IN RE ZARIRAI S. ET AL.*
(AC 47605)

Alvord, Clark and Westbrook, Js.

Syllabus

The respondent mother appealed from the judgments of the trial court terminating her parental rights with respect to her minor children. The mother claimed that the court improperly determined that she had failed to achieve a sufficient degree of rehabilitation pursuant to the applicable statute (§ 17a-112 (j) (3)). *Held*:

The trial court reasonably determined, on the basis of its subordinate factual findings and the reasonable inferences drawn therefrom, which were adequately supported by the evidence, that, pursuant to § 17a-112 (j) (3) (B) and (E), the respondent mother failed to achieve sufficient rehabilitation that would encourage the belief that, within a reasonable time, she could assume a responsible position in the children's lives.

The trial court did not improperly compare the parenting of the respondent mother with that of the foster parents in determining that the mother failed to achieve a reasonable degree of rehabilitation, the court's statements regarding the foster parents having been made in the context of its finding that the mother could not meet the children's needs.

The trial court applied the proper legal standard, namely, whether the petitioner, the Commissioner of Children and Families, proved by clear and convincing evidence that the respondent mother had failed to achieve a sufficient degree of rehabilitation pursuant to § 17a-112 (j) (3) (B) and (E), and it did not require the mother to "guarantee" her rehabilitation within a period of six months.

Argued October 10—officially released November 21, 2024**

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

* 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.

** November 21, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Court in the judicial district of Waterbury, Juvenile Matters, where the respondent Kenneth E. et al. were defaulted for failure to appear; thereafter, the respondent Juan R. M. consented to the termination of his parental rights; subsequently, the matter was tried to the court, *Wilkerson Brillant, J.*; judgments terminating the respondents' parental rights, from which the respondent mother appealed to this court. *Affirmed.*

Benjamin M. Wattenmaker, assigned counsel, for the appellant (respondent mother).

Lori Knuth, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Nisa Khan*, assistant attorney general, for the appellee (petitioner).

Opinion

WESTBROOK, J. The respondent mother, Crystal S., appeals from the judgments of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families, terminating her parental rights with respect to her minor children, Z and L.[1] On appeal, the respondent claims that the court improperly determined that she had failed to achieve a sufficient degree of rehabilitation because (1) the court's determination was not supported by the evidence, (2) the court impermissibly compared the parenting of the respondent with that of the children's foster parents, and (3) the court failed to apply the proper legal standard by "add[ing] a requirement of a 'guarantee' that the [respondent]

[1] The parental rights of L's father, Juan R. M., were terminated by consent. The court, *Wilkerson Brillant, J.*, terminated the parental rights of Z's putative fathers, Kenneth E. and John Doe, after trial, at which they did not appear. The termination of the father's and the putative fathers' parental rights is not at issue on appeal. Accordingly, all references to the respondent are to the mother only.

Additionally, the respondent had two other children, but only Z and L are the subjects of this appeal. Accordingly, all references to the children are to Z and L only.

must be able to rehabilitate within six months." We affirm the judgments of the trial court.

The following facts, which the court found by clear and convincing evidence, and procedural history are relevant to the resolution of this appeal. Z was born in August, 2018, and L was born in August, 2021. The Department of Children and Families (department) first became involved with Z on September 8, 2020, when it received a report that the respondent had left Z with an inappropriate caregiver for more than one week, during which time the respondent had little contact with the child or the caregiver. On September 10, 2020, the petitioner, pursuant to General Statutes § 17a-101g, invoked a ninety-six hour hold on Z and placed her in the care and custody of the petitioner. On September 14, 2020, the petitioner filed a neglect petition and sought an order of temporary custody on Z's behalf, which the court, *Aaron*, *J.*, granted ex parte that same day. The court sustained the order of temporary custody on September 23, 2020. On March 9, 2021, the court adjudicated Z neglected and committed her to the care of the petitioner.

The court also ordered the respondent to follow specific steps for reunification with Z. The specific steps required, inter alia, that the respondent (1) keep all appointments set by or with the department; (2) participate in counseling and make progress toward treatment goals; (3) submit to substance abuse evaluations and follow recommendations for treatment; (4) submit to random drug testing; (5) not use illegal drugs or abuse alcohol or medicine; and (6) visit Z as often as the department permits.

In March, 2021, the respondent began treatment at the Wellmore Behavioral Health's Women and Children's Program (WCP) to address issues with mental health,

medication compliance, substance use, parenting concerns, and intimate partner violence. She has been diagnosed with post-traumatic stress disorder, single episode severe major depressive disorder, generalized anxiety disorder, bulimia nervosa, cannabis use disorder, and alcohol use disorder. She has experienced intimate partner violence during her relationship with L's father and during other prior relationships. She has also experienced childhood trauma, including physical abuse and sexual assault. In August, 2021, while at the WCP, the respondent gave birth to L. In October, November and December, 2021, the respondent tested positive for opiates, including codeine and/or morphine. As a result of the respondent's positive drug tests, failure to supervise L, and failure to comply with WCP rules, the WCP discharged her on December 30, 2021. On the same day, the petitioner filed a neglect petition and sought an order for temporary custody on behalf of L, which the court, *Hon. John Turner*, judge trial referee, granted ex parte that day.

After the WCP discharged the respondent, the department required her to participate in the Intensive Outpatient Program (IOP) at Wellmore Behavioral Health, which she refused to attend. The respondent told the department that she would instead attend mental health treatment at Community Mental Health Affiliates (CMHA), but she attended only one outpatient group meeting at CMHA in February, 2022. The respondent also refused to accept in-home support services to confirm medication compliance, and she refused to participate in random drug testing. On January 5, 2022, the court ordered the respondent to participate in a hair follicle test, and, on February 17, 2022, the test results returned positive for marijuana. In March, 2022, the respondent attended group therapy sessions at Intercommunity Healthcare's IOP. In June, 2022, she was successfully discharged from the IOP despite her failure

to attend all of the required sessions and her failure to participate in drug testing.

Due to concerns about COVID-19, the department offered the respondent virtual visits with her children in January and February, 2022. The respondent, however, was inconsistent with visitation as she cancelled or was late to several virtual visits. In-person visits resumed in February, 2022, and the department referred the respondent to the Family and Children's Aid Quality Parenting Center (QPC) for parental coaching before, during, and after visits. The respondent began attending QPC in July, 2022, but she was discharged in November, 2022, due to lack of engagement. The department thereafter offered the respondent visitation with the children at its office, but she declined visitation with the children between October 6, 2022, and December 29, 2022.

On December 7, 2022, the court, *Hon. John Turner*, judge trial referee, adjudicated L neglected and committed her to the care of the petitioner. The court also ordered the respondent to follow specific steps for reunification with L. The specific steps required, inter alia, that the respondent (1) keep all appointments set by or with the department; (2) participate in counseling and make progress toward treatment goals; (3) accept and cooperate with in-home services offered by the department; (4) submit to substance abuse evaluations and follow recommendations for treatment; (5) submit to random drug testing; (6) not use illegal drugs or abuse alcohol or medicine; (7) complete an appropriate domestic violence program; (8) visit L as often as the department permits; and (9) complete psychosocial evaluation recommendations.

The children's foster parents are their maternal grandfather and stepgrandmother, who have expressed a willingness to adopt them. Z has resided with them since March 25, 2022, and L has resided with them since

December 30, 2021. On May 3 and October 4, 2022, the court, *Torres*, *J.*, approved permanency plans calling for the termination of parental rights and adoption of Z and L. On March 1 and July 7, 2023, the petitioner filed petitions to terminate the respondent's parental rights as to Z and L.

On March 1, 2024, the court, *Wilkerson Brillant*, *J.*, issued a memorandum of decision on the termination of parental rights petitions. It found that the department, pursuant to General Statutes § 17a-112 (j) (1), made reasonable efforts to reunify the respondent with the children and that the respondent was unable or unwilling to benefit from reunification efforts. At the time of trial, the respondent had not fully complied with her specific steps to reunify with either of the children. The court also found that statutory grounds for termination of parental rights existed because the children had been adjudicated neglected and the respondent failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) and also failed to rehabilitate given a prior termination of parental rights pursuant to § 17a-112 (j) (3) (E).[2] The court further found that termination of parental rights was in

[2] In the respondent's brief to this court, her statement of issues challenges the court's determination that she failed to rehabilitate pursuant to § 17a-112, but her arguments expressly discuss only the § 17a-112 (j) (3) (B) ground for termination of parental rights and fail to expressly address the § 17a-112 (j) (3) (E) ground. Generally, we dismiss an appeal as moot where the respondent fails to challenge separate and independent bases for the court's determination that the requirements of § 17a-112 were satisfied. See *In re Miracle C.*, 201 Conn. App. 598, 605, 243 A.3d 347 (2020) ("[b]ecause the respondent challenges on appeal only one of the two separate and independent bases for the court's determination that the requirements of § 17a-112 (j) (1) had been satisfied, this court can afford the respondent no relief").

In the present matter, both grounds for termination of parental rights require the petitioner to prove by clear and convincing evidence that the respondent failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child. See General Statutes § 17a-112 (j) (3) (B) and (E). This is the finding that the respondent challenges on appeal, and,

the children's best interests. The court, therefore, terminated the respondent's parental rights as to the children. This appeal followed.[3] Additional facts will be set forth as necessary.

Before discussing the respondent's claims on appeal, we briefly set forth the standard of review and relevant legal principles that govern our review. "Proceedings to terminate parental rights are governed by . . . § 17a-112. . . . Under § 17a-112, a hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the adjudicatory phase, the trial court must determine whether one or more of the . . . grounds for termination of parental rights set forth in § 17a-112 [(j) (3)] exists by clear and convincing evidence. . . . If the trial court determines that a statutory ground for termination exists, then it proceeds to the dispositional phase. During the dispositional phase, the trial court must determine whether termination is in the best interests of the child. . . . The best interest determination also must be supported by clear and convincing evidence." (Internal quotation marks omitted.) *In re Niya B.*, 223 Conn. App. 471, 476 n.5, 308 A.3d 604, cert. denied, 348 Conn. 958, 310 A.3d 960 (2024).

I

The respondent first claims that the evidence does not support the court's finding that the respondent failed to "achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life

therefore, we treat the respondent's challenge to the court's determination that she failed to rehabilitate as a challenge to both § 17a-112 (j) (3) (B) and (E).

[3] The attorney for the minor children has filed a statement, pursuant to Practice Book § 79a-6 (c), adopting the brief of the petitioner.

of the child . . . .” General Statutes § 17a-112 (j) (3) (B); see also General Statutes § 17a-112 (j) (3) (E). Specifically, she argues that (1) the court made subordinate factual findings that are clearly erroneous, and (2) the evidence supports a finding that she did achieve sufficient rehabilitation. We are not persuaded.

“[The] standard of review of a trial court’s finding that a parent has failed to achieve sufficient rehabilitation . . . is one of evidentiary sufficiency, that is, whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court.” (Citation omitted; footnotes omitted; internal quotation marks omitted.) *In re Shane M.*, 318 Conn. 569, 587–88, 122 A.3d 1247 (2015).

“[W]e review the trial court’s subordinate factual findings for clear error.” (Internal quotation marks omitted.) *In re Corey C.*, 198 Conn. App. 41, 59, 232 A.3d 1237, cert. denied, 335 Conn. 930, 236 A.2d 217 (2020). “A [subordinate factual] finding is clearly erroneous when either there is no evidence in the record to support it, or the reviewing court is left with the definite and firm conviction that a mistake has been made.” (Internal quotation marks omitted.) *In re November H.*, 202 Conn. App. 106, 123, 243 A.3d 839 (2020). “Where . . . some of the facts found [by the trial court] are clearly erroneous and others are supported by the evidence, we must examine the clearly erroneous findings to see whether they were harmless, not only in isolation, but also taken as a whole. . . . If, when taken as a whole, they undermine appellate confidence in the court’s fact finding process, a new hearing is required.” (Internal quotation

marks omitted.) *In re Selena O.*, 104 Conn. App. 635, 645, 934 A.2d 860 (2007).

A

Before turning to the court's determination that the respondent has failed to rehabilitate, we address the respondent's challenges to the subordinate factual findings of the court. The respondent claims that the court erroneously found that she (1) "does not argue that she has sufficiently personally rehabilitated but has asked the court to consider giving her more time to achieve such a degree of personal rehabilitation," (2) "was not consistent with her mental health treatment at Footsteps [Counseling]," (3) provided "testimony [that], in the court's view, did not even adequately acknowledge the children's needs," (4) "only began limited engagement" with mental health services six months before trial, and (5) attended mental health treatment at CMHA four times. After reviewing each finding in turn, we conclude that the court's finding that the respondent attended treatment at CMHA four times is clearly erroneous. We further conclude that the error is harmless and, therefore, does not warrant a new trial. Additionally, assuming, without deciding, that the court's finding that the respondent began engaging with mental health services six months prior to trial is clearly erroneous, we conclude that the error is harmless and does not warrant a new trial. We conclude that the remainder of the challenged subordinate findings are not clearly erroneous.

First, the respondent argues that the court improperly found that she had not argued that she achieved sufficient personal rehabilitation. The respondent points to her trial counsel's closing argument, in which he stated that, "despite what the [petitioner] alleges, [the respondent] has achieved a sufficient degree of rehabilitation." The petitioner, on the other hand, directs us to the

respondent's testimony at the trial. On direct examination, the respondent agreed that she was "asking that the court deny the termination of parental rights petition so that [she] can have additional time to work toward unifying with both of the kids." On cross-examination, counsel for the minor children asked the respondent how much time she needed, and she replied: "I would think that maybe a month [or] three months because I do have the home . . . but, also, I would like to be given a grace period . . . . So, I would say three months and, if the court were to . . . give me leniency, [then] anywhere to half a year . . . ." Counsel for the minor children subsequently asked whether the respondent thought that three months would be "long enough to rehabilitate," and the respondent answered, "I do believe in myself." Although the court's statement that the respondent did not *argue* that she had rehabilitated was, strictly speaking, not accurate, the respondent's *testimony* indicated that she had not rehabilitated, notwithstanding her counsel's arguments. Cf. *In re Javonte B.*, 226 Conn. App. 651, 663 n.7, 318 A.3d 1095 (2024) (noting that "[s]tatements and arguments of counsel are not evidence" (internal quotation marks omitted)). Accordingly, we conclude that the challenged statement was not a clearly erroneous factual finding.

Second, the respondent argues that the court improperly found that she was inconsistent with her mental health treatment at Footsteps Counseling because her counselor, Stephanie Pizzuto, testified that the respondent was consistent with her mental health treatment. Pizzuto testified that she began treating the respondent on November 21, 2021, and that she worked with the respondent for one year. She testified that the respondent was consistent with her scheduled appointments until October, 2022, at which point the respondent stopped showing up to appointments and Pizzuto lost

contact with her. As a result of the respondent's failure to maintain appointments, Footsteps Counseling unsuccessfully discharged the respondent from the program in November, 2022. Additionally, on February 18, 2022, Pizzuto reported to the department that "[the respondent] is making slow progress toward her goals. . . . She was present for her scheduled appointments but has missed the past [two] weeks." (Internal quotation marks omitted.)

Although Pizzuto testified that the respondent had been consistent with her mental health treatment between November, 2021, and October, 2022, she also testified that the respondent stopped showing up in October, 2022, and additional evidence shows that she missed two weeks of appointments in February, 2022. Accordingly, after considering Pizzuto's testimony and report, the court reasonably could have found that the respondent was inconsistent with her mental health treatment at Footsteps Counseling, and, therefore, the court's finding to that effect is not clearly erroneous.

Third, the respondent argues that the court improperly found that that her testimony did not adequately acknowledge the children's needs. To support her argument, the respondent points to the following testimony:

"[The Respondent's Counsel]: And just moving on to visitation with the kids. What types of activities do you do with the children during visitation?

"[The Respondent]: . . . [T]he girls get agitated because it's just a room. They get bored, so I see the creative side in them, so I bring toys. . . . [T]hey love coloring, so I didn't bring the markers. [Z is] like 'why you didn't bring the markers?' She's very outspoken. I bring all types of things that I can think of, little beach balls, bubbles, safe things. And I also want them to, because learning in the WCP they didn't play with each

other, so I try to bring activities that they can both play with.

* * *

"[Counsel for the Minor Children]: How much additional time do you think you need?

"[The Respondent]: . . . I would like to be given a grace period because I do recognize that all the choices I made, I have a lot of like starts and beginning, but I've never given up because ultimately I was hoping for the well-being of the children, more or less, not for my selfish gain. What was best for them because I under[went] a lot through my parents and especially my own father. So, I would hope to give them a promising future."

The respondent argues that such testimony demonstrates concern for the children's needs during visits and a desire to provide the children with a promising future. The court, however, found the following: "The [respondent's] testimony, in the court's view, did not even adequately acknowledge the children's needs. Although the [respondent] testified about the steps she is taking to better herself, she did not testify that she had made any realizations or come to any conclusions regarding the needs of the children, or her ability to prioritize them." Indeed, the respondent testified about her desire to entertain the children during visits and to provide them with a "promising future," but she did not testify about the children's developmental, emotional, educational, or moral needs, such as therapy, permanency, and safety. Regarding a restraining order against L's father, the respondent stated only that "I will always be my own self advocate and keep myself safe." She did not testify about the restraining order as it relates to the safety of the children. Although the respondent argues that she acknowledged the children's needs, "[i]t is well established that [i]n a case tried before a court, the trial judge is the sole arbiter of the . . . weight to

be given specific testimony. . . . On appeal, we do not retry the facts . . . .'' (Internal quotation marks omitted.) *In re Niya B.*, supra, 223 Conn. App. 499. Thus, the court could have reasonably found that, taken as a whole, the respondent's testimony failed to adequately acknowledge the children's needs, and, therefore, this finding is not clearly erroneous.

Fourth, the respondent argues that the court improperly found that she ''only began limited engagement with certain services—concerning intimate partner violence and mental health—in May and August of 2023, six months before the court held the [termination of parental rights] trial.'' In support of her claim, the respondent points to evidence that she began participating in counseling at the WCP in March, 2021, at Footsteps Counseling in November, 2021, and at Intercommunity Healthcare's IOP in February, 2022.[4] Even assuming that the

[4] We note that the challenged finding appears in a portion of the memorandum of decision in which the court addressed the respondent's claim that she would be able to rehabilitate herself within three to six months. In rejecting that contention, the court noted that, notwithstanding the respondent's recent participation in mental health and intimate partner violence services with CMHA and McCall Behavioral Health beginning in May and August, 2023, respectively, both providers were of the opinion that the respondent needed substantial additional treatment. The court found that, ''based on the evidence of the [respondent's] need for further engagement with counseling services, as stated by the professionals she engaged with at McCall Behavioral Health and CMHA, the court cannot assume, based on the [respondent's] representation, that permitting her six additional months to adequately rehabilitate will have a sufficient result.'' Elsewhere in the memorandum of decision, the court expressly found that the respondent had participated in services with other providers at various points from 2021 through 2023, but that her engagement with such services was inconsistent. Specifically, the court found that the respondent was discharged from the WCP in 2021, refused to attend the IOP at Wellmore Behavioral Health in 2022, failed to participate in all required sessions and drug tests at Intercommunity Healthcare's IOP in 2022, stopped attending counseling at Footsteps Counseling in 2022, and inconsistently attended services at Safe Haven in 2023. Thus, read in context, it appears that the court's finding that the respondent ''only began limited engagement with certain services . . . in May and August of 2023,'' was not intended as a finding that those were the only services that the respondent ever engaged

challenged statement amounts to a clearly erroneous finding, we disagree with the respondent's contention that it was harmful error.

