CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

IN RE S. F. ET AL.*
(AC 47517)

Alvord, Cradle and Harper, Js.

Syllabus

The respondent father appealed from the judgments of the trial court terminating his parental rights with respect to his minor children. The father claimed that he was denied due process because his trial counsel had rendered ineffective assistance by failing to object to the admission into evidence of hearsay contained in testimony and exhibits submitted by the petitioner, the Commissioner of Children and Families. *Held*:

The father did not demonstrate that his counsel rendered ineffective assistance, as there were one or more possible strategic reasons that were objectively reasonable for not objecting to the exhibits and testimony.

The father did not show that his counsel's vigorous cross-examination of a social worker for the Department of Children and Families in lieu of objecting to hearsay in the department's social study was not objectively reasonable.

Argued September 10—officially released October 30, 2024**

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

** October 30, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Procedural History

Petitions by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor children, brought to the Superior Court in the judicial district of New Haven, Juvenile Matters, and tried to the court, *Conway*, *J.*; judgments terminating the respondents' parental rights, from which the respondent father appealed to this court. *Affirmed.*

Matthew C. Eagan, assigned counsel, for the appellant (respondent father).

Nisa Khan, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Monica O'Connell*, assistant attorney general, for the appellee (petitioner).

Opinion

ALVORD, J. The respondent father, Perry F., appeals from the judgments of the trial court, rendered in favor of the petitioner, the Commissioner of Children and Families, terminating his parental rights with respect to his children, A, B, and C.[1] On appeal, the respondent claims that he was denied his due process right to the effective assistance of counsel.[2] We affirm the judgments of the trial court.

A was born in December, 2016, B was born in September, 2018, and C was born in April, 2020. The family's involvement with the Department of Children and Families (department) dates back at least to April, 2017,

[1] The court also terminated the parental rights of the children's mother, Bernisha R. Because she has not appealed from those judgments, we refer to Perry F. as the respondent and to Bernisha by name throughout this opinion. Unless necessary to our analysis of the claims raised by the respondent, in this opinion we need not and do not address the court's findings and conclusions with respect to Bernisha.

[2] The attorney for the minor children has filed a statement adopting the appellate brief of the petitioner.

when A was adjudicated neglected and committed to the petitioner's custody. In December, 2018, B was adjudicated neglected and committed to the petitioner's custody. In October, 2019, the court revoked the commitment as to both A and B, and the children were reunified with the respondent under a six month order of protective supervision, "with an explicit mandate that [the children's mother, Bernisha] not have unsupervised contact with the children, nor was she to reside with the children. Unbeknownst to [the department], throughout the period of the court-ordered protective supervision continuing through the time when [the department] administratively closed its case in September, 2020,[3] and beyond, [Bernisha] covertly resided with the respondent . . . and [the] children, and [the respondent] left the children in [Bernisha's] unsupervised care." (Footnote in original.)

"In the early morning hours of December 12, 2020, [the department] . . . assumed temporary custody of [A, B, and C] after police found the three children alone in a Days Inn hotel room, a room [the respondent] checked into with the three children just hours before [Bernisha] was shot in the leg as she was returning to her separate Days Inn room after having purchased cigarettes at a nearby gas station."

On December 15, 2020, the petitioner obtained ex parte orders of temporary custody. The following day, on December 16, 2020, the petitioner filed neglect petitions as to the children.

"The alleged shooter [of Bernisha], Jaymar Kelly, an acquaintance of [the respondent], was arrested and incarcerated in January, 2021. In April, 2021, [the

[3] "The court-ordered protective supervision period ran from October, 2019, to April, 2020. Given that [C was] discharged to [the respondent's] care in April, 2020, [the department] administratively, but without court involvement, remained involved with the family until September, 2020."

respondent] was arrested on various charges, including conspiracy [to commit] assault, risk of injury [to a child], and threatening . . . stemming from the December 11 shooting and its aftermath. From April to August, 2021, [the respondent] was held on bond by the Department of Correction . . . . In October, 2022, [the respondent] pleaded [guilty] to possession of narcotics with the intent to sell (in November, 2020, [the respondent] had been arrested for possession of one hundred packets of cocaine/fentanyl) and to threatening [Bernisha]. The alleged conspiracy [to commit] assault and risk of injury charges were not pursued due, at least in part, to [Bernisha's] refusal to testify and/or her recantation of [the respondent's] involvement in the planning and carrying out of the shooting." (Footnote omitted.)

On March 11, 2021, the respondent entered pleas of nolo contendere as to all three children's neglect petitions, and the children were adjudicated neglected and committed to the petitioner's custody. On March 28, 2022, the petitioner filed petitions to terminate the respondent's parental rights with respect to the children on the grounds that the children previously had been adjudicated neglected and that the respondent had failed to achieve a sufficient degree of rehabilitation pursuant to General Statutes § 17a-112 (j) (3) (B).

A trial on the petitions for the termination of parental rights was held over the course of several days in November, 2023, and January, 2024, before the court, *Conway*, *J*. The petitioner presented the testimony of two witnesses, department social worker Julie Dixon and Dr. Jessica Biren Caverly, an expert in clinical and forensic psychology who performed a psychological evaluation with respect to the respondent. The respondent testified and presented the testimony of David

Melchionne, an employee of 'r Kids Family Center. Melchionne supervised visitation between the respondent and the children.[4]

On February 2, 2024, the court issued a memorandum of decision in which it terminated the respondent's parental rights. The court found by clear and convincing evidence that the department had made reasonable efforts to reunify the minor children with the respondent and that the respondent was unable or unwilling to benefit from reunification efforts.

The court also found that the respondent had failed to achieve an appropriate degree of personal rehabilitation as would encourage the belief that, within a reasonable time, considering the ages and needs of the minor children, he could assume a responsible position in their lives. Specifically, the court found that intimate partner violence (IPV) has permeated the respondent's relationship with Bernisha, dating back to approximately 2017. The court found that the respondent "remains woefully ignorant as to how his controlling and threatening interactions toward [Bernisha] not only define their relationship but is a textbook example of controlling, coercive IPV behavior. . . . [The respondent's] deep denial about his pathological behaviors toward [Bernisha], and his persistent refusal/unwillingness to substantively engage in and successfully benefit from mental health and IPV treatment (to meaningfully alter his intolerably unbalanced and dangerous relationship with [Bernisha]), forecloses him from being a safe and competent caregiver to [A, B, and C]."[5] (Citation

[4] Bernisha also testified and presented the testimony of Lisa Milone, who was assigned to work with Bernisha through Milone's role as a multidimensional family recovery specialist with Communicare.

[5] In a footnote, the court explained: "Undoubtedly, the December 11th shooting factored heavily into [the department's] decision to remove the children from [the respondent's] care in the early morning hours of December 12th and presumably in the parties' agreement to sustain the [order of temporary custody] and in the eventual March, 2021 agreement (wherein the [respondent and Bernisha] entered nolo contendere pleas and the chil-

omitted; footnote omitted.) In addition to the IPV behavior, the court noted the respondent's "entrenched, loud and authoritative parenting style," and found that the respondent was not capable of providing "the nuanced parenting style" that A and B require because of their trauma. The court also found that "credible testimony and evidence reveal that, if given the opportunity, the respondent . . . would, as he has done in the past, relegate some or much of the daily parenting responsibilities to [Bernisha], and he would not comply with court orders barring [Bernisha's] unsupervised access to the three children."

In the dispositional phase of the proceedings, the court made findings as to each of the criteria set forth in § 17a-112 (k) and concluded that the termination of the respondent's parental rights was in the minor children's best interests. Accordingly, the court rendered judgments terminating the respondent's parental rights and appointing the petitioner as the minor children's statutory parent. This appeal followed.

On April 23, 2024, the respondent filed a motion for articulation, asking the trial court to articulate the factual basis for its determination that the respondent had left his three children alone and unsupervised in a hotel room. On April 24, 2024, the trial court granted the motion for articulation and issued a memorandum of decision, which stated: "This court's factual finding that the children were found alone in the Days Inn room on the night of December 11, 2020, arises, at least in part,

dren were adjudicated neglected and committed to the petitioner's care). Aside from permitting the children to be left alone in the hotel room, whatever role, if any, [the respondent] played in the planning and execution of the December 11th shooting is not relevant to this termination trial." Subsequently, the court again noted that, although any role the respondent may have played in the shooting was not relevant to the termination trial, "the fact that the children were found by authorities alone in the hotel room is. [The respondent's] contention that the children were not found alone in the hotel room, postshooting, is not credible."

from the November 22, 2023 credible trial testimony of [department] social worker Julie Dixon, specifically her testimony during the respondent father's cross-examination . . . . The court also credited what was stated in exhibit C, pp. 7–8: 'On December 11, 2020, Social Work Investigator Shaun Williams spoke with . . . [New Haven Police Department] Officer Rivellini about the incident at the Days Inn Motel. The officer reported that [the respondent] had fled the scene, leaving behind [A, B, and C] in a hotel room he had rented that same day.' [The respondent's] assertion [that] the children were found in a car with his grown son, Perry Jr., (exhibit I, p. 20) is not credible." (Footnote omitted.) The court stated in a footnote that exhibits C and I were admitted as full exhibits without objection.

On appeal, the respondent claims that he was denied his due process right to the effective assistance of counsel during the termination of parental rights proceeding. Specifically, he contends that his trial counsel rendered ineffective assistance in failing to object to hearsay evidence contained in testimony and exhibits submitted by the petitioner. We are not persuaded.

