CITY OF WATERBURY *v.* JANET BRENNAN ET AL.
(AC 46178)

Elgo, Moll and Cradle, Js.

Syllabus

The defendant, in her individual capacity and as the executrix of the estate of the decedent, the former fire chief of the plaintiff city, appealed from the judgment of the trial court rendered in favor of the plaintiff. The defendant claimed that the trial court improperly granted the plaintiff's motion for summary judgment and improperly denied her motion for summary judgment. *Held*:

The trial court properly granted the plaintiff's motion for summary judgment, concluding that there was no genuine issue of material fact that the decedent, under the terms of his employment contract, was entitled to receive pension benefits under the collective bargaining agreement between the plaintiff and the plaintiff's municipal administrators association, rather than the collective bargaining agreement between the plaintiff and the firefighters union.

In light of the record and the plain and unambiguous language in the decedent's employment contract, this court concluded that the trial court properly denied the defendant's motion for summary judgment as no genuine issue of material fact existed as to whether the plaintiff's retirement board possessed authority under the city charter to unilaterally confer a pension benefit on the decedent pursuant to the collective bargaining agreement with the firefighters union.

The trial court did not abuse its discretion in denying the defendant's motion for reargument and reconsideration on the ground that the defendant did not properly preserve her claim that the plaintiff was not permitted to utilize the decedent's pension benefits to offset heart and hypertension benefits due to him, and the defendant did not demonstrate that the trial court committed plain error.

Argued February 5—officially released September 24, 2024

Procedural History

Action seeking, inter alia, a judgment declaring that no further workers' compensation payments are due to the defendants, and for other relief, brought to the Superior Court in the judicial district of Waterbury, where the court, *Roraback*, *J.*, denied the defendants' motion for summary judgment, granted the plaintiff's motion for summary judgment, and rendered judgment thereon, from which the defendants appealed to this court. *Affirmed.*

Robert C. Lubus, *Jr.*, with whom, on the brief, was *Andrew S. Marcucci*, for the appellants (defendants).

Daniel J. Foster, corporation counsel, for the appellee (plaintiff).

Opinion

ELGO, J. In this action for declaratory relief, the defendant Janet Brennan[1] appeals from the judgment of the trial court rendered in favor of the plaintiff, the city of Waterbury (city). On appeal, the defendant claims that the court improperly denied her motion for summary judgment and, relatedly, that it improperly granted the motion for summary judgment filed by the city. We affirm the judgment of the trial court.

The backdrop to this appeal is detailed in *Brennan* v. *Waterbury*, 331 Conn. 672, 207 A.3d 1 (2019) (*Brennan I*). The city hired the decedent, Thomas Brennan,

[1] The city brought this action against Janet Brennan in both her individual capacity and as executrix of the estate of her late husband, Thomas Brennan.

as its fire chief on November 8, 1991. Id., 675. Following a heart attack in 1993, the decedent filed a claim for heart and hypertension benefits pursuant to General Statutes § 7-433c. Id., 676. In December, 1993, the workers' compensation commissioner (commissioner)[2] issued a finding and award, concluding that the decedent had sustained a compensable injury and ordering the city to pay all benefits to which he " 'is or may become entitled.' " Id. The city and the decedent thereafter attempted to no avail to reach an agreement on the payment of benefits. Id. While those negotiations were ongoing, the decedent elected to take disability retirement in December, 1995; id.; and the city's retirement board (board) authorized a 75 percent disability pension.[3] Id., 677 n.4. Although the city made payments to the decedent pursuant to § 7-433c in July, 1997, and June, 1999,[4] the decedent and the city never entered into a full and final settlement of the heart and hypertension claim. Id., 677.

The decedent died on April 20, 2006. Id., 678. As the court noted in *Brennan I*, "[i]t was not until 2013 that

[2] General Statutes § 31-275d (a) (1), effective October 1, 2021, provides in relevant part that, "[w]henever the words 'workers' compensation commissioner,' 'compensation commissioner,' or 'commissioner,' denote a workers' compensation commissioner in [several enumerated] sections of the general statutes, [including sections contained in the Workers' Compensation Act, General Statutes § 31-275 et seq.] the words 'administrative law judge' shall be substituted in lieu thereof . . . ."

Because many of the events underlying this appeal occurred prior to October 1, 2021, in this opinion we use the terms workers' compensation commissioner or commissioner.

[3] In its response to the defendant's requests for admission, the city admitted that "the annual pay of [the decedent] at the time of his retirement was $86,690.78" and that "[t]he disability pension granted to [the decedent] was in the amount of $65,018.04." It is undisputed that the decedent received monthly pension payments in the amount of $5418.17 from the time of his retirement on December 30, 1995, until his death on April 20, 2006.

[4] The record before us indicates that the city made lump sum payments toward the decedent's § 7-433c claim in the amounts of $59,200.20 in 1997 and $17,982.12 in 1999.

the decedent's attorney sought to finalize the decedent's permanent partial disability claim under § 7-433c." Id. The decedent's attorney subsequently moved to substitute the defendant as party claimant. The commissioner granted that motion and, in a decision dated December 7, 2015, ordered permanent partial disability benefits of 80 percent payable to her, less any advance payments made to date. See footnote 4 of this opinion.

The city commenced the present action by service of process on December 24, 2015. The gist of its complaint was that, due to a pension offset provision in the 1967 Waterbury city charter (city charter), no further heart and hypertension payments were due to the defendant.[5] The city thus sought a declaratory judgment that (1) "[p]ursuant to *Russo* [v. *Waterbury*, 304 Conn. 710, 41 A.3d 1033 (2012)], the city charter and [the decedent's] employment contract, any benefits allegedly due to [the decedent] under § 7-433[c] and the Workers' Compensation Act would have resulted in an offset of the defendant['s] or [the decedent's] pension"; (2) "[t]he offset applies to all amounts in contention, the 'net' amount in contention is zero and the city does not have to pay the defendant any additional benefits as a matter

[5] Section 2761 of the city charter contains an offset provision, which provides: "No payments of retirement, disability or death benefits shall be allowed or paid under the provisions of this act so long or for such period as payments are being made by [the city] under the provisions of the General Statutes relating to workers' compensation except when such payments would exceed the payments made under the provisions of the Workers' Compensation Act. In such cases the pensioner shall receive, in addition to his payments under the Workers' Compensation Act the difference between that amount and the amount which he would have received under the provisions of this act."

As our Supreme Court observed in *Russo* v. *Waterbury*, 304 Conn. 710, 714, 41 A.3d 1033 (2012), § 2761 of the city charter "allows the city to offset the . . . pension benefits [of municipal employees] based on their heart and hypertension benefits" under § 7-433c.

All references to the city charter herein are to the 1967 city charter unless otherwise indicated.

of law"; and (3) "[t]he judgment for benefits issued by the [commissioner] would result in a double recovery explicitly forbidden by the [city charter] and *Russo*, therefore the city does not have to pay the defendant any monies as a matter of law . . . ."[6]

The defendant subsequently filed a request to revise the city's complaint in multiple respects. The city filed an objection to that request, which the court sustained. The defendant also served two sets of requests for admission on the city in 2019 and 2021; copies of the city's responses thereto were filed with the court. At no time did the defendant answer the city's complaint.

On April 21, 2021, the city filed a motion for summary judgment, which was accompanied by a memorandum of law and several exhibits, including copies of the decedent's employment contract with the city (employment contract), the affidavit of Cynthia Van Deursen, a benefits analyst with the city, the affidavit of Daniel J. Foster, an attorney with the city, and collective bargaining agreements between the city and both the Waterbury Municipal Administrators Association[7] and the Waterbury Firefighters Association, Local 1339 (union). On September 29, 2021, the defendant filed an objection to that motion, as well as her own motion for summary judgment.

The primary disagreement between the parties, as detailed in their respective motions for summary judgment, concerned precisely which collective bargaining agreement governed the decedent's pension with the city. After hearing argument from the parties, the court

[6] The city also sought injunctive relief "prohibiting the payment of any benefits to the defendant following the ruling of the [commissioner] until [its request for] declaratory relief has been decided" by the trial court. That injunctive relief is not at issue in this appeal.

[7] In her affidavit, Van Deursen stated that the "Waterbury Municipal Administrators Association" was a labor union and was "also known as the 'Management Union.' "

rendered summary judgment in favor of the city. In so doing, the court concluded that no genuine issue of material fact existed as to whether the decedent, under the terms of his employment contract, was entitled to receive pension benefits under the collective bargaining agreement between the city and the Waterbury Municipal Administrators Association (administrator agreement),[8] rather than the collective bargaining agreement between the city and the union (firefighter agreement).[9] In addition, the court rejected the defendant's claim that certain actions on the part of the board created an issue of fact as to whether the decedent was entitled to the benefits set forth in the firefighter agreement.

With respect to the city's obligation to pay workers' compensation benefits pursuant to § 7-433c, the court noted, in light of the undisputed evidence of pension payments made to the decedent; see footnote 3 of this opinion; that, if the city "is permitted to offset pension payments . . . against any as of yet unpaid workers' compensation benefits to which [the decedent] might lawfully be entitled, the offsets would exceed the amounts due so as to relieve the city of any liability for payments on account of workers' compensation awards." The court then concluded that the defendant could not "escape [the] offset rules reducing amounts payable under workers' compensation awards by amounts that are received by way of pension payments" pursuant to the terms of the decedent's employment

[8] The record contains copies of two collective bargaining agreements between the city and the Waterbury Municipal Administrators Association, which covered the time periods of 1989–1993 and 1994–1998, respectively. Because there is no material difference in those agreements relevant to this appeal, for convenience we refer to them as the administrative agreement.

[9] The record contains copies of three collective bargaining agreements between the city and the union, which covered the time periods of 1989–1992, 1992–1995, and 1995–1999, respectively. Because there is no material difference in those agreements relevant to this appeal, for convenience we refer to them as the firefighter agreement.

contract. The court thus granted the city's motion for summary judgment and denied the defendant's motion.

On July 11, 2022, the defendant filed a motion seeking reargument and reconsideration, to which the city filed an objection. The court heard argument from the parties and thereafter denied that motion, and this appeal followed.

As a preliminary matter, we note the well established standard that governs our review of a trial court's decision to grant a motion for summary judgment. "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 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. . . . [T]he 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. . . . Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary." (Citations omitted; internal quotation marks omitted.) *Lucenti* v. *Laviero*, 327 Conn. 764, 772–73, 176 A.3d 1 (2018).

I

On appeal, the defendant claims that the court improperly concluded that no genuine issue of material fact existed as to whether the decedent was entitled to

receive pension benefits under the administrator agreement, rather than the firefighter agreement. We disagree.

A

As the court noted in its decision, it is undisputed that, when the decedent was hired as the city's fire chief in 1991, he had not previously been employed by the city and had never been a member of the union.[10] At the time of his hire, the decedent entered into the employment contract with the city.[11] That employment contract provides in relevant part that the decedent "shall be paid an annual salary commencing November 4, 1991 at $65,000"; that he "shall be entitled to twenty days vacation"; that he "shall be entitled to sick leave as Management personnel are entitled to"; and that he "shall be entitled to all insurance . . . benefits and all other fringe benefits, *including pension if eligible, currently available to members of the Waterbury Municipal Administrators Association*." (Emphasis added.) The employment contract further provides that "[t]his Contract embodies the whole agreement between [the city] and [the decedent] and there are no inducements, promises, terms, conditions or obligations made or entered into by either party other than those contained herein. . . . This Contract may not be changed except by a written Agreement signed by the Mayor of [the city] and [the decedent]."[12]

"Although ordinarily the question of contract interpretation, being a question of the parties' intent, is a

[10] The record indicates that the decedent previously had been employed as a firefighter in New York City before serving as an editor at Fire Department Magazine for approximately nine years.

[11] A copy of the employment contract was appended to the city's memorandum of law in support of its motion for summary judgment.

[12] The record also contains an addendum to the employment contract dated January 6, 1995, which extended its term for an additional three years and increased the decedent's annual salary. Both the decedent and the city's mayor signed that addendum.

question of fact . . . [w]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law. . . . [T]he interpretation and construction of a written contract present only questions of law, within the province of the court . . . so long as the contract is unambiguous and the intent of the parties can be determined from the agreement's face. . . . Contract language is unambiguous when it has a definite and precise meaning about which there is no reasonable basis for a difference of opinion. . . . A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity, and words do not become ambiguous simply because lawyers or laymen contend for different meanings. . . . When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract . . . ." (Citations omitted; internal quotation marks omitted.) *Christian* v. *Gouldin*, 72 Conn. App. 14, 20, 804 A.2d 865 (2002).

The employment contract plainly and unambiguously provides that the decedent may be eligible for the pension "currently available to members of the Waterbury Municipal Administrators Association." The employment contract also states that it embodied "the whole agreement" between the city and the decedent and may only be changed by written agreement of those parties. That contract contains no reference whatsoever to either the union or the firefighter agreement. Moreover, the decedent and the city's mayor never entered into a written agreement to change the fringe benefits provision of the employment contract, which expressly provides a pension benefit to the decedent pursuant to the administrator agreement.[13] In light of the plain and

[13] We reiterate that the administrator agreement is the collective bargaining agreement between the Waterbury Municipal Administrators Association and the city. See footnote 8 of this opinion.

unambiguous language contained in the employment contract, we agree with the court's conclusion that the decedent's employment with the city entitled him to a pension pursuant to the administrator agreement.

B

The defendant nevertheless argues that (1) the decedent qualified for a pension under the firefighter agreement and (2) the board awarded him such a pension. Neither contention has merit.

1

As the court observed in its decision, the decedent was never a member of the Waterbury Fire Department or the union prior to being hired as fire chief by the city. Despite that undisputed fact, the defendant maintains that the decedent qualified for a pension under the firefighter agreement.

"It is axiomatic that a collective bargaining agreement is a contract." *D'Agostino* v. *Housing Authority*, 95 Conn. App. 834, 838, 898 A.2d 228, cert. denied, 280 Conn. 905, 907 A.2d 88 (2006). For that reason, "[p]rinciples of contract law guide our interpretation of collective bargaining agreements." *Honulik* v. *Greenwich*, 293 Conn. 698, 710, 980 A.2d 880 (2009); see also *Christian* v. *Gouldin*, supra, 72 Conn. App. 20.

Article I, § 1, of the firefighter agreement recognizes the union "as the sole and exclusive bargaining agent for all full-time permanent uniformed and investigatory employees of the Waterbury Fire Department . . . ." It then specifies exactly who qualifies as an "employee," as that term is used in the firefighter agreement, stating: "The term 'employees or employee' as used in this Agreement shall refer only to those personnel who occupy positions whose job specifications required that the work be performed by uniformed and/or investigatory members of the Waterbury Fire Department and

who are covered by the bargaining unit referred to herein; which bargaining unit, the parties agree, does *not* include the following positions and/or classifications: Fire Chief . . . .'' (Emphasis added.) That language plainly and unambiguously provides that the fire chief is neither an employee nor a member of the union for purposes of the firefighter agreement between that bargaining unit and the city.

The defendant nonetheless argues that, read together, article I, § 4, and article XXXIII, § 3 (1), of the firefighter agreement, compel the conclusion that the fire chief is considered an employee who is eligible for a pension under that agreement. We do not agree. Article XXXIII is the pension portion of the firefighter agreement. Section 3 (1) thereof provides: ''The term 'employee' shall be defined per Article I, [§] 1, including Article I, [§] 4 of this Agreement . . . .'' We already have concluded that the fire chief is categorically not an employee under article I, § 1. The remaining question is whether the decedent, in his capacity as fire chief, qualifies as an employee under article I, § 4.

Article I, § 4, of the firefighter agreement provides in relevant part that ''[t]he parties . . . agree that for the purposes of [Article XXXIII], any member promoted to the rank-classification of Fire Chief . . . may, if he so elects, receive the pension benefits prescribed by, and his pension contribution will be governed by Article XXXIII hereof.'' For multiple reasons, we conclude that the decedent does not meet the qualifications of that section. First, the phrase ''member promoted,'' as used therein, plainly refers to someone who previously was a member of the Waterbury Fire Department. See Firefighter Agreement, art. I, § 1 (explaining that firefighter agreement pertains to ''personnel who occupy positions whose job specifications required that the work be performed by uniformed and/or investigatory members of the Waterbury Fire Department''). It is undisputed that

the decedent never was a member of the Waterbury Fire Department prior to his hiring as fire chief.[14] Second, the decedent was not a member who was promoted to the rank of fire chief; the record unequivocally indicates that he was a magazine editor for nine years prior to his hiring by the city. See footnote 10 of this opinion.

Third, article I, § 4, provides that any member promoted to the position of fire chief "may, if he so selects, receive the pension benefits prescribed by, and his pension contribution will be governed by Article XXXIII hereof." That provision plainly and unambiguously requires members promoted to the position of fire chief to (1) make a selection to receive a pension under the firefighter agreement and then (2) make pension contributions in accordance with the requirements of article XXXIII. In moving for summary judgment and opposing the city's motion, the defendant furnished no evidence indicating that the decedent, following his hiring as fire chief by the city, made a selection to receive a pension under the firefighter agreement at any time prior to filing for retirement in 1995.