Our review of the court's memorandum of decision indicates that the court's determination that the respondent had failed to rehabilitate did not rise or fall on the premise that the respondent only recently began engaging in services. Rather, the court's analysis relied heavily on the respondent's long-term inability to provide stability and support for her children, her ongoing inconsistency in engaging in treatment across multiple providers, and her providers' testimony that she "requires further counseling and needs at least eight more months of treatment." The court stated that "a sufficient degree of personal rehabilitation is generally characterized by factors like a consistent track record with respect to engagement with services offered, satisfaction, or at least attempted satisfaction, of specific steps, the completion of applicable programs, and the endorsement of a professional who has worked with the individual," none of which the court found applicable to the respondent. The court further stated that its determination that the respondent failed to achieve sufficient rehabilitation "is especially true given that the evidence demonstrates that the [respondent] engages with and attends treatment inconsistently, that she has no clear treatment path, and that the professionals she is engaged with have recommended further counseling and higher levels of care." Because we conclude that any error with respect to the court's finding that the respondent began engaging with mental health services six months prior to trial is harmless considering the respondent's history of inconsistent and unsuccessful treatment, a new trial is not warranted. See *In re Leilah*

in but, rather, was meant to explain why the court was not convinced that three to six more months in treatment would be adequate for the respondent to achieve sufficient rehabilitation.

W., 166 Conn. App. 48, 70, 141 A.3d 1000 (2016) (new trial was not warranted where error regarding factual finding appeared harmless to determination taken as whole).

Lastly, the respondent argues that the court improperly found that she attended mental health treatment at CMHA four times. The petitioner does not dispute that this finding is erroneous as she concedes that "[t]he record is not clear as to how many individual counseling sessions [Helen] St. Germain [a clinician at CMHA] had with [the respondent] at the time of trial."[5] Rather, the petitioner argues that such error is harmless because the court's concern was that, at the time of trial, the respondent needed at least eight more months of mental health treatment to reach her goals. We agree with the petitioner because, as previously discussed, the court's determination that the respondent had failed to rehabilitate relied heavily on the inconsistency of the respondent's treatment as well as her need for additional treatment, both of which are supported by the evidence. Thus, because we conclude that the court's finding that the respondent attended treatment at CMHA four times,

[5] At trial, St. Germain testified about her work with the respondent in relevant part:

"[The Petitioner's Counsel]: So, you have been seeing her since about May, correct?

"[St. Germain]: I have been seeing [her] since May for group treatment and . . . the . . . end of August . . . is when we began really doing individual work. So, it's only been a couple of months.

"[The Petitioner's Counsel]: So, it's really only been while you've seen her in groups for about seven months, individually would you say it's been about three or four?

"[St. Germain]: Yes.

* * *

"[Counsel for the Minor Children]: So, how many individual sessions have you had with the [respondent]?

"[St. Germain]: I cannot say exactly how many, but since September it's been either every week or every other week that I met with her. May[be] a brief lapse here and there because I was on vacation or if there's a holiday."

even if erroneous, is harmless error, a new trial is not warranted.

B

We now turn to the respondent's claim that the evidence does not support the court's determination that she failed to achieve sufficient personal rehabilitation. The respondent argues that she had rehabilitated because she was successfully discharged from the Wellmore Behavioral Health Supportive Housing Program, she obtained housing and employment, and she had no criminal involvement while this matter was pending. We are not persuaded.

"Personal rehabilitation as used in [§ 17a-112] refers to the restoration of a parent to [her] former constructive and useful role as a parent. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [her] ability to manage [her] own life, but rather whether [she] has gained the ability to care for the particular needs of the child at issue." (Internal quotation marks omitted.) *In re Eric M.*, 217 Conn. App. 809, 829, 290 A.3d 411, cert. denied, 346 Conn. 921, 291 A.3d 1040 (2023). "An inquiry regarding personal rehabilitation requires us to obtain a historical perspective of the respondent's child-caring and parenting abilities." (Internal quotation marks omitted.) *In re Tremaine C.*, 117 Conn. App. 590, 597, 980 A.2d 330, cert. denied, 294 Conn. 920, 984 A.2d 69 (2009). "Although the standard is not full rehabilitation, the parent must show more than any rehabilitation. . . . Successful completion of the petitioner's expressly articulated expectations is not sufficient to defeat the petitioner's claim that the parent has not achieved sufficient rehabilitation. . . . [E]ven if a parent has made successful strides in her ability to manage her life and may have achieved a level of stability within her limitations, such

improvements, although commendable, are not dispositive on the issue of whether, within a reasonable period of time, she could assume a responsible position in the life of her children." (Citations omitted; internal quotation marks omitted.) *In re Alejandro L.*, 91 Conn. App. 248, 260, 881 A.2d 450 (2005).

Here, our careful review of the record and the court's factual findings reveals that the evidence credited by the court reasonably supports its determination that the respondent had failed to achieve sufficient rehabilitation to be able to parent the children within a reasonable time. The respondent has not played any role in caring for or raising the children, as Z and L have been in the petitioner's custody since 2020 and 2021, respectively. The respondent also failed to comply with the court's specific steps for reunification with the children. Notably, the court ordered her to visit with the children as often as permitted, but the respondent was inconsistent with visitation. Between January and February, 2022, the respondent cancelled or was late to several virtual visits. The respondent then began attending QPC sessions in July, 2022, but she was discharged in November, 2022, due to lack of engagement. The department thereafter offered the respondent visitation with the children at its office, but she declined visitation with the children between October 6, 2022, and December 29, 2022. As discussed in part I A of this opinion, the respondent's testimony failed to even adequately acknowledge the children's needs for stability and safety.

The court's specific steps also ordered the respondent not to use illegal drugs and to comply with drug tests, but she failed to comply with these steps. In October, November and December, 2021, while attending the WCP, the respondent tested positive for opioids. In January, 2022, she refused to engage in random drug testing, so the court ordered her to participate in a hair follicle test, which returned positive for marijuana in

February, 2022. The respondent thereafter attended the IOP at Intercommunity Healthcare where she refused to engage in drug testing. In April, 2023, she admitted to the department that she was using marijuana while having an expired medical marijuana card. In July, 2023, while attending intake at McCall Behavioral Health, the respondent admitted to smoking large amounts of marijuana and she tested positive for marijuana in September, 2023.

Furthermore, the department offered the respondent services relating to, inter alia, intimate partner violence, housing, parenting, and substance abuse, since first becoming involved with Z, but she has engaged with such services inconsistently. She was discharged from the WCP without completing the program because she violated its rules by, inter alia, testing positive for drugs, failing to supervise L, and leaving the facilities without permission. The respondent's providers, including St. Germain, reported that the respondent needs further counseling and at least eight more months of treatment. Ana Aldana, who provided counseling to the respondent at McCall Behavioral Health, additionally reported that the respondent's attendance was inconsistent and recommended that she engage in a higher level of care. The respondent did not present any evidence that any of the professionals she engaged with support her position. Moreover, the respondent requested that the court give her three to six additional months to rehabilitate to an appropriate level, which indicates that she recognized her failure to rehabilitate sufficiently at the time of trial. In considering this request in light of her providers' testimony, the court found that a realistic possibility existed that she would fail to sufficiently rehabilitate even if given an additional six months.

The evidence reasonably supports the trial court's findings that the respondent has not maintained a present and stable position in the children's lives, she has

failed to consistently and meaningfully participate in services provided by the department, she requires further mental health treatment to reach her goals, and she has failed to even acknowledge her children's needs for permanency and stability. Although the respondent encourages us to focus on the positive aspects of her behavior and to ignore the negatives, "we will not scrutinize the record to look for reasons supporting a different conclusion than that reached by the trial court." *In re Shane M.*, supra, 318 Conn. 593. We simply cannot find fault with the court's reasoning that, "[a]lthough the court does not doubt that the [respondent] loves the children, she has been given chances before and many years have passed. She has failed to even meet the court-ordered specific steps for reunification with the children, which weighs heavily against her." Thus, we conclude that the court reasonably determined, on the basis of its subordinate factual findings and the reasonable inferences drawn therefrom, which were adequately supported by the evidence, that the respondent failed to achieve sufficient rehabilitation that would encourage the belief that, within a reasonable time, she could assume a responsible position in the children's lives.

II

The respondent next claims that the trial court improperly determined that she had failed to rehabilitate because the court compared the parenting of the respondent with that of the foster parents. We disagree.

"The interpretation of a trial court's judgment presents a question of law over which our review is plenary. . . . As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . Effect must be given to that which is clearly implied as well

as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole. . . . If there is ambiguity in a court's memorandum of decision, we look to the articulations that the court provides." (Internal quotation marks omitted.) *In re James O.*, 322 Conn. 636, 649, 142 A.3d 1147 (2016).

"When the petitioner seeks to terminate a parent's parental rights on the ground that the parent has failed to rehabilitate, [t]he trial court is required, pursuant to § 17a-112, to analyze the [parent's] rehabilitative status *as it relates to the needs of the particular child*, and further . . . such rehabilitation must be foreseeable within a reasonable time. . . . Therefore, the trial court must first determine the needs of the particular child before determining whether a parent has achieved a sufficient rehabilitative status to meet those needs." (Citation omitted; emphasis in original; internal quotation marks omitted.) Id., 650.

"Turning to the ability of a trial court to consider evidence of the abilities of a foster parent when adjudicating a petition to terminate parental rights, [our Supreme Court has] recognized that such determinations are particularly vulnerable to the risk that judges or social workers will be tempted, consciously or unconsciously, to compare unfavorably the material advantages of the child's natural parents with those of prospective adoptive parents and therefore to reach a result based on such comparisons rather than on the statutory criteria." (Internal quotation marks omitted.) Id. "It is . . . essential, in considering a petition to terminate parental rights, to sever completely the issues of whether termination is statutorily warranted and whether a proposed adoption is desirable. Although petitions for termination are presumably seldom brought unless prospective adoptive parents are available, there still must be a two-step process to determine,

first, the threshold question of whether cause for termination . . . has been proved. . . . Accordingly, we have held that [o]nly if a ground for termination exists may the suitability and circumstances of adoptive parents, in an appropriate proceeding, be considered." (Citations omitted; internal quotation marks omitted.) Id., 650–51; see also *In re Baby Girl B.*, 224 Conn. 263, 275, 618 A.2d 1 (1992).

"We do not permit foster or preadoptive parents to intervene in termination proceedings because to do so would permit them to shape the case in such a way as to introduce an impermissible ingredient into the termination proceedings. . . . We have never held, however, that a foster parent may not testify during the adjudicative phase of a termination proceeding or that a trial court may not consider evidence that arises within the context of a foster placement that is relevant to one of the statutory grounds raised for termination of parental rights." (Citation omitted; internal quotation marks omitted.) *In re James O.*, supra, 322 Conn. 651; see also *In re Anthony H.*, 104 Conn. App. 744, 752, 936 A.2d 638 (2007) (trial court noted that "[the child] requires a substantial amount of structure, which his prior therapeutic foster homes were able to provide" within context of specific needs of child), cert. denied, 285 Conn. 920, 943 A.2d 1100 (2008); *In re Shyliesh H.*, 56 Conn. App. 167, 171–72, 743 A.2d 165 (1999) (child's interactions with foster mother, in contrast to interactions with other adults, were evidence of psychiatric condition relevant to specific needs of child).

"We must determine, therefore, whether the trial court properly considered evidence of the children's foster placement as relevant to an aspect of an adjudicatory ground for termination, or rather, as the respondent contends, it improperly reasoned that termination was warranted" because the foster parents are better or

preferable parents when compared with the respondent. *In re James O.*, supra, 322 Conn. 652.

In re James O., supra, 322 Conn. 636, is analogous to the present case. In that case, the trial court, in determining that the mother had failed to rehabilitate, stated: "More important than the disclosures, however, is the clear and convincing evidence that the children have made extraordinary progress while living with [the foster mother], in an environment that is calm and understanding of the children's needs. . . . As the children's progress, relationship and work with [the foster mother] makes clear, the process of healing and recovery must also occur in a home environment which the children have come to learn is safe and caring. Given [the foster mother's] training and participation in therapy sessions, it is clear that this process cannot be limited to the one hour per week session that a child has, even with a trust[ed] therapist. In contrast, [the mother] is volatile and prone to violence, unable to set appropriate limits, unwilling to talk with the children's therapists and, therefore, unable to help them use coping skills to manage their anxiety and ultimately, unwilling to believe the children's statements regarding the trauma. In short, [the mother] has none of the qualities [that] the children have required to stabilize and to continue to heal from the traumas they experienced while in their parents' care." (Internal quotation marks omitted.) Id., 653–54. Our Supreme Court found that the court had discussed the foster mother in light of the specific needs of the children. Id., 655. It, therefore, held that, "because the trial court found that the [mother] had none of the qualities necessary to meet her children's needs . . . the court did not improperly compare the abilities of the [mother] and [foster mother] in making its finding during the adjudicatory phase that the [mother] failed to achieve a reasonable degree of rehabilitation." Id., 657.

In the present case, the court made two findings that are relevant to this appeal. First, the court stated: "The [respondent] is unable to meet the developmental, emotional, educational, and moral needs of the children. This is especially true given the children's need for permanency at their ages, as [Z] is five years old and [L] is two years old, and their attachments to their shared foster family, which provides them with love and stability as well as familiarity as their maternal grandparents. Further, [Z] has been in the care of the [petitioner] since before her second birthday and has lived with this foster family for almost two years. Similarly, [L] has been in the care of the [petitioner] since before her first birthday and has lived with this foster family for over two years." Second, regarding the respondent's request for six additional months to rehabilitate, the court stated: "Additionally, apart from the likelihood that the [respondent] may sufficiently rehabilitate if given the time she requested, the lack of any guarantee that such rehabilitation will occur weighs heavily here because the children require permanence in their lives. The children are presently benefitting from a living situation that provides them with stability, care, nurture, and love. Considering the young age of the children, such a positive living situation is absolutely integral to their healthy development. If the court was to grant the [respondent's] request, the children's custody status will continue to lack permanence when that is exactly what they need at this stage."

After considering the challenged portions of the court's memorandum of decision within the context of its overall analysis, we conclude that the court's adjudicative findings are appropriately centered on the specific needs of the children, a necessary consideration when determining whether a respondent has failed to rehabilitate. Similar to *In re James O.*, the court referenced the foster placement, but it did so in light of the specific needs of

the children. The court noted that the children currently reside with their foster parents, where they benefit from, inter alia, "a living situation that provides them with stability, care, nurture, and love." By discussing the children's foster placement, the court recognized that, whoever the children's caregiver is, that individual must provide the children with permanence. See *In re James O.*, supra, 322 Conn. 654–55 (trial court properly discussed foster parent's attributes for purpose of determining that "whoever the children's caregiver is, he or she necessarily must play an important role in helping the children continue to address and heal from their trauma"). Moreover, unlike *In re James O.*, the court in the present matter did not use any comparative language, such as "in contrast," to describe differences between the respondent and the foster parents. See id., 653. Rather, the court merely sought to describe the kind of environment a caregiver must be able to provide for the children.

After the court determined the children's specific needs, it compared those needs with the abilities of the respondent and found that "the [respondent's] personal history and testimony indicate that, while she may be making progress in addressing the issues that affect her individual development and safety, she is still not able to fully grasp the importance of assuming responsibility for the safety and developmental needs of the children. . . . The [respondent's] testimony, in the court's view, did not even adequately acknowledge the children's needs. Although the [respondent] testified about the steps she is taking to better herself, she did not testify that she had made any realizations or come to any conclusions regarding the needs of the children, or her ability to prioritize them." Thus, as in *In re James O.*, the court found that the respondent did not have the minimum ability to meet her children's particular needs, as she failed to even acknowledge those needs. See *In*

re James O., supra, 322 Conn. 656–57. "While we are sensitive to the risks of a court comparing the abilities of a natural parent who can meet the basic needs of her children with the abilities of a foster parent who is more capable of meeting those needs and then making an adjudicatory determination based on who can *better* meet the needs of the particular children, those risks do not materialize when a court has found that a respondent has failed to achieve *any* level of rehabilitation and has *none* of the qualities necessary to meet the needs of the particular children." (Emphasis in original.) Id., 657.

In sum, the court considered several factors, one of which was the context of the children's foster placement, in finding that the children need a caregiver who provides permanency in their lives. The court thereafter found that the respondent "did not even adequately acknowledge the children's needs." Because the court's statements regarding the foster placements were made in the context of its finding that the respondent could not meet the children's needs, we conclude that the court did not improperly compare the parenting of the respondent and the foster parents in making its finding during the adjudicatory phase that the respondent failed to achieve a reasonable degree of rehabilitation.

III

Lastly, the respondent claims that the trial court applied an improper legal standard in reaching its conclusion that the respondent failed to achieve a sufficient degree of rehabilitation because it required her to guarantee rehabilitation within six months. We conclude that the court did not require the respondent to guarantee her rehabilitation, and, therefore, we reject the respondent's claim.

"Whether the trial court applied the proper legal standard is subject to plenary review on appeal." (Internal

quotation marks omitted.) *In re Eric M.*, supra, 217 Conn. App. 836. As previously stated, "judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole." (Internal quotation marks omitted.) *In re Fayth C.*, 220 Conn. App. 315, 320, 297 A.3d 601, cert. denied, 347 Conn. 907, 298 A.3d 275 (2023).

Section 17a-112 (j) provides in relevant part: "The Superior Court . . . may grant a petition [to terminate parental rights] . . . if it finds by clear and convincing evidence that . . . (3) . . . (B) the child . . . has been found by the Superior Court or the Probate Court to have been neglected, abused or uncared for in a prior proceeding . . . and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent . . . and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . ." Section 17a-112 "requires the court to find, by clear and convincing evidence, that the level of rehabilitation [he or she] has achieved, if any, falls short of that which would reasonably encourage a belief that at some future date [he or she] can assume a responsible position in [his or her] child's life."[6] (Internal quotation

[6] As previously noted in footnote 2 of this opinion, the respondent challenges the court's determination that she failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) and (E). General Statutes § 17a-112 (j) (3) (E) provides grounds for termination of parental rights where "the parent of a child under the age of seven years who is neglected, abused or uncared for, has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such parent's parental rights of another child were previously terminated pursuant to a petition filed by the [petitioner] . . . ."

marks omitted.) *In re November H.*, supra, 202 Conn. App. 122.

