JONATHAN FORESTIER ET AL. *v.* CITY OF BRIDGEPORT ET AL.
(AC 45548)

Clark, Seeley and DiPentima, Js.

Syllabus

The plaintiffs, F and V, sought to recover damages from the defendants for the alleged wrongful termination of their employment in violation of the statute (§ 31-290a) prohibiting discrimination against employees exercising their rights under the Workers' Compensation Act (§ 31-275 et seq.). The plaintiffs were two of five special police officers who worked for the defendant Board of Education of the City of Bridgeport (board), and their work included patrolling the neighborhoods around the schools. In 2012, the Bridgeport Police Department assumed authority over security for the public schools in Bridgeport, and the plaintiffs began reporting to G, a supervising officer with the Bridgeport Police Department. The plaintiffs then began performing duties outside of the school area, including handling regular police calls. In February, 2014, F sustained an injury to his back during the course of his employment for which he sought and received workers' compensation benefits. When F informed G of his need for back surgery, G made certain disparaging comments toward him. In November, 2015, V sustained a work-related injury to his wrist for which he sought and received workers' compensation benefits. When he returned to work, he spoke with G about having surgery, but G turned the conversation to the topic of F's back surgery and again made certain disparaging comments. At a regular meeting of the board in June, 2016, the board voted to pass a motion to eliminate the five special police officer positions, along with 125 other positions, from the board's 2016-2017 budget, because the Bridgeport School District was facing a financial crisis. The plaintiffs were laid off from their positions effective August 12, 2016. Following the elimination of the special police officer positions by the board in 2016, the plaintiffs' union filed a grievance against the defendant city of Bridgeport (city) and the board, alleging a violation of a no layoff provision in a memorandum of understanding between the parties. The matter went to arbitration before an arbitration panel, which determined, in July, 2018, that the memorandum of understanding had been violated, and ordered the reinstatement of the five special police officers. Subsequently, the plaintiffs were notified that when they returned to work, they would receive layoff notices, as funding had never been restored for the special police officer positions and the memorandum of understanding had expired in June, 2018, and was no longer applicable. The plaintiffs then commenced this action, and the trial court granted motions for summary judgment filed by the city and the board, and the plaintiffs appealed to this court. *Held*:

1. This court declined to review the plaintiffs' claim that the trial court improperly focused or limited its analysis of their discrimination claim to the 2016 layoffs because their claim encompassed the events related to the 2018 reinstatement order and the defendants' 2018 postarbitration conduct, as that claim was not properly before this court: in their appellate briefs, the plaintiffs did not provide any argument or analysis or cite to anything in the trial court record that would demonstrate why the court was wrong in determining that the discrimination claim before it pertained only to the 2016 decision of the board to eliminate the special police officer positions, the plaintiffs never filed a motion for reconsideration or articulation of the court's decision on this issue, and it was not the responsibility of this court to search the record to determine whether the trial court's determination found support in the record; moreover, the trial court expressly stated in its decision that any claim concerning the 2018 reinstatement order was not before it and never addressed or decided any such claim, and it would be fundamentally unfair to the defendants for this court to review a claim that was neither addressed nor decided by the trial court; furthermore, the defendants objected to this court's consideration of the plaintiffs' discrimination claim as it related to the events in 2018, and the plaintiffs did not assert the existence of any exceptional circumstances to warrant this court's review of a claim not decided by the trial court and failed to raise any claim in their brief challenging the trial court's determination that the sole issue before it concerned the board's 2016 decision.
2. The trial court properly granted the defendants' motions for summary judgment because no genuine issues of material fact existed as to whether the plaintiffs established a prima facie case that their positions were eliminated and they were laid off in 2016 in violation of § 31-290a for exercising their rights to workers' compensation benefits and whether the alleged nondiscriminatory reason given by the defendants for the plaintiffs' layoffs was pretextual:

   a. Although the plaintiffs claimed that genuine issues of material fact existed as to whether they met their burden of establishing a prima facie case of employment discrimination under § 31-290a, this court did not need to reach the merits of that claim, and, as was done by the trial court, this court assumed, without deciding, that the plaintiffs both met their initial burden of establishing a prima facie case.

   b. On the basis of this court's plenary review of the evidence submitted in support of and in opposition to the motions for summary judgment, this court agreed with the trial court's conclusions that the defendants successfully rebutted the presumption of discrimination and that the plaintiffs failed in their burden of producing evidence to show the existence of a genuine issue of material fact that the nondiscriminatory reason offered by the defendants was not worthy of credence or was pretextual: the documentary evidence submitted by the defendants in support of their motions for summary judgment provided substantial,

uncontroverted support for the defendants' asserted nondiscriminatory reason for eliminating the special police officer positions and laying off the plaintiffs in 2016, namely, that the funding for the special police officer positions was eliminated due to financial considerations; moreover, the plaintiffs did not meet their burden of demonstrating a genuine issue of material fact that the legitimate, nondiscriminatory reason offered by the defendants was not worthy of credence or was pretextual, as they provided no evidence contradicting, inter alia, the affidavits submitted by the defendants from five of the board members who participated in the vote to eliminate the positions that confirmed that the plaintiffs' workers' compensation claims were not a factor in their decision, no evidence showing any connection whatsoever between the board's decision to defund and eliminate the special police officer positions and the plaintiffs' filing of claims for workers' compensation benefits, and no evidence providing evidentiary support for their assertion that the board's decision was retaliatory in nature and connected with their protected status under § 31-290a; furthermore, the plaintiffs' assertions were conclusory and speculative, and were not sufficient to create a genuine issue of material fact to defeat summary judgment, especially when it was undisputed that the defendants treated all of the special police officers the same.

Argued October 11, 2023—officially released January 16, 2024

Procedural History

Action to recover damages for the alleged wrongful termination of the plaintiffs' employment, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the action was withdrawn as to the defendant Police Department of the City of Bridgeport; thereafter, the court, *Stevens*, *J.*, granted the motions for summary judgment filed by the named defendant et al. and rendered judgment thereon, from which the plaintiffs appealed to this court. *Affirmed.*

John T. Bochanis, for the appellants (plaintiffs).

John P. Bohannon, *Jr.*, deputy city attorney, for the appellants (named defendant et al.).

Richard J. Buturla, with whom was *Warren L. Holcomb*, for the appellant (defendant Board of Education of the City of Bridgeport).

Opinion

SEELEY, J. This appeal arises out of an action by the plaintiffs, Jonathan Forestier and Stephen Vitka,[1] against the defendant city of Bridgeport (city) and the defendant Board of Education of the City of Bridgeport (board)[2] alleging that the plaintiffs wrongfully had been laid off from their employment as special police officers with the board for having exercised their rights to workers' compensation benefits, in violation of General Statutes (Rev. to 2015) § 31-290a (a).[3] The trial court granted motions for summary judgment filed by the defendants and rendered judgment in their favor, from which the plaintiffs have appealed. On appeal, the plaintiffs claim that the court improperly granted the defendants' motions for summary judgment because genuine issues of material fact exist as to whether (1) the plaintiffs established a prima facie case of discrimination, and (2) the defendants' proffered nondiscriminatory reason

[1] In this opinion, we refer to Forestier and Vitka individually by name where necessary and collectively as the plaintiffs.

[2] The Department of Labor Relations for the City of Bridgeport (department) was also named as a defendant in this action but did not file a motion for summary judgment. Although there is no final judgment as to the department being appealed in this matter, the department and the city filed a combined appellees' brief. The department's participation in this appeal as an appellee is proper pursuant to Practice Book § 60-4, which defines an appellee to mean "all other parties in the trial court at the time of judgment, unless after judgment the matter was withdrawn as to them or unless a motion for permission not to participate in the appeal has been granted by the court." See also *Paluha* v. *Braverman Group, LLC*, 80 Conn. App. 620, 621 n.1, 836 A.2d 1219 (2003) (noting that defendant against whom no judgment had been rendered "joined the remaining defendants in the brief filed in this appeal" pursuant to Practice Book § 60-4). In this opinion, however, our references to the defendants are to the city and the board only.

[3] General Statutes (Rev. to 2015) § 31-290a (a) provides: "No employer who is subject to the provisions of this chapter shall discharge, or cause to be discharged, or in any manner discriminate against any employee because the employee has filed a claim for workers' compensation benefits or otherwise exercised the rights afforded to him pursuant to the provisions of this chapter." Our references in this opinion to § 31-290a (a) are to the 2015 revision of the statute.

for the elimination of the plaintiffs' positions and their layoffs was a pretext for discrimination. We affirm the judgment of the court.

The following facts, viewed in the light most favorable to the plaintiffs as the nonmoving parties, or as otherwise undisputed in the record, and procedural history are relevant to our resolution of this appeal. Vitka, a graduate of the Bridgeport Police Academy, commenced working as a special police officer assigned to the board in 1997. Similarly, Forestier, a graduate of the Hartford Police Academy, commenced working as a special police officer assigned to the board in 2011. As special police officers for the board, the plaintiffs' employment was governed by a collective bargaining agreement between the city and the National Association of Government Employees, R1-200 (NAGE).[4] The board was not a party to the contract between NAGE and the city. By 2016, five individuals in total worked as special police officers for the board.

The plaintiffs' work as special police officers included patrolling the neighborhoods around the schools; the plaintiffs were not assigned to any specific school building. In 2012, however, the Bridgeport Police Department assumed authority over security for the public schools in Bridgeport, and, as a result, the plaintiffs began reporting directly to Police Lieutenant Paul Grech, a supervising officer with the Bridgeport Police Department.[5] The special police officers also started performing duties outside of the school area, including

[4] In contrast, police officers with the Bridgeport Police Department were members of a different union, namely, Local 1159, Council 4, AFSCME, AFL-CIO.

[5] Grech's supervisory responsibilities over the special police officers included maintaining their work schedules, disciplining the officers, and authorizing any absences, vacations, or overtime. He also reviewed and approved performance reports for the special police officers.

handling regular police calls, performing radar enforcement and motor vehicle stops, and providing backup assistance to regular police officers.

In February, 2014, Forestier sustained an injury to his back during the course of his employment for which he sought and received workers' compensation benefits. As a result of the injury, he was restricted to light duty and did not miss any time from work. Following an MRI, however, his doctor recommended that he undergo back surgery. After Forestier informed Grech of his need for back surgery, Grech told Forestier that he "would be dumb to get . . . back surgery" and that, if he underwent the surgery, his career would end and no police department would ever hire him. Forestier held off getting the surgery until September, 2016, out of fear of losing his job. In his affidavit, Forestier attested that he had been approved by the Workers' Compensation Commissioner to wear a tactical vest "to minimize [his] pain so that immediate surgery would not be necessary. . . . Grech also opposed the vest . . . [and] made it known to [Forestier that he] didn't need the vest in [Grech's] opinion." Forestier wore the vest, despite the fact that it was clear to him that Grech was unhappy and that Forestier "would pay for this later."

In November, 2015, Vitka sustained a work-related injury to his wrist for which he sought and received workers' compensation benefits. As a result of his injury, Vitka missed five to six months of work, and he returned to full duty in May, 2016. In his deposition testimony, Vitka testified that, when he returned to work following his injury, he spoke with Grech about having surgery on his wrist, but that Grech turned the conversation to the topic of Forestier's back surgery and made statements about how Forestier was going to lose his job and that he was not going to be hired anywhere else. Grech also talked about another special

police officer, Jeffrey Babey, who also had sustained a compensable work-related injury, and how Babey was going to lose his job. Vitka testified at his deposition that, although Grech never told him not to have the surgery, he felt that Grech's numerous comments about Forestier and Babey insinuated that Vitka should forgo having the wrist surgery. Despite the fact that his treating physician recommended that he have surgery on his wrist, Vitka never had the surgery.

A regular meeting of the board was held on June 27, 2016, at which the members of the board voted to pass a motion to eliminate the five special police officer positions from the board's 2016–2017 budget. At the time of that vote, the Bridgeport School District (school district) faced a financial crisis[6] due to the fact that the operating budget for the school district for the fiscal year 2016–2017 increased by only $59,550. Given the rising costs associated with general wage and salary increases as required by collective bargaining agreements, health insurance, and special education, there was an initial budget deficit of almost $16 million, which was subsequently reduced to a $15 million deficit after an additional appropriation to the board of $905,000 was made. See footnote 6 of this opinion. In an effort to close that gap without reducing the number of classroom teachers, the school district eliminated 130 positions from the 2016–2017 fiscal year budget, either by attrition, movement to different positions or layoffs.

[6] According to an affidavit of Marlene Siegel, the chief financial officer of the school district, the operating budget for the fiscal year 2015–2016 totaled $227,519,364. Despite a requested budget increase for the fiscal year 2016–2017 of $21 million, the Bridgeport City Council (city council) adopted a budget for the fiscal year 2016–2017 of $226,673,914, which amounted to $845,450 less than the budget for the prior year. Subsequently, the city council approved an additional appropriation to the board of $905,000, which increased the operating budget for the fiscal year 2016–2017 to $227,578,914, just $59,550 more than the prior year's budget. Siegel characterized that increase as an "essentially zero increase" to the operating budget.

The eliminated positions included, inter alia, forty-seven kindergarten paraprofessionals, twenty-six home school coordinators, thirty university interns, nine clerical employees for the school district's office, five elementary school guidance counselors, the five special police officers, one custodian and one maintenance person.