There likewise is no evidence in the record before us that the decedent made pension contributions in accordance with the requirements of article XXXIII, as expressly required by article I, § 4, of the firefighter agreement. To the contrary, the evidence in the record demonstrates that the decedent, in his four years of employment as fire chief, made pension contributions at rates of 5 percent and 6 percent, consistent with the requirements of the administrative agreement.[15] Article

[14] In his affidavit submitted in support of the city's motion for summary judgment, Foster averred that "[a] review of all documents that could be located with reasonable effort relating to [the decedent] found no documents indicating that he held any position of employment with [the city] or its fire department other than fire chief." The defendant does not argue otherwise.

[15] In her affidavit, Van Deursen averred in relevant part that, "[u]pon being hired in 1991, [the decedent] made pension contributions at the rate of 5%" and that, "[i]n July of 1993, [the decedent's] pension contribution rate increased to 6%, where it stayed until his retirement."

XXXIII of the firefighter agreement, by contrast, required pension contributions at a rate of 6 percent from the time of the decedent's hire until June 29, 1992, at a rate of 7 percent from July 1, 1992 until June 30, 1995, and at a rate of 9.5 percent from July 1, 1995 until the decedent retired on December 30, 1995.

In light of the foregoing, we conclude that no genuine issue of material fact exists as to whether the defendant qualified for a pension under the firefighter agreement. The pleadings, affidavits, and other evidence submitted demonstrate that the decedent (1) never was a member of the Waterbury Fire Department or the union prior to his hiring as fire chief, (2) was not an "employee," as that term is defined in article I, § 1, of the firefighter agreement, (3) was not a "member promoted," as that phrase is used in article I, § 4, of the firefighter agreement, (4) did not make a selection to receive a pension under the firefighter agreement upon being hired as fire chief, as required by article I, § 4, of the firefighter agreement, and (5) did not make pension contributions while employed as fire chief at the rates specified in article XXXIII, as required by article I, § 4, of the firefighter agreement. The court, therefore, properly determined that the decedent did not qualify for a pension under the firefighter agreement.

2

The defendant further claims that, irrespective of the decedent's entitlement to a pension under the terms of the firefighter agreement, the board in this case awarded him a disability pension under that agreement. For two distinct reasons, we disagree.

a

First, the record belies the defendant's claim. It is undisputed that, in applying for a disability pension, the decedent and his attorney requested a disability

pension pursuant to the terms of the firefighter agreement. Appended to the defendant's motion for summary judgment are two letters sent to the board from the decedent and Attorney Angelo Maragos. Those letters, dated November 28, 1995 and November 30, 1995, respectively, both state in relevant part that the decedent was exercising his option, pursuant to article I, § 4, of the firefighter agreement, to receive a pension pursuant thereto.[16] In part I B 1 of this opinion, we have explained why that request was untenable, as (1) the decedent was not a "member promoted" to the position of fire chief, as that terminology is used in the firefighter agreement, (2) there is no evidence that the decedent ever made a selection to receive a pension thereunder upon being hired as fire chief, and (3) there is no evidence that the decedent, while employed as fire chief, made the requisite pension contributions as mandated by article I, § 4, and article XXXIII of the firefighter agreement.

Although the decedent requested a pension pursuant to the firefighter agreement, the record indicates that the board did not grant that specific request. In its January 11, 1996 written notice of its decision, the board informed the decedent that it had approved his application for a disability retirement and had awarded him an annual pension of $86,690.78 pursuant to the terms of the administrative agreement.[17] The board's January

[16] In his letter to the board, the decedent stated in relevant part: "[I] do hereby make my election of Option one with regard to computing my pension entitlement under [article I, § 4, of the firefighter agreement] . . . ." Attorney Maragos similarly stated, in his letter to the board, that the decedent "makes election, pursuant to [article I, § 4, of the firefighter agreement] to retire, as is his right."

[17] Appended to the city's motion for summary judgment were copies of both the board's January 11, 1996 written notice of its decision to the decedent and the April 21, 2021 affidavit of Van Deursen, which indicate that the board granted the decedent a disability pension based on the "Waterbury Municipal Administrators Asso[ciation] (non union)." In addition, the decedent's pension worksheet similarly states that it was calculated in accordance with the "(Management) Waterbury Municipal Administration Associ-

11, 1996 letter also advised the decedent in relevant part: "If you have any questions regarding your pension or benefits, please do not hesitate to contact our office." The decedent nevertheless did not raise any issue or request clarification with respect to the board's determination that his pension was governed by the administrative agreement. To the contrary, the record before us indicates that the decedent, after receiving written notice of the board's decision in January, 1996, proceeded to collect his pension for more than ten years without question. The defendant's claim, therefore, fails as a factual matter.

b

In addition, we note that the board's decision to grant the decedent a pension in accordance with the terms of the administrative agreement is entirely consistent with the plain and unambiguous terms of his employment contract with the city. As noted in part I A of this opinion, that contract provides that the decedent's benefits may include a pension pursuant to the administrative agreement with the Waterbury Municipal Administrators Association and that the terms of the employment contract "may not be changed except by a written Agreement signed by the Mayor of [the city] and [the decedent]." In granting the decedent a pension pursuant to the administrative agreement, the board's decision comports with the principle that municipal agencies cannot bind the municipality by contract, in the absence of express authorization in the municipal charter or the General Statutes. See *Fennell* v. *Hartford*, 238 Conn. 809, 813, 681 A.2d 934 (1996).

Fennell is instructive in this regard. In that case, a group of supervisory police officers brought an action

ation." The administrative agreement sets forth pension benefits for the Waterbury Municipal Administrators Association. See footnote 13 of this opinion.

against the defendant municipality and its pension commission, claiming that a statement in a pension manual prepared by the pension commission created an implied contract between the municipality and those officers. Id., 811–13. In rejecting that claim, our Supreme Court observed that "a city's charter is the fountainhead of municipal powers . . . . The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised. . . . Agents of a city, including [its boards], have no source of authority beyond the charter. . . . In construing a city charter, the rules of statutory construction generally apply. . . . The officer, body or board duly authorized must act [on] behalf of the municipality, otherwise a valid contract cannot be created. Generally the power to make contracts on behalf of the municipality rests in the council or governing body . . . . Generally, no officer or board, other than the common council, has power to bind the municipal corporation by contract, unless duly empowered by statute, the charter, or authority conferred by the common council, where the latter may so delegate its powers . . . ." (Citation omitted; internal quotation marks omitted.) Id., 813. "It follows that agents of a city, including its [boards], have no source of authority beyond the charter. [T]heir powers are measured and limited by the express language in which authority is given or by the implication necessary to enable them to perform some duty cast upon them by express language." (Internal quotation marks omitted.) Id., 814.

The court then concluded, "as a matter of law, that the pension manual created and distributed by the commission could not confer any additional benefits not provided for by the city's charter." Id., 816. As it explained: "In order for additional retirement or pension benefits to be conferred on the plaintiffs and other city employees, the city council must adopt ordinances

in compliance with the statutory and charter mandates. . . . The plaintiffs concede that this was not done. If additional benefits were allowed to be conferred in any other manner, the actions of the commission would impinge on the city council's legislative prerogative to oversee the maintenance of the city's municipal employees' retirement fund. . . . In sum, the commission was without authority to confer additional benefits through the pension manual." (Citations omitted; footnote omitted.) Id., 817–18. The court further stated: "The plaintiffs argue that in order to carry out its obligation to administer the municipal employees' retirement fund, the commission must, by necessity, interpret the charter and confer pension benefits upon eligible recipients. We disagree. The fact that the commission has authority to administer the city's municipal employees' retirement fund does not give it authority to amend the pension plan and circumvent the city council's authority to amend the municipal employees' retirement fund." Id., 818 n.7.

In the present case, the defendant has identified no provision in the city charter that authorized the board to unilaterally grant the decedent a pension that is (1) contrary to the express terms of his employment contract and (2) pursuant to a collective bargaining agreement under which the decedent did not qualify for a pension. In this regard, we note that the defendant, in moving for summary judgment, did not furnish a copy of the entire city charter to the court, but rather appended only select portions to her memorandum of law. On appeal, the defendant relies on § 2767 of the city charter.[18] That reliance is unavailing, as that section

[18] Section 2767 of the city charter provides in relevant part: "All acts, actions, payments, failures to pay, pensions, contributions from employees and proceedings of the [board] . . . are validated, confirmed, approved, ratified and made binding on the [city] and the participants in the retirement system."

merely provides in broad terms that official actions of the board are binding on the city. As applied to the facts of this case, § 2767 mandates that the board's decision to grant a pension to the decedent in accordance with the administrative agreement, as communicated to the decedent by written notice on January 11, 1996, is binding on the city.

The defendant also overlooks the fact that the city charter contains a distinct section titled "Adjustment of pensions paid under retirement system." It provides in relevant part: "Notwithstanding the provisions of the [city charter] or any special act or any requirements in Section 2-14 of the General Statutes . . . the [board] with the approval of the board of aldermen may by appropriate action, including approval by a majority vote . . . of said [board] and a majority vote of the board of aldermen, *with respect to monthly payments* of [disability pensions] . . . to retired employees . . . including retired teachers, firemen, policemen, officer participants and regular participants as such classifications of retired employees are established by the [city charter], provide for *adjustments in the amount of such monthly payments* as deemed necessary by said [board] and the board of aldermen . . . . Any actions taken by the [board] and the board of aldermen . . . in accordance with this act are hereby validated and . . . binding upon the [c]ity."[19] (Emphasis added.) Waterbury City Charter, Div. 2, § 2711 (1989 Supp.). Section 2711 thus demonstrates that, when the city charter intends to confer authority on the board to modify the pension benefits of a particular person, it does so explicitly. See *Stafford* v. *Roadway*, 312 Conn. 184, 194, 93 A.3d 1058 (2014) ("[i]t is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to

[19] A copy of that section of the city charter was submitted in support of the defendant's motion for summary judgment.

use broader or limiting terms when it chooses to do so" (citation omitted; internal quotation marks omitted)).

In the present case, it is undisputed that the decedent's employment contract with the city provided for a pension benefit pursuant to the administrative agreement. To the extent that the defendant argues that the board intended to deviate from the plain terms of that employment contract and grant the decedent all of the benefits contained in the firefighter agreement,[20] § 2711 of the 1989 Supplement to the city charter provides little recourse, as that section only authorizes adjustments to the amount of monthly pension payments.

Moreover, assuming arguendo that § 2711 of the 1989 Supplement to the city charter could be broadly construed to encompass pension benefits generally, the plain language of that section obligated the board to secure the approval of a majority of the board of aldermen in order to make such an adjustment to the decedent's pension benefits. There is no suggestion by the defendant, nor evidence in the record before us, that such approval was sought or granted by the board of aldermen. On the record before us, we therefore conclude that no genuine issue of material fact exists as to whether the board possessed authority under the city charter to unilaterally confer a pension benefit on the decedent pursuant to the firefighter agreement.[21]

[20] The defendant claims that the board granted the decedent *all* of the benefits contained in the firefighter agreement, including the provision pertaining to the offset of § 7-433c benefits. That provision is contained in article XXXIII, § 11, of the firefighter agreement and provides in relevant part: "The parties hereto agree that . . . an employee who applies for, and receives, a disability pension [pursuant to § 7-433c] shall be entitled to, and shall receive, a maximum disability pension of [76 percent] of BASE PAY. . . . The parties agree that the provisions of this Section shall not apply to, and shall not require a reduction of, any specific injury award [pursuant to § 7-433c]."

[21] The defendant also claims that the board's handling of her spousal pension demonstrates that it "treated [the decedent's] disability pension as a pension under the firefighter contract," as reflected on a "pension worksheet." That pension worksheet plainly states that it is a pension work-

See *Fennell* v. *Hartford*, supra, 238 Conn. 818 n.7 ("[t]he fact that the [pension commission] has authority to administer the city's municipal employees' retirement fund does not give it authority to amend the pension plan and circumvent the city council's authority to amend the municipal employees' retirement fund").

II

The defendant alternatively contends that § 2761 of the city charter does not permit the city to utilize the decedent's pension benefits to offset heart and hypertension benefits due to him. In response, the city submits that this claim is unpreserved. We agree with the city.

A

Our rules of practice require a party, as a prerequisite to appellate review, to distinctly raise its claim before

sheet for "(Management) Waterbury Municipal Administration Association" and—like the written notice sent by the board to the decedent on January 11, 1996—indicates that the pension benefit was calculated pursuant to the administrative agreement. The defendant nevertheless claims that the undisputed fact that she was granted a spousal pension in excess of that to which she was entitled under the administrative agreement demonstrates an intention on the part of the board to grant the decedent a pension pursuant to the firefighter agreement. In light of our conclusion that nothing in the city charter authorized the board to grant a pension to the decedent pursuant to the firefighter agreement, that claim is unavailing. Any miscalculation of the defendant's spousal pension benefits by the board cannot create additional pension benefits for the decedent. See *Fennell* v. *Hartford*, supra, 238 Conn. 817–18.

We note that the city has *not* sought a reduction of the defendant's spousal pension as part of this declaratory judgment action, which she has received without interruption for almost two decades. The city merely sought a declaration that, due to the offset provision of the city charter, it is not obligated to make further payments on the decedent's heart and hypertension claim. As the city averred in its objection to the defendant's motion for reargument and reconsideration: "[The defendant] . . . assert[s] that the city cannot offset pension payments made to Janet Brennan in her capacity as surviving spouse. . . . But the city never has sought to do so. The city asserts that no additional payments are owed to the estate [of the decedent] because the pension payments made to [the decedent] during his lifetime would have been subject to an offset covering 100 percent of any

the trial court. See Practice Book § 5-2 ("[a]ny party intending to raise any question of law which may be the subject of an appeal must . . . state the question distinctly to the judicial authority"); Practice Book § 60-5 ("[t]he court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial"). For that reason, we repeatedly have held that "we will not decide an issue that was not presented to the trial court. To review claims . . . not raised before the trial court would be nothing more than a trial by ambuscade of the trial judge." (Internal quotation marks omitted.) *State* v. *Martin*, 110 Conn. App. 171, 180, 954 A.2d 256 (2008), appeal dismissed, 295 Conn. 192, 989 A.2d 1072 (2010); see also *State* v. *Jorge P.*, 308 Conn. 740, 753, 66 A.3d 869 (2013) ("the sina qua non of preservation is fair notice to the trial court"); *State* v. *Favoccia*, 119 Conn. App. 1, 14, 986 A.2d 1081 (2010) ("[i]t is axiomatic that issues not properly raised before the trial court ordinarily will not be considered on appeal"), aff'd, 306 Conn. 770, 51 A.3d 1002 (2012).

The record reveals, and the defendant does not dispute, that she did not raise her claim regarding the proper application of the offset provision of § 2761 of the city charter at any time prior to the court's June 27, 2022 decision on the parties' respective motions for summary judgment.[22] Although the defendant thereafter

[permanent partial disability] payments allegedly owed to him." (Citation omitted; emphasis omitted.)

[22] The defendant's assertion that this claim arose subsequent to the court's ruling on the motions for summary judgment is unavailing. The entire basis for the city's declaratory action was its assertion that the offset provision in question operates to bar any further payments of heart and hypertension benefits to the decedent's estate. In its complaint, the city sought a declaratory judgment that "[t]he offset applies to all amounts in contention, the 'net' amount in contention is zero and the city does not have to pay the defendant any additional [heart and hypertension] benefits as a matter of law" and that "[t]he judgment for benefits issued by the [commissioner] would result in a double recovery explicitly forbidden by the [city charter] and *Russo*, therefore the city does not have to pay the defendant any monies

filed a motion for reargument and reconsideration, she likewise did not advance such a claim in that written motion. Rather, the record indicates that the defendant raised this claim for the first time during argument before the court on September 26, 2022.[23]

It is well established that, generally speaking, "[r]aising an issue for the first time in a motion to reargue will not preserve that issue for appellate review." *White* v. *Mazda Motor of America, Inc.*, 313 Conn. 610, 634, 99 A.3d 1079 (2014). For that reason, the court correctly concluded that the defendant's offset provision claim was not properly preserved. Mindful that our review of a court's denial of a motion to reargue is pursuant to the abuse of discretion standard; see *Klass* v. *Liberty Mutual Ins. Co.*, 341 Conn. 735, 740–41, 267 A.3d 847 (2022); and that motions for reargument and reconsideration are not to be used as an opportunity for a second bite of the apple; see *Hudson Valley Bank* v. *Kissel*, 303 Conn. 614, 624, 35 A.3d 260 (2012); we further conclude that the court did not abuse its discretion in denying the defendant's motion on that basis.

B

The defendant also seeks to prevail on her unpreserved claim pursuant to the plain error doctrine. As

as a matter of law . . . ." The city similarly argued, in its memorandum of law in support of its motion for summary judgment, that "any [heart and hypertension] benefits to which [the decedent] may have been entitled would have been offset, in their entirety, from the [pension] sums already being paid to him by the city."

