PATRICK PALMIERI ET AL. *v.* FRANK CIRINO
(AC 46333)

Bright, C. J., and Westbrook and DiPentima, Js.

Syllabus

The plaintiff, who commenced this action seeking, inter alia, to quiet title to certain real property in New Haven, appealed to this court from the judgment of the trial court awarding attorney's fees to the defendant, following a default judgment rendered against the plaintiff on the defendant's counterclaim. *Held*:

1. The plaintiff could not prevail on his claim that the trial court's award of attorney's fees was improper because the affidavit of the defendant's counsel in support of attorney's fees was filed beyond the thirty day deadline set forth in the applicable rule of practice (§ 11-21) and because the defendant failed to demonstrate that the untimely filing was the result of excusable neglect; because Practice Book § 11-21 does not govern awards of attorney's fees that constitute an award of punitive damages and the court stated that it was awarding attorney's fees as punitive damages, the defendant was not required to comply with the deadline in § 11-21 and the court was not required to determine whether the untimely filing was the result of excusable neglect.
2. The trial court abused its discretion in awarding attorney's fees for expenses incurred by the defendant in defending prior actions between the parties: the amount of attorney's fees awarded should have been limited to the fees incurred in the present case; moreover, the court did not state that the litigation expenses that the defendant had incurred over the course of the multiple actions between the parties were the basis for its award of punitive damages, and the defense did not provide any legal support for this claim; accordingly, the case was remanded to the trial court to conduct a new hearing on the defendant's motion for attorney's fees.

Argued February 7—officially released July 2, 2024

Procedural History

Action seeking, inter alia, to quiet title to certain real property, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the defendant filed a counterclaim; thereafter, the court, *Robinson, J.*, granted the defendant's motion to dismiss and rendered judgment for the defendant on the complaint; subsequently, the case was tried to the court,

Robinson, *J.*; judgment for the defendant on the counterclaim; thereafter, the court, *Hon. Jon C. Blue*, judge trial referee, granted the defendant's motion for attorney's fees, and the plaintiff appealed to this court. *Reversed; further proceedings.*

Stephen R. Bellis, for the appellant (plaintiff).

Patricia A. Cofrancesco, for the appellee (defendant).

Opinion

DiPENTIMA, J. The plaintiff in the underlying quiet title action, Patrick Palmieri,[1] appeals from the judgment of the trial court awarding attorney's fees to the defendant, Frank Cirino, following a default judgment rendered against the plaintiff on the defendant's counterclaim. On appeal, the plaintiff claims that the court (1) abused its discretion in issuing the award because the affidavit in support of attorney's fees was filed beyond the thirty day deadline set forth in Practice Book § 11-21 and (2) improperly awarded attorney's fees that were incurred prior to the present action. We agree with the plaintiff's second claim and, accordingly, reverse the judgment of the trial court and remand the case for a new hearing on the defendant's motion for attorney's fees.

The record reveals the following undisputed facts and procedural history. The plaintiff owns certain real property in the city of New Haven that is adjacent to the defendant's property. In February, 2015, the plaintiff initiated the underlying action against the defendant seeking to quiet title to a beach area and jetty running

[1] Palmieri Cove Associates, LLC, also was a named plaintiff, but it was defaulted for failure to appear on the defendant's counterclaim and it is not participating in this appeal. Accordingly, we refer in this opinion to Patrick Palmieri as the plaintiff and to Palmieri Cove Associates, LLC, by name when necessary.

along the shoreline bordering the parties' properties, a declaratory judgment for an easement, and monetary damages for trespass and nuisance.

In his amended answer, the defendant denied the plaintiff's claims and asserted two special defenses in addition to a counterclaim alleging, inter alia, abuse of process. The defendant subsequently filed a revised three count counterclaim alleging abuse of process, negligent infliction of emotional distress and intentional infliction of emotional distress. The defendant alleged that the plaintiff and/or Palmieri Cove Associates, LLC, previously had filed five lawsuits against him—in 2002, 2008, 2009, 2010 and 2012, in addition to the present action filed in 2015—all relating to disputes over their adjoining properties.[2] The defendant claimed that the plaintiff and/or Palmieri Cove Associates, LLC, filed these actions for the improper purpose of trying to force him out of his property, and that he suffered from emotional distress, high blood pressure and sleeplessness as a result of the plaintiff's conduct.[3] The plaintiff filed a reply denying the allegations in the counterclaim.

[2] In the 2002 action, the trial court rendered judgment for the defendant after concluding that the plaintiff had no right to use the beach along the boundary of the defendant's property, and this court affirmed that portion of the trial court's judgment. See *Palmieri* v. *Cirino*, 90 Conn. App. 841, 845–48, 880 A.2d 172, cert. denied, 276 Conn. 927, 889 A.2d 817 (2005). In the defendant's counterclaim in the present case, he alleged that the plaintiff and/or Palmieri Cove Associates, LLC, nevertheless continued to seek ownership of the beach area through different legal theories in the 2010, 2012 and 2015 lawsuits.

[3] Specifically, the defendant alleged that, in addition to having to defend himself against the lawsuits filed by the plaintiff and/or Palmieri Cove Associates, LLC, the plaintiff, among other things, had placed posters around their neighborhood depicting the defendant's photograph with the caption " 'stalker' "; filed false complaints with the New Haven Building Department and the Water Pollution Control Authority of the City of New Haven; removed 100 feet of the defendant's fence on three different occasions; cut down trees and shrubs on the defendant's property; and lunged at the defendant with a plastic baseball bat, which caused the defendant to fall to the ground, and the plaintiff then sprayed the defendant with a garden hose.

After the complaint was dismissed in March, 2017, a trial on the defendant's counterclaim took place on July 28, 2017.[4] The plaintiff failed to appear for trial and the court, *Robinson*, *J.*, entered a default against him on the counterclaim. In light of the default, which eliminated any issues as to the plaintiff's liability, the only issue for the court to determine was the appropriate amount of damages to be awarded to the defendant.[5]

After hearing evidence as to damages, Judge Robinson awarded the defendant a total of $466,304.07 in compensatory damages and determined that the defendant also was entitled to attorney's fees as punitive damages. She explained: "The defendant . . . presented evidence that he incurred attorney's fees and surveyor's fees to defend himself against the multiple lawsuits initiated by the [plaintiff and/or Palmieri Cove Associates, LLC] . . . . Further, the defendant . . . presented evidence that he sustained severe emotional distress and was forced to seek medical and mental health treatment because of the intentional actions of the [plaintiff] . . . .

"The court finds that the defendant . . . is entitled to compensatory damages in the amount of $216,304.07 for economic losses and $250,000 for noneconomic losses for the abuse of process claim and the negligent infliction of emotional distress claim. The court also finds that the defendant . . . is entitled to punitive damages resulting from the intentional infliction of emotional distress and will award itemized attorney's

[4] The defendant had moved to dismiss the complaint on the basis that the plaintiffs did not have a legally cognizable interest in the property at issue and, therefore, lacked standing to bring the action.

[5] "[E]ntry of default, when appropriately made, conclusively determines the liability of a defendant. . . . Following the entry of a default, all that remains is for the plaintiff to prove the amount of damages to which it is entitled." (Internal quotation marks omitted.) *Dawson* v. *Britagna*, 162 Conn. App. 801, 810 n.3, 133 A.3d 880 (2016).

fees, when they are submitted to the court. Therefore, the total award for compensatory damages is $466,304.07. The court will award attorney's fees when an affidavit of attorney's fees is submitted."

More than five years later, on November 9, 2022, the defendant filed an affidavit in support of attorney's fees. The affidavit set forth attorney's fees and costs totaling $76,693.50. Specifically, the defendant's counsel averred that the defendant had incurred $33,690 in attorney's fees in connection with her representation of him in the present case, since March, 2015, and that the defendant also had incurred $43,003.50 in attorney's fees to other counsel in connection with a bankruptcy proceeding that had taken place postjudgment. The plaintiff filed an objection to the defendant's request for attorney's fees.

By the time the defendant filed the affidavit in support of attorney's fees, Judge Robinson was no longer a judge of the Superior Court. The matter was then referred to the court, *Hon. Jon C. Blue*, judge trial referee, which first held a hearing on the issue of attorney's fees on December 7, 2022. At that hearing, the plaintiff's counsel argued consistently with the plaintiff's written objection that the defendant was not entitled to postjudgment attorney's fees[6] and that the court should deny the defendant's request altogether because the affidavit was

[6] At the hearing, the parties' counsel provided the court with background information regarding the postjudgment proceedings. They explained that, after the judgment was rendered on July 28, 2017, the plaintiff initially paid only a portion of the compensatory damages award to the defendant. The defendant subsequently recorded judgment liens on three of the plaintiffs' properties and then commenced an action to foreclose those liens. In or around August, 2019, while the foreclosure proceeding was still pending, the plaintiff filed for bankruptcy. The bankruptcy proceeding subsequently was dismissed upon the defendant's motion. Approximately one and one-half years after the bankruptcy dismissal, the plaintiff paid the defendant the remainder of the compensatory damages award after selling one of his properties.

filed beyond the thirty day deadline set forth in Practice Book § 11-21.[7] Judge Blue responded that he would consider the affidavit of the defendant's counsel and the issue of attorney's fees, even though that issue was "belatedly" before him. Judge Blue also ruled that he did not have authority pursuant to Judge Robinson's order to award postjudgment attorney's fees, because that order awarded attorney's fees as punitive damages for "past . . . wrongdoing." Judge Blue explained that he was limited to awarding attorney's fees that were "incurred prior to and on July 28, 2017," the date of the judgment, and that it would require the defendant's counsel to submit an amended affidavit of attorney's fees reflecting the fees incurred for that time period. Judge Blue subsequently issued an order directing the defendant's counsel to submit an amended affidavit of attorney's fees by December 14, 2022.

The defendant filed an amended affidavit of attorney's fees on December 14, 2022, and the plaintiff filed an objection. The defendant subsequently filed a "corrected" amended affidavit on March 8, 2023 (corrected affidavit). In the corrected affidavit, the defendant's counsel averred that the defendant had incurred a total of $216,304.07 in attorney's fees, from 2002 until May, 2017, to defend himself in the numerous actions filed by the plaintiff and/or Palmieri Cove Associates, LLC. The defendant's counsel also averred that the defendant had incurred an additional $5190 in expert witness fees during that time, and, therefore, the "new grand total" amount of fees claimed was $221,494.07.

[7] Practice Book § 11-21 provides: "Motions for attorney's fees shall be filed with the trial court within thirty days following the date on which the final judgment of the trial court was rendered. If appellate attorney's fees are sought, motions for such fees shall be filed with the trial court within thirty days following the date on which the Appellate Court or Supreme Court rendered its decision disposing of the underlying appeal. Nothing in this section shall be deemed to affect an award of attorney's fees assessed as a component of damages."

Judge Blue addressed the corrected affidavit at a March 9, 2023 hearing. At the outset, Judge Blue indicated that Judge Robinson's order awarding punitive damages in the form of attorney's fees did not include expert witness fees. The defendant's counsel stated that the total amount of attorney's fees sought, excluding the expert witness fees, was $200,494.07.[8]

The plaintiff's counsel again argued that the court should decline to award attorney's fees because the defendant did not file an affidavit of attorney's fees until more than five years after the judgment was rendered, which was well beyond the thirty day deadline set forth in Practice Book § 11-21. Judge Blue concluded that an award of attorney's fees was not time barred under that provision. Judge Blue recognized that, pursuant to *Meadowbrook Center, Inc.* v. *Buchman*, 328 Conn. 586, 604, 181 A.3d 550 (2018), the thirty day deadline is directory, rather than mandatory. Judge Blue explained that he would exercise his discretion to permit the claim for attorney's fees because, "although the [defendant's] claim is somewhat belated here, this is a little bit different because Judge Robinson has ordered the payment of attorney's fees. . . . Attorney's fees were ordered by Judge Robinson in 2017."

In addition, Judge Blue questioned the defendant's counsel as to why the itemization of fees included work beginning in October, 2002, when "this is a 2015 case. . . . I don't see how you could have been working on a 2015 case in 2002." The defendant's counsel responded that "there were multiple pieces of litigation . . . that were part of the abuse of process trial." Judge Blue recognized that, typically, attorney's fees are awarded only for the case at issue, and, if Judge Robinson had wanted to award attorney's fees from a different case, "she could have said so and she did not."

[8] It is unclear from our review of the corrected affidavit how the defendant's counsel arrived at the figure of $200,494.07.

The defendant's counsel then directed Judge Blue's attention to the portion of Judge Robinson's order in which she stated that the defendant "presented evidence that he incurred attorney's fees and surveyor's fees to defend himself against the multiple lawsuits . . . ." The plaintiff's counsel argued in response that Judge Robinson was not, in her award of attorney's fees, referring to the multiple lawsuits that preceded the present action, because her compensatory damages award of more than $466,000 "presumably included that." Judge Blue disagreed with the plaintiff's counsel, noting that Judge Robinson awarded the compensatory damages before stating that she would "award attorney's fees when [an] affidavit of attorney's fees is submitted." Judge Blue explained: "That, to me, means that the compensatory damages award does not include attorney's fees. . . . [T]hat is for emotional distress."

At the conclusion of the hearing on March 9, 2023, Judge Blue issued an oral decision[9] in which he awarded the defendant $200,494.07, concluding that Judge Robinson had intended to award attorney's fees for the "multiple lawsuits" that extended from 2002 until 2017. This appeal followed.

At the outset, we note the legal principles governing the review of a trial court's award of attorney's fees or other litigation expenses. "We have explained that Connecticut adheres to the American rule . . . [which reflects the idea that] in the absence of statutory or contractual authority to the contrary, a successful party is not entitled to recover attorney's fees or other ordinary expenses and burdens of litigation . . . ." (Internal quotation marks omitted.) *Saunders* v. *Briner*, 334 Conn. 135, 179, 221 A.3d 1 (2019). "Despite the general rule, our Supreme Court has recognized exceptions for

[9] Judge Blue signed the transcript of his oral decision in compliance with Practice Book § 64-1.

cases in which the party or its counsel has acted in bad faith . . . and for cases in which attorney's fees are assessed as punitive damages." (Citation omitted.) *Mangiante* v. *Niemiec*, 98 Conn. App. 567, 570, 910 A.2d 235 (2006). "[C]ommon-law punitive damages are akin to statutorily authorized attorney's fees in practicality and purpose, insofar as both provide the same relief and serve the same function . . . namely, fully compensating injured parties." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Hylton* v. *Gunter*, 313 Conn. 472, 486, 97 A.3d 970 (2014); see also id., 484 (common-law punitive damages are limited under Connecticut law to litigation expenses, such as attorney's fees less taxable costs).

"It is well established that we review the trial court's decision to award attorney's fees for abuse of discretion. . . . This standard applies to the amount of fees awarded . . . and also to the trial court's determination of the factual predicate justifying the award. . . . Under the abuse of discretion standard of review, [w]e 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." (Internal quotation marks omitted.) *Saunders* v. *Briner*, supra, 334 Conn. 179.

To the extent that the plaintiff's claims require us to interpret Judge Robinson's order, our review is plenary. See *Glory Chapel International Cathedral* v. *Philadelphia Indemnity Ins. Co.*, 224 Conn. App. 501, 512, 313 A.3d 1273 (2024); see also *Clark* v. *Clark*, 150 Conn. App. 551, 569 n.12, 91 A.3d 944 (2014) ("[t]he construction of an order is a question of law over which we exercise plenary review" (internal quotation marks omitted)). "As a general rule, [orders and] judgments are to be

construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the [order or] judgment. . . . The interpretation of [an order or] judgment may involve the circumstances surrounding [its] making . . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The [order or] judgment should admit of a consistent construction as a whole." (Internal quotation marks omitted.) *Sessa* v. *Reale*, 213 Conn. App. 151, 161–62, 278 A.3d 44 (2022).

I

The plaintiff first claims that Judge Blue's award of attorney's fees was improper because the affidavit of the defendant's counsel was filed well beyond the thirty day deadline set forth in Practice Book § 11-21, and the defendant failed to demonstrate that the untimely filing was the result of excusable neglect pursuant to *Meadowbrook Center, Inc.*[10] We are not persuaded.

Practice Book § 11-21 does not govern the court's award of attorney's fees as punitive damages. Section 11-21 provides in relevant part: "Motions for attorney's fees shall be filed with the trial court within thirty days following the date on which the final judgment of the trial court was rendered. . . . *Nothing in this section shall be deemed to affect an award of attorney's fees*

[10] In *Meadowbrook Center, Inc.*, our Supreme Court concluded that the thirty day deadline provided by Practice Book § 11-21 is directory, rather than mandatory, and thus affords the trial court discretion to entertain untimely motions for attorney's fees in appropriate cases. *Meadowbrook Center, Inc.* v. *Buchman*, supra, 328 Conn. 604. Our Supreme Court then set forth factors for a trial court to consider in exercising that discretion to determine whether to allow an untimely filing and to determine whether there is "excusable neglect" for the late filing, including "[1] the danger of prejudice to the [nonmovant], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith." (Internal quotation marks omitted.) Id., 606.

assessed as a component of damages." (Emphasis added.) Consistent with the last sentence of that provision, this court has held that "[t]he time limits of . . . § 11-21 do not apply to a trial court's award of attorney's fees as damages." *Mangiante* v. *Niemiec*, 98 Conn. App. 567, 576, 910 A.2d 235 (2006); see also, e.g., *Torrance Family Ltd. Partnership* v. *Laser Contracting, LLC*, 94 Conn. App. 526, 528 n.1, 893 A.2d 460 (2006) ("[i]nsofar as the statute authorizing the award of attorney's fees . . . clearly contemplates those fees as a component of damages . . . we conclude that . . . § 11-21 is wholly inapplicable").

Judge Robinson explicitly stated that she was awarding attorney's fees as punitive damages for the defendant's claim of intentional infliction of emotional distress. The defendant, therefore, was not required to comply with the thirty day deadline set forth in Practice Book § 11-21. See *Mangiante* v. *Niemiec*, supra, 98 Conn. App. 576. In addition, because the affidavit was not untimely filed under that provision, Judge Blue did not need to determine whether there was excusable neglect pursuant to *Meadowbrook Center, Inc.*[11] Accordingly, Judge Blue did not abuse his discretion in awarding attorney's fees even though the affidavit of the defendant's counsel was filed more than thirty days after the judgment rendered by Judge Robinson.

II

The plaintiff also claims that Judge Blue abused his discretion in awarding attorney's fees for expenses incurred by the defendant in defending the prior actions between the parties. Specifically, the plaintiff argues that the amount of the attorney's fees award should

[11] The attorney's fees at issue in *Meadowbrook Center, Inc.*, were not awarded as a component of damages. See *Meadowbrook Center, Inc.* v. *Buchman*, supra, 328 Conn. 590.

have been limited to the fees incurred in the present action. We agree.

At the conclusion of the March 9, 2023 hearing, Judge Blue explained his reasoning for the amount of the $200,494.07 award of attorney's fees as follows: "Ordinarily, the court would award just the attorney's fees spent on this case. However, this is an award of . . . punitive damages given by Judge Robinson. And it is for . . . she specifically mentions the attorney's fees in multiple lawsuits. So, it is my best reading of Judge Robinson's order . . . that she intended for attorney's fees in the multiple litigations to be awarded. I might be right. I might be wrong. But I believe that's what Judge Robinson intended. And I think that her, to me, evident intention ought to be honored."

We do not agree with Judge Blue's interpretation of Judge Robinson's order. Although Judge Robinson stated that the defendant had "presented evidence that he incurred attorney's fees . . . to defend himself against the multiple lawsuits initiated by the [plaintiff and/or Palmieri Cove Associates, LLC]," she did not state that those expenses would serve as the basis for her award of punitive damages. The record provided to this court does not reflect the basis for Judge Robinson's calculation of the economic losses that were included in the compensatory damages award.[12] In the corrected affidavit, however, the defendant's counsel averred that the defendant had incurred a total of $216,304.07 in attorney's fees, which is the *exact*

[12] At oral argument before this court, the defendant's counsel explained that the evidence of economic loss that she had presented to Judge Robinson included the defendant's medical expenses, property damage expenses, and the attorney's fees that the defendant had incurred in defending against the "litany of litigation" brought by the plaintiff and/or Palmieri Cove Associates, LLC. As for the evidence of the attorney's fees incurred by the defendant, the defendant's counsel stated that she had submitted to Judge Robinson the same spreadsheet that she submitted to Judge Blue in considering the corrected affidavit of attorney's fees.

amount of economic damages that Judge Robinson included in the compensatory damages award.

At oral argument before this court, the defendant's counsel suggested that Judge Robinson properly could have awarded attorney's fees from the prior actions as economic damages, to make the defendant whole, and again as punitive damages, to serve as a deterrent to future misconduct. The defendant's counsel presented no legal support, and we have found none, to support this proposition. Instead, our case law indicates that common-law punitive damages are designed to "fully compensat[e] injured parties"; *Hylton* v. *Gunter*, supra, 313 Conn. 485–86; and that they are "restricted to cost of litigation less taxable costs of the action being tried *and not that of any former trial*." (Emphasis added; internal quotation marks omitted.) *Harty* v. *Cantor Fitzgerald & Co.*, 275 Conn. 72, 93, 881 A.2d 139 (2005); see also id., 96–98 (characterizing certain statutory double damages as more punitive in nature than common-law punitive damages). Accordingly, we conclude that the amount of the attorney's fees awarded should have been limited to the expenses incurred in the present action, and that Judge Blue improperly awarded attorney's fees for expenses incurred by the defendant in defending the prior actions between the parties.

The judgment is reversed and the case is remanded with direction to conduct a new hearing on the defendant's motion for attorney's fees consistent with this opinion.

In this opinion the other judges concurred.

M. C. *v.* A. W.*
(AC 46223)

Alvord, Moll and Clark, Js.

Syllabus

The defendant appealed to this court from the judgment of the trial court dissolving his marriage to the plaintiff and entering certain financial orders. *Held*:

1. This court declined to review the defendant's unpreserved claim that the trial court committed error by failing to recuse itself and by demonstrating judicial bias as the record was not adequate for review: the defendant failed to file a motion to disqualify the judge presiding over the action at any time prior to the dissolution judgment; moreover, contrary to the defendant's claim that he preserved the issue by virtue of his trial counsel raising it to the judge in chambers, there was no record of such conversation, and the defendant failed to file a motion for rectification to preserve any such conversation; furthermore, the claim could not be reviewed for plain error because there was no evidence indicating that the purported colloquy between the parties and the judge in chambers in relation to the recusal issue actually occurred nor was there any evidence of bias by the judge.
2. The defendant could not prevail on his claim that the trial court made clearly erroneous factual findings in support of its financial and property distribution orders; the court's findings as to the plaintiff's health and how the plaintiff conducted her business were supported by evidence in the record.
3. The defendant could not prevail on his claim that the trial court did not adequately consider the plaintiff's noncompliance with the court's discovery orders in entering its financial and property distribution orders: the court expressly found that the plaintiff was uncooperative vis-à-vis discovery and that she delayed, or wholly withheld, financial information, and the decision further reflected that the court considered the plaintiff's discovery noncompliance to the detriment of the plaintiff, as the court awarded no alimony to either party, which aligned with the defendant's operative proposed orders and which reflected a rejection of the plaintiff's request in her proposed orders to award alimony; moreover, there was no merit to the defendant's contention that the court

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

improperly declined to rule on three motions for contempt, as the record demonstrated that the defendant expressly withdrew those motions.

4. The defendant could not prevail on his claim that the trial court inequitably distributed the parties' assets: the court did not abuse its discretion in allocating the parties' assets as, contrary to the defendant's assertions, a review of his operative proposed orders and the court's final orders reflected that many of the defendant's requested orders were awarded in full or in part; moreover, the court was not obligated to apply any set formula when dividing the parties' assets so long as it considered the required factors under the statute (§ 46b-81) governing the distribution of assets in a dissolution case, which, as was expressly set forth in its decision, the court did.

Argued January 31—officially released July 2, 2024

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the defendant filed a counterclaim; thereafter, the matter was tried to the court, *Grossman*, *J.*; judgment dissolving the marriage and granting certain other relief, from which the defendant appealed to this court. *Affirmed.*

Terence J. Gallagher, with whom was *A. W.*, self-represented, for the appellant (defendant).

