidence, the court instructed the jury as to each of the plaintiff's causes of action.[7] The

[7] Before charging the jury on the elements of the plaintiff's causes of action, the court instructed the jury that, "[i]n this particular case, in order to meet his burden of proof, [the plaintiff] must prove each of his claims by a standard of proof known as clear and convincing evidence. Under Connecticut law, a claim that a decedent, here [the plaintiff's] grandfather, [the decedent], promised—promised to compensate a family member for caregiving services, and that is a serious claim. That's [the plaintiff's] allegation I should say. Therefore, the law applies a higher standard of proof to such a claim than is ordinarily applied in other civil cases. This, in this case, [the plaintiff] has the burden of proving each of his claims by clear and convincing evidence. This standard of proof also applies to any amount of damages [the plaintiff] may seek to prove. [The plaintiff] cannot meet the burden of proof of his claims by simply producing evidence which is slightly more persuasive than the evidence that is opposed to his claims. That amount of proof would meet the burden of proof under the preponderance of the evidence standards which is typical in most civil cases. Instead, in this case, [the plaintiff] must prove—must produce clear and convincing evidence to prove his claims. Clear and convincing evidence is evidence that is substantial and that unequivocally established each of the elements of [the plaintiff's] claims. Stated another way, clear and convincing evidence is evidence that establishes for you a very high probability that the facts asserted are true or—or that they exist. Not simply that the facts at issue are more probable

court then instructed the jury on the defendant's special defenses. Finally, the court instructed the jury on how to complete the jury interrogatories. Specifically, the court instructed the jury to make a finding as to each count of the plaintiff's operative complaint and then, if necessary, to make findings on the defendant's special defenses.

On September 19, 2022, the jury returned a verdict in favor of the defendant on each count of the plaintiff's operative complaint. The jury also determined that the defendant's statute of limitations defense applied. The plaintiff filed a timely motion to set aside the verdict pursuant to Practice Book § 16-35. The defendant filed an objection, and, on April 24, 2023, the court denied the plaintiff's motion and rendered judgment in accordance with the verdict. This appeal followed. Additional procedural history will be set forth as necessary.

I

The plaintiff first claims that the court improperly instructed the jury regarding the effect of the return of claims. Specifically, the plaintiff asserts, inter alia, that the court's instruction as to the defendant's statute of limitations defense caused the jury to find against the plaintiff on his five causes of action. The defendant responds that, because the jury returned a verdict in favor of the defendant on all five causes of action, the jury was not required to make any findings as to the defendant's special defenses and any purported error in the court's instruction was harmless. We agree with the defendant.

The following procedural history is relevant to our resolution of this claim. After the close of evidence, the

than not. Finally, you may have heard in criminal cases that proof must be beyond a reasonable doubt. I must emphasize to you that this is not a criminal case, and you are not deciding criminal guilt or innocence. Therefore, the standard of beyond a reasonable doubt has no application in this case."

court held a charging conference. The plaintiff's counsel objected to the court's draft instruction on the defendant's statute of limitations defense and argued, inter alia, that his "position is that the return of claims that seems to be the significant document by which the defendant is claiming that it notif[ied] the plaintiff of the rejection, our position is that that document in and of itself is invalid because it violates § 45a-360 (b)."[8] The court overruled the objection, stating that it understood the plaintiff's objection to be that the return of claims did not provide a reason for denying the plaintiff's claim. The court relied on *International Tool & Gauge Co.* v. *Borg*, 145 Conn. 644, 646, 145 A.2d 750 (1958), for the proposition that notice must be sufficiently unequivocal to place a claimant on notice that their claim has been denied.

The court, after instructing the jury on the plaintiff's causes of action, charged the jury on the defendant's statute of limitations defense as follows: "[The defendant] has raised defenses to [the plaintiff's] claims asserting that [the plaintiff] cannot prevail on his various claims because he did not bring suit on those claims within the time that is allowed by law. There are state statutes that specify how much time a person—how much time a person has to bring certain kinds of claims. These are called statutes of limitation. A person cannot recover on a claim that is brought after the time period that applies to a particular claim even if it is one day late. The defendant claims that the [statute] of limitations provided for under . . . § 45a-363 bars recovery under all of [the plaintiff's] claims since the action was not commenced within 120 days from the date of the rejection of [the plaintiff's] claim against [the decedent's] estate. [The defendant] contends that [the plaintiff's]

[8] General Statutes § 45a-360 (b) provides: "A notice rejecting a claim in whole or in part shall state the reasons therefor, but such statement shall not bar the raising of additional defenses to such claim subsequently."

claim for alleged caregiver services was denied on July 9, 2020,[9] and that [the plaintiff] received a copy of that denial on July 13, 2020. [The plaintiff] denies that he ever received a copy of the denial of his claim. It is undisputed that this action was filed with the court on December 24, 2020. If you find that [the defendant] has proven that [the plaintiff] did not file his claim within 120 days of being notified of his claim's denial by [the decedent's] estate, then you must find in favor of [the defendant] as to all of [the plaintiff's] claims." (Footnote added.)

Thereafter, the court instructed the jury on how to complete the jury verdict form and interrogatories. The court informed the jury that it "will have to answer, perhaps, nineteen questions in—in serial form," and then instructed the jury to begin with the first interrogatory, and then, depending on its answer, proceed pursuant to the instructions on the jury verdict form. By way of example, the court instructed: "Count one which is . . . the breach of expressed contract. If you find that there was—that there was a contract, then you have to answer some questions with respect to whether or not you think it was breached and whether or not there was any damage. If you find it was not—there was no breach, then you simply skip to the interrogatories dealing with the next count which is count two. I've set that all out in the instructions that are on your form, but it depends on how you answer that first question whether or not you answer the next four or five, we're only going to have you skip to what is interrogatory number five. Okay?" The court repeated similar instructions with respect to counts two through five of the plaintiff's operative complaint. The court then instructed in relevant part: "At interrogatory number sixteen, then you will consider the special defenses which are, again, the statute of limitations. You have to decide whether

[9] See footnote 5 of this opinion.

or not [the defendant] has met his burden there. You have to answer the first few questions before you get there . . . .''