[23] The defendant also raised the issue of the tax implications of offsetting § 7-433c benefits due to pension payments for the first time at oral argument on her motion for reargument and reconsideration. On appeal, we do not address that unpreserved claim, as the defendant has not distinctly briefed that issue in accordance with our rules of practice. See Practice Book §§ 67-4 (b) and (e); see also *Weber* v. *Pascarella Mason Street, LLC*, 103 Conn. App. 710, 713–14 n.2, 930 A.2d 779 (2007). Rather, she mentions that claim in a mere sentence of the supervisory authority section of her principal appellate brief.

our Supreme Court has explained, "[t]he plain error doctrine . . . is not . . . a rule of reviewability. It is a rule of reversibility. That is, it is a doctrine that this court invokes in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment . . . for reasons of policy. . . . [P]lain error review is reserved for only the most egregious errors. When an error of such a magnitude exists, it necessitates reversal." (Citation omitted; internal quotation marks omitted.) *State* v. *McClain*, 324 Conn. 802, 813–14, 155 A.3d 209 (2017). The defendant's burden under the first prong of that doctrine is to demonstrate the existence of an error that is "obvious in the sense of not debatable. . . . [T]his inquiry entails a relatively high standard, under which it is not enough for the defendant simply to demonstrate that [her] position is correct. Rather, the party seeking plain error review must demonstrate that the claimed impropriety was so clear, obvious and indisputable as to warrant the extraordinary remedy of reversal." (Internal quotation marks omitted.) *State* v. *Coccomo*, 302 Conn. 664, 685, 31 A.3d 1012 (2011).

On appeal, the defendant claims that the court's decision to render summary judgment in favor of the city was predicated on "an obvious misinterpretation of [§ 2761 of the city charter] as permitting the [city] to offset [§ 7-433c] benefits against pension benefits." In her view, § 2761 of the city charter permits a reduction in pension payments as a result of offsetting § 7-433c payments, but not the converse.

Section 2761 of the city charter provides: "No payments of retirement, disability or death benefits shall be allowed or paid under the provisions of this act so long or for such period as payments are being made by [the city] under the provisions of the General Statutes relating to workers' compensation except when such

payments would exceed the payments made under the provisions of the Workers' Compensation Act. In such cases the pensioner shall receive, in addition to his payments under the Workers' Compensation Act the difference between that amount and the amount which he would have received under the provisions of this act." In *Russo* v. *Waterbury*, supra, 304 Conn. 714, our Supreme Court concluded that § 2761 of the city charter "allows the city to offset the . . . pension benefits [of municipal employees] based on their heart and hypertension benefits" under § 7-433c.[24]

Although the defendant now claims that the court committed an "obvious misinterpretation" of § 2761 of the city charter to permit the offset of § 7-433c benefits due to pension payments made by the city, that error apparently was not obvious to the defendant's counsel, who did not raise that claim at any time between the commencement of this action in December, 2015, and the court's decision to grant the plaintiff's motion for summary judgment more than six and one-half years later. That error also was not obvious to the defendant at the time that she filed her motion for reargument and reconsideration in July, 2022. While the defendant raised four distinct grounds in that motion, she did not claim that the court had misinterpreted § 2761 of the city charter.

Moreover, in *Russo*, our Supreme Court, in considering the applicability of § 2761 of the city charter, emphasized that "[t]he purpose of . . . § 7-433c is to protect against a wage loss, not to give some firemen and policemen a double recovery for the same wage loss." (Internal quotation marks omitted.) Id., 730. If the defendant's construction of § 2761 of the city charter is correct—

[24] In *Brennan I*, the Supreme Court noted that "§ 7-433c benefits are subject to pension offsets and caps." *Brennan* v. *Waterbury*, supra, 331 Conn. 692.

and § 7-433c benefits cannot be offset by pension payments made by the city—the result would be a double recovery by the decedent for the same wage loss. In our view, whether the city charter intended to permit that double recovery is, at the very least, debatable.[25]

As our Supreme Court has noted, "[p]lain error is a doctrine that should be invoked sparingly." (Internal quotation marks omitted.) *State* v. *Jamison*, 320 Conn. 589, 596, 134 A.3d 560 (2016). The defendant's burden under the first prong of that doctrine is to demonstrate proof of "an error so obvious on its face that it is undebatable." *State* v. *McClain*, supra, 324 Conn. 820 n.13. On the record before us, we conclude that the defendant has not met that burden.[26]

The judgment is affirmed.

In this opinion the other judges concurred.

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[25] We reiterate that, in moving for summary judgment on her claim regarding the proper application of § 2761 of the city charter, the defendant did not furnish the court with a complete copy of the city charter. The inadequacy of the record in that respect impairs our ability to conclude that the court's interpretation of the charter in the present case was obviously and indisputably incorrect. See *State* v. *Coccomo*, supra, 302 Conn. 685 (party seeking review under plain error doctrine must demonstrate "obvious and indisputable" error (internal quotation marks omitted)); *Putala* v. *DePaolo*, 225 Conn. 378, 386, 623 A.2d 989 (1993) (court required to construe section of municipal charter "in the context of the charter as a whole with a view toward reconciling its parts in order to obtain a sensible and rational overall interpretation" (internal quotation marks omitted)); *Kusterer* v. *Sheehy*, 2 Conn. App. 712, 714–15, 483 A.2d 1105 (1984) ("[t]o construe a specific provision in the charter it is necessary to look at the charter as a whole").

[26] The defendant also asks us to exercise our supervisory authority to review her unpreserved claim. See *State* v. *Turner*, 334 Conn. 660, 686–87, 224 A.3d 129 (2020). We decline that invitation.

JANET BRENNAN, EXECUTRIX (ESTATE OF THOMAS BRENNAN) *v.* CITY OF WATERBURY (AC 45467)

Elgo, Moll and Cradle, Js.

Syllabus

The defendant city appealed from the judgment of the Compensation Review Board affirming in part the decision of the workers' compensation commissioner awarding certain workers' compensation benefits to the plaintiff. The defendant claimed, inter alia, that the board improperly affirmed the commissioner's conclusion that the plaintiff was entitled to interest pursuant to statute (§ 7-433c). *Held*:

In light of this court's resolution of the related appeal in *Waterbury* v. *Brennan* (228 Conn. App. 206), this court could afford the defendant no practical relief and, therefore, the present appeal was rendered moot and the appeal was dismissed for lack of subject matter jurisdiction.

Argued February 5—officially released September 24, 2024

Procedural History

Appeal from the decision of the Workers' Compensation Commissioner for the Fifth District, inter alia, approving certain workers' compensation benefits, brought to the Compensation Review Board, which reversed in part the commissioner's decision and remanded the case for further proceedings, and the defendant appealed to this court. *Appeal dismissed.*

Daniel J. Foster, corporation counsel, for the appellant (defendant).

Robert C. Lubus, Jr., with whom was *Andrew S. Marcucci*, for the appellee (plaintiff).

Opinion

ELGO, J. The defendant, the city of Waterbury (city), appeals from the judgment of the Compensation Review Board (board), affirming in part the decision of the

Workers' Compensation Commissioner (commissioner)[1] in favor of the plaintiff, Janet Brennan, the executrix of the estate of Thomas Brennan. On appeal, the city claims that the board improperly affirmed the commissioner's conclusions that (1) the plaintiff's entitlement to heart and hypertension benefits pursuant to General Statutes § 7-433c matured during the lifetime of the decedent, Thomas Brennan, (2) the plaintiff is entitled to statutory interest on § 7-433c benefits, and (3) the city unduly delayed payment on, and unreasonably contested, the decedent's claim for § 7-433c benefits. In light of our resolution of the related appeal in *Waterbury* v. *Brennan*, 228 Conn. App. 206, A.3d (2024), which also was released today, we conclude that the present appeal is moot, as this court can provide the city no practical relief. Accordingly, we dismiss the appeal.

The backdrop to this appeal is detailed in *Brennan* v. *Waterbury*, 331 Conn. 672, 207 A.3d 1 (2019) (*Brennan I*). The city hired the decedent as its fire chief on November 8, 1991. See id., 675. Following a heart attack in 1993, the decedent filed a claim for § 7-433c benefits. Id., 676. In December, 1993, the commissioner issued a finding and award, concluding that the decedent had sustained a compensable injury and ordering the city to pay all benefits to which he " 'is or may become entitled.' " Id. The city and the decedent thereafter attempted, to no avail, to reach an agreement on the

[1] General Statutes § 31-275d (a) (1), effective October 1, 2021, provides in relevant part that, "[w]henever the words 'workers' compensation commissioner,' 'compensation commissioner,' or 'commissioner,' denote a workers' compensation commissioner in [several enumerated] sections of the general statutes, [including sections contained in the Workers' Compensation Act, General Statutes § 31-275 et seq.] the words 'administrative law judge' shall be substituted in lieu thereof . . . ."

As all events involving the workers' compensation commissioner underlying this appeal occurred prior to October 1, 2021, we refer to the workers' compensation commissioner as the commissioner.

payment of benefits.[2] Id. Although the city made advance payments to the decedent pursuant to § 7-433c in July, 1997, and in June, 1999,[3] the decedent and the city "never entered into a full and final settlement of the heart and hypertension claim." Id., 677.

The decedent died on April 20, 2006. Id., 678. As the court noted in *Brennan I*, "[i]t was not until 2013 that the decedent's attorney sought to finalize the decedent's permanent partial disability claim under § 7-433c." Id.. The decedent's attorney subsequently moved to substitute the plaintiff as party claimant. Id. The commissioner granted that motion and, in a decision dated December 7, 2015, ordered permanent partial disability benefits of 80 percent payable to her, less any advance payments made to date. Id., 278–79. On appeal, the board concluded that an estate was not a qualified recipient of vested but unpaid § 7-433c benefits. Id., 680. The board thus vacated the commissioner's decision granting the motion to substitute the plaintiff as party claimant and remanded the case to the commissioner to determine the proper recipient. Id.

From that judgment, the plaintiff appealed to this court. The Supreme Court then transferred the appeal to itself pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1. In its decision, the Supreme Court first concluded that "§ 7-433c benefits properly may be paid to a claimant's estate, if such benefits matured before the claimant's death." Id., 682. The court further concluded that, "on the present record, we cannot state with certainty that the unpaid portion of the 80 percent

[2] While those negotiations were ongoing, the decedent elected to take disability retirement in December, 1995, and the city's retirement board authorized a 75 percent disability pension. *Brennan* v. *Waterbury*, supra, 331 Conn. 676–77 and n.4.

[3] The commissioner found, and the record confirms, that the city made lump sum payments toward the decedent's § 7-433c claim in the amount of $59,200.20 in 1997 and $17,982.12 in 1999.

permanent partial disability benefits necessarily matured before the decedent's death. Our uncertainty in this regard exists because the commissioner's decision does not include necessary findings on the critical issues, and we therefore leave open the possibility that the commissioner, on remand, may find that some portion of the benefits matured before the decedent's death." Id., 694. In that regard, the court explained that "permanent disability benefits mature only after the degree of permanency has been fixed by way of an award or an agreement between the parties sufficient to establish a binding meeting of the minds. . . . [W]e cannot conclude on the present record that the degree of permanency was fixed prior to the decedent's death. However, because this issue was not addressed by the commissioner, and the case is being remanded to the commissioner for further proceedings, we leave open the possibility that the commissioner may conclude that some portion of the benefits matured during the decedent's lifetime." Id., 697. The Supreme Court thus reversed the board's determination that the commissioner improperly granted the motion to substitute the plaintiff as party claimant and remanded the case for further proceedings before the commissioner "to determine the proper beneficiary and the amount of benefits due . . . ." Id., 700.

The commissioner held a hearing in accordance with that remand and issued a decision on May 21, 2021, in which he concluded, inter alia, that (1) "there was a clear meeting of the minds that the [decedent] had sustained a 77.5 [percent] permanent partial disability"; (2) the decedent's § 7-433c benefits "vested and matured on or before May 28, 1998"; (3) the decedent's estate "is entitled to all unpaid [§ 7-433c] benefits . . . less the payments made" to the decedent in July, 1997, and June, 1999; (4) "the [city] . . . is obligated to pay

statutory interest pursuant to General Statutes § 31-295, for all benefits due and owing from the date of maximum medical improvement of October 13, 1993"; (5) "the [city] unduly delayed and unreasonably contested this matter in violation of General Statutes §§ 31-288 and 31-300"; and (6) the city's "continued contest and arguments regarding the permanent partial disability issue [is] unreasonable given the Supreme Court decision in this matter, and the evidence in this case . . . which clearly establishes an agreement as to the permanent partial disability of 77.5 [percent]." The commissioner also stated that "[f]urther hearings will be held, if necessary, to address penalties and attorney's fees." In response, the city filed a motion to correct certain findings in that decision, which the commissioner denied.

The city then appealed from that decision to the board. In its April 11, 2022 decision, the board concluded that the commissioner had "properly determined that the parties had reached a compromise permanency agreement prior to May 28, 1998," and that said agreement was sufficient to establish a binding meeting of the minds pursuant to the Supreme Court's decision in *Brennan I*. The board also rejected the city's claim that a risk manager for the city lacked authority to bind the city to that agreement. With respect to the commissioner's award of interest under § 31-295 (c), which, the board noted, is not triggered "until the determination has been made that the claimant is entitled to the permanency benefits and the issue is no longer the subject of litigation," the board stated that it was "unable to identify" the date on which that interest should begin to accrue "on the basis of either the evidentiary record or the [commissioner's] findings . . . ." (Citation omitted.) The board therefore concluded that the commissioner's decision was erroneous in that limited regard and remanded the matter "for clarification relative to

the commencement date for the statutory interest . . . .'' Although the board rejected the city's challenge to the award of penalties and attorney's fees, as no such award had yet been granted, the board remanded the matter to the commissioner ''for additional proceedings on that issue, as well.'' From that decision, the city appealed to this court on May 2, 2022.

Distinct from this workers' compensation proceeding is a declaratory judgment action brought in the Superior Court by the city against the plaintiff[4] in 2015, regarding her entitlement to any further § 7-433c benefits.[5] As we noted in *Waterbury* v. *Brennan*, supra, 228 Conn. App. 209–10, ''[t]he gist of [the city's] complaint [in that action] was that, due to a pension offset provision in the 1967 Waterbury city charter (city charter), no further heart and hypertension payments were due to the [plaintiff]. The city thus sought a declaratory judgment that (1) '[p]ursuant to *Russo* [v. *Waterbury*, 304 Conn. 710, 41 A.3d 1033 (2012)], the city charter and [the decedent's] employment contract, any [§ 7-433c] benefits allegedly due to [the decedent] . . . would have resulted in an offset of the [plaintiff's] or [the decedent's] pension'; (2) '[t]he offset applies to all amounts in contention, the ''net'' amount in contention is zero and the city does not have to pay the [plaintiff] any additional [§ 7-433c] benefits as a matter of law'; and (3) '[t]he judgment for [§ 7-433c] benefits issued by the [commissioner] would result in a double recovery explicitly forbidden by the [city charter] and *Russo*, therefore the city does not have to pay the [plaintiff] any monies as a matter of law . . . .' '' (Footnote omitted.) By order dated June

[4] The city brought that action against Janet Brennan in both her individual capacity and as executrix of the estate of the decedent. *Waterbury* v. *Brennan*, supra, 228 Conn. App. 207 n.1.

[5] It is well established that an appellate court may ''take judicial notice of the court files in another suit between the parties . . . .'' *McCarthy* v. *Warden*, 213 Conn. 289, 293, 567 A.2d 1187 (1989), cert. denied, 496 U.S. 939, 110 S. Ct. 3220, 110 L. Ed. 2d 667 (1990).

27, 2022, the trial court in that action rendered summary judgment in favor of the city. In its decision, the court concluded that (1) the plaintiff could not "escape the . . . offset rules reducing amounts payable under workers' compensation awards by amounts that are received by way of pension payments" from the city and (2) the offsets in that case exceeded the amount of § 7-433c benefits due to the plaintiff "so as to relieve the city of *any* liability for payments on account of workers' compensation awards." (Emphasis added.)

The plaintiff thereafter filed a motion for reargument and reconsideration of that decision, which the court denied. In that motion, the plaintiff did not challenge the propriety of the court's determination that the amount of the offsets stemming from pension payments to the decedent relieved the city of "any liability for payments on account of workers' compensation awards."[6] The plaintiff likewise did not seek an articulation of the court's decision in that regard or file a motion for review with this court. See Practice Book §§ 66-5 and 66-6; see also *Orcutt* v. *Commissioner of Correction*, 284 Conn. 724, 739 n.25, 937 A.2d 656 (2007) ("in the absence of an articulation . . . [an appellate court will] presume that the trial court acted properly").

