JENNIFER M. YANAVICH *v.* JOSEPH YANAVICH (AC 46656)

Elgo, Seeley and Bishop, Js.

Syllabus

The defendant appealed from the trial court's denial of his motion to modify alimony and child support and its grant of his motion for contempt, claiming, inter alia, that the court improperly failed to impose sanctions on the plaintiff after finding her in contempt for violating the terms of the dissolution judgment. *Held*:

The trial court properly denied the defendant's motion to modify alimony and child support, as its finding that the distributions the defendant took from the retained earnings of the S corporation in which he was the sole shareholder constituted income for purposes of his alimony and child support obligations was not clearly erroneous, and it correctly determined that there had been no substantial change in circumstances to warrant a modification.

The trial court did not abuse its discretion when it failed to impose sanctions on the plaintiff for her contemptuous behavior because its remedial response was well within the scope of its discretionary authority.

Argued May 23—officially released October 8, 2024

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Litchfield, where the court, *Bentivegna, J.*, rendered judgment dissolving the parties' marriage and

granting certain other relief in accordance with a settlement agreement; thereafter, the court, *Lobo*, *J.*, granted in part the defendant's motions for contempt and for modification of alimony and child support and rendered judgment thereon, from which the defendant appealed to this court. *Affirmed.*

Steven H. Levy, for the appellant (defendant).

Opinion

BISHOP, J. The defendant, Joseph Yanavich, has presented two issues for our review in this postmarital dissolution appeal. First, he claims that the trial court improperly denied his motion to modify alimony and child support. Second, he claims that the court improperly failed to impose sanctions on the plaintiff, his former wife, Jennifer M. Yanavich,[1] after finding her in contempt for violating the terms of the dissolution judgment. More specifically, as to his first claim, he seeks our determination as to whether the retained earnings of a subchapter S corporation derived from past years' earnings and distributed to its sole shareholder in a later year or years can be considered present income to the shareholder for purposes of setting his or her alimony and child support obligations. As to his second claim, he argues that the court abused its discretion by not imposing sanctions on the plaintiff after finding that she wilfully failed to prevent the minor children from being inappropriately exposed to the parties' disputes over financial issues in violation of the explicit terms of their marital separation agreement. We affirm the judgment of the trial court.

The following undisputed facts and procedural history are pertinent to our resolution of the issues presented. The parties' marriage was dissolved on May

[1] The record reflects filings by the plaintiff in which she also refers to herself as "Jennifer Codey, f/k/a Jennifer Yanavich."

30, 2018, with orders based on their "separation and property settlement agreement" (agreement). At that time, the parties' seven children ranged in age from nineteen to three. The agreement required the defendant to pay the plaintiff the sum of $14,585 per month as alimony for a period of twelve years with the normal caveats regarding modifiability and termination upon death or remarriage. Additionally, the agreement required the defendant to pay the sum of $6250 per month as child support. The aggregate total of the defendant's alimony and child support obligation was, therefore, approximately $250,000 per year.

The agreement also included several provisions regarding the postdissolution care of the children. The parties agreed to share joint legal custody of the children, who would reside primarily with the plaintiff. There was also a fulsome access schedule and detailed language about the parties' parenting responsibilities. Notably, section 6.1 (c) of the agreement stated in relevant part: "Neither parent will engage in any conversation with the minor children concerning the other parent as to any disputes as between the parents existing in the past, present or future, specifically including financial matters. Neither parent will make any disparaging remark about the other parent to the minor children, in the presence of the minor children or in a circumstance in which the minor children can reasonably be expected to overhear such remarks, including the parents' telephone calls made while a child is under the care of the parent. . . ."

At all relevant times, the defendant has been the president and sole shareholder of Performance Plumbing & Heating, LLC (Performance), a subchapter S corporation based in Connecticut.[2] At the time of the marital dissolution, the defendant filed a financial affidavit

[2] A subchapter S corporation is a closely held business entity organized under the law of the state in which it is incorporated. One feature of such an entity is that it does not pay income taxes on its net earnings; rather,

in which he stated that he earned, as gross income, $15,279 per week from self-employment with Performance. After deductions for federal and state taxes, Social Security and Medicare, he claimed a weekly net income of $8508. As to Performance, while he indicated that he owned 100 percent of the company, he posited on his 2018 financial affidavit that its value was "unknown."

The record reveals that, following the dissolution of the parties' marriage, and despite their comprehensive separation agreement, the parties filed a steady stream of motions in which each charged the other with various violations of the marital dissolution judgment. Of note, in the early summer of 2021, the plaintiff sought permission from the court to relocate with the children to South Carolina and the matter was referred to the Judicial Branch's Family Services Office to conduct a comprehensive evaluation. The defendant, in turn, filed an objection and, when he learned that the move was imminent, he sought and obtained an ex parte order forbidding the removal of the minor children from Connecti-

its income is attributed to its shareholders and must be reported by them to the taxing authorities as income to them, regardless of whether the income, in part or entirely, is actually distributed to the corporation's shareholders. See 26 U.S.C § 1361 et seq. (2018); *Birkhold* v. *Birkhold*, 343 Conn. 786, 804 n.8, 276 A.3d 414 (2022). Each year, an S corporation provides a Schedule K-1 form to its shareholders that indicates the net income attributed to that shareholder. See *Bishop* v. *Freitas*, 90 Conn. App. 517, 522 n.3, 877 A.2d 922, cert. denied, 275 Conn. 931, 883 A.2d 1241 (2005). The defendant's expert witness, Lawrence Hallisey, a certified public accountant who has worked for the defendant and Performance, and the plaintiff's expert witness, James Nowell, also a certified public accountant, testified at trial. Hallisey explained that, if any of the corporation's net income is not actually paid to its shareholders, the corporation retains that income and it is characterized as retained earnings, which, generally, are then available to provide liquidity to the corporation as needed for its operations. Moreover, both Hallisey and Nowell agreed that if a shareholder takes a distribution from retained earnings in any year after the earnings were realized by the corporation and taxed to its shareholders, those subsequent distributions are not considered income for tax purposes, as the distributed amount has already been subject to taxation in the year earned.

cut, but the order was subsequently vacated, as the plaintiff had already moved to South Carolina even though Family Services had not completed its assigned task. Subsequently, the parties entered into an agreement that the plaintiff and the children could remain in South Carolina, with the defendant's parenting time adjusted to reflect the new reality that the children had already begun school in South Carolina and were settling into their new home and environment.

Notwithstanding this agreement, the flood of postjudgment motions continued unabated. Thereafter, the court scheduled an omnibus remote hearing to decide the motions then pending. That hearing took place over three days in 2023—January 25 and April 12 and 27—during which time the court considered the following motions: the defendant's motion to modify alimony and child support dated December 6, 2021; the defendant's motion for an order pertaining to educational support dated March 24, 2022; the defendant's motion for contempt dated March 24, 2022, alleging, in relevant part, that the plaintiff "[i]nvolves the minor children in adult issues in violation of article 6.1 (c) of the [agreement]," and requesting that she be found in contempt and "punished therefor"[3]; and, finally, the plaintiff's motions for contempt and for counsel fees dated February 23, 2022, and her motion for modification of alimony and child support dated July 21, 2022. On June 16, 2023, the court issued a written decision in which it partially granted the defendant's motion to modify alimony and child support on the basis that one of the children, Joseph,

[3] The defendant's motion for contempt also alleged that the plaintiff had failed to pay her share of the children's unreimbursed health expenses, refused to pay her portion of higher education expenses, refused to provide the defendant with information about "the children's school and surgery," refused to ensure telephone contact with the children, attempted to alienate the children from him, and failed to send the children to him for winter parenting time. These claims are not included in the issues the defendant has raised on appeal.

was shortly going to reach his eighteenth birthday. Accordingly, the court modified the child support order, which the court equated to $1040 per month per child, to $5210 per month.[4] The court denied the balance of the motion to modify alimony and child support upon finding that the defendant had failed to prove that there had been a substantial change in his financial circumstances. The court granted the defendant's motion for contempt on the basis of its finding that the plaintiff wilfully failed to prevent the minor children from inappropriate exposure to "disputes as between the parents existing in the past, present or future, specifically including financial matters" in violation of the dissolution judgment. The court did not, however, issue punitive sanctions against the plaintiff for doing so. The court denied the balance of the motions filed by the parties. This appeal followed.[5]

We begin our analysis by setting forth the standard that governs our review. "[T]he standard of review in

[4] Immediately following the court's June 16, 2023 decision, the defendant filed a pre-appeal "motion for rectification" in the trial court, which pointed out that one of the bases for his motion for modification of alimony and child support was that the parties' daughter, Alexa, had become eighteen years old in September, 2020. He requested, therefore, a further reduction in the order of support to reflect Alexa's attainment of the age of majority and that the order be made retroactive to December 7, 2021, the date on which he filed his motion for modification of alimony and child support. Additionally, he alleged in this motion that he had overpaid support by more than $18,000 and he sought an order permitting him to further decrease his support payments by $1040 per month until the entirety of the overpayment could be recouped by him. By order dated June 26, 2023, the court granted the defendant's motion for rectification on the papers.

[5] The plaintiff did not appeal from the court's denial of the motions she filed or from the court's orders regarding the reduction of child support or its order permitting the defendant to recoup overpayments he made after Alexa's eighteenth birthday. See footnote 4 of this opinion. Indeed, the plaintiff has not participated in any way in this appeal. Because she did not file a brief in this court, she was not permitted to present oral argument. See Practice Book § 70-4 ("[n]o argument shall be allowed by any party who has not filed a brief").

family matters is well settled. An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. . . . Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Our deferential standard of review, however, does not extend to the court's interpretation of and application of the law to the facts. It is axiomatic that a matter of law is entitled to plenary review on appeal." (Internal quotation marks omitted.) *Coleman* v. *Bembridge*, 207 Conn. App. 28, 33–34, 263 A.3d 403 (2021). "As has often been explained, the foundation for [our deferential] standard is that the trial court is in a clearly advantageous position to assess the personal factors significant to a domestic relations case . . . ." (Internal quotation marks omitted.) *Buxenbaum* v. *Jones*, 189 Conn. App. 790, 794, 209 A.3d 664 (2019).

I

We turn first to the defendant's claim that the court improperly considered distributions he took from Performance's retained earnings as present income when it denied his motion to modify his alimony and child support obligations because the amounts distributed were earned and taxed in previous years. We are not persuaded.

The following legal principles inform our analysis. "[General Statutes §] 46b-86 governs the modification

or termination of an alimony or support order after the date of a dissolution judgment. When, as in this case, the disputed issue is alimony [or child support], the applicable provision of the statute is § 46b-86 (a), which provides that a final order for alimony [or child support] may be modified by the trial court upon a showing of a substantial change in the circumstances of either party. . . . Under that statutory provision, the party seeking the modification bears the burden of demonstrating that such a change has occurred. . . . To obtain a modification, the moving party must demonstrate that circumstances have changed since the last court order such that it would be unjust or inequitable to hold either party to it. Because the establishment of changed circumstances is a condition precedent to a party's relief, it is pertinent for the trial court to inquire as to what, if any, new circumstance warrants a modification of the existing order. . . . A finding of a substantial change in circumstances is subject to the clearly erroneous standard of review." (Citation omitted; internal quotation marks omitted.) *De Almeida-Kennedy* v. *Kennedy*, 224 Conn. App. 19, 30–31, 312 A.3d 150 (2024). "Whether money should be characterized as income . . . is a question of fact for the trial court." *Keller* v. *Keller*, 167 Conn. App. 138, 152, 142 A.3d 1197, cert. denied, 323 Conn. 922, 150 A.3d 1151 (2016).

In concluding that there had not been a substantial change in the defendant's finances since the marital dissolution, the court noted: "As recently as 2022 the [defendant] collected against his accountant's advice between his salary and draw gross earnings/income [from Performance] a total of $710,000. Comparatively, in 2018, the [defendant's] salary and draws totaled $718,207. Although the [defendant's] company is nowhere near as healthy as it was in 2018, his own earnings have nonetheless, other than 2021, remained the same. As such, this court does not presently find a

substantial change in his individual financial circumstances to warrant a modification of alimony." Indeed, our review of the record supports the court's conclusion that the amounts reported as income by the defendant in 2018 and the flow of funds to him in 2022 are not meaningfully different.

It is the nature of those funds that presents the issue for our determination. The defendant argues that the court's characterization of his draws as income in both 2018 and 2022 is erroneous because the components of each are significantly different. The record reflects that the 2018 financial affidavit filed by the defendant in conjunction with the marital dissolution reflected his then current income because it identified the net income of the S corporation for that calendar year as well as a salary Performance paid to him. Exhibits introduced during the hearing reveal that the federal Form 1120S filed by Performance for the calendar year 2018 stated that $145,100 was paid to the defendant as compensation. Additionally, the company reported ordinary net business income of $573,107. The aggregate of those two figures is $718,207. In accordance with the pertinent provisions of the Internal Revenue Code, the defendant was required to report that total amount as personal income on his Form 1040 for the 2018 tax year. See *Tuckman* v. *Tuckman*, 308 Conn. 194, 209, 61 A.3d 449 (2013) (explaining that in S corporation, "all of its capital gains and losses, for federal income tax purposes, pass through . . . to the individual shareholders, and any federal income tax liability on capital gains is the responsibility of the individual shareholder"). Indeed, the defendant's 2018 financial affidavit reflected the income reported on the corporation's tax filing for the same time period.[6]

[6] At the hearing on this matter, Hallisey explained that the relatively small difference between the amounts shown on the defendant's 2018 financial affidavit for total income and the amounts shown on the corporation's tax return for income paid to the defendant were due to depreciation, meals, travel, and rental income received by the defendant.

In concluding that the defendant's receipt of salary and distributions from the corporation between 2018 and 2022 was all income for purposes of assessing whether there had been a substantial change in the defendant's financial circumstances, the court expressly relied on our Supreme Court's opinion in *Birkhold* v. *Birkhold*, 343 Conn. 786, 276 A.3d 414 (2022), in which the court stated: "We agree with the trial court's conclusion that the clear and unambiguous definition of gross annual base income from employment included income from self-employment or as an independent contractor. The definition of gross annual base income from employment *provided by the separation agreement* 'is expressly stated to be without limitation' and includes income 'actually received' by the plaintiff from employment as 'compensation for or by reason of past, present or future employment, in whatever form received,' and from 'any and all sources derived.' " (Emphasis added.) Id., 796. *Birkhold*, however, though otherwise instructive, involved a separation agreement in which the term "income" was amplified by a definition of " 'gross annual base income from employment' "; id., 791; whereas the parties' agreement in this case offers no such definitional assistance. Accordingly, we note that, unlike those circumstances, the court's task in the matter at hand was not to interpret the language used by parties to a separation agreement but rather to determine the meaning of the term "income," from its general usage and as applied in the marital dissolution context. We therefore look to the general definition of income in the marital dissolution context as an aid to our consideration of whether the court's finding that the draws taken by the defendant were income for purposes of its analysis was clearly erroneous.

At the outset, we note that our Supreme Court has instructed us that in dissolution of marriage proceedings, the concept of income is defined "broadly so as to include in income items that increase the amount of

resources available for support purposes." *Unkelbach* v. *McNary*, 244 Conn. 350, 360, 710 A.2d 717 (1998). "Adopting a flexible definition of income, the court has explained, ensures that each spouse fulfills his or her continuing duty to support one another and each receives his or her equitable share of the marital assets." *Bartel* v. *Bartel*, 98 Conn. App. 706, 712, 911 A.2d 1134 (2006), citing *McPhee* v. *McPhee*, 186 Conn. 167, 170, 440 A.2d 274 (1982). Indeed, "even gifts, if received regularly and consistently, 'whether in the form of contributions to expenses or otherwise, are properly considered in determining alimony awards to the extent that they increase the amount of income available for support purposes.' [*Unkelbach* v. *McNary*, supra], 360–61.

"For example, Black's Law Dictionary defines 'income' as '[t]he money or other form of payment that one receives, usu[ally] periodically, from employment, business, investments, royalties, gifts, and the like.' Black's Law Dictionary (11th Ed. 2019) p. 912. Another dictionary defines 'income' as 'something that comes in as an increment or addition usu[ally] by chance . . . a gain or recurrent benefit that is usu[ally] measured in money and for a given period of time, derives from capital, labor, or a combination of both, includes gains from transactions in capital assets, but excludes unrealized advances in value: commercial revenue or receipts of any kind except receipts or returns of capital . . . .' Webster's Third New International Dictionary (2002) p. 1143; see also *Gay* v. *Gay*, 70 Conn. App. 772, 778, 800 A.2d 1231 (2002) (quoting definition in Webster's Third New International Dictionary to determine meaning of 'income,' as used in General Statutes § 46b-82), aff'd, 266 Conn. 641, 835 A.2d 1 (2003)." *Birkhold* v. *Birkhold*, supra, 343 Conn. 796–97.

Applying this reasoning and defining "income" broadly, as we must, in accordance with these definitions, we are convinced that the court correctly characterized

the distributions the defendant received from retained earnings realized by the corporation in prior years as income to him for purposes of assessing his alimony and child support obligation.[7] Indeed, the plaintiff's expert, Nowell, testified that the distributions constituted "cash flow to [the defendant] personally." In other words, "they increase[d] the amount of income available for support purposes"; (internal quotation marks omitted) *Birkhold* v. *Birkhold*, supra, 343 Conn. 796; which buttresses the court's finding of no substantial change in the defendant's financial circumstances. We conclude, therefore, that the court's finding that the "draws taken by the [defendant]" constituted income for purposes of setting his alimony and child support obligations was not clearly erroneous and that the court correctly determined that there had been no substantial change in circumstances to warrant a modification.

II

We turn next to the defendant's claim that the court improperly failed to impose sanctions on the plaintiff for her contemptuous behavior. We review this claim pursuant to the abuse of discretion standard. See *Edmond* v. *Foisey*, 111 Conn. App. 760, 773–74, 961 A.2d 441 (2008). In doing so, we observe that "[c]ourts have in general the power to fashion a remedy appropriate to the vindication of a prior . . . judgment. . . . Having found noncompliance, the court, in the exercise

[7] We recognize the anomaly in our conclusion that, if the defendant had not taken distributions from past years' retained earnings but, instead, had moved to modify alimony and support on the basis that the corporation could not afford to distribute its retained earnings to him while its net earnings were faltering, the question before the court would have been the reasonableness of the defendant's choice in light of the corporation's need to retain its earnings for its business purposes. Here, however, this inquiry was not possible because the defendant did, in fact, take distributions during a period of lesser net earnings by the corporation and increased his own "cash flow" by doing so. See, e.g., *Tuckman* v. *Tuckman*, supra, 308 Conn. 208–14.

of its equitable powers, necessarily ha[s] the authority to fashion whatever orders [are] required to protect the integrity of [its original] judgment. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action." (Citation omitted; internal quotation marks omitted.) *Scott* v. *Scott*, 215 Conn. App. 24, 51, 282 A.3d 470 (2022).

In its memorandum of decision, although the court denied that portion of the defendant's motion for contempt that dealt with financial matters, the court did find the plaintiff in contempt for inappropriately involving two of the parties' children in their parents' disagreements. The court stated: "Of most concern to this court is the evidence of the minor children Abigail's and Zach's awareness of what is occurring pertaining to the financial issues being addressed by this court. The first sentence of article 6.1 (c) indicates that neither parent will engage in any conversation with the minor children concerning the other parent as to any disputes as between the parents existing in the past, present or future, specifically including financial matters. The text communications indicate that Abigail and Zach are unfortunately aware of the financial matters, and this court has no reason to believe that the [defendant] would be proffering information of his intent to reduce alimony or child support. The order in the original dissolution is clear and exhaustive in its terms in the prevention of said exposure occurring, and the [plaintiff] was aware of said order. Nevertheless, these two children are again in the middle of their parents' dysfunctional relationship. The court finds that [the failure to prevent] said inappropriate exposure was wilful on behalf of the [plaintiff] and finds her in contempt of said order.

"[It is] grossly apparent that neither of the parties is capable or mature enough to have healthy communications with the other whether it pertains to finances, the

children's needs, or attempts to co-parent with each other. Each party presents as more interested in making the life of the other more difficult, and accomplishing individual objectives on their own individual terms, than prioritizing the needs of the children. As such, this court orders that the parties reestablish the platform AppClose for all communications between them.[8] Said app shall be utilized to include, but not be limited to, submission of unreimbursed medical expenses, notification of payments addressing the same, visitation with the children either by the [plaintiff] in Connecticut or the [defendant] in South Carolina, as well as notable school and health related events." (Footnote added.)

Although the court's response to the plaintiff's contemptuous behavior may not have been punitive and directed solely to the plaintiff as desired by the defendant, it appears to this court on review to have been intended as remedial and to lessen the burden on the children of being involved in the parties' ongoing and dysfunctional manner of dealing with each other. The court's child-centered remedial response was well within the scope of its discretionary authority. See *Scott* v. *Scott*, supra, 215 Conn. App. 51. In sum, we do not find that the court abused its discretion in formulating this response to the plaintiff's contemptuous behavior.

The judgment is affirmed.

In this opinion the other judges concurred.

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[8] We take judicial notice that AppClose is a co-parenting software program designed for a mobile device that is, at times, recommended by the court to parents who have shared custody of their children.

STATE OF CONNECTICUT EX REL. JEREMIAH DUNN, CHIEF STATE ANIMAL CONTROL OFFICER *v.* JOANN CONNELLY ET AL. (AC 46113)

Elgo, Seeley and Bishop, Js.

Syllabus

The defendant C appealed from the judgment of the trial court vesting in the plaintiff ownership of certain animals the court found to be neglected after they were seized subsequent to a warrantless search of C's property, where she operated an animal rescue. C claimed, inter alia, that the court improperly denied her motion in limine, which sought to exclude all evidence seized following the search on the basis of its determination that the exclusionary rule did not apply to animal welfare proceedings brought pursuant to statute (§ 22-329a). *Held*:

This court concluded, under the balancing test set forth in *United States* v. *Janis* (428 U.S. 433), that the trial court's ruling denying C's motion in limine was legally and logically correct, that court having correctly determined that the exclusionary rule was inapplicable in civil proceedings, as the minimal deterrent effect of employing the rule in the circumstances at issue was substantially outweighed by the societal interest in presenting reliable evidence of animal neglect in actions under § 22-329a to protect the health and safety of animals.

C waived her claim that she was entitled to a jury trial under article first, § 19, of the state constitution, as she never requested a jury trial and made no objection prior to the start of the proceedings, in which she actively participated.

Argued May 23—officially released October 8, 2024

Procedural History

Verified petition seeking, inter alia, custody in favor of the plaintiff of certain animals in the named defendant's possession that allegedly were neglected or cruelly treated, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Budzik*, *J.*, issued an order vesting temporary custody of the animals with the plaintiff; thereafter, the court granted the named defendant's motion to reargue;

subsequently, the court, issued an order vesting temporary custody of the animals with the plaintiff; thereafter, the court denied the named defendant's motion to exclude certain evidence; subsequently, the case was tried to the court, *Budzik, J.*; judgment vesting permanent ownership of the animals with the plaintiff, from which the named defendant appealed to this court. *Affirmed.*

Trey Mayfield, pro hac vice, with whom, on the brief, was *John J. Radshaw III*, for the appellant (named defendant).

Daniel M. Salton, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Katherine A. Roseman*, assistant attorney general, for the appellee (plaintiff).

Opinion

SEELEY, J. The defendant Joann Connelly[1] appeals from the judgment of the trial court vesting permanent custody with the Department of Agriculture (department) of certain animals owned by the defendant, which included thirty-three dogs, twenty-eight cats, five ducks, three goats, one parakeet, and one pony. On appeal, the defendant claims that (1) the court improperly denied her motion in limine, which sought to exclude any evidence seized following a warrantless search of her property, on the basis of its determination that the exclusionary rule does not apply to civil proceedings, and (2) the animal welfare statute, General Statutes (Supp. 2022) § 22-329a[2] (g) and (h), violates her right

[1] CT Pregnant Dog and Cat Rescue, Inc. (rescue), an animal rescue operated by Connelly, also was named as a defendant in this matter. Because an appearance by counsel was not filed on behalf of the rescue by the deadline set by this court, the appeal was dismissed as to the rescue. In this opinion, our references to the defendant are to Connelly.

[2] All references in this opinion to § 22-329a are to the version of the statute codified in the 2022 supplement to the General Statutes unless otherwise indicated.

to a civil jury trial under article first, § 19, of the Connecticut constitution. We disagree and affirm the judgment of the court.

The following facts and procedural history are relevant to this appeal. The defendant is the owner of property located at 171 Porter Road in Hebron, at which she operates CT Pregnant Dog and Cat Rescue, Inc. (rescue). The rescue is wholly owned by the defendant and is a licensed animal importer registered with the state pursuant to General Statutes § 22-344 (e). The property serves as the defendant's primary residential and business address, and consists of 5.57 acres, including a two-story residential home, a barn or stable outbuilding, and several sheds. The defendant uses the house, barn and surrounding land to house and care for animals.

On March 23, 2022, Tanya Wescovich, an animal control officer with the plaintiff, the state of Connecticut, visited the property with an employee of the Department of Children and Families,[3] which had received a report that the defendant was abandoning the property and the animals being kept there. On the basis of Wescovich's observations during that visit, the next day, March 24, 2022, Wescovich, along with William A. Bell, the animal control officer for the town of Hebron, applied for a search and seizure warrant for the defendant's property in Hebron. The warrant application was granted by the Superior Court that same day.[4] On March

[3] An employee of the Department of Children and Families had contact with the defendant on March 21, 2022, concerning an unrelated matter.

[4] Specifically, the warrant granted permission to search "[t]he grounds, property, house, garage, trailers, vehicles, paddocks, barns and outbuildings located at 171 Porter Rd., Hebron, CT" for the following: "All animals on the property, alive or dead, including but not limited to dogs, cats, horses, goats, poultry and to have said animals evaluated and tested for dehydration, emaciation, physical condition, wounds, parasites, injuries and illness by a licensed veterinarian; all animal health and ownership records; collars, leashes, halters, lead ropes; photographs of animals; receipts and bills related to animal care and feeding; medication and syringes related to animal care."

25, 2022, Wescovich, along with members of the Connecticut State Police, animal control officers from the department and nearby towns, and officials from the Chatham Health District,[5] executed the warrant, seizing, in total, thirty-three dogs, twenty-eight cats, five ducks, three goats, one parakeet, and one pony.

On April 18, 2022, Jeremiah Dunn, the chief animal control officer of the plaintiff, filed a verified petition seeking permanent ownership of the animals pursuant to § 22-329a (b)[6] and (c),[7] as well as an application for an immediate ex parte order of temporary care and custody. The court, *Cobb, J.*, granted the application for an immediate ex parte order of temporary care and custody that same day and ordered a remote hearing to be held on April 22, 2022, at which the defendant had to show cause as to why the order of temporary care and custody should not continue. The remote hearing,

[5] The Chatham Health District serves the towns of Colchester, East Haddam, East Hampton, Hebron, Marlborough, and Portland, and has authority, pursuant to General Statutes § 19a-206, to "examine all nuisances and sources of filth injurious to the public health . . . ."

[6] General Statutes (Supp. 2022) § 22-329a (b) provides: "Any animal control officer or regional animal control officer appointed pursuant to section 22-328, 22-331 or 22-331a, as applicable, 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 or 53-252, and shall thereupon proceed as provided in subsection (c) of this section except that if, in the opinion of a licensed veterinarian or the State Veterinarian, at any time after physical custody of such animal is taken, such animal is so injured or diseased that it should be euthanized immediately, such officer may have such animal humanely euthanized by a licensed veterinarian."

[7] General Statutes § 22-329a (c) provides: "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. Upon the filing of such petition, the court shall cause a summons to be issued requiring the owner or owners or person having responsibility for the care of the animal, if known, to appear in court at the time and place named."

however, took place on April 29, 2022, at which the defendant stipulated, through counsel, that she would not contest the ex parte order vesting the temporary care of the animals in the department. The court, *Budzik, J.*, thus, ordered that day that temporary custody of the animals be vested in the department.

The defendant subsequently filed a motion seeking to withdraw her oral stipulation from the April 29, 2022 hearing, as well as a motion to reargue the court's April 29, 2022 order of temporary custody. In her motion to reargue, the defendant asserted that new information had come to light that created "a genuine issue of material fact regarding the statutory underpinnings of the plaintiff's claims in [the] verified petition." Specifically, the defendant claimed that results of the examinations performed "on each individual animal by licensed veterinarians after they were in the custody of the animal control officers who had effectuated the seizure" were not available at the time of the April 29, 2022 hearing, and that the results of these examinations showed that all but one animal were "healthy and apparently well cared for." The court granted the defendant's motion to reargue on May 18, 2022, and scheduled a new hearing on the plaintiff's application for temporary custody on May 26, 2022.

During the May 26, 2022 hearing, Wescovich and the defendant both testified. By agreement of the parties, the court admitted into evidence twenty-nine exhibits, consisting of, inter alia, photographs taken during the March 25, 2022 seizure of the animals, as well as veterinary reports documenting the physical condition of the animals. In a memorandum of decision dated June 15, 2022, the court made the following findings. "On March 23, 2022 . . . Wescovich visited the property with an employee of the . . . Department of Children and Families . . . [which] had received a report that [the defendant] was abandoning the property and the animals

being kept there. Upon accessing the property . . . Wescovich testified that she observed that the entire property was in an extreme state of uncleanliness and disarray.[8] Trash and unusable junk were everywhere. One dog was loose on the property. . . . Wescovich observed numerous large piles of trash, numerous empty plastic containers, numerous unused animal feed containers, a full garbage dumpster, and unused animal cages scattered about the property. A pile of trash blocked the entrance to the garage, and a dozen bags of trash were piled next to the house. The pictures of the property, house, and barn entered into evidence and examined by the court . . . corroborate . . . Wescovich's oral testimony and affidavit, which was also admitted into evidence as a full exhibit. . . .

"Upon walking within fifteen feet of the front door of the house . . . Wescovich detected an overwhelming odor of ammonia from the presence of urine and feces. Upon enter[ing] the house itself . . . Wescovich observed that the floors of the house were covered with cat and dog urine and feces, loose dog food, dirt, and newspaper clippings. . . . Wescovich testified that the air quality inside the house was so poor that she had difficulty breathing despite the use of an N95 respirator mask. . . . Wescovich also testified that the air in the house created a burning sensation in her eyes.

"On the first floor of the house . . . Wescovich observed approximately twenty-eight dogs in cages distributed throughout the first floor. Two additional dogs were loose in the house. . . . Wescovich observed that the first floor areas generally and each of the dogs' cages were, to be plain, filthy. The cages were soiled

[8] The court credited Wescovich's testimony with respect to her experience and observations regarding the subject property and animals. Specifically, the court stated in its memorandum of decision that Wescovich "has extensive training and experience in the investigation of animal neglect and abuse cases. . . . The court finds . . . Wescovich to be a very credible witness and credits [her] testimony."

with urine, feces, and used and soiled 'pee' pads. Old dog food kibble was strewn about the floor and in the dogs' cages.[9] . . .