Here, the respondent argues that the court required her to guarantee her ability to rehabilitate within six months. In support of her argument, she points to two portions of the court's memorandum of decision. The court first stated that, "apart from the likelihood that the [respondent] may sufficiently rehabilitate if given the time she requested, the lack of any guarantee that such rehabilitation will occur weighs heavily here because the children require permanence in their lives." It also stated that the evidence "leaves the court with no guarantee that giving the [respondent] six more months will be in the children's best interests." Although the court noted that the respondent could not "guarantee" her rehabilitation, the memorandum of decision, taken as a whole, demonstrates that the court did not require the respondent to prove such guarantee and, therefore, did not apply an improper standard.

Regarding the respondent's rehabilitation at the time of trial, the court found that she has been given years

"The language of § 17a-112 (j) (3) (E) is very similar to [§ 17a-112 (j) (3) (B)] in that both § 17a-112 (j) (3) (B) and § 17a-112 (j) (3) (E) provide grounds for termination of parental rights based on the failure to rehabilitate. The notable differences between the two are: (1) § 17a-112 (j) (3) (B) includes a specific steps requirement, whereas § 17a-112 (j) (3) (E) does not; (2) § 17a-112 (j) (3) (B) does not include any language about whether the parent is 'unable or unwilling' to be rehabilitated, whereas § 17a-112 (j) (3) (E) does; and (3) § 17a-112 (j) (3) (B) refers to a prior finding of neglect for the same child at issue in the termination proceeding, whereas § 17a-112 (j) (3) (E) refers to a prior termination of parental rights with respect to 'another child . . . .' The statute as a whole therefore provides more procedural protection—in the form of specific steps—to parents who are involved in their first termination proceeding, rather than their second or subsequent proceeding, when faced with a claim of failure to rehabilitate." (Emphasis omitted.) *In re Elvin G.*, 310 Conn. 485, 523, 78 A.3d 797 (2013) (*Zarella*, *J.*, dissenting).

Here, the respondent challenges the legal standard the court applied in reaching its determination that she failed to achieve a sufficient degree of personal rehabilitation, which goes to both § 17a-112 (j) (3) (B) and (E).

to rehabilitate but has failed to consistently engage with services offered by the department or even meet the court-ordered specific steps for reunification with the children. Accordingly, the court determined that, "on the basis of the credible testimony and documentary evidence presented, and pursuant to the requirements of § 17a-112 (j) (3) (B) (i), the petitioner has met [her] burden of proof by clear and convincing evidence that the [respondent] has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the ages and needs of the children, she could assume a responsible position in their lives." The respondent, apparently recognizing that she had failed to rehabilitate, requested the court to provide her three to six additional months to rehabilitate to a sufficient degree. Regarding this request, the court found that, "based on the evidence of the [respondent's] need for further engagement with counseling services . . . the court cannot assume based on the [respondent's] representation that permitting her six additional months to adequately rehabilitate will have a sufficient result."

After considering the challenged portions of the court's memorandum of decision within the context of its overall analysis, we conclude that the court applied the proper standard, i.e., whether the petitioner proved by clear and convincing evidence that the respondent had failed to achieve such degree of personal rehabilitation to encourage the belief that she would assume a responsible position in her children's lives within a reasonable time. Although the court noted that the respondent could not *guarantee* rehabilitation within six months, its analysis clearly demonstrates that it did not require her to prove such guarantee. Because the court found that the petitioner proved by clear and convincing evidence that the respondent had failed to

rehabilitate sufficiently and was not likely to rehabilitate sufficiently if given six additional months, the court determined that grounds exist for termination of the respondent's parental rights pursuant to § 17a-112 (j) (3) (B) and (E). Accordingly, we conclude that the court applied the proper standard for determining whether the respondent had achieved a sufficient degree of rehabilitation.

The judgments are affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT EX REL. JEREMIAH DUNN, CHIEF STATE ANIMAL CONTROL OFFICER *v.* NANCY BURTON
(AC 45710)

Alvord, Elgo and Seeley, Js.

Syllabus

The defendant appealed from the judgment of the trial court vesting in the plaintiff ownership of numerous goats in the defendant's possession found to be neglected and cruelly treated and from the judgment of the court dismissing the defendant's counterclaim. The defendant claimed, inter alia, that the court improperly determined that she failed to comply with its order to relinquish ownership of the goats or pay a surety or cash bond by the deadline. *Held*:

The defendant's claim that the trial court lacked jurisdiction over the verified petition to vest temporary custody of the goats with the Department of Agriculture failed because the petition sufficiently detailed the defendant's neglect and cruel treatment of the goats so as to comply with the requirements of the governing statute ((Supp. 2022) § 22-329a (c)).

This court declined to review the defendant's inadequately briefed claims that the trial court improperly denied her motion to suppress certain evidence, that it did not decide her motion to relinquish the goats in a timely manner, that it improperly denied her motion to relinquish, that § 22-329a is unconstitutional on its face and as applied in the present case, and that the trial court improperly dismissed her counterclaim, in part, on the ground of sovereign immunity.

This court could not conclude that the defendant was denied due process when she was not allowed to present her motion to suppress certain evidence at the hearing regarding the temporary custody of the goats, as that hearing resulted in only an order of temporary custody of the goats and, had the defendant posted bond as required by § 22-329a (f), she could have presented her concerns about the evidence at a subsequent hearing.

This court declined to review the defendant's claim that she was entitled to notice and a hearing prior to the seizure of her goats pursuant to statute (§ 19a-341), the defendant having failed to identify where in the voluminous record the trial court's ruling on that claim could be found.

The trial court did not incorrectly conclude that temporary custody of the goats should vest with the department, the plaintiff having established that it was more probable than not that the goats were neglected or cruelly treated by the defendant.

The trial court's finding that the defendant did not relinquish ownership of the goats by the deadline ordered by the court was supported by the record and was not clearly erroneous.

The trial court did not improperly determine that the defendant failed to pay the bond ordered by the court pursuant to § 22-329a (c), as there was no dispute that she did not pay the required amount by the deadline.

The trial court did not abuse its discretion in dismissing, in part, the defendant's counterclaim on the basis of the prior pending action doctrine because the present action and a separate action brought by the defendant that was pending before the Superior Court were virtually alike.

Argued March 5—officially released November 26, 2024

Procedural History

Verified petition seeking, inter alia, custody in favor of the plaintiff of certain animals in the defendant's possession that allegedly were neglected or cruelly treated, and other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Cobb*, *J.*, issued an order vesting temporary custody of the animals with the plaintiff; thereafter, the case was transferred to the Superior Court in the judicial district of Waterbury, Complex Litigation Docket, where the court, *Bellis*, *J.*, denied the defendant's motion to suppress certain evidence and rendered judgment vesting permanent custody of the animals with the Department of Agriculture, from which the defendant appealed to

this court; subsequently, the defendant filed a counterclaim; thereafter, the court, *Bellis*, *J.*, granted the plaintiff's motion to dismiss the counterclaim and rendered judgment thereon, and the defendant filed an amended appeal. *Affirmed*.

Nancy Burton, self-represented, the appellant (defendant).

Matthew I. Levine, deputy associate attorney general, with whom were *Daniel M. Salton*, assistant attorney general, and, on the brief, *William Tong*, attorney general, for the appellee (plaintiff).

Opinion

SEELEY, J. The self-represented defendant, Nancy Burton, appeals from the judgment of the trial court vesting permanent custody with the Commissioner of Agriculture, through the Department of Agriculture (department), of sixty-five goats owned by the defendant and from the judgment of the court dismissing the defendant's counterclaim against the plaintiff, the state of Connecticut. On appeal, the defendant raises a number of claims, which we distill to the following: (1) the court lacked jurisdiction over the verified petition filed by Jeremiah Dunn, the chief animal control officer of the plaintiff, to vest temporary custody of the goats with the department, (2) the court improperly denied her motion to suppress, which attacked the process by which the warrant to search her property and seize the goats was issued pursuant to General Statutes (Supp. 2022) § 22-329a (b),[1] (3) she was "denied due process when she was not allowed to present [her] motion to suppress for adjudication," (4) she was entitled to notice and a hearing prior to the seizure of her goats

[1] Hereinafter, unless otherwise indicated, all references to § 22-329a in this opinion are to the version of the statute set forth in the 2022 supplement to the General Statutes.

pursuant to General Statutes § 19a-341,[2] (5) the court improperly determined that the goats were subjected to neglect and cruel treatment, (6) the court improperly determined that the defendant failed to comply with its order to relinquish ownership of the goats by April 16, 2021, or pay a surety or cash bond in the amount of $32,000 by that date, (7) § 22-329a is unconstitutional on its face and as applied in this case, and (8) the court improperly dismissed the defendant's counterclaim on the ground that the claims raised in the counterclaim were barred by either sovereign immunity or the prior pending action doctrine. We affirm the judgments of the court.

The following facts, as set forth in the record or the trial court's memorandum of decision vesting temporary custody of the goats with the department, and procedural history are relevant to this appeal. At all relevant times, the defendant was the owner of real property located at 147 Cross Highway in Redding (property), on which she kept a herd of goats. The Redding Police Department (police department) had received at least 120 complaints regarding the goats kept on the property, most of which related to roaming goats and violations of town ordinances. In April, 2020, one of the goats was in the road and was struck by a motor vehicle.[3] The department, as well, received at least five complaints regarding the goats, most of which concerned their care and condition. On or about October 7, 2020, the state animal control unit received a complaint concerning injured and/or neglected goats kept on the property. Following that complaint, on October 15, 2020, Barbara Godejohn, a state animal

[2] Although § 19a-341 was amended in 2024; see Public Acts 2024, No. 24-70, § 1; that amendment has no bearing on the merits of this appeal. For simplicity, we refer to the current revision of the statute.

[3] As a result of the motor vehicle accident involving the goat, the defendant was arrested and charged with animal cruelty. That case is pending before the Superior Court.

control officer, along with Redding Police Detective Christina Dias, observed approximately fifty goats on the property, one of which appeared to be walking on its knees and unable to stand. Subsequently, Charles DellaRocco, a state animal control officer, was assigned to investigate a complaint made by the defendant and, on December 10, 2020, he went to the property. Although the defendant did not allow DellaRocco onto the property, DellaRocco was able to observe thirty-five to forty-five goats from a distance, one of which was visibly limping. On February 3, 2021, DellaRocco observed the goats from a nearby location, where he viewed the defendant as she provided a minimal amount of hay to a goat paddock containing ten goats. On the basis of DellaRocco's observations of the goats on February 3, 2021, the department decided to conduct further surveillance of the property for the purpose of determining the condition of the herd. That surveillance, which concluded on March 4, 2021, resulted in a number of animal health and property management concerns, including that the goats were not given enough food and fresh water, they were not provided with adequate shelters from the elements, the existing shelters were in disrepair, either missing walls or a roof, and the goats were living in unsanitary conditions as a result of manure piling up several feet high. The goats themselves appeared to be in poor condition as well, with some having overgrown hooves, which affected their gait and mobility.

As a result of these concerns, Dunn filed an application for a search and seizure warrant pursuant to § 22-329a (b) to seize the goats. The warrant application was accompanied by an affidavit from DellaRocco, who attested, on the basis of his observations, that the goats were being treated cruelly.[4] The court granted the application and issued the warrant on March 9, 2021, finding

[4] Tanya Wescovich, a state animal control officer, was a coaffiant on the affidavit in support of the search warrant.

that there was probable cause that the goats were neglected or cruelly treated. The following day, the warrant was executed, and the department took custody of sixty-five live goats and one dead goat from the property. Furthermore, members of the department who were present during the execution of the warrant discovered between forty and fifty dead goats, in various stages of decomposition, in multiple locations throughout the property. Thereafter, Dunn filed a verified petition seeking, inter alia, temporary custody of the goats and requesting the court to issue an order to the defendant to show cause why the court should not vest custody of the goats in the department.[5] The court granted that request, issued a show cause order to the defendant and ordered a remote hearing to be held on March 30, 2021. The court held an evidentiary hearing on the verified petition for temporary custody on March 30 and April 8, 2021. Thereafter, the court, *Cobb*, *J.*, granted the petition in part and ordered, inter alia, that "[t]emporary care and custody of the sixty-four live goats seized by the [plaintiff] . . . shall continue to be vested in the [plaintiff] . . . ."

In its memorandum of decision relating to the plaintiff's request seeking an order of temporary custody of the sixty-five goats seized from the property, the court made the following findings: "The defendant is the owner of the property located at 147 Cross Highway,

[5] In the verified petition, Dunn also requested that (1) upon vesting temporary custody of the animals in the department, the court issue an order requiring the defendant either to relinquish ownership of the goats or post a surety or cash bond with the department, (2) the court make a finding that the goats were in imminent harm, neglected and/or cruelly treated in violation of General Statutes § 53-247, (3) the court vest permanent ownership and custody of the goats with the department, and (4) the court order the defendant to pay to the department the expenses incurred by the department to provide proper food, shelter and care to the goats, calculated at a rate of $15 per goat per day until ownership of the goats is vested in the plaintiff, as well as veterinary costs and expenses incurred.

Redding . . . and sixty-five live goats that lived on the property prior to March 10, 2021, when the animals were seized by the [plaintiff]. The defendant had owned other goats that died on the property. Forty to fifty goats were found dead and decaying on the property, with some of the carcasses found decaying in black plastic bags and Rubbermaid plastic bins. In October, 2020, the defendant voluntarily transferred twenty-three live goats from her property and placed them at an animal rescue facility.

"The defendant neglected the goats and treated them cruelly in a number of ways, including: (1) The defendant did not properly maintain the hooves of many of the goats, allowing the hooves to grow too long which impacted their mobility.

"(2) The defendant did not maintain the property or the shelters in that she did not remove manure that accumulated on the property and inside the shelters. Certain of the shelters had manure piled up to a foot high. The buildup of the manure in the shelters limited the space available in the shelters for the goats and impeded the goats' ability to use them. The manure was also a hazard to the goats' health and safety.

"(3) Many of the goats seized by the [plaintiff] had manure caked into their fur and were missing significant areas of fur on their coats.

"(4) The defendant failed to provide the goats with adequate food or water. Many of the goats were underweight. Also, photographs depict many empty and dry food and water containers on the property. Certain of the buckets appeared to have had water in them but the water had frozen due to the freezing temperatures. When state investigators conducted a surveillance of the property over a two day period, one noted she did not see the defendant provide any food or water at any time.

"(5) When the defendant did provide water to the goats, she did not use a hose system, but rather purchased plastic gallon water bottles. The amount of water provided to the goats from these water bottles was insufficient. Also, the defendant then allowed empty plastic water bottles to be left around the property, where the goats had access and could chew on them.

"(6) The defendant did not provide the goats with proper or adequate shelter. The number of shelters located on the property [was] limited and sufficient to accommodate only about thirty-five goats, not the sixty-five goats living on the property. In addition, the shelters were decrepit with missing walls and parts of ceilings. As a result, many of the shelters failed to provide proper protection for the animals from the rain, snow, cold, wind and other inclement weather.

"(7) The defendant allowed the property to be riddled with numerous dead and decaying goats.

"(8) The defendant allowed at least one goat to die on the property without proper care or treatment nor did she provide the goat with a proper or humane death. On March 10, the [plaintiff] found a recently deceased goat lying on the floor of a shelter used by the live goats. There was evidence that the deceased goat had fallen and could not get up and had been scraping his legs against the floor of the shelter prior to its death. Parts of that dead goat's body had been eaten by rodents or other vermin.

"Since the goats were seized by the [plaintiff] on March 10, 2021, and have been in the [department's] custody, one goat has died and six kids have been born, putting the number of goats in the [department's] care at seventy. When the six kids were born, their birthweights were unusually low, and all needed human intervention to survive.

"The court finds that while in the defendant's care, the sixty-five goats were in imminent harm and were neglected and cruelly treated by the defendant. The court, therefore, determines that the [plaintiff] has met its burden to establish reasonable cause to find that the animals' condition and the circumstances surrounding their care by the defendant require that temporary care and custody continue to be assumed by the [plaintiff] to safeguard the goats' welfare."

The court, therefore, vested temporary care and custody of the sixty-four live goats seized and the newly born kids in the department. The court also ordered that the defendant, "[o]n or before April 16, 2021 . . . relinquish ownership of the animals to the [plaintiff] or post a surety or cash bond with the [department] in the amount of [$500] per each of the sixty-four remaining live goats seized by the [plaintiff] to pay for the reasonable expenses in caring and providing for such animals . . . ." The court further ordered the defendant to "pay the expenses incurred by the [department] in providing proper food, shelter and care to each animal calculated at the rate of [$15] per goat per day beginning March 11, 2021, and continuing until the goats are returned to the defendant, the defendant relinquishes custody of the goats or permanent custody of the goats is vested in the [department] . . . [and] . . . pay all veterinary costs and expenses incurred for the welfare of the animals, which costs are not covered in the per diem rate during the period the goats remain in the [department's] temporary care and possession."

On April 20, 2021, the plaintiff filed a motion for an order requesting that the court vest permanent custody of the goats in the department. The basis for the motion was the defendant's failure to post a bond or to voluntarily relinquish ownership of the goats, as ordered by the court on April 9, 2021, and as required by § 22-329a

(f).[6] In its motion, the plaintiff asserted: "Pursuant to the order of the court, the defendant was given a choice of posting a bond, in order to protect the plaintiff from the increasing expense of caring for her goats during the pendency of these proceedings, or relinquishing ownership over them. The order unambiguously required the defendant to choose. The court required the defendant to post a surety or cash bond in the amount of $32,000 ($500 per animal). The defendant has refused to comply with the order of the court. Instead, the defendant sent a check to the plaintiff in the amount of $450 and has attempted to unilaterally modify the order to her benefit. Notably, the defendant's attempt to ignore the order is based, in part, on her desire to proceed only to oppose the [plaintiff's] efforts to obtain ownership over nine specifically identified goats. By any metric, the defendant has wilfully defied the order of the court by failing to post the bond as required by the court or [to] relinquish ownership over the goats. As a result of the defendant's refusal to comply with the court's order, ownership must be vested in the [department]." The defendant filed an objection to the plaintiff's motion for an order on April 27, 2022.