Meagan A. Cauda, with whom was *Dana M. Hrelic*, for the appellee (plaintiff).

Opinion

MOLL, J. The defendant, A. W., appeals from the judgment of the trial court dissolving his marriage to the plaintiff, M. C. On appeal, we distill the defendant's claims to be that the court (1) failed to recuse itself on the basis of an alleged conflict of interest, (2) made clearly erroneous factual findings in support of its financial and property distribution orders, (3) failed to consider adequately the plaintiff's noncompliance with the court's discovery orders in entering its financial and

property distribution orders, and (4) improperly distributed the parties' assets.[1] We affirm the judgment of the trial court.

The following facts, which are not in dispute, and procedural history are relevant to our resolution of this appeal. The plaintiff and the defendant are both attorneys admitted to practice law in Connecticut. The parties were married on January 4, 1995. Two children were born of the marriage, both of whom were over the age of twenty-three at the time of the dissolution judgment. On April 8, 2020, the plaintiff commenced the present dissolution action against the defendant on the ground that the parties' marriage had broken down irretrievably. On May 7, 2020, the defendant filed an answer and a counterclaim for dissolution of marriage on the same ground.

The matter was tried to the trial court, *Grossman, J.*, over the course of five days in March, September, and November, 2022. The court heard testimony from the parties and other witnesses and admitted several full exhibits. The parties also submitted proposed orders. At the conclusion of trial on November 7, 2022, the parties requested an immediate dissolution of their marriage, which the court granted, subject to the court issuing orders at a later date relating to the parties' finances and marital property.

On December 22, 2022, the court issued a memorandum of decision in connection with the judgment of dissolution. At the outset, the court stated that it made its factual findings "[u]pon careful consideration of the evidence presented, the court file, and the pertinent statutory law, in particular, General Statutes §§ 46b-82,

[1] The defendant raises six claims on appeal, which we boil down to the claims described in this opinion. For the purpose of clarity, we address these claims in a different order than they are set forth in the defendant's principal appellate brief.

46b-81, and 46b-87, and the relevant case law, and having observed the demeanor and assessed the credibility of the parties and witnesses . . . .'' The court found that most of the testimony adduced at trial was credible, including testimony provided by the defendant and the fact witnesses. In addition, the court stated that the plaintiff's testimony was not wholly reliable and stated that at times it did not find her credible. The court then entered several financial and property distribution orders as part of the dissolution judgment. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

We begin with the defendant's claim that the Honorable Jane K. Grossman committed error by failing to recuse herself from presiding over the present dissolution action and by demonstrating judicial bias. Specifically, the defendant argues that ''[Judge Grossman's] long-term personal and professional relationship with the plaintiff'' biased the court in favor of the plaintiff, including in issuing the financial and property distribution orders. We decline to review this unpreserved claim because the record is not adequate for review.

As a preliminary matter, we deem the defendant's recusal claim to be unpreserved. The defendant did not file a motion to disqualify Judge Grossman at any time prior to the dissolution judgment.[2] See *State* v. *Cane*, 193 Conn. App. 95, 133, 218 A.3d 1073 (''[i]t is a well settled general rule . . . that courts will not review a claim of judicial bias on appeal unless that claim was

[2] On August 29, 2023, after having filed this appeal, the defendant filed a motion seeking to recuse Judge Grossman from hearing any posttrial motions in the present action, including the plaintiff's motion to terminate the automatic appellate stay. The defendant's filing of the postjudgment motion to recuse has no bearing on the question of whether the defendant preserved the recusal issue prior to the judgment of dissolution, from which the defendant has appealed.

properly presented to the trial court via a motion for disqualification or a motion for mistrial" (internal quotation marks omitted)), cert. denied, 334 Conn. 901, 219 A.3d 798 (2019). Nevertheless, in his principal appellate brief, the defendant maintains that he preserved this issue by virtue of his trial counsel raising it to Judge Grossman in chambers.[3] We disagree, as there is no record of the purported conversation in chambers, and the defendant has failed to file a motion for rectification to preserve any such conversation. See *Moyher* v. *Moyher*, 198 Conn. App. 334, 341, 232 A.3d 1212 (motion for rectification could have been filed pursuant to Practice Book § 66-5 to attempt to preserve discussions in chambers), cert. denied, 335 Conn. 965, 240 A.3d 284 (2020).

The defendant requests that we review his recusal claim, if unpreserved, for plain error.[4] The recusal claim cannot be reviewed for plain error, however, because the defendant has failed to present us with an adequate record.[5] See *State* v. *Kyle A.*, 348 Conn. 437, 446, 307

[3] The defendant's appellate counsel stated during oral argument that the issue of Judge Grossman's recusal was "raised with the court in chambers on the morning of the first day of the trial." However, counsel represented that (1) "there was no transcript" of this discussion, (2) the in-chambers request was denied, and (3) following the court's denial of the in-chambers request, the defendant did not raise the issue on the record because it purportedly was rendered moot by the denial.

[4] "[The plain error] doctrine, codified at Practice Book § 60-5, is an extraordinary remedy used by appellate courts to rectify errors committed at trial that, although unpreserved, are of such monumental proportion that they threaten to erode our system of justice and work a serious and manifest injustice on the aggrieved party. . . . [T]he plain error doctrine is reserved for truly extraordinary situations [in which] the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . Plain error is a doctrine that should be invoked sparingly." (Internal quotation marks omitted.) *State* v. *Taveras*, 219 Conn. App. 252, 269, 295 A.3d 421, cert. denied, 348 Conn. 903, 301 A.3d 527 (2023).

[5] During oral argument, reference was made to review of the defendant's unpreserved claim pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015). Insofar as the defendant seeks *Golding* review as well,

A.3d 249 (2024) ("An appellate court addressing a claim of plain error first must determine if the error is indeed plain in the sense that it is patent [or] readily discernable on the face of a factually adequate record, [and] also . . . obvious in the sense of not debatable. . . . [A] complete record and an obvious error are prerequisites for plain error review . . . ." (Citation omitted; internal quotation marks omitted.)); see also Practice Book § 61-10 (a) ("[i]t is the responsibility of the appellant to provide an adequate record for review"). The defendant has not cited in the record, and our review of the record has not revealed (1) any evidence indicating that the purported colloquy between the parties and Judge Grossman in chambers in relation to the recusal issue actually occurred[6] or (2) any evidence of bias by Judge Grossman otherwise. The only support offered by the defendant is counsel's representations, which are insufficient.[7] See *Magana* v. *Wells Fargo Bank, N.A.*, 164 Conn. App. 729, 734, 138 A.3d 966 (2016) ("representations of counsel are not evidence and are certainly not proof" (internal quotation marks omitted)). We conclude, therefore, that the record is inadequate to review this claim and, accordingly, we decline to review it.

the lack of an adequate record also prevents such review. See *S. A.* v. *D. G.*, 198 Conn. App. 170, 196 n.21, 232 A.3d 1110 (2020) (first prong of *Golding* requires adequate record to review alleged claim of error).

[6] The defendant states in his principal appellate brief that "the court was made aware of the appearance [of] impropriety in hearing this case at trial at the outset. [The defendant's trial counsel] discussed this matter in chambers with Judge Grossman, reminding her of a discussion she had with both of the litigants at a party at her home, which both the plaintiff and the defendant were invited [to] as guests, as were their then minor children . . . . Judge Grossman . . . advised both parties that she could not hear any cases in which they represented parties." The defendant further states that Judge Grossman commented in chambers that she was " 'fond' " of both parties.

[7] The defendant also asserts that Judge Grossman's adverse rulings against him reflected bias. This assertion is untenable. See *Batista* v. *Cortes*, 203 Conn. App. 365, 373, 248 A.3d 763 (2021) ("[a]dverse rulings do not themselves constitute evidence of bias" (internal quotation marks omitted)).

II

We next address the defendant's remaining claims, which, in essence, challenge the court's financial and property distribution orders. The defendant contends that the court (1) made clearly erroneous factual findings, (2) failed to account adequately for the plaintiff's noncompliance with the court's discovery orders, and (3) inequitably allocated the parties' assets. These claims are unavailing.

Before turning to the defendant's claims, we set forth "[t]he standard of review in domestic relations cases [which] is well established. [T]his court will not disturb trial court orders unless the trial court has abused its legal discretion or its findings have no reasonable basis in the facts. . . . As has often been explained, the foundation for this standard is that the trial court is in a clearly advantageous position to assess the personal factors significant to a domestic relations case . . . . Appellate review of a factual finding, therefore, is limited both as a practical matter and as a matter of the fundamental difference between the role of the trial court and an appellate court. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. . . . Simply put, we 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.) *Buchenholz* v. *Buchenholz*, 221 Conn. App. 132, 142–43, 300 A.3d 1233, cert. denied, 348 Conn. 928, 304 A.3d 860 (2023).

A

The defendant asserts that the court made factual findings in support of its financial and property distribution orders that were clearly erroneous. We disagree.

The following additional procedural history is relevant to our resolution of this claim. In entering its financial and property distribution orders, the court made several findings regarding the plaintiff. As to her health, the court found that "[t]he plaintiff is fifty-eight years old . . . [and] in poor health. For most of the marriage, she struggled with alcoholism; this impaired her judgment and her memory. She is experiencing serious medical complications. Only an organ transplant can extend her life and the likelihood of such a transplant is low." With respect to her income, the court found in relevant part that "[t]he evidence demonstrated that [the plaintiff] spends beyond her stated income without increasing her debt and that she conducts business in cash, which goes unreported."

The defendant argues that the court committed clear error in finding that (1) "[o]nly an organ transplant can extend [the plaintiff's] life and the likelihood of such a transplant is low," and (2) the plaintiff "conducts business in cash, which goes unreported." With respect to the plaintiff's health, the defendant asserts that the court's findings are unsupported by the record. With respect to the plaintiff's income, the defendant asserts that, "[w]hile the information to support that [finding] may exist by inference, it was . . . not a stated [finding] or admission in the record of the trial." We conclude that these findings are supported by the evidence in the record.

With respect to the court's findings concerning the plaintiff's health, the plaintiff testified that (1) she has had many medical problems and requires a liver transplant, (2) she has "end stage liver disease," which is a

"terminal illness," (3) at the time of her testimony during trial in March, 2022, she was "put on pause" with respect to a liver transplant list, although she would "be going back on the list," and (4) "there haven't been many livers available during [the COVID-19 pandemic] . . . ." Although the court noted in its decision that it "was unable to rely on all of the plaintiff's testimony and at times did not find [the plaintiff] credible," it also determined that "[m]ost of the testimony received by the court was credible . . . ." As we have explained, the court's decision "may include implicit findings that it resolved any credibility determinations and any conflicts in testimony in a manner that supports its ruling." (Internal quotation marks omitted.) *Buchenholz* v. *Buchenholz*, supra, 221 Conn. App. 147; see also *Delena* v. *Grachitorena*, 216 Conn. App. 225, 231, 283 A.3d 1090 (2022) ("[i]t is the exclusive province of the trier of fact to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness' testimony" (internal quotation marks omitted)). We will not disturb the court's credibility determinations on appeal. See id. Moreover, the defendant acknowledged the plaintiff's health problems in his testimony, including that the plaintiff had been seeking a liver transplant. We conclude, therefore, that the court's finding as to the plaintiff's health is not clearly erroneous.[8]

[8] The defendant asserts that the plaintiff did not submit any medical evidence to support her testimony regarding her medical issues. Insofar as the defendant claims error on this basis, we construe the defendant's argument, in essence, to seek that we retry the facts and evaluate the plaintiff's credibility, which we decline to do. See *Anketell* v. *Kulldorff*, 207 Conn. App. 807, 848, 263 A.3d 972 ("The defendant essentially requests that we reweigh [the] evidence in his favor. [W]e do not retry the facts or evaluate the credibility of witnesses." (Internal quotation marks omitted.)), cert. denied, 340 Conn. 905, 263 A.3d 821 (2021).

In addition, the defendant appears to question on appeal the "terminal" nature of the plaintiff's medical issues, observing that she remained alive at the time that he filed his principal appellate brief. We decline the defendant's apparent invitation to take the plaintiff's current health status into consider-

With respect to the court's finding that the plaintiff conducted business in cash, which went unreported, the court heard testimony from the defendant stating that, while the parties were married, the plaintiff would have him "do bank deposits for her . . . ." The defendant's testimony described how, "if [business checks] were made payable to [the plaintiff], [she] would . . . sign the back of the check and ask [him] to cash it and then bring her the cash." The court also heard testimony from a client of the plaintiff stating that she addressed several payment checks to the plaintiff personally, rather than to the law firm, and that, although she had not paid the plaintiff since September, 2021, the plaintiff represented her and/or performed legal work for her sometime after September, 2021. In addition, several exhibits purporting to chart the plaintiff's various sources of income discrepancies from 2019 to 2021, as derived from her bank statements, were admitted in full. The exhibit charting her "2021 bank and credit card statements," for example, indicates that certain sums of funds appearing on the statements were deposited from sources "unknown." As the defendant concedes in his principal appellate brief, the court reasonably may have drawn inferences on the basis of the evidence to reach its findings relating to the plaintiff's business and income. See *Giordano* v. *Giordano*, 203 Conn. App. 652, 657, 249 A.3d 363 (2021) ("[i]t is within the province of the trial court to find facts and *draw proper inferences from the evidence presented*" (emphasis added; internal quotation marks omitted)).

In sum, we conclude that the court's findings are supported by the record and, therefore, not clearly erroneous.[9]

ation in determining whether the court committed error in entering its financial and property distribution orders.

[9] The defendant suggests that, in light of the alleged lack of evidence in the record to support the court's findings, the court must have based its findings on ex parte communications. In light of our determination that

B

The defendant also asserts that the court did not adequately consider the plaintiff's noncompliance with the court's discovery orders in entering its financial and property distribution orders. Additionally, in connection with this assertion, the defendant contends that the court improperly declined to rule on three contempt motions that he had filed.[10] We are not persuaded.

The following additional procedural history is relevant. On March 29, 2021, the court entered orders, without prejudice to either party, adjudicating discovery disputes between the parties and requiring the parties to produce various discovery materials. Pursuant to Practice Book § 25-32B,[11] the court subsequently appointed a discovery special master to assist the parties with resolving discovery disputes.

Prior to the third day of trial on September 20, 2022, both parties filed motions for contempt. Specifically, on September 14, 2022, the defendant filed a motion for contempt claiming that the plaintiff had failed to comply with the court's discovery orders. On September 19, 2022, the plaintiff filed a motion for contempt predicated on the defendant's alleged noncompliance

the court's findings were not clearly erroneous, we find no merit to this contention.

[10] We note that the defendant filed his principal appellate brief as a self-represented party. His appellate counsel subsequently filed an appearance prior to oral argument.

In the defendant's principal appellate brief, which is not a model of clarity, the defendant refers to several motions that he filed in the present action. We construe comments made by the defendant's appellate counsel during oral argument to limit the defendant's claim concerning the court's refusal to rule on his motions to three contempt motions, which we discuss later in this portion of the opinion.

[11] Practice Book § 25-32B provides: "The judicial authority may appoint a discovery special master to assist in the resolution of discovery disputes. When such an appointment is made, the judicial authority shall specify the duties, authority and compensation of the discovery special master and how that compensation shall be allocated between the parties."

with discovery. On September 19, 2022, the defendant filed a motion for contempt asserting that the plaintiff had violated the court's automatic orders by withdrawing $50,000 from a retirement account without the defendant's consent.

At the outset of the proceedings on September 20, 2022, the parties and the court discussed the defendant's September 14, 2022 motion for contempt claiming discovery noncompliance by the plaintiff. During the discussion, the court commented that "[t]his case has been dragging on. The parties have an obligation to continue to exchange discovery while it drags on. At some point soon, I think I'm going to have to consider some remedies for not disclosing discovery. . . . So, look, at some point, [the plaintiff] might be precluded from putting on this evidence. I might make some adverse inferences if discovery's not produced. . . . I've got a case that's, I don't know, three years old. So I think all those options are on the table . . . . So [the plaintiff] can decide how she wants to handle it. She risks those penalties. She certainly risks some counsel fees for . . . payment of these motions if I find her in contempt for . . . violating discovery rules. But I'm certainly not gonna hold up trial. . . . [W]e have to move on. There can't be a lot between [the parties] that . . . isn't clear other than maybe what the current income is for [the plaintiff's] practice. And if she doesn't disclose it, then I guess some assumptions will be made by the court about why it wasn't disclosed." The court further noted that the defendant's September 14, 2022 motion remained before it and inquired whether there were any other motions to be addressed before the evidentiary portion of trial resumed. The plaintiff's trial counsel responded "[n]o," while the defendant's trial counsel suggested that the court address the defendant's other motions "if and when we readdress [the defendant's September 14, 2022] motion for contempt."

During the fourth day of trial on September 21, 2022, referencing the discussion from the prior day, the court commented that, "if [the plaintiff] doesn't produce the documents pursuant to valid requests and a number of orders . . . the court has a number of options available to it, including adverse inferences and including preclusion. And we haven't gotten into any of that yet because . . . I haven't heard from [the plaintiff] about those items. But . . . in my view, it has not changed." The court further commented that it was "disappointing and distressing" to see "two members of the bar who are credibly accused of not following all of the rules of practice regarding the exchanging of discovery . . . ."

Later in the day, the defendant's trial counsel requested that the court order a deadline by which the plaintiff had to comply with outstanding discovery. The plaintiff's trial counsel responded that the plaintiff was working on discovery compliance and that counsel would attempt to assure compliance by the following week. The court then stated that "[there have been] [o]utstanding discovery requests [i]n a case that is many years old and there are multiple orders for people to produce. So, as far as I'm concerned, all the motions to compel, all the motions for sanctions, and all the motions for remedy regarding the failure to produce documents are before the court. . . . I'm not delaying this trial or issuing any more deadlines. . . . If [the plaintiff] doesn't produce them, all remedies are available to [the defendant]. I may still, because they are produced late, make some adverse inferences or . . . issue some sanctions or shift some fees in either direction . . . . So, all the options are available. . . . If [the defendant's trial counsel doesn't] have enough time to go through [the production] . . . I will certainly hear [him] out about how that should impact my order for sanctions."

On November 1, 2022, the defendant filed an amended motion for contempt, ostensibly in relation to his September 14, 2022 motion for contempt, asserting that, notwithstanding some recent discovery compliance, the plaintiff had failed to comply fully with the court's discovery orders. The defendant requested as relief that the court order the plaintiff to provide full discovery compliance immediately and to pay reasonable attorney's fees and costs pursuant to General Statutes § 46b-87.

At the outset of the final day of trial on November 7, 2022, the court inquired whether there was anything to address before the evidentiary portion of trial resumed. The defendant's trial counsel made reference to pending motions for contempt, but there was no request to address the motions at that time.

During closing arguments, prior to the start of the plaintiff's rebuttal, the court noted that "the plaintiff's [operative] proposed orders are not asking for any ruling on any of [the] pendente lite motions" whereas the defendant's operative proposed orders suggested that there were pending motions to resolve.[12] The defendant's trial counsel responded that the court could consider the motions on the papers. The plaintiff's trial counsel, in turn, stated that she "thought [the parties] were not proceeding on the motions . . . ." The following colloquy then occurred:

[12] On November 3, 2022, the defendant filed an amended list of pending motions. The motions that were referenced therein included (1) the defendant's motion for contempt dated June 24, 2020, (2) the defendant's motion for sanctions dated September 17, 2020, (3) the defendant's motion for sanctions dated October 5, 2020, (4) the defendant's motion for sanctions and finding of per se bad faith dated November 14, 2020, (5) the defendant's November 1, 2022 amended motion for contempt, along with the defendant's September 14, 2022 motion for contempt, (6) the defendant's September 19, 2022 motion for contempt, (7) the plaintiff's September 19, 2022 motion for contempt, along with the defendant's objection thereto, and (8) the defendant's motion for order of compliance dated November 1, 2022.

"The Court: I thought . . . I'd heard one of the lawyers say nobody was pursuing these motions for sanctions or contempt regarding discovery . . . . Are you pursuing those motions? Do I need to rule on them or not? Because one set of proposed orders . . . looks like I don't, and one set of proposed orders makes it look like I do.

"[The Defendant's Counsel]: I've put my testimony on about them; I certainly have no objection to [the plaintiff's trial counsel] doing whatever she'd like to do to oppose those.

"The Court: Okay. . . . That sounds like a change in understanding from earlier. . . . I'll give you time to get back to me about it or talk to me about it . . . .

"[The Plaintiff's Counsel]: I started the day saying I won't claim [the plaintiff's] motion for contempt if [the defendant is not] claiming [his]." Following a pause in the proceedings, the defendant's trial counsel represented to the court that "we're going to not have you rule on those [motions] . . . and hope that you instead concentrate on defendant's [exhibit] CCC," consisting of a spreadsheet titled "spreadsheet of marital waste," along with accompanying documents, which purported to show the total amount of "waste of [marital] assets" by the plaintiff, including the accumulation of legal fees.

During the plaintiff's rebuttal argument, the following colloquy occurred:

"[The Plaintiff's Counsel]: Discovery has not—[the plaintiff] filed [a] motion for contempt that [she] did not proceed on . . . and argument is made to Your Honor about . . . how there was no discovery; there was lots of discovery here. . . .

"[The Defendant's Counsel]: Your Honor . . . I withdrew the motions for contempt. Why are we talking about this?

"[The Plaintiff's Counsel]: Well, because you talked about it. . . . Counsel's asked [the court] to take that into account in—

"[The Defendant's Counsel]: Oh, I definitely—

"[The Plaintiff's Counsel]: —fashioning [the court's] orders.

"[The Defendant's Counsel]: —have asked [the court] to take that into account. I agree.

"[The Plaintiff's Counsel]: Yeah. And so that's why I'm commenting about it.

"The Court: And . . . there is a request for counsel fees at least from the plaintiff's side; so . . . I think I need to at least give it some thought."

In its decision issuing its financial and property distribution orders, the court did not expressly refer to any motions filed by the parties. The court did, however, address the plaintiff's discovery violations, stating: "The plaintiff is admitted to practice law in Connecticut. She is self-employed in her own practice and continued to practice and take on clients while this action was pending. The plaintiff reported a gross annual income of $30,680 from annuities. *She was not cooperative during the discovery process. She delayed production of, or withheld entirely, information related to her earnings and spending.* The evidence demonstrated that she spends beyond her stated income without increasing her debt and that she conducts business in cash which goes unreported. In 2019, her personal gross annual income was more than $90,000. Accordingly, the court finds that the plaintiff has sufficient income to support herself." (Emphasis added.) The court proceeded to order, inter alia, that (1) neither party was to pay alimony to the other party and (2) each party was responsible for his or her own attorney's fees and costs.

At this juncture, we briefly address the defendant's contention that the court improperly declined to rule on his September 14, 2022, September 19, 2022, and November 1, 2022 motions for contempt. We reject this claim because the record demonstrates that the defendant expressly withdrew these motions on the record on November 7, 2022. As the November 7, 2022 trial transcript reflects, following confusion expressed by the parties' respective trial counsel regarding the status of the contempt motions, the court stated that it had "heard one of the lawyers say nobody was pursuing *these motions for sanctions or contempt regarding discovery*" and asked directly whether it "need[ed] to rule on them or not." (Emphasis added.) The defendant's trial counsel later informed the court that "we're going to *not have* [*the court*] *rule on those* [*motions*] . . . and hope that [the court] *instead* concentrate[s] on defendant's [exhibit] CCC." (Emphasis added.) Moreover, during the plaintiff's closing argument, the defendant's trial counsel confirmed that he "*withdrew* the motions for contempt." (Emphasis added.) Further, in his principal appellate brief, the defendant makes it clear that, "[i]n discussions with the court, the defendant's [trial] counsel, based upon [the court's] prior admonishment of the parties [during trial], requested that the court deal with the issues of the contempts by focusing on the defendant's exhibit CCC . . . ." Upon the defendant's withdrawal of the motions for contempt, those motions were no longer before the court for adjudication. Accordingly, there is no merit to the defendant's claim.[13]

[13] During oral argument before this court, the defendant's appellate counsel asserted that the defendant did not withdraw any motions on November 7, 2022, because his trial counsel was not specific enough as to which motions the defendant intended to withdraw during that discussion. Alternatively, the defendant's appellate counsel argued that, to the extent that the defendant's trial counsel may have represented to the trial court that the defendant was withdrawing any of his outstanding motions, it was only with respect to his September 19, 2022 motion relating to the court's automatic orders,

The crux of the defendant's remaining assertion is that the court did not adequately consider the plaintiff's noncompliance with discovery in entering its financial and property distribution orders. The defendant maintains that the court "failed to hold the plaintiff accountable for her intentional and [wilful] actions frustrating the orderly process of this dissolution action." The court's decision, however, reflects that the court expressly found that the plaintiff was uncooperative vis-à-vis discovery and delayed, or wholly withheld, financial information. The decision further reflects that the court considered the plaintiff's discovery noncompliance to the detriment of the plaintiff, as the court, notwithstanding the plaintiff having a reported gross income of $30,680, determined that the plaintiff had sufficient income to support herself. We construe that determination, in turn, implicitly to have guided the court in awarding no alimony to either party, which aligned with the defendant's operative proposed orders and rejected the plaintiff's request, as reflected in her operative proposed orders, to award her alimony in the amount of $1653 per month until either party's death or the plaintiff's remarriage. Insofar as the defendant posits that the court should have relied further on the plaintiff's discovery noncompliance to enter additional orders adverse to her, we do not deem the court to have abused its broad discretion in declining to do so. Accordingly, we reject the defendant's claim.