"Wescovich observed cobwebs throughout the entire house. There were piles of trash and unusable junk everywhere. . . . Wescovich stated that it was difficult to move about the house because of the presence of so much trash and junk. Indeed, on March 25, 2022, the house was condemned by the Chatham Health District[10] as unfit for human habitation and in violation of [§ 19-13-B1 (i) of the Regulations of Connecticut State Agencies, which is part of the Connecticut Public Health Code].[11] . . . Wescovich also recovered numerous used and unused containers of various animal medicines and syringes . . . including canine distemper vaccine and sulfadimethoxine (trademarked as Albon). Possession and use of canine distemper vaccine and Albon is restricted.

[9] "Testifying in her defense, [the defendant] offered that the filthy state of the house was the result of behavioral issues associated with [the defendant's] minor [child] and [the child's] failure to clean the cages and house appropriately. The court does not credit [the defendant's] testimony. Moreover, in the exercise of common sense, human experience, and reasonable inference, the court concludes, in its role as fact finder, that the filthy and unsanitary conditions depicted in the photographs of the property, house, and barn were the result of lengthy and long-term neglect of the property, house, and the animals living there. For clarity and completeness, the court does not credit [the defendant's] testimony that the deplorable conditions depicted in the photographs of the property, house, and barn were the result of any failure to clean the house, barn, or property on the part of [the defendant's] minor [child], or [the defendant's] allegation that the animals were not properly walked on the morning they were seized. Similarly, in its role as fact finder, the court does not credit [the defendant's] allegation that the conditions at the property were the fault of her estranged husband."

[10] During the hearing, the plaintiff submitted as a full exhibit the notice of violation and public health order issued to the defendant, which stated that she was in violation of the health code provisions.

[11] Section 19-13-B1 of the Regulations of Connecticut State Agencies provides in relevant part that "[t]he following conditions are specifically declared to be public nuisances . . . (i) Buildings or any part thereof which are in a dilapidated or filthy condition which may endanger the life or health of persons living in the vicinity."

"On the second floor of the house . . . Wescovich found one cat in a cage and one cat loose in a bedroom. The cat's cage was unsanitary with dirty cat litter and feces. There was no litter box for the loose cat. Three other cats were confined to an upstairs bathroom. Another bedroom held a large, caged parakeet that was very thin. The parakeet subsequently died. The air quality was significantly worse on the second floor than on the first floor. There was also a strong smell of incense on the second floor, which, in the exercise of common sense, human experience, and reasonable inference, the court concludes, in its role as fact finder, was intended to cover up the smell of urine and feces throughout the house. Incense is harmful to the respiratory system of parakeets. . . . Wescovich observed the same filthy and unsanitary conditions on the second floor as on the first floor.

"Upon entering the basement area . . . Wescovich found fourteen cats in cages. Four more dogs were confined to kennels in the basement, and at least one dog was loose in the basement. The conditions in the basement were similar to the filthy and unsanitary conditions in the rest of the house. The floors of the cat cages and dog kennels were dirty with urine, feces, and spilled cat litter. Litter boxes were full. There were no clean places for the animals to sit. Garbage was piled in the corners of the basement and strewn about the basement generally.

"The barn and paddock area were similarly cluttered with trash and unusable junk. The paddock area contained such a large pile of fecal matter and hay that it blocked the entrance to the barn and was situated such that animals would have to walk through the pile to gain access to the barn. A pony and several goats and ducks lived in this area.

"After seizure from the property, the subject animals were taken to various local veterinary hospitals for

examination and treatment. . . . While [the defendant] is correct that the animals generally did not show signs of malnutrition or dehydration, many of the animals showed the detrimental effects of the filthy and unsanitary conditions they were forced to live in by [the defendant] and [the rescue]. Dermatitis or other skin and coat conditions (fleas, hair loss, matted coats, matted feces in their coats) were very common. Many cats had respiratory issues. Veterinarians commonly noted that the cats and dogs smelled strongly of urine or feces and [that] many animals had patching or urine scalds on their paw pads from standing in urine or feces for long periods of time. Gastrointestinal issues (ringworm, roundworm, tapeworm, hookworm, giardia, urinary tract infections, and diarrhea) were also common. Several cats or dogs were noted to be timid or fearful. One of the goats was malnourished and had lice." (Citations omitted; footnotes added; footnote in original.)

On the basis of these findings, the court found, by a preponderance of the evidence, that the defendant "abused, neglected, and cruelly treated the subject animals" by failing "to give the subject animals 'proper care' and [to] provide them with 'wholesome air,' as those terms are defined by General Statutes [Rev. to 2021] § 53-247."[12] Accordingly, the court vested temporary ownership of the animals with the department and

[12] General Statutes (Rev. to 2021) § 53-247 provides in relevant part: "(a) Any person who overdrives, drives when overloaded, overworks, tortures, deprives of necessary sustenance, mutilates or cruelly beats or kills or unjustifiably injures any animal, or who, having impounded or confined any animal, fails to give such animal proper care or neglects to cage or restrain any such animal from doing injury to itself or to another animal or fails to supply any such animal with wholesome air, food and water, or unjustifiably administers any poisonous or noxious drug or substance to any domestic animal or unjustifiably exposes any such drug or substance, with intent that the same shall be taken by an animal, or causes it to be done, or, having charge or custody of any animal, inflicts cruelty upon it or fails to provide it with proper food, drink or protection from the weather or abandons it or carries it or causes it to be carried in a cruel manner, or fights with or baits, harasses or worries any animal for the purpose of making it perform

ordered the defendant to pay a cash or surety bond of $500 per animal, which she did for all of the animals except the ducks.[13]

Subsequently, a hearing was scheduled for September 7, 2022, pursuant to § 22-329a (d), concerning the plaintiff's petition seeking permanent custody of the animals. At the commencement of that hearing, the defendant informed the court that she wanted to discharge her attorney. As a result, the court agreed to continue the hearing until October 18, 2022, to give the defendant the opportunity to retain new counsel. Immediately following the conclusion of the September 7 proceeding, the plaintiff filed a motion requesting that the court take judicial notice of the following for the upcoming October 18 hearing: (1) "The evidentiary exhibits entered in full during the . . . evidentiary hearing in the underlying matter on May 26, 2022"; (2) "[t]he full transcript and testimony of the May 26, 2022 hearing"; and (3) "[t]he court's memorandum of decision, including factual findings and legal conclusions, dated June 15, 2022 . . . ." The defendant's counsel responded by filing an objection to the motion for judicial notice. Therein, counsel asserted that he had "no objection to the [court's] taking judicial notice" of the evidentiary exhibits and the full transcript of the May 26 hearing, but requested that the court not take judicial notice of its June 15 decision, findings and conclusions. On September 22, 2022, the court granted the plaintiff's motion for judicial notice, stating in its order that "[t]he defendant [was] free to present additional evidence in order to attempt to convince the court that its prior factual findings were in error."

for amusement, diversion or exhibition, 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. . . ."

[13] On September 7, 2022, the court vested in the department permanent ownership of the ducks.

On September 27, 2022, the defendant filed a motion in limine seeking to exclude any evidence obtained from her property on the ground that the search and seizure at her home on March 23, 2022, without a warrant and over her objection, was unlawful, in violation of the fourth amendment to the federal constitution and article first, § 7, of the Connecticut constitution. The defendant further asserted that, even though the removal of the animals on March 25, 2022, was conducted pursuant to a warrant, it was clear that the basis for the issuance of the warrant was the illegal entry on March 23. The motion was signed by the defendant herself, not by counsel.

On October 3, 2022, the plaintiff filed an objection to the defendant's motion in limine, arguing that the motion was procedurally improper, as only the defendant, and not counsel, had signed the motion. The plaintiff claimed that, although the motion was signed by the defendant herself and "assert[ed] in the certification that she [was acting] 'pro se' . . . the defendant's counsel has made it clear . . . . [that] he [was] still on retainer, and, in consultation with counsel, it appears he had no knowledge of this motion and did not review its contents prior to its filing. The defendant cannot simultaneously have representation and also represent herself. As is well settled in Connecticut jurisprudence, hybrid representation is not permitted in a civil context." The plaintiff further argued that the motion was waived and that the "exclusionary rule . . . has been categorically disallowed in civil actions."

On October 6, 2022, the court issued an order denying the defendant's motion in limine.[14] In its order, the court stated: "The exclusionary rule does not apply to civil

[14] Although the parties, in their appellate briefs and at oral argument before this court, also have referred to the defendant's motion as a motion to suppress, for consistency in this opinion we refer to the motion as a motion in limine.

cases." On October 12, 2022, the defendant, through counsel, filed a motion to reargue the court's order denying her motion in limine. In her motion to reargue, the defendant claimed that, although there are certain civil proceedings in which courts specifically have held that the exclusionary rule does not apply, "the law is different when it comes to matters involving the forfeiture of property where the proceeding is of a quasi-criminal nature." The court denied the defendant's motion to reargue.

On October 18, 2022, the court held a hearing on the plaintiff's petition for permanent custody of the animals. In doing so, it took judicial notice of the testimony presented at the May 26, 2022 temporary custody hearing, as well as the plaintiff's exhibits entered into evidence at the May 26 hearing, and they were entered into evidence at the October 18 hearing. At the beginning of the hearing, the defendant's counsel stated that the defendant took exception to the court's order denying the motion to reargue the court's denial of the motion in limine. The court reiterated its denial of the motion in limine, stating, "I don't think the exclusionary rule applies . . . for purposes of this case. I'm ruling that it does not. I agree with [plaintiff's] argument that this proceeding is civil in nature. I'd also note that the statute . . . at issue here is . . . for the protection of animals and . . . the safety and security of the animals at issue. It is not punitive in the sense [of] the case[15] . . . cited by the defendant. . . . It is to protect the animals, which would be another reason why I don't think the exclusionary rule applies.

"Finally, I think . . . that the defendant had ample opportunity to raise these issues at . . . probable

[15] The defendant cited to *One 1958 Plymouth Sedan* v. *Pennsylvania*, 380 U.S. 693, 85 S. Ct. 1246, 14 L. Ed. 2d 170 (1965), in both her motion to reargue and at the beginning of the October 18, 2022 hearing, for the proposition that the exclusionary rule applies to a civil forfeiture proceeding in which a defendant's property is seized by the government. Id., 702.

cause hearings. She was, obviously, present when the circumstances upon which she's relying occurred. And to the extent that she had any objection to the evidence that was seized at that point, or any procedural issues with respect to [how] the [department] or any of the other police individuals acted, she could have raised that at the time and did not. The evidence that, I think, is at issue was entered by the court on the record without objection." (Footnote added.) The defendant's counsel then interjected that the defendant had not been "given any of the evidence, the video evidence . . . until some two months after" the May 26, 2022 hearing.

The court responded: "I understood that. But your client was present. The video simply shows the conduct of your client. And your client was present and could have instructed her attorney, based on her presence and knowledge of the circumstances, to file whatever objection she thought was appropriate. Or you could have made that evaluation based on simply consulting with your client. You didn't need the video to tell you what happened. She was there." At this point, the defendant responded by stating: "I [complained] multiple times. I'd like that on the record. And I've complained multiple times, my civil rights were violated. Multiple times. And I requested to speak out and to be heard." Although the court attempted to quiet the defendant, she continued to speak, and the following colloquy occurred:

"[The Defendant]: They illegally entered my house and stole my animals.

"The Court: Ma'am, you're only harming your argument by stating that you knew your civil rights were violated. That only makes my ruling stronger because you knew your civil rights were violated yet didn't object.

"[The Defendant]: I did.

"[The Court]: So, you should listen to your attorney.

"[The Defendant]: I wasn't allowed to.

"The Court: Ma'am. You should listen to your attorney and follow his advice."

Upon the conclusion of this exchange, the court began the trial. After the court admitted the evidence from the May 26, 2022 hearing, the plaintiff rested its case. Thereafter, the defendant called as witnesses Wescovich and Elizabeth Lee Murphy, a veterinarian. The defendant also testified at the hearing.

On December 13, 2022, the court issued its memorandum of decision vesting permanent ownership of all the animals with the department. In its memorandum of decision, the court "reaffirm[ed], readopt[ed], and incorporate[d] . . . all of the court's findings of fact as set forth in its June 15 [2022] memorandum of decision, as if fully set forth herein." The court then made the following additional findings related to the evidence presented during the defendant's case-in-chief. "Wescovich testified that she did not use any scientific measuring device to measure the air quality in [the defendant's] house . . . . Murphy has been a veterinarian since 1985. . . . Murphy testified that she had reviewed the [plaintiff's] exhibits and that the [plaintiff's] exhibits were the basis of her opinions. . . . Murphy did not examine any of the subject animals and never visited the property. . . . Murphy opined that, while the sanitary conditions in which the subject animals lived were 'not adequate' . . . the animals were [not] in life-threatening conditions and . . . had sufficient food, water, and shelter. . . . Murphy also testified that the house that the subject animals lived in was more like a 'barn,' and that, while a barn was 'probably not' a proper environment for the subject animals, the

conditions were not actually 'cruel' and the animals were not 'neglected,' in . . . Murphy's view. After . . . Murphy testified, [the defendant] testified that she spent a significant amount of money ($132,000) on veterinary bills for the subject animals in an effort to keep [them] healthy and well cared for, and that many of the gastrointestinal issues suffered by the subject animals and documented in the veterinary records . . . were common in rescued animals." (Citation omitted.)

The court did not credit the portions of Murphy's testimony in which she opined that the animals had not been neglected or cruelly treated, as well as her testimony with respect to the specific medical conditions of the animals, as Murphy did not examine any of the animals. The court also specifically did not credit portions of the defendant's testimony. The court found, "by a preponderance of the evidence, that [the defendant] abused, neglected, and cruelly treated the subject animals . . . ." In making this finding, the court noted that the conditions at the property were unsanitary and filthy, and that the medical conditions of the animals reflected those unsanitary and filthy conditions. The court stated: "In particular, the long-term presence and accumulation of urine and feces [found at the defendant's property] produced an unwholesome air quality heavily laden with harmful ammonia gas. Nothing presented in the hearing on permanent custody changes the factual or legal conclusions reached by the court in its June 15, 2022 memorandum of decision on temporary custody. Indeed . . . Murphy affirmatively testified that the sanitary conditions in which the subject animals lived were 'not adequate,' and that the barn-like conditions the subject animals lived in were 'probably not' a proper environment for the . . . animals." The court concluded, on the basis of the evidence

before it, that "any person of ordinary intelligence" would have known that the conditions at the property did not meet the standard of proper care and wholesome air as required by § 53-247, and that the animals were neglected and cruelly treated by the defendant. The court, therefore, vested permanent ownership of the animals with the department pursuant to § 22-329a (g) (1).[16] This appeal followed.[17] Additional facts will be set forth as necessary.

I

The defendant first claims that the trial court improperly denied her motion in limine on the basis of its

[16] The court also ordered the defendant to "pay the expenses incurred by the [plaintiff] in providing proper food, shelter and care to the subject animals calculated at the rate of fifteen dollars per day per animal from March 25, 2022, the date the subject animals were seized by the [plaintiff]."

[17] Following oral argument before this court, the defendant filed a notice of supplemental authority pursuant to Practice Book § 67-10, in which she referenced two cases that were mentioned at oral argument but not briefed, as well as a June 27, 2024 decision of the United States Supreme Court regarding the right to a jury trial under the seventh amendment to the federal constitution. In her notice, however, she also responded to questions raised by this court at oral argument and set forth arguments in support of her position on various issues raised. The plaintiff responded to the notice, pointing out that it was not in conformity with § 67-10 in that, in the notice, the defendant "engages in extensive supplemental argument . . . ." The plaintiff thus asserts that it should not be considered by this court, with the exception of the reference to the 2024 Supreme Court case, which the plaintiff maintains is not relevant to the present case. We agree with the plaintiff. Pursuant to § 67-10, "[w]hen pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may promptly file with the appellate clerk a notice listing such supplemental authorities, including citations, with a copy certified to all counsel of record in accordance with Section 62-7. . . . The filing shall concisely and without argument state the relevance of the supplemental citations and shall include, where applicable, reference to the pertinent page(s) of the brief. . . . This section may not be used after oral argument to elaborate on points made or to address points not made." The defendant's notice is four pages in length, it includes argument, and it elaborates on and addresses issues raised at oral argument. For that reason, we limit our consideration to the 2024 Supreme Court decision referenced in the notice.

determination that the exclusionary rule, applicable in the context of a violation of the fourth amendment, does not apply to civil matters.[18] In support of this claim, the defendant asserts that the present case involves a civil forfeiture proceeding, to which the exclusionary rule applies.[19] Specifically, the defendant argues that the exclusionary rule applies to animal welfare proceedings[20] because such proceedings involve the civil forfeiture of noncontraband property, such as domesticated

[18] The plaintiff argues that the defendant did not preserve this claim for review on appeal. Specifically, the plaintiff asserts that, because the defendant voluntarily agreed at the May 26, 2022 temporary custody hearing to the admission into evidence of twenty-six exhibits, and because she subsequently represented that she had no objection to the plaintiff's motion requesting that the court take judicial notice of those exhibits and the testimony from the May 26 hearing for purposes of the October 18, 2022 permanent custody hearing, she waived any objection to the admission of that evidence, most of which derived from the alleged unconstitutional warrantless search of her residence on March 23, 2022. Thus, the plaintiff asserts that the defendant, having agreed to the admission of the evidence at the temporary custody hearing and having agreed with the plaintiff's request for the trial court to take judicial notice of that evidence for purposes of the upcoming permanent custody hearing, failed to preserve her fourth amendment claim that the evidence should have been suppressed as a result of the unlawful warrantless search of her home on March 23, 2022; accordingly, the plaintiff argues that this court should decline to review the claim. We are not persuaded by the plaintiff's arguments. Because the defendant filed her motion in limine seeking to exclude the evidence on fourth amendment grounds prior to the October 18 permanent custody hearing, at which the court took judicial notice of the challenged evidence, she revoked any prior consent she may have given to the admission of that evidence and, thus, did not waive her fourth amendment claim. We, therefore, proceed to a review of the merits of this claim.

[19] Although the defendant, in her motion in limine, argued that the warrantless entry into her home violated both the federal constitution and article first, § 7, of the state constitution, on appeal, she has neither raised nor briefed any claim under the state constitution relating to the warrantless entry of her home. Any such claim, therefore, is deemed abandoned. See, e.g., *Nietupski* v. *Del Castillo*, 196 Conn. App. 31, 37 n.7, 228 A.3d 1053 (failure to provide independent state constitutional analysis renders any claim with respect to state constitution abandoned), cert. denied, 335 Conn. 916, 229 A.3d 1045 (2020).

[20] We previously have identified a proceeding conducted pursuant to § 22-329a as an "animal welfare action . . . ." *Wethersfield ex rel. Monde* v. *Eser*, 211 Conn. App. 537, 539, 274 A.3d 203 (2022).

animals, regardless of whether a crime is alleged.[21] We disagree.

We first set forth the applicable standard of review. "The purpose of a motion in limine is to exclude irrelevant, inadmissible and prejudicial evidence from trial . . . ." (Internal quotation marks omitted.) *111 Clearview Drive, LLC* v. *Patrick*, 224 Conn. App. 419, 427, 313 A.3d 386 (2024). When a trial court's ruling pertaining to a motion in limine is based on a legal determination, "the applicable standard of review requires this court to determine whether the trial court was legally and logically correct . . . ." (Internal quotation marks omitted.) Id., 426. In the present case, because the court's determination that the exclusionary rule is inapplicable involved a legal determination, we exercise plenary review. See id.

A

The following legal principles are relevant to the defendant's claim that the exclusionary rule is applicable to a civil animal welfare proceeding. "The [f]ourth [a]mendment provides that, 'The right of the people to

[21] In her appellate brief, the defendant cites to a number of general principles underlying the fourth amendment, including, inter alia, that "the fourth amendment's warrant requirement applies to all governmental actors without regard to whether they describe their search and seizure endeavors as 'civil' or 'criminal.' " In doing so, the defendant argues that the fourth amendment is not limited in its application to criminal proceedings. The issue in this appeal, however, is not whether the fourth amendment was violated as a result of the warrantless search of the defendant's property on March 23, 2022. Rather, the issue in this appeal concerns the court's determination that the exclusionary rule does not apply to animal welfare proceedings, and that is the issue addressed on appeal by the plaintiff. The exclusionary rule is a prudential rule, not a constitutional rule, that was formulated in the criminal context to deter law enforcement officers who fail to obtain a warrant as required under the fourth amendment; its application necessarily must stem from a fourth amendment violation. Therefore, for purposes of this appeal, we assume, without deciding, that the warrantless search of the defendant's property on March 23, 2022, was conducted in violation of the fourth amendment.

be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.' The basic purpose of this [a]mendment, as recognized in countless decisions of [the United States Supreme] Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials. The [f]ourth [a]mendment thus gives concrete expression to a right of the people which 'is basic to a free society.' . . . As such, the [f]ourth [a]mendment is enforceable against the [s]tates through the [f]ourteenth [a]mendment." (Citation omitted.) *Camara* v. *Municipal Court*, 387 U.S. 523, 528, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967); see also *Carpenter* v. *United States*, 585 U.S. 296, 303–304, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018); *State* v. *Bemer*, 339 Conn. 528, 533 n.6, 262 A.3d 1 (2021).

"The [f]ourth [a]mendment protects the right to be free from 'unreasonable searches and seizures,' but it is silent about how this right is to be enforced. To supplement the bare text, [the United States Supreme Court] created the exclusionary rule, a deterrent sanction that bars the prosecution from introducing evidence obtained by way of a [f]ourth [a]mendment violation." *Davis* v. *United States*, 564 U.S. 229, 231–32, 131 S. Ct. 2419, 180 L. Ed. 2d 285 (2011). As such, the exclusionary rule "is a prudential doctrine . . . created by [the] [c]ourt to compel respect for the constitutional guarant[ee]. . . . Exclusion is not a personal constitutional right, nor is it designed to redress the injury occasioned by an unconstitutional search. . . . The rule's sole purpose is to deter future [f]ourth [a]mendment violations." (Citations omitted; internal quotation marks omitted.) Id., 236–37. "[T]he exclusionary rule bars the government from introducing at trial

evidence obtained in violation of the . . . United States constitution. . . . The rule applies to evidence that is derived from unlawful government conduct, which is commonly referred to as the fruit of the poisonous tree . . . .'' (Emphasis omitted; internal quotation marks omitted.) *State* v. *Romero*, 199 Conn. App. 39, 50, 235 A.3d 644, cert. denied, 335 Conn. 955, 238 A.3d 731 (2020).

''[T]he exclusionary rule is neither intended nor able to cure the invasion of the defendant's rights which he has already suffered. . . . [T]he [exclusionary] rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the [f]ourth [a]mendment against unreasonable searches and seizures . . . . Application of the rule is thus appropriate in circumstances in which this purpose is likely to be furthered. . . . [I]n the complex and turbulent history of the rule, the [United States Supreme] Court never has applied it to exclude evidence from a civil proceeding, federal or state. *Immigration & Naturalization Service* v. *Lopez-Mendoza*, [468 U.S. 1032, 1041–42, 104 S. Ct. 3479, 82 L. Ed. 2d 778 (1984)] (holding that rule does not apply in deportation proceedings); see also *Pennsylvania Board of Probation & Parole* v. *Scott*, 524 U.S. 357, 363, 118 S. Ct. 2014, 141 L. Ed. 2d 344 (1998) (recognizing that [Supreme Court has] repeatedly declined to extend the exclusionary rule to proceedings other than criminal trials and holding that rule was not applicable in parole revocation proceedings);[22]

[22] In *Pennsylvania Board of Probation & Parole*, the United States Supreme Court stated: ''We have emphasized repeatedly that the government's use of evidence obtained in violation of the [f]ourth [a]mendment does not itself violate the [c]onstitution. See, e.g., *United States* v. *Leon*, 468 U.S. 897, 906 [104 S. Ct. 3405, 82 L. Ed. 2d 677] (1984); *Stone* v. *Powell*, 428 U.S. 465, 482, 486 [96 S. Ct. 3037, 49 L. Ed. 2d 1067] (1976). Rather, a [f]ourth [a]mendment violation is fully accomplished by the illegal search or seizure, and no exclusion of evidence from a judicial or administrative proceeding can cure the invasion of the defendant's rights which he has already suffered. *United States* v. *Leon*, [supra, 906] (quoting *Stone* v. *Powell*, [supra, 540] (White, J., dissenting)). The exclusionary rule is instead a judi-

United States v. *Janis*, 428 U.S. 433, 448, 454, 96 S. Ct. 3021, 49 L. Ed. 2d 1046 (1976) (holding that rule does not apply in civil tax proceedings); *United States* v. *Calandra*, 414 U.S. 338, 343–46, 94 S. Ct. 613, 38 L. Ed.

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cially created means of deterring illegal searches and seizures. *United States* v. *Calandra*, 414 U.S. 338, 348 [94 S. Ct. 613, 38 L. Ed. 2d 561] (1974). As such, the rule does not proscribe the introduction of illegally seized evidence in all proceedings or against all [persons; *Stone* v. *Powell*, supra, 486], but applies only in contexts where its remedial objectives are thought most efficaciously [served. *United States* v. *Calandra*, supra, 348]; see also *United States* v. *Janis*, 428 U.S. 433, 454 [96 S. Ct. 3021, 49 L. Ed. 2d 1046] (1976) ([i]f . . . the exclusionary rule does not result in appreciable deterrence, then, clearly, its use in the instant situation is unwarranted). Moreover, because the rule is prudential rather than constitutionally mandated, we have held it to be applicable only where its deterrence benefits outweigh its substantial social costs. *United States* v. *Leon*, [supra] 907.

"Recognizing these costs, we have repeatedly declined to extend the exclusionary rule to proceedings other than criminal trials. [Id., 909]; *United States* v. *Janis*, [supra, 428 U.S.] 447. For example, in *United States* v. *Calandra*, [supra, 414 U.S. 338] we held that the exclusionary rule does not apply to grand jury proceedings; in so doing, we emphasized that such proceedings play a special role in the law enforcement process and that the traditionally flexible, nonadversarial nature of those proceedings would be jeopardized by application of the rule. [Id., 343–46, 349–50]. Likewise, in *United States* v. *Janis*, [supra, 433] we held that the exclusionary rule did not bar the introduction of unconstitutionally obtained evidence in a civil tax proceeding because the costs of excluding relevant and reliable evidence would outweigh the marginal deterrence benefits, which, we noted, would be minimal because the use of the exclusionary rule in criminal trials already deterred illegal searches. [Id., 448, 454]. Finally, in [*Immigration & Naturalization Service*] v. *Lopez-Mendoza*, [supra, 468 U.S. 1032], we refused to extend the exclusionary rule to civil deportation proceedings, citing the high social costs of allowing an immigrant to remain illegally in this country and noting the incompatibility of the rule with the civil, administrative nature of those proceedings. [Id., 1050.]

"As in *Calandra*, *Janis*, and *Lopez-Mendoza*, we are asked to extend the operation of the exclusionary rule beyond the criminal trial context. We again decline to do so. Application of the exclusionary rule would both hinder the functioning of state parole systems and alter the traditionally flexible, administrative nature of parole revocation proceedings. The rule would provide only minimal deterrence benefits in this context, because application of the rule in the criminal trial context already provides significant deterrence of unconstitutional searches. We therefore hold that the federal exclusionary rule does not bar the introduction at parole revocation hearings of evidence seized in violation of parolees' [f]ourth [a]mendment rights." (Internal quotation marks omitted.) *Pennsylvania Board of Probation & Parole* v. *Scott*, supra, 524 U.S. 362–64.

2d 561 (1974) (holding that rule does not apply in grand jury proceedings). [B]ecause the rule is prudential rather than constitutionally mandated, [it has been held] to be applicable only where its deterrence benefits outweigh its substantial social costs. . . . *Pennsylvania Board of Probation & Parole* v. *Scott*, supra, 363. [T]he need for deterrence and hence the rationale for excluding the evidence are strongest where the [g]overnment's unlawful conduct would result in imposition of a criminal sanction on the victim of the search. . . . *Fishbein* v. *Kozlowski*, 252 Conn. 38, 52–53, 743 A.2d 1110 (1999)." (Citation omitted; footnote added; internal quotation marks omitted.) *Boyles* v. *Preston*, 68 Conn. App. 596, 611–13, 792 A.2d 878, cert. denied, 261 Conn. 901, 802 A.2d 853 (2002); see also *Davis* v. *United States*, supra, 564 U.S. 236–37 (because exclusionary "rule's sole purpose . . . is to deter future [f]ourth [a]mendment violations . . . [United States Supreme Court] cases have thus limited the rule's operation to situations in which this purpose is thought most efficaciously served" (citations omitted; internal quotation marks omitted)). "Because the exclusionary rule precludes consideration of reliable, probative evidence, it imposes significant costs: It undeniably detracts from the truth-finding process and allows many who would otherwise be incarcerated to escape the consequences of their actions. See *Stone* v. *Powell*, [428 U.S. 465, 490, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976)]. Although [the United States Supreme Court has] held these costs to be worth bearing in certain circumstances, [its] cases have repeatedly emphasized that the rule's costly toll upon truth-seeking and law enforcement objectives presents a high obstacle for those urging application of the rule. *United States* v. *Payner*, 447 U.S. 727, 734 [100 S. Ct. 2439, 65 L. Ed. 2d 468] (1980)." (Footnote omitted; internal quotation marks omitted.) *Pennsylvania Board of Probation & Parole* v. *Scott*, supra, 364–65.

Consistent with this precedent, this court previously has recognized, as a general rule, that the exclusionary rule does not apply to civil cases. See *Tompkins* v. *Freedom of Information Commission*, 136 Conn. App. 496, 499 n.4, 46 A.3d 291 (2012); *In re Nicholas R.*, 92 Conn. App. 316, 321, 884 A.2d 1059 (2005); see also *State* v. *Schroff*, 198 Conn. 405, 412, 503 A.2d 167 (1986) ("*Subject to a few exceptions*, the same rules of evidence apply in criminal cases as in civil cases. . . . The most notable exceptions are the exclusionary rules prohibiting the use of evidence obtained in violation of the accused's constitutional rights." (Citation omitted; emphasis added.)).

Nevertheless, the exclusionary rule has been applied beyond the confines of criminal cases "in a proceeding for forfeiture of an article used in violation of the criminal law. [See *One 1958 Plymouth Sedan* v. *Pennsylvania*], 380 U.S. 693 [85 S. Ct. 1246, 14 L. Ed. 2d 170] (1965) [*Plymouth Sedan*]. [In *Plymouth Sedan*, the court] expressly relied on the fact that 'forfeiture is clearly a penalty for the criminal offense' and '[i]t would be anomalous indeed, under these circumstances, to hold that in the criminal proceeding the illegally seized evidence is excludable, while in the forfeiture proceeding, requiring the determination that the criminal law has been violated, the same evidence would be admissible.' " *United States* v. *Janis*, supra, 428 U.S. 447 n.17; see also *In re 650 Fifth Avenue & Related Properties*, 830 F.3d 66, 98 (2d Cir. 2016) ("[i]t is well-established that the [f]ourth [a]mendment's exclusionary rule applies in forfeiture cases"); *One 1995 Corvette VIN No. 1G1YY22P585103433* v. *Mayor & City Council of Baltimore*, 353 Md. 114, 123–24, 724 A.2d 680 ("Eleven of the thirteen United States Courts of Appeals have interpreted *Plymouth Sedan* to stand for the proposition that the exclusionary rule applies to civil in rem forfeitures. Additionally, courts in thirty-four states

have interpreted *Plymouth Sedan* to stand for the same proposition. . . . Our examination of the cases has revealed no court that completely rejects that interpretation . . . .'' (Footnotes omitted.)), cert. denied, 528 U.S. 927, 120 S. Ct. 321, 145 L. Ed. 2d 250 (1999).