At the outset of the June 27, 2016 board meeting, concerns were expressed regarding budget cuts and the financial issues facing the school district. Board member Howard Gardner, speaking on behalf of the finance committee of the board, made several recommendations, including moving to eliminate the special police officer positions from the 2016–2017 budget. His motion was seconded by board member Maria Pereira, and Gardner commented that "the concern is not the officers themselves, but the way they are being managed by the city." Pereira stated: "[T]he [special police officers] for the most part are wonderful, but the reality is we started with a $16 million deficit because the mayor didn't give one extra dollar for schools initially . . . . Now, the city has contributed an additional $900,000, leaving the board with a $15 million deficit. . . . [T]he board had ten [special police officers] in its budget in 2013. Five [of them] who retired weren't replaced and the dollars were shifted to security guards. . . . [T]he [special police officers] have been used for nonschool work, including domestic violence calls and traffic enforcement, even though the board pays the full salary of [those officers]. . . . [T]he five [special police officers] make $49[2],000 a year, not including overtime, and that amount was being directed back into schools and positions that work directly with children." Thereafter, Pereira moved that the board keep the five special police officers under the conditions that their salaries be funded by the city and the city stops directing them to perform work unrelated to the schools. Pereira,

however, withdrew her motion after a board member suggested that it was overly complicated. The original motion to eliminate the positions was approved by a vote of six to two. Thereafter, the five special police officers were laid off from their positions effective August 12, 2016.

After the layoffs, Vitka was able to exercise bumping rights under his union contract and was offered a position as a school security guard. Because the salary for that position was substantially less than what Vitka was being paid as a special police officer, he worked as a school security guard for just a few months. In January, 2017, Vitka secured employment with the Naugatuck Police Department. In contrast to Vitka, Forestier was not able to bump into another position after he was laid off. In March, 2017, he was hired by the Stratford Police Department.

Following the elimination of the special police officer positions by the board in 2016, NAGE filed a grievance on their behalf against the city and the board. In early 2016, as a result of financial difficulties, the city had entered into a memorandum of understanding with NAGE, thereby amending their existing collective bargaining agreement. The memorandum of understanding provided for lower to no wage increases but also provided that there would be no layoffs of unionized employees from July 1, 2016, through June 30, 2018. The grievance alleged a violation of the no layoff provision. The matter went to arbitration before an arbitration panel, which issued an award dated July 20, 2018, determining that the memorandum of understanding had been violated and ordering the reinstatement of the five special police officers.

Subsequently, the plaintiffs were notified that, to be "rehired" as police officers, they would need to attend

an orientation session, submit to a background investigation and undergo certain examinations. They were also advised that, when they completed the orientation and returned to work, they would receive layoff notices, as funding had never been restored for the special police officer positions, which, effectively, had been eliminated, and the no layoff provision in the memorandum of understanding between the city and NAGE had expired on June 30, 2018, and was no longer applicable. The complaint alleges that, "[i]n order for [the] plaintiffs . . . to comply with this directive, they would have jeopardized their present employment as police officers with their respective police departments." Both Vitka and Forestier testified at their depositions that they did not attend the orientation or report to work on September 4, 2018, as directed.[7]

The plaintiffs commenced this action in 2019, alleging discrimination by the defendants in violation of § 31-290a (a). Specifically, the plaintiffs allege that they were wrongfully laid off from their positions as special police officers due to their filing of claims for workers' compensation benefits. The city and the board each filed motions for summary judgment, which the trial court granted in a single memorandum of decision. From the judgment rendered thereon, the plaintiffs appealed to this court.

We first set forth our standard of review. "The standard of review of a trial court's decision granting [a motion for] summary judgment is well established. Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving

[7] It does not appear from the record that the plaintiffs actually were laid off again in 2018, despite the plaintiffs' references in their briefs to their 2018 discharge.

party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The courts are in entire agreement that the moving party . . . has the burden of showing the absence of any genuine issue as to all the material facts . . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the [nonmoving] party must present evidence that demonstrates the existence of some disputed factual issue. . . . A material fact . . . [is] a fact which will make a difference in the result of the case. . . . Our review of the trial court's decision to grant the [defendants'] motion[s] for summary judgment is plenary." (Citations omitted; internal quotation marks omitted.) *Dusto* v. *Rogers Corp.*, 222 Conn. App. 71, 87, 304 A.3d 446 (2023).

I

At the outset, we must clarify the issue that is before us in this appeal. In its memorandum of decision granting the defendants' motions for summary judgment, the court specifically stated that "[t]here is nothing before the court regarding the defendants' compliance with the [2018] reinstatement order of the [arbitration panel]. The plaintiffs' sole claim in this action is that the [board's] decision in June, 2016, to eliminate the special [police] officer positions constituted discriminatory behavior due to the plaintiffs' exercise of their rights" to workers' compensation benefits. Despite this clear statement from the court, the plaintiffs, in their appellate briefs and at oral argument before this court, have suggested that their claim of discrimination also rests on the events related to the 2018 reinstatement order

of the arbitration panel and the defendants' 2018 postarbitration conduct. Moreover, the plaintiffs have interwoven arguments related to the 2018 reinstatement order and the defendants' 2018 postarbitration conduct in their appellate briefs without making any argument or claim as to why the court was incorrect in its determination that the sole claim in this action is that the elimination of the special police officer positions in June, 2016, constituted discriminatory behavior.[8]

[8] For example, in the part of their brief discussing the causal connection element of a prima facie case, the majority of which focuses on the elements of a prima facie case with respect to the 2016 decision of the board to eliminate their positions, the plaintiffs assert that the court improperly focused solely on the date of Forestier's injury in 2014 and "the date of his initial discharge in June, 2016. . . . The court found that the 'two year' gap was too long to support a temporal relationship to his initial discharge in 2016 and subsequent discharge in 2018 when he was reinstated by the arbitration award." (Citation omitted.) Notably, though, the plaintiffs made that statement in the context of arguing that Forestier continued to need treatment for his work-related injury even after his discharge in 2016 and, thus, that the court's determination that a two year gap was too long to support a temporal relationship for purposes of establishing a prima facie case was inappropriate. In this opinion, however, we have assumed, without deciding, that the plaintiffs both established a prima facie case.

Thereafter, in arguing that an issue of fact exists as to whether the defendants' nondiscriminatory reason was pretextual, the plaintiffs assert: "The defendants' reasoning of the lack of coverage under the [board's] budget and the expiration of the memorandum of understanding precluding the city . . . from laying off members of the [plaintiffs' union] having expired June 30, 2018, does not provide a legitimate nondiscriminatory explanation for the decisions taken by the defendants." In their reply brief, they argue further that "a material question of fact was created as to whether the reason for [their] discharge was a pretext. But contrary to this claim of budgetary cutbacks by the defendants, the only evidence presented by the defendants was an issue of budgetary cutbacks for the fiscal year of [2016–2017] . . . . Contrary to the defendants' arguments, the plaintiffs were reinstated pursuant to an [arbitration] decision dated July 20, 2018 . . . which would not include the fiscal year 2016 or the alleged budgetary cutbacks of the fiscal year 2016. The defendants' argument of budgetary cutbacks for the fiscal year of 2016 would not pertain as a legitimate basis to discharge the plaintiffs when they were reinstated in August, 2018, pursuant to an arbitration decision." Finally, the plaintiffs suggest that Grech was involved in the plaintiffs' grievance process when the plaintiffs were not reinstated after the arbitration award of July, 2018.

At oral argument before this court, counsel for the plaintiffs argued that the budgetary concerns that were the basis for the 2016 layoffs related only to the 2016–2017 fiscal budget and did not exist when the plaintiffs were told in 2018 that they would again be discharged. Counsel also argued that the trial court's decision improperly focused on the defendants' explanation for the 2016 layoffs, not what happened in 2018. Those arguments prompted this court to question counsel several times regarding the trial court's statement that the sole issue before it concerned the 2016 layoffs and for counsel to clarify the adverse employment action of the defendants that was being challenged in this appeal. Counsel for the board appeared to be surprised and confused about this issue being raised on appeal, arguing that the decision litigated, argued, and briefed before, and decided by, the trial court concerned the elimination of the special police officers positions in 2016 and the subsequent 2016 layoffs of the plaintiffs, and that the 2018 order for the reinstatement of the plaintiffs was not briefed or before the trial court, regardless of whether the complaint made allegations concerning the postarbitration conduct of the defendants.[9] Counsel for the city echoed those arguments, stating further that it was inappropriate for the plaintiffs to now raise that issue and that it would be improper for this court to consider it when it was never before the trial court and was not a basis for the appeal. The appellate briefs of the defendants do not include any discussion or arguments concerning the 2018 reinstatement order and the defendants' 2018 postarbitration conduct.

[9] We note that the complaint does include references to the 2018 reinstatement order and the defendants' 2018 postarbitration conduct. Nevertheless, as we have indicated, if the plaintiffs believe that the court was wrong to limit its decision to the 2016 matters, it was incumbent on the plaintiffs to properly raise and argue such a claim on appeal, which they have failed to do.

It is well established that "[w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Internal quotation marks omitted.) *Fraser Lane Associates, LLC* v. *Chip Fund 7, LLC*, 221 Conn. App. 451, 472, 301 A.3d 1075 (2023). "Briefs submitted to this court require rigorous legal analysis. It is not the role of this court to undertake the legal research and analyze the facts in support of a claim or argument when it has not been briefed adequately." (Internal quotation marks omitted.) *Parnoff* v. *Mooney*, 132 Conn. App. 512, 517–18, 35 A.3d 283 (2011). "In addition, briefing is inadequate when it is not only short, but confusing, repetitive, and disorganized." (Internal quotation marks omitted.) *Wells Fargo Bank, National Assn.* v. *Doreus*, 218 Conn. App. 77, 79 n.1, 290 A.3d 921, cert. denied, 347 Conn. 904, 297 A.3d 198 (2023); see also *Missionary Society of the Diocese of Connecticut* v. *Coutu*, 134 Conn. 576, 577–78, 59 A.2d 732 (1948) ("[n]o duty is imposed upon this court to search the record for support for the defendant's claim").

In their appellate briefs, the plaintiffs have neither provided any argument or analysis, nor cited to anything in the trial court record, that would demonstrate why the court was wrong in determining that the discrimination claim before it pertained only to the 2016 decision of the board to eliminate the special police officer positions. The plaintiffs also never filed a motion for reconsideration or articulation of the trial court's decision on this issue.[10] When, as here, the plaintiffs have provided no argument or analysis concerning the propriety

[10] The plaintiffs never sought an articulation of the reason why the court determined that "[t]here [was] nothing before [it] regarding the defendants' compliance with the [2018] reinstatement order" of the arbitration panel. In their memoranda of law in support of their objections to the motions for summary judgment, the plaintiffs argued that they were required to be reinstated to their former positions with the defendants and that the defen-

of the court's determination that the sole issue before it pertained only to the 2016 decision of the board to eliminate the plaintiffs' positions and not to the 2018 reinstatement order of the arbitrators and what occurred thereafter, it is not the responsibility of this court to search the record to determine whether the court's determination finds support in the record.

Moreover, the trial court expressly stated in its decision that any claim concerning the 2018 reinstatement

dants, by failing to do so, improperly failed to comply with the arbitration award. The plaintiffs further asserted that they were entitled to receive what the award directed, and that another grievance had been filed and a hearing held on October 5, 2018, concerning the 2018 arbitration award and the defendants' conduct afterward, although there is no indication in the record of the result of that grievance or whether a decision thereon is pending. Although we do not know the basis for the court's determination not to address the 2018 arbitration award, we do note that "[i]t is well settled under both federal and state law that, before resort to the courts is allowed, an employee must at least attempt to exhaust exclusive grievance and arbitration procedures, such as those contained in the collective bargaining agreement between the defendant and the plaintiffs' union. . . . Failure to exhaust the grievance procedures deprives the court of subject matter jurisdiction. . . . The purpose of the exhaustion requirement is to encourage the use of grievance procedures, rather than the courts, for settling disputes. A contrary rule which would permit an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it. . . . [I]t would deprive [the] employer and union of the ability to establish a uniform and exclusive method for orderly settlement of employee grievances." (Internal quotation marks omitted.) *International Assn. of EMTs & Paramedics, Local R1-701* v. *Bristol Hospital EMS, LLC*, 222 Conn. App. 178, 189, 304 A.3d 170 (2023). In the present case, given that a grievance had been filed concerning the 2018 arbitration award and the defendants' 2018 postarbitration conduct, the plaintiffs were required to exhaust their administrative remedies concerning that grievance and it would not have been appropriate for the court to address their claims relating to the 2018 arbitration award to the extent an administrative proceeding concerning that grievance was still pending. Moreover, although the plaintiffs, after exhausting their administrative remedies, could bring an action in the Superior Court seeking to enforce the 2018 arbitration award; see *Spearhead Construction Corp.* v. *Bianco*, 39 Conn. App. 122, 132, 665 A.2d 86, cert. denied, 235 Conn. 928, 667 A.2d 554 (1995); the present action was brought in a single count alleging discrimination on the basis of the plaintiffs' filing of workers' compensation claims, and the trial court treated it as such.

order was not before it. Thus, the court never addressed or decided any such claim. "[T]o review such a claim on appeal would be contrary to our long-standing precedent" that "Connecticut appellate courts will not address issues not decided by the trial court." (Internal quotation marks omitted.) *Bayview Loan Servicing, LLC* v. *Gallant*, 209 Conn. App. 185, 197 n.7, 268 A.3d 119 (2021). "[B]ecause our review is limited to matters in the record, we . . . will not address issues not decided by the trial court. . . . The requirement that [a] claim be raised distinctly means that it must be so stated as to bring to the attention of the court the *precise* matter on which its decision is being asked. . . . The purpose of our preservation requirements is to ensure fair notice of a party's claims to both the trial court and opposing parties. . . . These requirements are not simply formalities. They serve to alert the trial court to potential error while there is still time for the court to act." (Emphasis in original; internal quotation marks omitted.) *DiMiceli* v. *Cheshire*, 162 Conn. App. 216, 230, 131 A.3d 771 (2016). "[O]nly in [the] most exceptional circumstances can and will [an appellate court] consider a claim, constitutional or otherwise, that has not been raised *and decided* in the trial court." (Emphasis added; internal quotation marks omitted.) *Blumberg Associates Worldwide, Inc.* v. *Brown & Brown of Connecticut, Inc.*, 311 Conn. 123, 142, 84 A.3d 840 (2014).