The jury returned a verdict in favor of the defendant, finding that (1) the plaintiff and the decedent did not enter into an express oral contract for the decedent to compensate the plaintiff for providing caregiver services, (2) the plaintiff and the decedent did not enter into an implied-in-fact contract for the decedent to compensate the plaintiff for providing caregiver services, (3) the decedent did not promise to nominate the plaintiff as a beneficiary in his will, (4) the plaintiff is not entitled to recover under quantum meruit, and (5) the decedent was not unjustly enriched by the caregiver services the plaintiff provided him. With respect to the defendant's special defenses, interrogatory sixteen stated: ''Do you find that [the plaintiff] did not file his complaint in this action within 120 days of the denial of [the plaintiff's claim against [the decedent's] estate by [the defendant],'' to which the jury answered, ''Yes.'' The jury did not make any findings on the additional special defenses raised by the defendant.

We now turn to our standard of review and relevant legal principles. ''A jury instruction must be considered in its entirety, read as a whole, and judged by its total effect rather than by its individual component parts. . . . [T]he test of a court's charge is not whether it is as accurate upon legal principles as the opinions of a court of last resort but whether it fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules of law. . . . As long as [the instructions] are correct in law, adapted to the issues and sufficient for the guidance of the jury . . . we will not view the instructions as improper. . . . Therefore, [o]ur standard of review on this claim is whether it is reasonably probable that the jury was misled. . . . Furthermore, [n]ot every error is harmful.

. . . [B]efore a party is entitled to a new trial . . . he or she has the burden of demonstrating that the error was harmful. . . . An instructional impropriety is harmful if it is likely that it affected the verdict." (Citation omitted; internal quotation marks omitted.) *Allen* v. *Shoppes at Buckland Hills, LLC*, 206 Conn. App. 284, 288–89, 259 A.3d 1227 (2021).

"The power of the trial court to submit proper interrogatories to the jury, to be answered when returning [its] verdict, does not depend upon the consent of the parties or the authority of statute law. In the absence of any mandatory enactment, it is within the reasonable discretion of the presiding judge to require or to refuse to require the jury to answer pertinent interrogatories, as the proper administration of justice may require. . . . The trial court has broad discretion to regulate the manner in which interrogatories are presented to the jury, as well as their form and content. . . . Moreover, [i]n order to establish reversible error, the defendant must prove both an abuse of discretion and a harm that resulted from such abuse. . . .

"We further note that jury interrogatories must be consistent with the pleadings and the evidence adduced at trial, so as not to mislead the jury. . . . The function of jury interrogatories is to provide a guide for the jury's reasoning, and a written chronicle of that reasoning. . . . The purpose of jury interrogatories is to elicit a determination of material facts, to furnish the means of testing the correctness of the verdict rendered, and of ascertaining its extent." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Wilkins* v. *Connecticut Childbirth & Women's Center*, 176 Conn. App. 420, 430–31, 171 A.3d 88 (2017).

On appeal, the plaintiff argues that the court improperly instructed the jury that, "[i]f you find that [the defendant] has proven that [the plaintiff] did not file

his claim within 120 days of being notified of his claim's denial by [the decedent's] estate, then you must find in favor of [the defendant] as to all of [the plaintiff's] claims." The plaintiff contends, inter alia, that "[t]he jury, relying on the erroneous instruction concerning the effect of the return of claims, probably felt compelled to find in favor of the defendant on the substantive claims of the plaintiff."

We need not decide whether the court should have provided a more detailed instruction on the defendant's statute of limitations defense because, even if we assume it was error, it was harmless. The court instructed the jury to answer the interrogatories in the order in which they were presented on the jury verdict form. "[W]hen a jury has received an instruction, it is presumed to have followed such instruction unless the contrary appears." (Internal quotation marks omitted.) *Stratek Plastic Ltd.* v. *Ibar*, 145 Conn. App. 414, 419, 74 A.3d 577, cert. denied, 310 Conn. 937, 79 A.3d 890 (2013). Because the jury found that the plaintiff had failed to prove an essential element of each of the five causes of action prior to addressing the defendant's special defenses, the court's instruction on the defendant's statute of limitations defense, assuming it was erroneous, could not have confused or misled the jury. See, e.g., *Kos* v. *Lawrence + Memorial Hospital*, 334 Conn. 823, 848, 225 A.3d 261 (2020) (instructional error was neither misleading nor harmful because error did not affect verdict, which was premised on different issue).[10] Accordingly, we conclude that any error arising from the court's jury instructions was harmless and did not affect the verdict.

[10] We decline the plaintiff's invitation to speculate as to how and why the jury arrived at its verdict. See *Tisdale* v. *Riverside Cemetery Assn.*, 78 Conn. App. 250, 263, 826 A.2d 232 (law is clear that reviewing court will not speculate about jury's intentions), cert. denied, 266 Conn. 909, 832 A.2d 74 (2003).

II

We next address the plaintiff's claims that the court improperly admitted into evidence testimony regarding the fair rental value of the property and the effect of the plaintiff's claims on the defendant and the plaintiff's mother.

"The trial court's ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion. . . . We will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion. . . . [Thus, our] review of such rulings is limited to the questions of whether the trial court correctly applied the law and reasonably could have reached the conclusion that it did. . . . To the extent [that] a trial court's admission of evidence is based on an interpretation of the Code of Evidence, our standard of review is plenary. For example, whether a challenged statement properly may be classified as hearsay and whether a hearsay exception properly is identified are legal questions demanding plenary review. . . . We review the trial court's decision to admit [or exclude] evidence, if premised on a correct view of the law, however, for an abuse of discretion. . . . Additionally, [b]efore a party is entitled to a new trial because of an erroneous evidentiary ruling, he or she has the burden of demonstrating that the error was harmful. . . . The harmless error standard in a civil case is whether the improper ruling would likely affect the result." (Internal quotation marks omitted.) *LM Ins. Corp.* v. *Connecticut Dismanteling, LLC*, 172 Conn. App. 622, 627–28, 161 A.3d 562 (2017).

A

The plaintiff's first evidentiary claim is that the defendant's testimony regarding the fair rental value of the

property "constituted inadmissible hearsay." We disagree.

The following additional procedural history is relevant. At trial, the following colloquy occurred:

"[The Defendant's Counsel]: All right. So . . . in the past what, if any, efforts did you undertake to ascertain rental values for [the property]?

"[The Defendant]: Well, in December of 2019, my brother did an evaluation of the foundation of the house and found out it had a failing foundation. So, we decided to get some rent values because we thought, you know, my father was not doing that well at that time. So, we thought, perhaps, we would need to maybe rent the house, since we couldn't sell it because of the foundation. So, I went online and also talked to a realtor friend of mine just to see what the value of the house would be, if we had rented it. And it turned out to be, somewhere between $1000–$2000 a month.