The United States Supreme Court, thus, has not foreclosed application of the exclusionary rule to civil proceedings. ''Instead, the [c]ourt [has] instructed that the exclusionary rule may be extended where the benefits exceed the costs to society''; *Garrett* v. *Lehman*, 751 F.2d 997, 1003 (9th Cir. 1985); and it ''set forth a framework for deciding in what types of proceeding[s] application of the exclusionary rule is appropriate. Imprecise as the exercise may be, the [c]ourt recognized in [*United States* v. *Janis*, supra, 428 U.S. 446] that there is no choice but to weigh the likely social benefits of excluding unlawfully seized evidence against the likely costs.'' *Immigration & Naturalization Service* v. *Lopez-Mendoza*, supra, 468 U.S. 1041; see also *Ahart* v. *Colorado Dept. of Corrections*, 964 P.2d 517, 520 (Colo. 1998) (''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.)). This approach is known as the *Janis* balancing test. See *Immigration & Naturalization Service* v. *Lopez-Mendoza*, supra, 1042; see also *Long Lake Township* v. *Maxon*, 343 Mich. App. 319, 330, 997 N.W.2d 250 (2022) (''[t]he *Janis* balancing test, as it is now known, requires a court contemplating applying the exclusionary rule in a civil proceeding to weigh the 'prime purpose' of the rule—deterrence—against 'the likely costs' ''), aff'd, Docket No. 164948, 2024 WL 1960615 (Mich. May 3,

2024). In applying that test, the Supreme Court determined in *Janis* that the exclusionary rule does not apply to a federal civil tax assessment proceeding and in *Lopez-Mendoza* that it does not apply to a deportation proceeding. See *United States* v. *Janis*, supra, 459–60; see also *Immigration & Naturalization Service* v. *Lopez-Mendoza*, supra, 1042.

Our appellate and trial courts have applied the *Janis* balancing test when determining whether the exclusionary rule applies to certain civil proceedings. See, e.g., *Fishbein* v. *Kozlowski*, supra, 252 Conn. 54 (applying *Janis* balancing test in determining that exclusionary rule does not apply to driver's license suspension hearings); *Payne* v. *Robinson*, 207 Conn. 565, 570, 541 A.2d 504 (applying *Janis* balancing test in determining that exclusionary rule does not apply to probation revocation proceedings), cert. denied, 488 U.S. 898, 109 S. Ct. 242, 102 L. Ed. 2d 230 (1988); *Boyles* v. *Preston*, supra, 68 Conn. App. 612–13 (applying *Janis* balancing test in determining that exclusionary rule does not apply to civil trial); *Housing Authority* v. *Dawkins*, Superior Court, judicial district of Stamford-Norwalk, Housing Session at Norwalk, Docket No. 9502-16173 (May 10, 1995) (14 Conn. L. Rptr. 450) (applying *Janis* balancing test in determining that exclusionary rule does not apply in summary process proceeding), aff'd, 239 Conn. 793, 686 A.2d 994 (1997); see also *Tompkins* v. *Freedom of Information Commission*, supra, 136 Conn. App. 499 n.4 (standing for proposition that exclusionary rule categorically does not apply to civil proceedings), citing *In re Nicholas R.*, supra, 92 Conn. App. 321.[23]

[23] Although in *Tompkins*, we stated that the exclusionary rule does not apply to civil proceedings, the previously cited precedent from our Supreme Court indicates that application of the *Janis* balancing test is appropriate when deciding if the exclusionary rule applies to a particular civil proceeding. Notably, however, courts in Missouri, New Jersey and North Dakota forgo application of the *Janis* balancing test and, instead, simply regard the exclusionary rule as categorically inapplicable to civil proceedings, as we did in *Tompkins*. See, e.g., *Coble* v. *Director of Revenue*, 323 S.W.3d 74, 77 (Mo.

Accordingly, "United States Supreme Court precedent regarding the exclusionary rule's use in civil cases can be succinctly summarized as follows: it only applies in forfeiture actions when the thing being forfeited as a result of a criminal prosecution is worth more than the criminal fine that might be assessed. That's it." *Long Lake Township* v. *Maxon*, supra, 343 Mich. App. 332; see also *Dolan* v. *Salinas*, Superior Court, judicial district of New Britain, Docket No. CV 99-0494202-S (July 22, 1999) (25 Conn. L. Rptr. 119, 121) ("[t]he only civil context in which the [United States] Supreme Court has applied the exclusionary rule is a case of a 'quasi-criminal' forfeiture proceeding based on criminal conduct"). Further, "[i]t is unclear if the Supreme Court requires a threshold finding that the nature of the civil proceeding is 'quasi-criminal' . . . or if the nature of the proceeding is merely one factor in applying the *Janis* balancing test." (Citation omitted.) *Pike* v. *Gallagher*, 829 F. Supp. 1254, 1265 n.6 (D.N.M. 1993).

Notably, if a proceeding is identified as quasi-criminal, we have treated that as determinative of whether the exclusionary rule applies *without* requiring consideration of the *Janis* balancing test. See *In re Nicholas R.*, supra, 92 Conn. App. 321 n.3. In Connecticut, few proceedings are deemed to be quasi-criminal, and they include (1) "forfeiture proceeding[s] intended to penalize . . . for the commission of a criminal offense"; *Miller* v. *Dept. of Agriculture*, 168 Conn. App. 255, 269 n.15, 145 A.3d 393 (citing *One 1958 Plymouth Sedan* v. *Pennsylvania*, supra, 380 U.S. 702), cert. denied, 323 Conn. 936, 151 A.3d 386 (2016); (2) attorney disciplinary proceedings; *Burton* v. *Mottolese*, 267 Conn. 1, 19, 835

App. 2010) (exclusionary rule does not apply to civil proceedings); *In re Civil Commitment of J.M.B.*, 395 N.J. Super. 69, 95, 928 A.2d 102 (App. Div. 2007) (same), aff'd, 197 N.J. 563, 964 A.2d 752, cert. denied sub nom. *J.M.B.* v. *New Jersey*, 558 U.S. 999, 130 S. Ct. 509, 175 L. Ed. 2d 361 (2009); *Muscha* v. *Krolik*, 969 N.W.2d 142, 143 (N.D. 2022) (same).

A.2d 998 (2003), cert. denied, 541 U.S. 1073, 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004); and (3) juvenile delinquency proceedings. *In re Nicholas R.*, supra, 321 n.3; see also *In re Samantha C.*, 268 Conn. 614, 664, 847 A.2d 883 (2004) (proceedings to terminate parental rights are not quasi-criminal); *Robertson* v. *Apuzzo*, 170 Conn. 367, 375, 365 A.2d 824 (child paternity proceedings are civil, not quasi-criminal), cert. denied, 429 U.S. 852, 97 S. Ct. 142, 50 L. Ed. 2d 126 (1976); *Miller* v. *Dept. of Agriculture*, supra, 263–64 (administrative hearing on disposal orders for biting animals is not quasi-criminal).

Our courts have never reached the issue of whether animal welfare proceedings conducted pursuant to § 22-329a are subject to the exclusionary rule. Thus, in the present case, we first must determine whether the animal welfare proceeding at issue constitutes a forfeiture proceeding intended to penalize the defendant for a criminal offense. If it does, the exclusionary rule applies pursuant to *Plymouth Sedan*. If it does not, we next must determine whether animal welfare proceedings conducted pursuant to § 22-329a are quasi-criminal. If such proceedings are determined to be quasi-criminal, the exclusionary rule is applicable. Finally, even if we determine that animal welfare proceedings are not quasi-criminal in nature, we nevertheless must apply the *Janis* balancing test to determine whether it is appropriate to extend the exclusionary rule to this particular civil proceeding. In other words, if the proceeding at issue constitutes either a forfeiture akin to *Plymouth Sedan* or a quasi-criminal proceeding, the exclusionary rule applies; otherwise, the rule is inapplicable unless we determine, after applying the *Janis* balancing test, that it should be extended to animal welfare proceedings. We therefore turn to the defendant's claim that the animal welfare proceeding at issue in this case constitutes a civil forfeiture proceeding to which the exclusionary rule applies.

B

The defendant's claim that the animal welfare proceeding at issue in the present case constitutes a civil forfeiture of noncontraband property is premised on the principle that animals are considered property under state law.[24] In response, the plaintiff does not

[24] We note that, although the defendant correctly notes that animals are " 'generally . . . regarded as personal property,' " quoting *Nonhuman Rights Project, Inc.* v. *R.W. Commerford & Sons, Inc.*, 192 Conn. App. 36, 45, 216 A.3d 839, cert. denied, 333 Conn. 920, 217 A.3d 635 (2019), animals enjoy a unique status in our society as opposed to typical personal property. As the Supreme Court of Vermont stated, "nonhuman animals occupy a unique legal status in that they have traditionally been regarded as property *but are nonetheless different from other property*" and, instead, "occup[y] a special place somewhere in between a person and [a] piece of personal property." (Emphasis added; internal quotation marks omitted.) *State* v. *Sheperd*, 204 Vt. 592, 601, 170 A.3d 616 (2017); see id., 602 ("animal welfare is a factor [that must be] consider[ed] when determining whether a search or seizure was lawful"); *Baity* v. *Mickley-Gomez*, Docket No. CV-19-6092718-S, 2020 WL 9314537, *5 (Conn. Super. December 14, 2020) ("a domesticated, household pet holds a special and unique interest to its owner dissimilar to other property"); see also General Statutes § 22-350 (dogs are considered personal property under state law). In *State* v. *Newcomb*, 359 Or. 756, 770, 375 P.3d 434 (2016), the Oregon Supreme Court "conclude[d] that [the] defendant had no protected privacy interest in [his dog's] blood that was invaded by the medical procedures performed [to diagnose and treat the malnourished dog]. In [those] circumstances, [the court agreed] with the state that [a dog] is not analogous to, and should not be analyzed as though he were, an opaque inanimate container in which inanimate property or effects were being stored or concealed." The court recognized that, even though "[a] dog is personal property under Oregon law, a status that gives a dog owner rights of dominion and control over the dog . . . Oregon law simultaneously limits ownership and possessory rights in ways that it does not for inanimate property. Those limitations, too, are reflections of legal and social norms. Live animals under Oregon law are subject to statutory welfare protections that ensure their basic minimum care, including veterinary treatment. The obligation to provide that minimum care falls on any person who has custody and control of a dog or other animal." Id., 771. Likewise, under Connecticut law, although animals are generally considered personal property, they are subject to statutory welfare protections that place them in a category separate from inanimate property. Therefore, the defendant's citation to *Plymouth Sedan* and its progeny, which deal with forfeitures of assets like vehicles and currency, is unavailing in the present case because "in the context of searches and seizures . . . the treatment

dispute whether animals are considered property but argues that such proceedings do not constitute a civil forfeiture under this state's statutory scheme. We agree with the plaintiff.

Whether an animal welfare proceeding conducted pursuant to § 22-329a constitutes a civil forfeiture requires us to construe § 22-329a, "which presents a question of statutory interpretation subject to plenary review. See *Keller* v. *Beckenstein*, 305 Conn. 523, 532, 46 A.3d 102 (2012) ([i]ssues of statutory interpretation constitute questions of law over which the court's 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 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. . . . It is a basic tenet of statutory construction that [w]e construe a statute as a whole and read its subsections concurrently in order to reach a reasonable overall interpretation." (Citation omitted; internal quotation marks omitted.) *Townsend* v. *Commissioner of Correction*, 226 Conn. App. 313, 330–31, 317 A.3d 1147 (2024). "[P]ursuant to § 1-2z, [the court is] to go through the following initial steps: [F]irst, consider the language of the statute at issue, including its relationship to other statutes, as applied to the facts of the case; second, if after the completion of step one, [the court] conclude[s] that, as so applied, there is but one likely or plausible meaning of the statutory language,

of animals is different from that of other types of property . . . ." *State* v. *Sheperd*, supra, 602.

[the court] stop[s] there; but third, if after the completion of step one, [the court] conclude[s] that, as applied to the facts of the case, there is more than one likely or plausible meaning of the statute, [the court] may consult other sources, beyond the statutory language, to ascertain the meaning of the statute." (Internal quotation marks omitted.) *State* v. *Smith*, 209 Conn. App. 296, 305, 268 A.3d 127 (2021), cert. denied, 342 Conn. 905, 270 A.3d 691 (2022).

Section 22-329a is titled: "Seizure and custody of neglected or cruelly treated animals. Vesting of ownership of animal. Animal abuse cost recovery account." The statute provides a mechanism by which state animal control officials may take physical custody of an animal. First, under subsection (a), if an animal control officer has reasonable cause to believe that an animal "is in imminent harm and is neglected or is cruelly treated," the animal control officer may take physical custody of the animal and, not later than ninety-six hours after taking custody, shall file with the Superior Court, in accordance with subsection (c), a verified petition "plainly stating such facts of neglect or cruel treatment . . . and praying for appropriate action by the court . . . ." Pursuant to subsection (b) of § 22-329a, "[a]ny 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 . . . ." The statute further sets forth the necessary procedures after physical custody of an animal has been taken; see General Statutes § 22-329a (c) and (d); or if temporary custody of an animal is sought; see General Statutes (Supp. 2022) § 22-329a (e); and certain requirements of the animal's owner, including posting a bond and the payment of expenses incurred by the state for the care of the animal. See General Statutes (Supp. 2022) § 22-329a (f) and (h). The

language of § 22-329a is clear and unambiguous, and nowhere in the statute is the term "forfeiture" present.

By contrast, General Statutes § 54-33g, which governs the "[f]orfeiture of moneys and property related to [the] commission of [a] criminal offense," expressly provides that it applies to forfeitures. The same is true with respect to General Statutes § 54-36h, which governs the "[f]orfeiture of moneys and property related to [the] illegal sale or exchange of controlled substances or money laundering." See also General Statutes § 54-36a (f) and (g)[25] (referring to forfeiture of seized property). The omission of any reference to the term forfeiture in the plain language of § 22-329a, taken together with the existence of such references in statutes that do provide for forfeiture proceedings, indicates an intent that animal welfare proceedings conducted pursuant to the statute are not civil forfeiture proceedings. It necessarily follows that, if the legislature intended proceedings conducted pursuant to § 22-329a to be considered forfeiture actions, it would have drafted the statute in a manner similar to those forfeiture statutes. See *Stone* v. *East Coast Swappers, LLC*, 337 Conn. 589, 606–607, 255 A.3d 851 (2020) ("Our case law is clear . . . that when the legislature chooses to act, it is presumed to know how to draft legislation consistent with its intent and to know of all other existing statutes . . . . [I]t is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so . . . ." (Citations omitted; internal quotation marks omitted.)).

For example, in *State* v. *Richard P.*, 179 Conn. App. 676, 678, 181 A.3d 107, cert. denied, 328 Conn. 924, 181

[25] Although § 54-36a was amended in 2023; see Public Acts 2023, No. 23-79, § 51; that amendment has no bearing on this appeal. For simplicity, we refer to the current revision of the statute.

A.3d 567 (2018), the state argued on appeal that the trial "court improperly dismissed the case because [the state] had sufficiently represented to the court that a material witness had 'died, disappeared or became disabled' within the meaning of General Statutes § 54-56b . . . ." In making that argument, the state asserted that "the phrase 'has . . . become disabled' should be construed to be synonymous with 'has . . . become unavailable,' as that term is typically used in related contexts regarding witnesses." Id., 685–86. This court disagreed, reasoning: "The legislature has included the term 'unavailable' with respect to witnesses in other statutes. See, e.g., General Statutes §§ 54-86*l*, 52-180, 52-148b (b) (1), 46b-129 (k) (4) and (5), and 17a-11 (f) (5). Presumably, it chose not to do so when it enacted § 54-56b. '[A] court must construe a statute as written. . . . Courts may not by construction supply omissions . . . or add exceptions merely because it appears that good reasons exist for adding them. . . . The intent of the legislature, as this court has repeatedly observed, is to be found not in what the legislature meant to say, but in the meaning of what it did say. . . . It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is a function of the legislature.' . . . *Doe* v. *Norwich Roman Catholic Diocesan Corp.*, 279 Conn. 207, 216, 901 A.2d 673 (2006).

"This rule of statutory construction has been applied vigorously in instances in which the legislature has repeatedly employed a term in other statutes, but did not use it in the provision to be construed. As our Supreme Court stated in *Viera* v. *Cohen*, 283 Conn. 412, 431, 927 A.2d 843 (2007), 'we underscore that the legislature frequently has used the term withdrawal. . . . Typically, the omission of a word otherwise used in the statutes suggests that the legislature intended a different meaning for the alternate term.' . . . 'Where a statute, with reference to one subject contains a given

provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed.' . . . *Hatt* v. *Burlington Coat Factory*, 263 Conn. 279, 310, 819 A.2d 260 (2003). Accordingly, we find it significant that the legislature did not choose to include the term 'unavailable' in § 54-56b.

"Moreover, in other statutes concerning witnesses, the legislature explicitly has expressed its intent to include circumstances in which a witness is beyond the reach of process, or cannot be found, and thus cannot be compelled to testify. For example, in General Statutes § 52-160, the legislature provided that '[i]f any witness in a civil action is beyond the reach of the process of the courts of this state, or cannot be found . . . [a transcript of his or her recorded testimony in] a former trial of the action . . . shall be admissible in evidence, in the discretion of the court . . . .' Presumably, the legislature chose not to employ the same or similar language in § 54-56b, thereby indicating an intent that § 54-56b sweep less broadly." *State* v. *Richard P.*, supra, 179 Conn. App. 688–89. The analysis in *Richard P.* regarding legislative intent when a statute fails to include a term that is present in other statutes applies equally to the present case.

Furthermore, § 54-33g "provides for a civil action in rem for the condemnation and [forfeiture] of the [property] which was used in violation of the law. . . . In such an action the guilt or innocence of the owner of the [property] is not in issue. The only issue is whether the [property] was used in violation of law. This follows from the nature of the action which is one against the res, an action in rem." (Internal quotation marks omitted.) *State* v. *Connelly*, 194 Conn. 589, 592, 483 A.2d 1085 (1984). A "forfeiture" is defined as a procedure by which the government may divest a person of his

or her property without compensation. Black's Law Dictionary (12th Ed. 2024) p. 789. "It is an area of the law which is founded upon the many inherent fictions of our jurisprudence. . . . As perhaps the most obvious use of legal fiction, the civil forfeiture action is brought directly against the property as [the] defendant. The conceptual basis of the forfeiture is, quite basically, that the property has perpetrated some wrong. . . . Thus, as the action is against the property and not the owner, the action is in rem in nature." (Citations omitted.) *United States* (*Drug Enforcement Agency*) v. *In re One 1987 Jeep Wrangler Automobile VIN No. 2BCCL8132HBS12835*, 972 F.2d 472, 476 (2d Cir. 1992). "Modern civil-forfeiture statutes are plainly designed, at least in part, to punish the owner of property used for criminal purposes. See, e.g., *Austin* v. *United States*, 509 U.S. 602, [618–19, 113 S. Ct. 2801, 125 L. Ed. 2d 488] (1993). When a [s]tate wishes to punish one of its citizens, it ordinarily proceeds against the defendant personally (known as in personam), and in many cases it must provide the defendant with full criminal procedural protections. Nevertheless . . . [the United States Supreme] Court permits prosecutors seeking forfeiture to proceed against the property (known as in rem) and to do so civilly." (Emphasis omitted.) *Leonard* v. *Texas*, 580 U.S. 1178, 1179, 137 S. Ct. 847, 197 L. Ed. 2d 474 (2017) (statement of Thomas, J., concurring in denial of certiorari).

Although animal welfare proceedings under § 22-329a similarly are in rem actions, they differ from in rem *forfeiture* actions principally in that the animals subject to the custody order have not perpetrated some wrong, nor were they used for criminal purposes. The statute also is devoid of any language indicating that it is designed to punish property owners who abuse or neglect animals. Instead, the overarching purpose of

§ 22-329a is to protect the welfare of animals. See *Wethersfield ex rel. Monde* v. *Eser*, 211 Conn. App. 537, 551, 274 A.3d 203 (2022). In cases in which an animal control officer takes physical custody of animals that are neglected or cruelly treated, the owners must appear in court to show cause why the court should not vest in some suitable state, municipal or other public or private agency or person the animal's temporary care and custody pending a hearing. If, after a hearing, it is determined that the animal is not neglected or cruelly treated, the court may cause the animal to be returned to its owner. If custody of the animal is vested in the state, the owner must pay any expenses incurred by the state to provide proper food, shelter and care for the animal, not as a punishment. See, e.g., *Miller* v. *Dept. of Agriculture*, supra, 168 Conn. App. 269 n.16 ("A municipality may assess on the owner [of a seized animal] certain fees, including a nominal 'redemption fee' for owners claiming a captured or impounded animal, and a payment representing the cost to the municipality of quarantining a biting animal. General Statutes § 22-333. These fees, however, merely compensate a municipality for costs incurred while impounding an animal, and thus cannot be described as punitive in nature.").

We note that the defendant's briefing on this issue is minimal. After citing federal case law holding that the exclusionary rule applies to forfeiture cases, the defendant simply asserts, in a conclusory fashion, that "because the civil forfeiture action brought under . . . § 22-329a (g) to seize the dogs in [the defendant's] custody was to seize noncontraband property—domesticated animals—the fourth amendment's protections apply to the seizures underlying the search." She has provided no Connecticut authority to support her position that § 22-329a sets forth a procedure for civil forfei-

ture.[26] Therefore, in the absence of any authority demonstrating that § 22-329a provides for a civil forfeiture action, and keeping in mind that, "[w]hen construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature"; (internal quotation marks omitted) *Lawrence* v. *Gude*, 216 Conn. App. 624, 629, 285 A.3d 1198 (2022); we conclude that the plain language of § 22-329a indicates that proceedings brought under the statute are not forfeiture actions.[27]

[26] In her appellate reply brief, the defendant asserts that "[t]he fourth amendment's exclusionary rule applies to civil forfeiture proceedings brought to protect animal welfare, regardless of whether a crime is alleged." In support thereof, she cites to out-of-state authority and to *Plymouth Sedan*. As we have stated, *Plymouth Sedan* stands for the proposition that the exclusionary rule applies to civil in rem forfeitures. *Plymouth Sedan*, however, involved a civil forfeiture proceeding of an automobile brought under a Pennsylvania statute governing the forfeiture of vehicles used in the illegal transportation of liquor. The other out-of-state authority on which the defendant relies also is inapposite, as it does not suggest or in any way support the assertion that proceedings under § 22-329a are civil forfeiture proceedings.

[27] A consideration of other states' statutes that are similar in purpose to § 22-329a provides support for our conclusion, as, even though proceedings to seize animals in some states are considered forfeitures, the relevant statutes, unlike § 22-329a, specifically refer to the forfeiture of animals. In Illinois, for example, the Humane Care for Animals Act, 510 Ill. Comp. Stat. 70/3.04 (a) (West 2012), which "promotes the humane care and treatment of animals and punishes . . . for violations thereof," expressly provides for the "forfeiture" of animals. *People* v. *Koy*, 13 N.E.3d 1260, 1266–67 (Ill. App. 2014). "Section 3.04 (a) provides that the [s]tate's [a]ttorney may file a 'petition for forfeiture prior to trial' and that the only possible ramification of the petition is the permanent forfeiture of the animals seized in conjunction with [an] arrest. . . . Section 3.04 (a) allows the [s]tate to take action before trial, not [as a punishment] but, rather, in the spirit of the [a]ct, to ensure the well-being and continued recovery of the injured animals." Id., 1267. Similarly, in Mississippi, state law "provides that '[a]ll courts in the State of Mississippi may order the seizure of an animal by a law enforcement agency, for its care and protection upon a finding of probable cause to believe said animal is being cruelly treated, neglected or abandoned.' Miss. Code Ann. § 97-41-2 (1) (Rev. 2014). Subsection (2) allows an owner of a seized animal to request a hearing within five days of the seizure 'to determine whether the owner is able to provide adequately for the animal and is fit to have custody of the animal.' Miss. Code Ann. § 97-41-2 (2) (Rev. 2014). Subsection (3) provides a nonexhaustive list of what a court may consider

Therefore, because an animal welfare proceeding brought pursuant to § 22-329a does not constitute a civil forfeiture, it is not subject to the exclusionary rule pursuant to *Plymouth Sedan*.

C

Having determined that an animal welfare proceeding brought pursuant to § 22-329a is not a civil forfeiture proceeding, we now must determine whether such a proceeding is quasi-criminal in nature. The United States Supreme Court has described a "quasi-criminal" proceeding as one whose "object, like a criminal proceeding, is to penalize for the commission of an offense against the law." *One 1958 Plymouth Sedan* v. *Pennsylvania*, supra, 380 U.S. 700; see also *Ahart* v. *Colorado Dept. of Corrections*, supra, 964 P.2d 520 ("A proceeding is quasi-criminal if it provides for punishment but is civil in form. . . . The more similar the objective of a civil proceeding to the purpose of criminal proceedings—punishment for violations of the law—the more likely exclusion of the evidence will foster deterrence. Perhaps the clearest example of civil proceedings that are quasi-criminal are government suits seeking forfeiture of non-contraband property based on the theory

in determining whether the owner is fit to have custody of an animal . . . . Subsection (5) delineates the circumstances under which an animal may be permanently forfeited: 'If the court finds the owner of the animal is unable or unfit to adequately provide for the animal or that the animal is severely injured, diseased, or suffering, and therefore, not likely to recover, the court may order that the animal be permanently *forfeited* and released to an animal control agency, animal protection organization or to the appropriate entity to be euthanized or the court may order that such animal be sold at public sale in the manner now provided for judicial sales; any proceeds from such sale shall go first toward the payment of expenses and costs relating to the care and treatment of such animal, and any excess amount shall be paid to the owner of the animal.' Miss. Code Ann. § 97-41-2 (5) (Rev. 2014)." (Citation omitted; emphasis added.) *Dancy* v. *State*, 287 So. 3d 931, 936–37 (Miss. 2020); see also Wn. Rev. Code § 16.52.200 (3) (2020) (expressly providing for forfeiture of animal following conviction of animal cruelty).

that the owner used the property in the commission of a criminal offense." (Citation omitted.)).

We begin with the object of our state's animal welfare proceedings. The defendant argues that proceedings pursuant to § 22-329a, unlike our child abuse and neglect proceedings, are not remedial in nature. The plaintiff counters that animal welfare actions "are standalone, remedial civil actions designed to protect animals against neglect and abuse." We agree with the plaintiff.

Unlike civil forfeiture actions, which are meant to penalize the property owner,[28] remedial actions are those actions that are designed to protect the rights and interests of a specific, often vulnerable, group. See *Stone* v. *East Coast Swappers, LLC*, supra, 337 Conn. 600–601 (Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq., is remedial measure designed to protect public); *First Federal Bank, FSB* v. *Whitney Development Corp.*, 237 Conn. 679, 688, 677 A.2d 1363 (1996) (tenant protection statute is remedial given its purpose to protect certain classes of tenants); see also *J.R.B.* v. *Dept. of Human Services*, 633 N.W.2d 33, 39 (Minn. App. 2001) (remedial statutes are those "designed to protect a specific class of individuals" and therefore shall be interpreted in favor of that class), review denied, Minnesota Supreme Court (October 24, 2001); *State ex rel. Ford* v. *Wenskay*, 824 S.W.2d 99, 100 (Mo. App. 1992) ("remedial statute is one 'enacted for the protection of life and property, or which introduce[s] some new regulation conducive to the public

[28] See *Garrett* v. *Lehman*, supra, 751 F.2d 1003 ("The exclusionary rule has been applied to forfeiture proceedings because they have been deemed to be 'quasi-criminal.' . . . The [c]ourt continues to instruct us, however, that the reason forfeiture proceedings are so characterized is that 'forfeiture is *clearly a penalty* for the criminal offense.' [*United States* v. *Janis*, supra 428 U.S. 447 n.17], quoting *One 1958 Plymouth Sedan* v. [*Pennsylvania*, supra, 380 U.S. 701] . . . ." (Citation omitted; emphasis in original.)).

good' "). "[R]emedial statutes should be construed liberally in favor of those whom the law is intended to [protect, and] exceptions to those statutes should be construed narrowly. . . . *Commission on Human Rights & Opportunities* v. *Edge Fitness, LLC*, 342 Conn. 25, 37, 268 A.3d 630 (2022) . . . . [R]emedial statutes must be afforded a liberal construction in favor of those whom the legislature intended to benefit . . . ." (Citation omitted; internal quotation marks omitted.) *Russbach* v. *Yanez-Ventura*, 213 Conn. App. 77, 102, 277 A.3d 874, cert. denied, 345 Conn. 902, 282 A.3d 465 (2022).

With respect to the purpose of an animal welfare action, this court has stated previously that "it is clear from the legislative history that the primary purpose of § 22-329a (a) is not the protection of the owner, but rather the protection of animals from imminent harm."[29]

[29] "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 [Diana S.] 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 investigation 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 are neglected and/or being cruelly treated. One of the things that

Wethersfield ex rel. Monde v. *Eser*, supra, 211 Conn. App. 551. In light of the clear purpose of animal welfare actions to protect the health and safety of animals, a vulnerable class, such actions are remedial and not punitive, and, thus, not quasi-criminal in nature.[30] The exclusionary rule, therefore, does not apply to animal welfare actions on the basis of quasi-criminality.

D

Finally, we must determine whether, pursuant to the *Janis* balancing test, the exclusionary rule applies to animal welfare actions. This court previously applied the *Janis* balancing test in *Payne* v. *Robinson*, 10 Conn. App. 395, 523 A.2d 917 (1987), aff'd, 207 Conn. 565, 541 A.2d 504, cert. denied, 488 U.S. 898, 109 S. Ct. 242, 102 L. Ed. 2d 230 (1988). In *Payne*, this court was faced with the question of whether the exclusionary rule should apply to probation revocation proceedings. We

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 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." *Wethersfield ex rel. Monde* v. *Eser*, supra, 211 Conn. App. 549–50.