Again, the plaintiffs have failed to provide any analysis of why this court should consider a claim that not only was not decided by the trial court, but which the court expressly stated that it was not considering. Instead, the plaintiffs attempt to circumvent the court's determination of the plaintiffs' sole claim in this action—that the board's 2016 decision to eliminate the special police officer positions constituted discriminatory behavior—by simply burying arguments related to the 2018 reinstatement order, which were not addressed

by the court, within arguments related to the board's 2016 decision, which the court did address. The plaintiffs argue in their brief that the court improperly "focused" its decision on their initial discharge in 2016, but do not provide any explanation of why or citation to the record or authority for support. Even though this court exercises plenary review of decisions granting motions for summary judgment, that does not excuse the plaintiffs from their obligation as appellants to provide this court with an adequate brief that thoroughly and clearly sets forth and addresses the specific claims that are being raised on appeal. See *Paoletta* v. *Anchor Reef Club at Branford, LLC*, 123 Conn. App. 402, 406, 1 A.3d 1238 ("[T]he parties must clearly and fully set forth their arguments in their briefs. We do not reverse the judgment of a trial court on the basis of challenges to its rulings that have not been adequately briefed." (Internal quotation marks omitted.)), cert. denied, 298 Conn. 931, 5 A.3d 491 (2010).

In the statement of issues in the plaintiffs' principal appellate brief, the plaintiffs list a single, broad issue on appeal: "Whether the trial court erred in granting summary judgment in the instant case." There are three main headings in their main brief: (1) "Nature of Proceedings/Facts"; (2) "The Trial Court Erred in Granting the Defendants' Motions for Summary Judgment"; and (3) "Material Questions of Fact Exist as to Whether the Alleged Nondiscriminatory Reasons for the Plaintiffs' Discharge Were Pretextual." There is no specifically designated section of the brief or appropriate or distinct heading addressing the issue of whether the court erred in determining that anything related to the 2018 reinstatement order was not before it and "focusing" its decision and burden-shifting analysis on the board's 2016 decision to eliminate the special police officer positions. See Practice Book § 67-4 (e).[11] Therefore, it

[11] Practice Book § 67-4 (e) provides in relevant part that an appellant's brief shall contain "[t]he argument, divided under appropriate headings into

is of no wonder that the defendants expressed surprise when this issue was raised by the plaintiffs' counsel at oral argument before this court, and why this court asked the plaintiffs' counsel for clarification as to whether the plaintiffs' appeal relates to the 2018 reinstatement order as well, despite the trial court's determination to the contrary. If the plaintiffs believe that the court was wrong to limit its decision on the motions for summary judgment to their layoffs in 2016 and to the board's 2016 decision, they should have sought an articulation of the basis for the court's decision and, at a minimum, they should have raised it as an issue under an appropriate heading in their brief, which would have clearly alerted the defendants and this court that such a claim is being raised.

This court's decision in *Weber* v. *Pascarella Mason Street, LLC*, 103 Conn. App. 710, 930 A.2d 779 (2007), provides guidance on this issue. In *Weber*, a claim being raised by the defendant on appeal was "not briefed in accordance with Practice Book § 67-4 (d) [now § 67-4 (e)] in that a proper analysis of the claim [did] not appear under an appropriate and distinct heading within the defendant's brief. Instead, the defendant discusse[d] th[e] issue in a section of its brief entitled 'NATURE OF PROCEEDINGS AND FACTS OF CASE.' " Id., 713 n.2. This court held: "The rules of appellate procedure are not abstract or technical goals; compliance with these rules is essential to the fair resolution of issues raised on appeal. A briefing strategy like that employed by the defendant is fundamentally unfair to the plaintiff and to this court. For these reasons, we decline to treat this issue as a properly asserted claim on appeal and decline to afford it review. See *Grimm* v. *Grimm*, 276 Conn. 377, 391 n.14, 886 A.2d 391 (2005) (court declines

as many parts as there are points to be presented, with appropriate references to the statement of facts or to the page or pages of the transcript or to the relevant document. . . ."

to review issue that 'is buried in the statement of facts and is not a distinctly raised separate point on appeal'), cert. denied, 547 U.S. 1148, 126 S. Ct. 2296, 164 L. Ed. 2d 815 (2006); *Northeast Economic Alliance, Inc.* v. *ATC Partnership*, 272 Conn. 14, 50–51, 861 A.2d 473 (2004) (noncompliance with Practice Book § 67-4 deemed basis on which to deny appellate review of claim); *Label Systems Corp.* v. *Aghamohammadi*, 270 Conn. 291, 300 n.9, 852 A.2d 703 (2004) (same); *Ramsay* v. *Camrac, Inc.*, 96 Conn. App. 190, 198 n.8, 899 A.2d 727 (court declines to review claim 'buried' in discussion of related issue and not 'distinctly raised as a separate point on appeal'), cert. denied, 280 Conn. 910, 908 A.2d 538 (2006)." *Weber* v. *Pascarella Mason Street, LLC*, supra, 713–14 n.2.

Likewise, in the present case, to the extent that the plaintiffs assert that their discrimination claim encompasses the defendants' 2018 postarbitration conduct and that the trial court improperly focused or limited its analysis of their discrimination claim to the 2016 layoffs, that claim is not properly before this court and we decline to review it. It would be fundamentally unfair to the defendants for this court to review a claim that was neither addressed nor decided by the trial court. Furthermore, the defendants objected to our consideration of the claim as it relates to the events in 2018, and the plaintiffs have not asserted the existence of any exceptional circumstances to warrant our review of a claim not decided by the trial court. See *Blumberg Associates Worldwide, Inc.* v. *Brown & Brown of Connecticut, Inc.*, supra, 311 Conn. 160–61. Finally, the plaintiffs' brief fails to raise any claim challenging the court's determination that the sole issue before it concerned the board's 2016 decision. Accordingly, because the trial court, in its decision, applied the burden-shifting analysis applicable to claims of employment discrimination only in relation to the board's 2016 decision

to eliminate the special police officer positions, we similarly limit our decision in part II of this opinion to the issue decided by the court, namely, whether the defendants are entitled to summary judgment with respect to the claim of employment discrimination stemming from the board's 2016 decision to eliminate the special police officer positions. To the extent that the plaintiffs refer to the defendants' 2018 conduct in arguing that the defendants' nondiscriminatory reason for laying them off in 2016 was pretextual, we address those arguments in part II B of this opinion.

II

The plaintiffs claim that the court improperly granted the defendants' motions for summary judgment because genuine issues of material fact exist as to whether (1) the plaintiffs established a prima facie case that their positions were eliminated and they were laid off in 2016 in violation of § 31-290a for exercising their rights to workers' compensation benefits, and (2) the alleged nondiscriminatory reason given by the defendants for the plaintiffs' layoffs was pretextual. We are not persuaded.

We first set forth the following relevant legal principles related to claims of employment discrimination under § 31-290a (a), which prohibits an employer from discharging or otherwise discriminating against an employee because the employee had filed a claim for workers' compensation benefits or otherwise exercised his rights under the Workers' Compensation Act (act), General Statutes § 31-275 et seq. "The burden of proof in actions alleging a violation of § 31-290a [(a)] is well established." *Gibilisco* v. *Tilcon Connecticut, Inc.*, 203 Conn. App. 845, 859, 251 A.3d 994, cert. denied, 336 Conn. 947, 251 A.3d 77 (2021). Our Supreme Court has stated: "Ever since this court's holding in *Ford* v. *Blue Cross & Blue Shield of Connecticut, Inc.*, [216 Conn.

40, 53, 578 A.2d 1054 (1990)], we have looked to federal employment retaliation law for guidance [i]n setting forth the burden of proof requirements in a § 31-290a action . . . . In *McDonnell Douglas* [*Corp.*] v. *Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), the United States Supreme Court set forth the basic allocation of burdens and order of presentation of proof in cases involving claims of employment discrimination. The plaintiff bears the initial burden of proving by the preponderance of the evidence a prima facie case of discrimination. . . . In order to meet this burden, the plaintiff must present evidence that gives rise to an inference of unlawful discrimination. . . . If the plaintiff meets this initial burden, the burden then shifts to the defendant to rebut the presumption of discrimination by producing evidence of a legitimate, nondiscriminatory reason for its actions. . . . If the defendant carries this burden of production, the presumption raised by the prima facie case is rebutted, and the factual inquiry proceeds to a new level of specificity. . . . The plaintiff then must satisfy [his] burden of persuading the factfinder that [he] was the victim of discrimination either directly by persuading the [factfinder] . . . that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." (Internal quotation marks omitted.) *Mele* v. *Hartford*, 270 Conn. 751, 767–68, 855 A.2d 196 (2004); see also *Gibilisco* v. *Tilcon Connecticut, Inc.*, supra, 859–60; *Martin* v. *Westport*, 108 Conn. App. 710, 717, 950 A.2d 19 (2008); *Kopacz* v. *Day Kimball Hospital of Windham County, Inc.*, 64 Conn. App. 263, 268, 779 A.2d 862 (2001).

"The first step in analyzing a claim under § 31-290a is to determine whether the plaintiff raised a genuine issue of material fact with respect to a prima facie case of discrimination."[12] *Gibilisco* v. *Tilcon Connecticut*,

[12] We note that, in the context of summary judgment, "regardless of [*McDonnell Douglas*'] burden-shifting framework, it is axiomatic that a

Inc., supra, 203 Conn. App. 860. "To establish a prima facie case of discrimination under § 31-290a, the plaintiff must show that [he] was exercising a right afforded [him] under the [act] and that the defendant discriminated against [him] for exercising that right. . . . [T]he plaintiff must show a [causal] connection between exercising [his] rights under the act and the alleged discrimination [he] suffered. Implicit in this requirement is a showing that the defendant knew or was otherwise aware that the plaintiff had exercised [his] rights under the act. . . . [T]o establish [a] prima facie case of discrimination, the plaintiff must first present sufficient evidence . . . that is, evidence sufficient to permit a rational trier of fact to find [1] that [he] engaged in protected [activity] . . . [2] that the employer was aware of this activity, [3] that the employer took adverse action against the plaintiff, and [4] that a causal connection exists between the protected activity and the adverse action, i.e., that a retaliatory motive played a part in *the adverse employment action* . . . ." (Emphasis in original; internal quotation marks omitted.) *Desmond* v. *Yale-New Haven Hospital, Inc.*, 212 Conn. App. 274, 288, 275 A.3d 735, cert. denied, 343 Conn. 931, 276 A.3d 433 (2022).

A

In applying this burden-shifting analysis to the circumstances of the present case, the trial court stated: "The plaintiffs argue that they have satisfied their initial burden of demonstrating a prima facie case of discrimination, because, as they stated in their depositions, they

defendant seeking summary judgment bears the burden to show the absence of a genuine fact issue for trial. . . . Accordingly, the burden [is] properly placed on [the defendant] to show the absence of a genuine fact issue . . . ." (Citations omitted.) *Peterson* v. *Connecticut Light & Power Co.*, United States District Court, Docket No. 3:10-cv-02032 (JAM), 2014 WL 2615363, *2 (D. Conn. June 12, 2014).

both filed workers' compensation claims and experienced an adverse employment action shortly thereafter. They argue that there is a causal connection between the filing of their claims and their termination because, in Vitka's case, there was a close temporal connection between the two events, and, in Forestier's case, the plaintiffs' supervisor indicated distaste for the filing of workers' compensation claims. The defendants argue that they have met their burden of production by demonstrating, through affidavits of board members and city and board budget statements, that the plaintiffs' positions were eliminated (along with many other positions) due to a significant cut to the board's budget for the 2016–2017 fiscal year. The plaintiffs then argue that they satisfied their final burden of persuasion by demonstrating, through their own affidavits, that the defendants' explanation is merely a pretext for underlying discrimination against those filing workers' compensation claims." The court stated further that the board and the city both "conceded, for the purpose of their summary judgment motions only, that the plaintiffs have both met the first two prongs of their prima facie cases," as each plaintiff filed a claim for workers' compensation benefits, and, because of that, they alleged that the employer was aware of those activities. Forestier was laid off from his position in August, 2016, which constitutes an adverse employment action,[13] and, even though Vitka was bumped into a school security guard position, which he worked only a few months

[13] "A plaintiff sustains an adverse employment action if he or she endures a materially adverse change in the terms and conditions of employment. . . . To be materially adverse a change in working conditions must be more disruptive than a mere inconvenience or an alteration of job responsibilities. . . . [A]n adverse employment action [has been defined] as a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." (Internal quotation marks omitted.) *Desmond* v. *Yale-New Haven Hospital, Inc.*, supra, 212 Conn. App. 289.

before voluntarily resigning, the defendants "concede[d] in their briefs supporting their motions that, for the purposes of the burden-shifting analysis, Vitka experienced an adverse employment action." They also conceded that Vitka satisfied the causal connection element to establish a prima facie case.[14]

Accordingly, the only element necessary to establish a prima facie case of employment discrimination that was at issue concerned Forestier's ability to demonstrate the fourth element—the existence of a causal connection between the protected activity and the adverse employment action.[15] After addressing the parties' arguments relating to this issue, the court concluded that "Forestier's direct evidence to support the causal connection requirement [was] particularly weak" and that the plaintiffs failed to offer "any evidence to explain why or how Grech's negative statements [could] be attributed to the defendants under the particular circumstances presented here." The court further determined that the plaintiffs presented no evidence directly contradicting the affidavits of the board members who participated in the vote to eliminate the special police officer positions, in which they stated that they had no knowledge of the identities of any of

[14] Specifically, the defendants conceded that there was indirect evidence to satisfy the causation element, namely, Vitka's position was defunded in June, 2016, within two months after he returned to work from his work-related injury in May, 2016, as those two events were sufficiently close in time for purposes of establishing causation indirectly. See footnote 8 of this opinion.