The following additional procedural history is relevant to this claim. At the commencement of the trial, the petitioner identified her proposed exhibits, including but not limited to the department's social study,[6] which was identified as exhibit C, and its addenda, identified as exhibits D, E, and F (addenda). The respondent's counsel did not object to the introduction into evidence of exhibit C or its addenda, and the documents were admitted as full exhibits.

[6] "A social study is a document prepared by the department that compiles relevant information regarding the respondent's history with the department, including notes from caseworkers, medical professionals, visit supervisors, and other relevant parties." *In re A. H.*, 226 Conn. App. 1, 7 n.4, 317 A.3d 197, cert. denied, 349 Conn. 918, 317 A.3d 784 (2024).

As the court stated in its articulation, exhibit C includes the following: "On December 11, 2020, Social Work Investigator Shaun Williams spoke with . . . Officer Rivellini about the incident at the Days Inn Motel. The officer reported that [the respondent] had fled the scene, leaving behind [A, B, and C] in a hotel room he had rented that same day." (Internal quotation marks omitted.)

The respondent identifies other statements in exhibit C that he contends constitute hearsay, including: "[The respondent] was guarded and provided conflicting information with his answers compared to [a] previous intake [at Grant Street Partnership] in January, 2021. He also refused to complete the trauma assessment or discuss any legal involvement." The respondent also identifies the following: "Currently, [the respondent] is participating in Fathers for Change, at Yale Child Study Center. A referral was made by [the department] for this program on September 30, 2021. At [the respondent's] intake on October 26, 2021, he informed Dr. Carla Stover, lead investigator of the Yale study, that the program was too long, and he needed to finish the program within ninety days to get his children back. Social Worker Dixon clarified with Dr. Stover that this was not true. His attendance was sporadic for a period, and he never mentioned the shooting incident at intake." Finally, the respondent identifies the following: "Ms. [Brittany] Bauer [of the Family Centered Services parenting program] reported that [the respondent] believes he is a very good parent and there is little room for improvement. He seems to have had a lax parenting style and not a lot of follow-through. Ms. Bauer reported that [the respondent] seems to have left the kids to do whatever they want to."

We next set forth the principles that guide our review. "Our Supreme Court has recognized that, [i]n Connecticut, a parent who faces the termination of his or her

parental rights is entitled, by statute, to the assistance of counsel. General Statutes § 45a-717 (b). . . . The Supreme Court further has held, consistent with that statutory right, that a parent in a termination of parental rights hearing has the right not only to counsel but to the effective assistance of counsel. . . .

"In *State* v. *Anonymous*, 179 Conn. 155, 160, 425 A.2d 939 (1979), our Supreme Court set forth the following standard for determining whether counsel has been ineffective in a termination proceeding: The range of competence . . . requires not errorless counsel, and not counsel judged ineffective by hindsight, but counsel whose performance is reasonably competent, or within the range of competence displayed by lawyers with ordinary training and skill in [that particular area of the] law. . . . The [respondent] must, moreover, demonstrate that the lack of competency contributed to the termination of parental rights. . . . A showing of incompetency without a showing of resulting prejudice . . . does not amount to ineffective assistance of counsel. . . . In making such a claim, it is the responsibility of the respondent to create an adequate record pointing to the alleged ineffectiveness and any prejudice the respondent claims resulted from that ineffectiveness. . . . In the absence of findings by the trial court in this regard, we directly review the trial court record. . . .

"We are mindful that [a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that [the] conduct [of trial counsel] falls within the wide range of reasonable professional assistance; that is, [an appellant] must overcome the presumption that, under the circumstances, the challenged action might

be considered sound trial strategy." (Citations omitted; internal quotation marks omitted.) *In re Wendy G.-R.*, 225 Conn. App. 194, 204–205, 314 A.3d 1029, cert. denied, 349 Conn. 916, 316 A.3d 357 (2024).

The respondent claims on appeal that his trial counsel rendered ineffective assistance in failing to object to the introduction into evidence of exhibit C and hearsay testimony from the department's worker.[7] Specifically, he contends that the statement in exhibit C that social work investigator Williams spoke with Officer Rivellini,

[7] Exhibit I was the report of the psychological evaluation of the respondent prepared by Dr. Caverly, who was qualified as an expert witness in the field of clinical and forensic psychology. At the commencement of Dr. Caverly's testimony, the petitioner offered into evidence the evaluation, and it was admitted without objection.

In the respondent's principal appellate brief, he makes brief reference to exhibit I, noting that "exhibit C and exhibit I (which repeats the hearsay) were not objected to by trial counsel." The only other references to exhibit I are contained within the prejudice section of the respondent's brief. In the petitioner's brief, she maintains that the respondent "does not claim that trial counsel was ineffective for failing to object to the court-ordered evaluator's report, exhibit I." In his reply brief, the respondent does not maintain that such statement is inaccurate, and he otherwise does not address exhibit I. At oral argument before this court, however, the respondent's counsel maintained that the respondent's claim of ineffective assistance of trial counsel did encompass the failure to object to exhibit I.

Because the respondent has failed to identify particular statements in exhibit I that he contends constituted inadmissible hearsay, we conclude that any claim with respect to exhibit I is inadequately briefed. "We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited." (Internal quotation marks omitted.) *In re A. H.*, 226 Conn. App. 1, 31 n.23, 317 A.3d 197, cert. denied, 349 Conn. 918, 317 A.3d 784 (2024); see id. (because respondent failed to brief how he was harmed by hearsay from evaluation related to mother of children, any claim in relation thereto was deemed abandoned). Consequently, any such claim of ineffective assistance with respect to the failure to object to exhibit I is deemed abandoned.

who reported that the respondent had fled the scene, leaving the children in the hotel room, constituted double hearsay, because Williams is not the author of the social study, and Williams reported the hearsay statements of Officer Rivellini. The respondent further contends that "[n]obody from the department was present at the Days Inn on December 11, 2020. All testimony related to the incident was, by definition, hearsay and should have been excluded upon a proper objection."

This court recently has reaffirmed that "counsel for a respondent parent may object to the admission of material contained within a social study on evidentiary or other grounds . . . ." *In re A. H.*, 226 Conn. App. 1, 25, 317 A.3d 197, cert. denied, 349 Conn. 918, 317 A.3d 784 (2024). One such evidentiary basis for objection is that the material constitutes inadmissible hearsay. "[O]ut-of-court statements offered to establish the truth of the matter asserted are hearsay. Such statements generally are inadmissible unless they fall within an exception to the hearsay rule." (Internal quotation marks omitted.) *In re Tayler F.*, 296 Conn. 524, 536, 995 A.2d 611 (2010).

As noted previously, the respondent's counsel did not object to the challenged evidence during trial, and the record does not contain evidence of counsel's actual trial strategy underlying the decision to forgo an objection. "[W]e, as a reviewing court, are mindful of the presumption that counsel acted reasonably, and we must contemplate possible strategic reasons that might have supported counsel's challenged actions before considering whether those actions were objectionably reasonable. This is the proper analytical path that governs claims of ineffective assistance of counsel in habeas corpus proceedings in which the record does not contain evidence of the actual trial strategy, if any, underlying trial counsel's challenged conduct." *In re Wendy G.-R.*, supra, 225 Conn. App. 208. In order to prevail on his claim, the respondent "must demonstrate

that counsel's failure to object cannot be explained by one or more possible strategic reasons that are objectively reasonable." Id., 211.

We conclude that the respondent has not satisfied his burden of demonstrating that his counsel's decision not to object cannot be explained by one or more possible strategic reasons that are objectively reasonable. In her appellate brief, the petitioner asserts that the social study would have been admissible under the business records exception to the rule against hearsay.[8] With respect to the hearsay statements contained in the social study, specifically, social work investigator Williams' reporting of Officer Rivellini's statement, the petitioner contends that such statements are admissible

[8] General Statutes § 52-180 provides in relevant part: "(a) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if the trial judge finds that it was made in the regular course of any business, and that it was the regular course of the business to make the writing or record at the time of the act, transaction, occurrence or event or within a reasonable time thereafter.

"(b) The writing or record shall not be rendered inadmissible by (1) a party's failure to produce as witnesses the person or persons who made the writing or record, or who have personal knowledge of the act, transaction, occurrence or event recorded or (2) the party's failure to show that such persons are unavailable as witnesses. Either of such facts and all other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect the weight of the evidence, but not to affect its admissibility. . . ."

"The business record exception is derived from the recognition that the trustworthiness of such documents comes from their being used for business purposes and not for litigation. . . . Business records are excepted from the hearsay rule when three conditions are met: (1) the records are made in the regular course of business, (2) it is the regular course of the business to make such records and (3) the records were made at the time of the incident described in the record or shortly thereafter." (Citation omitted; internal quotation marks omitted.) *In re Ellis V.*, 120 Conn. App. 523, 536–37, 992 A.2d 362 (2010).

The respondent argues in his reply brief that a "social study is statutorily mandated to be used in litigation," and, thus, it would not have been admissible as a business record. This court previously has determined that a trial court properly admitted a social study on the ground that the petitioner

because both Williams and Officer Rivellini had a duty to report the information. See *Jenzack Partners, LLC* v. *Stoneridge Associates, LLC*, 334 Conn. 374, 392, 222 A.3d 950 (2020) ("regardless of whether supporting documentation or testimony from the third party is offered—it is the third party's 'duty to report [the information] in a business context which provides the reliability to justify [the business records exception to the hearsay rule] . . . .' "); cf. *State* v. *Milner*, 206 Conn. 512, 520–21, 539 A.2d 80 (1988) (holding that one page police report detailing contents of telephone call was inadmissible as business record when caller was anonymous and had no duty to report). Thus, we agree with the petitioner that the respondent has not established that the evidence was inadmissible.