[30] This conclusion is also consistent with how this court has classified an animal disposal action. See, e.g., *Miller* v. *Dept. of Agriculture*, supra, 168 Conn. App. 268–69 ("An appeal of a disposal order for a biting animal pursuant to [General Statutes] § 22-358 (c) is not a criminal prosecution. The issuance of a disposal order under § 22-358 (c) does not, by itself, trigger the imposition of a fine or prison term on the owner. Rather, by obviating the threat that dangerous animals pose to the public, the provision is remedial and civil in nature." (Footnotes omitted.)).

explained the *Janis* balancing test as follows: "The exclusionary rule is . . . designed to deter future unlawful conduct on the part of law enforcement officers, and therefore the rule is to be applied in those instances when its deterrent purpose is likely to be served. . . . So, in deciding whether to extend the exclusionary rule to probation revocation hearings we must weigh the potential injury to the fact-finding process as a result of the exclusion of relevant evidence against the potential benefits of the rule as applied in this context."[31] (Citations omitted; footnote omitted; internal quotation marks omitted.) Id., 398.

In addressing this claim, we first look to child protection proceedings for guidance, as they share important similarities with animal welfare proceedings in that both seek to protect a vulnerable class or group and both are civil, and not quasi-criminal, in nature. See *In re Samantha C.*, supra, 268 Conn. 649 (child neglect proceedings are civil and not quasi-criminal); *In re Baby Girl B.*, 224 Conn 263, 282, 618 A.2d 1 (1992) (concluding that proceeding to terminate parental rights is civil action).[32] In *In re Nicholas R.*, supra, 92 Conn. App. 321, this court concluded that the exclusionary rule

[31] After applying that test, this court determined in *Payne* "that the potential injury to the function of the probation revocation proceedings substantially outweighed the deterrent effect to be gained by applying the exclusionary rule to [those] proceedings." *Payne* v. *Robinson*, supra, 10 Conn. App. 400. Accordingly, we concluded in *Payne* that the exclusionary rule did not apply to the probation revocation proceeding at issue. See id.

[32] See also *In re Felicia S.*, 1993 WL 576430, *9 (Conn. Super. May 21, 1993) ("A significant purpose of the criminal justice system is to punish the guilty. The purpose of child protection proceedings, however, is by definition to protect children. Although a parent whose child has been committed to [the Department of Children and Families] or whose parental rights have been terminated may feel punished, that result is purely ancillary to the fundamental purpose of protecting children. And, although the criminal justice system may have some role to play in protecting the public and the rights of individuals, its primary purpose is to adjudicate and punish the guilty."), aff'd sub nom. *In re Felicia D.*, 35 Conn. App. 490, 646 A.2d 862, cert. denied, 231 Conn. 931, 649 A.2d 253 (1994).

does not apply to a civil, child neglect proceeding. Similarly, in *Matter of Diane P.*, 110 App. Div. 2d 354, 494 N.Y.S.2d 881 (1985), appeal dismissed, 67 N.Y.2d 918, 492 N.E.2d 1235, 501 N.Y.S.2d 1027 (1986), the Appellate Division of the Supreme Court of New York rejected the application of the exclusionary rule to a child protection proceeding. Specifically, the court concluded: "Upon weighing the likely deterrent effect of the exclusionary rule against its detrimental impact upon the fact-finding process and the [s]tate's enormous interest in protecting the welfare of children, we conclude that the rule should not be applied in [child protection] proceedings. Rather, its deterrence purpose will be adequately served by the fact that any evidence seized pursuant to an illegal search will be inadmissible in any related criminal proceeding." Id., 354. In reaching that conclusion, the court explained: "Principles of law designed to protect the citizenry from improper police activities should not be applied without regard to the grim realities that permeate certain types of situations. A child abused by a parent is bereft of any refuge and is perhaps the most helpless and powerless of all victims, betrayed by the very person to whom he or she would most naturally turn for succor. We deal here not with theoretical quibbles over abstract social concepts, but with the urgent plight of those who most need the protective hand of the [s]tate. We also emphasize that the effects of applying the exclusionary rule in a child protective proceeding would potentially be immeasurably more devastating than is true of the typical criminal prosecution. Normally, in a criminal prosecution, if application of the rule prevents the conviction of a guilty person, the result will be that a past crime goes unpunished. It is a price society has been willing to pay to prevent unwarranted intrusions upon person or property. Here, however, if application of the rule leads to an erroneous finding that there has been no abuse, the result may be

to condemn an innocent child to a life of pain and fear or even to death . . . . Where the result would be so abhorrent, utilization of a rule normally intended to provide protection from illegal police activity is not justifiable.

"Nor does the potential impact upon a parent of a child protective proceeding require application of the rule. The possible consequences range from an order placing the child under the supervision of a child protective agency while remaining in parental custody to temporary removal of the child for an initial period of up to [eighteen] months . . . . Certainly, such potential interference in family relationships evokes the need for limited constitutional protections, albeit not to the same extent as would a proceeding to permanently remove the child . . . . These potential consequences, however, are not intended to punish the parent, but rather to protect the child. The effect on the parent is but a necessary collateral result of the need to safeguard the child. . . . The [l]egislature has specifically declared that the purpose of a child protective proceeding is 'to help protect children from injury or mistreatment and to help safeguard their physical, mental, and emotional well-being' and to act 'on behalf of a child so that his needs are properly met' . . . . On balance, the [s]tate's interest in protecting abused children and the unthinkable consequences to the children if they are left in the hands of abusive parents far outweigh the potential consequences to the parents." (Citations omitted.) Id., 357–58. Accordingly, the court concluded "that because a child protective proceeding itself is not punitive in nature and the deterrent effect of the exclusionary rule will be adequately served by precluding use of the evidence in any related criminal proceeding, the [s]tate's interest in protecting its children mandates the admissibility of relevant evidence seized during an illegal search." Id., 358.

In *State ex rel. A.R.* v. *C.R.*, 982 P.2d 73 (Utah 1999), the Supreme Court of Utah also addressed the applicability of the exclusionary rule to a child protection proceeding. In doing so, the court stated: "In light of the purpose of the exclusionary rule, as well as the [s]tate's interest in protecting children, it is improper to exclude evidence discovered during a warrantless search in subsequent child protection proceedings. State officials confronting the possibility of child abuse or neglect—emergencies that occasionally lead to child protection proceedings—do not ordinarily seek to uncover incriminating evidence during the warrantless searches incidental to these investigations. There is little incentive to violate the [f]ourth [a]mendment because these officers do not usually act with the object of obtaining evidence for criminal prosecution.

"There appears to be little likelihood that any substantial deterrent effect on unlawful police intrusion would be achieved by applying the exclusionary rule to child protection proceedings. Whatever deterrent effect there might be is far outweighed by the need to provide for the safety and health of children in peril. Although it is difficult to empirically document the impact of the exclusionary rule . . . the very paucity of exclusionary rule cases in the context of child welfare proceedings indicates that allegations of improperly obtained evidence in such proceedings are rare. Thus, extension of the exclusionary rule to such cases does not promise to add significant protection to . . . [f]ourth [a]mendment rights." (Citation omitted; internal quotation marks omitted.) Id., 78–79; see also *In re Mary S.*, 186 Cal. App. 3d 414, 418, 230 Cal. Rptr. 726 (1986) ("[a] parent at a dependency hearing cannot assert the [f]ourth [a]mendment exclusionary rule, since 'the potential harm to children in allowing them to remain in an unhealthy environment outweighs any deterrent effect which would result from suppressing evidence'

unlawfully seized"), review denied, California Supreme Court (December 3, 1986).

The reasoning underlying the refusal to apply the exclusionary rule to child protection cases as set forth in these cases can be analogized to the present animal welfare action. Animals, like children, are part of a vulnerable class, and the primary purpose of the animal protection statute, § 22-329a, like the child protection statutes, is to protect the safety and welfare of animals that are subjected to neglect and cruel treatment. Animals are dependent on their owners to provide the necessary food, shelter and care for their health and well-being, and when they are subjected to abuse and cruelty at the hands of their owners, they are helpless and in need of the protective hand of the state. As this court previously has stated, the state has a "significant interest in protecting the welfare of neglected or cruelly treated animals . . . ." *Wethersfield ex rel. Monde* v. *Eser*, supra, 211 Conn. App. 558. If we were to apply the exclusionary rule to cases in which the welfare of an animal is threatened, we would prevent the state from being able to offer crucial evidence related to the neglect or abuse of animals that could be used to help remove the animal from such an environment. Consequently, the social cost resulting from application of the exclusionary rule in this context is that the protection of animals would be hindered.

With respect to any benefit, or the deterrent effect, of applying the exclusionary rule in the present situation, we note that our Supreme Court previously has stated that there is "only a marginal deterrent effect . . . [in cases when] there [is] already a deterrent effect created by the application of the rule to any criminal proceedings, and because the use of evidence in a [civil] proceeding falls outside a [law enforcement] officer's zone of primary interest . . . that exclusion of such

evidence will not significantly affect a [law enforcement] officer's motivation in conducting a search." (Internal quotation marks omitted.) *State* v. *Jacobs*, 229 Conn. 385, 391, 641 A.2d 1351 (1994). The deterrent effect of applying the exclusionary rule in this context, therefore, would be minimal. See *Pennsylvania Board of Probation & Parole* v. *Scott*, supra, 524 U.S. 364 (discussing minimal deterrence benefit of applying exclusionary rule to civil parole revocation hearing because "application of the rule in the criminal trial context already provides significant deterrence of unconstitutional searches"). Notably, there are analogous criminal statutes, such as § 53-247, that allow for the criminal prosecution of individuals who neglect or abuse animals, and any criminal proceedings stemming from violations of those statutes would, of course, be subject to the exclusionary rule. As in *Matter of Diane P.*, we embrace the proposition that the use of illegally seized evidence in an animal welfare case would not impact a subsequent "related criminal prosecution because normal application of the exclusionary rule would in any event preclude use of that evidence in the criminal prosecution." *Matter of Diane P.*, supra, 110 App. Div. 2d 358. Accordingly, the potential harm to animals from allowing them to remain in an environment in which they are being neglected or cruelly treated outweighs any deterrent effect that would result from suppressing evidence unlawfully seized. Moreover, the minimal deterrent effect of applying the exclusionary rule in the present case is substantially outweighed by the societal interest in having otherwise reliable and relevant evidence concerning animal neglect and cruelty presented at an animal welfare proceeding seeking to remove the animal from such circumstances.

We also emphasize that, in the absence of imminent harm to an animal, the typical procedure as set forth under § 22-329a (b) for an animal control officer to

enter a premises is by first obtaining a warrant.[33] That is the procedure established by the statute, and animal control officers need to be properly trained to follow that procedure. Our decision today does not condone the warrantless entry of private residences.[34] Instead, we are charged with deciding whether, under the circumstances here, in which that procedure was not followed, the exclusionary rule, which is a judicially created doctrine that historically applies in the context of criminal trials, should be extended and applied to the present civil animal welfare proceeding. Our application of the *Janis* balancing test leads us to conclude that it should not, given that the application of the rule

[33] See *Wethersfield ex rel. Monde* v. *Eser*, supra, 211 Conn. App. 550–51 ("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 . . . .' ").

[34] Indeed, such warrantless entries may subject an animal control officer to civil liability for the illegal search and seizure, regardless of whether the defendant can rely on illegally obtained evidence in this animal welfare proceeding. See, e.g., *Newsome* v. *Bogan*, 617 F. Supp. 3d 133 (W.D.N.Y. 2022) (action by dog owner against, inter alia, police officers and animal control officer pursuant to 42 U.S.C. § 1983 alleging that defendants searched his apartment and seized his dogs without warrant in violation of fourth amendment to federal constitution); *Christensen* v. *Quinn*, 45 F. Supp. 3d 1043 (D.S.D. 2014) (owner of dog breeding operation brought action against various county and state officials, county's animal control services provider, and animal rights groups, under § 1983 alleging violations of his fourth amendment rights); see also *O'Neill* v. *Louisville/Jefferson Metro Government*, 662 F.3d 723, 727, 732 (6th Cir. 2011) (dog owners brought § 1983 action against various government officials, including director of city animal control agency, alleging violations of fourth and fourteenth amendments stemming from warrantless search of dog owners' home and seizure of dogs). This threat of civil liability will adequately deter animal control officers from violating the fourth amendment, regardless of whether the exclusionary rule applies in civil cases. See *Hudson* v. *Michigan*, 547 U.S. 586, 597–98, 126 S. Ct. 2159, 165 L. Ed. 2d 56 (2006). The "additional marginal deterrence" of applying the exclusionary rule in this context would not "outweigh the societal cost of excluding relevant evidence and decreasing the possibility of obtaining accurate factual findings." *Jonas* v. *Atlanta*, 647 F.2d 580, 588 (5th Cir. Unit B June 1981).

would yield a minimal deterrence benefit while at the same time it would frustrate and hinder the purpose of our animal welfare statute and the protection of animals.

Accordingly, the trial court's ruling denying the defendant's motion in limine was legally and logically correct.

II

We now turn to the defendant's claim that her right to a jury trial under article first, § 19, of the Connecticut constitution was violated. The defendant argues in support of this claim that the government may forfeit the property of an individual only "if it allows [the individual] to contest that position in a court of law before a jury," and that because § 22-329a provides for a hearing before a court only, as opposed to a jury trial, before allowing the court to vest ownership of the animals with the plaintiff, the statute violates her state constitutional right to a jury trial. The defendant concedes that she never requested a jury trial and, thus, that this claim was not preserved but argues that it is reviewable pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015).

Our resolution of this claim is governed by this court's decision in *Delahunty* v. *Targonski*, 158 Conn. App. 741, 746–50, 121 A.3d 727 (2015). In *Delahunty*, "[t]he sole claim raised by the plaintiff in her appeal [was] that she was denied her state constitutional right to a trial by a jury. Specifically, she argue[d] that the case was claimed for a jury trial, albeit by [the third-party defendants], and the denial of her right to a jury trial constituted structural error. She concede[d] that th[e] claim was not preserved and [sought] review under *State* v. *Golding*, supra, 213 Conn. 239–40. See, e.g., *State* v. *Elson*, 311 Conn. 726, 743, 91 A.3d 862 (2014) (bedrock principle of appellate jurisprudence that appellate courts generally will not review unpreserved

claims made for first time on appeal). We conclude[d] that, under the facts and circumstances of th[e] case, she waived her right to a jury trial and therefore her claim fail[ed] to satisfy the third prong of *Golding*.

"In *State* v. *Golding*, supra, 213 Conn. 239–40, our Supreme Court stated that 'a defendant can prevail on a claim of constitutional error not preserved at trial 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. In the absence of any one of these conditions, the defendant's claim will fail. The appellate tribunal is free, therefore, to respond to the defendant's claim by focusing on whichever condition is most relevant in the particular circumstances.' . . . *Golding* applies in civil as well as criminal cases. . . .

"We are mindful that '[i]n the usual *Golding* situation, the defendant raises a claim on appeal which, while not preserved at trial, *at least was not waived at trial*. . . . [A] constitutional claim that has been waived does not satisfy the third prong of the *Golding* test because, in such circumstances, we simply cannot conclude that injustice [has been] done to either party . . . or that the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial. . . . To reach a contrary conclusion would result in an ambush of the trial court by permitting the defendant to raise a claim on appeal that his or her counsel expressly had abandoned in the trial court.' . . . *State* v. *Reddick*, 153 Conn. App. 69, 80–81, 100 A.3d 439, [cert.] dismissed, 314 Conn. 934, 102 A.3d 85 [2014], and cert. denied, 315 Conn. 904, 104 A.3d 757 (2014); see also

Mozell v. *Commissioner of Correction*, 291 Conn. 62, 70–71, 967 A.2d 41 (2009); *State* v. *Fabricatore*, 281 Conn. 469, 481–83, 915 A.2d 872 (2007). Simply put, a constitutional claim that has been waived does not satisfy the third prong of *Golding*. . . .

"We recently discussed waiver in the context of a claim made pursuant to the *Golding* doctrine. '[W]aiver is [t]he voluntary relinquishment or abandonment—express or implied—of a legal right or notice. . . . In determining waiver, the conduct of the parties is of great importance. . . . [*W*]*aiver may be effected by action of counsel*. . . . When a party consents to or expresses satisfaction with an issue at trial, claims arising from that issue are deemed waived and may not be reviewed on appeal. . . . Thus, [w]aiver . . . involves the idea of assent, and assent is an act of understanding. . . .

" 'It is well established that implied waiver . . . arises from an *inference* that the defendant knowingly and voluntarily relinquished the right in question. . . . Waiver does not have to be express . . . but may consist of acts or conduct from which waiver may be implied. . . . In other words, waiver may be inferred from the circumstances if it is reasonable to do so. . . . It also is well established that any such inference must be based on a course of conduct. . . . Relevant cases inform us that a criminal defendant may implicitly waive one or more of his or her fundamental rights. . . . In some circumstances, a waiver of rights must be knowing, voluntary and intelligent, and it must be expressly made. . . . In other circumstances, waiver can be implied . . . [and] [t]he waiver can be made by counsel . . . .' " (Citations omitted; emphasis in original.) *Delahunty* v. *Targonski*, supra, 158 Conn. App. 746–49.

The court in *Delahunty* further stated: "In criminal cases, our Supreme Court has held that the defendant

must personally waive the fundamental right to a jury trial and there must be some affirmative indication from the defendant, on the record, that he or she knowingly, intelligently and voluntarily has waived the right to a jury trial. *State* v. *Gore*, 288 Conn. 770, 777–78, [955] A.2d 1 (2008). It also has recognized, however, that a lower standard for waiving the right to a jury applies in civil cases. *L & R Realty* v. *Connecticut National Bank*, 246 Conn. 1, 14, 715 A.2d 748 (1998) (appropriate to apply lower standard in determining enforceability of prelitigation contractual jury trial waivers than for waivers in criminal case); see also *Fuentes* v. *Shevin*, 407 U.S. 67, 94–95, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972) (standards for waivers of rights in criminal case would not necessarily apply to civil litigation).

"A party may forfeit the right to a jury trial in a civil case if the right is not asserted in a timely manner, may abandon the right to a jury trial if he or she chooses a forum that does not afford the right to a jury trial, or may waive the right to a jury trial. *L & R Realty* v. *Connecticut National Bank*, supra, 246 Conn. 10; see *Anastasia* v. *Mitsock*, Superior Court, judicial district of New Haven, Docket No. CV-05-4012156-S, 2006 WL 3759402 (December 1, 2006) (42 Conn. L. Rptr. 453, 454) (summary of law since 1899 that failure to claim civil action to jury within thirty days of return date or within ten days after an issue of fact has been joined amounts to voluntary and intentional relinquishment of right to jury trial); see also General Statutes §§ 51-239b and 52-215.

"In the present matter, the plaintiff did not claim the case for a jury trial. The . . . [third-party] defendants, filed the claim for a jury trial. On April 18, 2013, the [third-party defendants] filed a motion for a court trial and certified that a copy of their motion was sent to the plaintiff's counsel. In a handwritten notation dated April 29, 2013, the court granted the . . . motion by

agreement and noted that the plaintiff's counsel was present. The motion to withdraw the [third-party] complaint was filed by the defendants on May 31, 2013. Most importantly, the plaintiff appeared for a trial by the court and never raised any objection to the proceedings, namely, the absence of a jury. We conclude that, under the facts and circumstances of this case, the plaintiff waived her constitutional right to a jury trial." (Footnotes omitted; internal quotation marks omitted.) *Delahunty* v. *Targonski*, supra, 158 Conn. App. 749–50.

This court explained further in *Delahunty* that "[t]he failure of the plaintiff to raise an objection at the start of the court trial, after receiving notice that the [third-party] defendant had moved for a court trial and that there had been no jury selection, combined with her active and full participation in the ensuing trial, indicate[d] that she had acquiesced to a court trial and correspondingly relinquished her right to a jury trial. She failed to object at the start of the court trial, when there was time to present the matter to the court, so that a possible error could be addressed and corrected if necessary. Instead, she remained silent and participated fully in the court trial. Only after receiving nominal damages did the plaintiff seek to exercise her right to a jury trial. Put another way, the plaintiff now seeks a proverbial second bite at the apple after receiving an award that was less than she had hoped for. We cannot endorse such a tactic, as it amounts to an ambush of both the trial court and the opposing party. We will not reward the plaintiff with a new trial based on a situation that was caused in part by her failure to raise an objection. . . . We conclude that, under these facts and circumstances, the plaintiff waived her right to a jury trial. As a result, her claim fails under the third prong of *Golding*." (Citation omitted.) Id., 751–52.

As in *Delahunty*, the defendant in the present case never requested a jury trial. Moreover, she failed to

raise any objection prior to the commencement of the hearing before the court and she actively participated in it. On this basis, we conclude that the defendant waived her claim that she was entitled to a jury trial under the state constitution. As a result, she cannot demonstrate a constitutional violation under the third prong of *Golding*.[35] Her claim, therefore, fails.

The judgment is affirmed.

In this opinion the other judges concurred.

DAVID BELTON *v.* ENDRI DRAGOI ET AL. (AC 46182)

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

Syllabus

The plaintiff appealed from the judgment of the trial court rendered following its granting of the motion for summary judgment filed by the defendant police officers. The plaintiff claimed, inter alia, that the court improperly concluded that there were no genuine issues of material fact as to whether the defendants used excessive force when they arrested him. *Held*:

The trial court improperly rendered summary judgment for the defendants with respect to the plaintiff's battery claim because, after viewing the evidence in the light most favorable to the plaintiff as the nonmoving party, this court concluded that genuine issues of material fact existed as to the force the defendants used during the altercation with the plaintiff and, thus, the plaintiff was entitled to have a jury review the evidence and determine whether the force employed by the defendants was justified and reasonable.

The trial court did not err in rendering summary judgment for the defendants with respect to the plaintiff's false arrest claim because the undisputed

[35] In light of our determination that the defendant waived her unpreserved jury trial claim, we need not reach the merits of her claim that she has a right to a jury trial under the state constitution in an animal welfare action pursuant to § 22-329a, nor do we need to address the case relied on by the defendant in her notice of supplemental authority—*Securities & Exchange Commission* v. *Jarkesy*, U.S. , 144 S. Ct. 2117, 219 L. Ed. 2d 650 (2024)—which concerns the right to a jury trial under the seventh amendment to the federal constitution.

facts established that there was probable cause to arrest the plaintiff for interfering with an officer.

Argued April 25—officially released October 8, 2024

Procedural History

Action to recover damages for, inter alia, battery, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Young, J.*, granted the defendants' motion for summary judgment and rendered judgment thereon, from which the plaintiff appealed to this court. *Reversed in part*; *further proceedings*.

Christopher DeMarco, for the appellant (plaintiff).

Alan R. Dembiczak, for the appellees (defendants).

Opinion

BRIGHT, C. J. This case arises out of an incident between the plaintiff, David Belton, and the defendants, Endri Dragoi and J. T. Sosik, who are police officers in the city of New Haven (city). At issue on appeal is whether the trial court properly rendered summary judgment for the defendants as to the plaintiff's claims that the defendants committed a battery on him and falsely arrested him. Specifically, the plaintiff claims that the court improperly concluded (1) with respect to the alleged battery, that there are no genuine issues of material fact as to whether the defendants used more than reasonable force during the altercation and (2) with respect to the alleged false arrest, that (a) the defendants were entitled to governmental immunity because the plaintiff had failed to raise a claim of negligent false arrest and (b) there are no genuine issues of material fact as to whether the defendants had probable

cause to arrest the plaintiff.[1] We agree with the plaintiff's first claim but disagree with his other claims. Accordingly, we reverse in part the judgment of the trial court.

The following facts, viewed in the light most favorable to the plaintiff as the nonmoving party, and procedural history are relevant to our analysis. On July 30, 2019, the plaintiff was standing on the front stoop of the building at 1343 Chapel Street in New Haven (property), where he resided with his mother. The defendants, who were on duty and on patrol, stopped at the property because they did not recognize the plaintiff as someone who resided there. The owner of the property had provided the New Haven Police Department with a list of approved tenants to assist the department in identifying trespassers at the property. The defendants exited their vehicle and approached the plaintiff. Both defendants were in uniform and wearing body cameras that recorded their interaction with the plaintiff. Dragoi asked the plaintiff if he lived at the property. The plaintiff responded by asking Dragoi, "Why?" Dragoi then asked the plaintiff: "Do you live here or are you lying?" The plaintiff responded that he lived at the property. Dragoi then instructed the plaintiff to step off the front stoop, at which time both defendants grabbed the plaintiff's arms to physically remove him from the front stoop. When the plaintiff asked why they were moving

[1] The plaintiff also identifies as separate claims that the court's analysis of his battery cause of action is inherently contradictory, that the court relied on General Statutes § 52-557n even though the defendants did not rely on that statute in their motion for summary judgment, and that, because his causes of action were "ambiguous" as to whether they were based on intentional or negligent conduct, the court should have let the jury make that determination or should have treated the defendants' motion for summary judgment as a motion to strike so that the plaintiff could replead in a way to avoid the defendants' claims of immunity. We do not view these claims as separate claims and address them in the context of the claims we have identified. Furthermore, for sake of clarity, we have addressed the plaintiff's claims in a different order from that in which they were briefed by the plaintiff.

him, Dragoi told the plaintiff that he had to make sure that the plaintiff did not have any weapons on him. Dragoi then conducted a patdown search of the plaintiff, with which the plaintiff complied. The plaintiff asked Dragoi why they were "fucking with [him]," and Dragoi accused the plaintiff of trespassing on the property. After the plaintiff told the defendants that he did not like people touching him, both defendants, using both hands, grabbed the plaintiff's arms and waist and attempted to forcibly remove him from the front stoop. The plaintiff asked, "What'd I do?" Dragoi simply repeated his command that the plaintiff get off the stoop and instructed him to sit down, while the defendants continued to struggle with the plaintiff. During this struggle, the plaintiff raised his voice and told the defendants, "Don't fucking touch me." All of this occurred within two minutes of when the defendants first encountered the plaintiff.

As the altercation escalated, the plaintiff's sister, Devina Belton, arrived and told the defendants that the plaintiff resided at the property with their mother and then called her mother, while standing next to the defendants, to get her to come down to verify that the plaintiff resided at the property. The plaintiff's sister also yelled at the plaintiff to comply with the defendants' orders to step down from the stoop. Neither the plaintiff nor the defendants listened to the plaintiff's sister. Instead, the altercation between the plaintiff and the defendants became more physical, and the plaintiff more vigorously resisted the efforts to move him from the front stoop.

Dragoi threatened to handcuff the plaintiff and attempted to twist the plaintiff's arm behind his back. In response, the plaintiff pushed Dragoi away from him. The defendants then stepped off the front stoop and Dragoi pointed his Taser gun at the plaintiff and instructed him several times to get on the ground. When the plaintiff did not comply and said that he would not

sit down, Dragoi threatened to use the Taser on the plaintiff. At that point, the plaintiff stepped off the front stoop toward Dragoi. Before he could sit down, Dragoi pushed the plaintiff back, and the plaintiff swatted Dragoi's hand away and returned to the front stoop. Dragoi again instructed the plaintiff to get on the ground and told him, "last chance." The plaintiff's sister also was yelling at the plaintiff to get on the ground, as she did not want him to get tasered. The plaintiff then stepped off the front stoop, in the direction of Dragoi, in a possible effort to comply with Dragoi's demand that he sit down. Before he could do so, Dragoi fired his Taser at the plaintiff, which hit him.[2] The defendants then grabbed the plaintiff's arms and tried to put them behind his back. The plaintiff resisted these efforts and pulled his arms away. The defendants ordered the plaintiff to get on the ground, but he refused to comply. Dragoi then discharged his pepper spray, which hit Sosik but not the plaintiff.

Eventually, the plaintiff was handcuffed. He and Dragoi then continued to argue about who was responsible for the altercation. The plaintiff was then placed in the back of an ambulance and transported to the hospital to have the Taser prongs removed from his body. Dragoi thereafter interviewed the plaintiff's sister, who told him that the plaintiff had been residing with his mother at the property for more than one year. She also described the plaintiff as acting "crazy" during his interaction with the defendants. The plaintiff was charged with disorderly conduct, interfering with a police officer, and criminal trespass in the third degree. Those charges later were dismissed.

[2] "[W]hen a Taser is deployed, it fires two prongs at the targeted person, which stay connected to the Taser gun by conductive wire. . . . Generally speaking, the shock from the Taser completely incapacitates the target for the duration of the cycle. At the end of the cycle, however, the target's normal functioning is immediately restored." *State* v. *Osbourne*, 138 Conn. App. 518, 523, 53 A.3d 284, cert. denied, 307 Conn. 937, 56 A.3d 716 (2012).

On March 20, 2020, the plaintiff commenced the underlying action against the defendants. In the first count of his complaint, the plaintiff alleged that, "[a]t all relevant times, the defendants . . . were duly appointed members of [the New Haven] Police Department, acting under color of state law, and were acting in their official capacities as police officers for the city." After describing the events of July 30, 2019, the first count of the complaint concludes by alleging that the defendants' actions "constitute battery upon the plaintiff, as a result of which the plaintiff required hospitalization and suffered pain and physical injury, and offended the plaintiff's personal sense of dignity." In the second count of his complaint, the plaintiff incorporated the allegations from the first count and alleged that his "arrest was without probable cause that an offense had been committed." The plaintiff alleged that, as a result of his arrest, he had to live with the threat of incarceration until the charges against him were "dismissed without a finding of probable cause having been made by a judicial authority." The plaintiff concluded his second count by alleging that, "[a]s a result of the defendants' actions in falsely arresting the plaintiff, the plaintiff suffered emotional distress." The plaintiff requested as relief "money damages," "punitive damages" and "such other and further relief as the court may deem appropriate."

In their answer to the first count of the complaint, the defendants admitted "the deployment of a Taser and pepper spray" but alleged that doing so was "in response to the plaintiff's noncompliant, physically aggressive and belligerent behavior." They also denied that their actions constituted a battery of the plaintiff. In response to the plaintiff's allegations in the second count of the complaint, the defendants denied that their arrest of the plaintiff was without probable cause. The defendants also pleaded three special defenses. In their

first special defense, the defendants pleaded that they were justified in using physical force on the plaintiff because they reasonably believed such force was necessary to effect the plaintiff's arrest or to defend themselves while attempting to arrest the plaintiff. In their second special defense, the defendants alleged that any injuries the plaintiff suffered were caused by his own negligence in resisting the defendants' lawful commands. In their third special defense, they alleged that they were entitled to qualified immunity because at all relevant times they were acting in the course and scope of their employment as municipal employees, and their actions "were governmental in nature and required the exercise of judgment and discretion on their part." In his reply to the defendants' qualified immunity defense, the plaintiff admitted that the defendants were acting in the scope of their employment and that their actions were governmental in nature and required the exercise of judgment and discretion. Nevertheless, the plaintiff denied that the defendants were entitled to qualified immunity because "their actions were either malicious, illegal or constituted wilful misconduct and/or . . . one or more of the defendants' actions subjected an identifiable person to imminent harm."

On June 15, 2022, the defendants moved for summary judgment on three grounds. First, they argued that, because the defendants were sued only in their official capacities, the plaintiff's causes of action were effectively against the city and the city cannot be held liable for the intentional torts of its employees. Second, they argued that the plaintiff's battery cause of action failed because the defendants were justified in their use of force. Third, they argued that the plaintiff's false arrest cause of action failed because there was probable cause for the plaintiff's arrest. In support of their motion, the defendants relied on the transcripts of the depositions

of the plaintiff and Devina Belton, the defendants' affidavits, an approved tenant list for the property, and copies of the video footage from their body cameras recorded during the altercation.