[15] "The causation element can be proven (1) indirectly, by showing that the protected activity was followed closely by discriminatory treatment, or through other circumstantial evidence such as disparate treatment of fellow employees who engaged in similar conduct; or (2) directly, through evidence of retaliatory animus directed against the plaintiff by the defendant. . . . Alternatively, causation may be satisfied by showing a sufficiently close temporal connection between the protected activity and the adverse action . . . ." (Internal quotation marks omitted.) *Gibilisco* v. *Tilcon Connecticut, Inc.*, supra, 203 Conn. App. 861.

the special officers or whether any of those officers had filed workers' compensation claims. Nevertheless, the court, after stating that it was questionable whether Forestier satisfied his burden of establishing a prima facie case of employment discrimination, assumed, arguendo, that Forestier and Vitka both met their initial burden and proceeded to address the next step of the burden-shifting analysis—whether the defendants proffered a nondiscriminatory reason for why the special police officer positions were eliminated and the plaintiffs were laid off.

Although the plaintiffs claim that genuine issues of material fact exist as to whether they met their burden of establishing a prima facie case of employment discrimination under § 31-290a (a), we need not reach the merits of the claim. As was done by the trial court, we also will assume, without deciding, that the plaintiffs both met their initial burden of establishing a prima facie case.

B

The plaintiffs' next claim is that the trial court improperly granted the defendants' motions for summary judgment because genuine issues of material fact exist as to whether the alleged nondiscriminatory reason given by the defendants was pretextual. We do not agree.

In granting the defendants' motions for summary judgment, the trial court concluded that the defendants "submitted sufficient evidence with enough specificity to meet their burden of producing a nondiscriminatory explanation for the decision to remove the funding of the special police officers' positions from the budget." As the court explained: "The defendants have proffered a nondiscriminatory reason for not funding the special police officer positions. A significant part of the board's yearly budget is met by funds provided by the city. The defendants state that the city council's failure to

increase the board's 2016–2017 fiscal year budget caused a financial crisis that the board was required to address, and [that] not funding special police officer positions was just one of the budget items cut in order to address the shortfall. The defendants supported this explanation through board member affidavits, the 2016–2017 fiscal year budget for the board, and the minutes of the board's budget meeting on June 27, 2016, addressing the budget cuts. This evidence indicates that the board requested an increase of $21.1 million for the fiscal year. The city council not only denied this request but did not approve any increase to the board's fiscal budget. The board members' affidavits emphasize that their sole intention in voting to cut the special officers' positions was to reduce the budget deficit.

"Marlene Siegel, chief financial officer of the . . . school district, avers in her affidavit that the board reduced 130 nonteacher positions for the fiscal year in an attempt to close the budget deficit in order to avoid reducing the number of classroom teachers in schools. These positions included forty-seven kindergarten paraprofessionals, twenty-six home school coordinators, thirty university interns, nine district office clerical employees, five elementary school guidance counselors, one custodian, one maintenance person, and five special police officers (including the plaintiffs). The board meeting minutes also indicate that the board contemplated the labor costs of each of the cut positions and estimated that the labor cost of the five special police officers was approximately equivalent to . . . ten and [one]-half kindergarten paraprofessionals. These considerations ultimately led to a decision not to fund the five special police officer positions.

"Further support for the legitimacy of the defendants' nondiscriminatory reasoning is found in the board's June 27 meeting minutes. Board member Howard Gardner emphasized that the board financial committee's

concern with the special police officer positions was not the officers themselves, but the way the positions were being managed by the city. Pereira echoed this sentiment, saying that the officers 'for the most part are wonderful, but the reality is [the board has] a $15 million deficit.' Pereira went on to say that the board originally had ten special officers in its budget in 2013, after which point five retired and weren't replaced. The remaining five were used for nonschool work, including domestic violence calls and traffic enforcement, even though the board paid the full salaries for the positions. While some board members expressed concerns about school security in the event of the elimination of the special officer positions, board member [Andre] Baker explained that the board had lost most contact with the police department, Grech was no longer coming before the board to report on the officers, and something had to change. Pereira highlighted that the main issue was that the special officers were being directed to perform duties outside of school grounds, including sitting at the front desk of city hall. Pereira suggested an amendment to the motion to remove the five officers, which included keeping them if the city agreed to pay their salaries and agreed not to direct them to perform any nonschool related duties. The board members found this too contingent or complicated, noted the fast approaching deadline to finalize the board's budget, and passed the original motion to eliminate the officers' positions."

Having concluded that the defendants met their burden of production by producing evidence of a legitimate, nondiscriminatory reason for their actions, which rebutted the presumption raised by the prima facie case, the court shifted its focus back to the plaintiffs, who then had the burden "of persuading the [court] that [the plaintiffs were] the victim[s] of discrimination either

directly by persuading the court . . . that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence" or is pretextual. (Internal quotation marks omitted.) *Kopacz* v. *Day Kimball Hospital of Windham County, Inc.*, supra, 64 Conn. App. 268; see also *Callender* v. *Reflexite Corp.*, 143 Conn. App. 351, 364, 70 A.3d 1084, cert. denied, 310 Conn. 905, 75 A.3d 32 (2013). Ultimately, the court concluded that the plaintiffs failed to meet that burden because they did not submit evidence refuting the defendants' submissions, raising a genuine issue of material fact that the defendants' stated reason itself was false or pretextual, or indicating that the board's 2016 decision to eliminate the special officer positions was retaliatory or linked to statements made by Grech.[16]

[16] As the court explained: "The plaintiffs' allegation that the board's decision to eliminate the plaintiffs' positions was linked in some way to their protected status under § 31-290a also has no evidentiary support based on what they have submitted to the court. More specifically, the affidavits of Babey, Vitka, and Forestier indicate that Grech regularly gave general status reports of the special police officers at board meetings, but this information does not specifically reflect [that] Grech said anything to the board about the defendants' worker[s'] compensation claims or that any relevant decisions made by the board were connected to these claims. The plaintiffs' statements in their affidavits that the board 'could have' voted to retain the five special police officers' positions are correct, but provide nothing as to discriminatory animus, and the plaintiffs' statements that the board eliminated the positions without explanation is simply wrong. The defendants' submissions provide such explanations.

"For example, in addition to the minutes of the board previously discussed, Pereira attests that after the motion was made to eliminate the five special police officers' positions to manage the board's budget deficit, she moved to amend the motion in a way that would keep the five special police officer positions, as long as the city funded the entire amount of their labor costs and stopped directing them to perform work not directly related to Bridgeport public schools. She then proposed to amend the motion to eliminate all five positions, thereby reducing the budget deficit by half a million dollars, subject to the condition that if the city funded the five positions and agreed not to direct the officers to perform any work not benefitting the Bridgeport public school children and staff, the board would automatically restore the five positions without a meeting. However, because this alternative was discussed as being too contingent and complicated, the amended motion

For that reason, the court determined that the plaintiffs "failed to establish the existence of material disputed facts sufficient to refute the defendants' legitimate, nondiscriminatory reason" for the termination of the plaintiffs' employment and failed to provide "any evidence beyond speculation and factual assertions in opposition to the evidence submitted by the defendants . . . ."

On the basis of our plenary review of the evidence submitted in support of and in opposition to the motions for summary judgment, we agree with the court's conclusions that the defendants successfully rebutted the presumption of discrimination and that the plaintiffs failed in their burden of producing evidence to show the existence of a genuine issue of material fact that the nondiscriminatory reason offered by the defendants was not worthy of credence or was pretextual.

The documentary evidence submitted by the defendants in support of their motions for summary judgment[17] provides substantial support for the defendants'

was withdrawn, and the original motion was voted on and passed. The plaintiffs have not submitted anything to challenge or dispute the explanation of the board's actions based on the events that transpired at the board meeting. The plaintiffs have made conclusory statements to support their position, but they have not provided any evidence, either direct or indirect, sufficient to defeat the defendants' summary judgment motions."

[17] In support of its motion for summary judgment, the board submitted an affidavit of Marlene Siegel, the chief financial officer of the Bridgeport school district; the budget adopted by the mayor for the fiscal year 2016–2017; the budget detail for the board; a copy of the text of General Statutes (Rev. to 2015) § 10-262j, which sets forth the state's minimum budget requirements for public schools; a chart of the position reductions for the school district for fiscal years 2016–2017, 2017–2018, and 2018–2019; an affidavit of Janene Hawkins, the Director of Labor Relations for the city from 2015 to 2019; a copy of the collective bargaining agreement between the city and the plaintiffs' union; an affidavit of John McLeod, the clerk for the board responsible for the board's meeting minutes, along with his certification attesting to the truth of the June 27, 2016 meeting minutes; the June 27, 2016 meeting minutes of the board; affidavits from five board members who were present at the June 27, 2016 meeting and participated in the vote to eliminate the special police officer positions, including Maria Pereira, Andre Baker, Sauda Efia Baraka, Benjamin Walker, and Joseph Larcheveque; an

asserted nondiscriminatory reason for eliminating the special police officer positions and laying off the plaintiffs in 2016. Siegel, the chief financial officer for the school district, attested that the board faced a financial crisis for the fiscal year 2016–2017 due to the fact that there was essentially a zero increase in its operating budget for that fiscal year, which resulted in a budget gap of almost $16 million. The budgetary figures to which Siegel attested were substantiated by the budget detail for the board that was submitted by the defendants. Siegel further attested that the reason for eliminating the funding for the special police officer positions was "[t]o close the budget deficit without reducing the number of classroom teachers . . . ." To that end, the special police officer positions were not the only ones eliminated. In fact, 130 nonteacher positions in total were eliminated for the fiscal year 2016–2017.

The minutes of the June 27, 2016 meeting and the affidavits of five of the board members who participated in that meeting provide further support for the defendants' assertion that the special police officer positions were eliminated for financial reasons. A review of the minutes of that meeting demonstrates that the motivating factor behind the vote to eliminate the special police officer positions was budget related. Although concerns were expressed about the fact that the special police officers had assumed new duties unrelated to the schools, board member Gardner reported for the finance committee of the board and its recommendation to eliminate the special police officer positions from the 2016–2017 budget. An analysis prepared by the finance

affidavit from Rebeca Garcia, a Bridgeport police officer; and transcripts of the deposition testimony of the plaintiffs. The city also submitted documentary evidence in support of its motion for summary judgment, including transcripts of deposition testimony of the plaintiffs; the budget adopted by the mayor for the fiscal year 2016–2017; the budget detail for the board; and affidavits from Garcia, Hawkins, Siegel, Pereira, Baraka, Baker, Walker, Larcheveque and Grech.

committee was distributed to the board members, which showed that the special police officers collectively made $492,000 a year, not including overtime, and that that amount was going to be directed back into schools. Board member Kevin McSpirit commented that $492,000 "is ten and [one]-half kindergarten paraprofessionals," while Sauda Efia Baraka expressed her opinion that "the board could not start the fiscal year with a deficit."

Nowhere in this discussion was anything mentioned related to workers' compensation, the defendants or any work-related injuries. Indeed, the affidavits from five of the board members who participated in the vote to eliminate the positions confirmed that the plaintiffs' workers' compensation claims were not a factor in their decision. For example, Pereira attested that "[t]he five special officer positions were cut as a line item from the [b]oard's fiscal year 2016–2017 budget solely for the purpose of reducing the budget deficit. The elimination of the labor cost of the five [special police officer positions] from the budget reduced the deficit by approximately half a million dollars. On June 2[7], 2016, when I voted in favor of the motion to eliminate the five special officer positions from the [b]oard's 2016–2017 budget, I had no knowledge any of the five individuals who occupied those positions had filed a workers' compensation claim or otherwise exercised rights under the . . . [a]ct. The only reason the five special officer positions were cut from the budget was financial to reduce the massive budget deficit." Similarly, Baraka attested that when she voted in favor of the motion to eliminate the special police officer positions from the budget, she "had no knowledge any of the five persons who were then special officers either had filed a claim for workers' compensation benefits or was in the process of filing such a claim. The topic of workers' compensation was not mentioned by any other [b]oard

member during the discussion concerning [the] motion." Baraka further attested that, "[i]n defunding the five special officer positions, [her] sole motivation and goal was to reduce the significant budget gap in a way that would not affect the learning of [the] students." Baker, Benjamin Walker and Joseph Larcheveque all made similar attestations about the basis for their vote and the lack of knowledge that any workers' compensation claims had been filed by any of the special police officers.

We conclude that the evidence submitted in support of the defendants' motions for summary judgment provides uncontroverted support for the defendants' assertion that the funding for the special police officer positions was eliminated in 2016 due to financial considerations.