On May 4, 2022, the court granted the plaintiff's motion for an order. In its written order, the court, *Bellis*, *J.*,

[6] General Statutes (Supp. 2022) § 22-329a (f) provides: "If the court issues an order vesting the animal's temporary care and custody in some suitable state, municipal or other public or private agency or person, the owner or owners shall either relinquish ownership of the animal or post a surety bond or cash bond with the agency or person in whom the animal's temporary care and custody was vested. The surety bond or cash bond shall be in the amount of five hundred dollars for each animal placed in the temporary care or custody of such agency or person and shall secure payment for the reasonable expenses of the agency or person having temporary care and custody of the animal in caring and providing for such animal until the court makes a finding as to the animal's disposition under subsection (g) of this section. The requirement that a bond be posted may be waived if such owner provides satisfactory evidence that such owner is indigent and unable to pay for such bond."

stated: "The clear and unambiguous order of the court . . . on April 9, 2021, required the defendant to either relinquish control of the goats to the [plaintiff] or post surety or cash bond with the [department] in the amount of [$500] for each of the sixty-four remaining live goats no later than April 16, 2021. While the defendant filed a motion to 'Relinquish Ownership of Goats for Immediate Release to Qualified Animal Rescue Sanctuaries' on the April 16, 2021 deadline, that motion, which was subsequently denied, was an offer to relinquish ownership of the goats to two animal sanctuaries and various private individuals of the defendant's own choosing. Simply put, it was *not* an offer to relinquish control of the goats to the [plaintiff]. As such, the defendant did not relinquish control of the goats to the [plaintiff] by the April 16, 2021 court deadline. Therefore, the sole issue for the court is whether the defendant posted surety or cash bond with the [department] in the amount of [$500] for each of the sixty-four remaining live goats. The total amount due, on or before April 16, 2021, pursuant to the court's order, was $32,000. The defendant makes no claim that the $32,000 was paid. The court rejects the defendant's argument that the [plaintiff] waived the $32,000 based on her claim that the [plaintiff] had done so in the past in other matters. There is neither argument nor evidence in this case that the [plaintiff] has waived the surety or cash bond, but, more importantly, the imposition of the surety or cash bond was a binding order of the court [that] the parties were required to comply with. For these reasons, the motion of the [plaintiff] is granted. Permanent ownership of all of the defendant's goats and their offspring, born and unborn, is vested in the [department]. Additionally, pursuant to . . . § 22-329a (h), the sum of $39,360 ($15/day for forty-one days of care for sixty-four goats) plus any veterinary costs not covered by the per diem rate associated with the care of the goats for that forty-one

day time period shall be paid by the defendant to the [department]." (Emphasis in original.)

Subsequently, the plaintiff filed a motion for judgment in accordance with the court's May 4, 2022 order. On June 22, 2022, the court, *Bellis*, *J.*, granted the motion and rendered judgment for the plaintiff with respect to its action against the defendant but noted that a counterclaim filed by the defendant remained pending. The defendant appealed to this court from the June 22, 2022 judgment in favor of the plaintiff. Thereafter, the court, *Bellis*, *J.*, granted a motion to dismiss the counterclaim filed by the plaintiff following argument on the motion, and the defendant filed an amended appeal with this court challenging the judgment dismissing her counterclaim. Additional facts and procedural history will be set forth as necessary.

I

We first address the defendant's claim that the court lacked jurisdiction over the verified petition to vest temporary custody of the goats with the department. The defendant bases this claim on her assertion that, because the verified petition fails to identify the goats individually and to "plainly state" facts pertaining to the neglect and cruel treatment with regard to each goat seized, the goats were never brought within the jurisdiction of the court as a result of this alleged deficiency in the verified petition. Thus, according to the defendant, the court lacked jurisdiction over this case pursuant to the governing statute, § 22-329a (c). The plaintiff, on the other hand, counters that this claim, which concerns the sufficiency of the verified petition, does not implicate the subject matter jurisdiction of the court. We conclude that, even if we assume, without deciding, that the claim implicates the court's jurisdiction over the matter, the claim nonetheless fails, as

the verified complaint sufficiently complied with the requirements of the statute.

We first set forth our standard of review for this claim. The defendant's claim "presents a question of statutory construction over which we exercise plenary review. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. General Statutes § 1-2z. . . . [A] statute is plain and unambiguous when the meaning . . . is so strongly indicated or suggested by the [statutory] language . . . that . . . it appears to be *the* meaning and appears to preclude any other likely meaning. . . . [I]f the text of the statute at issue . . . would permit more than one likely or plausible meaning, its meaning cannot be said to be plain and unambiguous." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Demarco* v. *Charter Oak Temple Restoration Assn., Inc.*, 226 Conn. App. 335, 339–40, 317 A.3d 1137, cert. denied, 349 Conn. 923, 321 A.3d 1130 (2024). "It is a basic tenet of statutory construction that [w]e construe a statute as a whole and read its subsections concurrently in order to reach a reasonable overall interpretation." (Internal quotation marks omitted.) *Townsend* v. *Commissioner of Correction*, 226 Conn. App. 313, 331, 317 A.3d 1147 (2024). Applying these principles to § 22-329a (c), and for the

reasons that follow, we conclude that the defendant's interpretation of § 22-329a (c) is not consistent with the plain language of the statute.

Section 22-329a (c) applies after the department has taken custody of animals and provides in relevant part that an animal control officer "shall file with the [S]uperior [C]ourt . . . a verified petition plainly stating such facts of neglect or cruel treatment as to bring *such animal* within the jurisdiction of the court . . . ." (Emphasis added.) The defendant argues that we should construe "such animal" as used in the statute as meaning each individual animal. She does so, however, without citation to any authority supporting that interpretation.[7] "Courts are not permitted to read words into the statute that the legislature did not insert." *Dusto* v. *Rogers Corp.*, 222 Conn. App. 71, 108, 304 A.3d 446 (2023), cert. denied, 348 Conn. 939, 307 A.3d 274 (2024); see also *Randolph* v. *Mambrino*, 216 Conn. App. 126, 143, 284 A.3d 645 (2022) (" '[w]e will not read into a [statute] words or limitations that are not there' "). We,

[7] In her appellate briefs, the defendant cites only to other Superior Court animal welfare cases in which the verified petitions addressed specific animals in support of her claim that each of the sixty-five goats had to be referenced individually in the verified petition in the present case. See *State ex rel. Dunn* v. *Kornstein*, Superior Court, judicial district of Hartford, Docket No. CV-20-6124017-S (February 20, 2020) (seizure of 1 cow, 137 chickens, 33 ducks, 6 dogs, and 18 cattle); *State ex rel. Connors* v. *Olajos*, Superior Court, judicial district of Hartford, Docket No. CV-16-6065975-S (March 8, 2016) (seizure of 32 horses, 78 chickens, 19 rabbits and 2 dogs); *State ex rel. Dunn* v. *Wilson*, Superior Court, judicial district of Hartford, Docket No. CV-21-6137026-S (February 4, 2021) (seizure of eight horses). These cases, in addition to being nonbinding authority, do not provide support for that proposition. Although the verified petition in each case made specific references to some of the animals seized, each petition did not do so with respect to the remainder of the seized animals and, instead, referred to them generally or as a whole by category of animal. These cases, thus, do not support a conclusion that the plaintiff is obligated under the statute to identify each animal that is part of the seizure and make specific factual allegations regarding each animal individually, and the defendant has not provided any other authority demonstrating otherwise.

therefore, decline to read into the statute words that are not stated therein.

Furthermore, as we have stated, the statute must be read as a whole. Subsection (b) of § 22-329a permits any animal control officer to take physical custody of "*any animal* upon issuance of a warrant finding probable cause that *such animal* is neglected or is cruelly treated . . . ." (Emphasis added.) "[S]uch animal" under the statute thus means any animal over which the animal control officer, i.e., the department, takes custody, which could range from one to many animals. In the present case, custody was taken over sixty-five goats. It logically follows that the requirement in subsection (c) of a plain statement of facts of neglect and cruel treatment in the verified petition must be made as to the animals—the sixty-five goats—over which the department took custody. In the present case, the verified petition set forth in great detail the observations of various animal control officers during the course of the surveillance operation that took place prior to the seizure of the goats. Those observations revealed health concerns related to the goats, as well as property management concerns, including that ten to twelve "goats had extremely long hooves that affected their mobility," one of the goats appeared to be limping and unable to stand, the animals had to take shelter in manure filled enclosures because manure was allowed to accumulate in and around the paddocks, "the animals [did] not have adequate access to fresh water," and "the shelter provided in the paddocks did not provide enough space to shelter all of the animals and the shelters did not provide an adequate wind break for high winds and cold weather." The verified petition further outlined the conditions of the goats and the property following the seizure. For example, it explained that, "[d]uring the execution of the warrant, dozens of dead goats, estimated to be between forty . . . and fifty . . . were

discovered in multiple locations on the property in various stages of decomposition" and that dead goats were found in plastic bags, inside trash containers, and in a shallow pit that was covered by plywood. Of the sixty-five goats that were seized, the verified petition alleged that a number of them were visibly underweight, had fur that was missing, matted, or caked in mud and manure, and had "extremely long hooves that were not being maintained and were affecting the mobility of the animals."

We conclude that the facts alleged in the verified petition sufficiently detailed the neglect and cruel treatment of the goats so as to comply with the terms of § 22-329a (c). The clear and unambiguous language of the statute requires the animal control officer to include in the verified petition a plain statement of the facts demonstrating neglect and cruel treatment of "such animal" over which custody has been taken. In the present case, sixty-five goats were seized from the property. The verified petition sets forth a plain statement of the facts pertaining to the neglect and cruel treatment of the herd of goats that resided on the property. There is no language in the statute requiring that the plain statement of facts of neglect and cruel treatment single out "each" individual animal seized, as argued by the defendant. Moreover, the allegations of cruel treatment pertaining to the goats stemmed in large part from the defendant's management of the property. As we have stated, the verified petition alleged that the defendant failed to provide adequate shelter for the goats, failed to give them sufficient access to fresh water, and allowed the goats to live in manure filled shelters and with dead goats in various stages of decomposition strewn about the property. All of the goats on the property were being subjected to these unsanitary conditions. It, thus, would be nonsensical for the statute to require that the verified petition assert a separate

allegation as to each individual goat when, as here, the allegations contained therein plainly stated the cruel treatment to which the goats, as a herd, were being subjected. "[A] court must construe a statute as written. . . . Courts may not by construction supply omissions . . . or add exceptions merely because it appears that good reasons exist for adding them. . . . The intent of the legislature, as this court has repeatedly observed, is to be found not in what the legislature meant to say, but in the meaning of what it did say. . . . It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is a function of the legislature." (Internal quotation marks omitted.) *State* v. *Richard P.*, 179 Conn. App. 676, 688, 181 A.3d 107, cert. denied, 328 Conn. 924, 181 A. 3d 567 (2018). The defendant's claim, therefore, is unavailing.

II

The defendant next challenges the court's denial of her April 8, 2021 motion to suppress,[8] which attacked the process by which the warrant to search her property and seize the goats was issued pursuant to § 22-329a (b). In her motion, the defendant alleged that the warrant was "procured under false pretenses" by DellaRocco, that his affirmations under oath to procure the warrant were "highly suspect," and that his affidavit was "replete with false, fanciful and ridiculous" assertions that were made recklessly and that did not establish probable cause. The defendant sought a new probable cause hearing, the warrant "stricken," and the goats returned. On appeal, the defendant reiterates her assertions that DellaRocco lacked credibility and that the warrant failed to establish probable cause. She now argues for the first time that (1) DellaRocco lacked credibility because he wilfully withheld facts, namely, that he failed to disclose a prior arrest on felony charges

[8] In an order dated April 13, 2022, the court, *Bellis*, *J.*, denied the motion summarily.

of larceny and forgery, and that such facts, if known, "would have doomed the [warrant] application"; and (2) the trial judge who made the finding of probable cause to issue the warrant had a conflict of interest. Because these arguments were not raised in the defendant's motion to suppress[9] and are being raised for the first time on appeal, we decline to review them.[10] See *Deutsche Bank Trust Co. Americas* v. *Burke*, 218 Conn.

[9] On appeal, the plaintiff argues that the defendant "does not have a fourth amendment right to suppress evidence in civil proceedings like animal welfare actions." As the plaintiff maintains, "[o]ur jurisprudence has long held that one cannot exclude evidence based on an alleged fourth amendment violation in civil cases." Although this court recently determined that the exclusionary rule does not apply in the context of a civil animal welfare action involving a warrantless search; see *State ex rel. Dunn* v. *Connelly*, 228 Conn. App. 458, 459–60, A.3d (2024); the present case, in contrast, involves a claim that the affidavit in support of the search warrant contained assertions that were known to be false and omitted material facts, thereby implicating *Franks* v. *Delaware*, 438 U.S. 154, 155–56, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). See footnote 10 of this opinion. We need not decide whether the exclusionary rule applies in such circumstances in light of the defendant's failure to adequately brief her claim regarding her motion to suppress.

[10] We note that, in her motion to suppress, the defendant cited to *Franks* v. *Delaware*, 438 U.S. 154, 155–56, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), in support of her claim that the warrant affidavit was premised on false statements and omitted material facts. "In *Franks* v. *Delaware*, supra, [438 U.S.] 155–56, the United States Supreme Court held that where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, *and* if the allegedly false statement is necessary to the finding of probable cause, the [f]ourth [a]mendment requires that a hearing be held at the defendant's request. . . . The court in *Franks* mentioned only a false statement . . . included . . . in the warrant affidavit; subsequent cases, however, have extended *Franks* to include material omissions from such an affidavit." (Emphasis in original; internal quotation marks omitted.) *State* v. *Grant*, 286 Conn. 499, 519–20, 944 A.2d 947, cert. denied, 555 U.S. 916, 129 S. Ct. 271, 172 L. Ed. 2d 200 (2008). On appeal, the defendant has neither cited to *Franks* nor argued in her appellate briefs that she was entitled to a *Franks* hearing. We, therefore, deem any such claim abandoned. See *Samelko* v. *Kingstone Ins. Co.*, 329 Conn. 249, 255 n.3, 184 A.3d 741 (2018) (claim raised at trial but not argued on appeal was deemed abandoned); see also *Harris* v. *Bradley Memorial Hospital & Health Center, Inc.*, 306 Conn. 304, 319, 50 A.3d 841 (2012) ("[a]n appellant who fails to brief a claim abandons it" (emphasis omitted; internal quotation marks omitted)), cert. denied, 569 U.S. 918, 133 S. Ct. 1809, 185 L. Ed. 2d 812 (2013).

App. 542, 546 n.4, 292 A.3d 81 (declining to review claim raised for first time on appeal), cert. denied, 347 Conn. 904, 297 A.3d 567 (2023). Moreover, with respect to her claim that DellaRocco's allegations in his affidavit in support of the warrant lacked credibility and did not establish probable cause, the defendant makes conclusory assertions without any citation to authority or analysis of the law as applied to this case. "Where the parties cite no law and provide no analysis of their claims, we do not review such claims." (Internal quotation marks omitted.) *Jalbert* v. *Mulligan*, 153 Conn. App. 124, 133, 101 A.3d 279, cert. denied, 315 Conn. 901, 104 A.3d 107 (2014). "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." (Internal quotation marks omitted.) *Prescott* v. *Gilshteyn*, 227 Conn. App. 553, 571 n.8, 322 A.3d 1060 (2024). Because the defendant has inadequately briefed her challenge to the denial of her motion to suppress, we decline to review this claim.[11]

[11] 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.) *Burton* v. *Dept. of Environmental Protection*, 337 Conn. 781, 803–804, 256 A.3d 655 (2021); see also *Wells Fargo Bank, N.A.* v. *Caldrello*, 192 Conn. App. 1, 34, 219 A.3d 858 (" '[a]lthough we are solicitous of the rights of pro se litigants . . . [s]uch a litigant is bound by the same rules . . . and procedure as those qualified to practice law' "), cert. denied, 334 Conn. 905, 220 A.3d 37 (2019). "[A]lthough we recognize and adhere to the well-founded policy to accord leeway to self-represented parties in the appeal process, our deference is not unlimited; nor is a litigant on appeal relieved of the obligation to sufficiently articulate a claim so that it is recognizable to a reviewing court." (Internal quotation marks omitted.) *L. K.* v. *K. K.*, 226 Conn. App. 279, 303 n.11, 318 A.3d 243 (2024); see also *Burton* v. *Dept. of Environmental Protection*, supra, 804; *Bank of New York Mellon* v. *Horsey*, 227 Conn. App. 94, 107 n.9, 321 A.3d 441 (2024). Moreover, although the

III

The defendant next claims that she was "denied due process when she was not allowed to present [her] motion to suppress for adjudication." We disagree.