C

The defendant next asserts that the trial court inequitably distributed the parties' assets. We disagree.

"[Section] 46b-81 governs the distribution of the assets in a dissolution case. . . . That statute authorizes the court to assign to either spouse all, or any

but not any of the motions relating to the discovery issues. In light of the record, we do not find these arguments persuasive.

part of, the estate of the other spouse. . . . In fixing the nature and value of the property, if any, to be assigned, the court, after considering all the evidence presented by each party, shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates. . . . Moreover, [w]e have iterated that there is no set formula the court is obligated to apply when dividing the parties' assets and . . . the court is vested with broad discretion in fashioning financial orders. . . . As a panel of this court once expressed, the court has vast discretion in fashioning its orders. . . . Generally, we will not overturn a trial court's division of marital property unless it misapplies, overlooks, or gives a wrong or improper effect to any test or consideration which it was [its] duty to regard." (Citation omitted; internal quotation marks omitted.) *Wethington* v. *Wethington*, 223 Conn. App. 715, 734–35, 309 A.3d 356 (2024).

"Although the trial court must consider those factors delineated by § 46b-81 when distributing assets, *no single criterion is preferred over others*, *and the court is accorded wide latitude in varying the weight placed upon each item under the peculiar circumstances of each case*. . . . [Additionally, the court] *need not give each factor equal weight . . . or recite the statutory criteria that it considered in making its decision or make express findings as to each statutory factor*." (Emphasis in original; internal quotation marks omitted.) *Anderson-Harris* v. *Harris*, 221 Conn. App. 222, 248, 301 A.3d 1090 (2023).

In its decision, the court found that the plaintiff (1) is in poor health, (2) struggled with alcoholism for most of the parties' marriage, which impaired her judgment and memory, (3) "is experiencing serious medical complications," (4) requires an organ transplant to extend her life, "the likelihood [of which] is low," and (5) had sufficient income to support herself. The court also found that the plaintiff (1) since 2019 has lived exclusively in the parties' marital residence in Wallingford, which is valued at approximately $725,000 and which has no mortgage, but is subject to a home equity line of credit (HELOC) in the defendant's name alone with a balance of approximately $50,000, and has paid the property taxes[14] and utilities since then, and (2) used to own with her father a certain limited liability company (real estate LLC), as well as company owned real property upon which an office building is situated (but for which she has not paid rent or contributed to its upkeep for many years and which she, "in fact, deliberately damaged . . . at significant costs to the defendant [who now owns the company]. The defendant is closing his practice and has no need for this office any longer. . . . The approximate net value of the property is $130,000."). As to the defendant, the court found that he (1) lives in a West Hartford property co-owned with his sister, (2) is entitled to 75 percent of a trust with an approximate corpus value of $600,000, subject to certain distributions and obligations, (3) has paid car insurance, homeowners insurance, and motor vehicle taxes for both parties and their children during the pendency of the present action, and (4) has sufficient income to support himself.

On the basis of its findings, the court ordered that the plaintiff (1) was awarded (a) the marital residence,

[14] With respect to property taxes with regard to the marital residence, the court found that, in response to a foreclosure action, the plaintiff paid $42,000 in delinquent property taxes accrued from 2018 to 2021.

with the defendant obligated to pay the HELOC debt, as well as the homeowners insurance on the home until February 1, 2023, (b) certain real property in Hamden, (c) all interest in a certain limited liability company, (d) several vehicles, with the defendant required to pay car insurance on the parties' vehicles until February 1, 2023, (e) certain jewelry, and (f) certain furnishings and furs, and (2) would retain her retirement account and annuity accounts. The court further ordered that the defendant (1) would retain (a) the real estate LLC, subject to the requirement that he sell the real property that it owned and use the proceeds to pay off certain debts and (b) any interest in the trust, and (2) was awarded (a) his interest in the West Hartford property, (b) all interest in two other, identified limited liability companies, (c) certain vehicles, and (d) certain jewelry. Additionally, the court ordered that the parties (1) were to divide equitably the furnishings in the marital home, (2) would retain any personal property in their possession or financial accounts in their name or listed in their respective financial affidavits, not otherwise assigned by the court, and (3) were responsible for (a) their personal debts not otherwise assigned by the court, (b) their personal health insurance, and (c) their personal attorney's fees and costs.

The defendant maintains on appeal that, "[i]n this action, the issue of distribution is what is not equitable." In particular, he contends that the court's orders allocating the parties' assets "strip[ped] him of . . . the majority of the family assets earned by the parties during the course of the marriage . . . while the noncompliant . . . [plaintiff] is left with the lion['s] share of the jointly built family assets," specifically highlighting the court's allocation of the parties' marital residence to the plaintiff. We note that, contrary to the defendant's assertions, a review of his operative

proposed orders[15] and the court's final orders reflects that many of the defendant's requested orders were awarded in full or in part. For example, consistent with the defendant's operative proposed orders, the court declined to award the plaintiff alimony as she requested, which would have amounted to nearly $20,000 per year. The court also declined to award the plaintiff the amounts that she requested relating to the taxes and penalties on the marital residence; see footnote 14 of this opinion; and the parties' health insurance coverage. In any event, the court was not obligated to apply any set formula when dividing the parties' assets so long as it considered the statutorily required factors of § 46b-81; see *Anderson-Harris* v. *Harris*, supra, 221 Conn. App. 248; which, as is expressly set forth in its decision, the court did.[16] See id., 250 ("[M]aking every reasonable presumption in favor of the correctness of the trial

[15] In his operative proposed orders, the defendant requested in relevant part: (1) sole ownership of the parties' marital residence, subject to a life estate interest given to the plaintiff, and with the defendant required to pay the principal payments associated with the HELOC, (2) to retain his interest in the West Hartford property, (3) sole ownership of the real estate LLC, with the real property that it owned either (a) being retained by the defendant or (b) sold, with the defendant entitled up to $200,000 of any net proceeds following the sale and the plaintiff entitled to any remaining net proceeds, (4) to retain his interest in two other, identified limited liability companies, (5) to retain his interest in the trust, (6) that the parties retain the retirement accounts listed in their names, and (7) the plaintiff pay him $436,359.34 as compensation for her "marital waste."

[16] Moreover, notwithstanding the defendant's assertions to the contrary, the court awarded or allowed the defendant to retain substantial assets. For instance, the court ordered that the defendant (1) would retain his retirement accounts, which, per his averments in his operative financial affidavit, were valued at $544,264; (2) was awarded his interest in the West Hartford property, which, per the defendant's averments in his operative financial affidavit, was valued at $250,000; and (3) was awarded certain jewelry, which, per the defendant's averments in his operative financial affidavit, was valued at $20,000. Additionally, the court ordered that the defendant would retain his 75 percent interest in the trust with a corpus value of approximately $600,000, less certain distributions and obligations, although, as the court found, the defendant was uncertain as to when or how much he would ultimately receive.

court's orders, as we are required to do . . . we are satisfied that the court did consider these factors, even if it did not state with specificity how it weighed them. This conclusion is supported by comments made by the trial court throughout its financial orders, such as, '[h]aving considered the statutory criteria,' and, '[t]he court has closely examined the parties' financial affidavits . . . .' " (Citation omitted.)).

The defendant further contends that the court erred because it did not consider how the plaintiff's misconduct was "detriment[al] [to] the defendant financially and emotionally" or impute this impact in its financial orders. In particular, the defendant argues that the final orders reflect that the court failed to credit the defendant's evidence purporting to show "marital waste" that was committed by the plaintiff during the course of the dissolution action, as well as the evidence contained in his various prejudgment discovery motions. Insofar as the defendant invites us to reconsider the evidence that was before the court, "[w]e note that it is not the function of this court to review the evidence to determine whether a conclusion different from the one reached could have been reached. . . . Thus, [a] mere difference of opinion or judgment cannot justify our intervention." (Internal quotation marks omitted.) *Anderson-Harris* v. *Harris*, supra, 221 Conn. App. 251.

In sum, after a careful review of the record and the defendant's contentions on appeal, we conclude that the court did not abuse its discretion in allocating the parties' assets.

The judgment is affirmed.

In this opinion the other judges concurred.

NATIONSTAR MORTGAGE, LLC *v.* ALAN M. GIACOMI ET AL.

(AC 46212)

Clark, Seeley and Prescott, Js.

Syllabus

The plaintiff sought to foreclose on certain real property owned by the defendants G and his wife. After several failed attempts to serve G with process, the court granted the motion of the substitute plaintiff, U Co., to cite in G as a party defendant, and U Co. filed a revised complaint. Thereafter, G failed to file a timely pleading in response to the operative complaint by the deadline for doing so under the rule of practice (§ 10-8), and the court granted U Co.'s motion to default G for failure to plead and rendered a judgment of foreclosure by sale. G subsequently filed a motion to open and vacate the judgment of foreclosure, which the court denied. On G's appeal to this court, *held*:

1. G could not prevail on his claims challenging the trial court's underlying default judgment of foreclosure; neither G's claim that he wrongfully was denied participation in the foreclosure mediation program due to procedural delays nor his claim that the court erroneously denied his request to revise the complaint constituted a proper challenge to the court's judgment that G had been defaulted for failure to plead, as the effect of the default was to preclude G from denying liability for the claims asserted in the complaint and to permit the rendering of judgment in favor of U Co.
2. The trial court did not abuse its discretion in denying G's motion to open the default judgment; the court found, inter alia, that G's proffered justification for failing to file a timely pleading, namely, that he had an erroneous understanding of the pleading deadline at issue, did not satisfy the second prong of the applicable statute (§ 52-212 (a)) because it was not the result of mistake, accident or excusable neglect but was rooted in G's own negligence.

Argued January 29—officially released July 2, 2024

Procedural History

Action to foreclose a mortgage on certain real property owned by the named defendant et al., and for other relief, brought to the Superior Court in the judicial district of Waterbury, where the court, *M. Taylor*, *J.*, granted the plaintiff's motion to substitute U.S. Bank

National Association, Trustee, as the plaintiff; thereafter, the court, *Spader*, *J.*, granted the substitute plaintiff's motion for default for failure to plead as to the named defendant and rendered a judgment of foreclosure by sale; subsequently, the court, *Spader*, *J.*, denied the named defendant's motion to open and vacate the judgment of foreclosure, from which the named defendant appealed to this court. *Affirmed.*

Alan M. Giacomi, self-represented, the appellant (named defendant).

Jeffrey M. Knickerbocker, for the appellee (plaintiff).

Opinion

CLARK, J. The defendant Alan M. Giacomi[1] appeals from the judgment of the trial court denying his motion to open and vacate the judgment of foreclosure by sale rendered after he was defaulted for failure to plead. On appeal, the defendant claims that the court improperly (1) "den[ied] [his] requests to participate in foreclosure mediation," (2) "sustain[ed] the plaintiff's objection to [his] request to revise on or about February 5, 2020," and (3) denied his motion to open the default judgment pursuant to General Statutes § 52-212 (a). We disagree and, accordingly, affirm the judgment of the trial court.[2]

[1] The United States Department of Justice, Melissa R. Giacomi, and Mortgage Electronic Registration Systems, Inc., also were named as defendants in this action. None of those defendants is participating in this appeal. As such, all references to the defendant in this opinion are to Alan M. Giacomi only.

[2] Although the defendant's appeal form listed a number of other orders that he intended to challenge on appeal, he failed to discuss any of those orders in the briefs that he filed with this court. As a result, we deem those claims abandoned. See *Heyward* v. *Judicial Dept.*, 159 Conn. App. 794, 802–803, 124 A.3d 920 (2015) ("[W]e are not required to review claims that are inadequately briefed. . . . We consistently have held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . [A]ssignments of error which are merely mentioned but not briefed beyond a statement of the claim will be deemed abandoned and will not be reviewed

The following facts and procedural history are relevant to our resolution of this appeal. On May 18, 2017, the original plaintiff, Nationstar Mortgage, LLC (Nationstar), commenced this action against Melissa R. Giacomi (Melissa Giacomi) to foreclose a mortgage on property located at 70 Arvida Road in Wolcott owned by Melissa Giacomi and the defendant, who formerly were married but have since divorced. Although the original summons and complaint named both Melissa Giacomi and the defendant as defendants, Nationstar failed to serve the original summons and complaint on the defendant. On June 26, 2017, Melissa Giacomi filed a foreclosure mediation request, which the clerk of court granted on July 11, 2017. Melissa Giacomi and Nationstar subsequently engaged in court-annexed mediation between July, 2017, and January, 2018. On January 10, 2018, the foreclosure mediator filed a final report stating that the case had not been settled, and the mediation period subsequently was terminated.

On January 16, 2018, Nationstar filed a motion to cite in the defendant as a party defendant, which was granted by the court, *M. Taylor*, *J.*, on January 29, 2018. On May 14, 2018, after the defendant was defaulted for failure to appear, Nationstar filed a motion for a judgment of strict foreclosure, which was granted by the court on May 29, 2018, with the law days set to commence on August 7, 2018.

On June 29, 2018, Nationstar filed a motion to open the judgment nunc pro tunc and to substitute "U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016-CCT" (U.S. Bank), as the plaintiff on the basis that

by this court." (Internal quotation marks omitted.)); see also *Simms* v. *Zucco*, 214 Conn. App. 525, 546 n.14, 280 A.3d 1226 ("to receive review, a claim must be raised and briefed adequately in a party's principal brief, and . . . the failure to do so constitutes the abandonment of the claim" (internal quotation marks omitted)), cert. denied, 345 Conn. 919, 284 A.3d 982 (2022).

Nationstar had assigned the mortgage to U.S. Bank by an assignment dated May 17, 2018, and recorded on the Wolcott land records on May 29, 2018. On July 16, 2018, the court granted the motion.[3]

On August 3, 2018, Melissa Giacomi filed a notice of bankruptcy stay. On December 14, 2018, after Melissa Giacomi received a discharge from the bankruptcy court and her bankruptcy case was closed, U.S. Bank filed a motion to open and reset the law days. On January 28, 2019, the court granted the motion and rendered a judgment of strict foreclosure with the law days to commence on July 2, 2019.

On June 20, 2019, the defendant filed an appearance in the case. The defendant filed a motion to open and vacate the judgment on July 1, 2019, which the court granted on the same day and reset the law days to commence on July 23, 2019. Thereafter, on July 19, 2019, the defendant filed a motion to dismiss, claiming that the court had no personal jurisdiction over him pursuant to Practice Book § 10-30 (a) (2) and (4), and *Hyde* v. *Richard*, 145 Conn. 24, 138 A.2d 527 (1958), because the "defendant was never served with process

[3] We note that U.S. Bank was not docketed as the substitute plaintiff in the trial court file after the court granted the motion to open and substitute. This appears to have been an administrative error. We also note that, after the substitution in this case, various attorneys from Bendett & McHugh, P.C., counsel for Nationstar, continued to file some pleadings in the trial court on behalf of Nationstar despite the fact that Nationstar was no longer a party to the action by virtue of the fact that U.S. Bank had been substituted for Nationstar. In addition, counsel never filed an appearance on behalf of U.S. Bank in the trial court or in this court. Instead, appellate counsel for the plaintiff-appellee, Attorney Jeffrey M. Knickerbocker from Brock & Scott, PLLC, filed an appearance in this court for Nationstar and filed an appellee brief on behalf of Nationstar, not U.S. Bank. The record is clear, however, that the operative complaint was filed by U.S. Bank, and judgment was rendered by the trial court for U.S. Bank. Although counsel's filing errors appear to be mere oversights, counsel in such cases must pay careful attention to ensure that the pleadings and appearances they file comply with our rules of practice and accurately reflect which parties they represent.

. . . .” On August 1, 2019, the court granted the defendant’s motion to dismiss the case against him for lack of personal jurisdiction, finding that, at the time of service, the defendant did not live at the address where Nationstar had attempted service of process.

On August 7, 2019, a motion to open and vacate the judgment of foreclosure and a motion to cite in the defendant as a party defendant was filed. On August 19, 2019, the court granted the motion to open and vacate the judgment, and, on August 23, 2019, the court granted the motion to cite in the defendant as a party defendant. On November 12, 2019, due to an error in service, an additional motion to cite in the defendant as a party defendant was filed and was granted by the court on November 25, 2019.[4] On December 23, 2019, the defendant was finally served with the amended complaint.

On July 12, 2022, U.S. Bank filed a revised complaint, which is the operative complaint in this appeal. On August 10, 2022, U.S. Bank filed a motion for a judgment of strict foreclosure. The defendant filed a request to revise on August 11, 2022, which was denied by the court on September 6, 2022. The defendant subsequently filed a motion to strike on September 20, 2022, which was denied by the court on October 11, 2022. Thereafter, the defendant failed to file a timely pleading in response to the operative complaint by the October 26, 2022 deadline for doing so under Practice Book § 10-8.[5] As a result, on November 1, 2022, U.S. Bank moved

[4] Although the text of the motions to cite in the defendant as a party defendant filed on August 7, 2019, and November 12, 2019, refer to “[t]he plaintiff, Nationstar Mortgage, LLC,” these motions were both filed after the motion to substitute U.S. Bank as the plaintiff was granted on July 16, 2018, and, as stated in footnote 3 of this opinion, the operative complaint was filed by U.S. Bank, and we therefore interpret all motions filed after July 16, 2018, to have been filed by U.S. Bank.

[5] Practice Book § 10-8 provides in relevant part: “Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall advance

to default the defendant for failure to plead. The court granted that motion on November 8, 2022. On November 14, 2022, the court held a hearing on U.S. Bank's August 10, 2022 motion for a judgment of strict foreclosure, at which it rendered a judgment of foreclosure by sale with a sale date of February 25, 2023.

On December 5, 2022, the defendant filed a motion to open and vacate the judgment of foreclosure, arguing that he had good defenses at the time the judgment was rendered and that he was unable to raise his defenses by filing a timely answer due to mistake, accident, or other reasonable cause. Specifically, the defendant stated, inter alia, that he "failed to plead due to his belief that he had thirty days to plead after the court's action on the prior pleading. . . . The defendant was unaware that foreclosure actions carried different time constraints than regular civil actions." U.S. Bank filed an objection to the defendant's motion on December 13, 2022. On December 21, 2022, the court denied the defendant's motion to open and vacate the judgment of foreclosure and sustained U.S. Bank's objection to the motion.

In its memorandum of decision, the court stated: "The court has considered the arguments of the defendant and the response of [U.S. Bank] and is not persuaded to reopen the judgment of foreclosure pursuant to [§ 52-212 (a)] or Practice Book § 17-43.

"To open a judgment, the defendant must demonstrate *both* that he has a good defense to the underlying action and that he was prevented by mistake, accident, or other excusable neglect from raising said defense.

within thirty days from the return day, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of thirty days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required, *except that in . . . actions to foreclose a mortgage on real estate the time period shall be fifteen days*. . . ." (Emphasis added.)

Even if the court is persuaded that the defendant has good reason for not timely raising the defense, if the defense is insufficient, the judgment should not be opened. See generally *Costello* v. *Hartford Institute of Accounting, Inc.*, 193 Conn. 160, 167, 475 A.2d 310 (1984). The defendant has not presented good cause for the court to reopen the judgment. He has not credibly demonstrated that a good defense existed at the time of judgment.

"As to the timing of the default, it was properly entered. [U.S. Bank] moved for the default on November 1, 2022, and it was granted on November 8, 2022. The defendant claims he only received the notice of the granting of the default on November 10, 2022, the courthouse was closed on November 11, 2022, and the judgment hearing was on November 14, 2022—so he did not have time to go to the courthouse library to conduct legal research. The default was moved for on November 1, 2022. Based on the defendant's affidavit, he had not even begun to research his defenses at the time he received notice of the granting of the motion. While the defendant is a self-represented party, it is also true that he is a former attorney with more legal training than others before the court and had, at least at some point in the past, knowledge of the Connecticut Practice Book and knowledge of pleading timelines. The court cannot say that the defendant was prevented by mistake, accident, or excusable neglect from timely raising his potential defenses, as it appears that he neglected to raise them by his own negligence. He notes that he has vigorously defended the proceedings thus far, and the court acknowledges that he has, but the default entered properly for his not timely filing a responsive pleading when due nor after receiving [U.S. Bank's] motion requesting the default.

"Although at this point the court, based on the above finding, does not need to review the potential defenses, for the sake of a clean record, the court will do so.

"The defenses being claimed by the defendant are grounded in equity. Foreclosures are equitable proceedings and equitable defenses are available thereto. The defendant first claims that the original lender engaged in fraud in approving him for a mortgage as he executed a loan given to him based on inaccurate figures amended by employees of GMAC [Mortgage Corporation] prior to the loan origination and that the terms on the second mortgage signed contemporaneously with the loan subject to his action were inaccurate. The defendant then claims that the procedural delays caused by [Nationstar's] initial inability to serve him because he was no longer at the premises, and then through delays in causing the motions to cite to be consummated with valid service, resulted in his not being able to engage in mediation and caused excessive interest accrual. Accordingly, the defendant contends that the court should consider the procedural delays of [Nationstar and U.S. Bank] as a defense pursuant to *U.S. Bank National Assn.* v. *Blowers*, 332 Conn. 656, 212 A.3d 226 (2019). Finally, the defendant claims a priority issue, alleging that the federal lien on his property has priority over the city's accruing real estate taxes and if the court, following a foreclosure sale, disburses to the city rather than the [United States], less of his equity in the premises will be used to pay down his federal debt to his personal detriment.

* * *

"As to the second proposed defense, the court cannot fully credit the procedural delays against [Nationstar and U.S. Bank]. The defendant was unable to be served properly when he was no longer at the home. [Melissa Giacomi] may not have advised him of the pendency of this action, but he did know [that] he was in default on the mortgage and did not take any steps to reach out to [Nationstar] to attempt to resolve the situation.

The matter was delayed for a time with [Melissa Giacomi's] mediation attempts and her bankruptcy. The court found that service was not proper and granted the defendant's previous motion to open. The court's decision revealed the difficulty of effectuating proper service, but eventually, [U.S. Bank] obtained proper service and the action proceeded.

"These are not the types of delays that the *Blowers* court indicated could provide a defense to a foreclosure—the issue there was bad faith negotiations. If anything at all, delays could provide an offset to the debt, but the defendant would also have to demonstrate that he had some ability to negotiate payments. The defendant did not move to reconsider the denials of his mediation requests so there is no record of why they were denied, but with [Melissa Giacomi] as a coborrower on the note and her obtaining a Chapter 7 discharge of personal liability, it is clear that no modification is presently possible. The delay in effectuating actual service did not prejudice the defendant in his ability to redeem the mortgage if he chose to do so since the 2016 default in payments nor his ability to defend this matter.

* * *

"The defendant also mentions his issues with [U.S. Bank's] pleadings, alleging that it has not followed the cite in orders by properly stating his interest in the premises and by including the original plaintiff of Nationstar in its captioning of pleadings, despite an order to amend the summons and complaint. The court has reviewed the pleadings and finds no jurisdictional error in them. The case caption required by the court is the Nationstar name, as that is how the clerk has the case captioned. The operative complaint does indicate the substituted plaintiff in the signature block. The interest of the defendant has consistently been

plead[ed] as a party to the note and mortgage . . . and owner and possessor of the premises . . . .