Furthermore, after examining the evidence submitted by the plaintiffs in opposition to the motions for summary judgment,[18] we conclude that the plaintiffs did not meet their burden of demonstrating a genuine issue of material fact that the legitimate, nondiscriminatory reason offered by the defendants was not worthy of credence or was pretextual. Once the defendants presented evidence of a legitimate, nondiscriminatory reason for eliminating the subject positions, it was incumbent on the plaintiffs to refute that evidence. The

[18] The evidence submitted by the plaintiffs in opposition to the motions for summary judgment included a copy of a letter to Forestier from the Office of Labor Relations concerning his return date; the state's rehiring/reinstatement procedures; a copy of the union grievance complaint form and subsequent arbitration award; the text of statutes governing grievance and arbitration procedures; communications regarding the staffing of the special police officers; rescission of layoff letters to the plaintiffs following the arbitration award in their favor; minutes of the board's meetings from November 25, 2013, February 12, 2014, September 15, 2014, and April 6, 2016; a copy of the settlement agreement between the city and the union; a newspaper article addressing police officer staffing; copies of the plaintiffs' police department identification cards; and affidavits of Vitka, Forestier, and Babey.

plaintiffs, however, provided no evidence contradicting the affidavits submitted by the defendants or showing any connection whatsoever between the board's decision to defund and eliminate the special police officer positions and the plaintiffs' filing of claims for workers' compensation benefits. Significantly, both Vitka and Forestier testified at their depositions that their claim of retaliatory discrimination for having filed claims for workers' compensation benefits was based *solely* on the negative comments made by Grech concerning workers' compensation. Much of the evidence submitted by the plaintiffs substantiates their claim that Grech held a personal animosity toward employees who file workers' compensation claims. That evidence, however, does not establish any link between Grech's negative statements and the alleged adverse employment action of the defendants, or explain how Grech's comments could even be attributed to the defendants. The fact that Grech, at one time, attended board meetings regularly and delivered a monthly school security report to the board members does not support an inference that he also told those board members which, if any, of the special police officers had filed claims for workers' compensation benefits or that he had any type of control over the decision-making responsibilities of the board members. Any suggestion to that effect is entirely speculative. More importantly, the evidence submitted by the plaintiffs simply does not establish or even suggest that the defendants' stated nondiscriminatory reason was false or pretextual.

In contrast to the significant amount of evidence submitted by the defendants establishing that the board members knew nothing about the negative statements made by Grech to the plaintiffs and indicating that the need to fix the budget deficit was the sole basis for the decision to eliminate funding for the special police officer positions, the plaintiffs provided no evidentiary

support for their assertion that the board's decision was retaliatory in nature and connected with their protected status under § 31-290a (a). The plaintiffs make a number of assertions in their principal appellate brief concerning the reason for the elimination of their positions and that the defendants' nondiscriminatory reason "is false" and "was a pretext," without providing a clear explanation for the basis of those statements, except to suggest that because the city needed police coverage, there was work for the plaintiffs to perform and they did not need to lose their jobs. The plaintiffs also argue that the defendants' 2018 postarbitration conduct further demonstrates that their asserted nondiscriminatory reason for laying them off in 2016 was pretextual.[19] The plaintiffs' assertions are conclusory and speculative[20] and are not sufficient to create a genuine issue of material fact to defeat summary judgment, especially when it is undisputed that the defendants treated all of the special police officers the same.

"[I]t is axiomatic that in order to successfully oppose a motion for summary judgment by raising a genuine issue of material fact, the opposing party cannot rely

[19] See footnote 9 of this opinion.

[20] For example, in their principal appellate brief, the plaintiffs argue that "Forestier's ongoing need for medical treatment *may have* substantially increased the defendants' inclination to retaliate against [Forestier] and terminate [his employment]." (Emphasis added.) They also argue that "[t]he defendants' contention that the plaintiffs were discharged due to financial considerations is false." They have provided no evidence supporting these speculative arguments, only a suggestion that there was a close period of time between when the plaintiffs filed for workers' compensation benefits and their subsequent discharge. Moreover, the plaintiffs rely on statements in their affidavits that the defendants *could have* done things differently and retained their positions, despite the budgetary issues. Those statements, even if true, do not demonstrate that the positions were eliminated as a result of a discriminatory motive. Finally, the plaintiffs make the conclusory statement in their appellate brief, without support in the record or further explanation, that "[t]he defendants' claim that the plaintiffs' job[s] [were] eliminated and even that there was a reduction in force are simply not the real reasons for the plaintiffs' discharge."

solely on allegations that contradict those offered by the moving party . . . such allegations must be supported by counteraffidavits or other documentary submissions that controvert the evidence offered in support of summary judgment." (Internal quotation marks omitted.) *TD Bank, N.A.* v. *Salce*, 175 Conn. App. 757, 766, 169 A.3d 317 (2017). "Although the court must view the inferences to be drawn from the facts in the light most favorable to the party opposing the motion . . . a party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment. . . . A party opposing a motion for summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue." (Internal quotation marks omitted.) *Perez* v. *Metropolitan District Commission*, 186 Conn. App. 466, 476, 200 A.3d 202 (2018).

Accordingly, the plaintiffs failed to establish an issue of fact concerning the defendants' reason for defunding and eliminating the special police officer positions sufficient to preclude summary judgment. See *Morrissey-Manter* v. *Saint Francis Hospital & Medical Center*, 166 Conn. App. 510, 538, 142 A.3d 363 (plaintiff did not create genuine issue of material fact that defendants were negligent when allegation of negligence was supported by speculation and not by evidence submitted in opposition to motion for summary judgment), cert. denied, 323 Conn. 924, 149 A.3d 982 (2016). Therefore, the trial court properly granted the defendants' motions for summary judgment.

The judgment is affirmed.

In this opinion the other judges concurred.

SG PEQUOT 200, LLC *v.* TOWN OF FAIRFIELD (AC 45863)

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

Syllabus

Pursuant to statute (§ 12-111 (a) (1)), "[a]ny person . . . claiming to be aggrieved by the doings of the assessors of [a] town may appeal therefrom to the board of assessment appeals. Such appeal shall be filed in writing or by electronic mail in a manner prescribed by such board on or before February twentieth. . . ."

Pursuant further to statute (§ 12-112), "[n]o appeal from the doings of the assessors in any town shall be heard or entertained by the board of assessment appeals . . . unless written appeal is made on or before February twentieth in accordance with the provisions of section 12-111."

The plaintiff limited liability company appealed to this court from the trial court's judgment dismissing its municipal tax appeal brought pursuant to statute (§ 12-117a). In October, 2021, the defendant town assessed the plaintiff's property and set forth a valuation. The plaintiff mailed its petition to appeal the valuation to the town's board of assessment appeals on Friday, February 18, 2022, via commercial standard overnight shipping. The town's municipal offices were closed Saturday, February 19, 2022, through Monday, February 21, 2022, Washington's Birthday, a legal holiday. On February 22, 2022, the board received the plaintiff's petition and, on February 23, 2022, the board notified the plaintiff that its petition would not be heard because it was received after February 20, the statutory deadline set forth in §§ 12-111 (a) (1) and 12-112. The plaintiff then appealed to the trial court pursuant to § 12-117a, alleging, inter alia, that it had been aggrieved by the board under § 12-117a and that its appeal to the board had been timely. The town filed an answer and asserted several special defenses, including that the plaintiff's claim was barred under § 12-117a because the plaintiff did not file its petition before the statutory deadline. The town subsequently filed a motion for partial summary judgment, arguing, inter alia, that there was no genuine issue of material fact in dispute, it was entitled to judgment as a matter of law, and the court lacked subject matter jurisdiction because the plaintiff's appeal to the board was untimely. The trial court granted the town's motion for partial summary judgment and dismissed the relevant counts of the plaintiff's complaint, finding, inter alia, that the plaintiff's appeal was untimely because it was received two days after the statutory deadline set forth in §§ 12-111 and 12-112. On appeal, *held* that the trial court improperly determined that it lacked subject matter jurisdiction over the plaintiff's municipal tax appeal on the basis that the plaintiff's petition to the board was untimely: in accordance with the Supreme Court's decision in *Brennan* v. *Fairfield* (255 Conn. 693), which analyzed

the statutory deadline for a claim under the municipal defective highway statute (§ 13a-149), this court similarly determined that the legislature did not intend for a taxpayer to have a shorter time period to file its petition to a town's board simply because the statutory deadline fell on a day that the municipal offices were closed; moreover, this court found persuasive the principle set forth in *Brennan* and in *Lamberti* v. *Stamford* (131 Conn. 396) that a plaintiff cannot effectuate notice on a board when a town's municipal offices are closed on weekends or a legal holiday because the designated town official is not available to receive the notice, the Supreme Court having determined that the legislature did not intend the alternative, that is, that either the town clerk's office would have to be open on those days in order to receive the notice or the designated official would have to be otherwise available to receive the notice, and this court similarly was not persuaded that the legislature intended to have municipal offices open on weekends or legal holidays in order for a taxpayer to satisfy the deadline set forth in §§ 12-111 (a) (1) and 12-112; accordingly, because the statutory deadline of February 20, 2022, was a Sunday and the following day was a legal holiday, this court concluded that the plaintiff's appeal, received by the board on February 22, 2022, was timely made.

Argued November 8, 2023—officially released January 16, 2024

Procedural History

Appeal from the decision of the defendant's Board of Assessment Appeals declining to hear the plaintiff's petition to appeal the valuation of its property, brought to the Superior Court in the judicial district of Fairfield and transferred to the judicial district of New Britain, Tax Session, where the court, *Cordani*, *J.*, granted the defendant's motion for partial summary judgment and rendered judgment thereon; thereafter, the plaintiff withdrew the remaining count of its complaint and appealed to this court. *Reversed in part*; *judgment directed.*

Gary J. Greene, with whom, on the brief, were *Michael D. Reiner* and *Sean V. Patel*, for the appellant (plaintiff).

Owen T. Weaver, with whom was *Barbara M. Schellenberg*, for the appellee (defendant).

Opinion

ALVORD, J. The plaintiff, SG Pequot 200, LLC, appeals from the judgment of dismissal rendered in favor of the defendant, the town of Fairfield (town), by the trial court in this municipal tax appeal brought pursuant to General Statutes § 12-117a.[1] On appeal, the plaintiff claims that the court improperly determined that the court lacked subject matter jurisdiction over the plaintiff's municipal tax appeal on the basis that the plaintiff's petition to the town's board of assessment appeals (board) was untimely under General Statutes §§ 12-111 (a) (1) and 12-112. We agree and, accordingly, reverse in part the judgment of the trial court.

The following undisputed facts and procedural history are relevant to this appeal. On October 1, 2021, the town assessed the plaintiff's property located at 200 Pequot Avenue, Fairfield, and valued it at $2,750,790. The plaintiff mailed its petition to appeal the valuation to the board on Friday, February 18, 2022, via Federal Express (FedEx) standard overnight shipping. The town's municipal offices were closed Saturday, February 19, 2022, through Monday, February 21, 2022, Washington's Birthday.[2] On February 22, 2022, the board received the plaintiff's petition, and on February 23,

[1] General Statutes § 12-117a (a) (1) provides in relevant part: "Any person, including any lessee of real property whose lease has been recorded as provided in section 47-19 and who is bound under the terms of his lease to pay real property taxes, claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals, as the case may be, in any town or city may, within two months from the date of the mailing of notice of such action, make application, in the nature of an appeal therefrom to the superior court for the judicial district in which such town or city is situated, which shall be accompanied by a citation to such town or city to appear before said court. . . ."

[2] General Statutes § 1-4, titled "Days designated as legal holidays," provides in relevant part: "In each year . . . the third Monday in February (known as Washington's Birthday) . . . shall . . . be a legal holiday . . . ." Although the trial court refers to the holiday as "President's Day," we will use "Washington's Birthday" as set forth in the statute.

2022, the board notified the plaintiff that its petition would not be heard because it was received after the statutory deadline of February 20.

The plaintiff then appealed to the Superior Court pursuant to § 12-117a. In count one of its three count complaint; see footnote 4 of this opinion; the plaintiff alleged that it had been aggrieved by the board under § 12-117a and that its appeal to the board was timely. The town filed an answer and asserted several special defenses, including that the plaintiff's claim was barred under § 12-117a because the plaintiff did not file its petition before the statutory deadline.

On June 28, 2022, the town filed a motion for partial summary judgment, accompanied by a supporting memorandum of law, as to counts one and three of the plaintiff's complaint. See footnote 4 of this opinion. As to count one, the town argued, inter alia, that there was no genuine issue of material fact in dispute, it was entitled to judgment as a matter of law, and that the court lacked subject matter jurisdiction because the plaintiff's appeal to the board was untimely. In support of its motion, the town submitted the affidavit of its tax assessor, Ross Murray, who averred that he receives and processes taxpayer petitions for the board. Murray attested that he received the plaintiff's petition on February 22, 2022, and he notified the plaintiff on February 23, 2022, that the board would not hear its petition because the petition was received after the statutory deadline.

On July 15, 2022, the plaintiff filed an opposition to the town's motion for partial summary judgment, accompanied by a supporting memorandum of law, wherein it argued, inter alia, that it timely had appealed to the board. In support of its opposition, the plaintiff submitted a copy of the petition's FedEx tracking information as an exhibit. According to the tracking information, the plaintiff mailed the petition from Buffalo, New

York, on February 18, 2022, via FedEx standard overnight delivery and the board received the petition on February 22, 2022.