"[The Plaintiff's Counsel]: Objection. We move to strike (indiscernible) that's hearsay. And it's also beyond the scope, or beyond the province that the lay witness can testify about the value of somebody else's property.

"The Court: Overruled."

The Connecticut Code of Evidence defines "hearsay" as "a statement, other than one made by the declarant while testifying at the proceeding, offered in evidence to establish the truth of the matter asserted." Conn. Code Evid. § 8-1 (3). Subject to certain exceptions, hearsay is inadmissible. See Conn. Code Evid. § 8-2. A "statement" is defined as "an oral or written assertion or . . . nonverbal conduct of a person, if it is intended by the person as an assertion." Conn. Code Evid. § 8-1 (1). "There are certain circumstances when, although the witness did not repeat the statements of another person,

his or her testimony presented to the jury, by implication, the substance of another person's statements. . . . Under these circumstances, a witness has implied an out-of-court statement of another by testifying to the witness' own verbal or nonverbal response to an identifiable conversation." (Citation omitted; internal quotation marks omitted.) *Loiselle* v. *Browning & Browning Real Estate, LLC*, 147 Conn. App. 246, 257–58, 83 A.3d 608 (2013).

In the present case, the plaintiff has not demonstrated that the defendant's testimony that he "went online and also talked to a realtor friend" to ascertain the fair rental value of the property constituted hearsay. The defendant's counsel asked the defendant "what, if any efforts" the defendant undertook to determine the fair rental value of the property, and the defendant responded by describing his process for ascertaining the property's value and the conclusions he drew on the basis thereof. The plaintiff has not cited, nor has our review of the record revealed, any portion of the transcript where the defendant testified, in either substance or by implication, to any specific out-of-court statement made to him by his friend or that he discovered online. The court, therefore, properly concluded that the defendant's testimony regarding the fair rental value of the property was not hearsay.

The plaintiff contends that our Supreme Court's decision in *Urich* v. *Fish*, 261 Conn. 575, 804 A.2d 795 (2002), "applies squarely" to his case. We disagree. In *Urich*, the defendant offered during trial "a list that he had prepared of items that were missing from [a] boat upon delivery. The list was offered by the defendant both as an indicator of what items were missing and as evidence of their value. The plaintiff objected on the ground that the defendant had not provided a foundation for the value of the items, and the court sustained the objection, ruling that the list was admissible as a list of allegedly

missing items but not as evidence of their value. After a foundation had been laid, however, as to the replacement cost of some of the items, primarily in the form of the amount actually paid by the defendant to replace them, the trial court admitted the exhibit in its entirety but with the limitation that the court would rely only on the valuations for which a foundation had been laid." *Urich* v. *Fish*, supra, 578. Despite this ruling, the court relied, in its calculation of damages, on the price quotes provided by the defendant irrespective of whether the defendant had laid a proper foundation for the quote. Id., 579–80. Our Supreme Court determined that the price quotes offered by the defendant that lacked a proper foundation met "the definition of hearsay because they were statements made outside of court by the suppliers and were offered by the defendant to establish that the prices quoted represented the true replacement cost of the items." Id., 583–84.

In the present case, the defendant neither sought to introduce into evidence an exhibit reflecting, nor an out-of-court statement suggesting, the estimated rental value of the property for the truth of the matter asserted. Rather, the defendant testified as to the procedure he undertook to ascertain the property's rental value and the conclusions he drew therefrom. Moreover, the defendant, in his capacity as executor of the decedent's estate, was reasonably qualified to testify about the rental value of the property. See id., 581 ("[o]ur long settled rule is that a witness is permitted to testify about the value of goods with a proper foundation and when any reasonable qualifications of the witness to do so have been established"). Accordingly, the present case is factually distinguishable from *Urich*.[11]

[11] The plaintiff also maintains that the court improperly admitted the defendant's testimony regarding the fair rental value of the property because the testimony constituted inadmissible lay witness testimony. Typically, a witness cannot offer an opinion as to the value of a property unless they own the property to which their testimony relates. See Conn. Code Evid. § 7-1, commentary. Our courts, however, have allowed a witness to present

We, therefore, conclude that the court did not abuse its discretion in admitting the defendant's testimony on the rental value of the property.

B

The plaintiff's second evidentiary claim is that the court improperly admitted "evidence of the emotional effect" of the plaintiff's claim against the decedent's estate on his relatives. Specifically, the plaintiff contends that the testimony of the defendant and Margaret Longo, the plaintiff's mother, was irrelevant.[12] We are not persuaded.

The following procedural history is relevant to our resolution of this claim. At trial, the following colloquy occurred between the defendant's counsel and the defendant:

"[The Defendant's Counsel]: Okay. Now, as you heard from [the plaintiff's] testimony, he claims he's owed some figure. I don't know if we've heard an amount but it's a figure of maybe, in excess of a half a million dollars, for caregiver services that he's provided to your father. You understand that to be the claim. Right?

"[The Defendant]: Yes.

valuation testimony if the court finds the witness qualified to offer such testimony. See, e.g., *O'Connor* v. *Dory Corp.*, 174 Conn. 65, 70, 381 A.2d 559 (1977) (court admitted former property owner's testimony regarding property value because "[r]easonable qualifications were established for the admission of the witness' testimony as to value and the objection raised concerning his former ownership of the property went to its weight rather than its admissibility"). In the present case, because the defendant in his capacity of executor of the decedent's estate had experience with the oversight and management of the property prior to its sale, he was reasonably qualified to provide testimony on the rental value of the property.

[12] Although the other children of the decedent testified as to their reaction to the plaintiff's claim against the estate, the plaintiff's claim on appeal is limited to challenging the testimony of the defendant and the plaintiff's mother.

"[The Defendant's Counsel]: And when you heard [the plaintiff] was making this claim, what thoughts came into your mind?

"[The Defendant]: Nobody—

"[The Plaintiff's Counsel]: Objection. Relevance.

"The Court: Overruled.

"[The Defendant]: Nobody was really expecting it. So, I guess, you know, we were all kind of shocked because, you know, he certainly, did some things around the house. But he lived there, didn't pay rent so, we kind of thought that that's, you know, was payment for him staying there."

Additionally, the following colloquy occurred between the defendant's counsel and the plaintiff's mother:

"[The Defendant's Counsel]: When you heard that your son was making this claim, what thoughts did you have?

"[The Plaintiff's Counsel]: Objection. Relevance.

"The Court: Overruled.

"[The Witness]: I was appalled. I did not agree with it at all.

"[The Defendant's Counsel]: And what did you not agree with?