Second, the respondent has not shown that his counsel's pursuit of a vigorous cross-examination in lieu of objecting to any hearsay statements contained within the social study was not objectively reasonable. The respondent's counsel extensively questioned Dixon on cross-examination regarding the incident at the hotel. Specifically, he highlighted that Dixon had received the case in January, 2021, after the incident occurred. He questioned whether the respondent had left the children alone or whether he had left the children with his adult son. He further questioned Dixon: "[S]o, you have . . . no personal knowledge of whether these children were alone or not, correct?" Dixon responded: "No. I was not there. . . . No personal knowledge."[9] In conclusion on

had satisfied the requirements of the business record exception. See *In re Ellis V.*, supra, 120 Conn. App. 537.

[9] Cross-examination continued between the respondent's counsel and Dixon:

"Q. . . . [W]e don't know if [the children] were there before, during [the shooting]. Correct? We don't know how long they were there.

"A. Well, there's a video of [the respondent] going down the motel hallway, putting his ear against each door. It's . . . all written on this.

"Q. Okay. But that has nothing to do with where the children were. Correct?

"A. Well, the children were with him.

this point, the respondent's counsel asked Dixon whether she was "basing [her] testimony on that incident in December of 2020, where the facts are very fuzzy."

In addition to the targeted cross-examination regarding the incident at the hotel, the respondent's counsel also broadly cross-examined Dixon regarding other issues in the case. Specifically, the respondent's counsel questioned Dixon as to the respondent's compliance with certain specific steps, Grant Street Partnership's determination that the respondent did not need substance abuse treatment, and the respondent's recent engagement with Thomas Daniels with respect to a Fatherhood Engagement program.

Because there are one or more possible strategic reasons that are objectively reasonable for counsel's failure to object to exhibit C and hearsay testimony, the respondent has not demonstrated that his counsel's performance was deficient.[10] Consequently, we reject the respondent's claim that his trial counsel rendered ineffective assistance at the termination of parental rights trial.[11]

"Q. But you—okay. So, the children were with [the respondent]?

"A. At the hotel. Yes.

"Q. Okay. So, the children weren't left alone by [the respondent]. Correct?

"A. No. That he later left them alone.

"Q. But you don't know if he left them alone or whether [the respondent's older son] had the kids. Correct?

"A. They were by themselves when they were removed . . . ."

[10] Because we conclude that the respondent has not proven that his counsel's performance was deficient, we need not reach the respondent's argument with respect to prejudice.

[11] The respondent raises two additional claims on appeal. First, he claims that he has a due process right to a hybrid-habeas procedure within the context of a termination of parental rights trial. The respondent acknowledges that our Supreme Court, in *In re Jonathan M.*, 255 Conn. 208, 227–28, 764 A.2d 739 (2001), concluded that "due process does not dictate that the [party whose parental rights have been terminated] must be permitted to utilize the writ of habeas corpus as a procedural means of attacking collaterally the termination judgment." The court further explained that it saw "no need to utilize [its] supervisory authority to supplement the evidentiary

The judgments are affirmed.

In this opinion the other judges concurred.

KENNETH L. THOMAS *v.* MEGHAN M. CLEARY
(AC 46365)

Alvord, Suarez and Westbrook, Js.

Syllabus

The defendant appealed from the trial court's judgment adjudicating several postjudgment motions in the underlying custody action involving the parties' minor children. On appeal, the defendant claimed, inter alia, that the court improperly granted the plaintiff's postjudgment motion for the modification of custody. *Held*:

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record in direct appeals from such judgments in an effort to create an alternative to the habeas relief sought in this case." Id., 236. As the respondent acknowledges, this court is bound by our Supreme Court precedent. See *In re Wendy G.-R.*, supra, 225 Conn. App. 201 (rejecting request to reconsider appropriate options available to respondents seeking to supplement record to raise ineffective assistance of counsel claims, as *In re Jonathan M.* is binding authority). Accordingly, we reject the respondent's claim.

Finally, the respondent requests that this court exercise its supervisory authority to create a hybrid-habeas procedure. "Supervisory authority is an extraordinary remedy that should be used sparingly . . . ." (Internal quotation marks omitted.) *In re Aisjaha N.*, 343 Conn. 709, 724, 275 A.3d 1181 (2022). "Although [a]ppellate courts possess an inherent supervisory authority over the administration of justice . . . [that] authority . . . is not a form of free-floating justice, untethered to legal principle. . . . Our supervisory powers are not a last bastion of hope for every untenable appeal. They are an *extraordinary* remedy to be invoked only when circumstances are such that the issue at hand, [although] not rising to the level of a constitutional violation, is nonetheless of utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole. . . . Constitutional, statutory and procedural limitations are generally adequate to protect the rights of the [litigant] and the integrity of the judicial system. Our supervisory powers are invoked only in the rare circumstance [in which] these traditional protections are inadequate to ensure the fair and just administration of the courts." (Emphasis in original; internal quotation marks omitted.) Id.

Our Supreme Court in *In re Jonathan M.*, supra, 255 Conn. 236, declined a request to exercise its supervisory authority because "other means of vindicating the right to effective assistance of counsel exist through which an indigent parent may challenge a termination judgment." For the reasons expressed in *In re Jonathan M.*, we likewise decline the respondent's invitation to exercise our supervisory authority in this case.

This court declined to consider the propriety of certain factual findings made in connection with the trial court's earlier judgment because the defendant's challenge to those findings amounted to an impermissible collateral attack on the prior judgment.

The trial court's finding that the defendant had made another false accusation of abuse against the plaintiff was supported by abundant evidence and, thus, was not clearly erroneous.

The trial court did not abuse its discretion in granting the plaintiff's motion for modification because the court's factual findings supported a determination that there was a material change in circumstances and that it was in the best interests of the parties' children to grant the motion.

This court declined to review the defendant's inadequately briefed claim that the trial court improperly denied her motion to disqualify the judicial authority.

Submitted on briefs May 29—officially released November 5, 2024

Procedural History

Application for custody of the parties' minor children, and for other relief, brought to the Superior Court in the judicial district of Ansonia-Milford, and transferred to the judicial district of New Haven, where the case was tried to the court, *Grossman, J.*; judgment granting joint legal custody of the minor children to the parties and primary physical custody to the plaintiff; thereafter, the plaintiff and the defendant each filed a motion for modification of custody; subsequently, the court, *Hon. James G. Kenefick*, judge trial referee, denied the defendant's motion to disqualify the judicial authority, *Grossman, J.*; thereafter, *Grossman, J.*, rendered judgment granting the plaintiff's motion to modify custody and denying the defendant's motion to modify custody, from which the defendant appealed to this court. *Affirmed.*

Meghan M. Cleary, self-represented, filed a brief as the appellant (defendant).

John J. Mager filed a brief for the appellee (plaintiff).

Opinion

SUAREZ, J. In this custody matter, the self-represented defendant, Meghan M. Cleary, appeals from the

judgment of the trial court adjudicating several postjudgment motions.[1] On appeal, the defendant claims that the court improperly (1) granted a postjudgment motion for modification of custody brought by the plaintiff, Kenneth L. Thomas, (2) "displayed consistent bias" against her, and (3) found that she had an imputed earning capacity of $90,000.[2] We affirm the judgment of the trial court.

The following facts and procedural history are relevant to the resolution of this appeal. The plaintiff and the defendant are the parents of three minor children. The plaintiff first initiated a custody action in 2019. On July 25, 2022, after a fully contested hearing, the court, *Grossman*, *J.*, made the following oral findings regarding the defendant: "[V]arious professionals have expressed concern with the [defendant's] ability to address the children's emotional needs appropriately. . . . [They] reported that the [defendant] appeared disconnected from the children at times, unable to respond to them or redirect them appropriately. . . . Those same individuals noted examples of the [defendant]

[1] During the initial custody action, the defendant was represented by counsel. The defendant has represented herself in connection with all postjudgment motions. The plaintiff, Kenneth L. Thomas, has been represented by counsel in all proceedings in this matter. A guardian ad litem has been appointed to represent the interests of the children throughout this litigation.

[2] In the statement of issues in her appellate brief, the defendant characterizes her claims of error as follows: "(1) Whether custody and visitation rulings with no support of any kind in the trial record require reversal. . . . (2) Whether financial rulings in a domestic relations case, with no support of any kind in the trial record, require reversal. . . . (3) Whether reversal is required when the trial court systematically ignores all evidence favorable to one party, no matter how credible. . . . (4) Whether reversal is required by the trial court's manifest bias against the [defendant]. . . . (5) Whether a trial court may use child custody/visitation as a means to 'punish' a litigant rather than determining these issues on the basis of the children's best interest." We have reframed the defendant's claims, in some instances condensing closely related claims, to more accurately reflect the arguments in her brief. See, e.g., *Doe* v. *Quinnipiac University*, 218 Conn. App. 170, 173 n.4, 291 A.3d 153 (2023).

repeatedly taking a small, otherwise normal or not especially concerning behavior by the children or a child and misreading it and creating a bigger, alarming meaning to that behavior. This tendency led the [defendant] to claim that the [plaintiff] was molesting the children, taking pornographic pictures of the children, and using drugs when it turns out that none of these things were true. This tendency by the [defendant] is well documented and it is harmful for the children. These events are exaggerated and they are inaccurate. They distract the [defendant] from focusing on what the children actually need in the moment. They also caused her to have the children examined and interviewed and separated from [the plaintiff] for long periods of time. . . .