The following additional facts and procedural history are relevant to this claim. At the end of the day of the

defendant is a self-represented party, she was a licensed attorney prior to being disbarred in 2008; see https://www.jud.ct.gov/attorneyfirminquiry/JurisDetail.aspx (last visited November 15, 2024); and, therefore, has legal training that most self-represented litigants do not have. See *Nationstar Mortgage, LLC* v. *Giacomi*, 226 Conn. App. 467, 480 n.8, 319 A.3d 794 (2024); see also *United States* v. *Pierce*, 649 Fed. Appx. 117, 117 n.1 (2d Cir. 2016) ("[The defendant] was a licensed attorney before he was automatically disbarred as a result of his conviction in this case. . . . While [i]t is well established that a court is ordinarily obligated to afford a special solicitude to [self-represented] litigants, it is also well established that a lawyer representing himself [or herself] ordinarily receives no such solicitude at all. . . . Because the rationale for this latter rule is that an attorney is experienced in litigation and familiar with the procedural setting presented . . . it extends to disbarred attorneys . . . ." (Citations omitted; internal quotation marks omitted.)), cert. denied, 580 U.S. 1104, 137 S. Ct. 841, 197 L. Ed. 2d 78 (2017); *Tracy* v. *Freshwater*, 623 F.3d 90, 102 (2d Cir. 2010) (explaining that "the degree of solicitude" afforded to self-represented litigants is not identical and "may be lessened where the particular [self-represented] litigant is experienced in litigation and familiar with the procedural setting presented"). The defendant also has represented herself in numerous appeals before this court and our Supreme Court. See *Burton* v. *Dept. of Environmental Protection*, supra, 337 Conn. 781; *Burton* v. *Commissioner of Environmental Protection*, 323 Conn. 668, 150 A.3d 666 (2016); *Burton* v. *Dominion Nuclear Connecticut, Inc.*, 300 Conn. 542, 23 A.3d 1176 (2011); *Statewide Grievance Committee* v. *Burton*, 299 Conn. 405, 10 A.3d 507 (2011); *Burton* v. *Commissioner of Environmental Protection*, 291 Conn. 789, 970 A.2d 640 (2009); *Connecticut Coalition Against Millstone* v. *Connecticut Siting Council*, 286 Conn. 57, 942 A.2d 345 (2008); *Statewide Grievance Committee* v. *Burton*, 282 Conn. 1, 917 A.2d 966 (2007); *Jackson* v. *Drury*, 191 Conn. App. 587, 216 A.3d 768, cert. denied, 333 Conn. 938, 218 A.3d 1050 (2019); *Burton* v. *Freedom of Information Commission*, 161 Conn. App. 654, 129 A.3d 721 (2015), cert. denied, 321 Conn. 901, 136 A.3d 642 (2016); *Burton* v. *Connecticut Siting Council*, 161 Conn. App. 329, 127 A.3d 1066 (2015), cert. denied, 320 Conn. 925, 133 A.3d 459 (2016); *Burton* v. *Dominion Nuclear Connecticut, Inc.*, 129 Conn. App. 203, 21 A.3d 824, cert. denied, 302 Conn. 929, 28 A.3d 342 (2011); *Statewide Grievance Committee* v. *Burton*, 88 Conn. App. 523, 871 A.2d 380 (2005), aff'd, 282 Conn. 1, 917 A.2d 966 (2007); *Honan* v. *Dimyan*, 85 Conn. App. 66, 856 A.2d 463 (2004). As a

hearing on March 30, 2021, concerning the plaintiff's verified petition, the plaintiff's counsel requested that the court issue an order for temporary custody, which he argued would trigger subsection (f) of § 22-329a and allow for the remainder of the hearing to address a permanent order for custody of the goats. The court declined to issue any order at that time. On April 8, 2021, at the outset of the second day of the hearing, the court referred to the conversation from the previous day concerning the issue of whether the hearing should be for a permanent or temporary order. The court stated that it believed that the statute called for a two step process, that is, the court first had to determine whether a temporary order of custody was necessary and then, if necessary, it could address permanency at a separate proceeding. Both counsel for the plaintiff and the defendant initially agreed with the court proceeding that way and focusing the hearing on whether an order of temporary custody was warranted. Thereafter, the defendant notified the court that she had filed a motion to suppress and requested that her motion take priority over the proceedings that day, as she believed that "it should be considered first before anything else happen[ed] further in th[e] case." The court responded by stating that the proceedings that day would be moving forward and indicated that it would not be addressing the defendant's motion to suppress at the hearing that day, after which the defendant objected to the way in which the court was proceeding with the hearing, arguing that her due process rights required the court to consider her motion to suppress before continuing with the hearing. The court, nonetheless, overruled her objection to moving forward on the issue of a temporary order and stated: "With respect to your motion to suppress, this

result, she is more experienced in litigation than most self-represented parties and is well versed with the rules of appellate procedure. See *Turner* v. *Commissioner of Correction*, 201 Conn. App. 196, 224, 242 A.3d 512 (2020), cert. denied, 336 Conn. 945, 250 A.3d 694 (2021).

is a civil proceeding, it's not a criminal proceeding. Your motion will be taken up in due course, but not right now. This is a *temporary* proceeding, as I said before." (Emphasis added.)

The defendant asserts in her appellate brief that "[t]he motion was later marked 'off' . . . sua sponte by [*Hon. Jane S. Scholl*, judge trial referee], who had virtually no other involvement in the case. The motion was eventually denied without notice or a hearing by Judge Bellis on April 13, 2022 . . . a full year later. The defendant's supplement to motion to suppress . . . and motion in limine were also summarily disposed of by denial. Thereby, *the defendant was denied the opportunity to pursue her challenge to the warrant*, which, if successful, would have led to immediate release of all the goats and termination of this case and threats of excessive monetary penalties. The court's refusal to allow the defendant a hearing on the motion to suppress and related motions was a clear denial of due process." (Emphasis added.)

We next set forth general principles governing due process claims. "Whether a party was deprived of his [or her] due process rights is a question of law to which appellate courts grant plenary review. . . . The core interests protected by procedural due process concern the opportunity to be heard at a meaningful time and in a meaningful manner. . . . Fundamental tenets of due process require that all persons directly concerned in the result of an adjudication be given reasonable notice and opportunity to present their claims or defenses. . . . Due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. . . . Instead, due process is a flexible principle that calls for such procedural protections as the particular situation demands." (Citations omitted; internal quotation marks omitted.) *Cameron* v. *Santiago*, 223 Conn. App. 836,

842–43, 310 A.3d 391 (2024). "Due process does not mandate full evidentiary hearings on all matters, and not all situations calling for procedural safeguards call for the same kind of procedure. . . . So long as the procedure afforded adequately protects the individual interests at stake, there is no reason to impose substantially greater burdens . . . under the guise of due process." (Internal quotation marks omitted.) *In re Sarah S.*, 110 Conn. App. 576, 589 n.7, 955 A.2d 657 (2008).

Our Supreme Court has explained that "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he [or she] may be condemned to suffer grievous loss. . . . Whether the loss threatened by a particular type of proceeding is sufficiently grave to warrant more than average certainty on the part of the factfinder turns on both the nature of the private interest threatened and the permanency of the threatened loss." (Internal quotation marks omitted.) *In re Juvenile Appeal (83-CD)*, 189 Conn. 276, 297, 455 A.2d 1313 (1983).

Under the statutory scheme of § 22-329a, if an animal has been seized pursuant to a warrant finding probable cause that such animal is neglected or is cruelly treated under subsection (b), an animal control officer must file a verified petition plainly stating the facts of neglect or cruel treatment. See General Statutes (Supp. 2022) § 22-329a (b) and (c). Pursuant to subsection (d) of § 22-329a, "[i]f physical custody of an animal has been taken pursuant to subsection . . . (b) . . . and it appears from the allegations of the petition filed pursuant to subsection (c) of this section and other affirmations of fact accompanying the petition, or provided subsequent thereto, that there is reasonable cause to find that the animal's condition or the circumstances surrounding its care require that temporary care and custody be immediately assumed to safeguard its welfare, the court shall either (1) issue an order to show

cause why the court should not vest in some suitable state, municipal or other public or private agency or person the animal's temporary care and custody pending a hearing on the petition, or (2) issue an order vesting in some suitable state, municipal or other public or private agency or person the animal's temporary care and custody pending a hearing on the petition. A hearing on the order issued by the court pursuant to subdivision (1) or (2) of this subsection [(show cause order)] shall be held not later than fourteen days after the issuance of such order." If, following a hearing on the show cause order, a court vests temporary "care and custody" of the animal "in some suitable state, municipal or other public or private agency or person," the owner "shall either relinquish ownership of the animal or post a surety bond or cash bond" to pay for the reasonable expenses of the agency having temporary care of the animal until there is a final disposition pursuant to subsection (g). General Statutes (Supp. 2022) § 22-329a (f).

Following an order of temporary custody, § 22-329a (g) (1) requires that a hearing must be held at which it must be demonstrated that the animal, in fact, is or is not being neglected or cruelly treated.[12] Subsection (g) of § 22-329a provides in relevant part: "If, after hearing, the court finds that the animal is neglected or cruelly treated, it shall vest [permanent] ownership of the animal" with the department or "any state, municipal or other public or private agency . . . or . . . person," but if the court finds that the animal is not neglected or cruelly treated, it may return the animal to its owner. General Statutes (Supp. 2022) § 22-329a (g) (1) and (3). At this hearing, the animal owner has an opportunity to contest the seizure, which necessarily

[12] We note that there is nothing in the statute that prevents parties from agreeing to hold a hearing in one step, as long as the hearing is held within fourteen days of the show cause order.

includes challenging the validity of the warrant. Thus, under the statute, the deprivation of an animal owner's right in a temporary custody adjudication is neither final nor irrevocable; such order must be followed by a hearing to determine permanent ownership of the animal, including consideration of whether such animal must be returned to the owner. See *Cookson* v. *Cookson*, 201 Conn. 229, 235, 514 A.2d 323 (1986) ("the deprivation of rights in a *temporary* custody adjudication is neither final nor irrevocable" (emphasis added; internal quotation marks omitted)).

In the present case, the court made it clear to the parties that it would be addressing the verified petition in a two step process: first, it would determine, following the March 30 and April 8 hearings, whether an order of temporary custody of the goats was necessary. If it did so and issued such an order, and if the defendant subsequently paid the bond set by the statute and did not relinquish ownership of her goats, then a second hearing would be held to address permanent custody of the goats. Thus, when the defendant raised the issue of her motion to suppress and the court told her it would not be addressed at that temporary proceeding but that it would be "taken up in due course," the court was indicating that it was not appropriate to address the motion at that time, but that it would be addressed at a future hearing. Pursuant to § 22-329a (g) (1), there would have been a hearing on permanent custody, provided the defendant paid the bond as set forth in the court's order and the statute. In the present case, however, the defendant did not post the bond and, consequently, a subsequent hearing on permanent custody, at which she could have raised her challenge to the validity of the search warrant, never took place. On the basis of this record, we cannot conclude that the defendant was denied due process. In light of the fact that the hearing on April 8, 2021, resulted in an order

of temporary custody of the goats, the defendant was not denied due process as a result of the court's failure to consider her motion to suppress at that hearing.[13] As the court stated, the motion would be "taken up in due course." The fact that the motion was never ultimately "taken up" is due to the defendant's failure to post the bond as required by the statute and ordered by the court, which obviated the need for a permanent custody hearing. See part VI B of this opinion. The defendant's concerns about the validity of the warrant could have been raised at a meaningful time and in a meaningful manner had she posted a bond for the goats following the order vesting their temporary custody in the department. The defendant's claim that she was denied due process, therefore, fails.

IV

The defendant's next claim is that she was entitled to notice and a hearing prior to the seizure of her goats pursuant to § 19a-341.[14] Specifically, the defendant asserts

[13] In *State* v. *Kane*, 218 Conn. 151, 588 A.2d 179 (1991), the Supreme Court addressed a similar issue in the context of a probable cause hearing. Pursuant to General Statutes § 54-46a, a defendant charged with any crime punishable by death, life imprisonment without the possibility of release or life imprisonment is entitled to a probable cause hearing. In *Kane*, the defendant argued on appeal that he was denied due process because the statute governing probable cause hearings precluded him from having a hearing on his motion to suppress at the probable cause stage of the proceedings. See id., 155. In rejecting the defendant's claim, the Supreme Court explained that "[a] preliminary hearing is not designed to be a dress rehearsal for the trial. . . . [A]s long as the defendant was afforded the opportunity to challenge the admissibility of his statements at trial, the adjudicatory phase of the proceeding against him, his right to due process was preserved." (Citations omitted; internal quotation marks omitted.) Id., 159.

[14] General Statutes § 19a-341 is titled, "Agricultural or farming operation not deemed a nuisance; exceptions. Spring or well water collection operation not deemed a nuisance," is located in the chapter of the General Statutes titled, "Public Health and Well-being," and provides in relevant part: "(a) Notwithstanding the provisions of any general statute or municipal ordinance or regulation pertaining to nuisances to the contrary, no agricultural or farming operation, place, establishment or facility, or any of its appurtenances, or the operation thereof, shall be deemed to constitute a nuisance,

that an investigation of her property and the goats was conducted in 2017 and 2018 pursuant to § 19a-341, which resulted in a finding that the goats "appear[ed] to be in good condition with food and water available." That finding is set forth in a 2018 investigation report by the department that was admitted as a full exhibit at the March 30, 2021 hearing. On appeal, the defendant relies on that report as "prima facie evidence that [her] goat operation conforms with generally accepted agricultural practices pursuant to § 19a-341 . . . ." She also argues that the plaintiff was thus required to "overcome such prima facie evidence at a hearing preceded by notice before it could lawfully proceed with the 2021 seizure . . . ." We decline to review this claim.

First, the defendant does not include any citations in her appellate brief to the record showing when she raised this claim before the court or when it was addressed or decided by the court. Indeed, the report itself, on which the defendant relies in making this claim, makes no reference to § 19a-341. Instead, the report was generated in connection with a complaint of animal cruelty filed against the defendant pursuant

either public or private, due to alleged objectionable (1) odor from livestock, manure, fertilizer or feed, (2) noise from livestock or farm equipment used in normal, generally acceptable farming procedures, (3) dust created during plowing or cultivation operations, (4) use of chemicals, provided such chemicals and the method of their application conform to practices approved by the Commissioner of Energy and Environmental Protection or, where applicable, the Commissioner of Public Health, or (5) water pollution from livestock or crop production activities, except the pollution of public or private drinking water supplies, provided such activities conform to acceptable management practices for pollution control approved by the Commissioner of Energy and Environmental Protection; provided such agricultural or farming operation, place, establishment or facility has been in operation for one year or more and has not been substantially changed, and such operation follows generally accepted agricultural practices. *Inspection and approval of the agricultural or farming operation, place, establishment or facility by the Commissioner of Agriculture or the commissioner's designee shall be prima facie evidence that such operation follows generally accepted agricultural practices* . . . ." (Emphasis added.)

to General Statutes § 53-247 (a), and it simply concludes that, at the end of the investigation that occurred in *2017* and *2018*, "all goats on the property appear[ed] to be in good condition with food and water available," without mentioning any compliance with § 19a-341. Moreover, at the March 30, 2021 hearing, when the defendant offered the report into evidence, she made no reference to § 19a-341 or to her claim that it entitled her to a hearing prior to the seizure of her goats; instead, she questioned DellaRocco about the investigation of the complaint of animal cruelty that formed the basis of the report. Also, on the basis of our review of the record up to and through the temporary custody hearing held on March 30 and April 8, 2021, we could not find any motion filed by the defendant claiming that she was entitled to notice and a hearing under § 19a-341 prior to the seizure of her animals in early March, 2021.

As our Supreme Court recently has stated, it is the responsibility of parties, not an appellate court, "to clearly identify how and where in the record the claim that the party is raising on appeal was preserved for review and *where in the record the trial court's ruling on the claim may be found* . . . ." (Emphasis added.) *Dur-A-Flex, Inc.* v. *Dy*, 349 Conn. 513, 589–90, 321 A.3d 295 (2024). That is especially true in a case such as the present one, in which the pleadings are voluminous. We, therefore, decline to review this claim.

V

The defendant next challenges the court's determination that the plaintiff met its burden to establish that the goats were subjected to neglect and cruel treatment while in the defendant's care. In its April 9, 2021 decision vesting temporary custody of the goats with the department, the court determined that the plaintiff met its burden to establish "reasonable cause" that the goats were neglected and cruelly treated by the defendant.

In support of her claim on appeal, the defendant first argues that the court should have held the plaintiff to the burden of proving its claim by a fair preponderance of the evidence[15] but, instead, improperly applied a "minimal standard" of reasonable cause.[16] The defendant further argues that there was no evidence presented at the temporary custody hearing to support a finding that the goats were neglected or cruelly treated and, thus, that even the lower standard of reasonable cause was not met. We need not decide which standard applies to an order vesting temporary custody following a show cause hearing[17] because, even under the higher standard of a fair preponderance of the evidence, the defendant's claim fails.

We begin by setting forth our standard of review. "[T]he scope of our appellate review depends upon the proper characterization of the rulings made by the trial

[15] Proof by a preponderance of the evidence means, after a consideration of all the evidence fairly and impartially, there is enough evidence to produce "a reasonable belief that what is sought to be proven is more likely true than not true." (Internal quotation marks omitted.) *State* v. *Aviles*, 277 Conn. 281, 317, 891 A.2d 935, cert. denied, 549 U.S. 840, 127 S. Ct. 108, 166 L. Ed. 2d 69 (2006). Thus, to meet the fair preponderance of the evidence standard, the evidence had to induce a reasonable belief that it is more probable or likely than not that the goats were neglected or cruelly treated. See generally *State* v. *Reilly*, 60 Conn. App. 716, 725, 760 A.2d 1001 (2000).

[16] The reasonable cause standard is akin to that of probable cause. See *Karen* v. *Loftus*, 228 Conn. App. 163, 193, A.3d (2024); *Prioleau* v. *Commission on Human Rights & Opportunities*, 116 Conn. App. 776, 783, 977 A.2d 267 (2009). Probable cause "is a bona fide belief in the existence of facts essential under the law for the action and such as would warrant a [person] of ordinary caution, prudence and judgment, under the circumstances, in entertaining it." (Emphasis omitted; internal quotation marks omitted.) *Adriani* v. *Commission on Human Rights & Opportunities*, 220 Conn. 307, 316, 596 A.2d 426 (1991).

[17] We note that the defendant has not adequately briefed her claim that the court applied the wrong standard. In light of the inadequate briefing, the plaintiff briefly counters this claim by asserting that the defendant incorrectly argues that a preponderance of the evidence standard applies and that the correct standard is the reasonable cause standard. We thus leave for another day our decision on this issue.

court. To the extent that the trial court has made findings of fact, our review is limited to deciding whether such findings were clearly erroneous. When, however, the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Walters* v. *Servidio*, 227 Conn. App. 1, 29, 320 A.3d 1008 (2024). When, as in the present case, the resolution of a question of law "depends on underlying facts that are in dispute, that question becomes, in essence, a mixed question of fact and law. Thus, we review the subsidiary findings of historical fact . . . for clear error, and engage in plenary review of the trial court's application of . . . legal standards . . . to the underlying historical facts." (Internal quotation marks omitted.) *ASPIC, LLC* v. *Poitier*, 208 Conn. App. 731, 742, 267 A.3d 197 (2021).

In *State ex rel. Gregan* v. *Koczur*, 287 Conn. 145, 947 A.2d 282 (2008), our Supreme Court addressed the issue of what constitutes "neglect" for purposes of § 22-329a. In doing so, the court started "with the relevant language of [General Statutes (Rev. to 2005)] § 22-329a (a): 'The Chief Animal Control Officer, any animal control officer or any municipal or regional animal control officer may lawfully take charge of any animal found neglected or cruelly treated, in violation of sections 22-366, 22-415 and 53-247 to 53-252, inclusive, and shall thereupon proceed as provided in subsection (b) of this section . . . .' It is clear from this language that § 22-329a does not contain an independent standard of neglect but, instead, incorporates by reference the standards of the specific statutes enumerated therein. . . . [Section] 53-247 is the only statute listed in § 22-329a that applies to [the defendant's] conduct. Accordingly, to determine what constitutes neglect under § 22-329a under the circumstances of this case, we must look to

the language of § 53-247. Section 53-247 provides in relevant part: '(a) Any person who . . . deprives of necessary sustenance . . . any animal, or who, having impounded or confined any animal, fails to give such animal proper care or . . . fails to supply any such animal with wholesome air, food and water, or . . . having charge or custody of any animal . . . fails to provide it with proper food, drink or protection from the weather . . . shall be fined not more than one thousand dollars or imprisoned not more than one year or both. . . .' It is reasonable to conclude, therefore, that the neglect referred to in § 22-329a includes the failure to provide necessary sustenance, proper care, wholesome air, food and water under § 53-247 (a)." *State ex rel. Gregan* v. *Koczur*, supra, 153–54; see also *Bethlehem* v. *Acker*, 153 Conn. App. 449, 463, 102 A.3d 107 ("[i]t is reasonable to conclude that the neglect referred to in § 22-329a includes the failure to provide necessary protection from the weather"), cert. denied, 315 Conn. 908, 105 A.3d 235 (2014).