In response to the defendants' motion, the plaintiff argued that his causes of action for battery and false arrest did not necessarily allege intentional torts. He noted that his complaint did not allege that the defendants acted intentionally and argued that Connecticut has recognized that both causes of action can be based on negligent conduct. He further argued, relying on the body camera video, that there were genuine issues of material fact as to whether there was probable cause for the plaintiff's arrest and whether the defendants acted reasonably in using physical force on him.[3]

The defendants filed a reply to the plaintiff's objection in which they argued that, although causes of action for battery and false arrest can be based on negligent conduct, the plaintiff's allegations in his complaint and the undisputed evidence establish that the plaintiff's claims are based on the defendants' intentional conduct. They also reiterated their arguments that the undisputed facts prove that, even if the plaintiff's causes of action are viewed as sounding in negligence, they fail because the defendants' use of force during the altercation was a reasonable response to the plaintiff's actions and there was probable cause for his arrest. They further argued that, if the plaintiff's causes of actions sounded in negligence, they were entitled to discretionary act immunity under General Statutes § 52-557n.[4]

[3] The plaintiff also relied on excerpts from his deposition transcript as evidence that he resided at the property and was not trespassing. Because we view the evidence in the light most favorable to the plaintiff as the nonmoving party, we assume this fact for purposes of our analysis.

[4] Although § 52-557n has been amended since the events underlying this case; see Public Acts 2023, No. 23-83; that amendment has no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

After hearing oral argument from counsel for the parties, the court issued a memorandum of decision rendering summary judgment in favor of the defendants. With respect to the plaintiff's first count, the court agreed with the plaintiff that the allegations therein could be read as asserting a claim of negligent battery because they "could support a claim that the [defendants] used more force than reasonably necessary to effectuate a lawful arrest." Nevertheless, the court concluded that the plaintiff's battery cause of action failed as a matter of law because the undisputed evidence established that the defendants' use of force was justified by the plaintiff's actions in resisting arrest and not complying with the defendants' orders.

With respect to the plaintiff's second count alleging false arrest, the court concluded that, if the plaintiff intended to rely on a theory that the false arrest was negligent, rather than intentional, he needed to specifically so plead. The court concluded that, because the plaintiff failed to plead that his false arrest was the result of negligent conduct, the second count must be read as alleging an intentional tort, as to which the defendants are entitled to immunity.[5] The court further

[5] The court stated in its memorandum of decision: "The plaintiff has not specifically pleaded a claim of negligent false arrest, as our courts require. The allegation is one of intentional conduct. Therefore, the defendants are entitled to immunity under § 52-557n *for the claim of battery*." (Emphasis added.) We conclude that the court's reference to battery in the previous sentence was a scrivener's error. The immediately preceding sentences to the court's conclusion make clear that the court meant to say that there was immunity for the *claim of false arrest*, not for the claim of battery. This conclusion is buttressed by the court's statement that the plaintiff had sufficiently pleaded a claim of negligent battery such that the defendants had failed to establish as a matter of law that they were entitled to immunity under § 52-557n (a) (2) on the basis of the allegations of the plaintiff's complaint. Our conclusion thus disposes of the plaintiff's claim on appeal that the court's memorandum of decision is inherently contradictory because it concluded, on the basis of the allegations of the complaint, that the defendants were and were not entitled to immunity under § 52-557n.

concluded that the defendants were entitled to summary judgment on the false arrest count because the undisputed evidence established that there was probable cause for the plaintiff's arrest. The court thus granted the defendants' motion and rendered judgment accordingly. This appeal followed. Additional facts and procedural history will be set forth as necessary.

We begin with our familiar standard of review. "The standards governing our review of a trial court's decision to grant a motion for summary judgment are well established. Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts [that], under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact [that] will make a difference in the result of the case. . . . Finally, the scope of our review of the trial court's decision to grant the [defendants'] motion[s] for summary judgment is plenary." (Internal quotation marks omitted.) *Day* v. *Seblatnigg*, 341 Conn. 815, 825, 268 A.3d 595 (2022).

I

The plaintiff first claims that the court improperly rendered summary judgment for the defendants on his battery cause of action because there are genuine issues of material fact as to whether the defendants' use of force was reasonable during the altercation. In response,

the defendants argue that, because the complaint alleges, and the undisputed evidence shows, that the defendants' conduct can be viewed only as intentional and not negligent, they are entitled to immunity under § 52-557n (a) (2). Alternatively, they argue that, even viewing the plaintiff's battery count as sounding in negligence, the court correctly rendered summary judgment in their favor because the undisputed evidence establishes that their use of force was reasonable.

We begin with the relevant law that was the basis for the defendants' motion for summary judgment and the plaintiff's response thereto. Section 52-557n (a) (2) provides: "Except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by: (A) Acts or omissions of any employee, officer or agent which constitute criminal conduct, fraud, actual malice or wilful misconduct; or (B) negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." "[O]ur Supreme Court [has] held that the defendant municipality [can] not be liable for intentional torts committed by its employees under § 52-557n (a) (2) (A). This court consistently has adhered to that precedent." *McCullough* v. *Rocky Hill*, 198 Conn. App. 703, 712, 234 A.3d 1049, cert. denied, 335 Conn. 985, 242 A.3d 480 (2020).

Although the plaintiff did not sue the city in the present case, his complaint alleges that, "[a]t all relevant times, the defendants . . . were duly appointed members of [the New Haven] Police Department, acting under color of state law, and were acting in their official capacities as police officers for the city." "It is well settled law that an action against a government official in his or her official capacity is not an action against the official, but, instead, is one against the official's office and, thus, is treated as an action against the entity

itself. See *Kentucky* v. *Graham*, 473 U.S. 159, 165–66, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985) ('Official-capacity suits . . . "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Monell* v. *New York City Dept. of Social Services*, 436 U.S. 658 [690 n.55, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)]. . . . [In general] an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. . . . It is not a suit against the official personally, for the real party in interest is the entity. Thus, while an award of damages against an official in his personal capacity can be executed only against the official's personal assets, a plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself.' . . .) . . . ." (Citation omitted.) *Kelly* v. *New Haven*, 275 Conn. 580, 595, 881 A.2d 978 (2005).

On the basis of the allegations of the plaintiff's complaint and the legal principles set forth in the preceding paragraphs, the defendants argued in support of their motion for summary judgment that, because the defendants were sued for acting in their official capacities, the plaintiff's action constitutes an action against the city itself. Furthermore, they argued that, because battery and false arrest constitute intentional torts, the city is immune from liability pursuant to § 52-557n (a) (2).

In response to the defendants' motion for summary judgment, the plaintiff did not dispute that he was suing the defendants in their official capacities.[6] Instead, he

[6] Other than a passing reference in his reply to the defendants being personally liable if their actions constituted wilful misconduct, the plaintiff did not argue in his appellate briefs that he was suing the defendants other than in their official capacities. At oral argument before this court, counsel for the plaintiff for the first time argued that the allegations of his complaint could be read as alleging claims against the defendants in their individual capacities. We will not consider an argument raised for the first time in a reply brief or at oral argument. See *Benjamin* v. *Corasaniti*, 341 Conn. 463, 476 n.8, 267 A.3d 108 (2021) ("[i]t is a well established principle that arguments cannot be raised for the first time in a reply brief" (internal quotation marks omitted)); *Traylor* v. *State*, 332 Conn. 789, 809 n.17, 213 A.3d 467

argued that his causes of action were not barred by application of § 52-557n (a) (2) because they alleged negligent, as opposed to intentional, conduct. In particular, the plaintiff asserted: "The defendants argue that this case cannot be maintained as the plaintiff has alleged intentional torts against them, but such is not necessarily the case. The plaintiff's claims are based on two causes of action, battery and false arrest, neither of which allege[s] that the defendants acted intentionally."[7] As support for his argument, the plaintiff relied on cases in which our Supreme Court had recognized negligence based causes of action of battery and false arrest.[8]

In their reply to the plaintiff's objection, the defendants argued that the allegations of the complaint and

(2019) ("[r]aising a claim at oral argument is not . . . a substitute for adequately briefing that claim").

Furthermore, such an argument is flatly inconsistent with how the plaintiff argued the immunity issue in opposition to the defendants' motion for summary judgment, wherein he focused on whether his causes of action sound in negligence or intentional tort and never disputed that, if they sound only in intentional tort, the defendants are entitled to summary judgment. In fact, during oral argument before the trial court, when asked by the court if claims against the defendants "based on either a reckless or intentional act . . . would be precluded as to these two defendants," the plaintiff's counsel responded: "Correct."

[7] At oral argument before the trial court, counsel for the plaintiff refused to commit as to whether his causes of action sounded in negligence or intentional tort. After acknowledging that he "would be precluded" from asserting a reckless or intentional tort claim against the defendants and being confronted with the inconsistency of seeking punitive damages in a claim for negligence, counsel for the plaintiff stated: "I don't claim it's an action in negligence. . . . I'm not saying whether or not this [is] an action in negligence or an intentional tort." He then asserted, without citing any authority, that § 52-557n (a) (2) only provides immunity for intentional torts involving malicious or criminal conduct. He similarly stated that § 52-557n does not preclude all claims against the city for an intentional tort before concluding this part of the argument by stating: "[R]ight now, the complaint doesn't specify whether or not this is a negligence action or an intentional tort action, or a reckless, or wanton and wilful action."

[8] See, e.g., *Markey* v. *Santangelo*, 195 Conn. 76, 78, 485 A.2d 1305 (1985); *Sansone* v. *Bechtel*, 180 Conn. 96, 99, 429 A.2d 820 (1980).

undisputed evidence established that there was nothing accidental about the defendants' conduct that would support causes of action for negligent battery or false arrest. They argued that the only reasonable interpretation of the complaint and undisputed facts is that the plaintiff's causes of action are based on intentional conduct. In support of their arguments, the defendants pointed to the plaintiff's prayer for relief that sought punitive damages, which are available only for intentional, and not negligent, conduct. Alternatively, the defendants argued that, if the plaintiff's battery and false arrest claims sound in negligence, the defendants are entitled to governmental discretionary act immunity under § 52-557n.[9] Finally, the defendants reiterated their arguments that the undisputed facts established that they had probable cause to arrest the plaintiff and that their use of force was reasonable.

Before addressing each of the plaintiff's causes of action, the court framed the parties' positions regarding the defendants' claim of immunity: "The defendants assert that they are entitled to immunity for what they claim are intentional torts alleged by the plaintiff. The plaintiff argues that he has not alleged intentional torts.

[9] On appeal, the plaintiff claims that "[t]he court inappropriately considered the defense of [governmental] immunity, which was raised for the first time in the defendants' reply memorandum." This claim warrants little discussion. The defendants only raised their governmental discretionary act immunity defense in response to the plaintiff's claim, asserted for the first time in his objection to the motion for summary judgment, that his causes of action could sound in negligence. When ruling on the defendants' motion for summary judgment, the trial court did not address the defendants' discretionary act immunity argument. Instead, the court resolved the defendants' motion on the basis of whether the plaintiff's causes of action sounded in negligence or intentional tort, whether there were genuine issues of material fact as to the reasonableness of the force used by the defendants, and whether there was probable cause for the plaintiff's arrest. The defendants also have not raised discretionary act immunity as an alternative ground for affirmance in this appeal and acknowledge that the issue was never addressed by the trial court. Thus, the plaintiff's claim is of no moment.

Rather, he has alleged negligence claims of battery and false arrest."[10]

After concluding that battery and false arrest can be based on either intentional or negligent conduct, the court considered whether the plaintiff's allegations of battery could be read as sounding in negligence. The court summarized the plaintiff's battery allegations: "(1) the defendants approached the plaintiff outside of an

[10] In his appellate briefs, the plaintiff claims that the court's characterization of his complaint as alleging negligent battery and false arrest is incorrect. He claims that his complaint is "ambiguous" as to whether the causes of actions asserted sound in intentional tort or negligence and that "it should be for the jury to determine whether the defendants' actions were negligent or intentional." He further claims that, in light of the ambiguity over the nature of his claims, the court should have treated the defendants' motion for summary judgment as a motion to strike so that he could replead his claims if necessary. Both claims are without merit.

First, the plaintiff did not dispute the underlying premises of the defendants' motion for summary judgment. Because the plaintiff was suing the defendants in their official capacities, he was effectively suing the city, and because the city cannot be held liable for the intentional torts of its employees, the court construed the plaintiff's argument as asserting that his claims sounded in negligence because otherwise they would be barred by application of § 52-557n (a) (2). Furthermore, the construction of the pleadings is a legal question for the court, not a factual question to be left for the jury. See *Brusby* v. *Metropolitan District*, 160 Conn. App. 638, 667, 127 A.3d 257 (2015) ("[c]onstruction of pleadings is a question of law" (internal quotation marks omitted)). Thus, the court properly considered whether the complaint could be read as asserting negligence causes of action to avoid the defendants' immunity argument.

Second, the plaintiff never suggested to the trial court that it should treat the defendants' motion for summary judgment as a motion to strike. Furthermore, when the court asked counsel for the plaintiff whether his causes of action sounded in negligence or intentional tort, counsel refused to answer. See footnote 7 of this opinion. Counsel also did not request an opportunity to amend his complaint either in response to the defendants' motion for summary judgment or in response to the court's inquiries. Instead, he argued that "we can revise the pleadings up until, you know, jury deliberations begin." The court then pointed out to counsel that such revisions could be done only with leave of the court, which counsel acknowledged. Nevertheless, counsel still did not request such leave to clarify the nature of the plaintiff's causes of action. Under these circumstances, the court had no obligation sua sponte to treat the defendants' motion for summary judgment as a motion to strike.

apartment building and accused him of trespassing; (2) the plaintiff told the defendants that he was not trespassing and that he lived in the building; (3) the defendants asked for identification; (4) the plaintiff told the [defendants] his identification was in the apartment; (5) the defendants grabbed and tased the plaintiff and attempted to pepper spray him; and (6) the defendants handcuffed the plaintiff." After noting that these allegations were supported by the plaintiff's deposition testimony, the court concluded: "Viewing the evidence in the light most favorable to the plaintiff, these allegations could support a claim that the [defendants] used more force than reasonably necessary to effectuate a lawful arrest. . . . The defendants have not provided evidence to support their claim that there are no genuine issues of material fact as to whether they are entitled to summary judgment under the immunity provided in § 52-557n (a) (2) as to the battery claim." (Citation omitted.)

Nevertheless, the court ultimately held that the defendants were entitled to summary judgment on the plaintiff's battery cause of action because the force they used in their altercation with the plaintiff was justified and not excessive. In reaching this conclusion, the court relied on General Statutes (Rev. to 2019) § 53a-22,[11] which sets forth certain defenses from criminal liability in connection with the use of force in making an arrest or preventing escape, and provides in relevant part: "(b) . . . [A] peace officer . . . is justified in using physical force upon another person when and to the extent that he or she reasonably believes such to be necessary to: (1) Effect an arrest or prevent the escape from custody of a person whom he or she reasonably believes to have committed an offense, unless he or she knows that the arrest or custody is unauthorized; or (2) defend himself

[11] Hereinafter, unless otherwise indicated, all references to § 53a-22 are to the 2019 revision of the statute.

or herself or a third person from the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape." The court agreed with the defendants' argument that, because the plaintiff was resisting arrest, they were justified, pursuant to § 53a-22 (b), in using the force they did to subdue the plaintiff and, therefore, cannot have committed a battery on the plaintiff.

On appeal, the plaintiff argues that whether the force the defendants used was justified or excessive is a genuine issue of material fact that is for the jury to decide. The defendants argue that there is no factual dispute as to what occurred during the altercation, as it was all captured on the defendants' body cameras. According to the defendants, the undisputed evidence establishes that their use of force was objectively reasonable.[12]

[12] In their appellee brief, the defendants reiterate their argument that the plaintiff's causes of actions should be viewed as asserting only intentional tort claims, as to which the city, as the real party in interest, is immune. Nevertheless, the defendants have not argued that the trial court erred in rejecting their claim of intentional act immunity under § 52-557n because it construed the plaintiff's battery claim as sounding in negligence. They also did not raise this argument as an alternative ground for affirmance. In any event, we agree with the trial court that the plaintiff's battery count can be read as asserting a negligence cause of action.

Our Supreme Court has recognized repeatedly the tort of negligent battery. See, e.g., *Markey* v. *Santangelo*, 195 Conn. 76, 78, 485 A.2d 1305 (1985) ("[i]n this state an actionable assault and battery may be one committed wilfully or voluntarily, and therefore intentionally; one done under circumstances showing a reckless disregard of consequences; or one committed negligently" (internal quotation marks omitted)); *Sansone* v. *Bechtel*, 180 Conn. 96, 99, 429 A.2d 820 (1980) ("We have long adhered to the rule that an unintentional trespass to the person, or assault and battery, if it be the direct and immediate consequence of a force exerted by the defendant wantonly, or imposed without the exercise by him of due care, would make him liable for the resulting injury. . . . This principle has been applied to the case of an unintended injury incident to disciplinary action taken by a teacher." (Citations omitted; internal quotation marks omitted.)); *Krause* v. *Bridgeport Hospital*, 169 Conn. 1, 9, 362 A.2d 802 (1975) ("[a]rguably, an intentional or negligent extension of physical contact beyond that consented to or needed properly to position a patient on an x-ray table and which results in injury may present an actionable battery"); *Russo* v. *Porga*, 141

Although we agree that, given the video evidence, there is no factual dispute as to the actions the defendants took during the altercation with the plaintiff, the question of whether their actions were justified is one

Conn. 706, 708–709, 109 A.2d 585 (1954) ("An actionable assault and battery may be one committed wilfully or voluntarily, and therefore intentionally, or one done under circumstances showing a reckless disregard of consequences. It may also be one committed negligently.").

Although the court has never expounded on the elements of negligent battery or explained whether or how a defendant who intentionally initiates contact with a plaintiff may be liable for negligent battery, our Supreme Court's decision in *Brown* v. *Robishaw*, 282 Conn. 628, 922 A.2d 1086 (2007), is instructive. In *Brown*, our Supreme Court addressed whether a defendant, in a case in which he was charged with negligently striking the plaintiff, was entitled to have the jury charged on his special defense of self-defense. Id., 629. The plaintiff argued that self-defense was not a proper defense to a negligence cause of action. Id., 636. The trial court agreed. See id., 632. Following a verdict for the plaintiff, the defendant appealed, arguing that the court erred in not instructing the jury on his claim of self-defense. Id. Our Supreme Court agreed with the defendant. Id., 633. In doing so, the court explained: "The facts of this case involve the intersection between negligent and intentional torts. The plaintiff alleged that the defendant had handled him negligently. In reality, however, the plaintiff claims that the defendant committed the intentional tort of assault, and that the defendant's response to the plaintiff's behavior . . . was unreasonable, and therefore, unjustified. *It is undisputed that the defendant intentionally threw or pushed the plaintiff down the stairs of the house. Therefore, for negligence still to be an issue, the question of whether the defendant's intentional conduct was unjustified remains paramount.* Indeed, the plaintiff himself notes that negligence 'remains a viable cause of action even in instances when self-defense is claimed: if a party who feels threatened reacts unreasonably he remains liable in negligence.' Thus, the self-defense analysis incorporates negligence principles, as the plaintiff correctly points out that *a party who overreacts to a perceived threat may be held liable in negligence if his actions are unreasonable in light of the circumstances*. . . . In order to determine if the party unreasonably overreacted so that he may be held liable for negligence, however, the fact finder first would have to be presented with the party's claim of self-defense. The jury in the present case was not provided with the opportunity to accept or to reject that defense." (Citation omitted; emphasis added; footnote omitted.) Id., 637–39.

In the present case, the defendants, although not explicitly arguing self-defense, argue that their intentional use of force was a justified response to the plaintiff's actions. Although there can be little question that the defendants acted intentionally when using force against the plaintiff, if the defendants acted unreasonably and overreacted to the plaintiff's perceived threat, they, like the defendant in *Brown*, may be held liable for acting

on which reasonable minds may differ and therefore must be resolved at trial. See *Amendola* v. *Geremia*, 21 Conn. App. 35, 37, 571 A.2d 131 ("A conclusion of negligence or freedom from negligence is ordinarily one of fact. . . . The trier must determine whether, in his own opinion, the defendant's actions meet the standards of conduct for one of reasonable prudence. . . . Issues of negligence are ordinarily not susceptible of summary adjudication but should be resolved by trial in the ordinary manner." (Citations omitted; internal quotation marks omitted.)), cert. denied, 215 Conn. 803, 574 A.2d 217 (1990).

We find instructive the decision of the United States District Court for the District of Connecticut in *Mehaylo* v. *Loris*, Docket No. 3:19-CV-2002 (VAB), 2022 WL 17082169 (D. Conn. November 18, 2022), aff'd, Docket Nos. 22-3162 (L) and 22-3163 (Con), 2024 WL 618761 (2d Cir. February 14, 2024), on which the trial court relied in the present case to conclude that there were no genuine issues of material fact that the defendants' use of force was justified. In *Mehaylo*, the plaintiff sued the defendants, Officers Loris and Dominguez of the Shelton Police Department and Officer DeAngelo of the Derby Police Department, alleging excessive force in violation of the fourth amendment to the United States constitution and state law assault and battery in connection with her arrest. Id., *1. Her arrest occurred at her home after she left the scene of a motor vehicle accident in which she was involved. Id., *1–3. The court described the events of the arrest: "[The plaintiff] stated that once she knew it was the police that she knew she had to open the door. . . . She asked the officers outside her front door why they were at her house and

negligently. On the other hand, if the defendants' use of force in response to the perceived threat was not just unreasonably excessive, but also was intended by the defendants to be excessive relative to the threat that they perceived, the city would be immune from liability under § 52-557n (a) (2) (A).

answered questions about her involvement in the earlier car accident through the closed wood front door, which required her to raise her voice. . . . [The plaintiff] agreed to open the wood front door as long as she could speak to the officers with the screen storm door between them. . . .

"Once [the plaintiff] opened the front wood door, Officer DeAngelo opened the screen storm door, reached into [the plaintiff's] home, and grabbed [her] right arm to pull her out of her home and onto the front porch. . . . Once on the porch, Officer DeAngelo pushed [the plaintiff] against the wall to secure her with her arms behind her back. . . .

"Officer Loris then grabbed [the plaintiff's] left arm, and Officer Dominguez came to assist by holding [her] left arm while Officer Loris handcuffed her. . . . The three officers picked [the plaintiff] up and brought her from the front porch to a police car parked on the street. . . .

"While Officer Loris attempted to grab [the plaintiff's] legs so they could pick her up, she kicked backwards, and her foot made contact with Officer Loris' groin. . . .

"Once the officers reached the police car, still carrying [the plaintiff], they threw her into the back of the car on her stomach with her hands handcuffed behind her back and her head hit the center console. . . .

"[The plaintiff] was charged with two counts of [a]ssault [of] a [p]ublic [s]afety [o]fficer and one count of [i]nterfering with a [p]olice [o]fficer." (Citations omitted.) Id., *2–3.

The defendants in *Mehaylo* moved for summary judgment, arguing, with respect to the plaintiff's excessive force claim, that their use of force was objectively reasonable and, with respect to the plaintiff's state law

assault and battery claim, that "their use of force was justified." Id., *5. The District Court first addressed the defendants' argument that their use of force was objectively reasonable as a matter of law. Id., *5–9. In doing so, the court applied the legal test for such claims first set forth by the United States Supreme Court in *Graham* v. *Connor*, 490 U.S. 386, 396–97, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). *Mehaylo* v. *Loris*, supra, 2022 WL 17082169, *6–7. "Determining whether the force used to effect a particular seizure is reasonable under the [f]ourth [a]mendment requires a careful balancing of the nature and quality of the intrusion on the individual's [f]ourth [a]mendment interests against the countervailing governmental interests at stake. . . . [The United States Supreme Court's] [f]ourth [a]mendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. . . . Because [t]he test of reasonableness under the [f]ourth [a]mendment is not capable of precise definition or mechanical application . . . however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. . . .

"The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . . With respect to a claim of excessive force . . . [n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers . . . violates the [f]ourth [a]mendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second

judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

"As in other [f]ourth [a]mendment contexts, however, the reasonableness inquiry in an excessive force case is an objective one: the question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." (Citations omitted; internal quotation marks omitted.) *Graham* v. *Connor*, supra, 490 U.S. 396–97.

The District Court in *Mehaylo* concluded that there were genuine issues of material fact as to whether the force the defendants used was reasonable, given that the crime the defendants were investigating was a misdemeanor, it was questionable whether the plaintiff posed a threat to the defendants, and a reasonable fact finder could conclude that the plaintiff would not have resisted arrest had the defendants not first grabbed the plaintiff. *Mehaylo* v. *Loris*, supra, 2022 WL 17082169, *6–7.

With respect to the plaintiff's assault and battery claim, the District Court first noted, as did the trial court in the present case, that, "[i]f . . . the officer's actions are justified [under § 53a-22 (b)], he is not liable in tort for assault or battery." (Internal quotation marks omitted.) Id., *11. The court nonetheless held that, because it had concluded that there were genuine issues of material fact regarding whether the defendants' use of force was reasonable, those issues also precluded summary judgment as to the state law assault and battery claim. Id. Essentially, the court equated the test for reasonableness under the fourth amendment for excessive use of force claims with the test for whether the use of force was justified under the state law assault and battery claim. See id. The United States Court of

Appeals for the Second Circuit affirmed the judgment of the District Court in an unpublished opinion. *Mehaylo* v. *Loris*, Docket Nos. 22-3162 (L) and 22-3163 (Con), 2024 WL 618761, *2 (2d Cir. February 14, 2024).

In the present case, the defendants do not argue that there is any distinction between the fourth amendment's reasonableness inquiry for excessive use of force and whether their conduct was justified for purposes of a state law battery claim. In fact, they acknowledge in their appellee brief that the essential elements of a fourth amendment excessive use of force claim and a state assault and battery claim are nearly identical. See *Posr* v. *Doherty*, 944 F.2d 91, 94–95 (2d Cir. 1991). They also argue that applying the excessive use of force analysis to their conduct in this case leads to the conclusion that their conduct was objectively reasonable and justified as a matter of law. We are not persuaded.

Having conducted a plenary review of the evidence in the light most favorable to the plaintiff as the nonmoving party, we conclude that genuine issues of material fact similar to those in *Mehaylo* exist as to the force the defendants used during the altercation with the plaintiff. First, criminal trespass in the third degree, the crime the defendants were investigating and with which the plaintiff was charged, is a class C misdemeanor punishable by a term of imprisonment not to exceed three months. See General Statutes §§ 53a-36 and 53a-109. Thus, as in *Mehaylo*, the defendants were investigating the commission of a possible misdemeanor. Second, the defendants' decision to approach the plaintiff was not prompted by any specific complaint about the plaintiff. Instead, the defendants confronted him because they did not recognize him as a tenant of the building. In light of these circumstances, a reasonable jury could conclude that, at the time that the defendants approached the plaintiff and initiated physical contact by grabbing his arms, the plaintiff did not pose any

threat to their safety or the safety of anyone else. Such a conclusion would be supported by the fact that the plaintiff consented to a patdown search when requested by Dragoi. Finally, we cannot conclude, as a matter of law, that the force employed by the defendants during the course of the arrest was reasonable. Indeed, a jury could reasonably conclude that the defendants unjustifiably escalated the conflict with the plaintiff by attempting to forcibly twist his arms behind his back without provocation, causing the plaintiff to push them away or that the defendants acted unreasonably in attempting to physically remove the plaintiff from the front stoop after the arrival of his sister, who told the defendants that the plaintiff lived at the property with their mother. Similarly, viewing the evidence in the light most favorable to the plaintiff, a reasonable jury could conclude that the plaintiff was attempting to comply with Dragoi's commands that he step down from the stoop and sit on the ground when Dragoi pushed him back and then fired a Taser at him. The plaintiff is entitled to have a jury review the evidence and determine whether the defendants' use of force was justified and reasonable. Consequently, the court improperly rendered summary judgment for the defendants on the first count of the complaint.

II

The plaintiff also claims that the court erred in rendering summary judgment for the defendants on the second count of his complaint alleging false arrest because it treated the complaint as alleging only an intentional tort, as to which the city, as the real party in interest, was entitled to qualified immunity, and concluded that there was probable cause for the plaintiff's arrest. Assuming arguendo that the plaintiff properly pleaded negligent false arrest, we agree with the trial court that the undisputed facts establish that probable cause

existed for his arrest, and we therefore affirm the court's judgment as to the second count on that basis.[13]

The following law is relevant to our analysis. "False arrest is the unlawful restraint by one person of the physical liberty of another. . . . To prevail on a claim of false arrest, the plaintiff must establish that the arrest was made without probable cause. . . . Because probable cause to arrest constitutes justification, there can be no claim for false arrest where the arresting officer had probable cause to arrest the plaintiff." (Citations omitted; internal quotation marks omitted.) *Campbell* v. *Porter*, 212 Conn. App. 377, 390, 275 A.3d 684 (2022). "Probable cause, broadly defined, comprises such facts as would reasonably persuade an impartial and reasonable mind not merely to suspect or conjecture, but to believe that criminal activity has occurred. . . . It is a flexible common sense standard that does not require the police officer's belief to be correct or more likely true than false. . . . Probable cause for an arrest is based on the objective facts available to the officer at the time of arrest, not on the officer's subjective state of mind. . . . [W]hile probable cause requires more than mere suspicion . . . the line between mere suspicion and probable cause necessarily must be drawn by an act of judgment formed in light of the particular situation and with account taken of all the circumstances. . . . The existence of probable cause does not turn on whether the defendant could have been convicted on the same available evidence. . . . Indeed, proof of probable cause requires less than proof by a

[13] We note that the trial court's conclusion that the second count is barred by qualified immunity does not implicate the court's subject matter jurisdiction. See *Vejseli* v. *Pasha*, 282 Conn. 561, 572, 923 A.2d 688 (2007) ("whereas [t]he doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss . . . the doctrine of governmental immunity implicates no such interest" (citation omitted; internal quotation marks omitted)). Accordingly, we address the alternative basis for the court's judgment as to the false arrest cause of action.

preponderance of the evidence. . . . The determination of whether probable cause exists . . . is made pursuant to a totality of circumstances test." (Citation omitted; internal quotation marks omitted.) Id., 390–91. "Whether the facts are sufficient to establish the lack of probable cause is a question ultimately to be determined by the court, but when the facts themselves are disputed, the court may submit the issue of probable cause in the first instance to a jury as a mixed question of fact and law." *DeLaurentis* v. *New Haven*, 220 Conn. 225, 252–53, 597 A.2d 807 (1991).