"The [defendant] has repeatedly and falsely accused the [plaintiff] of sexually molesting the children. She withheld the children from him on this basis for six months. The police, the Department of Children and Families [(DCF)], [various professionals evaluating the children in clinical settings], and the [guardian ad litem (GAL)] determined that these allegations were not true. However, even in her testimony the [defendant] was unable to satisfactorily explain these events to the court. She indicated no understanding, to this court or to anyone else that this court heard from, about the negative impact this behavior had on her children. Her historical willingness to cut the children off from their father is troubling. . . .

"An especially important . . . item or statutory criteria for [custody] decision[s] is the mental and physical health of all the individuals involved. . . . [T]he [defendant's] mental health has been an area of concern throughout this case. Such an area of concern that she submitted to a psychological evaluation . . . . [The evaluator's] report codifies what the [GAL] and other engaged professionals and the court observed about

the [defendant] and that is that her demeanor can be quite unusual. She is sometimes emotionally elevated; sometimes grandiose. She's highly reactive. Her thinking is sometimes tangential. Her thought processes were difficult to follow. This court struggled to understand some of her testimony because the connections between her ideas were so tenuous. . . .

"The [defendant's] history of substance abuse is also relevant for this custody determination. And this is a concern raised by many professionals throughout the history of this case . . . . I don't think that [the evaluator] made this question, but the other professionals did, questioned whether or not the [defendant] was actually under the influence of medication or drugs on the occasions when they saw her. . . . There is good reason for this concern. The [defendant] was arrested in September, 2019, on several counts of larceny and possession of controlled substances. These charges relate to accusations that she was in possession of opiates prescribed to patients at the nursing home where she worked. These charges are still pending. She tested positive for opiates and cocaine in September of 2019. She is presently enrolled in and compliant with a five year program called the HAVEN program, which stands for the Health Assistance Intervention Education Network, though the Department of Public Health. . . . [A]s part of her participation in this program, the [defendant] is drug tested and attends eight [Narcotics Anonymous] meetings per month. She told the court that she used the same five year program in 2010 incident to similar criminal charges. Despite these two arrests [and] the positive drug tests . . . the [defendant] denied to the court that she has a drug problem. She blames others, including the [plaintiff] and his father, for the criminal charges. And she says that any inconclusive drug tests at the HAVEN were a result of her . . .

diabetes treatment. This testimony is simply not credible.

* * *

"The evidence before this court indicated strongly that the [defendant] has untreated mental health and substance abuse issues. Despite this evidence, the [plaintiff] and the [GAL] have requested the court to order joint legal custody and a shared parenting plan. This—this court is going to grant that request, but future modifications should take into account the court's observations about the needs of the [defendant] for additional treatment."

On the basis of these facts, the court issued the following orders: "The parties will share joint legal custody. In the event of a dispute, and after consultation and discussion with the [defendant], the [plaintiff] may make a final decision in all issues regarding the children. . . . The children will reside primarily with [the plaintiff]. If he deems it appropriate, he may change the school district the children attend."[3]

On August 29, 2022, the defendant refused to return the children to the plaintiff at the end of her scheduled parenting time, in order for the children to attend their first day of school in a new school district selected by the plaintiff. As a result, on the same day, the plaintiff filed an application for an emergency ex parte order of custody and a postjudgment motion for modification of custody. In an affidavit in support of his August 29, 2022 ex parte application, the plaintiff averred that,

[3] The defendant appealed from the July 25, 2022 judgment. On November 21, 2022, that appeal was dismissed due to the defendant's failure to submit certain preliminary documents. On December 5, 2022, the defendant filed a motion to reconsider the dismissal. On March 27, 2023, this court dismissed the defendant's motion to reconsider as moot, as subsequent custody orders had superseded the July 25, 2022 judgment and, thus, the court could not offer the defendant any practical relief.

pursuant to the July 25, 2022 custody order, the defendant was supposed to bring the children to school on the morning of August 29, 2022, but failed to do so. The court, *Price-Boreland*, *J.*, denied the plaintiff's emergency ex parte application but issued an order that the defendant return the children to the plaintiff "immediately" and scheduled an expedited hearing on the application.

On September 9, 2022, the court, *Grossman*, *J.*, commenced a hearing on the plaintiff's August 29, 2022 ex parte application. At the conclusion of the first day of evidence, the court issued the following temporary orders: "The [plaintiff] will have sole legal and physical custody of the minor children. . . . The children will be in the physical custody of the [plaintiff] at all times but for every Saturday from noon to Sunday at 5 p.m. . . . The [plaintiff] has sole decision-making authority regarding the education of the children, including decisions regarding their transportation to and from school." The hearing continued on October 3 and November 4, 2022.

On November 8, 2022, the court issued the following written orders: "The [plaintiff] has sole physical and legal custody of the minor children. . . . The [defendant's] parenting time will be [1] Every other weekend from after school on Friday to Sunday at 5 p.m. [2] Every week on Wednesdays from after school to 7 p.m. . . . The parents will have reasonable phone and/or video call access with the children when they are not in their care. . . . The [defendant] may not interfere with the children's school, activities and transportation to and from school."

On November 14, 2022, the defendant filed an application for an emergency ex parte order of custody and a postjudgment motion for modification. In support of her application, the defendant once again alleged that

the plaintiff had been sexually abusing the children. The court denied the ex parte application the same day. On November 15, 2022, the plaintiff filed a new application for an emergency ex parte order of custody and a postjudgment motion for modification. In an affidavit in support of this ex parte application, the plaintiff averred that, on November 13, 2022, the Orange Police Department and DCF informed him that the defendant once again had alleged that he had sexually assaulted one or more of the children. The plaintiff's application for an ex parte order of custody was granted the same day, and the court issued temporary orders suspending the defendant's visitation unless clinically supervised.

A consolidated hearing on the parties' ex parte applications and motions for modification of custody was scheduled for November 29, 2022. On November 28, 2022, the defendant filed a motion for the disqualification of Judge Grossman. In her motion, the defendant alleged that Judge Grossman was biased and prejudiced against her. The motion to disqualify was referred to the court, *Hon. James G. Kenefick, Jr.*, judge trial referee, and a hearing on that motion was held on December 22, 2022. In its memorandum of decision dated January 3, 2023, the court denied the motion.

A fully contested hearing on the parties' ex parte applications and motions for modification of custody was held on January 6, 2023. In a memorandum of decision dated March 13, 2023, the court, *Grossman, J.*, made the following factual findings: The defendant has "initiated new investigations into the [plaintiff]. She accused him, again, of sexually abusing the children. As in the past, she withheld the children from [the plaintiff] and subjected them to interviews and invasive evaluations. [DCF] and the Orange Police Department were compelled to investigate this complaint, as they have on many prior occasions. They quickly closed their

investigations, concluding that the complaint was unfounded.

"At the time of the hearing, the children had not seen [the defendant] in six weeks. On November 15, 2022, the GAL recommended, and the court ordered, that contact take place in a supervised clinical setting. This was intended as a temporary order until the [defendant] complied with a full psychological assessment and treatment. The GAL immediately identified a suitable provider for these services. The [plaintiff] consented to this person. The defendant had not, as of January 6, 2023, contacted this provider. . . . The [defendant] refuses to contact this provider because she believes that using a paid provider for this purpose would make her ineligible for her HUSKY medical coverage. No credible evidence was offered in support of this assertion. However, the GAL offered multiple solutions to this stalemate, and the court solicited suggestions from the [defendant]. The [defendant] rejected the GAL's suggestions and offered no [alternatives] to the court.

"The [defendant] has a substance abuse disorder. The [plaintiff] and the GAL are concerned she may have relapsed. Her criminal charges from 2019 are not resolved. She was admitted into a diversionary program for the drug charges but still faces the related larceny charge. She is enrolled in a five year HAVEN program . . . . This is the second time she has utilized this program to keep her nursing license. HAVEN provides alternatives to discipline for healthcare workers with physical, mental, emotional or addiction issues. As part of her participation, she is drug tested and attends eight Narcotics Anonymous meetings per month. She told the court she is compliant with this program and the conditions of release set by the criminal court; however, she declined to give the GAL access to her drug testing records.

"The [defendant's] presentation and demeanor in court was concerning. She appeared disassociated from the events taking place; her responses were inconsistent with the courtroom discussions. Her mood fluctuated throughout the hearing from disinterested to angry and agitated. At times it appeared she could not differentiate between her fears and actual events. At the outset of the hearing, she told the court that the ex parte orders should not be extended and that she had evidence to offer as a basis for that assertion. However, when the time came to offer her evidence, she initially refused. When she did testify, it was inconsistent with testimony she offered previously, particularly about . . . how [DCF] was notified of her most recent allegations of sexual abuse by the [plaintiff] and her efforts to find work. She did not appear to recognize these inconsistencies. Her explanations for refusing the GAL access to her drug tests and refusing to engage in a psychological evaluation were difficult to follow and unconvincing. The court could not rely on her testimony.

"The [defendant's] actions over the last six months have negatively impacted the children. Their education was disrupted: they were deprived of their first day of school experience and missed several days after that. The stability of their day-to-day routine was upended. Their relationship with [the plaintiff] was interrupted for two weeks during the latest DCF investigation; he had to leave the home, and the paternal grandparents moved into the home to care for [the] children. Their relationship with the [defendant] remains interrupted as she refuses to participate in evaluation, treatment or the current access schedule.

"Notwithstanding these events, all parties agree that the children should have contact with [the defendant]. They are bonded to her and benefit from their time with her, but only when she is able to parent them

appropriately. The evidence indicates that she cannot do so at this time. She appears to be struggling with her mental health or her drug [addiction] or both."