Applying the fair preponderance of the evidence standard to the present case, and on the basis of our careful review of the record relating to the two day evidentiary hearing held on March 30 and April 8, 2021, we conclude that the plaintiff presented sufficient evidence to produce a reasonable belief that it is more probable or likely than not that the goats were neglected or cruelly treated. DellaRocco testified to the information in his investigative report, which was admitted into evidence. Specifically, he testified to the poor conditions of the property observed during the preseizure surveillance, including that the shelters on the property were inadequate to house the goats, filled with manure and in a dilapidated condition with the roof caving in on one of them. He also testified to observing goats limping and having issues with their hooves and with walking, as well as to the large number of empty plastic water

bottles on the property and to the fact that he never saw the defendant provide water to the goats during his surveillance. He explained that when the warrant was executed, he walked the entire property and confirmed his prior observations. He further testified that there was not enough room for every goat to be in a shelter.

State Animal Control Officer Tanya Wescovich provided testimony as well regarding a report she prepared following the investigation of the property, which was admitted as a full exhibit, and as to her observations of the goats having extremely long hooves, the excessive amount of manure piled up in the shelters, which caused her concern for the health of the goats, and the large number of empty plastic water bottles on the property to which the goats had access. She further testified that there were nine pregnant goats at the time of the seizure, that five of them gave birth to six kids in total, and that none of the kids would have survived without human intervention. Similar to DellaRocco's testimony, Wescovich testified that she did not see the defendant give water to the goats during her surveillance shifts, during which she observed ten to fifteen goats that were either limping or could not move properly. Wescovich explained that once she gained access to the property during the execution of the warrant, she became aware that even more goats had issues. Other witnesses who testified during the two day hearing included Nancy Jarvis-Deluca, a state animal control officer who participated in the execution of the warrant; Rosa Buonomo, the operator of an animal rescue; and the defendant. In addition to the exhibits entered into evidence that were previously mentioned, the exhibits before the court also included, inter alia, numerous photographs taken on the day of the seizure, which showed the condition of the property, shelters and goats; the search

warrant application and supporting affidavit; a supplemental investigative report submitted by Jarvis-Deluca; and satellite images of the property.

The documentary and testimonial evidence presented shows that the defendant failed to provide the goats with adequate shelter, both in terms of space to shelter all the goats and for protection from high winds and cold weather; failed to give them sufficient access to fresh water; failed to properly care for the goats' hooves by letting them become overgrown, which affected the mobility of the goats; and allowed the goats to live in unsanitary conditions with manure filled shelters and with dead goats in various stages of decomposition strewn about the property. That evidence was sufficient to demonstrate that it is more probable than not that the goats were not provided with proper care, drink and protection from the weather to establish neglect for purposes of § 22-329a. See *State ex rel. Gregan* v. *Koczur*, supra, 287 Conn. 153–54;[18] *Bethlehem* v. *Acker*, supra, 153 Conn. App. 463. In her appellate brief, the defendant focuses much of her challenge to the court's finding of neglect on the fact that her goats were not identified to have any serious medical conditions and did not appear to be dehydrated so as to warrant their seizure. This court has determined previously, however,

[18] In *State ex rel. Gregan* v. *Koczur*, supra, 287 Conn. 157–58, "the defendant was keeping forty-six live cats and one dead cat in a 950 square foot residence, much of which was so cluttered with personal effects, trash and bags of raw garbage that it was unusable. The [trial] court . . . found, and the evidence amply demonstrated, that the residence was, and had been for some time, in a 'deplorable, filthy, unsanitary [and] unhealthy' condition, with cat feces, vomit and urine present throughout. . . . [A] person of ordinary intelligence would know that confining forty-six cats in these unhealthy conditions constituted a failure to provide proper care for the cats under any reasonable standard." Our Supreme Court thus found that the defendant's conduct in allowing the cats to live in unsanitary and unhealthy conditions fell within the " 'unmistakable core of prohibited conduct' " and constituted neglect under § 22-329a. Id., 157.

that "[n]owhere does our statutory, regulatory, or common-law scheme require an animal to be suffering from a present illness as a prerequisite to finding that the animal is neglected." *Bethlehem* v. *Acker*, supra, 467 n.12. Moreover, this claim ignores the court's factual findings that the goats not only endured extreme cruelty and neglectful conditions, but as many as forty to fifty of them died in the defendant's care as well.

We conclude that the plaintiff established that it is more probable than not that the goats were neglected or cruelly treated.[19] The defendant, therefore, has failed to demonstrate that the court incorrectly concluded that temporary custody of the goats should vest with the department.

VI

The defendant's next two claims concern the court's April 9, 2021 order that, "[o]n or before April 16, 2021, the defendant shall relinquish ownership of the animals to the [plaintiff] or post a surety or cash bond with the [department] in the amount of [$500] per each of the sixty-four remaining live goats seized by the [plaintiff] to pay for the reasonable expenses in caring and providing for such animals . . . ." With respect to this order, the defendant claims that (1) she complied with the order to the extent that it required relinquishment of the goats by April 16, 2021, and (2) she complied with the bond requirement of the order. We disagree with both claims and address them in turn.

A

The defendant first asserts that she complied with the order regarding relinquishment by filing a motion

[19] Of course, in light of our conclusion that the plaintiff established that it is more probable than not that the goats were neglected or cruelly treated, it necessarily follows that the court correctly determined that the plaintiff proved there was reasonable cause that the goats were neglected or cruelly treated.

on April 16, 2021, in which she sought to "relinquish ownership of [her] goats for immediate release to qualified animal rescue facilities and individuals as identified by the defendant" (motion to relinquish). In connection with this claim, the defendant also appears to be arguing that the court did not issue a ruling in a timely manner and, ultimately, improperly denied her motion. We are not persuaded.

After the court issued its April 9, 2021 order requiring the defendant, by April 16, 2021, either to relinquish ownership of the goats to the plaintiff or to post a surety or cash bond in the amount ordered, the defendant, instead, filed her motion to relinquish. Thereafter, the plaintiff filed a motion for an order requesting that the court vest permanent custody of the goats in the department as a result of the defendant's failure to relinquish ownership of the goats or to post a bond, as required by § 22-329a (f). In its written order granting the plaintiff's motion and vesting permanent custody of the goats with the department, the court stated that the language of its prior order was clear and unambiguous and "required the defendant to either relinquish control of the goats to the [plaintiff] or post surety or cash bond with the [department] in the amount of [$500] for each of the sixty-four remaining live goats, no later than April 16, 2021." The court further stated that the defendant's motion to relinquish "was *not* an offer to relinquish control of the goats to the [plaintiff]. As such, the defendant did not relinquish control of the goats to the [plaintiff] by the April 16, 2021 court deadline." (Emphasis in original.) The defendant's claim, therefore, appears to be challenging the court's finding, made in its order vesting permanent custody of the goats with the department, that the defendant had not complied with its April 9, 2021 order regarding relinquishment of the goats. That raises an issue of fact, which we review under the clearly erroneous standard of review. See

Meineke Bristol, LLC v. *Premier Auto, LLC*, 227 Conn. App. 64, 73, 319 A.3d 826 (2024) ("A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed . . . . Our authority, when reviewing the findings of a judge, is circumscribed by the deference we must give to decisions of the trier of fact, who is usually in a superior position to appraise and weigh the evidence. . . . The question for this court . . . is not whether it would have made the findings the trial court did, but whether in view of the evidence and pleadings in the whole record it is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.)).

The court's April 9, 2021 order, which tracked the language of § 22-329a (f), gave the defendant the choice between two options to be completed by April 16, 2021, namely, relinquish ownership of the goats to the plaintiff or post a surety or cash bond in the amount ordered. We agree with the court that filing a motion was not a proper response to the court's order. Moreover, the court was correct in finding that the motion to relinquish "was *not* an offer to relinquish control of the goats to the [*plaintiff*]." (Emphasis altered.) Rather, as the defendant states in her appellate brief, "[t]he motion [sought] to relinquish the goats with the single qualification that they be rehomed to facilities and individuals selected by the defendant." The addition of that qualification by the defendant, however, is contrary to the general rule that "[a]n order of the court must be obeyed until it has been modified or successfully challenged." (Internal quotation marks omitted.) *Celini* v. *Celini*, 115 Conn. App. 371, 382, 973 A.2d 664 (2009); see also *Eldridge* v. *Eldridge*, 244 Conn. 523, 530, 710 A.2d 757

(1998). In the present case, the defendant is improperly attempting, unilaterally, to modify the requirement of the court's order that she relinquish ownership of the goats to the *plaintiff* by adding the qualification that the goats be rehomed to a facility or individual of her choosing, which she cannot do, regardless of whether she believes any particular animal rescue is a more suitable environment for the goats. There is nothing in the statutory scheme governing the welfare of animals that allows the owner of a seized animal to decide or direct where a seized animal must go following a finding of neglect or cruel treatment of the animal. The court's finding that the defendant did not relinquish ownership of the goats by April 16, 2021, is supported by the record and is not clearly erroneous.

To the extent that the defendant claims on appeal that the court did not decide her motion to relinquish in a timely manner and then improperly denied it, we conclude that such claims are inadequately briefed. The defendant has not cited any authority demonstrating that there was a time period in which the motion had to be decided or why the court's ultimate denial of the motion was improper.[20] "[F]or this court judiciously and

[20] Instead, the defendant makes one reference to § 22-329a (g) (1), arguing that it "mandates that, once a judge has made a finding of neglect and cruel treatment, as Judge Cobb did in her April 9, 2021 order, she was under obligation to immediately vest ownership of the goats, as distinguished from temporary custody, in a [26 U.S.C.] § 501 (c) (3) facility permitted by law to care for neglected and cruelly treated animals, such as [the animal rescue she had suggested], with no prior hearing requirement, or a state, municipality or individual." This statute does not pertain to motions to relinquish or in any way explain why the court's denial of the defendant's motion was improper. Furthermore, we do not construe the statutory language as requiring the court to immediately vest ownership of the goats to an animal rescue of the defendant's choosing. The statute specifically provides that, "[i]f, after hearing, the court finds that the animal is neglected or cruelly treated, it shall vest ownership of the animal in *any state, municipal or other public or private agency which is permitted by law to care for neglected or cruelly treated animals* or with any person found to be suitable or worthy of such responsibility by the court." (Emphasis added.) General Statutes (Supp. 2022) § 22-329a (g) (1). The court complied with the statute when it exercised its discretion to vest ownership of the goats with the department.

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. . . . *State* v. *Buhl*, 321 Conn. 688, 724, 138 A.3d 868 (2016). Claims are inadequately briefed when they are merely mentioned and not briefed beyond a bare assertion. . . . Claims are also inadequately briefed when they . . . consist of conclusory assertions . . . with no mention of relevant authority and minimal or no citations from the record . . . .'' (Internal quotation marks omitted.) *State* v. *Roberts*, 227 Conn. App. 159, 185–86, 320 A.3d 989 (2024). The defendant's brief is devoid of citations to authority to support her assertions. Consequently, we decline to review these claims.

B

Next, the defendant claims that the court improperly determined that she failed to pay the bond ordered by the court pursuant to § 22-329a (f) within the deadline set by the court. Specifically, she argues that she complied with the order regarding the bond when she submitted a bank check to the plaintiff's counsel by the deadline in the amount of $450 along with a letter, which identified nine goats. The defendant subsequently submitted payments totaling $5070, which she claims is a sufficient amount for ten of the goats. Our resolution of this claim requires little discussion.

As we stated, the court's April 9, 2021 order provided the defendant with two options: relinquish ownership of the goats or pay a bond as set by the court. With respect to the bond issue, the court stated: ''The total amount due, on or before April 16, 2021, pursuant to the court's order, was $32,000. The defendant makes no claim that the $32,000 was paid.'' There is no dispute in the record that the defendant did not pay the required

amount by the April 16 deadline. On appeal, she argues first that she was not required to pay the bond because she relinquished ownership of the goats by way of her motion to relinquish. We already have rejected that claim. Because the defendant did not relinquish ownership of the goats, she was required to pay the $32,000 bond by April 16, 2021, which she failed to do. The defendant also makes a number of arguments about how the deadline to pay the bond was extended, by which point she had made incremental deposits totaling more than $4500, which she claimed was sufficient to secure more than nine goats. The order, however, did not give the defendant the option to pay a bond in an amount that would cover only nine goats, beyond the deadline. Even if we were to agree, without deciding, that the deadline had been extended, the defendant never paid the required amount of the bond. Her claim, therefore, fails.[21]

VII

The defendant next claims that § 22-329a is unconstitutional on its face and as applied in this case. We decline to review this claim due to inadequate briefing.

We begin by noting that, in her principal appellate brief, the defendant states that she challenged the constitutionality of § 22-329a by motion, which was denied. She then states: "The defendant asserts the unconstitutionality of the statute facially and as applied to her on appeal by incorporating the argument previously presented and presenting additional issues herein." Our rules of practice contain page and word limits for appellate briefs. See Practice Book §§ 67-3 and 67-3A. The defendant cannot sidestep those requirements by directing

[21] There is also no merit to the defendant's claim that she paid a sufficient bond pursuant to Practice Book § 38-8, which pertains to cash bail in criminal matters, as the present case is controlled by the bond provision set forth in § 22-329a (f).

us in her appellate brief to arguments in support of her claim that are raised in another document. See *Robb* v. *Connecticut Board of Veterinary Medicine*, 204 Conn. App. 595, 612, 254 A.3d 915 (2021) ("The plaintiff's attempt to incorporate by reference his amended verified complaint into his principal appellate brief is not procedurally proper. As is apparent in this case, permitting legal claims to be incorporated by reference into an appellate brief would, among other things, enable litigants to circumvent the page limitations set forth in Practice Book § 67-3. See, e.g., *Papic* v. *Burke*, 113 Conn. App. 198, 217 n.11, 965 A.2d 633 (2009) ('it is not permissible to use [an] appendix [to an appellate brief] either to set forth argument or to evade the thirty-five page limitation provided in Practice Book § 67-3 and already met by the [appellant's] brief')." (Footnote omitted.)), cert. denied, 338 Conn. 911, 259 A.3d 654 (2021).

In her principal appellate brief, the defendant argues that § 22-329a is unconstitutional on its face, stating that "[t]he statute suffers from constitutional defects in addition to those cited . . . in her motion" and listing the alleged defects. According to the defendant, the statute, on its face and as applied, denies "fundamental freedoms and protections from abusive conduct by the state in violation of the first, fourth, eighth and fourteenth amendments."

In her appellate brief, the defendant devotes a few sentences to a short paragraph to each of these claimed grounds challenging the statute's constitutionality, with no citation to authority. She also fails to include any relevant law concerning what must be shown to establish that a statute is unconstitutional on its face or as applied. In all, the defendant devotes three pages of her appellate brief to her challenge to the constitutionality of § 22-329a on all of these grounds and pursuant to the first, fourth, eighth and fourteenth amendments to the federal constitution. As our Supreme Court has

cautioned, "[a]lthough the number of pages devoted to an argument in a brief is not necessarily determinative, relative sparsity weighs in favor of concluding that the argument has been inadequately briefed. This is especially so with regard to first amendment and other constitutional claims, which are often analytically complex. See, e.g., *Schleifer* v. *Charlottesville*, 159 F.3d 843, 871–72 (4th Cir. 1998) ('[f]irst [a]mendment jurisprudence is a vast and complicated body of law that grows with each passing day' and involves 'complicated and nuanced constitutional concepts'), cert. denied, 526 U.S. 1018, 119 S. Ct. 1252, 143 L. Ed. 2d 349 (1999); *Missouri* v. *National Organization for Women, Inc.*, 620 F.2d 1301, 1326 (8th Cir.) (first amendment issues are 'complex'), cert. denied, 449 U.S. 842, 101 S. Ct. 122, 66 L. Ed. 2d 49 (1980); see also *In re Melody L.*, 290 Conn. 131, 154–55, 962 A.2d 81 (2009) (one and one-half page equal protection claim was inadequate), overruled on other grounds by *State* v. *Elson*, 311 Conn. 726, 746–47, 91 A.3d 862 (2014); *Connecticut Light & Power Co.* v. *Dept. of Public Utility Control*, [266 Conn. 108, 120, 830 A.2d 1121 (2003)] (claim under takings clause was inadequately briefed when plaintiff provided 'no authority or analysis in support of its specific claim'); *In re Shyliesh H.*, 56 Conn. App. 167, 181, 743 A.2d 165 (1999) (attempt to brief two constitutional claims in two and one-half pages was inadequate)." *State* v. *Buhl*, supra, 321 Conn. 726. We conclude that the defendant has not adequately briefed her claim challenging the constitutionality of § 22-329a, both on its face and as applied to her. Therefore, we decline to review this claim.

VIII

The defendant's last claim is that the court improperly dismissed her counterclaim. We are not persuaded.

The following additional facts are relevant to our resolution of this claim. In her counterclaim dated May

3, 2022, the defendant made a number of claims, which can be summarized as follows: (1) the defendant's fourth amendment rights were violated because the affidavit submitted by DellaRocco in support of the search warrant omitted material facts and contained false statements and because the verified petition did not plainly state the facts of neglect and cruel treatment as required by § 22-329a (c); (2) the department violated § 22-329a (i) by allowing favored individuals priority to adopt the goats; (3) the department violated the defendant's due process rights by providing false testimony at the hearing before Judge Cobb held on March 30 and April 8, 2021; (4) the defendant's first amendment rights were violated by the commencement of these proceedings in retaliation for the defendant's speech; and (5) § 22-329a is unconstitutional on its face and as applied to the defendant and infringes on the defendant's first amendment rights. The relief sought in the counterclaim included the "return of the goats, a declaratory judgment that § 22-329a is unconstitutional, and the extinguishment of all demands for bonds or other monetary payments." The plaintiff moved to dismiss the counterclaim on four grounds, namely, that the counterclaim was (1) barred by sovereign immunity, (2) barred by the prior pending action doctrine, (3) untimely and (4) not properly brought in this in rem proceeding. The court based its decision dismissing the counterclaim on the grounds of sovereign immunity and the prior pending action doctrine. We therefore limit our discussion regarding this claim to those two grounds and address them in turn.