"[The Witness]: The fact that he was bringing suit against me, and my siblings. And I always thought he had a roof over his head, a very nice room, a bathroom, a garage of his own and he helped my dad with things that any good grandson would help with and my dad, in turn, gave him free rent. And I didn't . . . I didn't think the suit was warranted at all."

The following legal principles guide our resolution of this claim. "Section 4-1 of the Connecticut Code of

Evidence defines relevant evidence as evidence having any tendency to make the existence of any fact that is material to the determination of the proceeding more probable or less probable than it would be without the evidence. To determine whether a fact is material or consequential, it is necessary to examine the issues in the case, as defined by the underlying substantive law, the pleadings, applicable pretrial orders, and events that develop during the trial. Thus, the relevance of an offer of evidence must be assessed against the elements of the cause of action, crime, or defenses at issue in the trial. The connection to an element need not be direct, so long as it exists." (Internal quotation marks omitted.) *McCrea* v. *Cumberland Farms, Inc.*, 204 Conn. App. 796, 804, 255 A.3d 871, cert. denied, 338 Conn. 901, 258 A.3d 676 (2021). "Once a witness has testified to certain facts . . . his credibility is a fact that is of consequence to [or material to] the determination of the action, and evidence relating to his credibility is therefore relevant . . . ." (Internal quotation marks omitted.) Id., 805.

We are not persuaded that the court improperly allowed the testimony of the defendant and the plaintiff's mother regarding their reactions to learning about the plaintiff's claim against the decedent's estate. The plaintiff brought causes of action sounding in breach of express oral contract, breach of implied-in-fact contract, unjust enrichment, quantum meruit, and "breach of promise to nominate as beneficiary." In support of these claims, the plaintiff testified at trial that he would have yearly discussions with the decedent during which the decedent promised to compensate the plaintiff for providing him with caregiving services. The court reasonably could have determined that the testimony provided by the defendant and the plaintiff's mother regarding their reactions to the plaintiff's claim against the decedent's estate was relevant because it was offered

to assist the jury in determining whether it found credible the plaintiff's testimony that the decedent promised to compensate the plaintiff for providing caregiver services.

Accordingly, the court did not abuse its discretion by allowing the defendant and the plaintiff's mother to testify to their reactions to the plaintiff's claim against the decedent's estate.

III

The plaintiff's final claim on appeal is that the trial court improperly allowed the defendant to present the testimony of two surrebuttal witnesses during his case-in-chief. The plaintiff argues that the court erred because there was no good cause for allowing the defendant's surrebuttal witnesses to testify out of order. We disagree.

The following additional procedural history is relevant to our resolution of this claim. During trial, the defendant sought to call as witnesses during his case-in-chief the defendant's wife and the plaintiff's stepfather. The plaintiff's counsel objected to the defendant's wife testifying because (1) she was not listed as a witness on the joint trial management report, (2) the plaintiff did not have questions prepared for her, and (3) allowing her to testify during the defendant's case-in-chief would prejudice the plaintiff. The court overruled counsel's objection and stated: "I'm going to allow [the defendant's counsel] to take her out of order, because she would be, obviously, an appropriate rebuttal witness. And I don't see any reason why to—to delay her testimony."[13]

[13] The following colloquy occurred prior to the testimony of the defendant's wife:

"[The Plaintiff's Counsel]: Your Honor, we would object, because I don't think [the defendant's wife is] listed on the joint trial management report.

"The Court: Ah. . . .

"[The Plaintiff's Counsel]: We have a specific list of witnesses. And I don't recall seeing her.

The plaintiff's counsel also objected to the plaintiff's stepfather testifying during the defendant's case-in-chief on the basis that it was premature surrebuttal evidence. The following colloquy occurred between the court and the plaintiff's counsel:

"The Court: If I—how are you prejudiced by this? I mean, I think you agree that he can present this witness on surrebuttal because he's contradicting testimony that [the plaintiff] has provided. So other than the procedural issue and timing, what is your prejudice? Testimony is coming in either way, right?

"[The Plaintiff's Counsel]: I don't think that's correct, Judge, no.

"The Court: I—my copy of the report is in the—in chambers, but that should be an objective yes or no. Is [the defendant's wife] listed or not?

"[The Defendant's Counsel]: She was not. This is a rebuttal [witness] in connection with the testimony of [the plaintiff] regarding what, if anything, a few family members did, with respect to helping [the decedent]. The [plaintiff's] testimony was no assistance. The testimony was the—whatever little things that [the defendant's wife] did and she has direct knowledge concerning what she did, as well. So, it—it wasn't intended to be a witness.

"The Court: Attorney Amato.

"[The Plaintiff's Counsel]: Well, I don't think that now is an appropriate time to be doing rebuttal for the defendant. Typically, the plaintiff does rebuttal and the defendant would do surrebuttal and that would only come after the plaintiff does rebuttal. So, in other words, under my interpretation—

"The Court: All right. Wait.

"[The Plaintiff's Counsel]:—it's all—

"The Court: And it—I understand the procedural issue. Is there any substantive issue, which is to say why shouldn't we just skip the formalities and let [the defendant's wife] testify, because she would be able to testify in rebuttal because, if—she's clearly rebutting what the plaintiff was saying with respect to what may or may not have been done—

"[The Plaintiff's Counsel]: I—

"The Court: —by the plaintiff and the children.

"[The Plaintiff's Counsel]: Apart from the—

"The Court: So why shouldn't we just skip to what we know—all know she's going to—her—her ability to testify?

"[The Plaintiff's Counsel]: Well, apart from the fact that we haven't had a chance to prepare anything for her, I think that's kind of—

"The Court: All right.

"[The Plaintiff's Counsel]:—prejudicial.

"The Court: I'm going to allow [the defendant's counsel] to take her out of order . . . ."

"The Court: Why is that not correct?

"[The Plaintiff's Counsel]: Because if he brings him in in the normal order—let's say, the defendant finishes his case-in-chief. Now the plaintiff goes on and does his rebuttal, then if he wants to bring in a witness on surrebuttal to rebut what the plaintiff brought in on rebuttal, that's fine. But we don't know that this person—this other witness, this undisclosed witness is going to rebut the rebuttal evidence. We don't know that. What he's trying to do is get an extra crack at trying to defend or contradict or challenge what the plaintiff said on direct examination. An undisclosed surrebuttal witness is not the way to do it."