On January 13, 2023, the plaintiff appealed to this court from the judgment of the trial court in that declar-

[6] The plaintiff advanced "four reasons" in support of her motion for reargument and reconsideration. She argued that (1) there was a genuine issue of material fact as to whether the decedent had been granted a pension pursuant to a collective bargaining agreement between the city and the Waterbury Firefighters Association, Local 1339; (2) the court incorrectly determined that the city's retirement board "lacked the authority to bind the city to providing a disability pension" pursuant to that collective bargaining agreement; (3) the court's decision permitting the offset of § 7-433c benefits was "impermissible as the benefits are to be paid to two distinct legal entities"; and (4) the court's decision "left unanswered the issue of the length of time the [city] is permitted to offset *Janet Brennan's pension benefits* when the remaining [§ 7-433c] benefits are past due in one lump sum payment." (Emphasis added.)

atory judgment action.[7] In *Waterbury* v. *Brennan*, supra, 228 Conn. App. 206, we concluded that the court properly rendered summary judgment in favor of the city in the declaratory judgment action and affirmed its decision in all respects, including its determination that no further payments related to the decedent's heart and hypertension claim were due to the plaintiff. In light of that conclusion, a question of mootness arises with respect to the present appeal.[8]

"Mootness presents a legal question and implicates this court's subject matter jurisdiction, a threshold matter to resolve. . . . This court has a duty to dismiss cases over which it lacks subject matter jurisdiction, which cannot be conferred by the consent of the parties." (Citation omitted.) *Gladstein* v. *Goldfield*, 325 Conn. 418, 424, 159 A.3d 661 (2017). "[T]he question of subject matter jurisdiction, because it addresses the basic competency of the court, can be raised by any of the parties, or by the court sua sponte, *at any time* . . . ." (Emphasis in original; internal quotation marks omitted.) *M&T Bank* v. *Lewis*, 349 Conn. 9, 20, 312 A.3d 1040 (2024). Our review of the question of mootness is plenary. *State* v. *Rodriguez*, 320 Conn. 694, 699, 132 A.3d 731 (2016).

[7] On February 5, 2024, this court heard oral argument on both Docket No. AC 46178, the plaintiff's appeal from the judgment of the trial court in the declaratory judgment action, and Docket No. AC 45467, the city's appeal from the decision of the board now before us.

[8] By order dated July 25, 2024, this court ordered the parties to file simultaneous supplemental briefs on "whether, if this court concludes that the trial court properly rendered judgment in favor of the . . . city in [Docket No.] AC 46178, this court can provide the parties any practical relief in AC 45467 or whether that appeal must be dismissed as moot." In its supplemental brief, the city—the sole appellant in this appeal—concedes that, if this court were to affirm the judgment of the trial court in Docket No. AC 46178, "there will be no practical relief that can be granted through disposition of the merits of [the claims raised in] the present appeal, and this appeal will be moot."

"[M]ootness implicates the well established rule that [a]n actual controversy must exist not only at the time [an] appeal is taken, but also throughout the pendency of the appeal. . . . When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot. . . . [T]he requirement of an actual controversy . . . is premised upon the notion that courts are called upon to determine existing controversies, and thus may not be used as a vehicle to obtain advisory judicial opinions on points of law. . . . [I]t is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . In short, [when] the question presented is purely academic, we must refuse to entertain the appeal." (Citations omitted; internal quotation marks omitted.) *Gladstein* v. *Goldfield*, supra, 325 Conn. 424–25.

As our Supreme Court observed more than one-half century ago, "the existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . The question may be made moot by the act of the court from which the appeal is taken, as where pending an appeal some judgment or order rendered or made in the cause renders the determination of the questions presented by the appeal unnecessary. Likewise it may arise from the act of another court or judge." (Citation omitted.) *Reynolds* v. *Vroom*, 130 Conn. 512, 515, 36 A.2d 22 (1944). We conclude that the city's appeal in the present case has been rendered moot due to our decision in *Waterbury* v. *Brennan*, supra, 228 Conn. App. 206.

In the present case, the city asks this court to determine whether the board improperly affirmed the commissioner's conclusions that (1) the plaintiff's entitlement to § 7-433c benefits matured during the decedent's lifetime, (2) the plaintiff is entitled to statutory interest on § 7-433c benefits, and (3) the city unduly delayed and unreasonably contested the decedent's claim for § 7-433c benefits. Those questions are purely academic in light of our decision in *Waterbury* v. *Brennan*, supra, 228 Conn. App. 206. In rendering summary judgment in favor of the city in the declaratory judgment action, the trial court concluded that an offset provision in the city charter relieved the city of "*any liability* for payments on account of workers' compensation awards." (Emphasis added; internal quotation marks omitted.) Id., 211. On appeal, we affirmed that judgment. Id., 207, 230. Accordingly, the city is not liable for any payments to the plaintiff arising from the decedent's claim for § 7-433c benefits beyond those that it made to the decedent in July, 1997, and June, 1999. See footnote 3 of this opinion. Because the city is not liable for such payments, it follows that the city cannot be liable for statutory interest, penalties, or attorney's fees for delaying payment thereon.[9] For that reason, resolution of the claims raised in this appeal would not benefit the parties in any meaningful way.[10] See *State* v. *Lester*,

[9] See General Statutes § 31-288 (b) (providing for civil penalties when payment of "compensation due" to claimant is unduly delayed by employer); General Statutes § 31-295 (c) (employer shall pay interest only on sums that "the employee is entitled to receive" that "are not so paid"); General Statutes § 31-300 (("[i]n cases where, through the fault or neglect of the employer or insurer, adjustments of compensation have been unduly delayed, or where . . . payments have been unduly delayed, the administrative law judge may include in the award . . . a reasonable attorney's fee"). Pursuant to the plain language of those statutes, a prerequisite to recovery thereunder is the existence of a workers' compensation payment due and owing to a claimant.

[10] In her supplemental brief filed with this court, the plaintiff argues that, because workers' compensation benefits are nontaxable, "the city caused [the decedent] to pay taxes on funds that were not taxable." She thus asserts that, "[u]nless handled within the compensation claim, [the plaintiff] upon final judgment would have a new suit against [the city] for intentionally

324 Conn. 519, 526, 153 A.3d 647 (2017) ("[i]n determining mootness, the dispositive question is whether a successful appeal would benefit the plaintiff or defendant in any way" (internal quotation marks omitted)). In light of the foregoing, we conclude that the city's appeal is moot and must be dismissed for lack of subject matter jurisdiction.

The appeal is dismissed.

In this opinion the other judges concurred.

VINCENT CIARLEGLIO *v.* MIRIAM MARTIN
(AC 45535)

Elgo, Suarez and Seeley, Js.*

Syllabus

The defendant appealed from the judgment of the trial court granting an annulment of her marriage to the decedent. The defendant claimed, inter alia, that the trial court lacked subject matter jurisdiction because the substitute plaintiff, the administrator of the decedent's estate, lacked standing to continue the annulment action after the decedent's death. *Held*:

The trial court did not lack subject matter jurisdiction over the action pursuant to statute (§ 52-599 (a)).

The exception set forth in § 52-599 (c) (1) was inapplicable to the circumstances presented by this case as the annulment action was not rendered useless by the death of the decedent, the administrator of his estate having had a legitimate fiduciary interest in establishing the identity of the rightful heirs as well as a duty to carry out the wishes of the decedent.

The plaintiff's continuation of the action to annul the marriage following the death of the decedent did not constitute an impermissible collateral attack on a legally valid marriage.

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misreporting the payments as taxable." That tax issue is not properly before us, as it was not raised at any time before the commissioner or the board. The plaintiff likewise did not raise it in her appellate brief with this court.

* Although Judge Suarez was not present at oral argument, he has read the briefs and appendices and listened to a recording of the oral argument prior to participating in this decision.

The defendant failed to preserve her claim, and induced any error, with respect to the applicable standard of proof and could not prevail under the plain error doctrine.

Argued January 8—officially released September 24, 2024

Procedural History

Action for the dissolution or annulment of a marriage, and for other relief, brought to the Superior Court in the judicial district of New Haven, where Steven M. Allinson, the administrator of the plaintiff's estate, was substituted as the plaintiff; thereafter, the matter was tried to the court, *Goodrow, J.*; judgment annulling the marriage, from which the defendant appealed to this court. *Affirmed.*

Sean R. Caruthers, for the appellant (defendant).

Gregory A. Allen, with whom were *Steven M. Allinson*, and, on the brief, *Kathleen S. Lima*, for the appellee (substitute plaintiff).

Opinion

ELGO, J. The defendant, Miriam Martin, appeals from the judgment of the trial court granting an annulment of her marriage to the decedent, Vincent Ciarleglio.[1] On appeal, the defendant claims that (1) the court lacked

[1] Ciarleglio commenced the present action by service of process on June 21, 2019. He died shortly thereafter, on August 24, 2019, and a motion to substitute party was granted on January 5, 2021. A motion to amend the complaint subsequently was granted, resulting in the operative complaint improperly naming the "Estate of Vincent Ciarleglio" (estate) as the plaintiff. The parties do not contest that a scrivener's error occurred when the court improperly substituted the estate as the plaintiff instead of Steven M. Allinson in his capacity as the administrator thereof. See *Estate of Rock* v. *University of Connecticut*, 323 Conn. 26, 32, 144 A.3d 420 (2016) ("An estate is not a legal entity. It is neither a natural nor artificial person, but is merely a name to indicate the sum total of the assets and liabilities of the decedent or incompetent. . . . Not having a legal existence, it can neither sue nor be sued." (Internal quotation marks omitted.)). For clarity, we refer to Ciarleglio as the decedent and to the administrator of his estate as the plaintiff in this opinion.

subject matter jurisdiction because the plaintiff lacked standing to continue the annulment action after the decedent's death, (2) the plaintiff's action to annul the marriage following the death of the decedent constituted an impermissible collateral attack on a legally valid marriage, and (3) the court held the plaintiff to an incorrect burden of proof when it granted the annulment. We affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to the defendant's claims. The parties obtained a marriage license on February 7, 2019, and were married later that day. At the time of the marriage, the decedent was eighty-two years old, and the defendant was fifty-two years old. The marriage ceremony was performed by a justice of the peace who was a friend of the defendant and an acquaintance of the decedent. No family members were invited to or attended the ceremony. Two days before the defendant obtained the marriage license, the decedent underwent a surgical procedure and was suffering from numerous medical conditions. The decedent was hospitalized two days after the ceremony.

On May 22, 2019, the Probate Court appointed the decedent's niece as his conservator under a voluntary conservatorship. In June, 2019, the decedent met with an attorney to secure legal representation for a divorce or annulment and, on June 21, 2019, he commenced an action to dissolve or annul the marriage on the basis that he "was incompetent at [the] time of marriage." On July 8, 2019, the decedent's attorney filed numerous motions on his behalf, in which the decedent sought exclusive possession of his premises and the return of certain personal items. On July 22, 2019, the decedent's attorney filed a motion asking the court to enjoin the defendant from collecting rent on properties owned by the decedent. Both parties filed mandatory disclosure and production orders, and the defendant filed a motion

for alimony pendente lite. Less than two months after this action commenced, the decedent died intestate on August 24, 2019.

On September 3, 2019, the defendant filed a motion to dismiss the action for lack of subject matter jurisdiction, asserting that the court was unable to grant any relief in the matter due to the decedent's death. Noting that the parties were married when the action commenced and relying on General Statutes § 52-599 (a), the court concluded that an annulment action does not abate upon the death of a plaintiff, unless there is no fiduciary in place to continue the litigation on behalf of the decedent.[2] Stating that it was unaware of any fiduciary acting on behalf of the estate, the court granted the defendant's motion and dismissed the action without prejudice.

Less than one month later, the Probate Court appointed the plaintiff, Steven M. Allinson, as temporary administrator of the estate of the decedent, with broad authority "to deal with all aspects of the estate, including but not limited to lawsuits, finances, rents, custody of the remains, and any other matter the temporary administrator feels is necessary to fulfill his duties." On February 14, 2020, the plaintiff moved to open the judgment of dismissal and simultaneously moved to substitute the decedent's estate as party plaintiff "[i]n order to preserve any and all claims by the decedent."[3]

[2] General Statutes § 52-599 (a) provides: "A cause or right of action shall not be lost or destroyed by the death of any person, but shall survive in favor of or against the executor or administrator of the deceased person."

[3] In his supplemental brief in support of the motion to substitute, the plaintiff argued that, because the annulment action affects not only the "legality of the marriage" but also "the division of property and other assets as well," the "interest of the parties in an annulment and the purpose of an annulment does not extinguish at the death of one of the parties and the action may survive by the executor." See *Perlstein* v. *Perlstein*, 26 Conn. Supp. 257, 258, 217 A.2d 481 (1966) ("[a] direct action to annul a marriage not only affects the status of the marriage itself but may also affect property rights arising from this status").

On November 30, 2020, the court granted the motion to open the judgment. The court thereafter held a hearing on the motion to substitute, which the defendant did not attend. Following the hearing, the court granted that motion.[4]

On February 8, 2021, the plaintiff filed a motion for permission to file an amended complaint, in which he sought an annulment of the marriage on the ground that it was void or voidable due to incompetence. The defendant objected, citing procedural defects in the motion to amend. The plaintiff then filed a second motion to amend the complaint; after a hearing, the court granted the motion without objection.[5]

A trial was scheduled for April 25, 2022. Before trial, the plaintiff filed proposed orders requesting: "(1) The parties' marriage of February 7, 2019, shall be annulled and deemed void as of the date of its initiation, February 7, 2019, and the marriage be annulled; [and] (2) [a]ll issues regarding the estate of [the decedent] and finances in this matter shall be referred to the Hamden/Bethany Probate Court for further proceedings consistent with the finding that the marriage between [the decedent] and [the defendant] was annulled and deemed void." A three day trial followed, at which both the defendant and the plaintiff were represented by counsel.

On May 9, 2022, the court issued a memorandum of decision, in which it found the following relevant facts:

[4] As previously noted, the action continued under "Estate of Vincent Ciarleglio" due to a scrivener's error; see footnote 1 of this opinion; despite the order of the court granting substitution of the administrator.

[5] The defendant did not, at any time in the underlying action, raise an objection based on the plaintiff's lack of standing. Because standing implicates subject matter jurisdiction, which can be raised at any time, and the defendant asserts a colorable claim of lack of standing, we nevertheless consider her claim on appeal. See, e.g., *Kloiber* v. *Jellen*, 207 Conn. App. 616, 621–22, 263 A.3d 952 (2021).

"The decedent was under medical care at the time the parties married, [had] uncontrolled diabetes and . . . was medically compromised with reduced blood flow. On February 5, 2019, two days before the marriage, the decedent was infused with fentanyl and Demerol so that his physician could search his upper bowels to determine the cause of his blood loss, dizziness, and general weakness. He was suffering from a defective heart, hypertension, heart valve failure, loss of blood to the brain, fainting and immune deficiency in addition to other illnesses. On February 7, 2019, the day of the marriage, the decedent was acutely ill, medically compromised and could not have made prudent decisions. He was suffering from numerous medical conditions, including a seizure caused by a blood infection, blood loss and dizziness, weakness, chronic anemia, difficulty breathing, fever, kidney failure and the beginnings of liver failure. The kidney failure impacted the decedent's cognitive abilities and affected his competency and ability to comprehend and make decisions. He was not receiving sufficient oxygen to the brain. The court finds based on Dr. [Michael] Nelken's opinion that the decedent's body was 'poisoning his brain' for a period prior to the marriage."[6]

[6] In finding those facts, the court credited the testimony of the plaintiff's expert witness, Nelken, an expert in the field of psychiatry who had reviewed the decedent's extensive medical records. The court found that Nelken "credibly testified that the decedent was medically compromised to such a degree on February 7, 2019, that he was not competent to make important decisions." Nelken's testimony included, inter alia, that just days prior to the ceremony, the decedent was suffering from twenty-eight separate medical conditions—these conditions, which were listed in Nelken's report, included prostate cancer, a blood infection, congestive heart failure, anemia, edema, gout, and numerous other heart problems. Additionally, just two days before the wedding ceremony, the decedent underwent a surgical procedure to investigate his blood loss and dizziness. The day after the ceremony, February 8, the decedent was advised to go to an emergency room—due to shortness of breath and the ongoing blood infection—but he did not go until the following day. When testing was done on February 8—one day after the ceremony—it revealed kidney failure. Kidney failure, Nelken opined, raises "questions about [the decedent's] competence" because

In its memorandum of decision, the court credited testimony from the decedent's niece that, during his February, 2019 hospitalization, the decedent told her that he was not married. She further testified that when she later presented him with the marriage license in early May, 2019, the following exchange took place: "At first he didn't know what I was showing him. And then I—I explained to him that it was a marriage license and that his signature was on the paper, the copy that I had. And he just looked at me confused and he said, no, he goes, I didn't get married. And I said, well apparently you did because I have the license in front of me. And I was showing it to him. And all he said to me was, I was tricked."

On the basis of the medical records of the decedent's hospitalization on February 9, 2019, which were admitted into evidence, the court further found that the decedent "was panting, wheezing, had blood in his feces, swollen legs, a heart murmur, and kidney failure" and that he "refused to admit that he was experiencing any medical problems and denied any medical complaints, demonstrating confusion and inattention," from which the court inferred that "the decedent was not in touch with reality."

The court did not credit the testimony of the defendant or the witness who performed the ceremony. The court expressly found that "[t]heir testimony was inconsistent regarding the planning of the marriage and not credible considering the overwhelming weight of the evidence that the decedent was not competent to consent to the marriage." The defendant does not challenge the propriety of those findings on appeal.

"these kinds of results don't occur instantaneously." On February 9, the decedent was hospitalized for four days, and further testing revealed anemia—the inability of the blood to transmit oxygen—and blood infection. Nelken's report was admitted as a full exhibit and credited by the court.