"After careful consideration of all of the defendant's arguments and his affidavit and pleadings, the court denies the motion to open and vacate the judgment of foreclosure by sale." (Emphasis in original.) This appeal followed.

I

We first address the defendant's claims challenging the underlying default judgment of foreclosure.[6] The defendant challenges that default judgment on two grounds. Specifically, he claims that the court improperly (1) "den[ied] [his] requests to participate in foreclosure mediation" and (2) "sustain[ed] the plaintiff's objection to [his] request to revise on or about February 5, 2020." We reject both of these claims because neither claim constitutes a proper challenge to the basis for the court's judgment in this case, namely that the defendant had been defaulted for failure to plead.

"The entry of a default constitutes an admission by the [defaulted party] of the truth of the facts alleged in the complaint. . . . Practice Book § 17-33 (b) provides in relevant part that the effect of a default is to preclude the defendant from making any further defense in the case so far as liability is concerned . . . ." (Citation omitted; internal quotation marks omitted.) *TD Banknorth, N.A.* v. *White Water Mountain Resorts of Connecticut, Inc.*, 133 Conn. App. 536, 545–46, 37 A.3d 766 (2012). "A default admits the material facts that constitute a cause of action . . . and entry of default, when appropriately made, conclusively determines the liability of a defendant. . . . If the allegations of the plaintiff's complaint are sufficient on their face to make out

[6] The defendant's challenges to the underlying default judgment are timely because he filed his motion to open the judgment within the twenty day period for appealing from the underlying judgment. See Practice Book § 63-1.

a valid claim for the relief requested, the plaintiff, on the entry of a default against the defendant, need not offer evidence to support those allegations." (Internal quotation marks omitted.) *Perez* v. *Carlevaro*, 158 Conn. App. 716, 725, 120 A.3d 1265 (2015).

The court granted U.S. Bank's motion for default for failure to plead on November 8, 2022. The effect of the default was to preclude the defendant from denying liability for the claims asserted in the complaint and to permit the rendering of judgment in favor of U.S. Bank. See *TD Banknorth, N.A.* v. *White Water Mountain Resorts of Connecticut, Inc.*, supra, 133 Conn. App. 545–46; Practice Book § 17-33 (b). Thereafter, the court properly rendered a judgment of foreclosure by sale on November 14, 2022, on the basis of the order defaulting the defendant for failure to plead. Neither the defendant's claim that he wrongfully was denied participation in the foreclosure mediation program nor his claim that the court erroneously denied his request to revise the complaint relates to the basis of the court's judgment in this case.[7] Having been defaulted for failure to plead,

[7] In the section of his brief challenging the court's denial of his request to revise, the defendant also suggests that U.S. Bank lacks standing because the operative complaint does not allege that Nationstar assigned the note and mortgage to U.S. Bank even though the court had previously granted Nationstar's motion to substitute U.S. Bank as plaintiff. As the trial court noted in its decision denying the defendant's motion to open, however, the operative complaint was signed by U.S. Bank and U.S. Bank is, in fact, the plaintiff in this matter by virtue of the court's order granting the motion to substitute. See *Countrywide Home Loans Servicing, LP* v. *Creed*, 145 Conn. App. 38, 52, 75 A.3d 38 ("The manner in which to bring a title taken by an assignment pending suit to the attention of the court is by and in an application for a change of parties. . . . No new cause of action, in such case, has arisen; there has been simply a transfer of the right of action for the original cause. . . . The substitution was effected when the order that it be made was passed. Nothing further was required to put the new plaintiff in the shoes of the former plaintiffs." (Internal quotation marks omitted.)), cert. denied, 310 Conn. 936, 79 A.3d 889 (2013). As a result, and notwithstanding the confusion caused by some of the filings made in the trial court and in this court by counsel for Nationstar and U.S. Bank; see footnote 3 of this opinion; U.S. Bank is the plaintiff in this case and has standing to prosecute this action.

the defendant was deemed to have admitted to liability. See *Perez* v. *Carlevaro*, supra, 158 Conn. App. 725 ("[a] default admits the material facts that constitute a cause of action . . . and entry of default, when appropriately made, conclusively determines the liability of a defendant" (internal quotation marks omitted)). Accordingly, the defendant's first two claims fail.

II

Next, the defendant claims that the court erred in denying his motion to open the default judgment. Although the defendant admits in his brief that he failed to timely plead, he nevertheless argues that, "because foreclosure is an equitable proceeding, the trial court must examine all relevant factors to ensure that complete justice is done. . . . In this case, it is clear that complete justice was not afforded." (Citation omitted; internal quotation marks omitted.) Additionally, the defendant argues that the failure of Nationstar and U.S. Bank to timely serve him with process created procedural delays, rendered him ineligible to participate in the foreclosure mediation program, and caused him to incur additional fees, charges, and interest on the unpaid mortgage. We are not persuaded.

We begin by setting forth our standard of review and the relevant legal principles. "We review a trial court's ruling on motions to open under an abuse of discretion standard. . . . Under this standard, we give every reasonable presumption in favor of a decision's correctness and will disturb the decision only where the trial court acted unreasonably or in a clear abuse of discretion. . . . As with any discretionary action of the trial court . . . the ultimate [question for appellate review] is whether the trial court could have reasonably concluded as it did. . . . [I]n order to determine whether the court abused its discretion [in ruling on a motion to open], we must look to the conclusions of fact upon

which the trial court predicated its ruling. . . . Those factual findings are reviewed pursuant to the clearly erroneous standard . . . .

"A motion to set aside a default judgment is governed by Practice Book § 17-43 and . . . § 52-212. . . . To open a judgment pursuant to Practice Book § 17-43 (a) and . . . § 52-212 (a), the movant must make a two part showing that (1) a good defense existed at the time an adverse judgment was rendered; and (2) the defense was not at that time raised by reason of mistake, accident or other reasonable cause. . . . The party moving to open a default judgment must not only allege, but also make a showing sufficient to satisfy the two-pronged test [governing the opening of default judgments]. . . . The negligence of a party or his counsel is insufficient for purposes of § 52-212 to set aside a default judgment. . . . Finally, because the movant must satisfy both prongs of this analysis, failure to meet either prong is fatal to its motion." (Citations omitted; internal quotation marks omitted.) *Disturco* v. *Gates in New Canaan, LLC*, 204 Conn. App. 526, 532–33, 253 A.3d 1033 (2021).

Our appellate courts have long held that a party's own negligence does not qualify as a "mistake" for purposes of § 52-212 (a). See, e.g., *Pantlin & Chananie Development Corp.* v. *Hartford Cement & Building Supply Co.*, 196 Conn. 233, 240–41, 492 A.2d 159 (1985) ("it has been consistently held that the denial of a motion to open a default judgment should not be held an abuse of discretion where the failure to assert a defense was the result of negligence"); *Disturco* v. *Gates in New Canaan, LLC*, supra, 204 Conn. App. 534 ("While mistake, accident or other reasonable cause may be a sufficient reason to open a default judgment, negligence is not. Our Supreme Court has consistently held that the denial of a motion to open a default judgment should not be held an abuse of discretion where

the failure to assert a defense was the result of negligence." (Internal quotation marks omitted.)); *Dziedzic* v. *Pine Island Marina, LLC*, 143 Conn. App. 644, 653, 72 A.3d 406 (2013) ("Negligence is no ground for vacating a judgment, and it has been consistently held that the denial of a motion to open a default judgment should not be held an abuse of discretion where the failure to assert a defense was the result of negligence. . . . Negligence of a party or [its] counsel is insufficient for purposes of § 52-212 to set aside a default judgment." (Internal quotation marks omitted.)).

In the present case, the court found, inter alia, that the defendant's proffered justification for failing to file a timely pleading did not satisfy the second prong of § 52-212 (a) because it was rooted in the defendant's own negligence. In its order denying the defendant's motion to open, the court stated: "The court cannot say that the defendant was prevented by mistake, accident, or excusable neglect from timely raising his potential defenses, as it appears that he neglected to raise them by his own negligence." On the basis of our review of the record, we conclude that the trial court did not abuse its discretion in reaching that conclusion.

The only reason the defendant offered for his failure to timely plead was that he "mistakenly believ[ed] that he had additional time to plead . . . ." He admits that he missed the requisite deadline because he had an "erroneous understanding of the time constraints at issue . . . ."[8] Although the defendant labels his failure

[8] "We are mindful that [i]t is the established policy of the Connecticut courts to be solicitous of [self-represented] litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party. . . . Nonetheless, [a]lthough we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law." (Internal quotation marks omitted.) *Anderson-Harris* v. *Harris*, 221 Conn. App. 222, 240 n.15, 301 A.3d 1090 (2023). We note, however, as the trial court did, that, although the defendant is a self-represented party, he is also a former attorney who has more legal training than most self-represented litigants.

to timely file his answer a "mistake," we conclude that the trial court did not abuse its discretion in determining that the defendant's proffered reason for failing to file a timely pleading constituted inexcusable negligence or ignorance of the law. See *Purtill* v. *Cook*, 197 Conn. App. 22, 27, 231 A.3d 245 (2020) (court did not abuse its discretion in denying motion to open where "the defendant had appeared and actively participated in pleadings, yet still failed to timely file his answer" (internal quotation marks omitted)); *Berzins* v. *Berzins*, 105 Conn. App. 648, 653, 938 A.2d 1281 (defendant's failure to appear was result of negligence where "[t]he defendant was served with notice of [the] action and did nothing"), cert. denied, 289 Conn. 932, 958 A.2d 156 (2008); *Fontaine* v. *Thomas*, 51 Conn. App. 77, 83, 720 A.2d 264 (1998) ("[A]lthough the defendant had actual notice of the pending case . . . he failed to take any action . . . . [Although] his mistaken perception of what steps he had to take [may have] prevented him from defending, his error does not constitute a . . . mistake . . . ."); see also 47 Am. Jur. 2d 51–52, Judgments § 659 (2017) (" '[M]istake,' 'inadvertence,' and 'excusable neglect' warranting relief from judgment require some justification for an error beyond mere carelessness or ignorance of the law on the part of the litigant or his or her attorney. Moreover, mistake of law does not constitute grounds to set aside a judgment due to mistake, inadvertence, surprise, or excusable neglect." (Footnote omitted.)).

Having determined that the defendant's motion fails under the second prong of § 52-212 (a), we need not decide whether the trial court properly determined that the defendant's motion also failed to demonstrate that a good defense existed at the time of judgment. See, e.g., *Karanda* v. *Bradford*, 210 Conn. App. 703, 714, 270 A.3d 743 (2022) ("because the movant must satisfy both

prongs of this analysis, failure to meet either prong is fatal to its motion" (internal quotation marks omitted)).

We therefore conclude that the court did not abuse its discretion in denying the defendant's motion to open the judgment.

The judgment is affirmed.

In this opinion the other judges concurred.

M. S. *v.* M. S.*
(AC 46005)

Alvord, Cradle and Suarez, Js.

Syllabus

The defendant, whose marriage to the plaintiff previously had been dissolved, appealed to this court from the judgment of the trial court denying her postdissolution motion for contempt. In June, 2017, approximately three years after the judgment of dissolution, the court approved an agreement of the parties setting the plaintiff's child support obligation at $2600 per month until June 30, 2019, and ordered that, after that date, child support would be modified on the basis of the child support guidelines. Thereafter, the defendant filed motions for modification and for contempt, alleging that, although the parties had been directed to recalculate child support payments on June 30, 2019, in accordance with the guidelines, the plaintiff unilaterally had decreased his child support payments in accordance with his own calculations. Subsequently, the court issued an order in March, 2021, which modified the plaintiff's child support obligations prospectively to $495 per week. Thereafter, the defendant filed a motion for contempt alleging, inter alia, that the plaintiff was in contempt of the court's June, 2017 order, in that the $2600 monthly payment order had remained in effect until the court's March, 2021 order, that he had unilaterally reduced the amount of his child support payments in July, 2019, and that he owed an arrearage. The court denied the motion for contempt and entered remedial orders limited to the plaintiff's compliance with the March,

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

2021 order to pay $495 per week. The defendant claimed on appeal that the court misinterpreted the June, 2017 order. *Held* that, although the trial court did not abuse its discretion in declining to find the plaintiff in contempt, the court erred in failing to determine the amount of the plaintiff's arrearage attributable to his noncompliance with the June, 2017 child support order: the plaintiff was obligated to pay $2600 monthly from July 1, 2019, until the court-ordered modification in March, 2021, as the terms of the June, 2017 order contemplated a judicial determination of the plaintiff's child support obligation following a consideration of the child support guidelines; moreover, an interpretation of the June, 2017 order that would condone the plaintiff's unilateral modification of his child support payments solely based on his understanding of the guideline amount would be inconsistent with the purpose of child support and its governing statutory scheme and, thus, the plaintiff's unilateral modification in his child support payments prior to the court-ordered modification violated the June, 2017 order; accordingly, this court remanded the case to the trial court for a hearing to identify properly any arrearage owed to the defendant for the period between July 1, 2019, and the March, 2021 order and to establish the terms for the payment of that arrearage.

Argued April 8—officially released July 2, 2024

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford, where the court, *Heller*, *J.*, rendered judgment dissolving the marriage and granting certain other relief in accordance with the parties' separation agreement; thereafter, the court, *Colin*, *J.*, modified the plaintiff's child support obligation in accordance with the parties' agreement; subsequently, the court, *M. Moore*, *J.*, granted the defendant's motion to modify child support; thereafter, the court, *McLaughlin*, *J.*, denied the defendant's motion for contempt, and the defendant appealed to this court. *Reversed in part*; *further proceedings*.

M. S., self-represented, the appellant (defendant).

Opinion

ALVORD, J. In this postjudgment dissolution matter, the self-represented defendant, M. S., appeals from the

judgment of the trial court denying her motion for contempt. On appeal, the defendant claims that the court improperly construed a child support order and found that the plaintiff, M. S., did not owe an arrearage.[1] We affirm in part and reverse in part the judgment of the trial court.[2]

The following facts and procedural history are relevant to our resolution of this appeal. The court, *Heller*, *J.*, dissolved the parties' marriage on January 2, 2014. At the time of the dissolution, the parties had three minor children. The judgment of dissolution incorporated by reference the parties' separation agreement dated December 3, 2013 (separation agreement). The separation agreement provided, inter alia, that the plaintiff would pay the defendant "child support pursuant to the child support guidelines," and stated a support order in the amount of "approximately $1650" monthly. It further provided that, "[a]s the parties are to 'true up' their incomes net of taxes for purposes of calculating the payment of alimony from time to time as set forth herein below, at the time those 'true ups' are conducted, child support shall also be recalculated pursuant to the requirements of the . . . child support guidelines." Article XI of the separation agreement, titled "True Up Calculation," provided a semiannual

[1] The plaintiff did not file a brief in this appeal. Consequently, on January 11, 2024, this court issued an order stating that "the appeal shall be considered on the basis of the [defendant's] brief, the record, as defined by Practice Book [§] 60-4, and oral argument, if not waived by the [defendant] or the court. Pursuant to Practice Book [§] 70-4, oral argument by the [plaintiff] will not be permitted." On April 2, 2024, the self-represented plaintiff filed a motion to set aside the order and a request to mark over oral argument scheduled for April 8, 2024, both of which were denied.

[2] The defendant also claims on appeal that the court improperly denied her motion to reargue. Because we reverse in part the judgment of the court denying the defendant's motion for contempt, we need not separately address the defendant's claim with respect to the denial of the motion for reargument. See *Moore* v. *Moore*, 216 Conn. App. 179, 185 n.1, 283 A.3d 994 (2022).

process by which the parties were required to "exchange necessary information regarding their respective employment incomes and deductions to allow for an accurate 'true up' of their combined net employment incomes . . . ." An accountant would then "determine for the parties whether monies paid in the prior six months meet the criteria of an equal division of net employment incomes."[3]

On April 5, 2017, the defendant filed a motion to modify the parties' separation agreement, alleging that the "true up" process set forth therein for alimony and child support was too burdensome, expensive, and

[3] Section 11.1 of the separation agreement provided: "The parties agree that for each year the [plaintiff] is obligated to pay alimony and/or child support to the [defendant] for her benefit and that of the children, the parties shall exchange necessary information regarding their respective employment incomes and deductions to allow for an accurate 'true up' of their combined net employment incomes pursuant to the terms set forth above. These true ups will be for the period ending June 30 of each year to be completed no later than July 31 and December 31, to be completed no later than January 30 of the following calendar year, thus giving sufficient time to the chosen accountant to determine for the parties whether monies paid in the prior six months meet the criteria of an equal division of net employment incomes. In the event it is determined that there is either an underpayment or overpayment of child support and/or alimony, the party who owes the money to be paid will do so over the course of 90 days in three, end of month installments. For example, for the June 30 calculation, due July 31, the under/over payment would be satisfied on July 31, August 31 and September 30, and the under/over payment for the period ending December 31, to be calculated by January 30, would be paid in three installments on January 30, February 28 and March 31. In order for each party to determine the accuracy of the calculations to be made, each shall submit to the other within one business week after June 30 and December 31 true copies of his or her year to date paystub information or written proof from his or her employment of gross and net income received to date, as well as any applicable W2's, 1099's and relevant information that would help the [plaintiff] or [defendant] assess the accuracy of the calculations. The parties also agree that if they select one accountant to assist them with these calculations, then each shall pay said accountant 50% of the charges for said accountant's services to perform the requisite work. If they select separate accountants, then each will be responsible for the cost of his or her own accountant's services."

unclear. She represented that no "true up" had taken place since the date of the dissolution and requested that Article XI be stricken from the separation agreement. Also on April 5, 2017, the defendant filed a motion for contempt, alleging, inter alia, that the plaintiff, commencing January 1, 2017, unilaterally had reduced his combined child support and alimony payments from the $2600 amount he had paid since January 1, 2014, to $620.

On June 27, 2017, the court, *Colin*, *J.*, approved an agreement of the parties, which set the plaintiff's child support obligation at $2600 per month until June 30, 2019 (June, 2017 order). The June, 2017 order further provided that, after June 30, 2019, "child support will be modified based on the [child] support guidelines." The June, 2017 order also removed the "true up" process and stated that all arrears regarding child support and alimony were to be considered resolved.

On September 29, 2020, the defendant filed a motion for modification. Therein, she alleged that, pursuant to the June, 2017 order, the parties were directed to recalculate child support in accordance with the child support guidelines on June 30, 2019. The defendant alleged that, despite the plaintiff's salary having increased in a manner that represented a substantial change in circumstances, he had "self-calculated without agreement what he claims to be his child support obligation and made monthly payments that reflected his own self-calculation." The defendant claimed that the plaintiff had decreased his monthly child support payment contrary to the child support guidelines, he owed $9600 in arrearages, and he refused to provide documentation to support his self-calculation. Also on September 29, 2020, the defendant filed a motion for contempt, in which she reiterated her allegations that the plaintiff unilaterally had decreased his child support payment notwithstanding a substantial increase in his

earnings and that he had refused to provide documentation supporting his self-calculations. See footnote 8 of this opinion.

On March 24, 2021, the court, *M. Moore*, *J.*, issued a memorandum of decision resolving the September, 2020 motion to modify (March, 2021 order). The court modified the plaintiff's child support obligation to $495 per week. The court ordered the child support to be paid by immediate wage withholding and ordered the plaintiff to pay the defendant directly until his paycheck reflected the deduction.

On April 12, 2021, the defendant filed another motion for contempt, in which she alleged that the plaintiff had failed to make weekly child support payments following the court's March, 2021 order. The defendant also alleged that the plaintiff was in contempt of the June, 2017 order, in that the $2600 monthly payment order had remained in effect until the court's March, 2021 order and the plaintiff unilaterally had reduced the amount of his child support payment beginning in July, 2019, and further that he had accrued a child support arrearage of $16,371.43.

On January 19, 2022, the court, *McLaughlin*, *J.*, held a hearing on the motion for contempt. Both parties, who were self-represented, testified, and the court admitted into evidence certain documents. On February 16, 2022, the court issued a decision. The court first found both the June, 2017 order and the March, 2021 order to be clear and unambiguous. Regarding the June, 2017 order, the court stated: "The defendant argued that the June, 2017 order required the plaintiff to continue paying $2600 a month until the plaintiff sought a modification from the court. The defendant is misreading the June, 2017 . . . order. The June, 2017 order requires the plaintiff to pay child support in accordance with the child support guidelines. There is no stated specific

amount. The plaintiff testified that he paid child support up through the court's March, 2021 order based on his understanding of the child support guidelines amount. The defendant failed to prove by clear and convincing evidence that the plaintiff violated the June, 2017 . . . order let alone that he violated the order wilfully. The plaintiff is not in contempt of those orders."

Regarding the defendant's claim that the plaintiff violated the March, 2021 order, the court stated: "Pursuant to [this order], the plaintiff is to pay child support in the amount of $495 by immediate wage withholding. At the commencement of the March, 2021 order, there was delay in the plaintiff paying the required child support until the immediate wage withholding went into effect. The parties attempted to resolve their dispute regarding arrears of child support unsuccessfully. The plaintiff testified that in December, 2021, he started a new job. Whether there should be a modification of child support based on the plaintiff's new position is not before the court. The immediate wage withholding in the amount of $495 is still in effect.

"There was considerable confusion between the parties regarding the amounts of child support to be paid. This confusion is animated because the parties do not communicate in an effective manner. Based on the confusion over the timing of the child support and the amounts due and owing, the court finds no wilful violation of the court's order. There is no contempt."

The court entered a remedial order limited to the plaintiff's compliance with the March, 2021 order to pay $495 per week in child support. For the forty week period of March 24, 2021, through December 31, 2021, the court found that the plaintiff owed a total of $19,800 in child support. The court credited the plaintiff's calculations that he paid $18,315 for that period. Accordingly, the court found that the plaintiff owed $1485 in child

support.[4] On April 7, 2022, the defendant, then represented by counsel, filed a motion to reargue, claiming, inter alia, that the court improperly had determined the amount of the plaintiff's child support arrearage. The court held argument on the motion to reargue on July 19, 2022. On October 24, 2022, the court denied the motion to reargue in part as to the issue in the present appeal.[5] This appeal followed.

The defendant claims on appeal that the court improperly found that the plaintiff did not owe an arrearage for the period of July 1, 2019, through March 24, 2021, based on the court's misinterpretation of the June, 2017 order.[6] Specifically, she contends that, pursuant to the June, 2017 order, the plaintiff's $2600 monthly child support obligation remained in place until modified by the court. Thus, she argues that the plaintiff's unilateral reduction in his monthly support payments, prior to the court-ordered modification, violated the June, 2017 order. We agree with the defendant.

The June, 2017 order was stated in the parties' agreement resolving the defendant's motions for contempt and modification, which agreement was approved by and incorporated into the order of the court. An agreement that has been incorporated into a postdissolution order "must be regarded as a contract and construed in accordance with the general principles governing contracts. . . . When construing a contract, we seek

[4] The court also adjudicated a July 15, 2021 motion for contempt filed by the plaintiff with respect to the claiming of the children as dependents on the parties' tax returns. Although the court in its memorandum of decision ordered a credit to the plaintiff's child support arrearage, the court vacated the credit in its ruling on the defendant's motion to reargue.

[5] The court, however, corrected its calculation of child support due to include amounts owed but not paid for the three weeks prior to the hearing on the motion for contempt. The court issued a corrected child support arrearage determination of $2970.

[6] The defendant does not raise any claim of error on appeal with respect to the court's ruling regarding compliance with the March, 2021 order.

to determine the intent of the parties from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract. . . . Extrinsic evidence is always admissible, however, to explain an ambiguity appearing in the instrument. . . . When the language of a contract is ambiguous, the determination of the parties' intent is a question of fact. . . . When the language is clear and unambiguous, however, the contract must be given effect according to its terms, and the determination of the parties' intent is a question of law. . . .

"A contract is unambiguous when its language is clear and conveys a definite and precise intent. . . . The court will not torture words to impart ambiguity where ordinary meaning leaves no room for ambiguity. . . . Moreover, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Parisi* v. *Parisi*, 315 Conn. 370, 383, 107 A.3d 920 (2015).