The existence of probable cause as to any offense defeats a false arrest claim, even if the basis for the arrest is unrelated to the crime being investigated or actually invoked at the time of the arrest. See *Devenpeck* v. *Alford*, 543 U.S. 146, 153–54, 125 S. Ct. 588, 160 L. Ed. 2d 537 (2004); see also *Jaegly* v. *Couch*, 439 F.3d 149, 154 (2d Cir. 2006) ("[A] claim for false arrest turns only on whether probable cause existed to arrest a defendant, and . . . it is not relevant whether probable cause existed with respect to each individual charge, or, indeed, any charge actually invoked by the arresting officer at the time of arrest. Stated differently, when faced with a claim for false arrest, we focus on the validity of the *arrest*, and not on the validity of each charge." (Emphasis in original.)). Consequently, we must determine whether, as a matter of law, the defendants had probable cause to arrest the plaintiff for the commission of any crime. We conclude that there are no genuine issues of material fact that the defendants had probable cause to arrest the plaintiff for interfering with an officer in violation of General Statutes § 53a-167a.[14]

[14] In their appellee brief, the defendants argue that, in addition to the crimes with which the plaintiff was charged, namely, disorderly conduct, interfering with an officer, and trespass in the third degree, they also had probable cause to arrest the plaintiff for breach of the peace in violation of General Statutes § 53a-181. Because we conclude that the defendants had probable cause to arrest the plaintiff for interfering with an officer, we need

Section 53a-167a (a) provides: "A person is guilty of interfering with an officer when such person obstructs, resists, hinders or endangers any peace officer or firefighter in the performance of such peace officer's or firefighter's duties." The plaintiff argues that there is a genuine issue of material fact as to whether there was probable cause to arrest him for interfering with an officer because the defendants were acting outside the scope of their role as police officers when they subjected him to a battery. The flaw in the plaintiff's argument is that he engaged in conduct that gave rise to probable cause of interfering with a police officer before the defendants exercised force on him. The defendants were investigating whether the plaintiff was trespassing at the property based on a persistent problem of individuals not permitted to be on the property committing crimes there. When the defendants approached the plaintiff, he did not cooperate in their investigation by providing his name, identification, or any other information regarding his right to be on the property. He also refused to comply with Dragoi's directives to step away from the building.

Although the defendants never said that they were placing the plaintiff under arrest at that time, they had probable cause to do so. "[T]he broad language of § 53a-167a reflects a recognition by the legislature that, because police officers are confronted daily with a wide array of diverse and challenging scenarios, it would be impractical, if not impossible, to craft a statute that describes with precision exactly what obstructive conduct is proscribed. In other words, § 53a-167a necessarily was drafted expansively to encompass a wide range

not consider whether there also was probable cause to arrest him for other crimes. See, e.g., *Kee* v. *New York*, 12 F.4th 150, 158–59 (2d Cir. 2021) ("a police officer is not liable for a false arrest . . . if probable cause to arrest the plaintiff existed for *any* crime" (emphasis in original; internal quotation marks omitted)).

of conduct that may be deemed to impede or hinder a police officer in the discharge of his or her official duties." *State* v. *Aloi*, 280 Conn. 824, 837, 911 A.2d 1086 (2007); see id., 837, 840–41 (failure to provide police officer with name or identification constituted violation of § 53a-167a). The undisputed facts establish that there was probable cause for the defendants to believe that the plaintiff was impeding or hindering their official duties. Consequently, because the defendants had probable cause to arrest the plaintiff for a crime, his cause of action for false arrest necessarily fails.

The judgment is reversed with respect to the granting of the defendants' motion for summary judgment as to the count of the complaint alleging battery and the case is remanded for further proceedings consistent with this opinion; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

REINALD E. THOMA, TRUSTEE *v.* DAVID WATSON ET AL.
(AC 46307)

Elgo, Clark and Westbrook, Js.

Syllabus

The plaintiff appealed from the judgment of the trial court for the defendants on the plaintiff's claim of adverse possession. The plaintiff claimed, inter alia, that the trial court improperly raised the issue of permissive use of the disputed property sua sponte despite the defendant W's failure to raise it by way of a special defense. *Held*:

W was not required under the facts of this case to raise permissive use or consent as a special defense, as W's answer denying that the plaintiff's use was hostile and leaving the plaintiff to his proof, together with the fact that the complaint alleged facts suggestive of some cotenancy or familial relationship between the parties, sufficiently put the plaintiff on notice that permissive use, as a matter of law, was a potential issue to overcome.

The trial court's sua sponte posttrial inquiry into the issue of permissive use was a proper exercise of judicial discretion.

The trial court did not apply an incorrect legal standard when it considered whether the plaintiff had demonstrated that he affirmatively undertook to dispossess, extinguish or steal another's property rights because, in an action in which the plaintiff and W shared some ownership rights in the subject property, the party seeking to establish adverse possession must show that their intent to disseize was clear and unmistakable.

The trial court did not erroneously find that the plaintiff failed to prove his case by clear and convincing evidence.

The trial court did not improperly fail to comply with the statute (§ 47-31) governing actions to quiet title by not making findings pursuant to § 47-31 (f) regarding the precise nature of the parties' respective interests in the disputed parcel, the court only having been required to affirmatively adjudicate the dispute of the parties as it had been presented to the court and on the basis of the evidence presented.

Argued May 16—officially released October 8, 2024

Procedural History

Action seeking, inter alia, a declaratory judgment determining the rights of the parties to a certain parcel of real property, and for other relief, brought to the Superior Court in the judicial district of New London, where the matter was tried to the court, *Jacobs*, *J.*; judgment for the defendants, from which the plaintiff appealed to this court. *Affirmed.*

Timothy D. Bleasdale, for the appellant (plaintiff).

Victoria S. Mueller, with whom were *Thomas J. Londregan* and *Mathew H. Greene*, for the appellee (named defendant).

Opinion

WESTBROOK, J. The plaintiff, Reinald E. Thoma, as trustee of the Reinald E. Thoma Revocable Trust (trust), appeals following a trial to the court from the judgment rendered in favor of the defendant David Watson[1] on

[1] Throughout this opinion, we refer to Reinald E. Thoma as the plaintiff when he is acting in his capacity as trustee of the trust and as Reinald when he is acting in his individual capacity.

In the complaint, the plaintiff named the unidentified "heirs of Florence B. Stimpson" as additional defendants. David Watson, however, is the only defendant who appeared before the trial court and is the only defendant participating in this appeal. Accordingly, any reference to the defendant in this opinion is to David Watson only.

the plaintiff's claim of adverse possession. On appeal, the plaintiff claims that the court (1) made several errors related to the issue of permissive use of the disputed property, including improperly raising that issue sua sponte after the close of evidence despite the defendant's failure to raise it by way of special defense; (2) made additional errors "concerning issues of intent, motive, and subjective understanding"; (3) erroneously found that the plaintiff had failed to prove his case by clear and convincing evidence; and (4) failed to comply with General Statutes § 47-31 (f)[2] by not determining the parties' respective interests in the disputed property. We disagree with the plaintiff's claims and, accordingly, affirm the judgment of the trial court.[3]

The following facts, which either were found by the court or are undisputed, and procedural history are relevant to our disposition of the plaintiff's appeal. The subject property is located on Long Pond Road in Ledyard. It originally was part of an undivided lot. On December 10, 1945, the owner of the undivided lot, Florence P. Stimpson, conveyed a remainder interest in a portion of the lot (front parcel) to the defendant and his sister, Lucille P. Watson (Lucille), reserving a life estate for herself. From December 10, 1945, until her death, the remainder of the lot (back parcel) was owned by Stimpson. Following her death, title to the back parcel passed to the heirs of her estate, which included the defendant and Lucille.[4] It is the back parcel that is at issue in this matter.

[2] General Statutes § 47-31 governs quiet title actions and subsection (f) provides that "[t]he court shall hear the several claims and determine the rights of the parties, whether derived from deeds, wills or other instruments or sources of title, and may determine the construction of the same, and render judgment determining the questions and disputes and quieting and settling the title to the property."

[3] Given our disposition of the plaintiff's claims, it is unnecessary to address the alternative grounds for affirmance raised by the defendant.

[4] Although it is not clear from the record how title to the back parcel passed to the heirs, whether by will or the laws of intestacy, no evidence

On May 8, 1991, the defendant conveyed all his interest in the front parcel to Lucille, who, at that time, was married and went by the name of Lucille Thoma.[5] On September 28, 2012, she conveyed her interests in the front and back parcels to her husband, Reinald Thoma, in his individual capacity. Reinald, on May 3, 2013, conveyed the same back to Lucille, who, on November 18, 2013, conveyed them to the plaintiff as trustee of the trust.

Reinald always regarded the back parcel as his "backyard" and used it as if it were his own. During his marriage to Lucille, Reinald installed a well in the back parcel to serve the front parcel. He also installed a septic system on the back parcel, cleared brush for the well drillers, planted grass seed, and cut down trees. Sometime between 2015 and 2016, he installed a fence on the back parcel. Reinald also has insured and paid property taxes for the back parcel. The only access to the back parcel is through the front parcel.

The plaintiff commenced the underlying action in May, 2021. In the operative amended complaint, the plaintiff alleged that he, together with his predecessors in title, had used and possessed the back parcel for more than fifteen years and that such use and possession was "open, visible, notorious, adverse, exclusive, continuous, and uninterrupted . . . ."[6] He claimed that,

was presented that title had passed to anyone other than Stimpson's heirs, and neither side advanced a contrary argument before the trial court.

[5] The record shows that Lucille married Reinald in May, 1963, and they remained married until Lucille's death in December, 2017.

[6] We note that, pursuant to the doctrine of "tacking," a period of adverse possession by a predecessor in title may be added onto a successive period of adverse possession by the claimant to meet the fifteen year requirement. See *McBurney* v. *Cirillo*, 276 Conn. 782, 813, 889 A.2d 759 (2006), overruled on other grounds by *Batte-Holmgren* v. *Commissioner of Public Health*, 281 Conn. 277, 914 A.2d 996 (2007). Because the plaintiff had only acquired his interest in the front parcel as of November, 2013, fewer than nine years prior to bringing this adverse possession action, he needed to "tack" the adverse possession by his predecessors in title to satisfy the fifteen year statutory period.

through such use and possession, the plaintiff obtained sole and exclusive title to the back parcel by adverse possession.

The defendant filed an answer in which he admitted some of the allegations but denied or left the plaintiff to his proof on others.[7] In particular, the defendant denied the allegation in the complaint that the use and possession of the back parcel by the plaintiff and his predecessors in title had been open, visible, notorious, adverse, exclusive, continuous, and uninterrupted. The defendant did not assert any special defenses.

The court, *Jacobs, J.*, conducted a one day bench trial on October 13, 2022. The plaintiff presented testimony from Reinald regarding his use of the back parcel and from Sharon Banker, a title searcher and paralegal, regarding the chain of title. The defendant's counsel did not cross-examine the plaintiff's witnesses and offered only the defendant's own testimony during the defendant's case-in-chief. The court did not request, nor did the parties provide, pretrial or posttrial briefs.

On October 17, 2022, a few days after the close of evidence and prior to rendering a decision in the matter, the court issued an order asking the parties to appear and to be prepared to address the following questions: "1. If [the defendant] and [Lucille] were siblings, and [the defendant] is an heir of the estate of Florence Stimpson, wouldn't that also make [Lucille] an heir of the estate of Florence Stimpson? 2. If so, wouldn't that make [Lucille's] use of the back portion of the property permissive? And if so, and given that her date of death, while not in evidence, occurred sometime between

[7] Although the defendant did not file an amended answer after the filing of the operative amended complaint, the earlier answer remains applicable, and we may construe it as such to the extent possible. See Practice Book § 10-61 ("[i]f the adverse party fails to plead further [following an amended pleading], pleadings already filed by the adverse party shall be regarded as applicable so far as possible to the amended pleading").

November 18, 2013, and the present, wouldn't that avoid the claim of continuous hostile use of the back portion for fifteen years?"

The parties appeared on November 1, 2022, and presented oral argument in response to the court's questions. During the hearing, counsel for the plaintiff confirmed that Lucille and the defendant were siblings and that both are heirs of Stimpson. Regarding the issue of permissive use, the plaintiff's counsel argued that the plaintiff had presented clear and convincing evidence that "Lucille and her subsequent predecessors in title held [the back parcel] adversely to the heirs" and that this evidence was sufficient to rebut any presumption of permissive use. The defendant's counsel disagreed, arguing that Lucille's use was presumptively permissive as there was no evidence "that she had the specific intent to take the property from the other heirs." Neither party raised any objection to the additional posttrial proceedings, asked the court to open the evidence, or sought to admit any additional evidence.

On November 4, 2022, the court issued a short memorandum of decision in which it found that the plaintiff had failed to establish his claim of adverse possession by clear and convincing evidence. The court's legal analysis is limited to the following single paragraph: "The plaintiff's claim of adverse possession is doomed by the simple fact that [Lucille], as an heir of the estate of Florence P. Stimpson, had, from the time of [Stimpson's] death, permission to use, and at times an ownership interest in, the back parcel. That [Reinald] honestly supposed the back parcel to be his 'backyard' does not evince an intent to dispossess [Lucille's] kin of their right to share in its use. But even more fundamentally: that Lucille and [Reinald] were related to the other owners of the back parcel creates a presumption that their use of that parcel was permissive. The plaintiff failed to rebut that presumption, *let alone prove* [*his*]

case by clear and positive proof." (Emphasis added; footnote omitted.)

On December 22, 2022, the plaintiff filed a motion to reargue claiming, inter alia, that the judgment included "[e]rrors concerning the law, findings of fact, and analysis relating [to] the issue of permissive use of the disputed parcel." The court denied the motion without comment on February 15, 2023. This appeal followed.

After filing the appeal, the plaintiff filed a motion for articulation. First, the plaintiff noted that the memorandum of decision stated that " 'judgment is entered for the defendant,' " singular, and asked the trial court to articulate whether it had intended to render judgment for all defendants. Second, to the extent that the court concluded that there was shared ownership of the back parcel, the plaintiff requested that the court articulate specific findings regarding the parties' respective property interests to effectively quiet title. The court held a hearing on July 6, 2023, and subsequently granted the motion for articulation, stating the following: "Judgment is hereby rendered for the defendants. The state of the title shall remain as is." The plaintiff did not seek any further articulation from the trial court, nor did he move this court for review of the trial court's articulation pursuant to Practice Book § 66-7.

On appeal, the plaintiff claims that the court (1) made several errors related to the issue of permissive use, including raising that issue sua sponte despite the defendant failing to affirmatively plead it as a special defense; (2) made additional errors "concerning issues of intent, motive, and subjective understanding"; (3) erroneously found that the plaintiff had failed to prove his case by clear and convincing evidence; and (4) failed to comply with § 47-31 (f) by not determining the parties' respective interests in the disputed parcel. For the reasons

that follow, we disagree with the plaintiff that the defendant was required to specially plead permission as an affirmative defense or that, under the circumstances, it was improper for the court to have inquired further regarding that issue following the close of evidence. Finally, we reject the remainder of the plaintiff's claims and conclude that the plaintiff has failed to demonstrate that the court's dispositive finding—that the plaintiff failed to prove its case "by clear and positive proof"—was clearly erroneous.

Before turning to the plaintiff's claims, we begin by setting forth general principles of law that guide our review of decisions concerning a claim of adverse possession. "[If] title is claimed by adverse possession, *the burden of proof is on the claimant*. . . . The essential elements of adverse possession are that the owner shall be ousted from possession and kept out uninterruptedly for fifteen years under a claim of right by an open, visible and exclusive possession of the claimant *without license or consent of the owner*. . . . The use is not exclusive if the adverse user merely shares dominion over the property with other users. . . . [Adverse] possession is not to be made out by inference, but by clear and positive proof. . . . *In the final analysis, whether possession is adverse is a question of fact for the trier*. . . . The doctrine of adverse possession is to be taken strictly. . . .

"Clear and convincing proof of the elements of an adverse possession claim is an exacting standard . . . that lies between the belief that is required to find the truth or existence of the [fact in issue] in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution. . . . [The burden] is sustained *if evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true* . . . . In evaluating a claim of adverse

possession under that demanding standard, [e]very presumption is in favor of possession in subordination to the title of the true owner." (Citations omitted; emphasis added; footnote omitted; internal quotation marks omitted.) *Mulvey* v. *Palo*, 226 Conn. App. 495, 500–502, 319 A.3d 211 (2024), petition for cert. filed (Conn. July 19, 2024) (No. 240124). "[T]he question of whether the elements of an adverse possession claim have been established by clear and convincing evidence is a factual one subject to the clearly erroneous standard of review." (Internal quotation marks omitted.) Id., 503. "The demanding burden placed on a party claiming adverse possession of the property of another reflects the fact that such actions are disfavored." Id., 502. With these general principles in mind, we turn to the plaintiff's claims.

I

We first address the plaintiff's claim that the court made multiple errors regarding the issue of permissive use. The plaintiff argues that permissive use must always be raised by way of special defense and, because the defendant failed to do so in this case, it was improper for the court to have raised it sua sponte, particularly after the close of evidence. The plaintiff also argues that the court misapplied the law regarding permissive use and impermissibly shifted the burden of proof on that issue to the plaintiff. For the reasons that follow, we reject the plaintiff's claim.

The issue of permissive use is highly relevant in adverse possession cases because the use or possession of property by permission of a title holder is, by definition, not hostile and cannot support a finding of adverse possession. As previously stated, to establish title by adverse possession, a claimant always has the very heavy burden of demonstrating by clear and convincing evidence that its alleged use and/or possession of the

subject property was without the consent or permission of the owner. See *O'Connor* v. *Larocque*, 302 Conn. 562, 581, 31 A.3d 1 (2011).

As our Supreme Court has explained, establishing this burden is particularly difficult in cases in which a party is seeking to establish adverse possession against a cotenant, i.e., a party holding a shared possessory interest in the property. Id. "In cases involving claims by one cotenant against another, we have added to [the already] heavy burden by applying a presumption against adverse possession. The rationale for this presumption is that, in view of the undivided interest held by cotenants . . . possession taken by one is ordinarily considered to be the possession by all and not adverse to any cotenant. . . . In other words, the presumption is based on a recognition that one cotenant's possession is not necessarily inconsistent with the title of the others."[8] (Citations omitted; emphasis omitted; internal quotation marks omitted.) Id., 581–82.

Moreover, "[a]lthough the presumption may be overcome in certain circumstances, it is not easily done.

[8] "Permissive possession is not hostile or adverse and will not support an adverse possession claim [because] permissive possession is not considered to be the possession of the occupant but rather the possession of the party on whose pleasure the permissive possession depends." (Footnote omitted.) 3 Am. Jur. 2d 129–30, Adverse Possession § 44 (2023). With a cotenancy, "[t]he general principle is that there is a relation of trust between cotenants, each having an equal right of entry and possession. Thus, every cotenant has the right to enter into and occupy the common property and every part thereof provided in so doing, the cotenant does not exclude fellow cotenants or otherwise deny them some right to which they are entitled as cotenants; and the other tenants, on their part, may safely assume, until something occurs of which they must take notice, and which indicates the contrary, that the possession taken is held as a cotenant and is, in law, the possession of all cotenants. . . . In the absence of facts showing that one cotenant in sole possession holds such possession in opposition to the rights of other cotenants, the occupancy will be presumed to be that of a cotenant, and it is further presumed that one tenant in common holds property for the benefit of the others." (Footnotes omitted.) Id., § 190, pp. 249–50.

[A] cotenant claiming adversely to other cotenants must show actions of such an unequivocal nature and so distinctly hostile to the rights of the other cotenants that the intention to disseize is clear and unmistakable. . . . Not only must an actual intent to exclude others be demonstrated . . . but there also must be proof of an ouster and exclusive possession so openly and notoriously hostile that the cotenant will have notice of the adverse claim." (Citations omitted; emphasis omitted; internal quotation marks omitted.) Id., 582. Courts have employed a similar rebuttable presumption of permissive use in cases involving family members or other close relations. See *Woodhouse* v. *McKee*, 90 Conn. App. 662, 673, 879 A.2d 486 (2005) ("In determining what amounts to hostility, the relation that the adverse possessor occupies with reference to the owner is important. If the parties are strangers and the possession is open and notorious, it may be deemed to be hostile. However if the parties are related, there may be a presumption that the use is permissive." (Internal quotation marks omitted.)).[9]

Whether the defendant was obligated to plead permissive use of the subject property as a special defense to the plaintiff's adverse possession claim is a question of law over which our review is plenary. See *Howard-Arnold, Inc.* v. *T.N.T. Realty, Inc.*, 145 Conn. App. 696, 711, 77 A.3d 165 (2013), aff'd, 315 Conn. 596, 109 A.3d 473 (2015); see also *Beckenstein Enterprises-Prestige Park, LLC* v. *Keller*, 115 Conn. App. 680, 689–90, 974 A.2d 764, cert. denied, 293 Conn. 916, 979 A.2d 488 (2009). Our rules of practice provide in relevant part that "[t]he defendant in the answer shall specially deny

[9] Both presumptions seem to be implicated under the facts of this case. The plaintiff contends on the basis of arguably imprecise or contradictory language in the court's memorandum of decision that the court conflated the two presumptions. We decline to read such ambiguity in the court's analysis as providing a basis for overturning the court's decision. See part III of this opinion.

such allegations of the complaint as the defendant intends to controvert, admitting the truth of the other allegations, unless the defendant intends in good faith to controvert all the allegations, in which case he or she may deny them generally. . . ." Practice Book § 10-46. As a general rule, a defendant must plead facts by way of special defense only if "they are *consistent* with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action." (Emphasis added; internal quotation marks omitted.) *Silver Hill Hospital, Inc.* v. *Kessler*, 200 Conn. App. 742, 750, 240 A.3d 740 (2020); see also Practice Book § 10-50.[10] "The fundamental purpose of a special defense, like other pleadings, is to apprise the court and opposing counsel of the issues to be tried, so that basic issues are not concealed until the trial is underway." *Bennett* v. *Automobile Ins. Co. of Hartford*, 230 Conn. 795, 802, 646 A.2d 806 (1994).

We now turn to the present case. The plaintiff argues that the court raised the issue of permissive use for the very first time, sua sponte, after the close of evidence and that he was prejudiced because that procedure prevented him from conducting discovery on the issue and presenting evidence to rebut a permission defense. He contends that the reason that the court should not have considered the defense goes directly to a basic sense of fair play embodied in our pleading and discovery rules and that the court's denial of his adverse

[10] Practice Book § 10-50 provides: "No facts may be proved under either a general or special denial except such as show that the plaintiff's statements of fact are untrue. Facts which are consistent with such statements but show, notwithstanding, that the plaintiff has no cause of action, must be specially alleged. Thus, accord and satisfaction, arbitration and award, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was non compos mentis, payment (even though nonpayment is alleged by the plaintiff), release, the statute of limitations and res judicata must be specially pleaded, while advantage may be taken, under a simple denial, of such matters as the statute of frauds, or title in a third person to what the plaintiff sues upon or alleges to be the plaintiff's own."

possession claim based on an unpleaded special defense amounted to a "trial by ambuscade to the detriment of [him]." (Internal quotation marks omitted.) *Jo-Ann Stores, Inc.* v. *Property Operating Co., LLC*, 91 Conn. App. 179, 199, 880 A.2d 945 (2005); see also *Howard-Arnold, Inc.* v. *T.N.T. Realty, Inc.*, supra, 145 Conn. App. 712 ("it is improper for a court, sua sponte, to apply an unpleaded special defense to defeat a plaintiff's cause of action"). The defendant, on the other hand, argues that Practice Book § 10-50, which contains our rules of practice governing denials and special defenses, is not directly applicable and that "the plaintiff [pleaded] facts to substantiate the cotenant/familial relationship, and thus the added burden of proof was apparent in the pleadings." We agree with the defendant that permissive use is not a defense that must be specially pleaded.

In asserting that permissive use must be specially pleaded, the plaintiff principally directs this court's attention to our Supreme Court's decision in *Slack* v. *Greene*, 294 Conn. 418, 984 A.2d 734 (2009). In *Slack*, the defendant appealed from a judgment finding that the plaintiff had established the existence of a prescriptive easement[11] over a paved right-of-way located on the defendant's property for purposes of ingress to and egress from her home. Id., 419–20. Among other things, the defendant claimed on appeal that there was insufficient evidence to support the trial court's finding that the plaintiff's use of the right-of-way was adverse to the couple who owned the property "because the plaintiff did not specifically mention the [couple] in her testimony, and because no other evidence about them was adduced at trial, [and thus] the trial court could not

[11] Although *Slack* and the cases to which it cites involved claims of prescriptive easements, "[t]he legal principles governing a claim for a prescriptive easement are similar . . . to those governing claims of adverse possession." *Viering* v. *Groton Long Point Assn., Inc.*, 223 Conn. App. 849, 868, 311 A.3d 215, cert. denied, 349 Conn. 901, 312 A.3d 586 (2024).

determine whether the plaintiff's use of the right-of-way was adverse to their interests, or whether, instead, they had given the plaintiff permission to use it." Id., 433. In rejecting the defendant's claims, our Supreme Court observed that, despite having alleged by way of special defense that the plaintiff "had permission to use the right-of-way from previous owners of the property"; (internal quotation marks omitted) id., 435 n.8; the defendant had presented no evidence to support that assertion. Id., 435. It explained that "the trial court reasonably could have inferred that the [couple] had not given the plaintiff permission to use the right-of-way by virtue of the fact that the record is devoid of any indication that such permission had been given." Id. It further explained that "[i]t is not the plaintiff's burden to establish that an *otherwise apparently adverse use* of the defendant's property was conducted without the defendant's permission or license. . . . [If] the defendant raises permission by way of a special or affirmative defense, the burden of proof rests on the defendant . . . who must prove the special defense by a fair preponderance of the evidence. . . . Indeed, a contrary rule would unfairly charge a party with proving a negative." (Citation omitted; emphasis added; footnote omitted; internal quotation marks omitted.) Id.

The plaintiff argues that our Supreme Court's discussion in *Slack* establishes that permissive use *must* be specially pleaded and, thus, the defendant in the present case was required to plead permission as a special defense to the adverse possession claim in order for the court to have relied on permissive use as a basis for ruling in favor of the defendant. We do not agree with the plaintiff's reading of *Slack*.

In *Slack*, the issue of whether permissive use is an affirmative defense or must be specially pleaded was not before the court. The court in *Slack* held that "[i]t is not the plaintiff's burden to establish that an *otherwise*

apparently adverse use of the defendant's property was conducted without the defendant's permission or license." (Emphasis added; internal quotation marks omitted.) Id. The court went on to explain that *if* a defendant chooses to raise permission vis-à-vis a special or affirmative defense, then "the burden of proof rests on the defendant . . . who must prove the special defense . . . ." (Internal quotation marks omitted.) Id. The court also observed that generally requiring a plaintiff to prove that it did not have permission to use the subject property in a case in which there was nothing in the pleadings or record suggesting the alleged use was anything other than adverse "would unfairly charge [the plaintiff] with proving a negative." (Internal quotation marks omitted.) Id.

We read *Slack* as standing for the proposition that, if the use of the disputed property as alleged by a plaintiff in support of its claim is "otherwise apparently adverse," a trier of fact reasonably may infer that such use was also done without permission. We construe the court's use of the term "otherwise apparently adverse" to mean there are no allegations in the pleadings or evidence adduced at trial that could raise a contrary inference. Moreover, *Slack* notes that whenever a defendant *elects* to plead facts via special defense that, if proven, would support a finding of consent or permissive use, the defendant assumes the burden of proof with respect to those facts. Cf. *Janow* v. *Ansonia*, 11 Conn. App. 1, 8, 525 A.2d 966 (1987) (defendant who voluntarily alleges fact that could be proven under simple denial may assume burden of proof, although plaintiff is still bound to prove essential allegations of complaint), citing *Coogan* v. *Lynch*, 88 Conn. 114, 116, 89 A. 906 (1914).

Permissive use, however, is not *consistent with* the allegations of an adverse possession complaint. A plaintiff claiming adverse possession must allege that the

use or possession of the subject property was done in a manner adverse or hostile to the interest of the title owner. Permissive use stands in direct contradiction to that essential element of adverse possession. Accordingly, permissive use is not properly viewed as an affirmative defense that *must* be specially pleaded under our rules of practice. Rather, a general denial of the allegations in the complaint seeking to establish the hostility element of adverse possession ordinarily will be enough to permit a defendant to demonstrate permissive use through evidence adduced at trial.[12] See *Silver Hill Hospital, Inc.* v. *Kessler*, supra, 200 Conn. App. 750 (if party disputes material fact by way of general denial, party "may introduce affirmative evidence tending to establish a set of facts inconsistent with the existence of the disputed fact").

The plaintiff suggests that a rule requiring the defendant to plead permissive use would alert a plaintiff that it may need to produce its own evidence either refuting a defendant's claim of permission or proving that such permission was repudiated through some clear and unequivocal act. We disagree. In the present case, by alleging adverse possession, the plaintiff necessarily

[12] Although our case law reflects other instances in which defendants have elected to plead permission as a special defense to adverse possession, none holds that a defendant *must* do so in every case, nor do they suggest that the failure to plead permissive use bars its consideration at trial. See, e.g., *Dowling* v. *Heirs of Bond*, 345 Conn. 119, 132, 282 A.3d 1201 (2022) ("[t]he defendant . . . raised the following special defenses . . . (3) the plaintiff's use of the parcel *was permissive*" (emphasis added)); *Brander* v. *Stoddard*, Superior Court, judicial district of Litchfield, Docket No. CV-13-6008351-S (August 6, 2015) (reprinted at 173 Conn. App. 732, 733, 164 A.3d 892) ("[t]he defendants filed . . . an amended answer and special defenses on February 13, 2015, alleging that the plaintiff's use of the property was *with the permission* of the owners" (emphasis added)), aff'd, 173 Conn. App. 730, 164 A.3d 889, cert. denied, 327 Conn. 928, 171 A.3d 456 (2017); *Woodhouse* v. *McKee*, supra, 90 Conn. App. 665 ("[i]n the special defenses, [the defendant] claimed that the plaintiffs' use of the disputed parcel *was consensual*" (emphasis added)).

assumed the burden of proving that his possession of the property was hostile, i.e., without permission. Moreover, the defendant's answer denying that the use was hostile and leaving the plaintiff to his proof, coupled with the fact that the complaint itself alleged facts suggestive of some cotenancy or familial relationship between the parties, sufficiently put the plaintiff on notice that permissive use, as a matter of law, was a potential issue to overcome in this case.

In short, we conclude that the defendant was not required under the facts of this case to raise permissive use or consent as a special defense. We turn then to the plaintiff's related argument that the court improperly raised the issue of permission sua sponte after the close of evidence. We are not convinced that the court's actions here amounted to reversible error.