A

The court granted the motion to dismiss on the ground of sovereign immunity only with respect to three of the five claims asserted in the counterclaim.[22] The

[22] The court declined to grant the motion to dismiss on the ground of sovereign immunity as to the defendant's first two claims of violations of the fourth amendment and § 22-329a (i). Nevertheless, as to those two claims,

court concluded that the three claims did not allege sufficient facts to bypass sovereign immunity or to show that an exception to the state's sovereign immunity applied, in that the claims failed to set forth a substantial claim that the defendant's constitutional rights were violated.

The defendant's briefing on this issue consists of three short paragraphs. She first appears to suggest that, because the trial court declined to grant the motion to dismiss on the basis of sovereign immunity as to two of the grounds raised in the counterclaim, sovereign immunity did not justify dismissal of the other three grounds in the counterclaim. Next, the defendant asserts that dismissal of the counterclaim should have been raised, if at all, by way of a motion to strike, rather than a motion to dismiss, because, according to the defendant, the issues raised in the motion to dismiss concerned the sufficiency of the allegations pursuant to Practice Book § 10-39, not the jurisdiction of the court. See Practice Book § 10-30. Aside from referencing those two rules of practice, the defendant provided no other citation to authority to support her assertions, and her brief lacks any analysis of applicable law concerning sovereign immunity or any exceptions thereto, including how any exception to the state's sovereign immunity applies to her claims.[23] As we have stated

the court granted the motion to dismiss on the ground that the claims were precluded under the prior pending action doctrine, which we address in part VIII B of this opinion.

[23] "The principle that the state cannot be sued without its consent, or sovereign immunity, is well established under our case law. . . . It has deep roots in this state and our legal system in general, finding its origin in ancient common law. . . . Not only have we recognized the state's immunity as an entity, but [w]e have also recognized that because the state can act only through its officers and agents, a suit against a state officer concerning a matter in which the officer represents the state is, in effect, against the state. . . . Exceptions to this doctrine are few and narrowly construed under our jurisprudence. . . . *Chief Information Officer* v. *Computers Plus Center, Inc.*, 310 Conn. 60, 79–80, 74 A.3d 1242 (2013)." (Internal quotation marks omitted.) *Jakobowski* v. *State*, 219 Conn. App. 839, 848, 296 A.3d 226 (2023). "[T]he doctrine of sovereign immunity implicates subject matter

previously in this opinion, "[c]laims are . . . inadequately briefed when they . . . consist of conclusory assertions . . . with no mention of relevant authority and minimal or no citations from the record"; (internal quotation marks omitted) *Wells Fargo Bank, N.A.* v. *Caldrello*, 192 Conn. App. 1, 35, 219 A.3d 858, cert. denied, 334 Conn. 905, 220 A.3d 37 (2019); and "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.) *Vaccaro* v. *D'Angelo*, 184 Conn. App. 467, 488, 195 A.3d 443 (2018). In the present case, the defendant's brief on this issue contains no meaningful analysis of how the court's dismissal of a portion of the counterclaim on the ground of sovereign immunity was improper, nor does it cite to relevant legal principles or analyze how the facts of

jurisdiction and is therefore a basis for granting a motion to dismiss." (Internal quotation marks omitted.) *Spillane* v. *Lamont*, 350 Conn. 119, 126, A.3d (2024).

"It is . . . well established that [t]he sovereign immunity enjoyed by the state is not absolute." (Internal quotation marks omitted.) *Dept. of Public Health* v. *Estrada*, 349 Conn. 223, 237, 315 A.3d 1081 (2024). Indeed, "[o]ur case law has identified three recognized exceptions to sovereign immunity: '(1) when the legislature, either expressly or by force of a necessary implication, statutorily waives the state's sovereign immunity . . . (2) when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights . . . and (3) when an action seeks declaratory or injunctive relief on the basis of a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority.' " *Spillane* v. *Lamont*, supra, 350 Conn. 127. Relevant to this appeal are the second and third exceptions. "For a claim made pursuant to the second exception, complaining of unconstitutional acts, [our Supreme Court] require[s] that [t]he allegations of such a complaint and the factual underpinnings if placed in issue, must clearly demonstrate an incursion upon constitutionally protected interests. . . . For a claim under the third exception, the plaintiffs must do more than allege that the defendants' conduct was in excess of their statutory authority; they also must allege or otherwise establish facts that reasonably support those allegations. . . . In the absence of a proper factual basis in the complaint to support the applicability of these exceptions, the granting of a motion to dismiss on sovereign immunity grounds is proper." (Citations omitted; internal quotation marks omitted.) *Columbia Air Services, Inc.* v. *Dept. of Transportation*, 293 Conn. 342, 350, 977 A.2d 636 (2009).

this case relate to any applicable law. As a result of the defendant's inadequate briefing,[24] we decline to review her claim that the court improperly dismissed her counterclaim, in part, on the ground of sovereign immunity.

B

We next turn to the defendant's claim that the court improperly dismissed her counterclaim, in part, on the basis of the prior pending action doctrine. Although the defendant's briefing of this claim also is minimal, the defendant clearly raises two grounds for challenging the court's decision to dismiss a portion of her counterclaim on the basis of the prior pending action doctrine, namely, that the prior pending action doctrine "does not apply because one of its key elements—identity of parties—is not met" and because the two actions seek different relief. We disagree.

The following additional facts are relevant to this claim. Prior to filing her counterclaim, the defendant commenced an action in the Superior Court on April 6, 2021, against a number of parties, including the department, alleging a variety of claims regarding the seizure of the goats from her property. See *Burton* v. *Mason*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. CV-21-5028294-S (*Mason*

[24] For similar reasons, we also decline to review the defendant's claim that the court should have granted her motion to open and vacate the judgment rendered in favor of the plaintiff on the ground of fraud. Like with many of her other claims on appeal, the defendant has provided no citation to authority to support her claim, let alone an analysis of relevant authority as it pertains to her claim. Instead, in two short paragraphs, she makes unfounded allegations about alleged retaliatory conduct of the trial judge. In its order denying the motion to open and vacate, the court cautioned the defendant "not to assert a claim unless there is a basis in law and fact for doing so that is not frivolous" and that "personal attacks on the court are inappropriate and will not be tolerated" and may subject the defendant to sanctions, should she continue to assert groundless claims. We echo those words of caution and remind the defendant that unsupported accusations that have no basis in fact or law cannot be properly considered by this court and have no place in proceedings before this court.

action). That action is still pending in the Superior Court. In the present case, in granting the motion to dismiss, in part, on the basis of the prior pending action doctrine, the court stated: "[T]he department argues that the counterclaim is virtually identical to the pending claims against the department in [the *Mason* action]. The remaining claims are that the department violated the [defendant's] fourth amendment rights when DellaRocco lied in his affidavit to obtain a search warrant and that the department violated § 22-329a (i) by allowing favored individuals priority to adopt the goats. In [the *Mason* action], the [defendant] brings these exact same claims. Although the relief sought is slightly different, as the [defendant] seeks monetary damages in [the *Mason* action] but not in the present case, and declaratory relief in the present case but not in [the *Mason* action], the actions are still virtually identical. In such instances, the court has discretion to decide whether the circumstances justify dismissal. In the present case, the circumstances clearly justify dismissal. The counterclaim is yet another transparent attempt to relitigate Judge Cobb's order of temporary care and custody. The [defendant] has already filed a motion to disqualify Judge Cobb, a motion to vacate, a motion to reopen the hearing, a motion to reargue, a motion to declare . . . § 22-329a unconstitutional, a motion to suppress and for return of property, and a motion for immediate release of her goats, as well as motions to reargue these motions. Given the blatantly 'oppressive and vexatious' nature of the counterclaim, dismissal under the prior pending action doctrine is justified. Any claims that the [defendant] may have against the department and its agents can be adjudicated in the [*Mason* action]."

We next set forth the legal principles and standard of review that govern our resolution of this claim. "[T]he

prior pending action doctrine permits the court to dismiss a second case that raises issues currently pending before the court. The pendency of a prior suit of the same character, between the same parties, brought to obtain the same end or object, is, at common law, good cause for abatement. It is so, because there cannot be any reason or necessity for bringing the second, and, therefore, it must be oppressive and vexatious. This is a rule of justice and equity, generally applicable, and always, where the two suits are virtually alike, and in the same jurisdiction. . . . The policy behind the doctrine is to prevent unnecessary litigation that places a burden on crowded court dockets." (Internal quotation marks omitted.) *Cameron* v. *Santiago*, supra, 223 Conn. App. 840 n.3.

"Under the prior pending action doctrine, the court must determine whether the two actions are: (1) exactly alike, i.e., for the same matter, cause and thing, or seeking the same remedy, and in the same jurisdiction; (2) virtually alike, i.e., brought to adjudicate the same underlying rights of the parties, but perhaps seeking different remedies; or (3) insufficiently similar to warrant the doctrine's application. . . . If the two actions are exactly alike or lacking in sufficient similarities, the trial court has no discretion. In the former case, the court must dismiss the second action, and in the latter instance, the court must allow both cases to proceed unabated. Where the actions are virtually, but not exactly alike, however, the trial court exercises discretion in determining whether the circumstances justify dismissal of the second action." (Internal quotation marks omitted.) *Loch View, LLC* v. *Windham*, 211 Conn. App. 765, 772–73, 274 A.3d 140 (2022). "In order to determine whether the actions are virtually alike, we must examine the pleadings . . . to ascertain whether the actions are brought to adjudicate the same underlying rights of the parties. . . . The trial court's conclusion on the similarities between the cases is subject to

our plenary review." (Internal quotation marks omitted.) *Rousseau* v. *Weinstein*, 204 Conn. App. 833, 844, 254 A.3d 984 (2021). We also note that "a motion to dismiss is the proper vehicle to raise the issue of a prior pending action"; (internal quotation marks omitted) *A1Z7, LLC* v. *Dombek*, 188 Conn. App. 714, 722 n.2, 205 A.3d 740 (2019); and that "[t]he prior pending action doctrine applies equally to claims and counterclaims." *Conti* v. *Murphy*, 23 Conn. App. 174, 178, 579 A.2d 576 (1990).

Because these claims are seeking different remedies, we examine the pleadings in both actions to determine whether they have been brought to adjudicate the same underlying rights of the parties. The two claims in the counterclaim that were dismissed on the basis of the prior pending action doctrine alleged a violation of the defendant's fourth amendment rights stemming from the allegedly illegal search of her property and a violation of § 22-329a (i) by the department. Our review of the pleadings in the *Mason* action demonstrates that those very same claims have been raised against the department in that action. Like in the counterclaim in the present case, the defendant alleges in the *Mason* action that the department violated her fourth amendment rights because DellaRocco lied in his testimony at the hearing on March 30, 2021, his affidavit included false statements and omitted facts, and the search of her property was illegal and was not supported by probable cause. She also alleges in the *Mason* action that the department violated § 22-329a (i).

We conclude, following our review of the record before us, that the present case and the *Mason* action both stem from the same factual circumstance—the seizure of the goats from the defendant—and involve the same parties and identical claims. Even though the relief sought in both actions is not identical, both actions seek the same goals or objectives, namely, to

adjudicate the defendant's rights and the propriety of the seizure of the goats and the proceedings that followed. See *Lodmell* v. *LaFrance*, 154 Conn. App. 329, 335, 107 A.3d 975 (2014) (" '[T]he applicability of the doctrine does not turn on the issue of whether the two actions seek the same remedy. . . . The key question is whether the two actions are brought to adjudicate the same underlying rights.' "), cert. denied, 315 Conn. 921, 107 A.3d 959 (2015). Moreover, the defendant's argument that the doctrine does not apply to the present case because the parties are not identical fails in light of this court's decision in *Modzelewski* v. *William Raveis Real Estate, Inc.*, 65 Conn. App. 708, 783 A.2d 1074, cert. denied, 258 Conn. 948, 788 A.2d 96 (2001). In that case, the defendant raised a similar argument, which this court rejected, concluding that, "[w]hile the parties are not 'identical' in that there are two additional parties to the prior action, the identical parties to the present action are involved in the prior one." Id., 714. The reasoning in *Modzelewski* applies equally to the present case; the parties in the present action are both involved in the *Mason* action, and the fact that there are additional defendants in the *Mason* action does not preclude application of the prior pending action doctrine to the present case. See id. Accordingly, we agree with the court that both actions are virtually alike. We further conclude that the court did not abuse its discretion in determining that the circumstances justified dismissal, in part, of the counterclaim against the department in the present case on the basis of the prior pending action doctrine.

The judgments are affirmed.

In this opinion the other judges concurred.

MICHAEL ROBINSON ET AL. *v.* V. D.*
(AC 46477)

Cradle, Suarez and Westbrook, Js.

Syllabus

The defendant appealed from the trial court's denial of his special motion to dismiss filed pursuant to the anti-SLAPP statute (§ 52-196a). He claimed that the court, inter alia, erred in determining that his alleged conduct, in connection with an application for a civil protection order and with respect to certain union grievance proceedings, did not relate to an exercise of a protected right in connection with a matter of public concern and, thus, fell outside the scope of § 52-196a. *Held*:

The trial court erred in failing to dismiss all counts of the plaintiffs' underlying complaint, with the exception of the statutory and common-law vexatious litigation counts, as they were barred by absolute immunity under the litigation privilege.

The trial court erred in concluding that the defendant failed to meet his initial burden of proving that the allegations in the complaint regarding his conduct during the course of the union grievance proceedings implicated the exercise of his constitutional right to petition the government in connection with a matter of public concern, the allegations of the complaint having sufficiently implicated potential and significant issues regarding the hiring practices within a governmental entity.

The plaintiffs could not demonstrate probable cause that they would have prevailed on their claims of statutory or common-law vexatious litigation to the extent that those counts were based on the union grievance proceedings and, therefore, the special motion to dismiss should have been granted as to those counts.

The trial court properly denied the special motion to dismiss with respect to the defendant's efforts to obtain a civil protection order, the defendant's conduct having arisen out of a wholly private dispute between the parties that did not have any appreciable connection to a matter of public concern, thus falling outside the ambit of § 52-196a and its intended protections.

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

Contrary to the plaintiffs' alternative ground for affirming the trial court's decision, § 52-196a did not, on its face or as applied, violate the plaintiffs' constitutional right to a jury trial under either the federal or state constitutions, as § 52-196a does not require trial courts to resolve disputed issues of fact or to dismiss claims that otherwise would have survived summary judgment or a motion for a directed verdict.

The plaintiffs failed to establish beyond a reasonable doubt that either prong of the separation of powers doctrine set forth in the state constitution was implicated by § 52-196a.

Argued March 4—officially released November 26, 2024

Procedural History

Action for, inter alia, defamation, and for other relief, brought to the Superior Court in the judicial district of New London, where the court, *Knox*, *J.*, denied the defendant's special motion to dismiss, and the defendant appealed to this court. *Reversed in part*; *further proceedings*.

Jon L. Schoenhorn, with whom, on the brief, was *Sebastian Ullman*, certified legal intern, for the appellant (defendant).

Michael P. Carey, for the appellees (plaintiffs).

Daniel E. Livingston and *Mary E. Kelly* filed a brief for the Connecticut AFL-CIO as amicus curiae.

Opinion

WESTBROOK, J. The defendant, V. D., appeals from the judgment of the trial court denying his special motion to dismiss the underlying civil action pursuant to General Statutes § 52-196a,[1] our state's anti-SLAPP

[1] General Statutes § 52-196a provides in relevant part: "(b) In any civil action in which a party files a complaint . . . against an opposing party that is based on the opposing party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, such opposing party may file a special motion to dismiss the complaint . . . .

* * *

"[e] (3) The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint . . . is based on the moving party's exercise

statute.[2] The civil action filed by the plaintiffs, Michael Robinson and Mary Robinson, seeks compensatory damages and injunctive relief for defamation, invasion of privacy by false light, statutory and common-law vexatious litigation, and intentional and negligent infliction of emotional distress. The defendant claims that (1) the court improperly denied his special motion to dismiss the action on the ground that his alleged conduct did not relate to an exercise of a protected right in connection with a matter of public concern and, thus, fell outside the scope of § 52-196a,[3] and, (2) even if he is not entitled to a dismissal of the action pursuant to § 52-196a, the trial court lacks subject matter jurisdiction over this action because the defendant is entitled to absolute immunity under the litigation privilege for his alleged conduct, all of which occurred in the course of judicial or quasi-judicial proceedings. In addition to

of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, unless the party that brought the complaint . . . sets forth with particularity the circumstances giving rise to the complaint . . . and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint . . . .

* * *

"(h) The provisions of this section shall not . . . (3) affect, limit or preclude the right of a party filing a special motion to dismiss to any defense, remedy, immunity or privilege otherwise authorized by law . . . ."

[2] "SLAPP is an acronym for strategic lawsuit against public participation, the distinctive elements of [which] are (1) a civil complaint (2) filed against a nongovernment individual (3) because of their communications to government bodies (4) that involves a substantive issue of some public concern. . . . The purpose of a SLAPP suit is to punish and intimidate citizens who petition state agencies and have the ultimate effect of chilling any such action." (Internal quotation marks omitted.) *Lafferty* v. *Jones*, 336 Conn. 332, 337 n.4, 246 A.3d 429 (2020), cert. denied, U.S. , 141 S. Ct. 2467, 209 L. Ed. 2d 529 (2021).

[3] The Connecticut AFL-CIO filed an amicus curiae brief in support of the defendant's contention that the court improperly denied his special motion to dismiss. It argues that protecting public employees against retaliatory lawsuits for exercising their right to engage in mandatory union grievance procedures is precisely the type of ill that § 52-196a was designed to prevent.

disputing the defendant's claims, the plaintiffs raise as an alternative ground for affirming the denial of the special motion to dismiss that § 52-196a violates both the state and federal constitutions.[4] We conclude that the question of whether the plaintiffs' action is barred by absolute immunity under the litigation privilege implicates the trial court's subject matter jurisdiction and, thus, must be considered prior to addressing the merits of the special motion to dismiss. We agree with the defendant that, with the exception of those counts sounding in vexatious litigation, the complaint is barred by absolute immunity. With respect to the remaining vexatious litigation counts, we affirm in part and reverse in part the court's decision to deny the special motion to dismiss, we reject the plaintiffs' alternative ground for affirmance, and we remand the matter for further proceedings in accordance with this opinion.

The following relevant facts and procedural history, which are undisputed for purposes of this appeal, were set forth by our Supreme Court in its earlier opinion in this matter.[5] See *Robinson* v. *V. D.*, 346 Conn. 1002,

[4] The plaintiffs argue that § 52-196a is unconstitutional for multiple reasons. First, both facially and as applied, it deprives them of their state and federal constitutional rights to a jury trial and to petition for grievances. See Conn. Const., art. I, §§ 6, 10, and 19; U.S. Const., amend. I. Second, they argue that the statute violates the separation of legislative and judicial powers as set forth in article second and article fifth, § 1, of the constitution of Connecticut.