Consistent with the foregoing principles, we begin with the relevant language of the June, 2017 order. The order first reflected the parties' agreement to remove the "true up" process contained within the parties' separation agreement. The order next stated that all arrears regarding child support and alimony were to be considered resolved, with neither party owing an arrearage as of June 30, 2017. The order then set the plaintiff's

child support obligation at $2600 per month. Finally, the order required the plaintiff to pay "to the defendant, child support in the full monthly amount of $2600 through June 30, 2019. Thereafter, child support will be modified based on the . . . child support guidelines."

The terms of the order expressly contemplate the possibility of modification of the plaintiff's child support obligation after June 30, 2019. Modification of child support is governed by General Statutes § 46b-86 (a), which provides in relevant part that "any final order for the periodic payment of . . . support . . . may, at any time thereafter, be . . . modified by the court upon a showing of a substantial change in the circumstances of either party or upon a showing that the final order for child support substantially deviates from the child support guidelines established pursuant to section 46b-215a, unless there was a specific finding . . . that the application of the guidelines would be inequitable or inappropriate. . . ." A self-calculation by the plaintiff of the amount of his child support obligation based on his understanding of the child support guidelines is inconsistent with the plain language of the order referencing modification. Accordingly, we conclude that the only fair and reasonable construction of the order stating that "child support will be modified based on the . . . child support guidelines" is an order contemplating a judicial determination of the plaintiff's child support obligation following consideration of the child support guidelines, as required by statute. See General Statutes § 46b-215b (a) ("[t]he . . . guidelines issued pursuant to section 46b-215a . . . shall be considered in all determinations of child support award amounts").

Consideration of the language used interpreted in light of the situation of the parties and the circumstances surrounding the issuance of the June, 2017 order also supports the conclusion that the $2600 payment was to remain in place until modified by the court.

The June, 2017 order resolved the motions of the defendant for modification and contempt, which alleged that the "true up" process set forth in the parties' separation agreement was unworkable and that the plaintiff unilaterally had reduced his child support payment. The June, 2017 order removed, by agreement of the parties, the "true up" process and stated that all past arrears regarding child support and alimony were to be considered resolved. To construe the June, 2017 order as permitting the plaintiff to self-calculate his child support obligation in accordance with his understanding of the child support guidelines cannot be reconciled with the removal of the "true up" process following the parties' inability to cooperatively perform that process.

Additionally, an interpretation of the June, 2017 order that would condone the plaintiff's unilateral modification of his child support payments solely "based on his understanding of the child support guidelines amount" would be inconsistent with the purpose of child support and its governing statutory scheme. "[A]lthough child support orders are made and enforced as incidents to divorce decrees . . . the minor children's right to parental support has an independent character, separate and apart from the terms of the support obligations as set out in the judgment of dissolution." (Internal quotation marks omitted.) *Kirwan* v. *Kirwan*, 185 Conn. App. 713, 731, 197 A.3d 1000 (2018). "[T]he statutory scheme regarding child support enforcement evinces a strong state policy of ensuring that minor children receive the support to which they are entitled. . . . Both state and national policy has been, and continues to be, to ensure that all parents support their children and that children who do not live with their parents benefit from adequate and enforceable orders of child support. . . . Child support is now widely recognized as an essential component of an effective and comprehensive family income security strategy. . . .

As with any income source, the effectiveness of child support in meeting the needs of children is, of necessity, increased when payments are made regularly and without interruption." (Citation omitted; internal quotation marks omitted.) *Kupersmith* v. *Kupersmith*, 146 Conn. App. 79, 92, 78 A.3d 860 (2013).

In the present case, neither party filed a motion for modification of the plaintiff's child support obligation until the defendant filed motions for modification and contempt in September, 2020. It is undisputed that the plaintiff did not continue to make monthly payments of $2600 for the period of July 1, 2019, through March 24, 2021, but rather, as the court found, he "paid child support up through the court's March, 2021 order based on his understanding of the child support guidelines amount."[7] In its March, 2021 order resolving the defendant's motions for modification,[8] the court modified the plaintiff's child support obligation to $495 weekly prospectively. Because the plaintiff was obligated to pay $2600 monthly from July 1, 2019, until the modification in March, 2021, the plaintiff's reduced payments during that time period were not in compliance with

[7] Although the court did not make factual findings as to the amount of child support paid by the plaintiff for the period of July 1, 2019, through March 24, 2021, the court admitted into evidence a copy of an email written and sent by the plaintiff to the defendant. The email stated: "So from July 2019 through Nov 2019 I made a mistake in payment and only paid $1,600 a month. Then for Dec 2019, I realized this and made the correct payment of $1,800. Then in Dec, I made a payment for $1,000 which would cover the 5 months of being short the $200 each month. Then July 2020, I made an additional payment for $4,275 because I made more than I projected when we were doing the support calculations for 2019. So that is a total of $14,075 for the half year of 2019, July-Dec 31, 2019. That is $2,345 a month Total for 2020 $21,600. That is $1,800 a month."

[8] During the hearing on the motion for contempt at issue in this appeal, the plaintiff argued that the claim for arrearages accumulated prior to the March, 2021 order implicitly had been rejected in the court's March, 2021 order based on the absence of any finding of an arrearage for that time period. The court rejected that argument, responding that the March, 2021 order did not "speak to arrearages for the prior years."

the terms of the June, 2017 order, and the court erred in failing to determine the amount of the arrearage attributable to the plaintiff's noncompliance with the child support order.

Accordingly, we reverse the judgment of the trial court in part as to the defendant's motion for contempt and remand the matter for further proceedings thereon, limited to a new hearing to identify properly any arrearage owed to the defendant for the period of July 1, 2019, through March 24, 2021, and to establish the terms for payment of that arrearage. See *Casiraghi* v. *Casiraghi*, 200 Conn. App. 771, 786 n.15, 241 A.3d 717 (2020) ("[e]ven in the absence of a finding of contempt, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order" (internal quotation marks omitted)).[9]

[9] The defendant also claims on appeal, in the alternative, that the court erred in failing to find the plaintiff in contempt. "[C]ivil contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts. . . . In part because the contempt remedy is particularly harsh . . . such punishment should not rest upon implication or conjecture, [and] the language [of the court order] declaring . . . rights should be clear, or imposing burdens [should be] specific and unequivocal, so that the parties may not be misled thereby. . . . To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be wilful. . . . It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive." (Citations omitted; internal quotation marks omitted.) *Puff* v. *Puff*, 334 Conn. 341, 364–65, 222 A.3d 493 (2020).

"A good faith dispute or legitimate misunderstanding of the terms of an alimony or support obligation may prevent a finding that the payor's nonpayment was wilful. This does not mean, however, that such a dispute or misunderstanding will preclude a finding of wilfulness as a predicate to a judgment of contempt. Whether it will preclude such a finding is ultimately within the trial court's discretion. It is within the sound discretion of the court to deny a claim for contempt when there is an adequate factual basis to explain the failure to honor the court's order." (Internal quotation marks omitted.) *Eldridge* v. *Eldridge*, 244 Conn. 523, 529, 710 A.2d 757 (1998).

In the present case, the plaintiff advocated, and the trial court accepted, an interpretation of the June, 2017 order that condoned the plaintiff's self-

The judgment is reversed in part as to the defendant's motion for contempt and the case is remanded for further proceedings consistent with this opinion; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

MONA S. MULVEY, TRUSTEE *v.* STEFAN PALO ET AL.
(AC 46383)

Elgo, Seeley and Westbrook, Js.

Syllabus

The plaintiff sought a declaratory judgment of adverse possession with respect to a portion of certain real property owned by the defendants. The defendants filed a counterclaim in which they sought to quiet title to the disputed portion of their property. At trial, the plaintiff submitted into evidence a general location survey prepared by R, a licensed land surveyor, which identified a wooded area and a lawn area on the disputed property. Other evidence at trial established that there was a third area on the disputed property, generally referred to as the muddy area, which straddled the wooded area and the lawn area. The trial court rendered judgment for the defendants. On the plaintiff's appeal to this court, *held*:

1. The plaintiff could not prevail on her claim that the trial court erroneously concluded that she failed to establish her claim of adverse possession with respect to all areas of the disputed property: although the court found that the plaintiff's late husband, S, had previously demonstrated possession of some areas on the disputed property, the court expressly found that no activities of any consequence occurred in the muddy area, and that finding was supported by the evidence in the record; moreover, there was no evidence that any member of the plaintiff's family posted signs or installed fencing on the disputed property generally or the muddy area specifically, the plaintiff's son, J, testified that S had not

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calculation of his child support obligation in accordance with his understanding of the child support guidelines. The court found that the defendant failed to prove a violation of the order, "let alone that he violated the order wilfully." Although we disagree with the trial court's construction of the June, 2017 order, in light of the misunderstanding over the terms of that order, the defendant has not shown that the court abused its discretion in declining to find the plaintiff in contempt. Accordingly, the scope of the remand is limited to a new hearing to identify properly any arrearage and to establish the terms for payment of that arrearage.

maintained the existing stone walls that abutted and intersected the disputed property, and the general survey prepared by R identified only two of the three areas of the disputed property; furthermore, although the court found that S created an access path on the disputed property, it did not find that that path traversed the muddy area, J did not identify the location of that path with any precision in his testimony, and he admitted that the path no longer existed, that he never took any measurements to determine its location, and that he could only provide an estimate of where it previously was located.

2. The plaintiff could not prevail on her claim that the trial court erroneously concluded that she failed to establish the boundaries of the areas of the disputed property with reasonable certainty: the survey prepared by R and admitted into evidence was of general character, was predicated on information furnished by J rather than R's own observations of the disputed property, did not identify all three areas of the disputed property, and did not delineate the boundaries of either of the two areas that were labeled as having been maintained by the plaintiff's family; moreover, R testified that he did not measure the wooded or lawn areas and did not know the square footage of either area, that he did not stake any of the areas in the disputed property, and that he would not advise a property owner to rely on the general survey to transfer title to the disputed property without further work; furthermore, J was unable to provide any specifics regarding the precise boundaries of the wooded area, the lawn area, or the muddy area.

Argued March 11—officially released July 2, 2024

Procedural History

Action seeking a declaratory judgment of adverse possession over certain real property owned by the named defendant et al., and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where Bank of America, N.A., was cited in as a defendant; thereafter, the named defendant et al. filed a counterclaim; subsequently, the case was tried to the court, *Hon. John F. Kavanewsky, Jr.*, judge trial referee; judgment for the defendants on the complaint and for the named defendant et al. on the counterclaim, from which the plaintiff appealed to this court. *Affirmed.*

Joseph DaSilva, Jr., with whom, on the brief, was *Marc J. Grenier*, for the appellant (plaintiff).

Jason A. Buchsbaum, with whom were *David A. Ball* and, on the brief, *Marc J. Herman*, for the appellees (defendants).

Opinion

ELGO, J. The plaintiff, Mona S. Mulvey, trustee of the Mona S. Mulvey Trust (trust), appeals from the judgment of the trial court rendered in favor of the defendants, Stefan Palo, Ema Palo, and Bank of America, N.A.,[1] on both her adverse possession claim and the defendants' quiet title counterclaim. On appeal, the plaintiff claims that the court improperly concluded that she failed to establish (1) her claim of adverse possession with respect to all areas of the property in question and (2) the boundaries of those areas with reasonable certainty.[2] We disagree and, accordingly, affirm the judgment of the trial court.

As the court found in its memorandum of decision, the plaintiff has owned real property in Norwalk known as 7 Grey Hollow Road in some manner since 1966.[3]

[1] Stefan Palo and Ema Palo were named as defendants in the plaintiff's original complaint. The plaintiff thereafter filed a motion to cite in Bank of America, N.A., as a necessary party due to its interest in the property in question as a mortgage holder, which the court granted. The plaintiff then filed an amended complaint to include Bank of America, N.A., as a defendant. For purposes of clarity, we refer to Stefan Palo and Ema Palo collectively as the defendants in this opinion.

[2] The plaintiff also claims that the court misapplied the fifteen year requirement for a claim of adverse possession. See General Statutes § 52-575; *Caminis* v. *Troy*, 300 Conn. 297, 311, 12 A.3d 984 (2011). In light of our resolution of the principal claim in this appeal, we need not address that alternative contention. See *Durkin Village Plainville, LLC* v. *Cunningham*, 97 Conn. App. 640, 651, 905 A.2d 1256 (2006) ("insofar as proof of all elements is necessary, a determination that the court's decision was proper as to any given element is fatal to the [adverse possession] claim").

[3] The plaintiff and her late husband, David Mulvey, Sr. (David Sr.), purchased 7 Grey Hollow Road in 1966 as joint tenants with rights of survivorship. When David Sr. died in 1996, the plaintiff became sole owner of that property. In 2015, she transferred the property to herself, as trustee of the trust, by quitclaim deed.

In this regard, we note that, "[i]f one party's period of use or possession is insufficient to satisfy the fifteen year requirement, that party may tack

The defendants own an abutting property to the south known as 1 Grey Hollow Road (defendants' property). This dispute concerns a 0.22 acre portion of the defendants' property (disputed portion) located on its northern boundary with the plaintiff's property.[4]

The defendants purchased their property on June 29, 2020. Approximately three months later, they were served with the plaintiff's complaint, which alleged one count of adverse possession. In response, the defendants filed an answer, a special defense of "waiver and/or estoppel," and a counterclaim, in which they sought to quiet title to the disputed portion of their property pursuant to General Statutes § 47-31. In answering that counterclaim, the plaintiff alleged, as a special defense, that she had ousted the defendants and their predecessors in interest from the disputed portion.

A two day trial followed, at which the plaintiff submitted into evidence a document titled "General Location Survey" (general survey) prepared by Zachary Rapp, a licensed land surveyor, that depicts the disputed portion of the defendants' property. On its top left corner are "Survey Notes," which state in relevant part that "[t]he sole intention of this map is to depict [the disputed portion]" and that the disputed portion "depicted hereon [was] physically identified in [the] field" by the

on the period of use or possession of someone who is in privity with the party, a relationship that may be established by showing a transfer of possession rights." (Internal quotation marks omitted.) *Caminis* v. *Troy*, 300 Conn. 297, 310 n.14, 12 A.3d 984 (2011). Although the plaintiff brought the present action in her capacity as trustee of the trust, there is no dispute that she can tack on the period of time in which she allegedly possessed the property in question in an individual capacity.

[4] The plaintiff concedes that the disputed portion is not within the description of the 7 Grey Hollow Road property in her deed. As the court noted in its memorandum of decision, "[t]he deed by which [the plaintiff and her late husband, David Mulvey, Sr.] acquired title [to 7 Grey Hollow Road] in 1966 references a survey done in 1965. That survey defines the [7 Grey Hollow Road] property as a matter of record, and it does not include the disputed [portion] within that description."

plaintiff's son, David Mulvey, Jr. (David Jr.). The general survey identifies a "wooded area" on the westerly side of the disputed portion and a "lawn area" on its easterly side. The general survey also identifies various stone walls, including one that runs along the southerly side of the disputed portion.

As the court found, "[t]he topography of the [disputed portion] can best be characterized as partly lawn, partly as lightly wooded and a muddy area [of] an indeterminate size straddling the lawn and wooded areas." That finding is supported by photographs admitted into evidence at trial and various witnesses who offered testimony as to "the lawn area," "the wooded area," and "the muddy area" of the disputed portion. David Jr. testified that the muddy area was located "between" the lawn area and the wooded area shown on the general survey and "to . . . the east" of a vertical stone wall.

In its memorandum of decision, the court found that, during a nineteen year period from 1966 to 1985, the plaintiff's late husband, David Mulvey, Sr. (David Sr.), "demonstrated possession of *some areas* on the disputed [portion] as would an owner thereof. His children played within it. [David Sr.], with the help of [David Jr.], mowed, raked, planted flowerbeds, created an access path, removed fallen tree limbs and chopped wood on much of the disputed [portion]. All of these acts were certainly consistent with displaying a right of exclusive possession over the property. . . . It was done in an open and visible manner on a regular basis."[5] (Citation omitted; emphasis added.) Significantly, the court did not find that the plaintiff had demonstrated possession of all areas of the disputed portion of the defendants' property.

[5] The court also found that evidence of exclusive possession "was notably lacking" after "1985 or 1990."

The court further found that the precise boundary lines of those areas over which David Sr. had demonstrated exclusive possession were uncertain and indeterminate. As the court stated, "[i]n resolving the present dispute, the court cannot identify the boundary lines of property supposedly acquired by adverse possession with any confidence." The court thus concluded that the plaintiff had not satisfied her burden of proof. Accordingly, the court rendered judgment in favor of the defendants on the adverse possession claim and the quiet title counterclaim, and this appeal followed.

As a preliminary matter, we note that, "[w]hen title is claimed by adverse possession, the burden of proof is on the claimant. . . . The essential elements of adverse possession are that the owner shall be ousted from possession and kept out uninterruptedly for fifteen years under a claim of right by an open, visible and exclusive possession of the claimant without license or consent of the owner. . . . The use is not exclusive if the adverse user merely shares dominion over the property with other users. . . . Such a possession is not to be made out by inference, but by clear and positive proof. . . . In the final analysis, whether possession is adverse is a question of fact for the trier. . . . The doctrine of adverse possession is to be taken strictly."[6] (Internal quotation marks omitted.) *Dowling*

[6] Like Connecticut, a multitude of jurisdictions throughout the United States recognize that a claim of adverse possession, and the evidence submitted in support thereof, must be strictly construed against the party asserting that claim. See, e.g., *Mercer* v. *Wayman*, 9 Ill. 2d 441, 445–46, 137 N.E.2d 815 (1956) ("A party claiming title by adverse possession always claims in derogation of the right of the real owner. He admits that the legal title is in another. He rests his claim, not upon a title in himself, as the true owner, but upon holding adversely to the true owner for the period prescribed by the statute of limitations. Claiming a benefit from his own wrong, his acts are to be construed strictly." (Internal quotation marks omitted.)); *Garrett* v. *Huster*, 684 N.W.2d 250, 253 (Iowa 2004) (doctrine of adverse possession is construed strictly); *Rozmarek* v. *Plamondon*, 419 Mich. 287, 292, 351 N.W.2d 558 (1984) ("[t]he evidence offered in support of adverse possession must be strictly construed with every presumption being exercised in favor

v. *Heirs of Bond*, 345 Conn. 119, 143, 282 A.3d 1201 (2022).

Clear and convincing proof of the elements of an adverse possession claim is an "exacting standard"; *Top of the Town, LLC* v. *Somers Sportsmen's Assn., Inc.*, 69 Conn. App. 839, 844, 797 A.2d 18, cert. denied, 261 Conn. 916, 806 A.2d 1058 (2002); that "lies between the belief that is required to find the truth or existence of the [fact in issue] in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution. . . . [The burden] is sustained if evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true . . . ." (Internal quotation marks omitted.) *Wildwood Associates, Ltd.* v. *Esposito*, 211 Conn. 36, 42, 557 A.2d 1241 (1989); see also *Esposito* v. *Stackler*, 160 App. Div. 2d 1154, 1155, 554 N.Y.S.2d 361 (1990) (clear and convincing proof is

of the record owner of the land" (internal quotation marks omitted)); *Ganje* v. *Schuler*, 659 N.W.2d 261, 266 (Minn. App. 2003) ("[t]he evidence presented in support of adverse possession must be strictly construed" with every presumption against party claiming adverse possession); *Maddock* v. *Higgins*, 176 N.H. 182, 191, 307 A.3d 1104 (2023) ("[w]hen evaluating the merits of an adverse possession claim, courts must strictly construe the evidence of adverse possession"); *Crown Credit Co., Ltd.* v. *Bushman*, 170 Ohio App. 3d 807, 818, 869 N.E.2d 83 (2007) ("adverse possession is disfavored" and must be strictly construed); *Harris* v. *Southeast Portland Lumber Co.*, 123 Or. 549, 557, 262 P. 243 (1927) ("[e]vidence of adverse possession is always to be construed strictly" (internal quotation marks omitted)); *King* v. *Hawkins*, 282 S.C. 508, 511, 319 S.E.2d 361 (App. 1984) ("[t]he doctrine of adverse possession must be strictly construed in favor of the owner of the title to land"); *Gangle* v. *Spiry*, 916 N.W.2d 119, 125 (S.D. 2018) (evidence is strictly construed against party claiming adverse possession); *Foust* v. *Metcalf*, 338 S.W.3d 457, 466 (Tenn. App. 2010) ("[e]vidence of adverse possession is strictly construed and any presumption is in favor of the holder of the legal title"); *Hollingsworth* v. *Williamson*, 300 S.W.2d 194, 198 (Tex. Civ. App. 1957) ("the evidence of adverse possession must be clear and positive, and should be strictly construed"); *Lindokken* v. *Paulson*, 224 Wis. 470, 475, 272 N.W. 453 (1937) ("[t]he rule is that the evidence of adverse possession must be positive, must be strictly construed against the person claiming a prescriptive right, and that every reasonable intendment should be made in favor of the true owner").

"stringent and demanding standard"). In evaluating a claim of adverse possession under that demanding standard, "[e]very presumption is in favor of possession in subordination to the title of the true owner." (Internal quotation marks omitted.) *Woycik* v. *Woycik*, 13 Conn. App. 518, 522, 537 A.2d 541 (1988); see also 2 C.J.S. 783, Adverse Possession § 274 (2023) ("[E]very presumption is in favor of the holder of legal title . . . . Every presumption is against the [party claiming adverse possession] and none is in their favor." (Footnotes omitted.)). That presumption is rooted in the recognition that "there are no equities in favor of a person seeking to acquire property of another by adverse holding." (Internal quotation marks omitted.) *Top of the Town, LLC* v. *Somers Sportsmen's Assn., Inc.*, supra, 848 n.4.

The demanding burden placed on a party claiming adverse possession of the property of another reflects the fact that such actions are disfavored. See, e.g., *Striefel* v. *Charles-Keyt-Leaman Partnership*, 733 A.2d 984, 988 (Me. 1999) ("the law disfavors the transfer of land by adverse possession"); *Rote* v. *Gibbs*, 195 App. Div. 3d 1521, 1523, 151 N.Y.S.3d 280 ("the law disfavors the acquisition of title by adverse possession"), appeal dismissed, 37 N.Y.3d 1106, 178 N.E.3d 1281, 157 N.Y.S.3d 402 (2021); *Amoorpour* v. *Kirkham*, 543 P.3d 677, 682 (Okla. 2023) ("[a]dverse possession claims are disfavored and are not to be made by inference"); *Woodward* v. *Valvoda*, 478 P.3d 1189, 1197 (Wyo. 2021) ("[a]dverse possession claims are disfavored in the law"). As the Supreme Court of Ohio explained, "[a]dverse [p]ossession represents the forced infringement of a landowner's rights, a decrease in value of the servient estate, the encouraged exploitation and development of land, the generation of animosity between neighbors, a source of damages to land or loss of land ownership, the creation of forced, involuntary legal battles, and uncertainty and perhaps the loss of property rights to

landowners with seisin. . . . Accordingly, we have recognized that adverse possession is disfavored." (Citation omitted; internal quotation marks omitted.) *Houck* v. *Board of Park Commissioners*, 116 Ohio St. 3d 148, 155, 876 N.E.2d 1210 (2007). Moreover, "[a] successful adverse possession action results in a legal titleholder forfeiting ownership to an adverse holder without compensation. . . . [T]hat is why the elements of adverse possession are stringent." *Grace* v. *Koch*, 81 Ohio St. 3d 577, 580, 692 N.E.2d 1009 (App. 1998).