On the basis of these findings, the court denied the defendant's November 14, 2022 motion for modification of custody, granted the plaintiff's November 15, 2022 motion for modification of custody, and issued the following orders: "The [plaintiff] has sole physical and legal custody of the minor children. . . . The [defendant] will see the children in a therapeutic setting with the individual recommended by the GAL . . . or another agreed upon individual recommended by the GAL. . . . Any additional parenting time with the [defendant] will be by agreement of the parties. The [defendant's] parenting time must be in the presence of an agreed upon third party until the [defendant] demonstrates compliance with the recommendations in [a previous] evaluation," including seeking assessment and treatment for psychiatric disorders, substance abuse issues, or, if necessary, both. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the court improperly granted the plaintiff's motion for modification of custody. Specifically, she argues that (1) the "court's rulings on custody and visitation were unsupported by the evidence" in that "there was no competent evidence that [the defendant] made false allegations against [the plaintiff]" and the "court prejudged the critical issue of [the plaintiff's] alleged sexual abuse," (2) the court's "findings regarding [the defendant's] 'substance abuse problem' were unsupported by any evidence," and (3) the "court's custody related rulings were contrary to the clear weight of evidence." We are not persuaded.

We begin by setting forth the relevant principles of law and our standard of review. General Statutes § 46b-56 bestows upon the trial court the statutory authority to modify an order of custody or visitation. The statute directs the court to "consider the best interests of the child" and, while not requiring the court to assign weight to any of the factors that it considers, sets forth seventeen enumerated factors that the court may consider with respect to the modification.[4] General Statutes § 46b-56 (c).

[4] General Statutes § 46b-56 (c) provides that the court, in making an order for custody, "shall consider the best interests of the child, and in doing so, may consider, but shall not be limited to, one or more of the following factors: (1) The physical and emotional safety of the child; (2) the temperament and developmental needs of the child; (3) the capacity and the disposition of the parents to understand and meet the needs of the child; (4) any relevant and material information obtained from the child, including the informed preferences of the child; (5) the wishes of the child's parents as to custody; (6) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (7) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (8) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (9) the ability of each parent to be actively involved in the life of the child; (10) the child's adjustment to his or her home, school and community environments; (11) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (12) the stability of the child's existing or proposed residences, or both; (13) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (14) the child's cultural background; (15) the effect on the child of the actions of an abuser, if any domestic violence, as defined in section 46b-1, has occurred between the parents or between a parent and another individual or the child; (16) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (17) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers, but shall articulate the basis for its decision."

"Our standard of review of a trial court's decision regarding custody, visitation and relocation orders is one of abuse of discretion. . . . [T]he trial court's decision on the matter of custody is committed to the exercise of its sound discretion and its decision cannot be overridden unless an abuse of that discretion is clear. . . . The controlling principle in a determination respecting custody is that the court shall be guided by the best interests of the child. . . . In determining what is in the best interests of the child, the court is vested with a broad discretion. . . . [T]he authority to exercise the judicial discretion [authorized by § 46b-56] . . . is not conferred [on] this court, but [on] the trial court, and . . . we are not privileged to usurp that authority or to substitute ourselves for the trial court. . . . A mere difference of opinion or judgment cannot justify our intervention. Nothing short of a conviction that the action of the trial court is one [that] discloses a clear abuse of discretion can warrant our interference. . . .

"The trial court has the opportunity to view the parties [firsthand] and is therefore in the best position to assess the circumstances . . . in which such personal factors as the demeanor and attitude of the parties are so significant. . . . [E]very reasonable presumption should be given in favor of the correctness of [the trial court's] action. . . . We are limited in our review to determining whether the trial court abused its broad discretion to award custody based upon the best interests of the child as reasonably supported by the evidence." (Citations omitted; internal quotation marks omitted.) *Dolan* v. *Dolan*, 211 Conn. App. 390, 399–400, 272 A.3d 768, cert. denied, 343 Conn. 924, 275 A.3d 626 (2022). In employing our abuse of discretion standard, "[t]he trial court's findings are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . 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." (Internal quotation marks omitted.) *Lambert* v. *Donahue*, 78 Conn. App. 493, 498, 827 A.2d 729 (2003).

"Before modifying a custody order, a court must satisfy two requirements. First, modification of a custody award must be based upon either a material change [in] circumstances which alters the court's finding of the best interests of the child . . . or a finding that the custody order sought to be modified was not based upon the best interests of the child. . . . Second, the court shall consider the best interests of the child and in doing so may consider several factors. . . .

"The power of the trial court to modify the existing order does not . . . include the power to retry issues already decided . . . or to allow the parties to use a motion to modify as an appeal. . . . Rather, the trial court's discretion includes only the power to adapt the order to some distinct and definite change in the circumstances or conditions of the parties. . . . [I]ts inquiry is necessarily confined to a comparison between the current conditions and the last court order." (Citations omitted; internal quotation marks omitted.) *J. Y.* v. *M. R.*, 215 Conn. App. 648, 658, 283 A.3d 520 (2022).

A

The defendant first argues that there was no competent evidence to support the court's finding that she has a history of making false allegations against the plaintiff, including that he sexually abused their children.

Our careful review of the defendant's brief and the record, however, reflects that the factual finding being

challenged by the defendant was made in connection with the court's July 25, 2022 judgment.

The defendant's challenge to a finding made in connection with a prior judgment amounts to an impermissible collateral attack on the prior judgment. "Unless a litigant can show an absence of subject matter jurisdiction that makes the prior judgment of a tribunal entirely invalid, he or she must resort to direct proceedings to correct perceived wrongs . . . . A collateral attack on a judgment is a procedurally impermissible substitute for an appeal." (Internal quotation marks omitted.) *Weyher* v. *Weyher*, 164 Conn. App. 734, 746, 138 A.3d 969 (2016). "A collateral attack on a judgment is an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it. . . . On the other hand, [a] direct attack on a judgment or decree is an attempt, for sufficient cause, to have it annulled, reversed, vacated, corrected, declared void, or enjoined, in a proceeding instituted for that specific purpose, such as an appeal, writ of error, bill of review, or injunction to restrain its execution; distinguished from a collateral attack, which is an attempt to impeach the validity or binding force of the judgment or decree as a side issue or in a proceeding instituted for some other purpose." (Citation omitted; internal quotation marks omitted.) *Lewis* v. *Planning & Zoning Commission*, 49 Conn. App. 684, 688 n.5, 717 A.2d 246 (1998). Accordingly, we decline to consider the propriety of factual findings made in connection with the earlier judgment.

Beyond arguing that the court erred in finding that she had a history of making false accusations against the plaintiff, the defendant also argues that it was clearly erroneous for the court to find that her latest accusation of sexual abuse against the plaintiff was another false

allegation. The following additional facts and procedural history are relevant to the resolution of this claim.

As previously mentioned in this opinion, on November 14, 2022, the defendant filed an emergency ex parte application for custody alleging that the children had been sexually abused by the plaintiff. On the same day, the GAL filed a request for an emergency status conference before the court and a hearing was held on November 15, 2022. At that hearing, the GAL informed the court that the purpose of his request was to inform the court of events in the case that were brought to his attention. The GAL reported to the court that, "based on the information that I have received, there was a call made to the Middlebury Police Department by [the defendant] indicating that there was an allegation of sexual abuse on [one of the children] . . . .

"And that led to a DCF referral by the Middlebury [Police Department] to the Careline as well as instructions that the jurisdiction would be the Orange Police Department, not the Middlebury Police Department, as the site of the alleged activity. So a call was also made to the Orange Police Department at that point in time or soon thereafter.

"The Careline did respond on Sunday. And the Careline worker did interview the children at [the defendant's] home. . . .

"The DCF Careline worker then appeared at [the plaintiff's] home later in the day. And [the plaintiff], at that point in time, agreed to a safety plan which included [the plaintiff's] parents being present at all times and him not being able to spend the overnight with his children. He was also instructed to have [his] parents pick up the children from [the defendant's] home . . . .

"And I have had the opportunity to speak to the DCF supervisor in the Milford office who was the individual

who had provided me the information from the notes from the Careline. I also had occasion to speak with the now assigned investigating DCF office who received the case late yesterday. So she will be setting up interviews with the children. This will be the third DCF worker these children have met in the last ninety days because this comes right on the heels of an unsubstantiation from the August referral that happened during the custodial exchange at the end of August. So this would be the third DCF worker.

"I spoke to the investigating detective . . . of the Orange [Police Department] to learn what the status of their investigation was. That has also recently been assigned to [that detective]. [That detective] indicated that she has been in preliminary discussions with DCF. And both DCF and the detective are trying to determine whether or not they will be seeking permission to do yet another forensic evaluation and interview of the minor child . . . .

"[T]he issue or the allegation of digital penetration of the anus has been ongoing since 2019. It has arisen multiple—on multiple occasions. There have been multiple DCF investigations in regards [to] that including the most recent one where the disclosure was from [one of the parties' other children].

"Both boys, at various points in time . . . have gone through forensic interview at Yale. And all of these cases have been unsubstantiated."

On the basis of the GAL's report to the court, the court granted the plaintiff's November 15, 2022 emergency ex parte application for custody, suspended the defendant's access to the children and scheduled a hearing on the merits of the application for November 29, 2022. The court explained: "I am doing that because the allegations that she's making today are the exact same allegations that were made in the course of the trial,

and they were so thoroughly and completely debunked during the course of that trial that the fact that [the defendant] is still latching on to those . . . is just too much for the court to be expected to withstand."

During the January 6, 2023 hearing on the parties' motions for modification of custody, the court heard testimony from the GAL that DCF had closed their investigation regarding the plaintiff's alleged sexual abuse of the children as unsubstantiated. Moreover, the GAL testified that, as of January 6, 2023, the Orange Police Department had closed its investigation.