The court overruled the plaintiff's objection and stated: "Okay. Well, I mean, I'm going to allow the witness. I think he's—it's not unfair surprise. There's clearly been a lot of testimony about this. It's a family dispute. The idea that family members on either side of this dispute might be testifying about relevant facts. It shouldn't come as a surprise to anyone. I'm going to allow him to present that testimony out of order."

We now turn to our standard of review and relevant legal principles. Practice Book § 15-5 (a) provides in relevant part: "Unless the judicial authority for cause permits otherwise, the parties shall proceed with the trial and argument in the following order: (1) The plaintiff shall present a case-in-chief. (2) The defendant may present a case-in-chief. (3) The plaintiff and the defendant may present rebuttal evidence in successive rebuttals, as required. The judicial authority for cause may permit a party to present evidence not of a rebuttal nature, and if the plaintiff is permitted to present further evidence in chief, the defendant may respond with further evidence in chief. . . ." "[W]hen considering whether there was cause for a court to [deviate from the procedures] prescribed in . . . § 15-5 (a), we

review the decision of the court under the abuse of discretion standard." (Internal quotation marks omitted.) *Moutinho* v. *500 North Avenue, LLC*, 191 Conn. App. 608, 625–26, 216 A.3d 667, cert. denied, 333 Conn. 928, 218 A.3d 68 (2019).

"It is well settled that the admission of rebuttal evidence lies within the sound discretion of the trial court. . . . Our standard of review of the [plaintiff's] claim is that of whether the court abused its discretion in allowing this . . . testimony. . . . Discretion means a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice. . . . It goes without saying that the term abuse of discretion . . . means that the ruling appears to have been made on untenable grounds. . . . In determining whether the trial court has abused its discretion, we must make every reasonable presumption in favor of the correctness of its action." (Citation omitted; internal quotation marks omitted.) *O & G Industries, Inc.* v. *American Home Assurance Co.*, 204 Conn. App. 614, 642–43, 254 A.3d 955 (2021).

As an initial matter, it is unclear to us why the testimony at issue would be considered surrebuttal evidence. It was offered to directly refute the plaintiff's testimony in his case-in-chief. It is typical for a defendant to offer in his case-in-chief evidence directly refuting evidence offered by the plaintiff, including the testimony of witnesses who directly contradict the plaintiff's testimony. See id., 645 ("[R]ebuttal evidence is that which refutes the evidence [already] presented . . . rather than that which merely bolsters one's case. . . . [A] general contradiction of the testimony given by [a party] is considered permissible rebuttal testimony." (Citation omitted; internal quotation marks omitted.)). Nevertheless, the plaintiff contends, inter alia, that "the trial court failed to expressly solicit and find good

cause" for allowing the defendant to present what the plaintiff calls "surrebuttal evidence" during his case-in-chief.

Regardless of the descriptor attached to the evidence, we conclude that the court did not abuse its discretion by allowing the defendant to present the testimony of the defendant's wife and the plaintiff's stepfather during his case-in-chief. The court stated that it was allowing the evidence, first, because the testimony did not unfairly surprise the plaintiff and, second, so as not to delay the trial. Considering that the court's decision is to be afforded every reasonable presumption of correctness, we conclude that the court's findings reasonably justified its decision to allow the defendant to present the evidence during his case-in-chief. See, e.g., *de Repentigny* v. *de Repentigny*, 121 Conn. App. 451, 456, 995 A.2d 117 (2010) (trial court's decision denying plaintiff's request to present oral closing argument on basis that it would prolong trial justified deviating from Practice Book § 15-5 and did not constitute abuse of discretion).[14] Accordingly, the plaintiff has not demonstrated that the court abused its discretion in allowing the defendant to present rebuttal evidence during his case-in-chief.

The judgment is affirmed.

In this opinion the other judges concurred.

SHERI SPEER *v.* DONNA SKAATS
(AC 46047)

Elgo, Suarez and Bear, Js.

Syllabus

The plaintiff sought injunctive relief and to recover damages from the defendant attorney for abuse of process. The defendant represented a third

[14] The plaintiff's claim, if accepted, also would lead to the bizarre circumstance that the defendant would be precluded from presenting evidence that contradicted the testimony the plaintiff already gave if the plaintiff

party, S Co., in a foreclosure action that related to the plaintiff's personal residence. In the present case, the plaintiff alleged that, inter alia, five years after S Co. was defaulted in the foreclosure action for failure to appear, the defendant filed an appearance in the foreclosure action on S Co.'s behalf and then proceeded to file numerous motions, notices, and objections for, inter alia, the purpose of causing annoyance and distress to the plaintiff. The trial court granted the defendant's motion to dismiss, finding that it lacked subject matter jurisdiction because the plaintiff had failed to establish that she was aggrieved, and, therefore, she did not have standing to bring the action. On the plaintiff's appeal to this court, *held* that the trial court erred in granting the defendant's motion to dismiss because it improperly determined that it lacked subject matter jurisdiction over the plaintiff's action: the plaintiff plainly alleged that the defendant had made use of a legal process, that she did so primarily to accomplish purposes for which the process was not designed, and that those purposes were detrimental to the plaintiff; moreover, the factual allegations in the plaintiff's complaint, when viewed in the light most favorable to her as the pleader and construed both broadly and realistically, sufficiently established classical aggrievement, as the allegations were sufficient to demonstrate both the possibility that the plaintiff had a specific, personal, and legal interest in the defendant's conduct in the foreclosure action and the possibility that such interest had been specially and injuriously affected by the defendant's conduct, and, consequently, the trial court incorrectly determined that the plaintiff lacked standing to bring the action; accordingly, this court reversed the judgment of the trial court and remanded the case for further proceedings.

Argued January 4—officially released June 25, 2024

Procedural History

Action to recover damages for abuse of process, and for other relief, brought to the Superior Court in the judicial district of New London, where the court, *Goodrow*, *J.*, granted the defendant's motion to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Reversed*; *further proceedings*.

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

chose not to present a rebuttal case. That simply is not how the rules of evidence and trial procedure work.

Opinion

SUAREZ, J. The plaintiff, Sheri Speer, appeals from the judgment of the trial court, *Goodrow*, *J.*, dismissing the civil action brought by her against the defendant, Donna Skaats.[1] The plaintiff claims that, in dismissing the action, the court erred in concluding that it lacked subject matter jurisdiction because she was not aggrieved and, thus, lacked standing to bring the action. The plaintiff also claims that the court, *Spallone*, *J.*, erred in "denying [her motion for] summary judgment."[2] We agree with the plaintiff's first claim and, therefore, reverse the judgment of the trial court.