"[T]he question of whether the elements of an adverse possession claim have been established by clear and convincing evidence is a factual one subject to the clearly erroneous standard of review." *Rudder* v. *Mamanasco Lake Park Assn., Inc.*, 93 Conn. App. 759, 785, 890 A.2d 645 (2006). "A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . A trial court's findings in an adverse possession case, if supported by sufficient evidence, are binding on a reviewing court . . . ." (Internal quotation marks omitted.) *Skelly* v. *Brucher*, 134 Conn. App. 337, 341, 38 A.3d 261 (2012); see also *Pagano* v. *Ippoliti*, 245 Conn. 640, 654, 716 A.2d 848 (1998) ("[t]he trial court, having heard the testimony and observed the witnesses, was in a position far superior to ours to judge the evidentiary record as a whole"); *Katz* v. *Martin*, 143 Conn. 215, 217, 120 A.2d 826 (1956) ("To interfere with the [trial court's] conclusions would be to substitute different findings of facts. This cannot be done where there is evidence upon which reasoning minds might disagree. . . . It is not given to us to retry a case. . . . The case presented controversial issues of fact which were solely within the province of the trial court to decide." (Citations omitted.)); *Federal Deposit*

Ins. Corp. v. *Mutual Communications Associates, Inc.*, 66 Conn. App. 397, 403 n.3, 784 A.2d 970 (2001) ("[w]e cannot substitute our view of the evidence for the trial court's finding"), appeal dismissed, 262 Conn. 358, 814 A.2d 377 (2003).

In her principal appellate brief, the plaintiff raises two related, yet distinct, challenges to the facts found by the trial court. The plaintiff first asserts that she had proven her adverse possession claim with respect to "the entirety of the claim area," which claim is in conflict with, and presents a challenge to, the court's finding that she had done so only as to "some areas." The plaintiff also argues that the court's finding that the boundaries of any adversely possessed property were "uncertain and indeterminate" is clearly erroneous. We address each argument in turn.

I

The plaintiff contends that the court erroneously concluded that she failed to establish her claim of adverse possession with respect to all areas of the disputed portion. We disagree.

When a party seeks to acquire by adverse possession a portion of real property belonging to another, that party bears the burden of establishing exclusive possession over all areas of that portion. As this court has explained, "[w]hen not claimed under color of title, adverse possession is limited to the area of land actually possessed. . . . It can only extend as far as [the] claimant has actually occupied and possessed the land in dispute . . . and the adverse possession of one area may not be inferred from that of a separate area absent independent proof of occupation." (Citations omitted; internal quotation marks omitted.) *Durkin Village Plainville, LLC* v. *Cunningham*, 97 Conn. App. 640, 654, 905 A.2d 1256 (2006); see also *Skelly* v. *Brucher*, supra, 134 Conn. App. 343 ("the court determined that

the defendants did not meet their burden of proving what *specific areas* of the plaintiffs' property the defendants and [their predecessors] had actually occupied" (emphasis added; footnote omitted)); *Lisiewski* v. *Seidel*, 95 Conn. App. 696, 707–12, 899 A.2d 59 (2006) (noting that "the plaintiff is entitled only to the portion of the disputed area that he actually occupied during the course of his adverse possession" and concluding that plaintiff had not established adverse possession over all areas of disputed portion of defendants' property).

In its memorandum of decision, the court found that the disputed portion of the defendant's property contained three different areas: the lawn area, the wooded area, and the muddy area. The court found that, from 1966 to 1985, David Sr. "demonstrated possession of *some areas* on the disputed [portion] as would an owner thereof. His children played within it. [David Sr.], with the help of [David Jr.], mowed, raked, planted flowerbeds, created an access path, removed fallen tree limbs and chopped wood on much of the disputed [portion]. All of these acts were certainly consistent with displaying a right of exclusive possession over the property. . . . It was done in an open and visible manner on a regular basis." (Citation omitted; emphasis added.) At the same time, the court expressly found that, in contrast to the activities conducted on other areas of the disputed portion, "[n]o activities of any consequence . . . occurred in [the] muddy area."

That finding is supported by the evidence in the record. At trial, David Jr. was asked what he had done "to maintain [the] muddy area"; he replied, "Nothing." David Jr. further confirmed that neither he nor any member of his family had made "any improvements" in that area. See, e.g., *Porter* v. *Schaffer*, 126 Md. App. 237, 277, 728 A.2d 755 (1999) ("something more than 'mere occasional use of land' is needed" to demonstrate

adverse possession), cert. denied, 355 Md. 613, 735 A.2d 1107 (1999).

There also was no evidence that any member of the Mulvey family posted signs or installed fencing on the disputed portion generally or the muddy area specifically, which would have apprised the title owner of their purportedly hostile possession of that property.[7] See *O'Connor* v. *Larocque*, 302 Conn. 562, 598, 31 A.3d 1 (2011) ("there is no evidence in the record that the plaintiff's possession and use of the lot was so openly and notoriously hostile that the defendant had notice of her adverse possession claim"); *Benjamin* v. *Norwalk*, 170 Conn. App. 1, 23, 153 A.3d 669 (2016) (in case where court found adverse possession had not been established, defendant testified that "[h]e has never seen a chain, fence, sign, name on the pillars, or other circumstance that would suggest that the plaintiffs claimed possession of the contested area"); see also *Machado* v. *Southern Pacific Transportation Co.*, 233 Cal. App. 3d 347, 362–63, 284 Cal. Rptr. 560 (1991) (defendant posted "multiple signs on the perimeter of the property" stating "Private Property" and "No Trespassing" that "clearly [gave] notice that [the defendant] considered itself in possession and control of the property, and certainly raised the inference that [it] was asserting an ownership interest"); *Boneno* v. *Lasseigne*, 534 So. 2d 968, 973 (La. App. 1988) ("some substantial and readily observable physical signs [of adverse possession] must be present in order to make the action public; there must be some easily visible evidence

[7] As other courts have noted, an adverse possessor must "fly the flag over the [disputed portion] and put the true owner upon notice that his land is held under an adverse claim of ownership." (Internal quotation marks omitted.) *Snowden & McSweeny Co.* v. *Hanley*, 195 Miss. 682, 687, 16 So. 2d 24 (1943); see also *Barrell* v. *Renehan*, 114 Vt. 23, 29, 39 A.2d 330 (1944) (adverse possessor "must unfurl his flag on the land, and keep it flying so that the owner may see, if he will, that an enemy has invaded his dominions and planted his standard of conquest").

which could place a possessor 'on notice' "). To the contrary, David Jr. testified at trial that neither he nor any member of his family ever posted signage or installed fencing on any part of the disputed portion.[8] David Jr. further testified that David Sr. did not maintain the existing stone walls that abut and intersect the disputed portion. See *Rayburn* v. *Coffelt*, 153 Or. App. 76, 81, 957 P.2d 580 (1998) (concluding that "the continuous existence of [a] fence alone is insufficient to put defendants and their predecessors on notice of an adverse possession claim" when plaintiff "did not maintain the fence, post no-trespassing signs or take any other affirmative steps to put defendants on notice that the fence marked the boundary of his property").

Moreover, the general survey prepared by Rapp identifies only *two* areas on the disputed portion—what was labeled "wooded area maintained by Mulvey" on its westerly side and a "lawn area maintained by Mulvey" on its easterly side. Rapp testified at trial that he prepared that survey on the basis of information furnished to him by David Jr., rather than his own observations of the disputed portion. Yet the general survey does not include any mention of the muddy area, nor does it indicate where that area was located or whether it was maintained by any member of the Mulvey family. Rapp further testified that the muddy area was located "between the areas" that David Jr. had identified as

[8] At trial, the following colloquy transpired between counsel for Bank of America, N.A., and David Jr.:

"Q. You never place[d] any signage indicative of ownership to say no trespassing, keep out, private property, anything like that around the [disputed portion], right?

"A. No, sir.

"Q. And no such signs ever existed throughout your experience with the [plaintiff's] property since 1966?

"A. No, sir.

"Q. Okay. And no fences or walls, or anything like that were ever built by you or your parents to enclose the [disputed portion]?

"A. No, sir."

ones that had been "maintained" by the Mulvey family. That evidence supports a finding that the plaintiff had not established her claim of adverse possession with respect to the muddy area by clear and convincing proof.

The plaintiff argues that, in his testimony, David Jr. offered evidence that David Sr. cleared leaves and maintained a path through the muddy area. Although the court in its memorandum of decision found that David Sr. "created an access path" on the disputed portion, it did not find that said path traversed the muddy area. Nor did David Jr. identify the location of that path with any precision in his testimony, other than to say that it was "between those [stone] walls" depicted in a central location on the general survey. David Jr. admitted that the path no longer existed, that he never took any measurements to determine its location, and that he could only provide an estimate of where it previously was located.

David Jr. also testified that David Sr. used a tractor to access the wooded area. At the same time, David Jr. testified that the muddy area was caused by a "natural spring" that had "water bubble up from the ground." As he stated: "You could see the water coming up, and it has a flow to it." His sister, Lee Viteretto, also testified that the disputed portion, as depicted in photographs admitted into evidence, had "always looked like that" since she was a child, the only changes being that "[t]he trees are bigger" and that there was a "little bit" of overgrowth. In light of that testimony, the court reasonably could conclude that the path created by David Sr. to access the wooded area with a tractor did not traverse the muddy area.

Furthermore, "[t]he mere existence of evidence tending to support a rejected claim of adverse possession does not establish that the court's finding that the claim

was not proven by clear and convincing proof is clearly erroneous." *Skelly* v. *Brucher*, supra, 134 Conn. App. 344; see also *Shepard Group, LLC* v. *Arnold*, 124 Conn. App. 41, 45, 3 A.3d 975 (2010) ("[t]he fact that there was evidence in support of the defendants' claim of adverse possession does not establish that the court's finding . . . is clearly erroneous"). As the sole arbiter of credibility, the court was free to accept or reject, in whole or in part, the testimony offered by David Jr. at trial.[9] See *Skelly* v. *Brucher*, supra, 345; see also 2 C.J.S., supra, § 295, p. 801 ("[e]vidence of adverse possession is strictly construed . . . against the person claiming a prescriptive right . . . and the testimony of [the] claimant or their witnesses need not be accepted at face value" (footnotes omitted)). In light of the foregoing, we conclude that the court's finding that the plaintiff failed to establish her claim of adverse possession with respect to *all* areas of the disputed portion is not clearly erroneous.

II

The plaintiff also claims that the court erroneously concluded that she failed to establish the boundaries of the areas of the disputed portion with reasonable certainty. We do not agree.

In its memorandum of decision, the court found that the plaintiff had demonstrated exclusive possession over "some areas" of the disputed portion during a nineteen year period from 1966 to 1985. The court also found that the "precise boundary lines" of the areas over which David Sr. had demonstrated exclusive possession

[9] We note that David Jr. admitted at trial that he was a beneficiary under the trust laying claim to the disputed portion and that he was involved in "the commencement of this lawsuit . . . ." As this court has observed in the adverse possession context, "[a] court properly may take into account testimony from a witness with an interest in the outcome of the case" and "is at liberty to discredit any witness . . . ." (Internal quotation marks omitted.) *Benjamin* v. *Norwalk*, supra, 170 Conn. App. 26.

were "uncertain and indeterminate" and relatedly found that the muddy area was "an indeterminate size." The court thus concluded that it could not "identify the boundary lines of property supposedly acquired by adverse possession with any confidence."

The court's findings are supported by evidence in the record before us. The survey prepared by Rapp and admitted into evidence (1) was of general character,[10] (2) was predicated on information furnished by David Jr., rather than Rapp's own observations of the disputed portion, (3) did not identify all three areas of the disputed portion, and (4) did not delineate the boundaries of either of the two areas that are labeled "maintained by Mulvey." Rapp testified at trial that he did not measure the wooded or lawn areas and did not know the square footage of either area. Rapp also testified that he did not stake any of the areas in the disputed portion. When asked if a property owner would be able to rely on the general survey to transfer title to the disputed portion, Rapp stated: "Without further work I would advise against it."

In his testimony, David Jr. likewise was unable to provide any specifics regarding the precise boundaries of the wooded area, the lawn area, or the muddy area. On cross-examination, David Jr. admitted that he was providing an "educated guess" as to certain locations in the disputed portion and stated: "I don't know what else to tell you, because I can't give you any numbers. And I can't give you measurements." In addition, both David Jr. and his sister testified that the boundaries of the wooded area were not readily discernable.[11] Their

[10] We reiterate that the general survey is titled "General Location Survey." In its upper left corner, that survey specifically notes that "[t]he sole intention of this map is to depict [the disputed portion]" as "identified" by David Jr.

[11] At trial, David Jr. testified that there were no markers or surveyor's stakes in the wooded area and that, as a child, he had "no idea" where the property lines of the wooded area were located. He testified that he assumed the westerly boundary was marked by a stone wall, which is shown on the general survey as being located on property belonging to a third party that

testimony, like the general survey, is not clear and convincing proof of the boundaries of the areas contained in the disputed portion.

When a party seeks to acquire by adverse possession a portion of real property belonging to another, that party bears the burden of establishing exclusive possession over all areas to which it lays claim. See *Skelly* v. *Brucher*, supra, 134 Conn. App. 343; *Durkin Village Plainville, LLC* v. *Cunningham*, supra, 97 Conn. App. 654; *Lisiewski* v. *Seidel*, supra, 95 Conn. App. 707–12. As our Supreme Court has observed, "[w]here a person claims land by adverse possession, his title is limited to the boundaries of his actual, exclusive occupation, and can not extend beyond those boundaries." *Huntington* v. *Whaley*, 29 Conn. 391, 394 (1860).

In the present case, the trial court found that the plaintiff established that David Sr. had exercised exclusive possession over "some areas" of the disputed portion, but not all. To prevail on her adverse possession claim, it therefore was incumbent on the plaintiff to provide clear and convincing evidence as to the boundaries of those areas. See, e.g., *Barrs* v. *Zukowski*, 148 Conn. 158, 166, 169 A.2d 23 (1961) (adverse possession claim failed due to plaintiffs' "inability to locate the proper boundary lines"); *Adametz* v. *Adametz*, Docket No. CV-98-0086469-S, 2002 WL 31172465, *5 (Conn. Super. August 27, 2002) ("[The] defendants' claim of

is not included in the plaintiff's claim of adverse possession. His sister similarly testified that she did not know how far back the wooded area on which she played as a child extended.

David Jr.'s testimony that "[w]e thought the stone walls were the property lines" also is at odds with the demarcation of the disputed portion on Rapp's survey. On that survey, the westerly boundary of the disputed portion does not extend to the stone wall at the rear of wooded area but, rather, ends before that wall—most notably at its northwest and southwest corners. On cross-examination, David Jr. conceded that the westerly boundary that he identified to Rapp was based on a property line with a third party and not the stone wall.

adverse possession must fail . . . because they have not established the boundaries of the land claimed to have been acquired by adverse possession. It was their burden to do so."); *Miller* v. *Onorato*, Docket No. CV-92-0335319-S, 1996 WL 409226, *3 (Conn. Super. June 27, 1996) (rejecting defendants' adverse possession claim due to their "failure to depict an area which can be found to have been adversely possessed and which can be delineated by a trier"), aff'd, 45 Conn. App. 908, 693 A.2d 309, cert. denied, 243 Conn. 911, 701 A.2d 332 (1997); *Downing* v. *Bird*, 100 So. 2d 57, 64 (Fla. 1958) ("the limits, location, and extent of [a claimant's] occupation must be definitely and clearly established by affirmative proof" (internal quotation marks omitted)); *McClellan* v. *King*, 133 Ill. App. 2d 914, 916, 273 N.E.2d 696 (1971) ("clear and definite proof of the location of the land . . . is a prerequisite to obtaining title" by adverse possession); *Pokorski* v. *McAdams*, 204 Neb. 725, 731, 285 N.W.2d 824 (1979) ("[a] claimant of title by adverse possession must further show the extent of his possession [and] the exact property which was the subject of the claim" (internal quotation marks omitted)); see also 2 C.J.S., supra, § 260, p. 769 ("[a]dversely possessed property must be of fixed and definite boundaries"); id., § 271, p. 781 (burden on party claiming adverse possession to establish "the exact property which [is] the subject of the claim of ownership").

Requiring a plaintiff in an adverse possession action to provide clear proof of the precise boundaries of the real property in question is consistent with the precept that "[a] landowner claiming more property than the claimant's title reflects bears the burden of proof in [a] boundary dispute, while the neighboring adjacent landowners, relying on the title, do not bear the burden of proving the boundary." 11 C.J.S. 218, Boundaries § 186 (2021); accord *Steinman* v. *Maier*, 179 Conn. 574, 575, 427 A.2d 828 (1980) ("[t]he burden was on the

plaintiff to fix [the] location" of boundary in dispute); *Velsmid* v. *Nelson*, 175 Conn. 221, 224, 397 A.2d 113 (1978) ("[a] plaintiff's claim may fail simply as a result of his or her inability to establish adequately the disputed boundary line"); *LaFreniere* v. *Gallinas*, 148 Conn. 660, 665, 174 A.2d 46 (1961) (plaintiff alleging possession of disputed area in boundary dispute "is obliged to locate the boundary line"); *Simmons* v. *Addis*, 141 Conn. 738, 741, 110 A.2d 457 (1954) ("[t]he burden of establishing the location of the boundary line where he claimed it to be was upon the plaintiff"). The court's finding in the present case that the plaintiff had not established with any reasonable certitude the boundaries of any areas over which she had claimed exclusive possession comports with that bedrock real property principle. Requiring such proof is consonant with the maxim that a claim of adverse possession, and the evidence submitted in support thereof, must be strictly construed against the party who is seeking to forever alter the boundaries of the title owner's property. See *Dowling* v. *Heirs of Bond*, supra, 345 Conn. 143; *Huntington* v. *Whaley*, supra, 29 Conn. 398; see also footnote 6 of this opinion.

In the present case, the record substantiates the court's findings that the plaintiff failed to provide clear and convincing evidence "of the precise boundary lines of any property she may have otherwise by satisfying the elements of adverse possession" and that said boundary lines were uncertain and indeterminate. Those findings, therefore, are not clearly erroneous.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* KRISTOPHER CARLSON (AC 45883)

Cradle, Seeley and Westbrook, Js.

Syllabus

Convicted, after a jury trial, of the crime of manslaughter in the first degree, the defendant appealed to this court. Following an altercation in the parking lot of a bar, the defendant chased the victim approximately ninety feet and then stabbed the victim two times in the chest with a knife. The defendant then ran to his vehicle and quickly drove away from the scene. At trial, the defendant pursued the theory that the victim was the initial aggressor and that he had killed the victim in self-defense. At the state's request and over the defendant's objection, the trial court provided a consciousness of guilt instruction to the jury. *Held*:

1. The defendant could not prevail on his claim that the trial court's consciousness of guilt instruction implicated his constitutional right to due process of law: in its instruction, the trial court emphasized that any evidence of consciousness of guilt derived from the defendant's flight was circumstantial, which allowed for a permissive inference that did not unconstitutionally dilute the state's burden to disprove beyond a reasonable doubt the elements of self-defense, including the duty to retreat prior to using deadly physical force; moreover, the defendant did not drive away from the bar until after he had chased the victim and stabbed him in the chest two times and, as our Supreme Court instructed in *State* v. *Luster* (279 Conn. 414), flight that occurs after a defendant's use of deadly force does not logically compel a conclusion that the reason for the flight was self-defense nor does it entitle the defendant to present such evidence without permitting the jury to consider other possible reasons for the flight.
2. The defendant failed to demonstrate that the consciousness of guilt instruction violated his constitutional right not to testify as guaranteed by the fifth amendment to the United States constitution: this court concluded that the defendant's claim was unpreserved because it was entirely distinct from his objection that was stated on the record following the charge conference, namely, that the instruction diluted the state's burden to disprove self-defense, and he did not raise an exception on the basis of his fifth amendment rights or on any other basis immediately following the charge; moreover, the defendant could not prevail on his unpreserved claim under *State* v. *Golding* (213 Conn. 233) because he failed to demonstrate a violation of his constitutional right not to testify, as the trial court unequivocally instructed the jury that it could draw no unfavorable inferences from the defendant's decision not to testify and that, even if the jury did find that the defendant's flight from the scene and the washing of the clothes that he was wearing during the

incident shortly thereafter were influenced by the criminal act, it could, but was not required to, infer consciousness of guilt from those actions.

3. The trial court did not abuse its discretion in instructing the jury on consciousness of guilt: although the defendant claimed that he fled the scene due to fear of a continued threat from the victim, the record demonstrated ample support for a consciousness of guilt instruction, including evidence that the defendant's flight occurred after he stabbed the victim and watched him fall to the ground and his misstatements to law enforcement, evidence that could have been relied on by the jury to find that the defendant sought to avoid detection of or responsibility for the crime and permitted an inference that he was acting from a guilty conscience.

4. This court declined the defendant's request to exercise its supervisory authority to prohibit courts from providing consciousness of guilt instructions to juries: our Supreme Court declined an identical request in *State* v. *Coward* (292 Conn. 296), and the defendant failed to present any authority that would allow this court to deviate from that precedent.

Argued February 8—officially released July 2, 2024

Procedural History

Information charging the defendant with the crime of murder, brought to the Superior Court in the judicial district of New Haven and tried to the jury before *Vitale*, *J.*; verdict and judgment of guilty of the lesser included offense of manslaughter in the first degree, from which the defendant appealed to this court. *Affirmed.*

Erica A. Barber, assistant public defender, for the appellant (defendant).

Danielle Koch, assistant state's attorney, with whom, on the brief, were *John Doyle*, state's attorney, *Seth Garbarsky*, supervisory assistant state's attorney, and *Jason Germain*, senior assistant state's attorney, for the appellee (state).

Opinion

SEELEY, J. The defendant, Kristopher Carlson, appeals from the judgment of conviction, rendered following a jury trial, of manslaughter in the first degree in violation of General Statutes § 53a-55 (a) (1). On appeal, the defendant raises multiple claims concerning

the trial court's jury instructions on consciousness of guilt.[1] Specifically, the defendant claims that (1) the instruction diluted the state's burden to disprove the elements of self-defense beyond a reasonable doubt, (2) in a self-defense case, a consciousness of guilt instruction improperly burdens the defendant to explain his conduct in violation of his constitutional right not to testify, (3) the instruction was unwarranted based on the evidence presented at trial, (4) the jury was misled by the instruction,[2] and (5) this court should exercise its supervisory powers and adopt a rule categorically prohibiting consciousness of guilt instructions. We conclude that the court did not err by giving a consciousness of guilt instruction and decline to adopt a rule prohibiting such an instruction. We affirm the judgment of the trial court.

The jury reasonably could have found the following facts. On the evening of January 16, 2021, the defendant went to Corner Café, a bar in Wallingford, with his father, David Carlson. At some point in the evening, the defendant's father left, but the defendant remained at the bar. In addition to the defendant and other

[1] We note that the defendant frames his appeal as consisting of one claim—that the court erred in issuing the consciousness of guilt instruction—with five separate supporting arguments. Upon a careful review of each of the five issues raised by the defendant, however, it is clear that there are five distinct claims being raised on appeal. "[A] claim is an entirely new legal issue, whereas, [g]enerally speaking, an argument is a point or line of reasoning made in support of or in opposition to a particular claim." (Internal quotation marks omitted.) *Markley* v. *State Elections Enforcement Commission*, 339 Conn. 96, 105 n.9, 259 A.3d 1064 (2021). The grounds he has raised are not interconnected arguments in support of one legal claim relevant to the consciousness of guilt instruction but, rather, they are separate claims, each of which posit an entirely different legal challenge to the issuance of the instruction, as each one can be decided individually without affecting our analysis of the defendant's other claims. Accordingly, we address each of the five grounds raised by the defendant in support of his appeal as separate claims.

[2] The defendant's fourth claim is, in effect, a restatement of his first claim. See footnote 14 of this opinion.

patrons, present at the bar were Rebecca Souza, the bartender; Jessica Falcone, a friend of Souza; Gene DelGreco, a regular customer and an acquaintance of both Souza and Falcone; and the victim, Ernest Cipolli III, who was in a romantic relationship with Souza. The bar had a closing time of 10 p.m. due to the COVID-19 restrictions in place at that time. At some time after 9:30 p.m., Souza announced "last call," which signaled to the patrons that the bar would be closing soon. Around 10 p.m., Souza informed the remaining customers that it was closing time and asked them to leave the premises. Some of the customers, including Falcone, DelGreco, the defendant, and the victim, remained.

The victim was irritated with the defendant for his continued presence at the bar, believing that the defendant had been flirting with Souza. The victim also seemed irritated with Souza for not forcing the defendant to leave more promptly. As a result, there was a verbal confrontation between the defendant and the victim inside the bar, in the presence of Souza, Falcone, and DelGreco, in which the victim approached the defendant, asked him who he was and told him to leave the bar. Souza told the victim to sit down and the defendant not to pay attention to the victim because he was jealous. Nevertheless, the victim told the defendant to leave, while pointing at the exit. A surveillance video from inside the bar shows that, after this confrontation, at approximately 10:03 p.m., DelGreco physically escorted the defendant out of the bar. There was no physical contact between the defendant and the victim at that time.