"When litigation raises difficult questions of law, a trial court is well-advised to request briefs and to defer its written decision until such time as the court has had the opportunity to deliberate and to reach a thoughtful, reasoned conclusion." *Frank* v. *Streeter*, 192 Conn. 601, 605, 472 A.2d 1281 (1984). Accordingly, it is entirely appropriate for a trial court, following a bench trial, to request additional briefing if necessary to fulfill its duty to the due administration of justice. Additionally, "[a] court, in the interest of justice, after the close of evidence, may exercise its discretion to open the case for the purpose of permitting the introduction of additional evidence." *Statewide Grievance Committee* v. *Ankerman*, 74 Conn. App. 464, 470, 812 A.2d 169, cert. denied, 263 Conn. 911, 821 A.2d 767 (2003). This is particularly so if there is "a dearth of evidence to assist the court in reaching an appropriate disposition." (Internal quotation marks omitted.) Id., 471.

Here, the court did not explicitly state that it was opening the evidence but rather appears only to have

sought clarification and additional argument from the parties regarding the facts and issues already before it. As we have previously discussed, the record before the court indicated that the parties shared some ownership interest in the disputed property which, by implication, raised the issue of whether there was a presumption of permissive use that the plaintiff needed to overcome. Moreover, the plaintiff's suggestion that the court raised the issue of permissive use for the first time sua sponte is belied by our review of the trial transcript. On direct examination about his use of the back parcel, counsel for the plaintiff asked Reinald the following question: "And you never had permission from anyone to use it?" This question demonstrates that the plaintiff was cognizant that permissive use was potentially at issue in this case.

Finally, nothing in the court's request to the parties precluded either party from asking the court formally to open the evidence if they believed that responding to the court's posttrial inquiries required the presentation of additional testimony or other evidence. As we have already indicated, the issue of whether the plaintiff had proven by clear and convincing evidence that its use of the subject property was adverse rather than permissive was an issue that was raised by necessary implication from the pleadings and evidence at trial and, thus, was properly before the court to decide in its role as the trier of fact. We are persuaded that the court's posttrial inquiry in the present matter was a proper exercise of judicial discretion and not, as the plaintiff argues, reversible error.

II

The plaintiff next claims that the court made additional errors "concerning issues of intent, motive, and subjective understanding," thereby demonstrating that

the court applied an incorrect legal standard. We disagree.

We construe the plaintiff's claim as challenging whether the court applied an incorrect legal standard, which also requires us to interpret the decision rendered by the court, both of which invoke our plenary review. See *In re Paulo T.*, 213 Conn. App. 858, 867, 279 A.3d 766 (2022), aff'd, 347 Conn. 311, 297 A.3d 194 (2023). The plaintiff's claim focuses on the court's statement in its memorandum of decision that the plaintiff's purported use of the back parcel did not "evince an intent to dispossess [Lucille's] kin of their right to share in its use." The plaintiff argues that, ordinarily, a party seeking to establish that it has acquired title by adverse possession has no obligation to demonstrate any particular motive or purposeful intent behind its use of the subject property. In other words, there is no need to prove that it affirmatively undertook to dispossess, extinguish or steal another's property rights. The plaintiff, however, acknowledges in his brief that, in an action in which the plaintiff and the defendant share some ownership rights in the subject property, the law requires the party seeking to establish adverse possession over the other to show "actions of such an unequivocal nature and so distinctly hostile . . . that *the intention to disseize* is clear and unmistakable." (Emphasis added; internal quotation marks omitted.) *O'Connor* v. *Larocque*, supra, 302 Conn. 582. This is the standard that the court appears to have been referencing in the previously quoted statement. Despite the plaintiff's arguments to the contrary, we are unconvinced from our review of the court's decision that it applied an incorrect legal standard; accordingly, we reject this claim.

III

The plaintiff also claims that the court erroneously found that the plaintiff had failed to prove its case by clear and convincing evidence. We disagree.

"This court will neither speculate with regard to the rationale underlying the court's decision nor, in the absence of a record that demonstrates that error exists, presume that the court acted erroneously. . . . It is well settled that [we] do not presume error; the trial court's ruling is entitled to the reasonable presumption that it is correct unless the party challenging the ruling has satisfied its burden [of] demonstrating the contrary. . . . [If] the record can be read to support [a] court's conclusion that the plaintiff failed to meet his burden, the plaintiff has failed to demonstrate that the court erred." (Citations omitted; internal quotation marks omitted.) *White* v. *Latimer Point Condominium Assn., Inc.*, 191 Conn. App. 767, 780–81, 216 A.3d 830 (2019).

Here, the court reasonably could infer from the evidence presented and the admissions of the parties during argument before the court that both the defendant and Lucille were heirs of Stimpson and, as such, each had acquired some ownership interest in the back parcel following her death. The court's decision is not a model of clarity as it can be read to conflate a presumption of permissive use based on a familial relationship between the parties with the presumption of permission arising from a cotenant's equal right of entry and possession to co-owned property. As previously explained, however, after the close of evidence, the court issued its order asking the parties to appear and clarify certain issues.

The court's first question sought clarification regarding the relationship between the defendant and Lucille for the purpose of establishing whether, as Stimpson's heirs, they became cotenants of the back parcel after Stimpson's death. As we have discussed, the issue of cotenancy is critical in an adverse possession case because there is a "presumption against adverse possession" whenever one cotenant brings a claim against another. (Emphasis omitted.) *O'Connor* v. *Larocque*,

supra, 302 Conn. 581. In such an instance, "[a] cotenant claiming adversely to other cotenants must show actions of such an unequivocal nature and so distinctly hostile to the rights of the other cotenants that the intention to disseize is clear and unmistakable." (Internal quotation marks omitted.) Id., 582. Overcoming this presumption, our Supreme Court has said, "is not easily done." Id.

In light of the court's questions, it is reasonable to construe the court's decision as having followed this analytical pathway in concluding that the plaintiff had not proven its case by clear and convincing proof. In setting forth the elements of an adverse possession claim, the court cited to *O'Connor* v. *Larocque*, supra, 302 Conn. 562, the leading cotenancy case in Connecticut. Although the court made no express findings concerning the existence of a cotenancy, the court as the trier of fact reasonably could have inferred cotenancy from the evidence before it and thus the existence of a presumption against adverse possession. Although it is true that the court commingles references to the familial relationship of the parties, we are not convinced that such reference undermines the fact that the court also recognized the parties' cotenancy as a basis for a presumption of permissive use, one that the court as the trier of fact determined the plaintiff failed to rebut by clear and convincing proof.

Additionally, and perhaps more importantly, the court stated in its decision that "[t]he plaintiff failed to rebut [a] presumption [of permissive use], *let alone prove* [*his*] *case by clear and positive proof*." (Emphasis added.) The plaintiff never sought clarification of this statement. The court's statement is ambiguous as to whether it found that the plaintiff had failed to meet his burden of proof with respect to one, multiple or all elements of his adverse possession claim and why. It was the sole province of the court as the trier of fact

to determine whether the evidence presented was believable and established adverse possession by clear and convincing proof, and we cannot substitute our own weighing of the evidence. In the face of ambiguity, we do not presume error but rather hold the appellant to his burden of establishing error requiring reversal. See *White* v. *Latimer Point Condominium Assn., Inc.*, supra, 191 Conn. App. 780–81. On the record presented, we are not convinced that the court erroneously found that the plaintiff had failed to prove his case by clear and convincing evidence.

IV

Finally, we address the plaintiff's claim that the court improperly failed to comply with § 47-31 (f) by not making findings regarding the precise nature of the parties' respective interests in the disputed parcel. We reject this claim.

Section 47-31 (f) provides in relevant part that a court hearing a quiet title action "shall hear the several claims and determine the rights of the parties . . . and render judgment determining the questions and disputes and quieting and settling the title to the property." See footnote 2 of this opinion. There is no express statutory requirement that, in order to quiet and settle a title dispute, a court must always set forth with any particular degree of specificity each party's legal interest in the disputed property. The court is only required to affirmatively adjudicate the disputes of the parties as they have been presented to the court and on the basis of the evidence presented. See *Marquis* v. *Drost*, 155 Conn. 327, 333–34, 231 A.2d 527 (1967). We are convinced that the court met that standard here.

In particular, our review of the transcript of the hearing on the motion for articulation leads us to conclude that the court properly determined that the evidence before it was insufficient to determine anything more

than that the plaintiff had failed to meet his burden of demonstrating that the existing title to the back parcel had changed as a result of the plaintiff's use or possession. Under these circumstances, we are not convinced that the court failed to comply with the requirements of § 47-31 (f) by affirmatively adjudicating the adverse possession claim of the plaintiff in favor of the defendant and expressly finding that the "state of the title shall remain as is."

The judgment is affirmed.

In this opinion the other judges concurred.

S. S. *v.* D. M.*
(AC 47010)

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

Syllabus

The defendant, a former police officer, appealed from the judgment of the trial court granting an application for a civil protective order for the plaintiff, a police chief, filed pursuant to statute (§ 46b-16a (a)) on the basis of stalking. The defendant claimed, inter alia, that the trial court abused its discretion in issuing the order of civil protection, as modified, because the trial court did not make the requisite factual findings. *Held*:

The trial court abused its discretion in issuing the modified order of civil protection without having made the necessary factual findings that there were reasonable grounds to believe that the defendant both had stalked the plaintiff and would have continued to stalk the plaintiff.

Argued September 5—officially released October 8, 2024

Procedural History

Application for a civil protection order, brought to the Superior Court in the judicial district of Ansonia-Milford, where the court, *M. Moore, J.*, issued an ex

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

parte civil protection order; thereafter, the court, *Hon. Arthur A. Hiller*, judge trial referee, granted the application and issued an order of civil protection, from which the defendant appealed to this court; subsequently, the court, *Hon. Arthur A. Hiller*, judge trial referee, granted the defendant's motion to modify the order upon agreement of the parties, and issued a modified order of civil protection, and the defendant filed an amended appeal. *Reversed*; *order vacated.*

Todd R. Michaelis, with whom, on the brief, was *Jeffrey M. Beck*, for the appellant (defendant).

Thomas W. Bucci, for the appellee (plaintiff).

Opinion

MOLL, J. The defendant, D. M., appeals from the judgment of the trial court granting the application for an order of civil protection for the plaintiff, S. S., pursuant to General Statutes § 46b-16a[1] on the basis of stalking. On appeal, the defendant claims that the court improperly continued in effect and further modified an order of civil protection for the benefit of the plaintiff without making certain requisite factual findings. We agree and, accordingly, reverse the judgment of the trial court.

The following procedural history is relevant to our resolution of this appeal. On September 25, 2023, the plaintiff filed an application seeking an order of civil

[1] General Statutes § 46b-16a (a) provides: "Any person who has been the victim of sexual abuse, sexual assault or stalking may make an application to the Superior Court for relief under this section, provided such person has not obtained any other court order of protection arising out of such abuse, assault or stalking and does not qualify to seek relief under section 46b-15. As used in this section, 'stalking' means two or more wilful acts, performed in a threatening, predatory or disturbing manner of: Harassing, following, lying in wait for, surveilling, monitoring or sending unwanted gifts or messages to another person directly, indirectly or through a third person, by any method, device or other means, that causes such person to reasonably fear for his or her physical safety."

protection against the defendant on the ground that the defendant had stalked him (application). In the supporting affidavit accompanying the application, the plaintiff averred that (1) he was the chief of police for a municipality and an adjunct professor at a community college, and (2) the defendant, whose employment as a police officer for the same municipality had been terminated in July, 2020, had stalked him at the community college and at his residence.[2] On September 25, 2023, the trial court, *M. Moore, J.*, issued an ex parte civil protection order prohibiting the defendant, inter alia, from stalking, contacting, or coming within 100 yards of the plaintiff. The court further ordered that a hearing on the application be held on October 6, 2023.

At the October 6, 2023 hearing on the application, the court, *Hon. Arthur A. Hiller*, judge trial referee, heard testimony from both parties. The plaintiff testified that the defendant (1) had driven by his house on multiple occasions, during which times the defendant videotaped and photographed him, and (2) had followed him on September 21, 2023, to the community college where he taught classes. The defendant testified that he had never followed the plaintiff, either intentionally or accidentally, or driven to the plaintiff's residence and videotaped the plaintiff's vehicle parked at the home, but he confirmed that he had visited the community college (1) on September 14, 2023, when the plaintiff was not present, and (2) again on September 21, 2023, under the belief that the plaintiff would not be present. According to the defendant's testimony, he (1) believed that the plaintiff was directing other police officers to teach his classes for him at the community college and (2) traveled to the community college on

[2] The plaintiff further averred that (1) he previously had observed the defendant stalking him while he was on duty performing traffic detail in 2020, and (2) the defendant intentionally had driven by his past residences and watched him.

the aforementioned dates in order to document the plaintiff's absences.

At the conclusion of the October 6, 2023 hearing, the court issued an oral decision granting the application. The court stated: "The court finds that there [are] sufficient grounds for the continuation of this protective order. The evidence is sufficient to cause concern for the court. And I'm sure to cause concern for the [plaintiff] as to potential harassment, potential—excuse me for a second, harassment, [lying in wait for], surveilling. All the items that are grounds for a civil protection order. There's sufficient proof for the court to continue this order." On October 23, 2023, the court accepted a stipulation executed by the parties to modify the civil protection order, granted a motion filed by the defendant to modify the order, and issued a modified order of civil protection. The modified order limited the scope of the original order's stay away provision by permitting the defendant to come within 100 yards of the plaintiff during other ongoing legal proceedings between the parties.[3] This amended appeal followed.[4]

We begin by setting forth the applicable standard of review and legal principles that are relevant to our resolution of the defendant's claim. "We apply the same standard of review to civil protection orders under § 46b-16a as we apply to civil restraining orders under General Statutes § 46b-15. Thus, we will not disturb a trial court's orders unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its

[3] The modified order of civil protection is set to expire on October 6, 2024.

[4] On October 18, 2023, the defendant filed this appeal from the October 6, 2023 order granting the application. On December 21, 2023, the defendant amended the appeal to encompass the October 23, 2023 modified civil protection order.

broad discretion . . . we allow every reasonable presumption in favor of the correctness of its action. . . . Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Our deferential standard of review, however, does not extend to the court's interpretation of and application of the law to the facts. It is axiomatic that a matter of law is entitled to plenary review on appeal." (Internal quotation marks omitted.) *S. B-R.* v. *J. D.*, 208 Conn. App. 342, 346–47, 266 A.3d 148 (2021).

Section 46b-16a (a) provides in relevant part: "Any person who has been the victim of . . . stalking may make an application to the Superior Court for relief under this section, provided such person has not obtained any other court order of protection arising out of such . . . stalking and does not qualify to seek relief under section 46b-15. As used in this section, 'stalking' means two or more wilful acts, performed in a threatening, predatory or disturbing manner of: Harassing, following, lying in wait for, surveilling, monitoring or sending unwanted gifts or messages to another person directly, indirectly or through a third person, by any method, device or other means, that causes such person to reasonably fear for his or her physical safety." Subsection (b) of § 46b-16a provides in relevant part: "If the court finds that there are reasonable grounds to believe that the respondent has committed acts constituting grounds for issuance of an order under this section and will continue to commit such acts, or acts designed to intimidate or retaliate against the applicant, the court, in its discretion, may make such orders as

it deems appropriate for the protection of the applicant. . . ."

Importantly, "an applicant for a civil protection order on the basis of stalking pursuant to § 46b-16a must prove only that there are reasonable grounds to believe that every element is met and that such conduct will continue." (Internal quotation marks omitted.) *Kayla M.* v. *Greene*, 163 Conn. App. 493, 506, 136 A.3d 1 (2016); see General Statutes § 46b-16a (b). "A finding of reasonable grounds to believe stalking occurred is equivalent to a finding of probable cause that stalking occurred. . . . While probable cause requires more than mere suspicion . . . the line between mere suspicion and probable cause necessarily must be drawn by an act of judgment formed in light of the particular situation and with account taken of all the circumstances. . . . The existence of probable cause does not turn on whether the defendant could have been convicted on the same available evidence. . . . In dealing with probable cause . . . as the very name implies, we deal with probabilities." (Citation omitted; internal quotation marks omitted.) *C. A.* v. *G. L.*, 201 Conn. App. 734, 740–41, 243 A.3d 807 (2020).

"In order for a court to issue an order of civil protection under § 46b-16a on the basis of stalking, it must find that there are reasonable grounds to believe that the defendant both stalked the plaintiff and will continue to commit such acts. . . . If a court issues an order without a proper finding or without sufficient evidence to support such a finding, as to either stalking or the continuation of such acts, it will constitute an abuse of discretion." (Citations omitted.) *S. B-R.* v. *J. D.*, supra, 208 Conn. App. 347–48.

With these legal principles in mind, we turn to the merits of the defendant's claim on appeal. The defendant argues that the court abused its discretion in issuing the order of civil protection, as modified, because

the court did not make the requisite factual findings that there were reasonable grounds to believe that the defendant both stalked the plaintiff and will continue to commit such acts. In connection with this claim, the defendant further asserts that the court improperly failed to make a finding as to the reasonable fear prong of stalking as defined in § 46b-16a (a). We agree with the defendant that the court's failure to make express findings that reasonable grounds existed to believe that the defendant both had stalked the plaintiff and will continue to do so constitutes an abuse of the court's discretion.[5]

The court, in its ruling from the bench, stated that there were sufficient grounds for the continuation of the protective order, specifically that the evidence "cause[d] concern for the court . . . [a]nd . . . cause[d] concern for the [plaintiff] as to potential harassment . . . [lying in wait for], surveilling." Although we remain mindful that "we allow every reasonable presumption in favor of the correctness of [the court's] action"; (internal quotation marks omitted) *S. B-R.* v. *J. D.*, supra, 208 Conn. App. 347; we cannot reasonably construe the court's statements to constitute factual findings that there were reasonable grounds to believe that the defendant both had stalked the plaintiff and would continue to commit such acts. The court did not make any such findings expressly, and we do not interpret the court's statements that the court and the plaintiff were "concern[ed]" as to "*potential* harassment . . . [lying in wait for], surveilling"; (emphasis added); as being adequate to comprise any such findings. The court's use of the word "potential" implies

[5] The defendant also argues that there was insufficient evidence to establish reasonable grounds to believe that the defendant both had stalked the plaintiff, including evidence to support the reasonable fear prong of stalking as statutorily defined, and would continue to stalk the plaintiff. Because the defendant's claim regarding the court's failure to make the requisite factual findings is dispositive, we need not reach his evidentiary claim.

only the possibility that stalking might occur in the future, not that stalking will continue. Indeed, the lack of subordinate findings by the court drawn from the evidence that would support these necessary findings further bolsters our conclusion. Cf., e.g., *Stacy B.* v. *Robert S.*, 165 Conn. App. 374, 377–79, 140 A.3d 1004 (2016) (in granting plaintiff's application for protective order under General Statutes (Rev. to 2015) § 46b-16a on basis of stalking, trial court noted numerous instances where defendant made disparaging and defamatory statements about plaintiff to others, including on online publication, to school board of educational institution that plaintiff's son attended, and to plaintiff's employer).

In addition, in order to find that the defendant had stalked the plaintiff pursuant to § 46b-16a (a), it was necessary for the court to make an attendant finding that there were reasonable grounds to believe that the plaintiff reasonably feared for his safety as a result of the defendant's actions. "The standard to be applied in determining the reasonableness of the victim's fear in the context of the crime of stalking is a subjective-objective one. . . . As to the subjective test, the situation and the facts must be evaluated from the perspective of the victim, i.e., did [he] in fact fear for [his] physical safety. . . . If so, that fear must be objectively reasonable, i.e., a reasonable person under the existing circumstances would fear for his or her personal safety." (Internal quotation marks omitted.) *S. B-R.* v. *J. D.*, supra, 208 Conn. App. 348; see also *L. H.-S.* v. *N. B.*, 341 Conn. 483, 494, 267 A.3d 178 (2021) ("under our tools of statutory construction, § 46b-16a unambiguously creates a subjective-objective standard for purposes of assessing fear"). The court's decision is wholly devoid of any findings vis-à-vis the reasonable fear prong, as the court's statements regarding the plaintiff having "concern" as to "potential harassment . . . [lying in wait for], surveilling" are insufficient to satisfy

this prong. The lack of subordinate findings by the court drawn from the evidence concerning the reasonable fear prong further supports our conclusion. Cf., e.g., *C. A.* v. *G. L.*, supra, 201 Conn. App. 736–37 (in granting plaintiff's application for civil protection order under § 46b-16a on basis of stalking, trial court found that parties had toxic relationship and were locked in adversarial litigation, defendant frequently had left messages on plaintiff's door, and defendant's anger was " 'escalating well beyond the litigation' "); *Stacy B.* v. *Robert S.*, supra, 165 Conn. App. 377 ("[t]he court highlighted a number of incidents that would cause any reasonable person under the same circumstances to fear for his personal safety and to fear that his employment, business and career [were] thereby threatened" (internal quotation marks omitted)).

In sum, we conclude that the court abused its discretion in issuing the order of civil protection, as modified, without making the necessary factual findings that there were reasonable grounds to believe that the defendant both had stalked and will continue to stalk the plaintiff.[6] See *S. B-R.* v. *J. D.*, supra, 208 Conn. App. 347–48. Accordingly, the order of civil protection, as modified, cannot stand.

[6] Relying on Practice Book § 61-10, the plaintiff argues that the defendant's claim regarding the court's failure to make the requisite factual findings is untenable because the defendant failed to file a motion for articulation of the court's decision pursuant to Practice Book § 66-5. See Practice Book § 61-10 (a) ("[i]t is the responsibility of the appellant to provide an adequate record for review"). We are not persuaded. As this court has instructed, prior to issuing an order of civil protection under § 46b-16a on the basis of stalking, a trial court *must* make factual findings "that there are reasonable grounds to believe that the defendant both stalked the plaintiff and will continue to commit such acts"; *S. B-R.* v. *J. D.*, supra, 208 Conn. App. 347; and the failure to do so "*will* constitute an abuse of discretion." (Emphasis added.) Id., 348. Here, there was no ambiguity or deficiency in the court's decision to be clarified; rather, the court's decision reflects that it committed error by failing to make the factual findings necessary to support the order of civil protection, as modified.

The judgment is reversed and the case is remanded with direction to vacate the order of civil protection, as modified.

In this opinion the other judges concurred.

JOHN W. MILLS *v.* STATEWIDE GRIEVANCE COMMITTEE (AC 46606)

Seeley, Westbrook and Sheldon, Js.

Syllabus

The plaintiff attorney appealed from the judgment of the trial court dismissing his appeal from the decision of the defendant finding that he violated the Rules of Professional Conduct by failing to act competently in his representation of a client and ordering a sanction. He claimed, inter alia, that the trial court improperly dismissed his appeal because the record did not provide clear and convincing evidence that he acted incompetently. *Held*:

The trial court properly determined that clear and convincing evidence supported the defendant's finding that the plaintiff had violated rule 1.1 of the Rules of Professional Conduct when he acted incompetently in filing a complaint for a client without naming that client's business as a party.

This court declined to review the plaintiff's claim that the defendant abused its discretion by ordering him to complete three hours of continuing legal education, as the plaintiff raised this claim for the first time on appeal and failed to assert any arguments or facts demonstrating exceptional circumstances that would justify review of his unpreserved claim.

Argued September 6—officially released October 8, 2024

Procedural History

Appeal from the decision of the defendant finding that the plaintiff's conduct violated the Rules of Professional Conduct and ordering a sanction, brought to the Superior Court in the judicial district of Hartford and tried to the court, *Cobb, J.*; judgment dismissing the appeal, from which the plaintiff appealed to this court. *Affirmed.*

Suzanne B. Sutton, for the appellant (plaintiff).

Brian B. Staines, chief disciplinary counsel, for the appellee (defendant).

Opinion

WESTBROOK, J. The plaintiff attorney, John W. Mills, appeals from the judgment of the trial court dismissing his appeal from the decision of the defendant, the Statewide Grievance Committee (committee). The committee found that the plaintiff acted incompetently in violation of rule 1.1 of the Rules of Professional Conduct by failing to name his client's business as a party to her lawsuit and by failing to provide proof of the client's individual damages. The plaintiff claims on appeal that the trial court improperly dismissed his appeal because (1) the record does not provide clear and convincing evidence that he acted incompetently in violation of rule 1.1, and (2) the committee abused its discretion by ordering him to complete three hours of continuing legal education. We affirm the judgment of the trial court.

The record reveals the following relevant facts as found by a reviewing committee of the Statewide Grievance Committee (reviewing committee). The plaintiff is an attorney licensed to practice law in Connecticut. Cristy Lombardi retained the plaintiff to represent her and her business in an action against her accountant's estate. Pursuant to that representation, the plaintiff filed a complaint on behalf of Lombardi in her individual capacity. The complaint did not name Lombardi's business as a party to the action. After a trial on the merits, the court, *Abrams, J.*, issued a memorandum of decision stating: "The claims regarding the damage to [Lombardi's] financial situation fail for a lack of proof. The court declines to award damages regarding the proven claims related to economic damages suffered by [Lombardi's] business because her business is not a party

to the suit." Lombardi subsequently filed a grievance complaint against the plaintiff with the committee.

On November 4, 2020, the New Haven Judicial District Grievance Panel found probable cause that the plaintiff had violated rule 1.1 of the Rules of Professional Conduct by failing to act competently in his representation of Lombardi. The reviewing committee subsequently conducted a hearing on the matter. In its March 25, 2022 decision, the reviewing committee found the following facts by clear and convincing evidence: "The [plaintiff] failed to name [Lombardi's] business, Endless Journeys, as a [party] in the Superior Court case against the estate. The [plaintiff] was aware that [Lombardi's] business had incurred financial damages, as he had represented exactly that in correspondence to various individuals on at least two occasions and prior to [Lombardi's] matter going to trial. Additionally, the evidence at trial referenced [Internal Revenue Service] documents addressed to [Lombardi's] business. The decision by the court, while it awarded $5000 in noneconomic damages to [Lombardi], declined to award other damages on the basis that there was no proof [Lombardi] individually sustained damages. As the decision indicated, the proof provided was as to [Lombardi's] business only, and the business was not a party to the matter."

The reviewing committee found that "[t]he [plaintiff's] conduct in failing to name the business as a party to the Superior Court matter, as well as failing to provide proof that would have substantiated [Lombardi's] claim of damages in her individual capacity, is a clear violation of rule 1.1 of the Rules of Professional Conduct." The reviewing committee ordered the plaintiff "to take, at his own expense, three . . . credit hours of continuing legal education . . . in legal ethics within nine . . . months of the issuance of this decision." Pursuant to

Practice Book § 2-35 (k),[1] the plaintiff requested review of the reviewing committee's decision. The committee thereafter issued a decision affirming the decision of the reviewing committee.

Pursuant to Practice Book § 2-38,[2] the plaintiff appealed from the committee's determination to the Superior Court. In its April 27, 2023 memorandum of decision, the court, *Cobb*, *J.*, found that clear and convincing evidence supported the reviewing committee's findings and conclusion that the plaintiff violated rule 1.1 of the Rules of Professional Conduct. The court dismissed the plaintiff's appeal. This appeal followed.

I

We first address the plaintiff's claim that the trial court improperly dismissed his appeal because the reviewing committee did not have clear and convincing evidence that he violated rule 1.1 of the Rules of Professional Conduct. Specifically, the plaintiff argues that (1) his failure to name Lombardi's business as a party to her litigation does not constitute incompetence and (2) he could not have acted incompetently because another attorney in his office was responsible for trying the case. We disagree.

The reviewing committee's conclusion that the plaintiff acted incompetently is a factual finding. See *Cohen* v. *Statewide Grievance Committee*, 339 Conn. 503, 520, 261 A.3d 722 (2021) ("[t]he reviewing committee's conclusion that the plaintiff made a 'knowingly false statement' is a factual finding"). "Factual findings of the review-

[1] Practice Book § 2-35 (k) provides in relevant part that, "[w]ithin thirty days of the issuance to the parties of the final decision by the reviewing committee, the respondent may submit to the Statewide Grievance Committee a request for review of the decision. . . ."

[2] Practice Book § 2-38 (a) provides in relevant part that "[a] respondent may appeal to the Superior Court a decision by the Statewide Grievance Committee or a reviewing committee imposing sanctions or conditions against the respondent . . . ."

ing committee are reviewed under the clearly erroneous standard." Id. "Although the [S]tatewide [G]rievance [C]ommittee is not an administrative agency . . . the court's review of its conclusions is similar to the review afforded to an administrative agency decision." (Citation omitted.) *Weiss* v. *Statewide Grievance Committee*, 227 Conn. 802, 811, 633 A.2d 282 (1993). "The burden is on the [S]tatewide [G]rievance [C]ommittee to establish the occurrence of an ethics violation by clear and convincing proof." (Internal quotation marks omitted.) *Somers* v. *Statewide Grievance Committee*, 245 Conn. 277, 290, 715 A.2d 712 (1998).

"Upon appeal, the court shall not substitute its judgment for that of the Statewide Grievance Committee or reviewing committee as to the weight of the evidence on questions of fact. The court shall affirm the decision of the committee unless the court finds that substantial rights of the [plaintiff] have been prejudiced because the committee's findings, inferences, conclusions, or decisions are: (1) in violation of constitutional provisions, rules of practice or statutory provisions; (2) in excess of the authority of the committee; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Practice Book § 2-38 (f). Stated succinctly, in reviewing a decision of the committee to sanction the plaintiff, "our role is limited to reviewing the record to determine if the facts as found are supported by the evidence contained within the record and whether the conclusions that follow are legally and logically correct." (Internal quotation marks omitted.) *Somers* v. *Statewide Grievance Committee*, supra, 245 Conn. 290.

Rule 1.1 of the Rules of Professional Conduct provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Commentary to the rule explains that "[c]ompetent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation." Rules of Professional Conduct 1.1, commentary.

Here, the reliable, probative, and substantial evidence in the record provides clear and convincing evidence that the plaintiff acted incompetently in violation of rule 1.1 of the Rules of Professional Conduct. Lombardi retained the plaintiff to represent both her and her business, which is a limited liability company. The plaintiff, however, failed to inquire into the legal status of Lombardi's business and, instead, assumed that Lombardi was doing business as a trade name, and, therefore, he did not include the business as a party to the litigation.

"[A] fictitious or assumed business name, a trade name, is not a legal entity; rather, it is merely a description of the person or corporation doing business under that name." *America's Wholesale Lender* v. *Pagano*, 87 Conn. App. 474, 477, 866 A.2d 698 (2005). A limited liability company, however, "is a distinct legal entity whose existence is separate from its members. . . . [It] has the power to sue or to be sued in its own name . . . or may be a party to an action brought in its name by a member or manager. . . . *A member or manager, however, may not sue in an individual capacity to recover for an injury based on a wrong to the limited*

liability company." (Emphasis in original; internal quotation marks omitted.) *Bernblum* v. *Grove Collaborative, LLC*, 211 Conn. App. 742, 756, 274 A.3d 165, cert. denied, 343 Conn. 925, 275 A.3d 626 (2022). The reviewing committee found that, although "[v]arious documents and letters from the [Internal Revenue Service] that were submitted into evidence were addressed to Lombardi Roberts Travel, Inc., d/b/a Endless Journeys," only "[t]wo documents in evidence . . . referenced [Lombardi] in her individual capacity," thereby indicating that Lombardi's business was a separate legal entity. Thus, because the plaintiff failed to name Lombardi's business as a party, the court that heard the underlying civil action, which found that the business sustained $2369.22 in economic damages, was unable to award those damages to Lombardi in her individual capacity.