With respect to the claims raised in this appeal, the record reflects the following relevant procedural history. In August, 2019, the plaintiff commenced the underlying civil action against the defendant, a member of the Connecticut bar, in connection with the defendant's representation of a third party, Seaport Capital Partners, LLC (Seaport), in an action brought by Deutsche Bank National Trust Company to obtain a judgment of foreclosure with respect to the plaintiff's personal residence (foreclosure action). The plaintiff alleged that, in the foreclosure action, Seaport was "an alleged lienholder" who had recorded a property interest with respect to the real property. The plaintiff further alleged that, on November 17, 2018, five years after Seaport was defaulted for its failure to appear in the foreclosure action, the defendant entered an appearance on Seaport's behalf, however, "[t]he defendant

[1] The plaintiff also appeals from the court's denial of her motion to reconsider the judgment of dismissal. In this appeal, however, the plaintiff does not raise any claims of error that are specifically related to the court's denial of her motion to reconsider.

[2] The plaintiff appeared before both the trial court and this court as a self-represented litigant. The defendant did not file a brief in this appeal. Consistent with an order of this court, dated September 19, 2023, we consider the merits of this appeal on the basis of the plaintiff's brief and appendix, the record as defined by Practice Book § 60-4, and the arguments advanced by the plaintiff during oral argument before this court.

never entered into an attorney-client agreement for representation in the [foreclosure] action with Seaport." The plaintiff also alleged that "Seaport never authorized the defendant to appear or litigate on its behalf in the [foreclosure] action."

In the plaintiff's single count complaint, she alleged: "Between November 17, 2018, and July 1, 2019, the defendant filed numerous motions, notices, and objections on behalf of Seaport . . . [1] without its authorization, which constituted the employment of a legal process . . . [2] to cause annoyance, alarm, embarrassment, and distress on the part of the plaintiff, and promises to do so in the future to her irreparable harm, which is not the proper use of the legal processes and procedures employed by the defendant in the name of Seaport . . . [3] to increase the costs the plaintiff in the [foreclosure] action would charge or assess during the litigation, which would be charged to the [present] plaintiff, and promises to do so in the future to her irreparable harm, which is not the proper use of the legal processes and procedures employed by the defendant in the name of Seaport . . . [4] to obstruct, thwart, and otherwise impair any possibility that the plaintiff could enter into a modification agreement to save her home from foreclosure, and promises to do so in the future to her irreparable harm, which is not the proper use of the legal processes and procedures employed by the defendant in the name of Seaport . . . [and (5)] to prevent the plaintiff from taking any action to defend against the [foreclosure] action, with the objective of rendering the plaintiff homeless, and promises to do so in the future to her irreparable harm, which is not the proper use of the legal processes and procedures employed by the defendant in the name of Seaport. . . .

"None of the filings made by the defendant in the [foreclosure] action relate[s] at all in any way to the

claims of the plaintiff [in the foreclosure action] or the defenses alleged to the [foreclosure] action. . . .

"Seaport has alleged no defense to the [foreclosure] action, has no defense to the [foreclosure] action, and was defaulted for failure to plead. . . .

"Seaport has alleged no claim in the [foreclosure] action and has no practical relief to obtain, that could be obtained, or that it has or had authorized the defendant to attempt to obtain on its behalf in the [foreclosure] action."

By way of relief, the plaintiff sought "[t]emporary and permanent injunctive relief against the defendant from engaging in the abuse of process as complained of herein in the [foreclosure] action or any proceedings related thereto" as well as damages, costs, and all other relief the court deems "fit and proper."

On October 23, 2019, the defendant filed a motion to dismiss and a supporting memorandum of law. On October 28, 2019, the plaintiff filed a memorandum of law in opposition to the motion to dismiss. On February 3, 2022, following a hearing, the court, *Spallone*, *J.*, denied the motion to dismiss.

On June 20, 2022, the defendant filed a second motion to dismiss as well as a supporting memorandum of law. The ruling on the defendant's second motion to dismiss is at issue in the present appeal. In its motion, the defendant argued, inter alia, that "[t]he plaintiff does not have standing to bring an action against the attorney representing Seaport . . . ."[3] On June 22, 2022, the

[3] The defendant also argued that the court should dismiss the present action in light of an order issued by the court against the plaintiff in an unrelated action that barred the plaintiff from filing any pleadings in cases in which Seaport was a party. The court, in granting the defendant's second motion to dismiss in the present case, concluded that, because Seaport was not a party to the present action, the defendant's reliance on the order was misplaced.

plaintiff filed a memorandum of law in objection to the motion to dismiss.

By order of October 28, 2022, the court, *Goodrow*, *J.*, granted the defendant's second motion to dismiss. The court stated: "[T]his action is dismissed due to lack of subject matter jurisdiction. . . . The crux of the plaintiff's complaint is that the plaintiff allegedly suffered an injury when the defendant represented Seaport . . . in a . . . [foreclosure] action in which the plaintiff in this case . . . was the defendant . . . . The plaintiff . . . alleges, in essence, that the defendant . . . acted without authority in holding herself out as counsel for Seaport . . . in the earlier [foreclosure] action. [The defendant] was counsel of record for [Seaport] in the earlier [foreclosure] action. . . . [T]he instant case is required to be dismissed due to the lack of standing by the plaintiff to bring the action and, therefore, the court's lack of subject matter jurisdiction. This court does not have subject matter jurisdiction based on the plaintiff's lack of standing. . . . Consistent with the court's policy of leniency to self-represented litigants, the court has construed the plaintiff's complaint broadly and realistically rather than narrowly and technically. . . . The plaintiff lacks standing to bring this action because she is not aggrieved, either classically or statutorily. . . . The plaintiff alleges that the defendant . . . illegally or without authority represented Seaport . . . in the prior [foreclosure] action. The facts alleged by the plaintiff do not include conduct that has injured, or will likely injure a specific, personal, legal interest of the plaintiff. Because the plaintiff has established neither classical nor statutory aggrievement, she lacks standing to bring this action." (Citations omitted; internal quotation marks omitted.)

On November 7, 2022, the plaintiff filed a motion for reconsideration of the court's decision. On November 18, 2022, the defendant filed an objection to the motion

to reconsider. On November 21, 2022, the court summarily denied the motion to reconsider and sustained the defendant's objection thereto. This appeal followed. Additional procedural history will be discussed as necessary.

I

First, the plaintiff claims that, in dismissing the action, the court erred in concluding that it lacked subject matter jurisdiction because she was not aggrieved and, thus, lacked standing to bring the action. We agree.