In its memorandum of decision, the court stated that, although statutory prohibitions can render a marriage void, a lack of consent is a "substantive defect, derived from the common law, sufficient to avoid a marriage."[7] (Internal quotation marks omitted.) The court found that "the decedent was not competent to marry" on the basis of "[t]he overwhelming evidence" before it and concluded that "[t]he decedent did not possess at the time of the marriage on February 7, 2019, a sufficient mental capacity to understand and comprehend the consequences of the marriage or to consent to the marriage. He was medically and cognitively compromised to such a degree on February 7, 2019, that he was unable to consent to the marriage. Therefore, because the decedent was incapable of consenting to the marriage due to his insufficient mental capacity, the marriage is void." The court thus rendered judgment annulling the marriage of the decedent and the defendant, and this appeal followed.

I

The defendant first claims that the court lacked subject matter jurisdiction because the plaintiff lacked standing to continue the annulment action following the death of the decedent. More specifically, the defendant argues that § 52-599 does not grant standing to the administrator of an estate, when substituted in an annulment action initiated by a decedent plaintiff, because an exception set forth in subsection (c) of that statute

[7] On appeal, the defendant claims that "the trial court's memorandum of decision makes no distinction between a void marriage and a voidable marriage" and argues that the marriage at issue in this case was voidable, rather than void. The plaintiff, likewise, does not dispute that it sought an annulment of a voidable marriage on the basis of mental incapacity and that "[a]t no time did any party state [that the decedent] was statutorily incapacitated to the point that the marriage from the start was void." During closing arguments, the plaintiff's counsel explicitly argued that the decedent did not "properly enter into the contract of marriage."

applies to this scenario. Because standing is a threshold issue, we first address the question of whether the plaintiff is statutorily aggrieved under § 52-599.

The following legal principles are relevant to this claim. "When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue . . . . Standing requires no more than a colorable claim of injury; a [party] ordinarily establishes . . . standing by allegations of injury. Similarly, standing exists to attempt to vindicate arguably protected interests. . . . Standing is established by showing that the party claiming it is authorized by statute to bring an action, in other words, statutorily aggrieved, or is classically aggrieved. . . . [Statutory] [s]tanding concerns the question [of] whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." (Internal quotation marks omitted.) *Handsome, Inc.* v. *Planning & Zoning Commission*, 317 Conn. 515, 525, 119 A.3d 541 (2015).

"Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) *Burton* v. *Commissioner of Environmental Protection*, 291 Conn. 789, 803, 970 A.2d 640 (2009).

In the present case, the plaintiff claims to be aggrieved pursuant to § 52-599 (a). To resolve that claim, we first consider whether such standing exists under the broad contours of the statute and then turn to the question of whether an exception set forth in § 52-599 (c) applies.

A

Section 52-599 sets out the circumstances under which an action interrupted by the death of a litigant shall be allowed to continue by substituting the executor or administrator of the estate in place of a deceased litigant. When presented with questions of statutory interpretation, we are guided by General Statutes § 1-2z, commonly known as the plain meaning rule, which provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

The language of § 52-599 (a) is both broad and mandatory, providing that "[a] cause or right of action shall not be lost or destroyed by the death of any person, but shall survive in favor of or against the executor or administrator of the deceased person." Substitution in this manner can cure a jurisdictional defect, which is the precise purpose of § 52-599.[8] "The phrase right of action includes the right to commence and maintain an action." (Internal quotation marks omitted.) *Hayes* v. *Smith*, 194 Conn. 52, 62, 480 A.2d 425 (1984).

Both principles of equity and judicial precedent support the proposition that the administrator of an estate properly may maintain an annulment action initiated by a decedent plaintiff. Although there is no clear precedent establishing that an annulment action, initiated

[8] Discussing the substitution of an administrator of an estate for a conservator who had brought various tort actions on behalf of a plaintiff who died prior to judgment, our Supreme Court noted that any potential jurisdictional defect was cured by the substitution of the administrator of the estate. *Kortner* v. *Martise*, 312 Conn. 1, 10–11, 91 A.3d 412 (2014).

prior to the death of a party, can proceed under § 52-599, we note that, as a general principle, "[o]ur rules of practice . . . permit the substitution of parties as the interests of justice require." *Federal Deposit Ins. Corp.* v. *Retirement Management Group, Inc.*, 31 Conn. App. 80, 84, 623 A.2d 517, cert. denied, 226 Conn. 908, 625 A.2d 1378 (1993); see also General Statutes §§ 52-107, 52-108 and 52-109; Practice Book §§ 9-18 and 9-19. The rules permitting the substitution of parties as the interests of justice require "are to be construed so as to alter the harsh and inefficient result that attached to the mispleading of parties at common law." (Internal quotation marks omitted.) *Byrne* v. *Avery Center for Obstetrics & Gynecology, P.C.*, 212 Conn. App. 339, 372 n.24, 275 A.3d 639, cert. denied, 343 Conn. 933, 276 A.3d 974 (2022).

Alongside these guiding principles, we also have guidance from our Supreme Court, which, as this court previously has noted, "has described § 52-599 as having a broad sweep and that the *only* exceptions to its application are those set forth in § 52-599 (c): (1) . . . any cause or right of action or . . . any civil action or proceeding the purpose or object of which is defeated or rendered useless by the death of any party thereto, (2) . . . any civil action or proceeding whose prosecution or defense depends upon the continued existence of the persons who are plaintiffs or defendants, or (3) . . . any civil action upon a penal statute." (Emphasis in original; internal quotation marks omitted.) *In re David B.*, 167 Conn. App. 428, 442, 142 A.3d 1277 (2016).

It is also a long-standing principle that, because marriage is of vital social importance, "any question touching its dissolution should be passed upon with that fact and the interests of the [s]tate and society in view . . . ." *Lyman* v. *Lyman*, 90 Conn. 399, 411, 97 A. 312 (1916); see also *Boddie* v. *Connecticut*, 401 U.S. 371, 376, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971) ("marriage

involves interests of basic importance in our society"). There is a strong presumption of validity for marriage, as "[t]he policy of the law is strongly opposed to regarding an attempted marriage . . . entered into in good faith, believed by one or both of the parties to be legal, and followed by cohabitation, to be void." *Hames* v. *Hames*, 163 Conn. 588, 599, 316 A.2d 379 (1972).

In the present case, the defendant asks us to rule that the death of a party seeking an annulment would *automatically* validate the very same marriage that is being challenged as invalid. Given the broad and mandatory language of § 52-599, we cannot agree.

Our Supreme Court has held that the administrator of an estate has, by virtue of the survival statute, and rooted in common law, "the right and duty to recover or clear title to real property when the estate is insolvent." *Miner* v. *Miner*, 137 Conn. 642, 647, 80 A.2d 512 (1951). In *Miner*, the administrator of an estate continued a quiet title action initiated by a decedent plaintiff; id., 643–44; although the legal title may have been with the heirs or devisees.[9] Id., 647; see also *Poglitsch* v. *Camp Bethel Assn., Inc.*, Docket No. CV-19-6018358-S, 2021 WL 1400927, *9 (Conn. Super. March 1, 2021) ("[t]he court concludes that § 52-599, which does not place any limit on the type of action that may survive upon substitution of an executor, operates so as to provide statutory aggrievement to an executor or administrator to continue pursuit of a quiet title action commenced prior to the death of a testator").

[9] In *Miner*, our Supreme Court applied General Statutes (1949 Rev.) § 8337, the predecessor to § 52-599, in determining that the trial court possessed subject matter jurisdiction. See *Miner* v. *Miner*, supra, 137 Conn. 646–47. Connecticut has had similar statutes in place since at least 1903. See *Pickett* v. *Ruickoldt*, 91 Conn. 680, 683, 101 A. 82 (1917) ("[u]nder [the Survival Act of 1903] the survival of actions is the rule and not the exception, and the presumption is that every cause or right of action survives until the contrary is made to appear by way of exception to the rule").

Conversely, our courts have prohibited substitution in cases where specific relief was sought, such as an injunction for specific performance. See *Groton* v. *Commission on Human Rights & Opportunities*, 169 Conn. 89, 100–101, 362 A.2d 1359 (1975). Determination of paternity, a proceeding instituted to ascertain a relationship or status between persons, was held to be purely "personal to the parties." (Internal quotation marks omitted.) *Hayes* v. *Smith*, supra, 194 Conn. 62.

In the present case, the plaintiff proposed orders relating to the court's division of the estate. The plaintiff cites the "significant financial implications" of an annulment, given that the decedent died intestate. The defendant likewise acknowledges that the granting of an annulment "stripped" her of "the rights and benefits that she enjoyed as a married person" despite the death of the decedent.

Given that there was sufficient purpose to continue the annulment action, as conceded by the defendant's own characterization of the situation and supported by established precedent, we conclude that the administrator of the estate of a decedent plaintiff is statutorily aggrieved and, thus, has standing to continue an annulment action under § 52-599 (a).

B

We turn next to the question of whether the exception set forth in § 52-599 (c) (1) applies in this case. We conclude that it does not.

Section 52-599 (c) (1) provides: "The provisions of this section shall not apply . . . [t]o any cause or right of action or to any civil action or proceeding the purpose or object of which is defeated or rendered useless by the death of any party thereto . . . ." The defendant claims that § 52-599 (c) (1) applies in the present case, arguing that the action seeking annulment is rendered

useless or absurd because "the very same second the motion to open [would be] granted, General Statutes § 46b-40 would immediately operate to dissolve the marriage." Section 46b-40 provides in relevant part: "(a) A marriage is dissolved only by (1) the death of one of the parties or (2) a decree of annulment or dissolution of the marriage by a court of competent jurisdiction. (b) An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed. . . ." The defendant contends that, by allowing an annulment action to continue under the survival statute, the court effectively reinstated a marriage that already had dissolved upon the death of one of the parties. Because we do not read the statute to compel that result, we cannot agree with the defendant.

The broad application of § 52-599 mandated by our Supreme Court; see *Foisie* v. *Foisie*, 335 Conn. 525, 532, 239 A.3d 1198 (2020); *In re David B.*, supra, 167 Conn. App. 442; informs our analysis of the exceptions contained therein. There is a general policy favoring "the continuation and timely resolution of actions on the merits whenever possible." *In re David B.*, supra, 442. As this court previously has observed, when a party seeks to substitute the administrator of the estate of a deceased plaintiff, the applicability of § 52-599 can reasonably be construed to extend to those civil cases in which, despite the death of the plaintiff, "the continuation of the litigation arguably could benefit the decedent's estate, typically in some pecuniary manner . . . ." Id., 446. Where the value of the estate is at issue, causes of action have been allowed to be continued by the administrator of the estate because the substitution would "do no more than enhance or diminish the estate the same as it would have enhanced or diminished the deceased [party's] assets if he had lived." *Foisie* v. *Foisie*, supra, 542.

In considering the applicability of § 52-599 to an action to annul a marriage, we note that, because property rights attach to the status of marriage, an action to annul not only seeks to affect the status of the marriage itself, but also those attendant property rights. The defendant acknowledges as much, arguing that "[t]he trial court's decision not only invalidated the parties' marriage, but it also stripped [the defendant] of the rights and benefits that she enjoyed as a married person." It is clear that, upon the death of a party seeking an annulment, especially when that party dies intestate, the purpose of the underlying action becomes heightened—not useless. See *Perlstein* v. *Perlstein*, 26 Conn. Supp. 257, 258, 217 A.2d 481 (1966) (noting that, under § 52-599, action to annul marriage was not rendered useless upon death of plaintiff). This is particularly so in this case where the decedent, prior to his death, took action to protect his assets by seeking exclusive possession of the premises, the return of personal items, and to enjoin the defendant from collecting rent on his properties.

In arguing that the continuation of an annulment action effectively seeks to reinstate an already dissolved marriage, the defendant mischaracterizes the holding of our Supreme Court in *Foisie* v. *Foisie*, supra, 335 Conn. 525. She contends that, pursuant to § 46b-40, the Supreme Court "expressly prohibit[ed]" the trial court's reopening of the judgment in that case because "[t]he party's death would defeat and render useless the motion [seeking to alter marital status], because, once granted, the reinstated marriage would automatically be dissolved as of the date of the deceased party's death . . . ." The defendant is mistaken, as the court in *Foisie* considered—and rejected—the argument that every motion to open, if granted, would effectively reinstate a marriage, even if one of the parties had died during the pendency of the action. See *Foisie* v. *Foisie*, supra,

537.[10] In concluding that the trial court in that case erred in determining that a motion to open a dissolution judgment would automatically reinstate the marriage, triggering § 46b-40 and immediately dissolving it, our Supreme Court held that the determination of the issue turned on the relief requested in the motion to open.[11] Id., 536.

In the present case, the relief sought was an annulment, and not the reinstatement, of a marriage. Although the defendant's theory may be compelling if the sole relief being sought by the motion to open was reinstatement of the marriage, it would be absurd to demand that an action for annulment requires the reinstatement of a marriage in order to void it. Here, as in *Foisie*, the plaintiff was not attempting to have the marriage reinstated. See id., 537. Indeed, the plaintiff had moved to open the annulment action that had been commenced by the decedent, who had taken steps to protect his assets, and, on his death, the plaintiff duly moved to protect the decedent's estate.

Because the administrator of the estate has a legitimate fiduciary interest in establishing the identity of

[10] Trial courts also have opened dissolution judgments for the limited purpose of reconsidering financial orders with the stipulation of the parties. See *Reinke* v. *Sing*, 186 Conn. App. 665, 667 n.1, 201 A.3d 404 (2018); see also *Lavy* v. *Lavy*, 190 Conn. App. 186, 192, 210 A.3d 98 (2019) (parties agreed to have court open dissolution judgment for purpose of conducting limited discovery related to fraud claims). Here, the defendant did not object to the motion to open the judgment nor the motion to substitute a party. This is the functional equivalent of a stipulation to open the judgment for a limited purpose, which was also operative in *Foisie*. The defendant's claim of lack of subject matter jurisdiction does not erase the underlying procedural history.

[11] As our Supreme Court stated, "[a]lthough a motion to open, if granted, may vacate the dissolution of the marriage and thereby reinstate the marriage, that does not mean that the granting of every motion to open necessarily vacates the dissolution of the marriage. Not every motion to open *seeks* to vacate the dissolution of the marriage." (Emphasis in original.) *Foisie* v. *Foisie*, supra, 335 Conn. 537.

the rightful heirs, as well as a duty to carry out the wishes of the decedent, it is only logical that he be permitted to continue an action to annul a marriage under the circumstances presented by this case.

We therefore conclude that the purpose of the cause of action originally pursued by the decedent was not defeated or rendered useless by his death. Accordingly, the exception set forth in § 52-599 (c) (1) does not apply in this case.

II

We next address the defendant's claim that, because the marriage was voidable based on a claim of lack of mental capacity, the decedent's failure to "act" on his annulment prior to his death operates as a waiver of the voidable defect and abates upon his death. In other words, because the marriage was voidable, it remained legally valid until it was automatically dissolved upon the decedent's death pursuant to § 46b-40 (a). The defendant therefore argues that the plaintiff's action to annul the marriage following the death of the decedent constitutes an impermissible collateral attack on a legally valid marriage.[12]

Whether the plaintiff's action to annul the marriage following the death of the decedent constitutes an

[12] Although we agree with the defendant that the operative complaint seeks to annul a voidable marriage, we do not read the trial court's memorandum of decision as necessarily differing from that premise. We reiterate that both parties do not dispute that an annulment may be granted for either voidable or void marriages, which, if granted, in either case would result in a judgment that the marriage was void. Because the defendant raised her lack of standing claim for the first time on appeal, which is also premised on her contention that a voidable marriage dissolves upon death, the court had no occasion to determine the legal status of the marriage as being either voidable or void prior to rendering judgment. Against that backdrop, the court's finding and conclusion that, because "the decedent was incapable of consenting to the marriage due to his insufficient mental capacity, the marriage is void" appears to represent the court's judgment that the marriage is void based on those findings and pursuant to the relief sought.

impermissible collateral attack on a legally valid marriage presents a question of law over which our review is plenary. "Because our review is plenary, we must decide whether [the trial court's] conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Karen* v. *Loftus*, 210 Conn. App. 289, 297, 270 A.3d 126 (2022).

On appeal, the defendant contends that, if a party does not "act [to obtain] an annulment from a court of competent jurisdiction prior to the death of one of the parties, the voidable defect is deemed waived and will abate with the death of a party." We do not agree.

As our Supreme Court has explained, "[i]n the absence of express language in the governing statute declaring a marriage void for failure to observe a statutory requirement, this court has held in an unbroken line of cases since *Gould* v. *Gould*, 78 Conn. 242, 247, 61 A. 604 (1905), that such a marriage, though imperfect, is dissoluble rather than void. *Hames* v. *Hames*, supra, [163 Conn.] 598; *Perlstein* v. *Perlstein*, 152 Conn. 152, 157–58, 204 A.2d 909 (1964); *Vendetto* v. *Vendetto*, 115 Conn. 303, 305, 161 A. 392 (1932)." *Carabetta* v. *Carabetta*, 182 Conn. 344, 349, 438 A.2d 109 (1980).

At the same time, "[w]e recognize that an annulment and a dissolution of marriage differ fundamentally. An annulment renders the marriage void ab initio while a dissolution is based upon a valid marriage which terminates as of the date of the judgment of dissolution." *Durham* v. *Miceli*, 15 Conn. App. 96, 96, 543 A.2d 286 (1988).