The town filed a reply memorandum, wherein it argued, inter alia, that the plaintiff's "late filing was due solely to [its] decision to mail its petition on February 18, 2022." In support of its reply memorandum, the town submitted, inter alia, a supplemental affidavit of Murray. Murray averred that the Office of Policy and Management informed towns that taxpayers were required to file their petitions on or before February 18, 2022, because February 20, 2022, fell on a Sunday, and Monday, February 21, 2022, was Washington's Birthday.[3]

On September 14, 2022, the court, *Cordani*, *J.*, issued a memorandum of decision, in which it dismissed counts one and three of the plaintiff's complaint. Relevant to this appeal, the court determined that "[t]he timing deadlines in §§ 12-111, 12-112 and 12-117a are jurisdictional. The court acquires subject matter jurisdiction over a § 12-117a claim pursuant to the applicable statutes themselves and only upon compliance with the terms of the statutes. A failure to comply with the foregoing enabling statutes undermines the subject matter jurisdiction of the court for such claims. As noted, these statutes provide a two step process. The taxpayer is first required to file an appeal with the [board]. Then, only a taxpayer who is 'aggrieved by the action' of the

[3] The plaintiff, without seeking the court's permission, then filed a reply memorandum and accompanying affidavits in further support of its opposition to the town's motion for partial summary judgment. In response, the town filed a motion to strike the plaintiff's reply memorandum and an accompanying memorandum of law in support thereof, citing Practice Book § 11-10 (c) ("[s]urreply memoranda cannot be filed without the permission of the judicial authority"). Subsequently, the plaintiff filed a request for leave to file its surreply brief. Neither the town's motion to strike nor the plaintiff's request for leave was adjudicated, and neither party raises any contention on appeal with respect to these filings.

[board] may file a claim pursuant to § 12-117a in court. Further, as noted, § 12-112 expressly prohibits the [board] from hearing or entertaining an untimely appeal. In this matter, the [board] determined that the plaintiff's appeal was untimely because it was received two days after the deadline. As a result, the [board], in accordance with § 12-112, refused to hear or entertain the appeal." Accordingly, the court dismissed count one of the plaintiff's complaint.[4] This appeal followed.

Before turning to the plaintiff's claim on appeal, we set forth the relevant standard of review. "A determination regarding a trial court's subject matter jurisdiction is a question of law. When . . . the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Manifold* v. *Ragaglia*, 94 Conn. App. 103, 114, 891 A.2d 106 (2006). "[A] claim that the court lacks jurisdiction over the subject matter cannot be waived and must be addressed whenever it is brought to the court's attention. . . . Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented

[4] In count two of the plaintiff's complaint, the plaintiff had alleged that it had been aggrieved by the board under General Statutes § 12-119 and that its appeal to the board was timely. Following the court's dismissal of counts one and three, the plaintiff withdrew count two.

In count three, the plaintiff had alleged that the town improperly assigned an income and expense penalty to the subject property. Regarding count three, the court determined that "[t]he [town] has also moved for summary judgment on count three, which presents an unspecified claim challenging the imposition of a late filing penalty in connection with the plaintiff's 2021 income and expense statement. The [town] has represented that no such penalty has been imposed. The plaintiff has not opposed the [town's] motion as to count three. Given the undisputed facts, it is apparent that count three does not present an actual case and controversy, and as a result the court lacks subject matter jurisdiction over count three. Accordingly, the court must dismiss count three." The plaintiff does not raise any claim on appeal with respect to the court's ruling dismissing count three of its complaint.

by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . . Accordingly, [t]he subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings, including on appeal." (Citations omitted; internal quotation marks omitted.) Id., 116–17.

"[A] challenge to the court's subject matter jurisdiction is ordinarily raised by way of a motion to dismiss. . . . Our Supreme Court, however, has held that a motion for summary judgment is also an appropriate means of challenging the court's subject matter jurisdiction, as the question of subject matter jurisdiction can be raised at any time. . . . Furthermore, once the question of the court's subject matter jurisdiction is raised, it must be resolved before the court addresses the merits of the plaintiff's claims." (Citations omitted.) *Sosa* v. *Robinson*, 200 Conn. App. 264, 275–76, 239 A.3d 1228 (2020).

"Practice Book § 17-49 provides in relevant part that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Furthermore, [i]n deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle[s] him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . .

"Whereas a motion to dismiss is decided only on the allegations in the complaint and the facts implied from those allegations, summary judgment is decided by looking at *all* of the pleadings, affidavits and documentary evidence presented to the court in support of the motion." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Manifold* v. *Ragaglia*, supra, 94 Conn. App 120.

We next set forth the applicable legal principles regarding a municipal tax appeal. "When a taxpayer is aggrieved by the assessment of his property, there are statutory procedures in place for the taxpayer to challenge the assessment. [T]he legislature has established two primary methods by which taxpayers may challenge a town's assessment or revaluation of their property. First, any taxpayer claiming to be aggrieved by an action of an assessor may appeal, pursuant to . . . § 12-111, to the town's board . . . . The taxpayer may then appeal, pursuant to . . . § [12-117a], an adverse decision of the town's board . . . to the Superior Court. The second method of challenging an assessment or revaluation is by way of [General Statutes] § 12-119." (Internal quotation marks omitted.) *Tirado* v. *Torrington*, 179 Conn. App. 95, 101–102, 179 A.3d 258 (2018). Section 12-111 (a) (1) provides in relevant part: "Any person . . . claiming to be aggrieved by the doings of the assessors of such town may appeal therefrom to the board of assessment appeals. Such appeal shall be filed in writing or by electronic mail in a manner prescribed by such board on or before February twentieth. . . ." Section 12-112 provides in relevant part: "No appeal from the doings of the assessors in any town shall be heard or entertained by the board of assessment appeals . . . unless written appeal is made on or before February twentieth in accordance with the provisions of section 12-111."

In the present case, the plaintiff claims that the court had subject matter jurisdiction over its appeal because its appeal to the board was timely made on February 22, 2022, given that the February 20 statutory deadline fell on a Sunday and February 21, 2022, was Washington's Birthday. The town maintains that the court correctly determined that the plaintiff's petition was untimely because the board received it after the statutory deadline. We agree with the plaintiff.

In support of its argument that it timely appealed, the plaintiff relies on *Brennan* v. *Fairfield*, 255 Conn. 693, 768 A.2d 433 (2001). Therein, our Supreme Court concluded that the ninety day filing period under the municipal defective highway statute, General Statutes § 13a-149,[5] may be extended to ninety-two days when the ninetieth and ninety-first days fall on a Saturday and a Sunday. Id., 694–95. The court applied the longstanding principle that, "[a]t common law, when the terminal day for filing legal papers fell on a holiday or Sunday, the plaintiff was able to make performance on the following day"; id., 698; and determined that there is "no meaningful distinction between, on one hand, municipal offices that routinely are closed on weekends, and, on the other hand, such offices that are required to be closed on legal holidays . . . . Filing notice under § 13a-149 . . . does not involve just one party. The designated town official must be available to receive the notice. When municipal offices are closed on weekends, public officers are freed from the obligation of keeping open their offices or attending to their duties, just as they are freed from these obligations on official holidays. . . . To conclude otherwise would mean that, if the terminal date for filing notice pursuant

[5] General Statutes § 13a-149 provides in relevant part that "[n]o action for any such injury shall be maintained . . . unless written notice of such injury . . . shall, within ninety days thereafter be given to a selectman or the clerk of such town . . . ."

to § 13a-149 fell on a Saturday or Sunday, then either the town clerk's office would have to be open on those days in order to receive the notice, or the designated official would have to be otherwise available to receive the notice delivered on the ninetieth day. We do not think that the legislature intended these consequences in order for a claimant to satisfy the notice filing requirements of § 13a-149." (Citation omitted; internal quotation marks omitted.) Id., 700. The court also recognized "that permitting filings past certain deadlines is an accepted practice in our courts," cited several examples of statutes that directly provide for extended deadlines, and determined that, although § 13a-149 "does not explicitly provide for an extension of time when the terminal day falls on a Saturday or Sunday . . . its notice provision should be read in light of the statute's overall purpose to provide claimants with the opportunity to recover for injuries . . . ." Id., 700–701.

In reaching its determination in *Brennan*, the court relied on *Lamberti* v. *Stamford*, 131 Conn. 396, 40 A.2d 190 (1944), wherein the court analyzed the notice requirement of General Statutes (1930 Rev.) § 1420, the predecessor to § 13a-149, the current municipal defective highway statute. Under General Statutes (1930 Rev.) § 1420, a person who sought to bring a cause of action against a municipality alleging an injury resulting from a defective road or bridge had ten days to notify the municipality of the occurrence. See also id., 397. In *Lamberti*, the plaintiff was injured on December 15, meaning that the statutory deadline fell on December 25, Christmas, a legal holiday. Id., 397–98. The plaintiff notified the municipality of the occurrence on December 26. Id., 397. The court concluded that, "if the last day of the [statutory] period falls on a holiday, the giving of notice on the next day is . . . sufficient compliance with the statute." Id., 401. After examining the interplay between the municipal defective highway statute and

the statute designating legal holidays, the court determined that "[w]e do not have here a situation where the giving of the notice requires action only by the [party] injured or someone [on its] behalf. The giving of that notice involves a duty to receive it on the part of the proper municipal official. Certainly when the legislature declares a day to be a holiday, it means at least to free public officers from the obligation of keeping open their offices or attending to their duties on that day . . . . Practically, where the last day of the period falls on a holiday, not to permit the notice to be filed on the succeeding day would be to cut down the time permitted for giving the notice . . . . We cannot believe that the legislature had such an intention." Id., 399–400.

In the present case, the plaintiff relies on *Brennan* and argues that, "[r]egardless of whether the statutory deadline is a 'bright line deadline' or a deadline 'measured by any particular triggering event or time period,' the legislature intended to give the plaintiff the deadline provided for in [§§ 12-111a and 12-112]." The town maintains that *Brennan* is inapplicable because that case concerns a statute that prescribes a certain number of days after a triggering event as a deadline, whereas §§ 12-111 (a) (1) and 12-112 set forth a specific date.[6]

[6] The town further contends that the plaintiff's argument is "[t]he exact style argument" raised in *Seramonte Associates, LLC* v. *Hamden*, 345 Conn. 76, 282 A.3d 1253 (2022) (*Seramonte*). In that case, our Supreme Court considered "whether General Statutes § 12-63c (a), which requires the owners of certain rental property to submit income and expense information to their municipal tax assessor not later than the first day of June, [was] satisfied when that information [was] postmarked but not delivered by that date." (Internal quotation marks omitted.) Id., 78. The court determined "that the word 'submit' in § 12-63c (a) unambiguously requires that the income and expense information be received by the assessor by June 1." Id., 91. *Seramonte* is distinguishable from the present appeal for several reasons. First, unlike the plaintiff in *Seramonte*, the plaintiff in the present case sent its petition to the board prior to the statutory deadline and the delay in the board's receipt of the plaintiff's petition was due to February 20, 2022, falling on a Sunday and February 21, 2022, being Washington's Birthday. Second, *Seramonte* does not involve a situation where the June

We agree with the plaintiff that the principles set forth in *Lamberti*, and reaffirmed in *Brennan*, apply in the present case, notwithstanding that those cases involved statutory deadlines prescribed by a certain number of days after a triggering event rather than a specific date. In the present case, the plaintiff mailed its petition on Friday, February 18, 2022, via FedEx standard overnight delivery. As in *Brennan* and *Lamberti*, the town's municipal buildings were closed on the final day of the statutory deadline, here Sunday, February 20, 2022, and also on Monday, February 21, 2022, for a legal holiday, Washington's Birthday. Thus, the board received the plaintiff's petition the following business day, Tuesday, February 22, 2022. The court in *Brennan* determined that the legislature did not intend "for claimants to have fewer than the prescribed ninety days available to them pursuant to § 13a-149 simply because the terminal day coincides with a day when the municipal office is closed." *Brennan* v. *Fairfield*, supra, 255 Conn. 701. Similarly, we do not believe that the legislature intended for a taxpayer to have a shorter time period to file its petition to a town's board simply because the statutory deadline falls on a day that the municipal offices are closed.

We also find persuasive the principle set forth in *Lamberti* and *Brennan* that a plaintiff cannot effectuate notice on a board when a town's municipal offices are closed on weekends or a legal holiday because the designated town official is not available to receive the notice. See *Lamberti* v. *Stamford*, supra, 131 Conn. 400–401; *Brennan* v. *Fairfield*, supra, 255 Conn. 700. The court in *Brennan* determined that, "if the terminal

1 deadline fell on a weekend or legal holiday. Finally, the language of neither § 12-111 (a) (1) nor § 12-112 includes the word "submit" when describing the process of a taxpayer appealing to their town's board. Thus, we are unpersuaded by the town's argument that the statutory analysis in *Seramonte* is instructive to our consideration of the present appeal.

date for filing notice pursuant to § 13a-149 fell on a Saturday or Sunday, then either the town clerk's office would have to be open on those days in order to receive the notice, or the designated official would have to be otherwise available to receive the notice delivered on the ninetieth day. We do not think that the legislature intended these consequences in order for a claimant to satisfy the notice filing requirements of § 13a-149." *Brennan* v. *Fairfield*, supra, 700. Similarly, we are not persuaded that the legislature intended to have municipal offices open on weekends or legal holidays in order for a taxpayer to satisfy the deadline set forth in §§ 12-111 (a) (1) and 12-112.

Because the statutory deadline of February 20, 2022, was a Sunday and the following day was a legal holiday, we conclude that the plaintiff's appeal, received by the board on February 22, 2022, was timely made. Thus, the court had subject matter jurisdiction over the plaintiff's appeal from the board's decision declining to hear its petition, and, as a result, the court improperly dismissed count one of the plaintiff's complaint.

The judgment is reversed only as to the dismissal of count one of the plaintiff's complaint and the case is remanded to the trial court with direction to deny the defendant's motion for summary judgment as to count one and to remand the case to the Board of Assessment Appeals of the Town of Fairfield; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

BETH E. ANKETELL *v.* MARTIN KULLDORFF
(AC 45871)

Bright, C. J., and Cradle and Sheldon, Js.