"A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . [O]ur review of the court's ultimate legal conclusion and resulting [determination] of the motion to dismiss will be de novo. . . .

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . [When] a party is found to lack standing, the court is consequently without subject matter jurisdiction to determine the cause." (Citation omitted; internal quotation marks omitted.) *Derblom* v. *Archdiocese of Hartford*, 346 Conn. 333, 341–42, 289 A.3d 1187 (2023). "Trial courts addressing motions to dismiss for lack of subject matter jurisdiction pursuant to [Practice Book § 10-30] may encounter different situations, depending on the status of the record in the case. . . . [L]ack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. . . . [If] a trial court decides a jurisdictional question raised by a

pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Internal quotation marks omitted.) *307 White Street Realty, LLC* v. *Beaver Brook Group, LLC*, 216 Conn. App. 750, 763, 286 A.3d 467 (2022).

"When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue . . . . Standing requires no more than a colorable claim of injury; a [party] ordinarily establishes . . . standing by allegations of injury. Similarly, standing exists to attempt to vindicate arguably protected interests. . . . Standing is established by showing that the party claiming it is authorized by statute to bring an action, in other words, statutorily aggrieved, or is classically aggrieved. . . . [Statutory] [s]tanding concerns the question [of] whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. . . .

"The fundamental test for determining [classical] aggrievement encompasses a well-settled twofold determination: [F]irst, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]. . . . Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been

adversely affected." (Footnote omitted; internal quotation marks omitted.) *Handsome, Inc.* v. *Planning & Zoning Commission*, 317 Conn. 515, 525–26, 119 A.3d 541 (2015).

"An action for abuse of process lies against any person using a legal process against another in an improper manner or to accomplish a purpose for which it was not designed. . . . Because the tort arises out of the accomplishment of a result that could not be achieved by the proper and successful use of process, the Restatement Second (1977) of Torts, § 682, emphasizes that the gravamen of the action for abuse of process is the use of a legal process . . . against another primarily to accomplish a purpose for which it is not designed . . . . Comment b to § 682 explains that the addition of primarily is meant to exclude liability when the process is used for the purpose for which it is intended, but there is an incidental motive of spite or an ulterior purpose of benefit to the defendant." (Internal quotation marks omitted.) *Rogan* v. *Rungee*, 165 Conn. App. 209, 220, 140 A.3d 979 (2016). "[A]lthough the definition of process may be broad enough to cover a wide range of judicial procedures, to prevail on an abuse of process claim, the plaintiff must establish that the defendant used a judicial process for an improper purpose." (Emphasis omitted.) *Larobina* v. *McDonald*, 274 Conn. 394, 406–407, 876 A.2d 522 (2005). As our Supreme Court has observed, "the elements of abuse of process . . . are less stringent than the elements of vexatious litigation. Specifically, unlike the tort of vexatious litigation, a claim for abuse of process does not require termination of the underlying litigation in favor of the plaintiff." *MacDermid, Inc.* v. *Leonetti*, 310 Conn. 616, 633, 79 A.3d 60 (2013).

In the present case, the court resolved the issue of standing on the basis of the complaint alone, not in conjunction with undisputed facts in the record or the

court's resolution of disputed facts. Accordingly, our analysis of the issue of standing is limited to the facts alleged in the complaint. Beyond our duty to interpret the facts alleged in the complaint, as well as the facts implied by the allegations in the complaint, in the light most favorable to the plaintiff, we are mindful in our de novo review of the complaint that "[t]he modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically . . . ." (Internal quotation marks omitted.) *M&T Bank* v. *Lewis*, 349 Conn. 9, 31 n.10, 312 A.3d 1040 (2024). "[W]e long have eschewed the notion that pleadings should be read in a hypertechnical manner. . . . [T]he complaint must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory [on] which it proceeded, and do substantial justice between the parties. . . . Our reading of pleadings in a manner that advances substantial justice means that a pleading must be construed reasonably, to contain all that it fairly means, but carries with it the related proposition that it must not be contorted in such a way so as to strain the bounds of rational comprehension." (Internal quotation marks omitted.) *Hepburn* v. *Brill*, 348 Conn. 827, 848, 312 A.3d 1 (2024). This method of interpreting the complaint applies with greater force in light of the fact that the plaintiff appeared before the court as a self-represented party.[4] Finally, we observe the well established principle that, "in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Fountain of Youth Church, Inc.* v. *Fountain*, 225 Conn. App. 856, 867, A.3d (2024).

[4] Connecticut courts adhere to the modern trend of interpreting pleadings broadly and realistically in part "to ensure that [self-represented] litigants receive a full and fair opportunity to be heard, regardless of their lack of legal education and experience . . . ." (Internal quotation marks omitted.) *Donald G.* v. *Commissioner of Correction*, 224 Conn. App. 93, 104, 311 A.3d 187, cert. denied, 349 Conn. 902, 312 A.3d 585 (2024).

As set forth previously in this opinion, the plaintiff alleged in her complaint that, without any authorization by Seaport, the defendant filed an appearance on behalf of Seaport, who was an "alleged lienholder" and a party to the foreclosure action that had been brought against her in the Superior Court. The plaintiff also alleged that, between November 17, 2018, and July 1, 2019, the defendant "filed numerous motions, notices and objections on behalf of Seaport . . . ." In paragraph 10 of her complaint, the plaintiff alleged that the defendant engaged in this conduct "to cause annoyance, alarm, embarrassment, and distress on the part of the plaintiff . . . ." In paragraph 11 of her complaint, the plaintiff alleged that the defendant engaged in this conduct "to increase the costs the plaintiff in the [foreclosure] action would charge or assess during the litigation, which would be charged to the [present] plaintiff . . . ." In paragraph 12 of her complaint, the plaintiff alleged that the defendant engaged in this conduct "to obstruct, thwart, and otherwise impair any possibility that the plaintiff could enter into a modification agreement to save her home from foreclosure . . . ." In paragraph 13 of her complaint, the plaintiff alleged that the defendant engaged in this conduct "to prevent the plaintiff from taking any action to defend against the [foreclosure] action, with the objective of rendering the plaintiff homeless . . . ." The plaintiff also alleged that none of the defendant's filings "relate[d] at all in any way to the claims of the plaintiff [in the foreclosure action] or the defenses alleged to the [foreclosure] action." Moreover, the plaintiff alleged that Seaport "alleged no claim in the [foreclosure] action and has no practical relief to obtain, that could be obtained, or that it has or had authorized the defendant to attempt to obtain on its behalf in the [foreclosure] action." Finally, in her prayer for relief, the plaintiff sought damages and relief against the defendant from "engaging

in the *abuse of process* as complained of herein . . . .'' (Emphasis added.)