The plaintiff does not dispute these facts. Rather, he argues that rule 1.1 of the Rules of Professional Conduct did not impose a duty to inquire about the legal status of Lombardi's business and that he "competently filed the complaint upon information known at the time of filing." The plaintiff, however, represented Lombardi's business and, at the time he filed the complaint, was aware that Lombardi's business had incurred financial damage. Evidence in the record shows that, before the plaintiff filed the complaint, he sent correspondence stating that the Internal Revenue Service had levied and withdrawn money from Lombardi's business bank account and that both Lombardi and her business had incurred damages. Moreover, he wrote in the complaint that the Internal Revenue Service levied Lombardi's personal and business bank accounts as a result of her failure to file income tax returns and that Lombardi was entitled to recover economic damages. The plaintiff therefore had a duty to determine the business' legal

status and the implications of that status on Lombardi's ability to recover economic damages.

Had the plaintiff adequately prepared for litigation, as required by rule 1.1 of the Rules of Professional Conduct, he would have learned that the business is an entity that had to be named as a party for the court to award the economic damages sought. The fact that another attorney, rather than the plaintiff, represented Lombardi and her business at trial does not absolve the plaintiff of his earlier incompetence in filing the complaint without adequate preparation. On the basis of our review of the record, we conclude that the record fully supports the reviewing committee's finding that, by clear and convincing evidence, the plaintiff had violated rule 1.1.

II

The plaintiff next claims that the trial court improperly dismissed his appeal because the committee abused its discretion by ordering him to complete three hours of continuing legal education. He argues that the court should have (1) made specific findings regarding aggravating and mitigating factors under the American Bar Association's Standards for Imposing Lawyer Sanctions (ABA standards)[3] and (2) concluded that no sanction was appropriate. The committee, however, contends that this claim is not properly preserved for

[3] The plaintiff argues that the trial court should have applied ABA standards 3.0, 9.22, and 9.32. Standard 3.0 provides: "In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors: (a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors." A.B.A., Compendium of Professional Responsibility: Rules and Standards (2017 Ed.), p. 455, standard 3.0. Standard 9.22 provides the following aggravating factors: "(a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience

review because the plaintiff did not raise it before the trial court. We agree with the committee and decline to review the merits of this claim.

Practice Book § 60-5 provides that this "court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial." "Only in the most exceptional circumstances will this court consider a claim that was not raised [before the trial court]. . . . Such exceptional circumstances may occur where a new and unforeseen constitutional right has arisen between the time of trial and appeal or where the record supports a claim that a litigant has been deprived of a fundamental constitutional right and a fair trial. . . . An exception may also be made where consideration of the question is in the interest of public welfare or of justice between the parties." (Internal quotation marks omitted.) *Statewide Grievance Committee* v. *Egbarin*, 61 Conn. App. 445, 452, 767 A.2d 732, cert. denied, 255 Conn. 949, 769 A.2d 64 (2001).

The record reveals that the plaintiff did not raise before the trial court the issue of whether the committee's sanction was proper. Neither the plaintiff's complaint nor his written brief in support of his appeal to the trial court raises this issue. His brief states: "[The plaintiff] submits this brief in support of his appeal to the Superior Court of the decision . . . of the

in the practice of law; (j) indifference to making restitution; (k) illegal conduct, including that involving the use of controlled substances." Id., p. 463, standard 9.22. Standard 9.32 provides the following mitigating factors: "(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical disability; (i) mental disability or chemical dependency including alcoholism or drug abuse . . . (j) delay in disciplinary proceedings; (k) imposition of other penalties or sanctions; (*l*) remorse; (m) remoteness of prior offenses." Id., p. 464, standard 9.32.

[reviewing committee] . . . which was affirmed by the [committee] . . . to the extent that the decision concluded that the [plaintiff] engaged in unethical conduct in violation of rule 1.1 of the Rules of Professional Conduct." At the January 24, 2023 hearing before the trial court, the plaintiff similarly argued that the reviewing committee's finding that he violated rule 1.1 was not supported by the record. He did not, however, argue that the committee's order to complete three hours of continuing legal education was an improper sanction. Moreover, the trial court, in its memorandum of decision, stated that "the plaintiff argues only that the reviewing committee's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." The trial court addressed the committee's order only to the extent that it stated that the "reviewing committee, therefore, correctly concluded that the plaintiff's conduct violated rule 1.1 and ordered a modest penalty, requiring him to undergo three hours of continuing legal education."

On the basis of our review of the record, it is clear that the plaintiff is raising this claim for the first time in this appeal. The plaintiff, however, fails to assert any arguments or facts demonstrating exceptional circumstances that would justify review of this unpreserved claim. Accordingly, we decline to review the merits of this claim. See *Statewide Grievance Committee* v. *Egbarin*, supra, 61 Conn. App. 452 (declining to reach merits of claim that was not raised on appeal to trial court).

The trial court properly determined that the committee had clear and convincing evidence that the plaintiff acted incompetently in violation of rule 1.1 of the Rules of Professional Conduct.

The judgment is affirmed.

In this opinion the other judges concurred.

TOWN OF BROOKFIELD *v.* HOLLENE GOHN (AC 46897)

Clark, Seeley and Harper, Js.

Syllabus

The defendant appealed from the judgment of the trial court granting injunctive relief in favor of the plaintiffs, the town of Brookfield and its zoning enforcement officer. On appeal, the defendant made various claims that the trial court erred by enjoining her from violating certain of the Brookfield Zoning Regulations. *Held*:

This court thoroughly reviewed the claims raised by the defendant and concluded that they lacked merit.

Submitted on briefs September 12—officially released October 8, 2024

Procedural History

Action seeking, inter alia, a permanent injunction compelling the defendant to bring her property into compliance with certain of the plaintiff's zoning regulations, and for other relief, brought to the Superior Court in the judicial district of Danbury, where the court, *Brazzel-Massaro*, *J.*, granted in part the plaintiff's motion to cite in additional parties; thereafter, Francis W. Lollie was added as a party plaintiff; subsequently, the matter was tried to the court, *Medina*, *J.*; judgment for the plaintiffs, from which the defendant appealed to this court. *Affirmed.*

Hollene Gohn, self-represented, submitted a brief as the appellant (defendant).

Barbara M. Schellenberg, submitted a brief for the appellees (plaintiffs).

Opinion

PER CURIAM. The self-represented defendant, Hollene Gohn, appeals from the judgment of the trial court granting injunctive relief in favor of the plaintiffs, the town of Brookfield (town) and Francis W. Lollie, the town's zoning enforcement officer.[1] On appeal, it appears

[1] This action originally was commenced by the town only. On July 22, 2022, the town filed a motion to cite in additional parties in which it sought,

that the defendant is claiming that by enjoining her from violating certain of the Brookfield Zoning Regulations (zoning regulations), the court erred by (1) incorrectly interpreting the applicable regulatory provisions, (2) violating her constitutional rights to due process and equal protection, (3) holding an evidentiary hearing after the close of trial, (4) granting the relief sought by the plaintiffs despite insufficient evidence, and (5) failing to render its decision within 120 days. We are not persuaded by the defendant's claims and, accordingly, affirm the judgment of the court.

The record reveals the following relevant facts and procedural history. The defendant resides at a property that she owns in a residentially zoned area of the town, where she and her husband operate a landscaping business. The underlying dispute arose out of a neighbor's complaint filed with the town's land use office concerning construction equipment and vehicles that were being stored on the defendant's property. Lollie investigated potential zoning violations by the defendant following receipt of the complaint and, during his investigation, observed and photographed equipment and vehicles related to the defendant's landscaping business in the front of the property, as well as vehicles parked outside of designated driveway areas. Lollie subsequently issued a notice of a zoning violation dated March 25, 2021, alleging that the defendant was impermissibly using her property as a "contractor's yard,"[2]

inter alia, to add Lollie as a plaintiff in this matter. The court granted the motion, as it pertained to Lollie, on August 23, 2022.

[2] Specifically, the notice alleged that the defendant was "running a [contractor's] yard from the property . . . which is a violation of [the zoning regulations] and is not a permitted use in a [r]esidential [z]one," and notified her that "any and all contractor's equipment should be removed promptly." The notice also informed her that "the parking of vehicles needs to be within the designated driveways."

The term "contractor's yard" is defined in article 2 of the zoning regulations as follows: "A commercially or industrially zoned lot, with or without support structures and buildings, limited to the storage and maintenance of equipment commonly used in the construction industry, including but not neces-

notifying her that the vehicles needed to be parked in designated driveway areas, and giving her until April 5, 2021, to bring the property into compliance with the zoning regulations.

Because the defendant did not bring the property into compliance or respond to the notice, Lollie investigated further on April 7, 2021. On that date, he observed and photographed construction equipment and vehicles that were being stored at the defendant's property, as well as other vehicles that were parked outside of designated driveway areas. Lollie subsequently issued a cease and desist order to the defendant, which was delivered to her residence on April 14, 2021, ordering the defendant to bring the property into compliance with the zoning regulations. The defendant continued not to bring the property into compliance or to respond and, on April 11 and 16, 2021, additional complaints of the same nature as the first regarding the defendant's property were received by the town's land use office. On April 26, 2021, Lollie sent a letter to the defendant, notifying her that the town's zoning commission was giving her until May 26, 2021, to remove all commercial equipment from the property or risk further enforcement. The defendant's noncompliance and unresponsiveness continued, resulting in Lollie issuing another cease and desist order to the defendant on August 9, 2021. On September 17, 2021, he issued her a citation which alleged violations of §§ 4.2 (A)[3] and 6.12 (B) (1) (e)[4] of

sarily limited to dump trucks, bucket loaders, excavators, bulldozers, and the like. The lot may also store construction materials acquired in anticipation of their use at remote locations." Brookfield Zoning Regs., art. 2, § 2.2.

[3] Section 4.2 of the zoning regulations is titled, "Permitted Uses," and provides a table specifying that a "contractor's yard" is permitted only in commercial and industrial zones. Brookfield Zoning Regs., art. 4, § 4.2 (A) (11).

[4] Section 6.12 of the zoning regulations is titled, "Neighborhood Anti-Blight," and provides in relevant part: "(B) (1) Unless otherwise determined by the [Zoning] Commission, uses, items, or materials to be specifically prohibited from placement within any residential front yard are . . . (e)

the zoning regulations and assessed a $150 fine against the defendant. The defendant, during a subsequent phone call with Lollie, responded by referring to him as "the devil," and alleging that he was biased against her based on their contacts during a prior zoning dispute in Danbury.[5] She did not, however, otherwise appeal, act on the citation or pay the fine. From December 8, 2021, to June 8, 2022, Lollie periodically investigated the defendant's property and continued to find that the defendant was in violation of the zoning regulations.

In between Lollie's periodic investigations, counsel for the plaintiffs sent a letter to the defendant dated January 28, 2022, demanding that she bring her property into compliance with the zoning regulations by February 27, 2022, or a lawsuit would be commenced against her seeking court enforcement of the zoning regulations, along with fines, penalties, attorney's fees and costs. The defendant's property was not brought into compliance, and the town brought an action against the defendant by way of a verified complaint filed on April 18, 2022, which later was amended on July 22, 2022, to include Lollie as a plaintiff. In their amended complaint, the plaintiffs sought injunctive relief and civil penalties pursuant to General Statutes § 8-12[6] due

The parking of any vehicle except within the designated driveways and turnarounds. . . ." Brookfield Zoning Regs., art. 6, § 6.12 (B) (1) (e).

[5] As to this prior zoning dispute, Lollie testified that "long ago," while he was employed as an "[Assistant] Construction Manager, Permit Inspector, for the city of Danbury," he had issued citations to the defendant and her husband for "cut[ting] an illegal driveway in . . . their property without a permit," having an illegal fence on their property, and having a "landscaping contractor's yard also." He further testified that he was one of the plaintiffs in a subsequent zoning enforcement lawsuit filed by the city of Danbury against the defendant and her husband.

[6] General Statutes § 8-12 provides in relevant part: "If . . . any building, structure or land has been used, in violation of any provision . . . of any bylaw, ordinance, rule or regulation made under authority conferred [by chapter 124 of title 8 of the General Statutes], any official having jurisdiction, in addition to other remedies, may institute an action or proceeding to prevent such . . . use or to restrain, correct or abate such violation or . . . to prevent any illegal act, conduct, business or use in or about such premises.

to the defendant's failure to comply with certain zoning regulations, to wit, articles 4 and 6, specifically, §§ 4.2 and 6.12 (B) (1) (e), of the zoning regulations. The basis of these violations was the defendant's storage of vehicles and equipment used for the landscaping business in the front of her property, and her parking of vehicles on the property outside of designated driveway areas. The defendant filed an answer in which she raised sixty-seven special defenses.

At the court trial held on September 8 and November 18, 2022, the plaintiffs were represented by counsel and the defendant appeared in a self-represented capacity. The court heard testimony from three witnesses: the defendant, Lollie and Courtney George, an attorney employed by counsel for the plaintiffs. The defendant extensively cross-examined Lollie. The court, *Medina, J.*, issued an order on March 17, 2023, for a supplemental evidentiary hearing to be held for the purpose of affording the parties an opportunity to enter the zoning

Such regulations shall be enforced by the officer or official board or authority designated therein, who shall be authorized to cause any building, structure, place or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereon in violation of any provision of the regulations made under authority of the provisions of this chapter . . . . The owner or agent of any building or premises where a violation of any provision of such regulations has been committed or exists . . . who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation exists, shall be fined not less than ten dollars or more than one hundred dollars for each day that such violation continues; but, if the offense is wilful, the person convicted thereof shall be fined not less than one hundred dollars or more than two hundred fifty dollars for each day that such violation continues . . . . Any person who, having been served with an order to discontinue any such violation, fails to comply with such order within ten days after such service . . . or continues to violate any provision of the regulations made under authority of the provisions of this chapter specified in such order shall be subject to a civil penalty not to exceed two thousand five hundred dollars . . . . If the court renders judgment for such municipality and finds that the violation was wilful, the court shall allow such municipality its costs, together with reasonable attorney's fees to be taxed by the court. . . ."

regulations into evidence in full, which neither party had done previously. The defendant filed an objection to the court's order, which the court overruled on April 19, 2023, and the supplemental evidentiary hearing was held on April 20, 2023.

On August 18, 2023, the court issued a memorandum of decision granting a permanent injunction and enjoining the defendant from continuing to violate §§ 4.2 and 6.12 (B) (1) (e) of the zoning regulations. Further, the court ordered the defendant "to cure all existing violations of [§§ 4.2 and 6.12 (B) (1) (e) of the zoning regulations] by no later than September 25, 2023." The court also denied the defendant's special defenses[7] and deferred ruling on the damages requested by the plaintiffs until after a hearing could be held on the issue. This appeal followed.

The defendant's appeal raises a number of claims. We have thoroughly reviewed the claims raised on appeal and conclude that they lack merit.

The judgment is affirmed.

JOZEF SAMSEL *v.* WILLIAM PARKS
(AC 47018)

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

Syllabus

The defendant appealed from the trial court's denial of his motion to open the judgment of possession rendered for the plaintiff in this summary process

[7] The court determined that: "Many of [the special defenses] are not defenses but evidentiary claims or attacks on [Lollie]. Utilizing a generous definition of a 'special defense' this court considers paragraph numbers [two, four, eighteen, twenty-seven, thirty, thirty-one, forty-four] and [fifty-two] as containing sufficient substance to be construed, in a light most favorable to [the] defendant as a defense. As to each and every one of those defenses, this court finds the defendant failed to satisfy her burden of proof." Furthermore, the court "found no evidence to support [the defendant's] accusation" that Lollie was biased against her due to his involvement in a prior zoning action in Danbury.

action. The defendant claimed that the trial court improperly denied his motion to open. *Held:*

The defendant's appeal was dismissed as moot because he was no longer in possession of the subject property, and he failed to demonstrate that any recognized exception to the mootness doctrine applied.

Submitted on briefs September 20—officially released October 8, 2024

Procedural History

Summary process action, brought to the Superior Court in the judicial district of New Haven, Housing Session at Meriden, where the court, *Hon. John F. Cronan*, judge trial referee, rendered judgment of possession for the plaintiff; thereafter, the court, *Hon. John F. Cronan*, judge trial referee, denied the defendant's motion to open the judgment, and the defendant appealed to this court. *Appeal dismissed.*

David E. Rosenberg filed a brief for the appellant (defendant).

Opinion

PER CURIAM. In this summary process action, the defendant, William Parks, appeals from the judgment of the trial court denying his motion to open the judgment of possession in favor of the plaintiff, Jozef Samsel. On appeal, the defendant claims that the court improperly denied his motion to open the judgment. We dismiss the defendant's appeal as moot.

The record reflects the following undisputed facts. The plaintiff owns the premises located at 421 E. Mitchell Avenue in Cheshire (premises). The parties executed a written lease agreement pursuant to which the defendant agreed to rent the premises. On August 1, 2023, the plaintiff served the defendant with a notice to quit possession, which stated that the defendant's lease was terminated due to, inter alia, nonpayment of rent, and ordered him to vacate the premises by August 31, 2023.

On September 10, 2023, the plaintiff served the defendant with a summary process summons and complaint with a return date of September 19, 2023, which was filed on September 13, 2023. On September 25, 2023, after the defendant failed to file an appearance within the time allotted, the plaintiff filed a motion for judgment for failure to appear pursuant to General Statutes § 47a-26. The trial court granted the motion and rendered judgment for the plaintiff for immediate possession of the premises on Monday, October 2, 2023.

In accordance with General Statutes § 47a-35,[1] the automatic stay of the judgment expired on Monday, October 9, 2023, and counsel for the defendant filed an appearance and a motion to open and vacate judgment on October 10, 2023.[2] In that motion, counsel for the defendant stated that the defendant had "just engaged" counsel and that he "is an elderly, unsophisticated party" who did not understand that the underlying action was different from a prior action filed by the plaintiff and was "unaware of the significance of the filing of the plaintiff's motion for default" until he received the notice of judgment.

Also on October 10, 2023, the plaintiff filed an objection to the defendant's motion to open. In that objection, the plaintiff asserted that "the prior action to which [the

[1] General Statutes § 47a-35 provides in relevant part: "(a) Execution shall be stayed for five days from the date judgment has been rendered, provided any Sunday or legal holiday intervening shall be excluded in computing such five days.

"(b) No appeal shall be taken except within such five-day period. If an appeal is taken within such period, execution shall be stayed until the final determination of the cause, unless it appears to the judge who tried the case that the appeal was taken solely for the purpose of delay . . . . If execution has not been stayed, as provided in this subsection, execution may then issue . . . ."

[2] The filing of "the motion to open . . . *outside* of the five day statutory appeal period from the judgment of possession" does not stay execution of the judgment. (Emphasis in original.) *Atlantic St. Heritage Associates, LLC* v. *Bologna*, 204 Conn. App. 163, 170, 252 A.3d 881 (2021).

defendant] is referring was withdrawn . . . on May 20, 2023. . . . The defendant has already gone through an eviction process . . . [in which] he again failed to appear and then filed a motion to open in response to the plaintiff's motion for default. . . . In [that] motion to open . . . [the defendant] made the identical claim [that he is] 'elderly and unsophisticated' and 'unaware of the significance of the filing of the plaintiff's motion for default.' . . . Like in the former action, [the defendant] now has again chosen to fail to appear and has claimed thereafter to be unaware of the significance of the motion for default for failure to appear."

On October 11, 2023, the court denied the defendant's motion to open and sustained the plaintiff's objection thereto without elaboration. On October 17, 2023, the defendant filed a motion to reargue, requesting that the court allow reargument and/or reconsideration of the denial of his motion to open or, in the alternative, that the court articulate the reasoning for its decision. The plaintiff filed an objection to the defendant's motion the following day, and the court denied the motion to reargue on October 19, 2023, again without elaboration. The defendant filed the present appeal on October 23, 2023.

On October 27, 2023, the plaintiff filed a motion to terminate stay with the Office of the Appellate Clerk, which forwarded the motion to the trial court for a hearing and decision pursuant to Practice Book § 61-11 (e). The defendant filed an objection to the motion on November 20, 2023, and the trial court held a hearing on the motion on the same day. In a memorandum of decision dated November 27, 2023, the court granted the motion to terminate stay.[3] The defendant did not

[3] Given that the defendant's motion to open was filed outside of the statutory appeal period, it appears that there was no stay in place for the court to terminate. See footnote 2 of this opinion. Nevertheless, it is irrelevant to our mootness analysis whether the defendant was evicted because no stay existed or because the court terminated the stay.

seek review of that decision pursuant to Practice Book § 66-6,[4] and an execution for possession of the premises issued on December 20, 2023.[5] A state marshal performed the eviction on December 26, 2023, and returned the satisfied execution to the court on December 27, 2023.

"This court has consistently held that an appeal from a summary process judgment becomes moot where, at the time of the appeal, the defendant is no longer in possession of the premises." (Internal quotation marks omitted.) *Friedman* v. *Gomez*, 172 Conn. App. 254, 260, 159 A.3d 703 (2017). "Mootness is a question of justiciability that must be determined as a threshold matter because it implicates this court's subject matter jurisdiction. . . . An actual controversy must exist not only at the time the 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." (Citations omitted; internal quotation marks omitted.) *Renaissance Management Co.* v. *Barnes*, 175 Conn. App. 681, 685–86, 168 A.3d 530 (2017).

Because the defendant is no longer in possession of the premises, his appeal is moot unless an exception

[4] Practice Book § 66-6 provides in relevant part: "(a) The court may, on written motion for review stating the grounds for the relief sought, modify or vacate . . . (4) any order made by the trial court concerning a stay of execution in a case on appeal . . . ."

Pursuant to Practice Book § 61-14, "[t]he sole remedy of any party desiring the court to review an order concerning a stay of execution shall be by motion for review under Section 66-6."

[5] The defendant filed an application for an ex parte temporary injunction and a motion to quash execution (writ of audita querela) on December 26, 2023, which were denied by the court that same day. On December 27, 2023, the defendant filed a motion to reargue/reconsider the denial of his writ of audita querela, which the court denied "as moot, the judgment having been executed."

to the mootness doctrine applies. The defendant recognizes this fact in his appellate brief and argues that his claim is nevertheless reviewable pursuant to both the collateral consequences and "capable of repetition, yet evading review" exceptions to the mootness doctrine. We are not persuaded and, therefore, dismiss the appeal as moot.

It is well settled that "the court may retain jurisdiction when a litigant shows that there is a reasonable possibility that prejudicial collateral consequences will occur. . . . [T]he litigant must establish these consequences by more than mere conjecture, but need not demonstrate that these consequences are more probable than not. This standard provides the necessary limitations on justiciability underlying the mootness doctrine itself. Whe[n] there is no direct practical relief available from the reversal of the judgment . . . the collateral consequences doctrine acts as a surrogate, calling for a determination whether a decision in the case can afford the litigant some practical relief in the future." (Internal quotation marks omitted.) *In re P. M.*, 226 Conn. App. 378, 386–87, 318 A.3d 1085, cert. denied, 349 Conn. 919, A.3d (2024).

In the present case, the defendant contends that, "as a result of the trial court's abuse of its discretion, the [defendant] has [suffered] and continues to suffer actual and substantial collateral consequences, including but not limited to harm to the defendant's access for his benefits through the Veteran's Administration and to his reputation, which continue to impair his ability to secure safe and secure housing." These assertions, without more, amount to mere conjecture.

This court previously rejected similar contentions in *Iacurci* v. *Wells*, 108 Conn. App. 274, 947 A.2d 1034 (2008). In that case, as in the present one, the court considered whether the appeal from a summary process

judgment had been rendered moot because the defendants no longer were in possession of the leased property. Id., 276. On appeal, the defendants claimed "that their reputation in the community [had] been and [would] be adversely affected by the eviction judgment rendered against them." Id., 281. In addition, one of the defendants, who was an attorney for a casino, claimed that his gaming license, which he was required to maintain as a casino employee, would "be affected adversely by the summary process judgment because he [was] required to disclose all judgments against him [pursuant to] certain gaming license requirements." Id., 282–83.

In rejecting these contentions, this court explained that "the defendants . . . failed to show how a summary process eviction, in and of itself, damages a person's reputation in the community at all, much less that it rises to the level such that we would be inclined to recognize it as a collateral consequence that would allow this court to review an otherwise moot appeal. Contra *Putman* v. *Kennedy*, 279 Conn. 162, 900 A.2d 1256 (2006) (defendant's otherwise moot appeal of expired domestic violence restraining order reviewable because of its reasonably possible negative impact on reputation in community); *Williams* v. *Ragaglia*, 261 Conn. 219, 802 A.2d 778 (2002) (en banc) (foster parent's otherwise moot appeal regarding revocation of foster care license deemed reviewable due in part to possibility that revocation information would be disseminated through government agencies creating reasonable possibility of negative impact on reputation as foster parent); *Statewide Grievance Committee* v. *Whitney*, 227 Conn. 829, 633 A.2d 296 (1993) (attorney's otherwise moot appeal of expired suspension reviewable because of collateral consequences to attorney's reputation). . . .

"[Moreover] [t]he defendants [failed to] explain how [the defendant attorney's] license adversely will be

affected. Without more, we are unable to determine, without speculating, whether there is a reasonable possibility that prejudicial collateral consequences will occur. . . . Because this court will not speculate on what is not in the record, we decline to review this claim." (Citation omitted; footnote omitted.) *Iacurci* v. *Wells*, supra, 108 Conn. App. 282–83.

The same reasoning applies in the present case, in which the defendant also has failed to explain how the summary process judgment damages his reputation in the community or how it affects his "access for his benefits through the Veteran's Administration." Cf. *Housing Authority* v. *Lamothe*, 225 Conn. 757, 765, 627 A.2d 367 (1993) (holding that appeal was not moot despite defendant's vacating of premises because judgment would have potentially prejudicial collateral consequences to defendant given plaintiff's concession that eviction from federally subsidized housing would hinder defendant's ability to obtain future low-income housing). As in *Iacurci*, because the defendant offers mere conjecture as to possible collateral consequences, "we are unable to determine, without speculating, whether there is a reasonable possibility that prejudicial collateral consequences will occur." *Iacurci* v. *Wells*, supra, 108 Conn. App. 283. Therefore, because we "will not speculate on what is not in the record"; id.; the defendant has failed to demonstrate that the collateral consequences doctrine applies in the present case.

The defendant also argues that his claim is reviewable under the capable of repetition, yet evading review exception. See *Loisel* v. *Rowe*, 233 Conn. 370, 382–83, 660 A.2d 323 (1995). There are three requirements "for an otherwise moot question to qualify for review under the 'capable of repetition, yet evading review' exception . . . . First, the challenged action, or the effect of the challenged action, by its very nature must be of a limited duration so that there is a strong likelihood that the

substantial majority of cases raising a question about its validity will become moot before appellate litigation can be concluded. Second, there must be a reasonable likelihood that the question presented in the pending case will arise again in the future, and that it will affect either the same complaining party or a reasonably identifiable group for whom that party can be said to act as surrogate. Third, the question must have some public importance. Unless all three requirements are met, the appeal must be dismissed as moot." Id., 382–83.

The defendant argues that "it is unquestioned that summary process actions are, by their very nature, limited proceedings, and without addressing the issues on appeal, the effects of the challenged actions would evade adjudication indefinitely. Second, the issues raised in this appeal will most certainly arise again . . . and the effects of the challenged action will affect unrepresented and underrepresented tenants in housing matters in the future. Finally, the question of how the trial courts can and should address tenant litigants . . . is clearly a matter of public importance." We conclude that the first requirement of the capable of repetition, yet evading review exception is not satisfied in the present case.

"The first [requirement] pertains to the length of the challenged action. . . . The basis for this [requirement] derives from the nature of the exception. If an action or its effects is not of inherently limited duration, the action can be reviewed the next time it arises, when it will present an ongoing live controversy. Moreover, if the question presented is not strongly likely to become moot in the substantial majority of cases in which it arises, the urgency of deciding the pending case is significantly reduced." (Internal quotation marks omitted.) *Renaissance Management Co.* v. *Barnes*, supra, 175 Conn. App. 687.

The defendant has appealed from the denial of his motion to open a default judgment rendered against him in a summary process action. Although "[s]ummary process appeals are particularly susceptible to becoming moot upon some action taken by the parties"; *Housing Authority* v. *Lamothe*, supra, 225 Conn. 763; such cases do not involve "the functionally insurmountable time constraints" involved in the "[p]aradigmatic examples [of] abortion cases and other medical treatment disputes." (Internal quotation marks omitted.) *Wendy V.* v. *Santiago*, 319 Conn. 540, 546, 125 A.3d 983 (2015). As § 47a-35 makes clear, termination of the automatic stay and eviction of a tenant during the pendency of an appeal is the exception—not the rule—in summary process actions. See General Statutes § 47a-35 (b) ("[i]f an appeal is taken within such period, *execution shall be stayed* until the final determination of the cause, *unless* it appears to the judge who tried the case that the appeal was taken solely for the purpose of delay" (emphasis added)). Pursuant to Practice Book § 63-1 (c) (1), the filing of a motion to open within the five day appeal period set forth in § 47a-35 suspends that appeal period until the trial court resolves the motion.[6] See *Atlantic St. Heritage Associates, LLC* v. *Bologna*, 204 Conn. App. 163, 170–71, 252 A.3d 881 (2021).

Thus, so long as both the motion to open and the appeal from the denial thereof are filed within the respective five day appeal periods, a tenant will not be dispossessed of the premises during the pendency of an appeal in the majority of cases. Therefore, the issue presented here—namely, whether the trial court abused its discretion by denying a tenant's motion to open a default judgment—is not likely to become moot in the vast majority of summary process cases. This is evident

[6] As previously noted; see footnote 4 of this opinion; when a trial court terminates the automatic stay pursuant to § 47a-35 (b), an appellant may file a motion for review of that decision in this court.

from this court's recent decisions. See, e.g., *Prime Management, LLC* v. *Arthur*, 217 Conn. App. 737, 754, 290 A.3d 401 (2023) (reversing judgment denying defendant tenant's motion to open default judgment); *Josephine Towers, L.P.* v. *Kelly*, 199 Conn. App. 829, 835, 238 A.3d 732 (considering merits of defendant tenant's appeal from denial of motion to open filed after appeal period from judgment of possession had expired), cert. denied, 335 Conn. 966, 240 A.3d 281 (2020); *Purtill* v. *Cook*, 197 Conn. App. 22, 26–27, 231 A.3d 245 (2020) (affirming judgment denying defendant tenant's motion to open default judgment). Accordingly, because the issue presented will not evade review, the capable of repetition, yet evading review exception to the mootness doctrine does not apply in the present case. See *Wendy V.* v. *Santiago*, supra, 319 Conn. 547.

Consequently, because we can afford the defendant no practical relief, and because he has failed to demonstrate that a recognized exception to the mootness doctrine applies, we dismiss the defendant's appeal for lack of subject matter jurisdiction.

The appeal is dismissed.