After a careful review of the record, we conclude that the court's finding that the defendant made yet another false accusation of sexual abuse against the plaintiff was supported by abundant evidence in the record and, thus, was not clearly erroneous.

B

The defendant next contends that it was clearly erroneous for the court to reiterate, in its March 13, 2023 memorandum of decision, that she had ongoing struggles with substance abuse. We disagree.

In finding that the defendant had ongoing struggles with substance abuse, the court relied on the prior finding of substance abuse made in connection with the July 25, 2022 judgment. For the reasons set forth in part I A of this opinion, we decline to consider the propriety of the court's finding made in connection with the earlier judgment because the claim amounts to an impermissible collateral challenge to the earlier judgment.

C

The defendant's final argument is that the court's custody rulings were contrary to the clear weight of the evidence. We disagree.

In a modification of custody, a court must satisfy two requirements. "First, modification of a custody award must be based upon either a material change [in] circumstances which alters the court's finding of the best interests of the child . . . or a finding that the custody order sought to be modified was not based upon the best interests of the child. . . . Second, the court shall consider the best interests of the child and in doing so may consider [the] several factors [set forth in § 46b-56 (c)]." (Internal quotation marks omitted.) *J. Y.* v. *M. R.*, supra, 215 Conn. App. 658.

In the present case, the court found that there had been a material change of circumstances since the initial custody order. The court found that "the [defendant's] condition has deteriorated dramatically" in ways that "ha[d] negatively impacted the children." In its July 25, 2022 judgment, the court found that various professionals had expressed concerns regarding the defendant's ability to address the children's emotional needs. The court found that those professionals "noted examples of the mother repeatedly taking a small, otherwise normal or not especially concerning behavior by the children . . . and misreading and creating a bigger, alarming meaning to that behavior." The court found that "[t]his tendency led the mother to claim that the [defendant] was molesting the children, taking pornographic pictures of the children, and using drugs when it turns out that none of these things were true. This tendency by the [defendant] is well documented and it is harmful for the children." The court ultimately found that the defendant had "untreated mental health and substance abuse issues" and noted that "future modifications should take into account the court's observations about the needs of the [defendant] for additional treatment."

In its March 13, 2023 memorandum of decision, the court found that the defendant withheld the children

from the plaintiff, which required police and court intervention, and further found that the defendant "initiated new investigations into the [plaintiff]. She accused him, again, of sexually abusing the children. As in the past, she withheld the children from [the plaintiff] and subjected them to interviews and invasive evaluations. [DCF] and the Orange Police Department were compelled to investigate this complaint, as they have on many prior occasions. They quickly closed their investigations, concluding that the complaint was unfounded."

Additionally, the court found that, although the defendant was participating in a drug treatment program, the plaintiff and the GAL were concerned that she may have relapsed. The defendant testified that "she is compliant with this program and the conditions of release set by the criminal court; however, she declined to give the GAL access to her drug testing records."

Moreover, the court noted in its memorandum of decision that the defendant's "presentation and demeanor in court was concerning." The court recounted that the defendant "appeared disassociated from the events taking place; her responses were inconsistent with the courtroom discussions. Her mood fluctuated throughout the hearing from disinterested to angry and agitated. At times it appeared she could not differentiate between her fears and actual events. At the outset of the hearing, she told the court that the ex parte orders should not be extended and that she had evidence to offer as a basis for that assertion. However, when the time came to offer her evidence she initially refused. When she did testify it was inconsistent with testimony she offered previously . . . . Her explanations for refusing the GAL access to her drug tests and refusing to engage in a psychological evaluation were difficult to follow and unconvincing. The court could not rely on her testimony."

On the basis of the testimony of the plaintiff, the GAL, and the court's own observations, it concluded that the children's education was disrupted and that the stability of their day-to-day routine was upended. The latest DCF investigation had interrupted their relationship with the plaintiff for two weeks, and their relationship with the defendant remains interrupted because "she refuses to participate in evaluation, treatment or the current access schedule." In light of these findings and conclusions, the court modified the custody and access orders.

The court's factual findings, all of which find support in the record, support a determination that there was a material change in circumstances and that it was in the best interests of the parties' children to grant the motion for modification. Thus, the defendant has not proven that the court's ruling reflects an abuse of its discretion.

II

The defendant's next claim is that the court "displayed consistent bias" against her. We conclude that this claim is inadequately briefed.

"We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. . . . For a reviewing court to judiciously and efficiently . . . consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . .

"In addition, briefing is inadequate when it is not only short, but confusing, repetitive, and disorganized. . . .

We are mindful that [i]t is the established policy of the Connecticut courts to be solicitous of [self-represented] litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party. . . . Nonetheless, [a]lthough we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law." (Internal quotation marks omitted.) *C. B.* v. *S. B.*, 211 Conn. App. 628, 630, 273 A.3d 271 (2022).

In the present case, the defendant maintains that Judge Grossman was biased against her and, therefore, the "judge was predisposed to rule against [her] regardless of what the evidence showed." As previously noted in this opinion, the defendant filed a motion to disqualify Judge Grossman, and that motion was referred to Judge Kenefick for a hearing. In its memorandum of decision dated January 3, 2023, the court noted that, with respect to the motion to disqualify Judge Grossman, "this court has carefully reviewed the defendant's memorandum in support thereof with its exhibits and does not find that Judge Grossman was in any way biased, [partial] or prejudiced against the defendant."

The court further noted that, in "the defendant's motion and memorandum of law, she accuses Judge Grossman of having 'an extreme prejudice and bias against self-represented litigants.' I find no basis for that accusation in these proceedings. It would appear to be just the opposite. Judge Grossman went out of her way to show concern for this defendant." The court concluded: "There is no credible evidence that Judge Grossman's conduct toward the defendant could give rise to an appearance of impropriety. There is no evidence of bias, [partial] conduct or prejudice against the defendant." On that basis the court denied the motion.

The defendant, however, does not challenge the court's January 3, 2023 findings. The defendant makes only the following two references to her motion to disqualify Judge Grossman: "As shown above, [the defendant's] attempts to disqualify Judge Grossman were unsuccessful" and, "[a]s noted above, [the defendant's] motion to disqualify Judge Grossman for bias was denied." In her brief to this court, the defendant merely restates the claim of bias she made before the trial court. She does not provide any legal authority or analysis to support her claim on appeal.

Although we allow the defendant some latitude as a self-represented litigant, the sparsity and lack of substantive argument cause her brief to be "inadequate for us to conduct any meaningful review of" this claim. *C. B.* v. *S. B.*, supra, 211 Conn. App. 630–31 (declining to review claim when briefing was sparse, conclusory, disorganized, and confusing). Because the defendant has failed to challenge, in any meaningful way, the court's denial of her motion to disqualify, we decline to review this claim.

III

The defendant's final claim on appeal is that the court erred in finding that she had an imputed earning capacity. After careful review of the court's decision, we decline to reach the merits of this claim.

In its July 25, 2022 orders, the court found that the defendant had an imputed earning capacity of $90,000. The defendant attempted but failed to bring a successful appeal of the July 25, 2022 orders. See footnote 3 of this opinion. In its March 13, 2023 memorandum of decision granting the plaintiff's motion for modification, the court ordered that "[a]ll prior orders not specifically modified by these orders remain in effect." In that memorandum of decision, which is the subject of this appeal,

the court did not revisit or alter its earlier finding with respect to the defendant's imputed earning capacity.[5]

The defendant's present attempt to challenge the court's finding with respect to her earning capacity, which was made in connection with its July 25, 2022 orders, amounts to an improper collateral attack on that earlier judgment that is not a proper subject of this appeal. For the foregoing reasons and on the basis of the authority set forth in part I A of this opinion, we decline to reach the merits of this claim.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* ANTHONY SINCHAK (AC 47303)

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

Syllabus

The defendant filed a motion with this court to dismiss the state's appeal from the decision of the trial court granting the defendant's motion to correct an illegal sentence. The defendant claimed that the appeal, which was taken before he was resentenced, was not from a final judgment. This court granted the defendant's motion and subsequently issued its opinion. *Held*:

This court dismissed the appeal for lack of subject matter jurisdiction, as the trial court's decision granting the defendant's motion to correct an illegal sentence was an interlocutory order and not an immediately appealable final judgment.

Considered September 4—officially released November 5, 2024

Procedural History

Substitute information charging the defendant with one count of the crime of murder and with two counts

[5] We note that, on January 18, 2024, the court issued subsequent orders that superseded the July 25, 2022 order and required that the defendant pay the plaintiff $337 per week in child support. In connection with the January 18, 2024 order, the court similarly did not revisit or alter its earlier finding with respect to the defendant's imputed earning capacity.

of the crime of kidnapping in the first degree, brought to the Superior Court in the judicial district of Waterbury and tried to the jury before *Murray*, *J.*; verdict and judgment of guilty; thereafter, the court, *Preleski*, *J.*, granted the defendant's motion to correct an illegal sentence; subsequently, the court, *Preleski*, *J.*, denied the state's motion for permission to appeal, and the state appealed to this court; thereafter, the defendant filed a motion to dismiss the appeal. *Appeal dismissed.*

John Cizik, *Jr.*, and *Laila M. G. Haswell*, senior assistant public defenders, in support of the motion.

Timothy F. Costello, supervisory assistant state's attorney, in opposition to the motion.