By statute, an annulment must be granted if the marriage is either void or voidable under the laws of this state or of the state in which the marriage was performed.[13] Section 46b-40 (a) provides that "[a] marriage

[13] We note that our General Assembly could have prohibited the issuance of an annulment after the death of one of the parties as other jurisdictions

is dissolved only by (1) the death of one of the parties or (2) a decree of annulment or dissolution of the marriage by a court of competent jurisdiction." Subsection (b) of § 46b-40 further provides: "An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed."

Our modern statutory construction of § 46b-40 supports the distinction between annulment and dissolution and provides for annulments, in equity, to be granted simply when "void or voidable." Here, the plaintiff commenced an action to annul the parties' marriage but died before a decree of annulment could be issued by the court. Had the plaintiff not commenced that action, there can be little dispute that § 46b-40 (a) would have operated to dissolve the marriage upon his death. However, the defendant's contention that the court erred because the plaintiff did not "act [to obtain] an annulment" prior to his death and therefore waived the voidable defect suffers from a false premise. By commencing the action in the first place, the plaintiff did act to obtain an annulment. That he died before the action was concluded does not obviate that undisputed fact. We are thus hard-pressed to conclude that the voidable defect must be deemed waived in the circumstances presented by this case.[14]

Put differently, § 46b-40 (a) does not set up a race between two different actions—it sets up an alternative, and legally distinct, avenue to effect the dissolution of a marriage. In light of the foregoing, we conclude that

have done, but it has not elected to do so. See, e.g., Wis. Stat. § 767.313 (2) (2009) ("A judicial proceeding is required to annul a marriage. A marriage may not be annulled after the death of a party to the marriage.").

[14] Indeed, the court, in ruling on the motion to dismiss, recognized that the circumstances warranted granting the motion without prejudice and implicitly acknowledged that the action could be revived if a fiduciary was appointed to continue the litigation pursuant to § 52-599.

the plaintiff's action to annul the marriage following the death of the decedent did not constitute an impermissible collateral attack on a legally valid marriage.

III

The defendant also claims that the court held the plaintiff to an incorrect standard of proof—a preponderance of the evidence—when the appropriate standard was clear and convincing evidence. The defendant argues that this claim is properly preserved but that, in the alternative, we should apply the plain error doctrine. We disagree with both contentions.

"The question of whether a trial court has held a party to a less exacting standard of proof than the law requires is a legal one. . . . Accordingly, our review is plenary." (Internal question marks omitted.) *In re Denzel W.*, 225 Conn App. 354, 372, 315 A.3d 346, cert. denied, 349 Conn. 918, 317 A.3d 1 (2024). When determining whether an issue is properly preserved, "[i]t is well established that an appellate court is under no obligation to consider a claim that is not distinctly raised at the trial level. . . . 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 reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court or the opposing party to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party." (Emphasis in original; internal quotation marks omitted.) *Downing* v. *Dragone*, 216 Conn. App. 306, 327, 285 A.3d 59 (2022), cert. denied, 346 Conn. 903, 287 A.3d 601 (2023).

Moreover, Practice Book § 5-2 provides in relevant part: "Any party intending to raise any question of law which may be the subject of an appeal must either state

the question distinctly to the judicial authority in a written trial brief . . . or state the question distinctly to the judicial authority on the record before such party's closing argument and within sufficient time to give the opposing counsel an opportunity to discuss the question. If the party fails to do this, the judicial authority will be under no obligation to decide the question."

The record reveals that, on the second day of trial, the court sua sponte raised the issue of the applicable standard of proof. The court stated: "It is this court's view that the standard of proof which the plaintiff must meet is proof by a preponderance of the evidence. I recognize that other trial courts in the past have applied the clear and convincing evidence standard. I am aware of no Appellate or Supreme Court case [subsequent to] the enactment of the annulment statute which squarely addresses the issue.

"The court concluded in a prior case that the preponderance of the evidence standard is appropriate based upon statutory construction in that the annulment statute is silent as to the applicable standard. And, therefore, the court is required to apply the less stringent standard of preponderance of the evidence." The plaintiff's counsel concurred, and then the following colloquy ensued:

"The Court: And, [Defendant's Counsel], if you disagree with that analysis, I would ask you to, as soon as possible, bring to the court's attention some authority to the contrary.

"[The Defendant's Counsel]: Your Honor, I—I believe that your research is superior to mine. And I defer to your best judgment in that regard.

"The Court: Thank you for that . . . . I'll share with counsel that this was one of the very first issues that I had to address when I first began family matters . . . ."

Throughout the remainder of the trial, the defendant did not raise an issue regarding the applicable standard of proof nor file a posttrial motion to allow the court an opportunity to address the claim. In its memorandum of decision, the court applied the preponderance of the evidence standard, citing precedent and basic principles of statutory interpretation.[15] The defendant now claims, for the first time on appeal, that the court applied an incorrect standard of proof.

The defendant acknowledges that she did not distinctly raise this claim of error before the trial court. She nonetheless claims that the "ultimate purpose of issue preservation" was achieved by the on the record statement by the court. The defendant quotes *Overley* v. *Overley*, 209 Conn. App. 504, 268 A.3d 691 (2021), cert. denied, 343 Conn. 901, 272 A.3d 657 (2022), for the proposition that "because the sine qua non of preservation is fair notice to the trial court . . . the determination of whether a claim has been properly preserved will depend on a careful review of the record to ascertain whether the claim on appeal was articulated below with sufficient clarity to place the trial court on reasonable notice of *that very same claim*." (Emphasis added; internal quotation marks omitted.) Id., 513.

The defendant overlooks the undisputed fact that the court invited the defendant to provide it with any contrary arguments or authority "as soon as possible." The defendant's counsel declined to do so, stating: "Your Honor, I—I believe that your research is superior to mine. And I defer to your best judgment in that

[15] The court noted that it was the plaintiff's burden to establish the basis for an annulment and that "the court must adhere to the language of the statute. When a statute is silent regarding the standard of proof [to apply to the evidence], the court must apply the preponderance of the evidence standard. *Stuart* v. *Stuart*, 297 Conn. 26, 34–35, 996 A.2d 259 (2010)."

regard."[16] Moreover, in her appellate brief, the defendant concedes that there is an "absence of any binding [appellate] authority" on that legal issue.

Although it is true that the issue of the proper standard of proof was briefly discussed by the court at trial, the defendant declined the court's invitation to weigh in on that issue and voiced no objection to the court's conclusion that the applicable legal standard was the preponderance of the evidence standard. Rather, she affirmatively deferred to the court on that issue and did not raise any objection until this appeal.

Allowing the defendant to now raise the issue after deferring to the court's "best judgment" and forgoing the opportunities she previously had to address it "would be sanctioning trial by ambush, which we have repeatedly stated we will not allow." *In re David B.*, supra, 167 Conn. App. 444. Accordingly, we conclude that the defendant failed to preserve her claim, and induced any error, with respect to the applicable standard of proof.

In the alternative, the defendant submits that the plain error doctrine should apply. "[T]he plain error

[16] We note that the doctrine of induced error is implicated in the present case. "[T]he term induced error, or invited error, has been defined as [a]n error that a party cannot complain of on appeal because the party, through conduct, encouraged or prompted the trial court to make the [allegedly] erroneous ruling. . . . It is well established that a party who induces an error cannot be heard to later complain about that error. . . . This principle bars appellate review of induced nonconstitutional error and induced constitutional error. . . . The invited error doctrine rests [on principles] of fairness, both to the trial court and to the opposing party. . . . [W]hether we call it induced error, encouraged error, waiver, or abandonment, the result—that the . . . claim is unreviewable—is the same." (Internal quotation marks omitted.) *Boone* v. *Boehringer Ingelheim Pharmaceuticals, Inc.*, 335 Conn. 547, 567–68, 239 A.3d 1175 (2020). To the extent that the defendant declined to furnish any legal authority to the court and expressly indicated that she would defer to the court's "superior" research and "best judgment" on the issue of the applicable standard of proof, she induced the error of which she now complains.

doctrine . . . is not . . . a rule of reviewability. It is a rule of reversibility. That is, it is a doctrine that this court invokes in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment . . . for reasons of policy. . . . [P]lain error review is reserved for only the most egregious errors. When an error of such a magnitude exists, it necessitates reversal." (Citation omitted; internal quotation marks omitted.) *State* v. *McClain*, 324 Conn. 802, 813–14, 155 A.3d 209 (2017). "An appellate court addressing a claim of plain error first must determine if the error is indeed plain in the sense that it is patent [or] readily [discernible] on the face of a factually adequate record, [and] also . . . obvious in the sense of not debatable. . . . This determination clearly requires a review of the plain error claim presented in light of the record. Although a complete record and an obvious error are prerequisites for plain error review, they are not, of themselves, sufficient for its application. . . . [T]he plain error doctrine is reserved for truly extraordinary situations [in which] the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . [An appellant] cannot prevail under [the plain error doctrine] . . . unless he demonstrates that the claimed error is *both* so clear *and* so harmful that a failure to reverse the judgment would result in manifest injustice." (Citations omitted; emphasis in original; internal quotation marks omitted.) Id., 812.

We conclude that the defendant has not satisfied that burden. At trial, the court explained that it had concluded "in a prior case that the preponderance of the evidence standard is [the] appropriate" legal standard for claims involving § 46b-40. The court also acknowledged the lack of appellate authority on that issue. Moreover, in deciding to apply the preponderance

of the evidence standard, the court expressly relied on *Stuart* v. *Stuart*, 297 Conn. 26, 38–40, 996 A.2d 259 (2010).

The defendant's burden under the first prong of the plain error doctrine requires proof of "an error so obvious on its face that it is undebatable." *State* v. *McClain*, supra, 324 Conn. 820 n.13. On the basis of the record before us, we conclude that the defendant has not met that burden. She therefore cannot prevail under the plain error doctrine.

The judgment is affirmed.

In this opinion the other judges concurred.

CITY OF MIDDLETOWN *v.* JUSTIN WAGNER ET AL. (AC 46940)

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

Syllabus

The defendant appealed from the trial court's judgment vesting in the plaintiff city ownership of certain dogs seized from a barn that was leased by the defendant and J, after the court found that the dogs were neglected. The defendant claimed, inter alia, that his rights under the fourth amendment to the United States constitution were violated because the evidence presented did not permit a finding that the police reasonably believed a warrantless entry was necessary to help an animal in immediate need of assistance. *Held*:

The trial court properly applied the applicable statute (§ 22-329a (a)) in denying the defendant's motion to suppress, and, because the evidence supported the court's finding that the plaintiff's animal control officers reasonably concluded that the dogs confined in the barn were in imminent harm and were neglected, the warrantless search did not violate the defendant's rights under the fourth amendment.

The applicable statutes (§§ 22-329a and 53-247) afforded the defendant and J adequate notice of the type of conduct prohibited thereby, and, accordingly, the defendant failed to demonstrate that the statutes were unconstitutionally vague.

This court declined to review the defendant's inadequately briefed claim that the police did not provide J with fair notice of the law because they

failed to notify her that the lack of ventilation in the barn constituted neglect under § 22-329a.

The trial court applied the proper legal standard in determining that the dogs in the barn, having been neglected by the defendant and J, were properly subject to a warrantless seizure pursuant to § 22-329a (a) because it was clear from the plain language of § 53-247 that the neglect referred to in § 22-329a included neglect committed by individuals, not just neglect committed by commercial kennels or large breeding operations.

The evidence was sufficient to support the trial court's finding that the dogs in the barn were neglected because, pursuant to § 22-329a, the plaintiff demonstrated that the defendant and J failed to supply the dogs with wholesome air, food and water.

Argued March 7—officially released September 24, 2024

Procedural History

Verified petition seeking, inter alia, custody in favor of the plaintiff of certain animals taken from the defendants' possession that were allegedly neglected, and for other relief, brought to the Superior Court in the judicial district of Middlesex, where the court, *Shah, J.*, granted the plaintiff's application for an order to show cause, vesting temporary care and custody of the defendants' animals in the plaintiff; thereafter, the named defendant filed a motion for the return of his property and to suppress evidence; subsequently, the matter was tried to the court, *Hon. Edward S. Domnarski*, judge trial referee; judgment denying the named defendant's motion to suppress and granting the plaintiff's petition in part; thereafter, the court, *Hon. Edward S. Domnarski*, judge trial referee, denied the motion for a new trial filed by the named defendant, and the named defendant appealed to this court. *Affirmed.*

Justin Wagner, self-represented, the appellant (named defendant).

Kori Termine Wisneski, deputy general counsel, for the appellee (plaintiff).

Opinion

SUAREZ, J. In this animal welfare action, the self-represented defendant Justin Wagner[1] appeals from the judgment of the trial court vesting ownership of the dogs seized from a barn leased by the defendant and Destiny Jennings, together with the puppies subsequently born to those dogs, in the plaintiff, the city of Middletown, after it found that the dogs were neglected. On appeal, the defendant claims that (1) the trial court erred when it denied the defendant's motion to return property and suppress evidence obtained pursuant to a warrantless search and seizure of the property, (2) General Statutes §§ 22-329a and 53-247,[2] as applied to the defendant and Jennings, are void for vagueness, (3) the police did not provide Jennings with fair notice of the law, (4) the court did not apply the proper legal standard, and (5) there was insufficient evidence presented at the hearing to support a finding that the dogs in the barn were neglected.[3] We affirm the judgment of the trial court.

The following facts, as set forth in the court's August 21, 2023 memorandum of decision, and procedural history are relevant to our resolution of this appeal. "On

[1] Destiny Jennings was also named as a defendant in the underlying action but is not a party to this appeal. Accordingly, all references in this opinion to the defendant are to Wagner only. The defendant represented himself in both the trial court and this court.

[2] Although § 22-329a has been amended by the legislature since the events underlying this appeal; see Public Acts 2023, No. 23-149, § 5; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, unless otherwise indicated, we refer to the current revision of the statute.

Although § 53-247 has been amended by the legislature since the events underlying this appeal; see Public Acts 2023, No. 23-149, § 7; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[3] In his appellate brief, the defendant raised eight claims of error related to the trial court's August 21, 2023 judgment and two claims of error relating to the court's September 20, 2023 order denying his motion for a new trial. Specifically, the defendant characterized his claims of error as follows: (a) "[t]he court erred when it improperly denied [the defendant's] motion to

June 27, 2023, the Middletown Police Department responded to a domestic violence call at 797 Washington Street, [in] Middletown . . . . [The defendant] was arrested and taken into custody as a result of the incident. The police officers found the house on the premises to be in very poor condition. In response to these conditions, the police officers contacted the Department of Health, and the department condemned the home as unfit for human occupancy. The two dogs in the house, a German shepherd named Leanna and a golden retriever named Ruby, were placed with a neighbor that night. The neighbor later decided he could not

return property and suppress evidence obtained pursuant to a warrantless search and seizure"; (b) "[t]he court erred in concluding [§] 22-329a authorized a warrantless search and seizure as [there is] no objective evidence on the record to support the court's conclusion that a reasonable officer would determine the dogs were both in 'imminent harm and neglected' "; (c) "the court was persuaded to erroneously apply [§ 22-329a], when it omitted the statutory requirement of being 'neglected' "; (d) "[t]he statutory language of [§] 53-247 is impermissibly vague when applied to the specific facts of the case"; (e) the "[p]olice . . . did not provide . . . Jennings with fair notice of law"; (f) "[t]he court abused its discretion when it applied an improper legal standard"; (g) "[t]he false statements provided by [Animal Control Officer Gail] Petras should be enough to grant the [defendant and Jennings] a new trial, as it's clear the false statements [affected] the court's conclusion"; (h) "[t]he new evidence, specifically the police body camera footage, should be enough to grant the [defendant and Jennings] a new trial"; (i) "[t]he [judgment] is not supported by the clear weight of the evidence, as there is no proof on the record of the dogs being deprived, and because the substantial evidence contradicts the allegation of 'neglect' "; and (j) "[t]he court abused its discretion because the [judgment] is not supported by any empirical or objective evidence, nor by substantial evidence."

The defendant has not appealed from or amended his appeal to include the court's September 20, 2023 order denying his motion for a new trial. Accordingly, we will not review the defendant's claims related to the September 20, 2023 court order. See *OneWest Bank, N.A.* v. *Ceslik*, 202 Conn. App. 445, 465–66, 246 A.3d 18 (declining to review claim because defendant did not appeal from or amend appeal to include court's denial of motion related thereto), cert. denied, 336 Conn. 936, 249 A.3d 39 (2021). We have reframed the defendant's remaining claims, in some instances condensing closely related claims, to more accurately reflect the arguments in the defendant's brief. See, e.g., *Doe* v. *Quinnipiac University*, 218 Conn. App. 170, 173 n.4, 291 A.3d 153 (2023).

care for the dogs, and he turned them over to an animal control officer.

"On the evening of June 27, 2023 . . . Jennings left the premises with her minor child to go stay with a relative in Massachusetts. Before she left the premises, Jennings informed the police officers that there were three dogs in a padlocked barn behind the house and that two of the dogs were pregnant. She told the police officers that she did not have a key for the padlock, and she would not allow the police officers to enter the barn. The next day, June 28, [2023, the defendant] was still in custody and Jennings had not returned to the premises. The animal control officers were concerned about the conditions in the barn because it was their understanding that the dogs had not been tended to since the previous morning. The officers attempted to contact Jennings without success.