Syllabus

The defendant, whose marriage to the plaintiff previously had been dissolved, appealed to this court from the trial court's judgment granting the

plaintiff's postjudgment motion for clarification and for postjudgment interest. In accordance with the dissolution judgment, the defendant was required to transfer $175,000 from the retirement funds of his choice to the plaintiff by way of a qualified domestic relations order (QDRO). In its decision, the trial court indicated that such amount could be adjusted to reflect any gains or losses that occurred prior to the judgment. The defendant appealed from the dissolution judgment, asserting claims of error unrelated to the division of his retirement funds. The orders of the judgment were stayed during the pending appeal, and, consequently, the retirement funds were not transferred. This court affirmed the trial court's judgment, and our Supreme Court denied the defendant's petition for certification to appeal. Thereafter, the plaintiff filed a postjudgment motion requesting that the trial court clarify whether the $175,000 award of retirement funds was to be adjusted for gains and losses prior to the time of transfer and, if it was not, that the court award the plaintiff statutory (§ 37-3a) interest. The trial court awarded the plaintiff 5 percent annual interest, pursuant to § 37-3a, for each of the three full years that the funds were not paid and for ten months of the fourth year. The trial court indicated that the accrual of interest would cease as of the issuance of its order and would begin to accrue again only if there was a delay beyond that which was necessary to prepare the QDROs. In his appeal, the defendant did not challenge the court's award of interest for the three year period during which his appeal from the dissolution judgment was pending but only claimed, inter alia, that the trial court improperly awarded interest for the ten month period of the fourth year. *Held* that the trial court's award of postjudgment interest to the plaintiff for the ten month period was not improper: contrary to the defendant's claim that the trial court abused its discretion in awarding the plaintiff postjudgment interest for the unpaid months of the fourth year because, during that time, the plaintiff and her counsel were responsible for the delay in the transfer of the funds, the trial court properly found that the defendant had wrongfully withheld the $175,000, as the parties disagreed as to whether the award was subject to adjustment for gains or losses, and the defendant did not claim, at any point during the hearing on the plaintiff's motion or during the additional time provided by the trial court thereafter for the defendant to respond to the plaintiff's request for postjudgment interest, that the plaintiff had prevented the execution of the QDROs nor did he seek to present any evidence contradicting the statement of the plaintiff's counsel that the QDRO company would not proceed with the transfer; moreover, the defendant conceded that, in arguing his appeal, he was relying on evidence that was not presented at the hearing on the plaintiff's motion, and this court declined to conclude, on the basis of evidence not presented to the trial court, that the plaintiff had refused to accept the retirement funds and that, as a result, the trial court had abused its discretion in awarding postjudgment interest; furthermore, the trial court

reasonably concluded that it would not be an abuse of its discretion to compensate the plaintiff for the inequity of being deprived of the $175,000 award for an extended period, which included the period that encompassed the wrongful detention of the funds that continued until the court issued its decision on the plaintiff's postjudgment motion for clarification and interest, as such reasoning was consistent with the statutory purpose of postjudgment interest; additionally, contrary to the defendant's claim, the trial court did not award the plaintiff interest for any period after the issuance of the trial court's order, but, rather, ordered that interest would accrue again only if there was an unnecessary delay in the execution of the QDROs, which it had the authority to do.

Argued October 12, 2023—officially released January 16, 2024

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Windham and tried to the court, *Green*, *J.*; judgment dissolving the marriage and granting certain other relief, from which the defendant appealed to this court, *Alvord*, *Prescott* and *Lavine*, *Js.*, which affirmed the judgment of the trial court; thereafter, our Supreme Court denied the defendant's petition for certification to appeal; subsequently, the court, *Green*, *J.*, granted the plaintiff's motion for clarification and request for postjudgment interest, from which the defendant appealed to this court. *Affirmed.*

Martin Kulldorff, self-represented, the appellant (defendant).

Scott T. Garosshen, with whom was *Linda L. Morkan*, for the appellee (plaintiff).

Opinion

BRIGHT, C. J. In this postjudgment marital dissolution matter, the self-represented defendant, Martin Kulldorff, appeals from the judgment of the trial court awarding the plaintiff, Beth E. Anketell, postjudgment interest pursuant to General Statutes § 37-3a. On appeal, the defendant claims that the court abused its discretion in

awarding the plaintiff postjudgment interest for certain time periods. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. The parties married in 2011, and the plaintiff initiated the dissolution action in 2016. After a two day court trial in September, 2018, the court, *Green*, *J.*, rendered judgment dissolving the parties' marriage on December 3, 2018. The court ordered, inter alia, that the "[d]efendant shall transfer $175,000 to the plaintiff from retirement funds/accounts of his choice by way of a qualified domestic relations order [(QDRO)]. . . . This figure may be adjusted to reflect any gains or losses that have occurred prior to the judgment." The defendant appealed and asserted claims of error unrelated to the division of his retirement funds.[1] This court affirmed the judgment; *Anketell* v. *Kulldorff*, 207 Conn. App. 807, 810, 263 A.3d 972, cert. denied, 340 Conn. 905, 263 A.3d 821 (2021); and our Supreme Court denied the defendant's petition for certification to appeal on November 30, 2021. *Anketell* v. *Kulldorff*, 340 Conn. 905, 263 A.3d 821 (2021).

On January 7, 2022, the plaintiff filed a postjudgment motion to implement court orders. In that motion, the plaintiff stated that the parties disagreed as to how to implement the court's orders regarding counsel fees.[2] The plaintiff's counsel, Attorney Carol A. Brigham, also filed a motion for advice for communicating directly

[1] Specifically, the defendant claimed "that the trial court (1) erred by failing to identify the presumptive child support obligation under the child support guidelines . . . before entering a support order based on a deviation, (2) erred in calculating the parties' incomes, (3) erred in awarding the plaintiff a lump sum property settlement, (4) abused its discretion in awarding appellate attorney's fees to the plaintiff, and (5) abused its discretion in entering its custodial orders." *Anketell* v. *Kulldorff*, 207 Conn. App. 807, 810, 263 A.3d 972, cert. denied, 340 Conn. 905, 263 A.3d 821 (2021).

[2] In October, 2021, the trial court granted the plaintiff's postjudgment motion for attorney's fees. Although the defendant appealed from that judgment, he withdrew his appeal on December 13, 2021.

with the defendant, who had filed a self-represented appearance " 'in addition to' " his attorney's appearance. At a February 14, 2022 hearing on those motions, Brigham informed the court that the communication issue had been resolved, and she also addressed the division of the defendant's retirement funds. Brigham explained: "I believe [the defendant] has submitted the original paperwork. I believe [the plaintiff] has provided her Social Security number, and I believe both parties need to fund . . . the [QDRO] service, and [they] need to provide any other information that the company would need. So, I think at this point we just want to ensure that both parties fund this . . . immediately, actually. I think my client believes they both owe $975, and I'm sure the service will not undertake the preparation until the payment is made. So, I would suggest they both pay within a week."

In response, the defendant stated: "So, this was delayed because of the communication issues between me and . . . Brigham as soon as it was agreed to use this . . . service. I was the one who filled in all the information that they needed, except I didn't remember [the plaintiff's] Social Security number, so they were requesting to get that Social Security number, but I'm . . . glad that she has provided [it] at this time. They haven't sent a bill yet. As soon as they send a bill, I will pay my part of it. There's one issue . . . I thought they were charging per company, but they [are] actually charging per retirement account, and my retirement is split into more than half a dozen different accounts, so I specified three accounts, but I think they are going to—I'm going to revise that. I'll send them an email later today. So there [are] only two accounts. . . . I don't have enough money in one account. I can't do one account, so I have to do two. But that will save both me and [the plaintiff] $325 each. So, I'm going to

make that change to save a little bit of money for both of us."

On March 14, 2022, the plaintiff filed a postjudgment motion requesting that the court clarify whether the $175,000 award "was to be adjusted for gains and losses until the time of transfer" and that the court "award the plaintiff statutory interest from December 3, 2018, to the present if the QDRO allocation is not adjusted for gains and losses . . . ." The defendant filed a response to that motion on June 7, 2022, stating that he had "done all the required paperwork and paid the fee. The transfer can proceed as soon as [the plaintiff] and her attorney give the green light. . . . My understanding is that statutory interest is a concept used for delinquent debts. I am not and have not been delinquent. The retirement transfer was put on hold during the appeal process, governed by judicial rules beyond my control. Subsequent delays were due to (i) . . . [the] unwillingness [of the plaintiff's counsel] to directly communicate with me as a [self-represented] party, increasing the time it took to agree on a company to execute the QDRO, and (ii) this subsequent court motion, which has stalled the transfer process. . . .

"Brigham said that there [is] a Connecticut statute in support of her claim for statutory interest. . . . If she had sent me a copy of such a statute, and it says what she claims, I would have paid the required amount upon reading it. Since she did not send me a copy, I do not know if it exists or if she was bluffing to intimidate me and/or impress the judge.

"[Brigham] is asking for statutory interest not only for the Appellate Court period, but also for the subsequent delays caused by her. During [that] delay . . . the stock market has gone down, and the unnecessary . . . delay in the retirement transfer has therefore caused a financial loss to me and my children. If there is to be an

adjustment, the natural thing would be for me to be compensated for that unnecessary loss . . . .''

The court held an evidentiary hearing on the plaintiff's motion for clarification on June 8, 2022, and Attorney Kenneth Caisse appeared on behalf of the plaintiff. Both parties were placed under oath at the beginning of the hearing. Caisse explained that the transfer from the defendant's retirement accounts had not occurred because the company that the parties hired to process the QDROs ''would not proceed until there was a resolution of this interest [issue] so that they could have a proper amount, or calculation, to be able to make the transfers. So, they're waiting on a resolution of this particular motion. I would report to the court that at this point what we're primarily requesting is the statutory interest, which is 10 percent, which the court has authority to do pursuant to [§] 37-3a . . . .'' Shortly thereafter, the following exchange occurred between the court and the defendant:

''The Court: . . . [D]o you want to be heard before Attorney Caisse argues?

''[The Defendant]: Yes, please. First of all, I submitted a response to the motions. I don't know if Your Honor has read that.

''The Court: I did read that.

''[The Defendant]: Thank you. I also would like to, just for the record, since I'm now under oath, to just state that all those things are truthful, and that—so I want to do that under oath. So, I've been doing that here by doing that. I would also like to have a copy of the Connecticut statute. I know that Attorney Brigham mentioned that in March I think. And I don't know why I haven't received . . . a copy of [it]. I know you mentioned the number, but I didn't . . . have time to write down the number.''

After the defendant submitted a copy of an email that he had sent to Caisse explaining why he was unable to prepare a financial affidavit, he explained that he would need more time to go through his retirement account records. At that point, the court asked Caisse: "[I]f I grant . . . [the plaintiff's] request for the statutory interest then that would obviate the need for [the defendant] to provide those documents. That would solve the problem, would it not?" Caisse responded affirmatively, and the court proceeded to hear argument on the plaintiff's request for statutory interest.

Caisse argued that "the court intended that [the plaintiff] be able . . . to do what she wants with [the retirement funds as] of December, 2018.

* * *

"If she had, she could have invested—maybe she gets . . . 15 percent during this period of time . . . . Or she could have used it for whatever other reason she had. . . . But she hasn't been able to do that." Caisse also provided the court and the defendant with copies of the cases he cited in support of an award of postjudgment interest pursuant to § 37-3a.

After hearing from the parties as to other issues unrelated to the present appeal, the court noted that it would issue a ruling clarifying its decision and addressing the plaintiff's request for postjudgment interest. At that point, the defendant stated: "So, I have no opportunity to read the [cases] provided and the Connecticut statute, I guess?" The court responded, "I'm not ruling [now], so anything that you want to submit between now and the ruling is fine."[3]

On June 13, 2022, the defendant filed another response to the plaintiff's motion for clarification, in

[3] Although Caisse urged the court "not to accept any further writings from [the defendant] regarding [the postjudgment interest] issue," the court did not alter its instruction to the defendant.

which he argued that "[t]he retirement transfer did not become payable until after the appeal was denied on November 30, 2021. I have submitted all the paperwork required for the transfer. Delays in 2022 are due to the plaintiff and her previous attorney, as explained in [his June 7, 2022 response to the plaintiff's motion for clarification]." After addressing the case law cited by Caisse at the June 8, 2022 hearing, the defendant noted that Caisse had "argued for statutory interest based on an increase in [the defendant's] retirement savings from 2018 to 2021. Much of this increase was due to contributions that I made to my retirement accounts after the divorce was finalized." The defendant did not submit any documents in support of his claims in that response.

On September 27, 2022, the court issued a memorandum of decision granting the plaintiff's motion for clarification and request for postjudgment interest. In that decision, the court explained that, "[a]lthough the adjustment based on gains and losses was stated to be permissive, the period contemplated by the court included only the time between the conclusion of the September, 2018 trial and the December, 2018 issuance of its final orders. The orders of the judgment were stayed because of the then pending appeal and the funds were not and have not been transferred now that . . . the court's judgment [has] been affirmed in its entirety. The plaintiff argues that application of § 37-3a (a) would be an appropriate means of addressing the protracted delay in transferring the funds. The defendant disagrees, [arguing] that the funds were not wrongfully withheld and that any gains or losses could be ascertained to arrive at a figure. It is undisputed that no funds have been transferred by QDRO.

* * *

"The defendant . . . withheld the transfer of funds awarded to the plaintiff . . . on the basis of a good

faith belief that he was legally entitled to retain the funds while filing various appeals from the judgment. The defendant's appeal of the judgment effectively served to stay the transfer of the funds and deprived the plaintiff of her use of the funds for forty-five months.