Opinion

BRIGHT, C. J. The state appeals from the orders of the trial court granting a motion to correct an illegal sentence filed by the defendant, Anthony Sinchak, and denying the state's motion for permission to appeal from that decision because the defendant has not yet been resentenced. The defendant moved to dismiss the appeal because it is not from a final judgment. The state claims that the orders are immediately appealable. We disagree with the state and, therefore, we have granted the defendant's motion to dismiss.[1]

The record reveals the following relevant facts and procedural history. On April 21, 1995, following a jury trial, the court accepted a verdict of guilty of one count of murder in violation of General Statutes § 53a-54a, and two counts of kidnapping in the first degree in violation of General Statutes § 53a-92 (a) (2) (B).

On July 20, 1995, the court, *Murray*, *J.*, conducted a sentencing hearing. Of relevance to the present matter,

[1] On September 4, 2024, this court granted the defendant's motion to dismiss the appeal and indicated that an opinion would follow. This opinion explains the reasons for our determination.

the transcript reflects that, during the hearing, defense counsel did not make any advocacy statement whatsoever on behalf of the defendant. Instead, defense counsel stated, "I'm handing the court a handwritten statement of the defendant regarding the—for the jury verdict case, and we have no other comments as far as sentencing is concerned." The state and the victim's family advocated for their sentencing recommendations, spanning ten pages of the transcript. Defense counsel responded, "I have no comment." The court sentenced the defendant to sixty years of incarceration for the murder and eighteen years of incarceration on each of the two counts of kidnapping, to run consecutively, for a total effective sentence of ninety-six years of incarceration. This court affirmed the judgment of conviction in 1997, and our Supreme Court granted certification to appeal, but subsequently dismissed the appeal as improvidently granted. *State* v. *Sinchak*, 47 Conn. App. 134, 703 A.2d 790 (1997), appeal dismissed, 247 Conn. 440, 721 A.2d 1193 (1999).

Thereafter, the defendant filed a series of motions and petitions challenging his sentencing and confinement.[2] Among them, the defendant filed a habeas corpus petition in 2000 claiming that defense counsel was ineffective for his failure to speak on the defendant's behalf at sentencing. The habeas court denied that claim, concluding that the defendant failed to prove prejudice

[2] See, e.g., *Sinchak* v. *Warden*, Superior Court, judicial district of Tolland, Docket No. CV-00-0800827-S (June 29, 2007) (habeas petition denied); *Sinchak* v. *Warden*, Superior Court, judicial district of Tolland, Docket No. CV-07-4001895-S (August 28, 2014) (habeas petition denied); *Sinchak* v. *Strange*, United States District Court, Docket No. 3:00-cv-00034 (SRU) (D. Conn. August 29, 2017) (habeas petition dismissed); *Sinchak* v. *Commissioner of Correction*, 173 Conn. App. 352, 355, 163 A.3d 1208 (affirming denial of habeas petition), cert. denied, 327 Conn. 901, 169 A.3d 796 (2017); *State* v. *Sinchak*, 205 Conn. App. 346, 367, 256 A.3d 671 (affirming denial of motion to correct illegal sentence alleging vindictive or retaliatory motive by sentencing judge), cert. denied, 338 Conn. 914, 259 A.3d 1179 (2021).

because he did not identify any specific fact or argument that competent counsel would have submitted. See *Sinchak* v. *Commissioner of Correction*, 126 Conn. App. 670, 681, 14 A.3d 348, cert. denied, 301 Conn. 901, 17 A.3d 1045 (2011). This court dismissed the defendant's appeal from the habeas court's judgment; id., 683; and the Supreme Court denied certification to appeal. *Sinchak* v. *Commissioner of Correction*, 301 Conn. 901, 17 A.3d 1045 (2011).

On June 20, 2023, the defendant filed the underlying motion to correct an illegal sentence and request for new sentencing, pursuant to Practice Book § 43-22. The defendant argued, among other things, that defense counsel provided no advocacy regarding mitigation at his sentencing hearing. On July 5, 2023, the state filed its objection.

Following a hearing on the matter, the trial court, *Preleski*, *J.*, granted the motion to correct and ordered a new sentencing hearing. In its memorandum of decision issued on December 27, 2023, the court concluded that the defendant was effectively abandoned by defense counsel at his sentencing, in deprivation of his sixth amendment right to counsel at a critical stage of the proceedings.

On January 4, 2024, the state, pursuant to General Statutes § 54-96[3] and Practice Book § 61-6 (b),[4] filed a motion for permission to appeal. On January 10, 2024, the defendant filed an objection arguing a lack of appellate jurisdiction arising from a lack of finality because

[3] General Statutes § 54-96 provides: "Appeals from the rulings and decisions of the Superior Court, upon all questions of law arising on the trial of criminal cases, may be taken by the state, with the permission of the presiding judge, to the Supreme Court or to the Appellate Court, in the same manner and to the same effect as if made by the accused."

[4] Practice Book § 61-6 (b) provides in relevant part: "The state, with the permission of the presiding judge of the trial court and as provided by law, may appeal from a final judgment. . . ."

the trial court had not yet resentenced him. In denying the state's motion on January 11, 2024, the court reasoned that the "granting [of] a motion to correct an illegal sentence is not a final judgment from which an appeal may be taken. It becomes a final judgment upon resentencing. It is the imposition of sentence that constitutes a final judgment in a criminal matter." This appeal followed.

As of the date that the state filed its appeal, January 23, 2024, the trial court had not resentenced the defendant. On May 29, 2024, the defendant filed this motion to dismiss the appeal for lack of subject matter jurisdiction due to the lack of a final judgment. See Practice Book § 66-8 (motion to dismiss challenging this court's jurisdiction may be filed at any time). On June 7, 2024, the state timely filed its opposition. For the following reasons, we conclude that the appeal must be dismissed for lack of subject matter jurisdiction because the trial court had not resentenced the defendant before the appeal was filed.[5]

We begin our analysis by recognizing that "[t]he lack of a final judgment implicates the subject matter jurisdiction of an appellate court to hear an appeal. A determination regarding . . . subject matter jurisdiction is a question of law . . . . We commence the discussion of our appellate jurisdiction by recognizing that there is no constitutional right to an appeal . . . . Article fifth, § 1, of the Connecticut constitution provides for a Supreme Court, a Superior Court and such lower courts as the [G]eneral [A]ssembly shall . . . ordain and establish, and that [t]he powers and jurisdiction of

[5] At the time this court issued its order granting the motion to dismiss, the defendant had not been resentenced, and the state had not filed an amended appeal from any such judgment. Had the defendant been resentenced during the pendency of this appeal, however, the state could have filed an amended appeal from that final judgment, pursuant to Practice Book § 61-9, and that amended appeal would have been jurisdictionally proper.

these courts *shall be defined by law*. . . . To consider the . . . claims [raised in the motion to dismiss], we must apply the law governing our appellate jurisdiction, which is statutory. . . . The legislature has enacted . . . [General Statutes] § 52-263, which limits the right of appeal to those appeals filed by aggrieved parties on issues of law from final judgments." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Smith* v. *Supple*, 346 Conn. 928, 936–37, 293 A.3d 851 (2023).

"Adherence to the final judgment rule is not dictated by legislative fiat alone. It has long been this court's policy to discourage piecemeal appeals, particularly in criminal proceedings. . . . The appealable final judgment in a criminal case is ordinarily the imposition of sentence." (Citations omitted; internal quotation marks omitted.) *State* v. *Curcio*, 191 Conn. 27, 30–31, 463 A.2d 566 (1983). An otherwise interlocutory order is considered a final judgment pursuant to § 52-263 and for purposes of appeal "(1) where the order or action terminates a separate and distinct proceeding, or (2) where the order or action so concludes the rights of the parties that further proceedings cannot affect them." Id., 31. By contrast, an interlocutory order is not a final judgment if it is "merely a step along the road to final judgment." (Internal quotation marks omitted.) *Hartford Accident & Indemnity Co.* v. *Ace American Reinsurance Co.*, 279 Conn. 220, 226, 901 A.2d 1164 (2006).

On granting a motion to correct an illegal sentence, the "court possesses the sole authority . . . [to] resentence a defendant if it is determined that the original sentence was illegal." (Internal quotation marks omitted.) *State* v. *Casiano*, 282 Conn. 614, 625, 922 A.2d 1065 (2007). Our appellate courts have jurisdiction to consider an appeal from the granting of a motion to correct an illegal sentence *after* resentencing. See, e.g., *State* v. *Jason B.*, 320 Conn. 259, 261, 128 A.3d 937

(2016) (considering defendant's appeal and state's cross appeal from order partially granting defendant's motion to correct illegal sentence *and* subsequent resentencing). Neither our Supreme Court nor this court has addressed, however, whether the state can appeal from the granting of a motion to correct an illegal sentence before the defendant has been resentenced.

That is the situation that confronts us in the present case, where the trial court only identified a sentencing error but did not resentence the defendant. The court therefore had not yet determined whether that error would have any impact on the defendant's sentence before the state filed this appeal.[6]

The state, although recognizing the general rule that the final judgment in a criminal case occurs upon the imposition of sentence, argues "that the granting of a motion to correct a sentence imposed in an illegal manner, which upsets a prior final judgment, is a final judgment for purposes of appeal and that the state, victims, and/or their survivors should not be required [to] litigate a new sentencing proceeding many years after the fact before the state may appeal the granting of the motion." In support of this argument, the state relies on our Supreme Court's decision in *Solomon* v. *Keiser*, 212 Conn. 741, 562 A.2d 524 (1989), in which the court recognized a limited exception to the "well established [rule] that an order opening a judgment ordinarily is not a final judgment within § 52-263." Id., 746. That exception is "where the appeal challenges the power of the court to act to set aside the judgment." (Internal quotation marks omitted.) Id., 747. Our Supreme Court has further explained that this narrow exception applies only when there is a colorable claim that the trial court

[6] It follows that the state—and, for that matter, the defendant—cannot know whether it will be aggrieved by the new sentence and, if so, the grounds on which the new sentence may be challenged on appeal.

lacked jurisdiction to act altogether, as opposed to a claim that the court abused its discretion in acting within its established jurisdiction. See *Wolfork* v. *Yale Medical Group*, 335 Conn. 448, 463–65, 239 A.3d 272 (2020) (distinguishing immediately appealable colorable claim that trial court lacked jurisdiction from claim of incorrect decision made in course of exercising its jurisdiction).