"On the afternoon of June 28, [2023] the weather was hot and humid with temperatures in the mid-eighties. The officers returned to the premises because they were concerned about the condition of the dogs locked inside the barn. The officers understood that the dogs in the barn had been left unattended for at least thirty-six hours. Police officers broke the door frame and entered the barn. It is undisputed that they did not have a warrant. The barn floor was covered in urine and feces and there was a strong smell of ammonia and feces that affected the officers' breathing. The officers reported a burning sensation in their eyes and noses from the strong smell in the barn. There was no active ventilation in the barn.

"There were five dogs in the barn, all German shepherds. [The defendant] later provided the names of the dogs and they can be referred to here. Deacon and Ruby were running free in the barn. Mitzi was chained to a post in the barn with two padlocks on her collar. Mitzi

was confirmed to be pregnant. Because of the way Mitzi was chained, the officers were concerned that the dog could wrap the chain around the post and be strangled. These three dogs did not have access to water or food.

"Two other German shepherds, Luna and Lily, both pregnant, were located within a fenced off area of the barn. Lily had an injury above her eye. These two dogs did not have access to food, they did have access to water. The fur on the dogs was wet and matted and smelled of urine. All five dogs were taken into the custody of the animal control officer. After they were taken into custody, the three pregnant German shepherds delivered a total of twenty-two puppies, of which, nineteen have survived.

"On [June] 30, 2023, an animal control officer also took custody of three corgi puppies, approximately ten weeks old, that were kept in the basement of the house. The names of the puppies were not part of the evidence. Jennings did not inform the animal control officers of these puppies before she left the premises. These puppies were left unattended until Jennings asked her neighbor to retrieve them. The neighbor turned the puppies over to animal control on June 30, 2023."

On July 11, 2023, the plaintiff, pursuant to § 22-329a, filed an application for an order to show cause and a verified petition as to the custody of the dogs seized from the property leased by the defendant and Jennings. In its petition, the plaintiff requested, inter alia, orders that (1) the dogs and unborn puppies at issue were neglected and/or were treated cruelly in violation of § 53-247, (2) the court vest temporary and permanent ownership and custody of the dogs and unborn puppies with the plaintiff pursuant to § 22-329a (g), and (3) the defendant and Jennings, pursuant to § 22-329a (h), pay the plaintiff the expenses incurred in providing proper food, shelter, and care to the dogs of which it took

custody under § 22-329a. On July 12, 2023, the court, *Shah*, *J.*, granted the plaintiff's application for an order to show cause, vesting temporary care and custody of the dogs in the plaintiff, and scheduled an evidentiary hearing within fourteen days.

On July 19, 2023, the defendant filed a motion for the return of his property and to suppress evidence. In his motion, the defendant argued that the officers' entry into the locked barn and the seizure of the dogs therein violated his rights under the fourth amendment to the United States constitution because the police did not have a warrant to enter the barn or probable cause that any crime was being committed that would allow them to enter the barn. On July 24, 2023, the plaintiff filed an objection to the defendant's motion to suppress. The plaintiff argued that the officers' decision to enter the barn did not constitute an illegal search under the fourth amendment. Specifically, the plaintiff asserted that § 22-329a authorizes warrantless searches and seizures when, as in the present case, an animal control officer has reasonable cause to believe that an animal is in imminent harm and neglected, or cruelly treated. The plaintiff also argued that, even if a warrant were required, the officers' decision to enter the barn fell within the consent and exigent circumstance exceptions to the warrant requirement.

On July 26, 2023, the court, *Hon. Edward S. Domnarski*, judge trial referee, held an evidentiary hearing on the plaintiff's petition and the defendant's motion to suppress. The court heard testimony from Animal Control Officer Gail Petras, the defendant, and Jennings. The plaintiff offered multiple photographs, which were admitted into evidence, that documented the conditions of the house and barn leased by the defendant and Jennings, and the dogs found therein, along with a bill for the veterinary expenses for the dogs. The defendant and Jennings also offered photographs of the exterior

of the barn, which were admitted into evidence, that depicted one open window, high on the gable end of the barn.

On August 21, 2023, the court issued a memorandum of decision in which it granted the plaintiff's petition, in part, and denied the defendant's motion to suppress. The court concluded that the plaintiff did not establish that the dogs in the defendant's and Jennings' home, including the three corgi puppies, were neglected as required by § 22-329a. The court, however, found that the five dogs in the barn were neglected under § 22-329a. The court also concluded that, because it found that the pregnant dogs in the barn were neglected, it followed that the unborn puppies those dogs were carrying were likewise neglected. The court reasoned that "[t]he dogs had been left confined and unattended for approximately thirty-six hours when the weather was hot and humid. [Petras] was present when police officers entered the padlocked barn. She testified as to the unwholesome and unsanitary conditions in the barn. . . . Petras also testified as to the condition and appearance of the five dogs in the barn.

"At the hearing, [the defendant] and Jennings stated that the conditions in the house and barn were the result of a 'bad day.' The court does not find [the defendant or] Jennings to be credible on this issue. [Petras] testified that the conditions in the barn did not come about in only one day. The court has considered the testimony of [Petras] related to the conditions in the barn and the animals therein. The court finds the testimony of [Petras], as supported by the submitted exhibits, to be credible." (Citation omitted.)

Regarding the defendant's motion to suppress evidence related to the police officers' entry into the locked barn, the court stated that it was unpersuaded by the defendant's arguments. The court noted that § 22-329a

(a) allows an animal control officer to act and enter property to take custody of an animal when that animal is in imminent harm and is neglected. The court concluded that the circumstances that existed on June 27, 2023, met the requirement of imminent harm provided for in the statute. The court stated that, "[a]t the time the officers entered the barn on the afternoon of June 28, 2023, it was their understanding that the dogs had been confined and left unattended for at least thirty-six hours. The officers attempted to contact Jennings without success. [The defendant] was still in custody from the earlier arrest. The officers had not been informed that someone was coming to unlock the barn and tend to the dogs. . . . Because of the high levels of temperature and humidity, the officers were concerned that the dogs did not have adequate ventilation, water, or food. . . . [U]nder §§ 22-329a and 53-247, failure to supply confined animals wholesome air, food, and water constitutes neglect." (Citations omitted.) Accordingly, the court issued the following orders: "(1) The dogs in the barn . . . together with the nineteen puppies . . . are found to be neglected and the court vests ownership of these dogs and puppies in [the plaintiff]. (2) The dogs in the house . . . and the three . . . corgi puppies, are found not to be neglected and may be returned to an agent of the [defendant and Jennings] . . . . (3) The [defendant and Jennings] are to pay the [plaintiff] the sum of $1062.50 for veterinary expenses. (4) The [defendant and Jennings] are to pay the [plaintiff] $19,020 for expenses for the care and custody of the dogs found to be neglected."

On August 29, 2023, the defendant filed a motion for a new trial and a memorandum of law in support of his motion. On September 6, 2023, the plaintiff filed an objection to the defendant's motion. On September 18, 2023, the court held a hearing on the defendant's motion, and, on September 20, 2023, the court issued

an order denying the defendant's motion. This appeal followed.

I

The defendant first claims that the court erred when it improperly denied his motion to return property and suppress evidence obtained pursuant to a warrantless search and seizure. Specifically, the defendant argues that his constitutional rights under the fourth amendment to the United States constitution were violated because the evidence presented at the hearing "did not permit a finding that the police reasonably believed a warrantless entry was necessary to help an animal in immediate need of assistance." The defendant also asserts that there was "no objective evidence on the record to support the court's conclusion that a reasonable officer would determine the dogs were both in 'imminent harm and neglected.' " The defendant further contends that the court improperly applied § 22-329a in denying his motion to suppress because it omitted the statutory requirement that the officers have reason to believe the confined animals were neglected. We are not persuaded.

The following legal principles and additional procedural history are relevant to our resolution of the defendant's claim. "As a general matter, the standard of review for a motion to suppress is well settled. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record. . . . [W]hen a question of fact is essential to the outcome of a particular legal determination that implicates a defendant's constitutional rights, [however] and the credibility of witnesses is not the primary issue, our customary deference to the trial court's factual findings is tempered by a scrupulous examination of the record to ascertain that the trial court's factual findings are supported by substantial evidence. . . .

[W]here the legal conclusions of the court are challenged, [our review is plenary, and] we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision. . . . Moreover, [i]t is by now well settled that, in order to determine whether the defendant's constitutional rights have been infringed, [w]e review the record in its entirety and are not limited to the evidence before the trial court at the time the ruling was made on the motion to suppress." (Citation omitted; internal quotation marks omitted.) *State* v. *Leuders*, 225 Conn. App. 612, 632–33, 317 A.3d 69 (2024).

The defendant does not dispute that, by virtue of § 22-329 (a), an animal control officer may lawfully take physical custody of an animal if the officer has reasonable cause to believe that the animal is in imminent harm and is neglected or cruelly treated. Nor does he claim that an imminent threat to the animals would not justify a warrantless search under the fourth amendment to the United States constitution.[4] He asserts, instead, that the evidence and circumstances of this case do not satisfy the imminent harm standard under § 22-329a (a) and, therefore, that the animal control officers were required to obtain a warrant, pursuant

[4] The law is clear that "[t]he fourth amendment does not bar police officers, when responding to emergencies, from making warrantless entries into premises and warrantless searches when they reasonably believe that *a person* within is in need of immediate aid." (Emphasis added; internal quotation marks omitted.) *State* v. *DeMarco*, 311 Conn. 510, 535, 88 A.3d 491 (2014). As this court recently noted though, neither our Supreme Court nor this court has addressed whether the imminent threat of harm to a nonhuman animal justifies a warrantless search. See *State* v. *Leuders*, supra, 225 Conn. App. 636 n.22. Courts in other states that have considered the issue have held that the risk of imminent harm to a nonhuman animal constitutes exigent circumstances under the fourth amendment. See, e.g., *Commonwealth* v. *Duncan*, 467 Mass. 746, 751–54, 7 N.E.3d 469, cert. denied, 574 U.S. 891, 135 S. Ct. 224, 190 L. Ed. 2d 170 (2014); *State* v. *Fessenden*, 355 Or. 759, 775–76, 333 P.3d 278 (2014). Because the defendant has not argued otherwise, we need not resolve that question in this case.

to § 22-329a (b) and the fourth amendment, prior to entering the barn and taking custody of any animal on the property. We disagree.

Section 22-329a is titled "Seizure and custody of neglected or cruelly treated animals." It provides in relevant part: "(a) Any animal control officer . . . may take physical custody of any animal when such animal control officer has reasonable cause to believe that such animal is in imminent harm and is neglected or is cruelly treated in violation of section 22-366, 22-415, 53-247, 53-248, 53-249, 53-249a, 53-250, 53-251, 53-252 or 53a-73b, and, not later than ninety-six hours after taking physical custody, shall proceed as provided in subsection (c) of this section . . . ." General Statutes § 22-329a (a). Subsection (c) of § 22-329a provides in relevant part: "Such officer shall file with the superior court which has venue over such matter or with the superior court for the judicial district of Hartford at Hartford a verified petition plainly stating such facts of neglect or cruel treatment as to bring such animal within the jurisdiction of the court and praying for appropriate action by the court in accordance with the provisions of this section. . . ."[5] It is clear from the plain language of § 22-329a that an animal control officer may take physical custody of an animal when the officer has reasonable cause to believe that such animal is in imminent harm and is neglected or cruelly treated. In such circumstances, a warrant is unnecessary. As previously noted in this opinion, the defendant does not claim that

[5] We note that, in nonemergency circumstances, an animal control officer must first obtain a warrant, pursuant to § 22-329a (b), in order to take physical custody of an animal. Specifically, General Statutes § 22-329a (b) provides in relevant part: "Any animal control officer . . . may take physical custody of any animal upon issuance of a warrant finding probable cause that such animal is neglected or is cruelly treated in violation of section 22-366, 22-415, 53-247, 53-248, 53-249, 53-249a, 53-250, 53-251, 53-252 or 53a-73b, and shall thereupon proceed as provided in subsection (c) of this section . . . ."

the statutory imminent harm requirement is incompatible with or different from the immediate aid or exigent circumstances requirements for warrantless searches under the fourth amendment. Once an animal control officer takes physical custody of such animal, she must then seek court intervention within ninety-six hours.[6]

[6] In *Wethersfield ex rel. Monde* v. *Eser*, 211 Conn. App. 537, 548–51, 274 A.3d 203 (2022), this court had occasion to discuss the legislative history underlying § 22-329 (a). Although we need not resort to the statute's legislative history to resolve the issues presented in the present case, this court's prior discussion of the legislative history provides useful background: "The legislative history of § 22-329a reveals that the 2007 amendment to that statute; see Public Acts 2007, No. 07-230, § 1; substantially revised it in response to Judge Berger's criticism of the prior version of the statute in *State ex rel. Griffin* v. *Thirteen Horses*, Docket No. CV-06-4019747-S, 2006 WL 1828459 (Conn. Super. June 16, 2006). In that decision, Judge Berger noted that portions of the statute were 'difficult to understand because if the court has found probable cause to believe that an animal is neglected or cruelly treated, then leaving the animal in the owner's custody pending a hearing would only perpetuate its suffering. . . . One could argue that . . . the legislature did not intend to require a judicial finding in advance of the seizure . . . . If the legislature does intend to vest the seizure decision in the animal control officer, rather than in the court, the statute should be redrafted accordingly, with provisions for immediate filing of the petition and a speedy hearing.' . . . Id., *4–5. Judge Berger concluded with respect to the prior revision of the statute that, 'despite the deficiencies of the statute, the state successfully complied with its twofold obligation of obtaining a judicial determination of reasonable cause prior to seizure . . . and following the filing process . . . . The state obtained the search and seizure warrant from the court . . . and filed its petition with the court . . . .' Id., *5.

"When discussing the 2007 amendment on the floor of the House of Representatives, Representative Gerry Fox explained the origins of the amendment: 'This bill came to us from the Commissioner of Agriculture and requested a change to the way that animal control officers currently handle situations where animals are treated cruelly or neglected. Presently, when an animal control officer sees a situation that may appear to be dangerous to an animal, they're required to go to court and get a warrant. What this would allow is if there's reasonable cause to believe that an animal [is] in imminent harm of being cruelly or negligently treated, the animal control officer may, at that time, seize the animal.' 50 H.R. Proc., Pt. 25, 2007 Sess., p. 8077, remarks of Representative Gerry Fox. In support of the legislation, Representative Urban stated: 'This bill makes it much easier when there is an animal that is being subjected to cruel treatment or a cruel situation to get in and to mitigate that situation and be able to move the horse, the dog, the cat, the puppy, whatever it happens to be, out of that situation and into a place where they will be able to receive the treatment they need.' Id., pp. 8078–79, remarks of Representative Diana Urban. In the judiciary committee, the then Commissioner of Agriculture, F. Philip Prelli, explained that 'the Department of Agriculture is the lead agency in investiga-

In its memorandum of decision, the court denied the defendant's motion to suppress on the basis that "[t]he circumstances that existed on June 27, 2023, as testified to by [Petras], met the requirement of imminent harm provided for in [§ 22-329a (a)]." The court reasoned that, "[o]n June 27, 2023, Jennings told the officers that there were three dogs in the barn. One of the dogs was an aggressive male and the other two dogs were pregnant. At the time the officers entered the barn on the afternoon of June 28, 2023, it was their understanding that the dogs had been confined and left unattended for at least thirty-six hours. The officers attempted to contact Jennings without success. . . . The officers

tion of animal cruelty and negligence. . . . Even if it's done on a local level, the department is involved with those. The primary purpose of [this] legislative proposal is to better define and clarify the section to enable animal control officers to take physical custody of animals that animal control officers have a reasonable cause to believe are in imminent harm and/or are neglected or being cruelly treated. One of the things that we've noticed about the law that's there, it's been a while since it's been modified, and the language tends to be language that was written a number of years ago. . . . Usually, the animal control officers will go in there and try to work with the people to either get the animals fed, get the treatment up right, so they're treated correctly, and then go to the steps. And if they still feel they need to take those steps, they will get a warrant first. So the steps that we're defining here are never going to be the norm. But there are times when our animal control officers will see an animal that is truly in jeopardy of dying, and we've seen that. We've seen horses down, and we've seen cows down, where we've had to try to seize those animals and then go and get the court order. So what this does is then sets up the procedure that will give us the opportunity to seize the animals. Then within [ninety-six] hours, we will have to get a court order . . . .' Conn. Joint Standing Committee Hearings, Judiciary, Pt. 14, 2007 Sess., pp. 4422–23, remarks of Commissioner of Agriculture F. Philip Prelli.