After the defendant left the bar with DelGreco, Falcone subsequently went outside to the parking lot to check on the defendant, who was seated in his vehicle. He seemed annoyed and stated to Falcone that, if the victim wanted to fight, he would "call [his] boys." Thereafter, Falcone went back inside the bar. The victim,

meanwhile, appeared agitated, stepped outside the bar to smoke a cigarette at approximately 10:07 p.m. and then went back inside, where he and Souza had an "emotional conversation."

At around 10:12 p.m., Falcone again went outside to the parking lot of the bar where she met with DelGreco, at which time the defendant was still inside his vehicle in the parking lot. At approximately 10:16 p.m., the victim exited the bar and walked over to the area of the parking lot where DelGreco and Falcone were both seated in their respective vehicles and were having a conversation through their unrolled car windows. The victim, Falcone, and DelGreco had a brief conversation, during which Falcone observed that the victim seemed agitated and informed the victim that she had told the defendant to leave. The victim thereafter went back inside the bar around 10:18 p.m.

At approximately 10:22 p.m., the victim exited the bar a final time and approached the defendant's vehicle. Falcone and DelGreco were still engaged in a conversation through their unrolled car windows. Falcone, concerned about the potential for further conflict between the victim and the defendant, exited her vehicle, approached the defendant's vehicle and stood next to the victim. A surveillance video from outside the bar shows that the victim banged on or punched the defendant's vehicle at least once. DelGreco also exited his vehicle and approached the defendant's vehicle. A physical altercation followed, in which the defendant was trying to open the door to his vehicle and the victim kept pushing it shut.

Falcone, who had been attempting to deescalate the altercation, observed the defendant lean over and grab something from underneath the passenger seat in his vehicle. Afraid that the defendant had a firearm, Falcone told the victim, who was unarmed, that the defendant

had a gun. The defendant, who actually was retrieving a knife that he kept stored in his car, thereafter exited his vehicle. Falcone and DelGreco attempted to separate the victim and the defendant, but the victim moved toward the defendant and the defendant struck the victim in the arm.[3]

The victim then began running away from the defendant, who chased him approximately ninety feet toward the door of the bar. The victim attempted to open the door, but it was locked.[4] The defendant caught up with the victim at the door and stabbed him twice in the chest with the knife.[5] At the time the defendant stabbed the victim, the victim had his hands in the air, which is supported by the documented injuries to the victim's hands.[6] The defendant then ran back to his vehicle and quickly left the scene, driving over the curb at the edge of the parking lot in the process. Thereafter, Falcone banged on the bar door, and, after Souza opened it, Falcone instructed Souza to call 911. Police and emergency medical personnel arrived shortly after and attempted to administer aid to the victim. The medical personnel transported the victim by ambulance to a hospital where he died later that evening.

[3] It is unclear, based upon the evidence, whether the victim was struck with a fist or a knife at this point.

[4] Souza testified that she locked the door because, as she was the only employee working and was closing the bar for the night, she was supposed to count the money and lock herself in with the register.

[5] Chief Medical Examiner James Gill testified that the victim had suffered two stab wounds to the left side of his chest, one of which was one and one-eighth inches in length and the other of which was three and one-quarter inches in length, both of which were fatal wounds.

[6] James Gill, the chief medical examiner, noted that there were multiple wounds to the victim's hands, including a perforating stab wound and a corresponding injury on the other side of the victim's right hand, between the third and fourth fingers, and multiple smaller lacerations on the palm and fingers, as well as abrasions to the victim's forearms. Dr. Gill further testified that "it's not unusual . . . to see people who are . . . stabbed to death to have injuries on their hands or their forearms in . . . trying to grab at a knife blade, for example."

In the hours following the victim's death, police officers went to the home of the defendant's father in Wallingford. The defendant's father called the defendant, who agreed to come to the house and speak to the officers. When he arrived, the defendant was wearing different clothes from what he was wearing in the surveillance video obtained from the bar on the night of the stabbing.[7]

The defendant agreed to an interview with the police at the police station, which was recorded. In the interview, the defendant told the police that the victim had been punching the driver's side window of his car and that he had to use a folding knife he kept in his vehicle to defend himself from the victim. The defendant told the police that he did not know where the knife was but that it may have been left at the scene.[8] The defendant also told the police that when he left the bar after the stabbing he drove directly to his girlfriend's house in New Britain and that he left the clothes that he had been wearing during the altercation at his girlfriend's house.

Tracking data later obtained from the defendant's cell phone showed that the defendant did not drive directly to his girlfriend's house in New Britain but, instead, that he had first driven to his mother's house in Meriden, then to a house in New Britain, and finally to his father's house to speak with the police officers. The day after the incident, the police obtained a search warrant for the defendant's mother's house. During the execution of the search warrant, the officers seized the clothes and shoes that the defendant had been wearing during the stabbing at the bar. The defendant's clothes were damp, smelled of detergent, and had been laid

[7] The surveillance footage showed that the defendant was wearing a black and white hooded jacket, a pair of jeans, and a pair of white sneakers.

[8] No weapon was ever recovered from the scene.

out on the bed by someone. The shoes appeared to have been washed as well, but a "bloodlike stain" remained. The defendant was subsequently arrested and charged with murder in violation of General Statutes § 53a-54a (a).

At trial, the defendant pursued the theory that the victim was the initial aggressor and that he had killed the victim in self-defense. After the close of evidence, the parties participated in a charge conference with the court that was held in chambers, which the court memorialized on the record the following day. The state had submitted a request for an instruction on consciousness of guilt, to which the defendant objected, arguing that it would be "inappropriate in this case where the defense is justification, it's a self-defense case, there's an instruction of self-defense, to indicate that flight or any other behavior is . . . evidence of consciousness of guilt I think jumps over the issue of justification."[9]

The court, *Vitale, J.*, overruled the defendant's objection, stating that it "concluded that the record demonstrated sufficient evidence that had been introduced to permit . . . that instruction be given. So, I want to just note in connection with the claims [made by the defendant] . . . that the evidence related to consciousness of guilt concerns not only what the state alleges is flight from the scene, which I don't think is disputed, and then subsequently the washing of [the defendant's] clothes after the fact.

[9] The court first provided counsel for both parties with draft copies of the instructions on April 18, 2022, more than one month before the charge conference. That copy of the charge, however, did not contain an instruction on consciousness of guilt. On May 5, 2022, several weeks before the charge conference, the court provided counsel with a revised set of preliminary jury instructions, which did contain the consciousness of guilt instruction. On May 24, 2022, the court provided counsel with the final set of jury instructions. Therefore, counsel was aware, several weeks before the charge conference, of the proposed instruction on consciousness of guilt.

"The court has carefully considered the Supreme Court's language in *State* v. *Luster*, 279 Conn. 414, [902 A.2d 636 (2006)], which was a self-defense case, and *State* v. *Grajales* . . . 181 Conn. App. 440, [186 A.3d 1189], cert. denied, 329 Conn. 910, [186 A.3d 707] (2018), which involved another justification claim, that one being defense [of] others.

"In connection with this specific claim being raised by the defendant . . . this court's instruction on consciousness of guilt is consistent with language in *Luster* and *Grajales* in that it allows a permissive inference only. The court is mindful of the cautions suggested by the Supreme Court in *Luster* in a self-defense situation. The court concludes, though, after a thorough examination of the evidence presented in applying not only *Luster*, but *Grajales*, which, as I said, involved a defense of others claim by the defendant, that the instruction is appropriate to provide in this case."

During their closing arguments, both the prosecutor and defense counsel addressed whether certain evidence showed the defendant's consciousness of guilt, or whether there was an alternative explanation. The prosecutor argued that "[t]he [defendant's] actions after [he] stabbed [the victim] shows a guilty conscience. Now, the fact that he left the scene, drove in his car and took off, indicated that he went . . . to see his girlfriend, but actually went to his mother's house and the first thing he does . . . he goes to his mother's house and immediately starts cleaning up, wipes down all the blood. And why is that important? Because he tells the police officer[s] that there was no blood on him, there was none, but he tried to wash out that DNA and they found it from the clothes that he was wearing. His sneakers include[d] little, small drops on his shoelace. That comes back and shows, again, [the defendant's] consciousness of guilt in trying to get rid of evidence after you committed a murder, not that he

used self-defense." In response, defense counsel argued that "the state argued consciousness of guilt; he washed his clothes, he changed his clothes, he didn't tell the detectives that the clothes were at his mom's house, he fled the scene. It's not consciousness of guilt, it's consciousness of fear. It's consciousness of the fact that things went awful bad. Consciousness of the fact that he was scared, he was scared he was in trouble, he was scared that his mom was gonna get dragged into this. It's not consciousness of guilt."

In its final charge to the jury, the court gave the same instruction on consciousness of guilt it previously had shown to counsel. That instruction read: "In any criminal trial, it is permissible for the state to show that conduct by a defendant after the time of the alleged offense may have been influenced by the criminal act; that is, the conduct shows a consciousness of guilt.

"Flight, when unexplained, may indicate consciousness of guilt if the facts and the circumstances support it. With regard to this issue, the state has offered evidence of the defendant's alleged flight from the Corner Café in Wallingford and the alleged cleansing of his clothing following the events that . . . are the subject of this trial. . . . It is of course for you to pass upon the credibility of that evidence and to give to it the weight you deem appropriate.

"Whatever you find proven in this regard must have been influenced by the criminal act and not by any other reason. If you find that the defendant did engage in such conduct following the commission of the crime alleged, and also find that . . . the acts were influenced by the criminal act and not by any other reasons, you may, but are not required to, infer from this evidence that the defendant was acting from a guilty conscience.

"First, you must determine whether the state has proven any . . . such conduct. . . . If so, and if you then find proven that the defendant did so in connection with this crime, this does not raise a presumption of guilt. It is circumstantial evidence and you may, or may not, infer consciousness of guilt from it. . . . Let me make this clear to you. It is up to you as judges of the fact[s] to decide whether the state has proven any of the alleged conduct, and if so, whether or not whatever has been proven reflects a consciousness of guilt and to consider such in your deliberations in conformity with these instructions." After the court charged the jury, defense counsel did not take any exception with respect to the consciousness of guilt instruction. The jury subsequently found the defendant guilty of manslaughter in the first degree as a lesser offense included within the crime of murder. The court imposed a sentence of sixteen years of incarceration. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the consciousness of guilt instruction improperly violated his constitutional right to due process of law. Specifically, the defendant argues that an instruction on flight is unconstitutional in a case in which the defendant asserts a claim of self-defense because it dilutes the state's burden to disprove the elements of self-defense beyond a reasonable doubt.[10] The defendant further argues that, to "[assess]

[10] As noted by our Supreme Court, "[u]nder our Penal Code, self-defense . . . is a defense . . . rather than an affirmative defense. . . . Consequently, a defendant has no burden of persuasion for a claim of self-defense; he has only a burden of production. That is, he merely is required to introduce sufficient evidence to warrant presenting his claim of self-defense to the jury. . . . Once the defendant has done so, it becomes the state's burden to disprove the defense beyond a reasonable doubt." (Internal quotation marks omitted.) *State* v. *Singleton*, 292 Conn. 734, 747, 974 A.2d 679 (2009).

whether the state met [that] burden, the jury needed to consider the defendant's duty to retreat, i.e., whether the state had proven that the defendant knew that he could avoid using deadly physical force by retreating from the threat." The defendant asserts that he left the scene of the altercation out of fear in an attempt "to escape his aggressor," not due to guilt, and that, therefore, his flight was consistent with his claim of self-defense. The defendant contends that, "[b]y emphasizing the possibility that the defendant's retreat was motivated by something other than his fear, the court improperly endorsed the prosecution's version of the events and [unconstitutionally] diluted the state's burden of proof [regarding the defendant's claim of self-defense]." The state responds that the consciousness of guilt instruction did not implicate the defendant's due process rights, as it is a permissive inference, which does not implicate the defendant's due process rights or shift the burden of proof from the state to the defendant. We agree with the state.

We begin by setting forth the appropriate standard of review and the principles of law that guide our analysis of the defendant's claim. "A challenge to the validity of jury instructions presents a question of law over which [we have] plenary review." *Pickering* v. *Rankin-Carle*, 103 Conn. App. 11, 14, 926 A.2d 1065 (2007); see also *State* v. *Wilson*, 209 Conn. App. 779, 807, 267 A.3d 958 (2022). "When reviewing [a] challenged jury instruction . . . we must adhere to the well settled rule that a charge to the jury is to be considered in its entirety . . . and judged by its total effect rather than by its individual component parts. . . . The pertinent test is whether the charge, read in its entirety, 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. . . . [It should] not [be] critically dissected in a microscopic search for possible error. . . . In this inquiry

we focus on the substance of the charge rather than the form of what was said not only in light of the entire charge, but also within the context of the entire trial." (Internal quotation marks omitted.) *State* v. *Luster*, supra, 279 Conn. 421; see also *State* v. *Alston*, 272 Conn. 432, 447, 862 A.2d 817 (2005). Furthermore, "[i]n reviewing a constitutional challenge to the trial court's instruction, we must consider the jury charge as a whole to determine whether it is reasonably possible that the instruction misled the jury. . . . In other words, we must consider whether the instructions [in totality] are sufficiently correct in law, adapted to the issues and ample for the guidance of the jury." (Internal quotation marks omitted.) *State* v. *Haughwout*, 339 Conn. 747, 770, 262 A.3d 791 (2021).

Generally, "a person is justified in using reasonable physical force upon another person to defend himself . . . from what he reasonably believes to be the use or imminent use of physical force, and he may use such degree of force which he reasonably believes to be necessary for such purpose . . . ." General Statutes § 53a-19 (a). A person is not justified, however, "in using deadly physical force upon another person if he or she knows that he or she can avoid the necessity of using such force with complete safety (1) by retreating, except that the actor shall not be required to retreat if he or she is in his or her dwelling . . . ." General Statutes § 53a-19 (b). "In other words, § 53a-19 (b) 'requires recourse to retreat in lieu of the use of physical force only when the actor himself knows that he can avoid the necessity of using such force with complete safety . . . .' " *State* v. *Hallowell*, 61 Conn. App. 463, 469, 766 A.2d 950 (2001).

In the present case, the court provided a lengthy and comprehensive instruction to the jury on the defendant's claim of self-defense,[11] including that a defendant

[11] In the present case, the court instructed the jury that "our law defines . . . self-defense as follows: A person is justified [in] using reasonable physi-

has a legal duty to retreat prior to using deadly physical force. The court instructed the jury that "[t]he state can defeat the defendant's claim of self-defense by proving the statutory disqualification to the use of deadly physical force. The law describing self-defense describes a circumstance in which a person is not justified in using deadly physical force in self-defense against another.

"Now, this exception applies only to the use of deadly force. So, if you have found the defendant used deadly physical force you must consider this exception, meaning the duty to retreat. . . . A person is not justified in using deadly physical force upon another person if he knows that he can avoid the necessity of using such force with complete safety by retreating. . . . This disqualification requires a defendant to retreat instead of using deadly physical force whenever two conditions are met: First, that retreat was completely safe and, in fact, available to him; and second, that the defendant had actual knowledge that he could avoid the necessity of deadly physical force by making the completely safe retreat. Retreat does not mean movement in a particular direction. It includes any steps the defendant could have taken to remove himself from the confrontation with complete safety."

Our Supreme Court has previously addressed the question of whether a consciousness of guilt instruction

cal force upon another person to defend himself from what he reasonably believes to be the use or imminent use of force, and he may use such degree of force which he reasonably believes to be necessary for such purpose.

"Deadly physical force may not be used unless the actor reasonably believes that such other person is, one, using or about to use deadly physical force, or, second, inflicting or about to inflict great bodily harm. By this language, the law requires that, before a defendant can use physical force upon another person to defend himself, he must have two reasonable beliefs. The first is a reasonable belief that . . . physical force is then being used or about to be used upon him. The second is a reasonable belief that the degree of force he is using to defend himself from what he believes to be an ongoing . . . or imminent use of force is necessary for that purpose."

impermissibly dilutes the state's burden to disprove the elements of the defendant's self-defense claim in *State* v. *Luster*, supra, 279 Conn. 421. In *Luster*, the defendant sought *Golding*[12] review of his unpreserved claim challenging the trial court's jury instruction on consciousness of guilt. Id., 420. Specifically, he argued, relying on § 53a-19 (b) (1); id., 423; "that an instruction on flight is unconstitutional in the context of a self-defense claim because it allows the jury to presume guilt from the defendant's actions in fulfilling his legal duty to retreat, which dilutes the state's burden to disprove self-defense beyond a reasonable doubt." Id., 421. Our Supreme Court declined to review the consciousness of guilt instruction; id., 425; concluding that "consciousness of guilt claims, including claims involving flight instructions, are not constitutional and, therefore, are not subject to *Golding* review." Id., 421–22. The defendant in *Luster* nevertheless argued that his case was distinguishable from that precedent because it involved a claim of self-defense. Id., 423. He argued that "instructing the jury that it may use the same evidence as circumstantial proof of the defendant's guilt tends to undermine the self-defense claim and unfairly dilutes the state's burden of proof." (Emphasis omitted.) Id.

Our Supreme Court rejected that claim, stating: "[E]vidence of flight from the scene of a crime inherently is ambiguous. . . . That ambiguity does not render a flight instruction improper. . . . Moreover, we conclude that the defendant's reliance on § 53a-19 (b) (1) in support of his claim is misplaced. The section of the statute that pertains to the duty to retreat merely allows the state to rebut a claim of self-defense by showing that the defendant could have retreated safely *before* using deadly force. It does not follow that a defendant is statutorily or constitutionally entitled to

[12] See *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015).

use evidence of retreat *after* using deadly force to bolster a claim of self-defense without permitting the jury to consider other possible reasons for the flight. As in other contexts, evidence of flight after using deadly force inherently is ambiguous and does not logically compel a conclusion that the reason for the flight was self-defense. Although it may be prudent, as a general rule, for the trial court to use greater caution in giving a consciousness of guilt instruction when a defendant has claimed self-defense, we do not believe that such instructions inherently are unconstitutional." (Citations omitted; emphasis in original.) Id., 423–24; see also *State* v. *Adams*, 225 Conn. 270, 287–90, 623 A.2d 42 (1993) (because consciousness of guilt instruction allowed permissive inference, it did not implicate constitutional right and, thus, claim that instruction unconstitutionally diluted state's burden of proof had no merit). In concluding that consciousness of guilt instructions do not implicate a defendant's constitutional rights with respect to the state's burden of proof, the court in *Luster* stated further: "In [*State* v. *Alston*, supra, 272 Conn. 448], we explained that 'jury instructions that *mandate* inferences adverse to a defendant may sufficiently implicate constitutional rights to satisfy the second condition of *Golding*.' . . . Such instructions may violate the defendant's due process rights by relieving the state of its burden of proving every element of the crime beyond a reasonable doubt. . . . Instructions that allow a *permissive* inference do not, however, implicate a defendant's constitutional rights." (Citations omitted; emphasis in original.) *State* v. *Luster*, supra, 279 Conn. 422.

In the present case, the defendant's argument that the instruction to the jury on consciousness of guilt lessened the burden on the state to disprove the elements of self-defense is similar to the one that was presented to and rejected by our Supreme Court in

Luster.[13] The instruction given by the court in the present case emphasized that any evidence of consciousness of guilt derived from the defendant's flight was circumstantial and that the jury could, but was "not required to, infer from th[at] evidence that the defendant was acting from a guilty conscience." Because the court's instruction allowed for a permissive inference, we conclude that the court's consciousness of guilt instruction did not unconstitutionally dilute the state's burden of proof. Moreover, the jury was able to view the surveillance video that was introduced into evidence, which showed that the defendant did not drive away

[13] The defendant also argues that "[a] jury charge which addresses permissive presumptions of guilt favoring the prosecution, without acknowledging competing inferences of innocence, violates the balance requirement and undermines the defendant's right to a fair trial." This court previously has held that courts are not required to provide a consciousness of innocence instruction in addition to a consciousness of guilt instruction. See *State* v. *Seekins*, 123 Conn. App. 220, 226, 1 A.3d 1089 ("[t]his court repeatedly has refused to apply the consciousness of innocence principle to jury instructions regarding a consciousness of guilt"), cert. denied, 298 Conn. 927, 5 A.3d 487 (2010); see also *State* v. *Holley*, 90 Conn. App. 350, 365, 877 A.2d 872 ("[e]ven in cases in which a defendant has explained his flight, an instruction that flight is circumstantial evidence of guilt need not be accompanied by a discussion by the court of the benign explanations for flight offered by the defendant"), cert. denied, 275 Conn. 929, 883 A.2d 1249 (2005).

We further note that, notwithstanding the binding precedent rejecting the necessity of a consciousness of innocence instruction, the instruction given by the court in the present case did allow for the possibility that the defendant fled the scene for reasons other than consciousness of guilt. The court instructed the jury that, "[i]f you find that the defendant did engage in such conduct following the commission of the crime alleged, and also find that . . . the acts were influenced by the criminal act *and not by any other reasons*, you may, but are not required to, infer from this evidence that the defendant was acting from a guilty conscience." (Emphasis added.) The court's instruction, therefore, permitted an inference of guilt only if the jury rejected any other possible reason, including fear, for the defendant's conduct following the commission of the crime. Furthermore, as stated previously in this opinion, defense counsel argued during his closing argument that the defendant's relevant conduct following the stabbing was due to fear, not consciousness of guilt. Accordingly, we conclude that the defendant's right to a fair trial was not violated by the consciousness of guilt instruction.

from the bar until *after* he chased the victim to the locked door of the bar and used deadly physical force by stabbing the victim two times in the chest. Thus, the evidence of flight in the present case concerned flight that occurred after the use of deadly force. As our Supreme Court instructs, such evidence "does not logically compel a conclusion that the reason for the flight was self-defense"; *State* v. *Luster*, supra, 279 Conn. 424; and a defendant is not "entitled to use evidence of retreat *after* using deadly force to bolster a claim of self-defense without permitting the jury to consider other possible reasons for the flight." (Emphasis in original.) Id. The defendant's claim, therefore, fails.[14]

II

The defendant next claims that the consciousness of guilt instruction violated his constitutional right not

[14] The defendant's fourth claim is that the consciousness of guilt instruction was improper because it "impermissibly alleviated the state of its obligation to disprove the defendant's claim of self-defense" and that this claimed error misled the jury. We conclude that this claim is, in effect, a restatement of his first claim, which we have rejected in part I of this opinion. Moreover, to the extent that the defendant is asserting that consciousness of guilt instructions are improper in that they inherently mislead the jury and are prejudicial and unfair to a defendant, we disagree. "[T]he decision to give a consciousness of guilt instruction is left to the sound discretion of the trial court." (Internal quotation marks omitted.) *State* v. *McClain*, 324 Conn. 802, 820, 155 A.3d 209 (2017). "[T]he propriety of an instruction regarding consciousness of guilt based upon flight goes to the question of the defendant's state of mind. In other words, when a defendant has left the [scene] following a crime, the question is: *why* did he do so? This requires an assessment by the fact finder of the defendant's motivations or reasons for leaving the [scene]. If there is a reasonable view of the evidence that would support an inference that he did so because he was guilty of the crime and wanted to evade apprehension—even for a short period of time—then the trial court is within its discretion in giving such an instruction because the fact finder would be warranted in drawing that inference." (Emphasis in original.) *State* v. *Scott*, 270 Conn. 92, 105–106, 851 A.2d 291 (2004), cert. denied, 544 U.S. 987, 125 S. Ct. 1861, 161 L. Ed. 2d 746 (2005). As we already have concluded, the trial court in the present case acted within its discretion in giving the consciousness of guilt instruction to the jury, which was supported by a reasonable view of the evidence in the record. The defendant's fourth claim, therefore, fails.

to testify by improperly burdening him to explain his conduct. Specifically, the defendant references the portion of the court's instruction stating that "[f]light, when unexplained, may indicate consciousness of guilt if the facts and the circumstances support it" and argues that such language "suggests that, in the absence of an explanation, flight shows guilt." As a preliminary matter, we conclude that this claim was not preserved for appeal. In his principal appellate brief, the defendant seeks review of any unpreserved claims pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015).[15] We conclude that the defendant has failed to demonstrate a violation of his constitutional right not to testify as guaranteed by the fifth amendment to the United States constitution.