In the present case, the state does not argue that the trial court lacked jurisdiction to grant the defendant's motion to correct an illegal sentence. In fact, as the state acknowledges, Practice Book § 43-22 expressly authorizes the trial court to entertain such motions "at any time." The state simply disagrees with the court's conclusion that the defendant's sentence was illegal and does not make any colorable claim that the court did not have jurisdiction to grant the defendant's motion. For this reason, the state's reliance on *Solomon* and its progeny is misplaced.

Alternatively, the state argues that the court's order satisfies both prongs of *Curcio*. To satisfy the first prong of *Curcio*, the order or action must terminate a separate and distinct proceeding. *State* v. *Curcio*, supra, 191 Conn. 31. The state argues that this prong is satisfied because the correction of an illegal sentence is separate and distinct from the matters determined in the defendant's long final criminal judgment. The state's argument misses the mark. The question is not whether the defendant's motion to correct is a separate and distinct proceeding from the underlying criminal judgment. The issue is whether the court's granting of the motion "terminates" the proceeding. Clearly it does not. The proceeding will not be terminated until the defendant is resentenced. Accordingly, the court's decision does not satisfy the first prong of *Curcio*.

To satisfy the second prong of *Curcio*, the rights of the appellant must be so concluded by the order that

further proceedings cannot affect it. Id. "The second prong of the *Curcio* test focuses on the nature of the right involved. It requires the parties seeking to appeal to establish that the trial court's order threatens the preservation of a right already secured to them and that that right will be irretrievably lost and the [parties] irreparably harmed unless they may immediately appeal. . . . Thus, a bald assertion that [the appellant] will be irreparably harmed if appellate review is delayed until final adjudication . . . is insufficient to make an otherwise interlocutory order a final judgment. One must make at least a colorable claim that some recognized statutory or constitutional right is at risk." (Internal quotation marks omitted.) *Hartford Accident & Indemnity Co.* v. *Ace American Reinsurance Co.*, supra, 279 Conn. 226. The state argues that the correction of an illegal sentence through resentencing deprives the state, victims, and survivors of their interests in the finality of the long final original judgment. We are not persuaded.

If a party's interest in finality were a relevant factor, the "well established" rule that an order granting a motion to open is not a final judgment would not exist. *Curcio* requires much more, in particular, that the appellant show that a recognized right will be " 'irretrievably lost' " and that it will be " 'irreparably harmed' " if it cannot take an immediate appeal. Id. The state's interest in finality is not the type of recognized right that the second prong of *Curcio* is intended to protect. To the contrary, the state's interest in seeking reversal of the court's order before a new sentencing hearing is no different from that of any party that would prefer to appeal from an interlocutory order rather than be subject to additional proceedings necessitated by that order. Furthermore, no interest of the state will be irretrievably lost or irreparably harmed because it will have a full opportunity to challenge on appeal the

court's decision granting the motion to correct if it is aggrieved by the defendant's resentencing.[7]

We conclude that the trial court's decision granting the defendant's motion to correct an illegal sentence is not an immediately appealable final judgment, as it does not fit within either prong of *Curcio* or the *Solomon* exception to the final judgment rule. Accordingly, this court lacks subject matter jurisdiction over this appeal from that decision.

The appeal is dismissed.

In this opinion the other judges concurred.

RETAINED REALTY, INC. *v.* CHRISTOPHER A. SELKE ET AL.
(AC 47040)

Elgo, Suarez and DiPentima, Js.

Syllabus

The defendant property owner appealed from the judgment of foreclosure by sale rendered by the trial court for the plaintiff in a mortgage foreclosure action. *Held*:

This court dismissed the defendant's appeal as moot because, after the trial court had terminated the appellate stay, it approved the committee's sale of the defendant's property, which extinguished his right of redemption and, thereafter, title to the property vested in the successful bidder.

Submitted on briefs September 17—officially released November 5, 2024

[7] The state also argues that *Curcio*'s second prong is satisfied because "the new sentencing proceeding almost certainly will not be before the original judge who observed the criminal trial. One cannot contend that review of the cold transcript record of the original trial and sentencing is an adequate proxy to preserve the state's interest in finality." This argument merits little discussion. The state will have an opportunity to make a full presentation at the new sentencing hearing and will not be limited to presenting the transcripts of the original trial and sentencing.

Procedural History

Action to foreclose a mortgage on certain real property owned by the named defendant, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the named defendant et al. were defaulted for failure to plead; thereafter, the defendant Point Digital Finance, Inc., was defaulted for failure to disclose a defense; subsequently, the court, *Hon. Robert L. Genuario*, judge trial referee, granted the plaintiff's motion for summary judgment; thereafter, the court, *Hon. Robert L. Genuario*, judge trial referee, granted the plaintiff's motion for a judgment of foreclosure by sale and rendered judgment thereon, from which the named defendant appealed to this court; subsequently, the court, *Hon. Robert L. Genuario*, judge trial referee, granted the plaintiff's motion for termination of the stay of execution; thereafter, the court, *Hon. Kevin Tierney*, judge trial referee, granted the plaintiff's motion for approval of the committee sale; subsequently, the court, *Hon. John F. Kavanewsky, Jr.*, judge trial referee, granted the motion to open filed by the defendant Bay Tree Lane I, LLC, solely to substitute Point Titling Trust as a party defendant. *Appeal dismissed.*

Christopher A. Selke, self-represented, filed a brief as the appellant (named defendant).

Taryn D. Martin filed a brief for the appellee (plaintiff).

Opinion

PER CURIAM. On September 17, 2024, this court ordered that the parties, the plaintiff, Retained Realty, Inc., and the defendant Christopher A. Selke,[1] file supplemental memoranda addressing whether the defendant's appeal from the trial court's judgment of foreclosure by sale of the defendant's property should be

[1] The complaint named Park Tower Stamford Association, Inc., Point Digital Finance, Inc., and Bay Tree Lane I, LLC, as additional defendants.

dismissed as moot where, after the trial court terminated the appellate stay, it approved the committee's sale of the property on April 5, 2024, which extinguished the defendant's right of redemption, and, thereafter, title to the property vested in the successful bidder. See *U.S. Bank, National Assn.* v. *Fitzpatrick*, 206 Conn. App. 509, 514–15, 260 A.3d 1240 (2021); *Connecticut Savings Bank* v. *Howes*, 9 Conn. App. 446, 447–48, 519 A.2d 1216 (1987). Neither party filed a response to this order. After a careful review of the record, briefs, and appendices on file, we have determined that this appeal is moot. See, e.g., *BNY Western Trust* v. *Roman*, 102 Conn. App. 265, 266–67, 926 A.2d 36 (after sale is approved and relevant appeal periods have expired, any action by mortgagor to redeem should be dismissed as moot), cert. denied, 284 Conn. 935, 937 A.2d 693 (2007).

The appeal is dismissed.

JAIRON CASTILLO MARTINEZ *v.* COMMISSIONER OF CORRECTION
(AC 46675)

Elgo, Moll and Cradle, Js.

Syllabus

The petitioner appealed, following the denial of his petition for certification to appeal, from the judgment of the habeas court denying his amended petition for a writ of habeas corpus. *Held*:

This court dismissed the petitioner's appeal, as he exclusively challenged the habeas court's credibility determinations concerning the testimony at trial.

Argued October 23—officially released November 5, 2024

The trial court defaulted Park Tower Stamford Association, Inc., and Bay Tree Lane I, LLC, for failure to plead and Point Digital Finance, Inc., for failure to disclose a defense. Thereafter, the court substituted Point Titling Trust as a party defendant for Bay Tree Lane I, LLC. None of these entities has participated in this appeal. Accordingly, all references in this opinion to the defendant are to Selke alone.

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland and tried to the court, *Bhatt*, *J.*; judgment denying the petition; thereafter, the court, *Bhatt*, *J.*, denied the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

J. Christopher Llinas, assigned counsel, for the appellant (petitioner).

Danielle Koch, assistant state's attorney, with whom, on the brief, were *Angela Macchiarulo* and *Michelle Manning*, supervisory assistant state's attorneys, for the appellee (respondent).

Opinion

PER CURIAM. The petitioner, Jairon Castillo Martinez, appeals, following the denial of his petition for certification to appeal, from the judgment of the habeas court denying his amended petition for a writ of habeas corpus. As acknowledged by the petitioner's counsel during oral argument before this court, the petitioner's appeal exclusively challenges the habeas court's credibility determinations concerning the testimony during the habeas trial given by Attorney Jerome Larracuente and the petitioner. However, a habeas court's "pure credibility determination . . . is unassailable." *Breton* v. *Commissioner of Correction*, 325 Conn. 640, 694, 159 A.3d 1112 (2017); see also *Sanchez* v. *Commissioner of Correction*, 314 Conn. 585, 604, 103 A.3d 954 (2014) ("we must defer to the [trier of fact's] assessment of the credibility of the witnesses based on its firsthand observation of their conduct, demeanor and attitude" (internal quotation marks omitted)). Accordingly, we dismiss the petitioner's appeal.

The appeal is dismissed.