We disagree with the trial court's conclusion that the plaintiff's complaint was merely based on the allegation that the defendant illegally or without authority represented Seaport in the foreclosure action and that the plaintiff had failed to allege conduct on the part of the defendant that has injured, or will likely injure, a specific, personal, and legal interest of the plaintiff. The factual allegations in the plaintiff's complaint, when viewed in the light most favorable to her as the pleader, and construed both broadly and realistically, were sufficient to demonstrate the possibility that the plaintiff had a specific, personal, and legal interest in the defendant's conduct in the foreclosure action. The allegations were also sufficient to demonstrate the possibility that her specific, personal, and legal interest had been specially and injuriously affected by the defendant's conduct. The plaintiff plainly alleged that the defendant had made use of a legal process and that she did so primarily to accomplish purposes for which it was not designed and for purposes that were detrimental to the plaintiff. Specifically, the plaintiff alleged that the defendant's motions, notices, and objections were not related to a proper purpose in connection with the practical relief that Seaport could obtain by operation of law in the foreclosure action but that the defendant had used those procedural devices for the improper purposes that the plaintiff alleged in paragraphs 10 through 13 of her complaint. Setting aside the plaintiff's allegation that, in the foreclosure action, the defendant represented Seaport without its authorization, the plaintiff alleged that the defendant had caused her various types of harm. Although it is not dispositive of our analysis, the plaintiff characterized the conduct of which she complained as ''abuse of process . . . .'' Thus, the

plaintiff's factual allegations in her complaint sufficiently established classical aggrievement. Accordingly, the court improperly determined that it lacked subject matter jurisdiction because the plaintiff lacked standing to bring the action.

II

We next address the plaintiff's claim that the court erred in "denying [her motion for] summary judgment." We decline to review this claim.

The following additional procedural history is relevant to this claim. On November 12, 2019, the plaintiff filed a motion for summary judgment as to liability only and a supporting memorandum of law. On June 13, 2020, the court, *S. Murphy, J.*, marked the motion off due to concerns and restrictions related to the COVID-19 pandemic. The court noted that the parties had the right to reclaim the motion "with affirmative language regarding their agreement to have the motion taken on the papers or at such time as the courts begin hearing arguable matters on short calendar."

On July 31, 2020, the plaintiff, relying on the fact that the defendant had not filed an opposition to the motion for summary judgment, filed a caseflow request seeking to have the motion for summary judgment taken on the papers. On August 4, 2020, the defendant filed what she characterized as an "initial procedural objection" to both the motion for summary judgment and the caseflow request related thereto. The defendant argued that the request to have the motion for summary judgment taken on the papers contravened her right to a hearing on the motion and that ruling on the motion for summary judgment was inappropriate in light of the fact that the court had not yet ruled on her pending motion to dismiss that she had filed in October, 2019. The defendant represented that, if the court denied her motion to dismiss, she was prepared to file a substantive objection to the motion for summary judgment within

thirty days. By orders of August 7, 2020, the court denied the plaintiff's caseflow request and sustained the defendant's objection thereto.[5]

After the court, *Spallone*, *J.*, denied the defendant's first motion to dismiss on February 3, 2022, the defendant filed a second motion to dismiss on June 20, 2022. The record reflects that, on June 9, 2022, Judge Spallone issued an order regarding the pending motion for summary judgment that stated: "The court is taking no action at this time on the plaintiff's motion for summary judgment . . . . This matter is currently stayed. Such stay is subject to a motion to reconsider, which will be scheduled for a hearing." The record does not reflect that the plaintiff brought a motion to reconsider this ruling. Thereafter, the court, *Goodrow*, *J.*, granted the defendant's second motion to dismiss on October 28, 2022. That ruling was the subject of the claim addressed in part I of this opinion.

It is important to identify the ruling, if any, that is being challenged by the plaintiff, for "[w]e cannot pass on the correctness of a trial court ruling that was never made." *Fischel* v. *TKPK, Ltd.*, 34 Conn. App. 22, 26, 640 A.2d 125 (1994). The plaintiff's brief is murky in this respect. The court did not consider, let alone deny, her motion for summary judgment. In this appeal, the plaintiff does not challenge the propriety of the court's denial of her caseflow request on August 7, 2020. Rather, in her appellate brief, the plaintiff specifically claims error on the part of Judge Spallone, for she states that "[t]he . . . trial court (*Spallone*, *J.*) found that subject matter jurisdiction existed and erred in denying summary judgment that remained unopposed for several years." She thereafter argues that Practice Book §§ 17-44, 17-45 and 17-49 "required" the court to grant her motion in light of the fact that she demonstrated her

[5] The court file reflects that the caseflow request and the objection thereto were denied "by the court."

entitlement to judgment in her favor as a matter of law and "there was no opposition whatsoever" within forty-five days of the filing of the motion.

To the extent that the plaintiff raises a claim of error related to Judge Spallone, the only ruling that was made by him that was tangentially related to her motion for summary judgment was his order of June 9, 2022, staying consideration of the motion.[6] In her brief, however, the plaintiff does not specifically identify this ruling, nor does she attempt to demonstrate that the court's ruling to defer consideration of her summary judgment motion at that time amounted to an abuse of its discretion. She does not address the myriad possible reasons on which the court may have relied in determining that the court's action was appropriate in June, 2022, but merely argues that summary judgment was a proper remedy. Even if we had an adequate record of the factual and legal basis underlying the court's imposition of a stay, the plaintiff has failed in her brief to adequately challenge the propriety of that specific ruling. "For a reviewing court to judiciously and efficiently . . . consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs." (Internal quotation marks omitted.) *C. B.* v. *S. B.*, 211 Conn. App. 628, 630, 273 A.3d 271 (2022); see also *Parnoff* v. *Mooney*, 132 Conn. App. 512, 518, 35 A.3d 283 (2011) ("[i]t is not the role of this court to undertake the legal research and analyze the facts in support of a claim or argument when it has not been briefed adequately" (internal quotation marks omitted)).

The judgment is reversed and the case is remanded for further proceedings.

In this opinion the other judges concurred.

[6] We note that, after she filed the present appeal, the plaintiff filed six motions for articulation. In one of those motions, she asked Judge Spallone to articulate with respect to his June 9, 2022 order. Judge Spallone denied the motion for articulation. The plaintiff did not thereafter file a motion for review in this court related to that ruling.