"According to the legislative history, the process in § 22-329a (a) for taking physical custody of animals in imminent harm is not the norm. Rather, the usual process is codified in § 22-329a (b), which provides in relevant part that '[a]ny animal control officer or regional animal control officer . . . may take physical custody of any animal upon issuance of a warrant finding probable cause that such animal is neglected or is cruelly treated . . . and shall thereupon proceed as provided in subsection (c) of this section . . . .' General Statutes (Supp. 2022) § 22-329a (b). Accordingly, when, prior to taking physical custody of an animal, a warrant is issued finding probable cause that such animal is neglected or cruelly treated, there is no statutory time frame for the filing of a verified petition." (Footnote omitted.) *Wethersfield ex rel. Monde* v. *Eser*, supra, 211 Conn. App. 548–51.

had not been informed that someone was coming to unlock the barn and tend to the dogs. . . . Because of the high levels of temperature and humidity, the officers were concerned that the dogs did not have adequate ventilation, water or food. . . . Petras also stated there was a concern that the dogs could suffer from dehydration, which could cause death. . . . The court finds [Petras'] testimony regarding her belief that the dogs were in imminent harm and neglected to be reasonable and credible." (Citations omitted.)

Our scrupulous examination of the entire record supports the court's conclusion that the officers had reasonable cause to believe that the dogs contained within the barn were in imminent harm and neglected, or cruelly treated. Petras testified that, prior to entering the barn, the officers believed that the dogs therein had not been cared for in approximately thirty-six hours and that the officers were concerned that the dogs' lives were potentially in danger on the basis of the weather, the lack of ventilation in the barn, and the dogs' access to water. The court credited Petras' testimony. On the basis thereof, we conclude that the court properly determined that the animal control officers had reason to believe the dogs confined in the barn were in imminent harm and neglected, or cruelly treated, and that they properly took physical custody of the dogs therein.

Accordingly, we conclude that the court properly applied § 22-329a (a) in denying the defendant's motion to suppress evidence. We further conclude that, because the evidence supported the court's finding that the officers reasonably concluded that the dogs were in imminent danger, the warrantless search did not violate the defendant's rights under the fourth amendment.[7]

[7] Although the plaintiff has not questioned whether the fourth amendment's exclusionary rule applies in this case, it is not entirely clear to us that it does. This court has previously recognized the general principle that "the exclusionary rule does not apply to civil cases . . . ." (Citation omit-

II

The defendant next claims that §§ 22-329a and 53-247, as applied to both him and Jennings, are void for vagueness. Specifically, the defendant argues that the statutes do not define neglect with particularity because the failure to provide "wholesome air, food and water" to a confined animal, which is prohibited by § 53-247 (a), does not identify what type of ventilation is required to provide a confined animal with wholesome air or how long an animal can go without food or water before such conduct is considered to be neglect. We are not persuaded.

As a preliminary matter, we address the plaintiff's argument that this claim was not preserved for appellate

ted.) *Tompkins* v. *Freedom of Information Commission*, 136 Conn. App. 496, 499 n.4, 46 A.3d 291 (2012). Both our Supreme Court and this court have applied a balancing test based on the United States Supreme Court's decision in *United States* v. *Janis*, 428 U.S. 433, 446–47, 96 S. Ct. 3021, 49 L. Ed. 2d 1046 (1976), when addressing whether the fourth amendment applied in a case other than a criminal prosecution. See, e.g., *Fishbein* v. *Kozlowski*, 252 Conn. 38, 54, 743 A.2d 1110 (1999) (applying *Janis* balancing test when determining whether exclusionary rule applies to driver's license suspension hearings); *Payne* v. *Robinson*, 207 Conn. 565, 570–73, 541 A.2d 504 (applying *Janis* balancing test when determining whether exclusionary rule applies to probation revocation proceedings), cert. denied, 488 U.S. 898, 109 S. Ct. 242, 102 L. Ed. 2d 230 (1988); *Boyles* v. *Preston*, 68 Conn. App. 596, 612–13, 792 A.2d 878 (applying *Janis* balancing test when determining whether exclusionary rule applies to civil trial), cert. denied, 261 Conn. 901, 802 A.2d 853 (2002). The *Janis* balancing test requires a court to "weigh the likely social benefits of excluding unlawfully seized evidence against the likely costs." *Immigration & Naturalization Service* v. *Lopez-Mendoza*, 468 U.S. 1032, 1041, 104 S. Ct. 3479, 82 L. Ed. 2d 778 (1984). "The question of whether the exclusionary rule applies in a particular civil case requires weighing the deterrent benefits of applying the rule against the societal cost of excluding relevant evidence. . . . There is no 'bright line' to determine when the rule should apply, and courts must apply the *Janis* analytic framework on a case by case basis." (Citation omitted.) *Ahart* v. *Colorado Dept. of Corrections*, 964 P.2d 517, 520 (Colo. 1998). Because the parties have not undertaken a *Janis* analysis or otherwise addressed the applicability of the exclusionary rule, and because we have concluded that the defendant's claim fails, even if we were to assume that the exclusionary rule applies to the search in this case, we do not need to reach the question of the exclusionary rule's applicability to the facts of this case.

review. Although we agree with the plaintiff that this claim is unpreserved, we conclude that the claim is reviewable under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015),[8] but that it nonetheless fails under the third prong of *Golding*.[9]

The following additional legal principles are relevant to our resolution of this claim. "The void for vagueness doctrine is a procedural due process concept that originally was derived from the guarantees of due process contained in the fifth and fourteenth amendments to the United States constitution. . . . The doctrine [of void for vagueness] requires statutes to provide fair notice of the conduct to which they pertain and to establish minimum guidelines to govern law enforcement." (Internal quotation marks omitted.) *In re Aurora H.*, 222 Conn. App. 307, 328, 304 A.3d 875, cert. denied, 348 Conn. 931, 306 A.3d 1 (2023). "A statute . . . [that] forbids or requires conduct in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process. . . . Laws must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly. . . . A statute is not void for vagueness

[8] "Under *Golding*, a defendant can prevail on an unpreserved claim only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." (Emphasis in original; internal quotation marks omitted.) *State* v. *Carlson*, 226 Conn. App. 514, 532 n.15, 318 A.3d 283 (2024).

[9] "[T]o obtain review of an unpreserved claim pursuant to [*Golding*], a defendant need only raise that claim in his main brief, wherein he must present a record that is [adequate] for review and affirmatively [demonstrate] that his claim is indeed a violation of a fundamental constitutional right." (Internal quotation marks omitted.) *Bethlehem* v. *Acker*, 153 Conn. App. 449, 471 n.16, 102 A.3d 107, cert. denied, 315 Conn. 908, 105 A.3d 235 (2014).

unless it clearly and unequivocally is unconstitutional, making every presumption in favor of its validity. . . . To demonstrate that [a statute] is unconstitutionally vague as applied to [them], the [defendants] therefore must . . . demonstrate beyond a reasonable doubt that [they] had inadequate notice of what was prohibited or that [they were] the victim[s] of arbitrary and discriminatory enforcement. . . . [T]he void for vagueness doctrine embodies two central precepts: the right to fair warning of the effect of a governing statute . . . and the guarantee against standardless law enforcement. . . . If the meaning of a statute can be fairly ascertained a statute will not be void for vagueness since [m]any statutes will have some inherent vagueness, for [i]n most English words and phrases there lurk uncertainties. . . . Unless a vagueness claim implicates the first amendment right to free speech, [a] defendant whose conduct clearly comes within a statute's unmistakable core of prohibited conduct may not challenge the statute because it is vague as applied to some hypothetical situation . . . ." (Citation omitted; internal quotation marks omitted.) *State ex rel. Gregan* v. *Koczur*, 287 Conn. 145, 156–57, 947 A.2d 282 (2008). "A statute is not unconstitutional merely because a person must inquire further as to the precise reach of its prohibitions, nor is it necessary that a statute list the exact conduct prohibited." (Internal quotation marks omitted.) *In re Aurora H.*, supra, 329.

In *Koczur*, our Supreme Court stated that it is clear from the language of the statute that "§ 22-329a does not contain an independent standard of neglect but, instead, incorporates by reference the standards of the specific statutes enumerated therein." *State ex rel. Gregan* v. *Koczur*, supra, 287 Conn. 153; id., 157 (§ 22-329a is not void for vagueness despite its failure to define "neglect"). At issue in *Koczur*, as in the present

case, was the portion of § 22-329a that expressly incorporates the standard of neglect codified in and prohibited by § 53-247. See id., 153–55. Section 53-247 provides in relevant part: "(a) Any person who . . . deprives of necessary sustenance . . . any animal, or who, having impounded or confined any animal, fails to give such animal proper care or . . . fails to supply any such animal with wholesome air, food and water, or . . . having charge or custody of any animal . . . fails to provide it with proper food, drink or protection from the weather . . . shall, for a first offense, be fined not more than one thousand dollars or imprisoned not more than one year or both . . . ." In *Koczur*, our Supreme Court determined that "[i]t is reasonable to conclude . . . that the neglect referred to in § 22-329a includes the failure to provide necessary sustenance, proper care, wholesome air, food and water under § 53-247 (a)." *State ex rel. Gregan* v. *Koczur*, supra, 154.

Even assuming, as the defendant claims, that the phrase "wholesome air, food and water" as used in § 53-247 (a) may be susceptible to some degree of interpretation, our careful review of the record satisfies us that the defendant's and Jennings' conduct comes within the statute's unmistakable core of prohibited conduct. In the present case, the court found that the dogs had been left unattended in the barn for at least thirty-six hours when the weather was hot and humid and that Deacon, Ruby, and Mitzi did not have access to food or water. Luna and Lily, both pregnant, also did not have access to food; however, they had access to water. Moreover, the court found that the barn floor was covered in urine and feces and that the smell of ammonia and feces was so strong that it affected the officers' breathing and created a burning sensation in their eyes and noses. The court also found that the barn did not

have active ventilation.[10] Put simply, a person of ordinary intelligence would know that confining five dogs in a barn in these conditions for at least thirty-six hours constituted a failure to provide proper care for the dogs under any reasonable standard. Accordingly, we conclude that the statute afforded the defendant and Jennings adequate notice of the type of conduct prohibited thereby and that the defendant therefore has failed to demonstrate that § 53-247 (a) is unconstitutionally vague as applied to his and Jennings' conduct through § 22-329a.

III

The defendant next claims that the police did not "provide [Jennings] with fair notice of the law" because the officers failed to notify her that the lack of ventilation in the barn constituted neglect under § 22-329a. Specifically, the defendant argues that the officers should have notified him and Jennings of the neglectful conditions and provided them with an opportunity to remedy the situation. We conclude that this claim is inadequately briefed, and, therefore, we decline to address it.

"We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only

[10] The defendant argues that the court failed to give greater weight to the evidence that he submitted of an open window in the barn that provided air to the dogs. The court acknowledged, however, that the defendant submitted evidence of an open window in the barn in its memorandum of decision but concluded that, when "[c]onsidering the size of the barn, the pictures of the interior of the barn, and the testimony regarding breathing conditions in the barn, the court cannot find that this one window was sufficient to provide wholesome air for the five dogs in the barn."

cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. . . . For a reviewing court to judiciously and efficiently . . . consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . In addition, briefing is inadequate when it is not only short, but confusing, repetitive, and disorganized. . . .

"We are mindful that [i]t is the established policy of the Connecticut courts to be solicitous of [self-represented] litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party. . . . Nonetheless, [a]lthough we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law." (Internal quotation marks omitted.) *Gleason* v. *Durden*, 211 Conn. App. 416, 439–40, 272 A.3d 1129, cert. denied, 343 Conn. 921, 275 A.3d 211 (2022).

The defendant baldly asserts that the officers were required to notify Jennings that the conditions of the barn were neglectful and to give them a chance to remedy the situation. The defendant, however, does not provide any applicable legal authority or meaningful analysis in his appellate brief, nor are we aware of any legal authority, to support his claim. See *C. W.* v. *Warzecha*, 225 Conn. App. 137, 147, 314 A.3d 617 (2024) (claim was inadequately briefed when defendant provided no applicable legal authority or meaningful analysis in support of claim). Accordingly, the defendant's claim is inadequately briefed, and we decline to review it.

IV

The defendant further claims that the court applied an improper legal standard in defining neglect under

§ 22-329a. Specifically, the defendant argues that the court applied a standard of neglect that is applicable only to commercial kennels meant for large breeding operations. We disagree.

The following additional legal principles are relevant to our resolution of the defendant's claim. "The meaning of neglect under § 22-329a is a question of statutory interpretation, over which our review is plenary. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Citation omitted; internal quotation marks omitted.) *State ex rel. Gregan* v. *Koczur*, supra, 287 Conn. 152–53.

We reiterate that § 22-329a (a) provides in relevant part: "Any animal control officer . . . may take physical custody of any animal when such animal control officer has reasonable cause to believe that such animal is in imminent harm and is neglected or is cruelly treated in violation of section . . . 53-247 . . . ." Section 53-247 provides in relevant part: "(a) *Any person* who . . .

deprives of necessary sustenance . . . or who, having impounded or confined any animal, fails to give such animal proper care . . . or fails to supply any such animal with wholesome air, food and water . . . or, having charge or custody of any animal . . . fails to provide it with proper food, drink or protection from the weather or abandons it . . . shall, for a first offense, be fined not more than one thousand dollars or imprisoned not more than one year or both, and for each subsequent offense, shall be guilty of a class D felony." (Emphasis added.)

Neither § 22-329a nor § 53-247 defines "person." "Generally, in the absence of statutory definitions, we look to the contemporaneous dictionary definitions of words to ascertain their commonly approved usage." *Ledyard* v. *WMS Gaming, Inc.*, 338 Conn. 687, 697, 258 A.3d 1268 (2021). Webster's Third New International Dictionary defines "person" as "an individual human being . . . a human being as distinguished from an animal or thing . . . ." Webster's Third New International Dictionary (2002) p. 1686. It is therefore clear from the plain language of § 53-247 that the neglect referred to in § 22-329a includes neglect committed by individuals such as the defendant and Jennings, and not just neglect committed by commercial kennels or large breeding operations, as the defendant suggests. Accordingly, in the absence of any indication to the contrary, we conclude that the court applied the proper legal standard in determining that the dogs in the barn, having been neglected by the defendant and Jennings, were properly subject to a warrantless seizure pursuant to § 22-329a (a).

V

The defendant's final claim is that there was insufficient evidence to support a finding that the dogs in the barn were neglected. Specifically, the defendant argues

that there was no evidence in the record to support the court's finding that the health or physical conditions of the dogs were adversely affected as a result of the defendant's and Jennings' alleged neglect.[11] We are not persuaded.

We begin by setting forth the applicable standard of review. "The standards governing our review of a sufficiency of evidence claim are well established and rigorous. . . . [W]e must determine, in the light most favorable to sustaining the [judgment], whether the totality of the evidence, including reasonable inferences therefrom, supports the [court's judgment] . . . . In making this determination, [t]he evidence must be given the most favorable construction in support of the [judgment] of which it is reasonably capable. . . . In other words, [i]f the [court] could reasonably have reached its conclusion, the [judgment] must stand, even if this court disagrees with it. . . .

"We apply this familiar and deferential scope of review, however, in light of the equally familiar principle that the plaintiff must produce sufficient evidence to remove the [court's] function of examining inferences and finding facts from the realm of speculation." (Internal quotation marks omitted.) *C. W.* v. *Warzecha*, supra, 225 Conn. App. 148.

After a careful review of the record, we conclude that the totality of the evidence was sufficient to support the court's judgment that the dogs confined in the barn were neglected. During the July 26, 2023 hearing, Petras testified that the dogs in the barn had not received care for at least thirty-six hours prior to the officers entering the barn. Petras also testified that, when the officers entered the barn, they "found ripped open bags of dog

[11] In his appellate brief, the defendant also claims that the court abused its discretion because "the [judgment] is not supported by any empirical or objective evidence nor by substantial evidence." We consider this claim to be factually interrelated to the defendant's evidentiary sufficiency claim, and, therefore, we address both of the defendant's claims together as a singular claim.

food that were empty on the floor. [Luna and Lily] had [one] half of a five gallon pail with water in it, and we found empty buckets tipped over [for Deacon, Ruby, and Mitzi]." Petras further testified that "it was very hot and humid in there because there was no airflow, and there was an excessive amount of feces and urine on the floor of the barn. . . . It was very difficult to breathe. The officers who were in [the barn] reported that their . . . eyes and noses were burning from the ammonia smell of the urine." In addition to Petras' testimony, the plaintiff submitted photographs, which were admitted into evidence, depicting the conditions of the barn and the dogs found therein. The court specifically found that Petras' testimony was supported by the photographs submitted. Therefore, construing the evidence in the light most favorable to upholding the judgment, we conclude that the evidence was sufficient to support a finding of neglect pursuant to § 22-329a.

To the extent the defendant argues that the plaintiff was required to produce evidence that the dogs' health or physical conditions were adversely affected for the court to find the dogs neglected, such argument assigns a higher burden of proof than that which is required by the relevant statutes. Pursuant to § 22-329a, the plaintiff can prove that the dogs confined in the barn were neglected or cruelly treated under § 53-247 (a) by showing that the defendant and Jennings failed to supply the dogs with wholesome air, food and water. The statute does not require the plaintiff to prove that the confined animals suffered actual physical injuries or adverse effects as a result of those conditions.

Accordingly, we conclude that the evidence was sufficient to support the court's finding that the dogs in the barn were neglected.

The judgment is affirmed.

In this opinion the other judges concurred.