The following additional facts are relevant to our determination that this claim is not preserved for review on appeal. When defense counsel objected during the charge conference, he stated: "My objection to the instruction of consciousness of guilt is that the instruction is inappropriate in this case where the defense is justification, it's a self-defense case, there's an instruction of self-defense, to indicate that flight or any other behavior . . . is evidence of consciousness of guilt I think jumps over the issue of justification. It is, I think, indicative of an act and it's up to the jury to decide if that act equates with guilt or not, so to say that by . . .

[15] "Under *Golding*, a defendant can prevail on an unpreserved claim only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." (Emphasis in original; internal quotation marks omitted.) *State* v. *Christopher R.*, 222 Conn. App. 763, 771, 306 A.3d 1117 (2023), cert. denied, 348 Conn. 946, 308 A.3d 34 (2024).

fleeing it's consciousness of guilt suggests it's not self-defense. So, I think there's an incongruity there with the instruction and the law as it applies to a justification defense . . . ." At no time did defense counsel object on the ground that the instruction implicated the defendant's fifth amendment right not to testify. Furthermore, defense counsel did not take any exception after the court finished its instructions.[16]

"An appellate court shall not be bound to consider error as to the giving of, or the failure to give, an instruction [to the jury] unless the matter is covered by a written request to charge or exception has been taken by the party appealing immediately after the charge is delivered. Counsel taking the exception shall state distinctly the matter objected to and the ground of exception. The exception shall be taken out of the hearing of the jury." Practice Book § 42-16; see also *State* v. *Silva*, 113 Conn. App. 488, 494–95, 966 A.2d 798 (2009) ("It is well settled . . . that a party may preserve for appeal a claim that an instruction, which was proper to give, was nonetheless defective either by: (1) submitting a written request to charge covering the matter; or (2) taking an exception to the charge as given. . . . Moreover, the submission of a request to charge covering the matter at issue preserves a claim that the trial court improperly failed to give an instruction on that matter. . . . In each of these instances, the trial court

[16] After the court finished instructing the jury, the court stated: "I am going to excuse you while I go over my instructions with the attorneys on the record. The attorneys may have some suggestions regarding modifications in the instructions. If that's the case, you will be brought back in, you'll be given a brief supplemental instruction. So, I'm going to ask you now that, while I am discussing this with the attorneys, that you please remain in the jury deliberation room . . . ." Once the jury left the courtroom, the court asked the prosecutor and defense counsel if either of them had anything else they would like to put on the record, at which time defense counsel replied, "No, Your Honor."

has been put on notice and afforded a timely opportunity to remedy the error. . . . *It does not follow, however, that a request to charge addressed to the subject matter generally, but which omits an instruction on a specific component, preserves a claim that the trial court's instruction regarding that component was defective.*" (Emphasis in original; internal quotation marks omitted.)).

"Our rules of practice require a party, as a prerequisite to appellate review, to *distinctly* raise its claim before the trial court." (Emphasis added.) *Samuel* v. *Hartford*, 154 Conn. App. 138, 145, 105 A.3d 333 (2014). The purpose of this requirement is to "plainly put the trial court on notice as to the specific basis for [the defendant's] objection . . . ." (Citations omitted.) *State* v. *Coleman*, 304 Conn. 161, 174, 37 A.3d 713 (2012). "Under either method [of submitting a written request to charge or taking an exception to the charge as given], some degree of specificity is required, as a general request to charge or exception will not preserve specific claims. . . . Thus, a claim concerning an improperly delivered jury instruction will not be preserved for appellate review by a request to charge that does not address the specific component at issue . . . or by an exception that fails to articulate the basis relied upon on appeal with specificity." (Internal quotation marks omitted.) *State* v. *Wilson*, supra, 209 Conn. App. 797. Our Supreme Court has "held that the *specific* grounds for an objection raised at trial are relevant to the preservation of a claim on appeal. . . . Accordingly, [our Supreme Court has] explained that, to afford petitioners on appeal an opportunity to raise different theories of objection would 'amount to ambush of the trial court' because, '[h]ad specific objections been made at trial, the court would have had the opportunity to alter [the charge]' or otherwise respond." (Citations omitted; emphasis added.) *State* v. *Johnson*, 288 Conn. 236, 287–

88, 951 A.2d 1257 (2008); see also *State* v. *Ramon A. G.*, 336 Conn. 386, 396, 246 A.3d 481 (2020) ("On the basis of the record presently before us, we simply cannot conclude that the trial court and the state were given fair notice of the fact that the defendant took issue with *this particular aspect* of its instructions on assault. . . . [T]he essence of the preservation requirement is that *fair notice* be given to the trial court of the party's view of the governing law and of any disagreement that the party may have had with the charge actually given . . . ." (Citations omitted; emphasis altered; internal quotation marks omitted.)). In other words, if the "theory of [the] objection has changed [on appeal], we [must] conclude that the claim is not reviewable." *State* v. *Johnson*, supra, 288.

In the present case, although the defendant asserts in his appellate brief that his "claim[s] [were preserved] by objecting and presenting related arguments,"[17] the record shows that, after the court summarized the charge conference that had been held in chambers, defense counsel objected to the court's proposed consciousness of guilt instruction on the basis of a *single* ground, that is, that the instruction is not appropriate in a self-defense case because "to indicate that flight or any other behavior . . . is evidence of consciousness of guilt . . . suggests it's not self-defense." The court responded by stating that it had "carefully considered [our] Supreme Court's language in [*State* v. *Luster*, supra, 279 Conn. 414], and [*State* v. *Grajales*, supra, 181 Conn. App. 440], which involved another justification claim, that one being defense of others. In connection with this specific claim being raised by the defendant . . . this court's instruction on consciousness of guilt is consistent with language in *Luster* and *Grajales* in

[17] We note that, although the defendant filed a written request to charge on May 3, 2022, it did not include any request related to a consciousness of guilt or innocence instruction.

that it allows a permissive inference only. The court is mindful of the cautions suggested by the Supreme Court in *Luster* in a self-defense situation." It is clear from the court's response that it considered the defendant's objection to be based on a claim, pursuant to *Grajales* and *Luster*, that the instruction diluted the state's burden on retreat, and not as an objection to the instruction on the basis that it violated the defendant's fifth amendment right to remain silent. There was no assertion by defense counsel that the instruction would impugn in any way the defendant's decision not to testify or that the defendant's decision not to testify would have been impacted by the instruction. See *State* v. *Lee*, 138 Conn. App. 420, 453, 52 A.3d 736 (2012) (in rejecting defendant's claim that he properly raised concern about jury instruction on conspiracy, this court noted that defense counsel expressed concern about definition of conspiracy but not about instruction on intent elements of conspiracy charges), rev'd in part on other grounds, 325 Conn. 339, 157 A.3d 651 (2017). Moreover, the defendant failed to take an exception "immediately after the charge [was] delivered." Practice Book § 42-16; see also *State* v. *Payne*, 121 Conn. App. 308, 318, 996 A.2d 302 (defendant failed to distinctly raise claim of instructional error at trial when neither precharge objection nor postcharge exception included ground for objection), cert. denied, 297 Conn. 919, 996 A.2d 1193 (2010); *State* v. *Silva*, supra, 113 Conn. App. 495 ("The defendant . . . did not object to the specific contents of the charge . . . . Following the charge, defense counsel indicated that she had no objection concerning the instruction. *The discussion of an instruction prior to the charge does not preserve all aspects of the issue for review.* . . . We must therefore conclude that the defendant failed to preserve . . . [her claim regarding the jury charge]." (Citation omitted; emphasis added.)). Because the defendant's claim on appeal in the present

case is entirely distinct from the defendant's objection as stated on the record following the charge conference, and because the defendant did not raise an exception on this basis or any other basis immediately following the charge, we conclude that the claim was not preserved.

Nevertheless, we review this unpreserved claim under *Golding*[18] because the record is adequate for review and the claim raised is of constitutional magnitude. We conclude, however, that the defendant cannot prevail on his unpreserved claim under *Golding* because he has failed to demonstrate a violation of his constitutional right not to testify. The defendant argues that a consciousness of guilt instruction violates his constitutional right not to testify by improperly burdening him to explain his conduct. Specifically, the defendant references the portion of the court's instruction stating that "[f]light, when unexplained, may indicate consciousness of guilt if the facts and the circumstances support it," and argues that such language "suggests that, in the absence of an explanation, flight shows guilt."

We begin with the relevant constitutional principles. The fifth amendment to the United States constitution protects a defendant's right not to testify and prohibits comments on a defendant's silence. See *Griffin* v. *California*, 380 U.S. 609, 614 n.5, 85 S. Ct. 1229, 14 L. Ed. 2d 106 (1965); *State* v. *A. M.*, 324 Conn. 190, 200, 152 A.3d 49 (2016). In *State* v. *Holloway*, 209 Conn. 636, 650, 553 A.2d 166, cert. denied, 490 U.S. 1071, 109 S. Ct. 2078, 104 L. Ed. 2d 643 (1989), our Supreme Court

[18] The state has not raised a claim that the defendant waived his challenge to the court's consciousness of guilt instruction pursuant to *State* v. *Kitchens*, 299 Conn. 447, 482–83, 10 A.3d 942 (2011). See *State* v. *Thompson*, 305 Conn. 806, 814 and n.11, 48 A.3d 640 (2012) (reviewing unpreserved challenge to jury charge pursuant to *Golding* where state did not claim that defendant waived challenge under *Kitchens*).

addressed the question of whether a consciousness of guilt instruction improperly burdens a defendant's right not to testify.[19] The defendant in *Holloway* argued that "the trial court's instructions to the jury that flight, if unexplained, tends to prove consciousness of guilt violated" his right not to testify. Id. Our Supreme Court was not persuaded, concluding that, although a defendant has a right not to testify and "to have the jury instructed that [it] may not draw any unfavorable inference against him for exercising that right . . . [w]e need not close our eyes to the fact that every person accused of crime is under some pressure to testify, lest the jury, despite carefully framed instructions, draw an *unfavorable* inference from his silence. . . . The flight instruction given by the trial court is consistent with our case law. We have stated: Flight, when unexplained, tends to prove a consciousness of guilt. . . . Flight is a form of circumstantial evidence. Generally speaking, all that is required is that the evidence have relevance, and the fact that ambiguities or explanations may exist which tend to rebut an inference of guilt does not render evidence of flight inadmissible but simply constitutes a factor for the jury's consideration." (Citations omitted; emphasis in original; internal quotation marks omitted.) Id., 651–52.

In the present case, the defendant's claim is virtually identical to the one that failed in *Holloway*, and no part of the court's instruction contravened our Supreme Court's decision in *Holloway*. The court in the present case unequivocally instructed the jury that it could draw no unfavorable inferences from the defendant's decision not to testify when it stated that, "in this case, the

[19] In *Holloway*, the defendant "neither requested an instruction on the subject of flight nor objected or excepted to the charge as given." *State* v. *Holloway*, supra, 209 Conn. 650. Nevertheless, our Supreme Court reviewed his unpreserved claim that the instruction on flight violated his right not to testify pursuant to *State* v. *Evans*, 165 Conn. 61, 70, 327 A.2d 576 (1973), the precursor of *Golding* review. *State* v. *Holloway*, supra, 650–52.

defendant has not testified. An accused person has the option to testify or not to testify at the trial. He is under no obligation to testify. He has a constitutional right not to testify. You must draw no unfavorable inferences from the defendant's choice not to testify." The court further instructed the jury that it could, if it chose, draw inferences as to the defendant's consciousness of guilt based on his conduct, but it also emphasized that the evidence, namely, the defendant's flight from the scene and the washing of his clothes, did "not raise a presumption of guilt. It is circumstantial evidence, and you may, or may not, infer consciousness of guilt from it." The court also instructed the jury to consider the defendant's actions as they relate to consciousness of guilt only insofar as they "were influenced by the criminal act and not by any other reasons . . . ." The jury was thus instructed that, even if it did find that the defendant's actions were influenced by the criminal act, it could, but was not required to, infer consciousness of guilt from those actions. We conclude that the defendant has failed to demonstrate that the court's flight instruction violated his constitutional right not to testify. His second claim, therefore, fails under the third prong of *Golding*.

We further conclude that the defendant's alternative request that this court reverse his judgment of conviction under the plain error doctrine[20] is inadequately

[20] Practice Book § 60-5 provides in relevant part: "The court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. The court may in the interests of justice notice plain error not brought to the attention of the trial court. . . ."

"[T]he plain error doctrine . . . is not . . . a rule of reviewability. It is a rule of reversibility. That is, it is a doctrine that this court invokes in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment . . . for reasons of policy." (Internal quotation marks omitted.) *State* v. *Jamison*, 320 Conn. 589, 596, 134 A.3d 560 (2016). "An appellate court addressing a claim of plain error first must determine if the error is indeed plain in the sense that it is patent [or] readily [discernible] on the face of a factually adequate record, [and] also . . . obvious in the

briefed and therefore decline to reach the merits of that request as well. The defendant makes a perfunctory argument that we should review his claim under the plain error doctrine but has failed to provide any analysis as to why his claim of a fifth amendment violation constitutes plain error. Our Supreme Court has explained that "[p]lain error review is reserved for truly extraordinary situations where the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . [W]e will not review an underlying claim for plain error unless the request for relief under that doctrine has been adequately briefed. . . . A party claiming plain error must engage in a separate analysis under that doctrine to demonstrate that plain error has occurred under the circumstances of [the] case. . . . Indeed, a mere conclusory assertion of plain error is insufficient to allow this court to reach the merits of an unpreserved claim under that doctrine." (Citations omitted; internal quotation marks omitted.) *Schoonmaker* v. *Lawrence Brunoli, Inc.*, 265 Conn. 210, 266 n.69, 828 A.2d 64 (2003); see also *State* v. *Rodriguez*, 337 Conn. 175, 189

sense of not debatable. . . . This determination clearly requires a review of the plain error claim presented in light of the record. Although a complete record and an obvious error are prerequisites for plain error review, they are not, of themselves, sufficient for its application. . . . [T]he plain error doctrine is reserved for truly extraordinary situations [in which] the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . [I]n addition to examining the patent nature of the error, the reviewing court must examine that error for the grievousness of its consequences in order to determine whether reversal under the plain error doctrine is appropriate. A party cannot prevail under plain error unless it has demonstrated that the failure to grant relief will result in manifest injustice. . . . [Previously], we described the two-pronged nature of the plain error doctrine: [An appellant] cannot prevail under [the plain error doctrine] . . . unless he demonstrates that the claimed error is *both* so clear *and* so harmful that a failure to reverse the judgment would result in manifest injustice." (Citations omitted; emphasis in original; internal quotation marks omitted.) *State* v. *McClain*, 324 Conn. 802, 812, 155 A.3d 209 (2017).

n.12, 252 A.3d 811 (2020). The defendant's contention that his claim is reviewable under the plain error doctrine, without any distinct analysis of how the alleged violation of his fifth amendment right not to testify constitutes plain error, is inadequately briefed, and, therefore, we decline to review it.

III

The defendant's third claim is that the evidence presented at trial did not warrant the court's instructions to the jury on consciousness of guilt. Specifically, the defendant argues that, in the present case, in which he did "not dispute his involvement in the crime and cooperate[d] with law enforcement, it makes no sense to give an instruction that implies his flight points to his efforts to thwart the police investigation." The defendant further argues that there was insufficient evidence as to "who washed [his] clothing or why" to warrant a consciousness of guilt instruction. We disagree.

"We review a trial court's decision to give a consciousness of guilt instruction under an abuse of discretion standard." (Internal quotation marks omitted.) *State* v. *Grajales*, supra, 181 Conn. App. 448. "[Consciousness of guilt] is relevant to show the conduct of an accused, as well as any statement made by him subsequent to an alleged criminal act, which may be inferred to have been influenced by the criminal act. . . . The state of mind which is characterized as guilty consciousness or consciousness of guilt is strong evidence that the person is indeed guilty . . . and under proper safeguards . . . is admissible evidence against an accused. . . . Evidence that an accused has taken some kind of evasive action to avoid detection for a crime, such as flight, concealment of evidence, or a false statement, is ordinarily the basis for a [jury] charge on the inference of consciousness of guilt. . . .

"Undisputed evidence that a defendant acted because of consciousness of guilt is not required before an instruction is proper. Generally speaking, all that is required is that the evidence have relevance, and the fact that ambiguities or explanations may exist which tend to rebut an inference of guilt does not render evidence of flight inadmissible but simply constitutes a factor for the jury's consideration. . . . The fact that the evidence might support an innocent explanation as well as an inference of a consciousness of guilt does not make an instruction on flight erroneous. . . . Moreover, [t]he court [is] not required to enumerate all the possible innocent explanations offered by the defendant. . . . Once [relevant] evidence is admitted, if it is sufficient for a jury to infer from it that the defendant had a consciousness of guilt, it is proper for the court to instruct the jury as to how it can use that evidence. . . .

"If there is a reasonable view of the evidence that would support an inference that [the defendant has taken some sort of evasive action to avoid detection for a crime] because he was guilty of the crime and wanted to evade apprehension—even for a short period of time—then the trial court is within its discretion in giving such an instruction . . . ." (Citations omitted; internal quotation marks omitted.) *State* v. *Marrero*, 198 Conn. App. 90, 133–34, 234 A.3d 1 (2020), appeal dismissed, 343 Conn. 468, 274 A.3d 865 (2022) (certification improvidently granted).

In the present case, the record demonstrates ample support for a consciousness of guilt instruction. First, as to flight, the jury viewed the surveillance video footage from outside the bar and heard testimony that, after the altercation in which the defendant stabbed the victim multiple times and the victim was lying on the ground, the defendant ran directly to his car and then exited the parking lot at a rapid pace, driving over the curb.

As this court has stated previously in addressing a defendant's flight from the scene of a crime as providing support for a court's instruction on consciousness of guilt, "[n]o Connecticut appellate case . . . has held that flight requires proof of more than departure from the scene of the crime or a nefarious purpose for leaving. To the contrary, our case law addressing whether there is sufficient evidence to support a consciousness of guilt instruction on the basis of flight upholds the proposition that the instruction is warranted even when the evidence reveals little more than mere departure." *State* v. *Grajales*, supra, 181 Conn. App. 450; see also *State* v. *Adams*, 36 Conn. App. 473, 481–82, 651 A.2d 747 (1994) (evidence that defendant got into his car and left scene and police officer saw defendant rapidly driving away was sufficient to support consciousness of guilt instruction based on flight), appeal dismissed, 235 Conn. 473, 667 A.2d 796 (1995).

Behaviors other than flight that indicate that the defendant sought "to avoid detection of a crime or responsibility for a crime . . . are admissible as evidence reflecting a consciousness of guilt." (Internal quotation marks omitted.) *State* v. *Pascal*, 109 Conn. App. 55, 72, 950 A.2d 566, cert. denied, 289 Conn. 917, 957 A.2d 880 (2008). For example, concealment of evidence or misstatements to law enforcement can also be the basis for a consciousness of guilt instruction. Id. As previously discussed in this opinion, the jury heard evidence that, after the defendant drove away from the crime scene, he then drove to his mother's house in Meriden and that he omitted this information during his interview with the police. Instead, he told the police that, after he left the bar, he went to his girlfriend's house in New Britain. The jury heard further evidence that the clothes and shoes the defendant had been wearing at the time of the stabbing were later discovered at his mother's house during the execution

of the search warrant and that they appeared to have been freshly washed, although bloodlike stains remained on the interior heel area of one of his shoes.[21]

The standard for whether a consciousness of guilt instruction is warranted is "whether there is a reasonable, and not a compelling, view of the evidence that supports it." *State* v. *Grajales*, supra, 181 Conn. App. 455. The evidence was sufficient to support a finding that, despite claiming that he fled due to fear of a continued threat from the victim, the defendant's action of hastily driving away from the bar after chasing the victim approximately ninety feet and cornering him by the locked door to the bar and then stabbing him and watching him fall to the ground, could be used by the jury to determine that he was influenced by the criminal act and permitted an inference that he was acting from a guilty conscience. Likewise, the evidence also was sufficient to support a finding that the defendant's statement to the police that, when he left the bar, he went to his girlfriend's house in New Britain, and his failure to inform the police that he first went to his mother's home in Meriden, was a misstatement made to conceal the discovery of the clothing and shoes that he had worn during the stabbing that were left at his mother's home and permitted the jury to infer that he misled the police and attempted to conceal evidence because he had a guilty conscience in relation to the stabbing.

Accordingly, on the basis of the evidence presented, we conclude that the trial court did not abuse its discretion in instructing the jury on consciousness of guilt.

[21] Although the defendant is correct that the record does not establish *who* was responsible for the washing of the clothes, the fact that he was not forthcoming with the police that he first drove to his mother's home and discarded his clothes and shoes at that location is what is relevant in assessing the defendant's consciousness of guilt. In other words, it is the attempt to conceal evidence, not the specific act of washing the clothes, that permits the jury to infer that the defendant's actions constituted a guilty conscience in relation to the stabbing.

IV

Finally, the defendant requests that this court exercise its supervisory authority and adopt a rule prohibiting trial courts from providing consciousness of guilt instructions to juries. The defendant argues that such instructions are outdated and points to other jurisdictions that have abolished them.

We begin with the principles of law relating to the exercise of our supervisory authority. Our Supreme Court previously has stated that the use of supervisory authority is appropriate in " 'exceptional circumstances' "; *In re Yasiel R.*, 317 Conn. 773, 791, 120 A.3d 1188 (2015); when the requesting party is "faced with the loss of core fundamental rights . . . ." Id., 792. Our Supreme Court previously considered an identical request to abolish consciousness of guilt instructions in *State* v. *Coward*, 292 Conn. 296, 972 A.2d 691 (2009). In that case, an accomplice of the defendant testified during the trial that "the defendant had asked him prior to trial if [the accomplice] intended to testify against the defendant, and [the defendant] also indicated to [the accomplice] that he had written to [the accomplice's] mother asking her to tell [the accomplice] not to testify." Id., 314. As a result of that testimony, the trial court instructed the jury that the aforementioned "conduct by the defendant may lead you to infer that [the defendant] was conscious of his guilt, and that his statements and conduct were influenced by that consciousness. So if you determine that the statements were made by [the defendant], and that they tend to show a consciousness of guilt . . . you may use that evidence, but you are instructed that such conduct does not raise a presumption of guilt. It's up to you, as judges of the facts, to decide whether the statements or conduct of the defendant in fact reflects a consciousness of guilt, and consider that in your deliberations." (Internal quotation marks omitted.) Id.

On appeal, our Supreme Court declined the defendant's request to bar such instructions, concluding that, "[a]lthough [a]ppellate courts possess an inherent supervisory authority over the administration of justice . . . [that] authority . . . is not a form of free-floating justice, untethered to legal principle. . . . Our supervisory powers are not a last bastion of hope for every untenable appeal. They are an *extraordinary* remedy to be invoked only when circumstances are such that the issue at hand, while not rising to the level of a constitutional violation, is nonetheless of utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole. . . . Constitutional, statutory and procedural limitations are generally adequate to protect the rights of the defendant and the integrity of the judicial system. Our supervisory powers are invoked only in the rare circumstance where these traditional protections are inadequate to ensure the fair and just administration of the courts. . . . We repeatedly have refused to exercise our supervisory authority to alter or to bar similar consciousness of guilt instructions . . . . The defendant has not presented us with a compelling reason to deviate from those conclusions and, accordingly, we decline his invitation to exercise our supervisory powers in the circumstances of the present case." (Citations omitted; emphasis in original; internal quotation marks omitted.) Id., 315–16.

"[I]t is manifest to our hierarchical judicial system that [our Supreme Court] has the final say on matters of Connecticut law and that the Appellate Court and Superior Court are bound by [that] precedent." *Stuart* v. *Stuart*, 297 Conn. 26, 45–46, 996 A.2d 259 (2010). Because our Supreme Court already has declined an identical request to exercise its supervisory authority to prohibit consciousness of guilt instructions, and the defendant has presented no authority that allows us to

deviate from that precedent, we also decline to do so in the present case.

The judgment is affirmed.

In this opinion the other judges concurred.