"Pursuant to § 37-3a, the court has the discretion to fashion an equitable and appropriate remedy and may award postjudgment interest to the plaintiff. . . . In the present action, the remedy of postjudgment interest in accordance with § 37-3a would serve to compensate the plaintiff for the detention of $175,000, which was payable on December 3, 2018, the date that the court dissolved the marriage of the parties. Considering the protracted history of this case, it would not be an abuse of discretion for the court to compensate the plaintiff for the inequity of having been deprived of the funds during this extended period of time. . . .

"The court determines that it may award the plaintiff no more than 10 percent interest, annually, beginning from December 3, 2018, through the date that the court issues its decision on the plaintiff's motion for clarification and request for statutory interest.

* * *

"As of the issuance of these orders, the court finds that the defendant has wrongfully withheld the $175,000 due and payable by QDRO to the plaintiff for a period of forty-six months. Accordingly, the court will award [5 percent] statutory, annual interest to the plaintiff pursuant to § 37-3a (a). This will occasion an additional payment of $8750 for each of the three full years that the funds were not paid and an additional $6800 for the unpaid months of the fourth year. The total additional amount is $33,050. The accrual of interest will cease as of the issuance of this order. . . .

"The defendant is to transfer $175,000 to the plaintiff within fifteen (15) days of the issuance of this order

and the additional $33,050 is to be transferred within thirty (30) days. If there is delay beyond that which is necessary to prepare the QDROs, interest will again begin to accrue on the 31st day beyond the issuance of these orders to terminate only upon the execution of the QDROs." (Citations omitted.) This appeal followed.[4]

On appeal, the defendant does not challenge the court's award of $26,250 in postjudgment interest for the three years during which his appeal from the dissolution judgment remained pending. Instead, he claims that the court improperly awarded the plaintiff interest for the period thereafter. Specifically, he claims that the court improperly awarded (1) $6800 in postjudgment interest for the ten month period from December, 2021, to September, 2022, and (2) 5 percent interest after October, 2022.[5]

[4] While this appeal was pending, the parties executed two QDROs assigning the plaintiff $208,050 from two of the defendant's retirement accounts: $52,600 from one account and $155,450 from a second account. The first was signed by the parties in January, 2023, and the second was signed by the defendant in May, 2023, and by the plaintiff in June, 2023. After a hearing on August 31, 2023, the court, *Chadwick, J.*, signed both QDROs on September 1, 2023.

[5] The defendant also asserts that (1) Caisse "lied in court" regarding the growth rate of the defendant's retirement accounts in arguing for 10 percent statutory interest and (2) "there has been a pattern of false accusations and perjury . . . ." (Citation omitted.) Neither claim warrants much discussion.

First, any claim predicated on the actual growth rate of the retirement accounts necessarily fails given that the court awarded the plaintiff interest pursuant to § 37-3a. Indeed, the court expressly stated that granting the plaintiff's request for statutory interest "would obviate the need for [the defendant] to provide" records of his retirement accounts. Second, the alleged "pattern of false accusations and perjury" is unrelated to the issue of postjudgment interest. The defendant identifies three incidents that occurred more than three years before the June 8, 2022 hearing on the plaintiff's motion for clarification. Each incident involved child support payments, which are not at issue in this appeal. Insofar as the defendant suggests that those incidents provide a basis for reversing the court's award of postjudgment interest, we are not persuaded. Accordingly, we limit our discussion to the defendant's primary claims challenging the only judgment from which the defendant has appealed.

We begin our analysis with the applicable standard of review and relevant legal principles regarding awards of interest pursuant to § 37-3a. "A decision to [award] postjudgment interest is primarily an equitable determination and a matter lying within the discretion of the trial court. . . . 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 properly applied the law and reasonably could have reached the conclusion that it did." (Citation omitted; internal quotation marks omitted.) *Customers Bank* v. *Tomonto Industries, LLC*, 156 Conn. App. 441, 452, 112 A.3d 853 (2015); see also *Tilsen* v. *Benson*, 347 Conn. 758, 796, 299 A.3d 1096 (2023) ("[a]n appellate court will not disturb a trial court's orders in domestic relations cases unless the court . . . could not reasonably conclude as it did, based on the facts presented" (internal quotation marks omitted)).

Pursuant to statute, "interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions . . . as damages for the detention of money after it becomes payable." General Statutes § 37-3a (a). " 'Although § 37-3a does not use the word "wrongful" to describe a compensable detention of money under the statute, [our Supreme Court] has long employed that term to describe such a detention. . . . [The] earliest cases interpreting § 37-3a reveal that the term "wrongful" invariably was used interchangeably with "unlawful" to describe the narrow category of claims for which prejudgment interest was allowed under the statute, namely, claims to recover money that remained unpaid after it was due and payable. . . . Consistent with this precedent, [our Supreme Court] . . . clarified that, under § 37-3a, proof of wrongfulness

is not required "above and beyond proof of the underlying legal claim." . . . In other words, the wrongful detention standard of § 37-3a is satisfied by proof of the underlying legal claim, a requirement that is met once the plaintiff obtains a judgment in his favor on that claim.' " *Paniccia* v. *Success Village Apartments, Inc.*, 215 Conn. App. 705, 731, 284 A.3d 341 (2022); see also *Marulli* v. *Wood Frame Construction Co., LLC*, 154 Conn. App. 196, 206, 107 A.3d 442 (2014), cert. denied, 315 Conn. 928, 109 A.3d 923 (2015).

"The trial court's discretion in awarding interest is quite broad, and the court may consider whatever factors may be relevant to its determination." (Internal quotation marks omitted.) *Salce* v. *Wolczek*, 314 Conn. 675, 696–97, 104 A.3d 694 (2014). "A court's discretion must be informed by the policies that the relevant statute is intended to advance. . . . [T]he policy behind [§ 37-3a] is to compensate the successful party for the loss of the use of the money that he or she is awarded from the time of the award until the award is paid in full." (Internal quotation marks omitted.) *Marulli* v. *Wood Frame Construction Co., LLC*, supra, 154 Conn. App. 207.

The defendant first claims that the court improperly awarded the plaintiff $6800 in postjudgment interest because "[i]t was the plaintiff and [her] attorneys who did not do what was necessary for her to receive those funds." We are not persuaded.

As previously noted in this opinion, in his response to the plaintiff's motion for clarification and request for statutory interest, the defendant argued that the delays beginning in 2022 "were due to (i) . . . [the] unwillingness [of the plaintiff's counsel] to directly communicate with me as a [self-represented] party, increasing the time it took to agree on a company to execute the QDRO, and (ii) *this subsequent court motion*, *which*

has stalled the transfer process. . . . If [the plaintiff's counsel] had sent me a copy of [§ 37-3a], and it says what she claims, *I would have paid the required amount upon reading it*. Since she did not send me a copy, I do not know if it exists or if she was bluffing to intimidate me . . . . [The plaintiff's counsel] is asking for statutory interest not only for the Appellate Court period, but also for the subsequent delays caused by her." (Emphasis added.)

On appeal, however, the defendant argues that, although "there was a disagreement about the plaintiff's request for 10 percent in statutory interest, there was no reason to hold up the transfer of the $175,000, about which there was no disagreement. At the hearing, the plaintiff's attorney stated that the QDRO company '*would not proceed until there was a resolution of this interest*,' but they would have moved ahead with the $175,000 transfer if both parties agreed and paid the fee." (Emphasis in original.)

Initially, we note that, although the defendant claims on appeal that there was "no reason to hold up the transfer of the $175,000," the plaintiff's motion for clarification indicated that the parties, in fact, disagreed as to whether that amount was subject to adjustment for gains or losses. More importantly, during the June 8, 2022 evidentiary hearing on the plaintiff's motion for clarification, when the defendant had an opportunity to address the trial court immediately after the plaintiff's counsel stated that the QDRO company "would not proceed" with the transfer, he neither claimed that the plaintiff had prevented the execution of the QDROs nor sought to present any evidence contradicting the statement of the plaintiff's counsel. In fact, despite being provided with additional time after that hearing to respond to the plaintiff's request for postjudgment interest, the defendant again neither addressed counsel's explanation as to why the transfer had not

occurred nor sought to present evidence to support his claim that the plaintiff was responsible for the delay after November 30, 2021. After forgoing those opportunities to present evidence in support of his claim, the defendant now attempts to do so on appeal.

In the appendix to his appellant's brief, the defendant includes documents that were not presented to the trial court. Specifically, he includes copies of emails exchanged among the parties, the plaintiff's counsel, and the company that the parties hired to execute the QDROs.[6] The defendant concedes that he is relying on evidence that was not presented at the June 8, 2022 hearing "with respect to evidence that the plaintiff and [her] attorneys are responsible for the delay after December, 2021," but contends that, "[i]f an attorney is dishonest, courts should allow subsequent evidence about that." In other words, the defendant asks this court to conclude, on the basis of evidence not presented to the trial court, that the plaintiff "refused to accept the funds" and, therefore, that the court abused its broad discretion in awarding postjudgment interest pursuant to § 37-3a. We decline to do so.

This court cannot find facts and, therefore, "we cannot consider evidence not available to the trial court to find adjudicative facts for the first time on appeal." *State* v. *Edwards*, 314 Conn. 465, 478, 102 A.3d 52 (2014); see also *Parisi* v. *Parisi*, 315 Conn. 370, 385, 107 A.3d 920 (2015) ("[a]n appellate court cannot find facts or draw conclusions from primary facts found, but may only *review* such findings to see whether they might be legally, logically and reasonably found" (emphasis in original; internal quotation marks omitted)). Accordingly, because the documents on which the defendant

[6] Some of the emails were exchanged before the June 8, 2022 hearing, but many of them were not exchanged until after the court issued its memorandum of decision in September, 2022.

relies were not before the trial court, we will not consider them on appeal. See, e.g., *Rainbow Housing Corp.* v. *Cromwell*, 340 Conn. 501, 523 n.12, 264 A.3d 532 (2021) ("[t]his evidence was not presented to the trial court and cannot be considered for the first time on appeal"); *Cunningham* v. *Planning & Zoning Commission*, 90 Conn. App. 273, 278–79, 876 A.2d 1257 (granting motion to strike references in party's brief to conservation plan "[b]ecause the conservation plan was not in evidence before the trial court when it rendered its judgment"), cert. denied, 276 Conn. 915, 888 A.2d 83 (2005); *DiBello* v. *Barnes Page Wire Products, Inc.*, 67 Conn. App. 361, 374–75, 786 A.2d 1234 (2001) ("[b]ecause the defendant's claim is predicated entirely on a document extraneous to the record, we cannot consider it"), cert. granted, 260 Conn. 915, 796 A.2d 560 (2002) (appeal withdrawn June 26, 2002).

Having reviewed the evidence in the record, we conclude that the court correctly applied the law and reasonably concluded as it did. The court properly found that the defendant wrongfully withheld the $175,000 beginning on December 3, 2018, and that the wrongful detention continued until the court issued its decision in September, 2022. The court reasoned that, "[c]onsidering the protracted history of this case, it would not be an abuse of discretion for the court to compensate the plaintiff for the inequity of having been deprived of the funds during this extended period of time." Such reasoning is consistent with the statutory purpose of postjudgment interest, which "is not to punish defendants but, rather, to compensate plaintiffs for the loss of the use of their money, after the fact finder has determined that the money is due and owing, during the pendency of any appeals." *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, 310 Conn. 38, 60 n.18, 74 A.3d 1212 (2013).

To be sure, the court could have declined to award the plaintiff interest if it found that the plaintiff refused to accept the $175,000 at some earlier date. See, e.g., *Gebbie* v. *Cadle Co.*, 49 Conn. App. 265, 277–78, 714 A.2d 678 (1998) (holding that trial court properly declined to award defendant interest on payments due from earlier date given "the pivotal fact that the defendant refused to accept [those] payments"). The defendant, however, provided no basis for the court to make such a finding and, instead, argued that the plaintiff and her attorneys caused the delay by filing the postjudgment motion for clarification and request for statutory interest. Given the defendant's arguments before the trial court, and considering the evidence in the record, we cannot conclude that the court abused its discretion in finding that the wrongful detention continued until the court issued its decision on the plaintiff's postjudgment motion. See, e.g., *Bruno* v. *Bruno*, 177 Conn. App. 599, 613, 176 A.3d 104 (2017) ("[a]lthough an earlier date may have been within the court's discretion, we cannot say that the court abused its discretion").

Finally, the defendant claims that the court improperly ordered that, "[i]f there is delay beyond that which is necessary to prepare the QDROs, interest will again begin to accrue on the 31st day beyond the issuance of these orders to terminate only upon the execution of the QDROs." In his principal brief on appeal, the defendant outlines the events that transpired in the months after the court's September 27, 2022 decision and argues that he is not responsible for the ensuing delay in executing the QDROs. According to the defendant, the court awarded the "plaintiff statutory interest into the future without knowing whether the plaintiff or the defendant might be responsible for future delays." We disagree.

The court did not award the plaintiff interest for any time after September, 2022. Instead, the court ordered

that "[t]he accrual of interest will cease as of the issuance of this order" and that 5 percent interest would accrue again *if* there was any unnecessary delay in the execution of the QDROs. There is no question that the court has the authority to issue such an order to compensate the plaintiff for any unnecessary delay in satisfying the judgment. Nevertheless, as the plaintiff's counsel conceded during oral argument before this court, that order is not self-executing, and the trial court would need to make a finding that the defendant was responsible for the unnecessary delay in executing the QDROs. At this point, however, the court has not been asked to make that determination, and the defendant has not been ordered to pay interest for any period after the court's September, 2022 decision.[7] Accordingly, we reject the defendant's claim.

The judgment is affirmed.

In this opinion the other judges concurred.

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[7] Of course, if the court orders the defendant to pay interest for that period, the defendant may appeal from the judgment awarding the plaintiff additional interest.