[5] Our Supreme Court previously transferred this appeal to itself, pursuant to Practice Book § 65-1, in order to adjudicate the plaintiffs' pending motion to dismiss the appeal for lack of a final judgment. See *Robinson* v. *V. D.*, 346 Conn. 1002, 1003 n.3, 293 A.3d 345 (2023). Our Supreme Court denied the motion to dismiss, concluding that a trial court's denial of a § 52-196a special motion to dismiss that raises a colorable claim under our anti-SLAPP statute is an immediately appealable final judgment under the second prong of the test annunciated in *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983). See *Robinson* v. *V. D.*, supra, 1004. After concluding on the basis of its review of the record that the defendant had presented a colorable claim, it transferred the appeal back to this court for further proceedings on the merits of the appeal. Id., 1011.

1004–1007, 293 A.3d 345 (2023). "The parties are civilian employees of the United States Coast Guard (Coast Guard). Michael Robinson works as a locksmith at the United States Coast Guard Academy in New London (academy) and previously served as an assistant coach for the academy's skeet shooting team. Mary Robinson works as a human resources specialist at the Coast Guard headquarters. The defendant is employed as a carpenter/mason at the academy and, in 2019, was temporarily promoted to the new position of construction control inspector.

"In late 2019 or early 2020, after applying for the full-time, permanent construction control inspector position, the defendant was informed that he had not been selected for the position. The defendant then resumed his job as a carpenter/mason. Thereafter, the defendant filed a formal, written grievance through his union representative [in which he] alleged that the plaintiffs were involved in a quid pro quo arrangement with the candidate selected for the position and the official who had selected the candidate. The defendant also alleged that he was denied the position, in part, because of his known affiliation with the union . . . . A hearing took place, at which, the plaintiffs contend, the defendant made certain statements consistent with the allegations in the written grievance. Administrative officials with the Coast Guard subsequently investigated both of the plaintiffs and cleared them of any wrongdoing.

"Thereafter, in June, 2020, the parties attended a competitive shooting event at a gun club in Burrillville, Rhode Island. After the event was over, Michael Robinson and the defendant had a verbal altercation in the parking lot, during which they exchanged certain insults. Thereafter, the defendant served an application for a [civil protection] order on Michael Robinson. A hearing took place in the Superior Court, which dismissed the application.

"In December, 2020, the plaintiffs filed the present action against the defendant, alleging in their complaint that the defendant made false accusations against them on numerous occasions, namely, in the union grievance, during the proceedings which resulted from it, in the application for the [civil protection] order, and during the hearing that took place in the Superior Court on the [civil protection] order application. . . .

"In January, 2021, the defendant filed a special motion to dismiss, pursuant to § 52-196a, arguing that the plaintiffs' allegations in this action arose from the exercise of his rights of free speech, to petition the government, and to associate as a member of a labor union under the Connecticut constitution and the first amendment to the United States constitution. The defendant also alleged, among other defenses, that the plaintiffs' action violated public policy and that his statements were immune from the defamation claims, as they arose during judicial or quasi-judicial proceedings.

"The plaintiffs opposed the motion, and, following a hearing, the trial court denied the special motion to dismiss. The court found that the defendant's conduct as alleged in the complaint was not protected under § 52-196a because it addressed private concerns, rather than a matter of public concern, as defined in subsection (a) (1) of the statute. The court further concluded that the defendant's conduct during the work-related grievance process was personal in nature because it related to his employer's denial of the defendant's promotion and did not address the general practices of the employer. As such, the court determined that the defendant's conduct during that process was not related to a matter of public concern under the government, zoning and other regulatory matters category of the definition [of a matter of public concern found in § 52-196a (a) (1) (C)]. . . . In addition, the trial court found that the defendant's actions did not relate to a matter

of public concern under the public official or public figure category [of § 52-196a (a) (1) (D)] because the defendant had failed to establish that the plaintiffs' positions gave them substantial control or responsibility over governmental affairs or that there was a significant public interest in either position that went beyond the general interest in all public sector employees. Accordingly, the court concluded that the defendant had failed to meet his burden of showing, by a preponderance of evidence, that the complaint was based on the exercise of his right of free speech, to petition the government, or of association." (Footnotes omitted; internal quotation marks omitted.) Id., 1004–1007.

The defendant appealed from the trial court's decision to this court, following which the plaintiffs filed a motion to dismiss the appeal for lack of a final judgment. The defendant then moved to stay proceedings until our Supreme Court issued a decision in *Pryor* v. *Brignole*, 346 Conn. 534, 292 A.3d 701 (2023), in which the parties also had raised the issue of whether an appeal from the denial of a § 52-196a special motion to dismiss is an appealable final judgment. Id., 536–37. This court granted the defendant's motion for a stay on September 29, 2021, and deferred ruling on the plaintiffs' motion to dismiss. In July, 2022, pursuant to Practice Book § 65-1, our Supreme Court transferred this appeal to itself and ordered the parties to file appellate briefs addressing only the threshold jurisdictional issue.

On May 2, 2023, our Supreme Court released its decision in *Smith* v. *Supple*, 346 Conn. 928, 293 A.3d 851 (2023), in which it held that the denial of a special motion to dismiss that raises a colorable claim to the anti-SLAPP protections of § 52-196a is an immediately appealable final judgment. Id., 964. That same day, the court also released its decisions in *Pryor* v. *Brignole*, supra, 346 Conn. 534, and in the present appeal.

With respect to the present matter, our Supreme Court concluded that the defendant "has asserted a colorable claim that at least some of the statements forming the basis of the plaintiffs' complaint were based on the defendant's exercise of his right to petition the government, as contemplated by the anti-SLAPP statute. Right to petition the government is defined in relevant part as communication in connection with an issue under consideration or review by a legislative, executive, administrative, judicial or other governmental body. . . . General Statutes § 52-196 (a) (3) (A). A party seeking protection under the statute must show, by a preponderance of the evidence, that the exercise of that right is in connection with a matter of public concern, as defined in § 52-196a (a) (1). . . . Courts have found that mixed questions of private and public concerns may be protected under the first amendment and that the fact that a statement evolves from a personal dispute does not preclude some aspect of it from touching [on] matters of public concern. . . .

"The defendant presented evidence before the trial court that his actions related to a matter of public concern because they (1) arose from a collective bargaining agreement between the Coast Guard and the American Federation of Government Employees, Council 120, to which the defendant belongs, and (2) related to improprieties in the hiring process at the academy that went beyond his own personal position, specifically, that Coast Guard hiring officials disfavor persons with a union affiliation when hiring." (Citation omitted; internal quotation marks omitted.) *Robinson* v. *V. D.*, supra, 346 Conn. 1008–1009.

Our Supreme Court concluded on the basis of its review of the record and the plain meaning of right to petition the government that "the defendant has at least a superficially well founded claim that some of his statements, particularly those relating to the grievance process,

qualify as communications relating to an issue under consideration by a governmental body, namely, the Coast Guard. . . . In addition, the defendant has asserted a colorable claim that his statements during the grievance process relate to a matter of public concern. Although these statements evolved from a personal dispute between the parties, the statements could conceivably be of concern to the general public because the allegations related to hiring practices within a governmental entity. In particular, the defendant's speech touches on the possible existence of anti-union sentiment within the academy and quid pro quo arrangements between management officials as it relates to hiring. Therefore, the defendant has at least a superficially well founded claim that his conduct concerns not only him, but others at the academy and the general community at large." (Citations omitted; internal quotation marks omitted.) Id., 1009–10.

Having determined that the appeal was taken from an appealable final judgment, our Supreme Court transferred the appeal back to this court pursuant to Practice Book § 65-1 "for further proceedings according to law."[6] Id., 1011. Additional facts will be set forth as necessary.

I

The defendant claims that the underlying action is barred by absolute immunity under the litigation privilege because all the relevant conduct alleged in the underlying complaint occurred during the course of judicial or quasi-judicial proceedings. Although the defendant raised the issue of absolute immunity in his special motion to dismiss, the trial court declined to

[6] In accordance with the Supreme Court's decision and remand order, the Office of the Appellate Clerk issued a letter to the parties informing them that the appeal had been assigned a new docket number and setting a schedule for filing briefs on the merits of the appeal.

address it.[7] Ordinarily, "[o]nly in [the] most exceptional circumstances can and will [an appellate] court consider a claim, constitutional or otherwise, that has not been raised *and decided* in the trial court. . . . A claim that a court lacks subject matter jurisdiction, however, may be raised at any time during the proceedings, *including for the first time on appeal*." (Citations omitted; emphasis added; footnote omitted; internal quotation marks omitted.) *Mangiafico* v. *Farmington*, 331 Conn. 404, 429–30, 204 A.3d 1138 (2019). Because the defendant's absolute immunity claim implicates the trial court's subject matter jurisdiction, it presents a thresh-

[7] The court reasoned that, despite the defendant having expressly stated in the opening paragraph of his special motion to dismiss that the motion was brought "[p]ursuant to Practice Book §§ 10-6 and 10-30, and [General Statutes] § 52-196a," he had failed expressly to request that the court treat his motion as "a hybrid motion, combining a special motion to dismiss with a standard motion to dismiss." The court further indicated that other Superior Court decisions had expressed a general disfavor for hybrid motions, albeit in other contexts, because our rules of practice do not expressly authorize them. The court concluded: "Given the expedited time requirements pertaining to a statutory special motion to dismiss, the limited inquiry of a special motion to dismiss, and the defendant's failure to cogently argue that his motion incorporated a Practice Book § 10-30 motion to dismiss, the court will not recognize this special motion to dismiss as a hybrid motion nor entertain it as one." Although a court certainly has "broad discretion to manage its docket and resolve cases as it sees fit"; *M. B.* v. *S. A.*, 194 Conn. App. 727, 735, 222 A.3d 551 (2019); which arguably would include the discretion to reject a so-called hybrid motion, it is axiomatic that questions pertaining to the subject matter jurisdiction of the court "may be raised at any time and by any party . . . and that [o]nce . . . raised, [the challenge] must be disposed of *no matter in what form it is presented*." (Citations omitted; emphasis added; internal quotation marks omitted.) *Oxford House at Yale* v. *Gilligan*, 125 Conn. App. 464, 473, 10 A.3d 52 (2010). Moreover, § 52-196a (h) expressly provides that a party's use of the statute "shall not . . . (3) affect, limit or preclude the right of a party filing a special motion to dismiss to *any defense, remedy, immunity or privilege otherwise authorized by law* . . . ." (Emphasis added.) Nevertheless, the defendant has not raised the trial court's failure to address his absolute immunity claim as a claim of error on appeal. Instead, he raises the issue as a matter for this court to decide in the first instance, and, thus, we do not reach whether the trial court abused its discretion by failing to consider the issue when raised.

old issue that we must address before turning to the merits of the special motion to dismiss.[8] See *Bruno* v. *Travelers Cos.*, 172 Conn. App. 717, 719, 161 A.3d 630 (2017) ("litigation privilege provides an absolute immunity from suit and, thus, implicates the trial court's subject matter jurisdiction");[9] see also *American Tax Funding, LLC* v. *Design Land Developers of Newtown, Inc.*, 200 Conn. App. 837, 844, 240 A.3d 678 (2020) ("subject matter jurisdiction . . . is a threshold matter that must be resolved first").

We begin by setting forth the appropriate legal standard and relevant principles of law. "When a . . . court decides a jurisdictional question raised by a pretrial motion to dismiss, it . . . [ordinarily] must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.[10] . . . When deciding whether the [litigation]

[8] "A special motion to dismiss filed pursuant to § 52-196a . . . is not a traditional motion to dismiss based on a jurisdictional ground. It is, instead, a truncated evidentiary procedure enacted by our legislature in order to achieve a legitimate policy objective, namely, to provide for a prompt remedy. . . . It is, in this respect, similar to a motion for summary judgment." (Citation omitted.) *Elder* v. *Kauffman*, 204 Conn. App. 818, 824, 254 A.3d 1001 (2021). In other words, a special motion to dismiss pursuant to § 52-196a does not itself implicate a trial court's subject matter jurisdiction.

[9] Courts have deemed that certain claims of immunity, such as sovereign immunity, implicate a court's subject matter jurisdiction and, thus, properly are raised by way of a motion to dismiss. See *Carrubba* v. *Moskowitz*, 81 Conn. App. 382, 398, 840 A.2d 557 (2004), aff'd, 274 Conn. 533, 877 A.2d 773 (2005). Other immunities and privileges, however, such as qualified quasi-judicial immunity and governmental immunity, have been held not to implicate a court's subject matter jurisdiction and, thus, more appropriately are raised as a special defense and subsequently tested via a motion to strike or a motion for summary judgment. Id., 398–99. Our Supreme Court has stated that absolute immunity serves a similar purpose as "the sovereign immunity enjoyed by the state." *Chadha* v. *Charlotte Hungerford Hospital*, 272 Conn. 776, 787, 865 A.2d 1163 (2005). Accordingly, absolute immunity under the litigation privilege, like sovereign immunity, implicates subject matter jurisdiction.

[10] As explained in more detail by our Supreme Court in *Conboy* v. *State*, 292 Conn. 642, 650, 974 A.2d 669 (2009), "[t]rial courts addressing motions to

privilege applies, every presumption in favor of the court's jurisdiction should be indulged." (Citations omitted; footnote added; internal quotations marks omitted.) *Deutsche Bank AG* v. *Vik*, 349 Conn. 120, 136–37, 314 A.3d 583 (2024).

Courts often have used the terms absolute immunity and litigation privilege interchangeably. See *Tyler* v. *Tatoian*, 164 Conn. App. 82, 83 n.1, 137 A.3d 801, cert. denied, 321 Conn. 908, 135 A.3d 710 (2016). "The litigation privilege is a long-standing [common-law] rule that communications uttered or published in the course of judicial proceedings are absolutely privileged so long as they are in some way pertinent to the subject of the controversy. . . . The privilege . . . applies to every step of the proceeding until [its] final disposition . . . including to statements made in pleadings or other documents prepared in connection with [the] proceeding. . . . The privilege originated in response to the need to bar persons accused of crimes from suing their accusers for defamation. . . . [It] then developed to encompass and bar defamation claims against all participants in judicial proceedings, including judges, attorneys, parties, and witnesses. . . . Subsequently, the privilege was expanded to bar a variety of retaliatory civil claims arising from communications or communicative acts occurring in the course of a judicial or quasi-judicial proceeding, including, but not limited to, claims for

dismiss for lack of subject matter jurisdiction . . . may encounter different situations, depending on the status of the record in the case." The court in *Conboy* agreed with analogous federal jurisprudence that "[l]ack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." Id., 651. In the present case, neither party has asserted that the absolute immunity issue requires resolution of any disputed jurisdictional facts. Accordingly, we can resolve the question of subject matter jurisdiction on the basis of the allegations in the complaint and those facts that are undisputed as evidenced in the record.

tortious interference, intentional infliction of emotional distress, fraud, and violations of [the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq.]. . . .

"The policy underlying the [litigation] privilege is that in certain situations the public interest in having people speak freely outweighs the risk that individuals will occasionally abuse the privilege by making false and malicious statements. . . . Participants in a judicial process must be able to testify or otherwise take part without being hampered by fear of defamation [or other retaliatory litigation]. . . . [In] determining whether a statement is made in the course of a judicial proceeding . . . the court must decide as a matter of law whether the [alleged statement is] sufficiently relevant to the issues involved in . . . [the] proceeding, so as to qualify for the privilege. . . . The test for relevancy is generous, and judicial proceeding has been defined liberally to encompass much more than civil litigation or criminal trials." (Citations omitted; internal quotation marks omitted.) *Deutsche Bank AG* v. *Vik*, supra, 349 Conn. 137–38.

In deciding whether a person is entitled to absolute immunity under the litigation privilege, "[courts] must first determine whether the proceedings [in question] were [judicial or quasi-judicial] in nature. The judicial proceeding to which [absolute] immunity attaches has not been defined very exactly. It includes any hearing before a tribunal which performs a judicial function, ex parte or otherwise, and whether the hearing is public or not. . . . It extends also to the proceedings of many administrative officers, such as boards and commissions, so far as they have powers of discretion *in applying the law to the facts* which are regarded as judicial or quasi-judicial, in character." (Emphasis added; internal quotation marks omitted.) *Kruger* v. *Grauer*,

173 Conn. App. 539, 547–48, 164 A.3d 764, cert. denied, 327 Conn. 901, 169 A.3d 795 (2017).

In addition to the application of law to fact requirement, our Supreme Court has identified additional factors for courts to consider in determining whether a proceeding is quasi-judicial in nature. These factors include whether the body conducting the proceeding has the power to "(1) exercise judgment and discretion; (2) hear and determine or to ascertain facts and decide; (3) make binding orders and judgments; (4) affect the personal or property rights of private persons; (5) examine witnesses and hear the litigation of the issues on a hearing; and (6) enforce decisions or impose penalties. . . . These factors are not exclusive; nor must all factors militate in favor of a determination that a proceeding is quasi-judicial in nature for a court to conclude that the proceeding is, in fact, quasi-judicial. . . . [T]hese factors are [i]n addition to, not in lieu of, the application of the law to fact requirement." (Citations omitted; internal quotation marks omitted.) *Priore* v. *Haig*, 344 Conn. 636, 648, 280 A.3d 402 (2022). It is also important for courts "to consider whether there is a sound public policy reason for permitting the complete freedom of expression that a grant of absolute immunity provides." (Internal quotation marks omitted.) Id., 652.

Our Supreme Court recently summarized that a proceeding will only be considered quasi-judicial if "the proceeding at issue is specifically authorized by law, applies law to fact in an adjudicatory manner, contains adequate procedural safeguards, and is supported by a public policy encouraging absolute immunity for proceeding participants." *Khan* v. *Yale University*, 347 Conn. 1, 10, 295 A.3d 855 (2023). Accordingly, "whether a particular proceeding is quasi-judicial in nature, for the purposes of triggering absolute immunity, will depend on the particular facts and circumstances of each case." *Priore* v. *Haig*, supra, 344 Conn. 645.

In the present case, the alleged conduct of the defendant occurred in connection with two separate and distinct proceedings: (1) the filing and pursuit of a union grievance and (2) the filing and pursuit of an application for a civil protection order. With respect to the grievance proceedings, the plaintiffs allege in the underlying complaint that the defendant made a number of false accusations against them, both in the written grievance complaint and in oral statements made during the grievance hearing. Specifically, the complaint provides that the defendant asserted that the plaintiffs had used their positions within the Coast Guard to influence the hiring process, including by engaging in an improper quid pro quo with Coast Guard officials and the person who eventually was hired for the permanent promotion sought by the defendant.[11] With respect to the civil protection order proceedings, which arose out of the parties' altercation at the gun show, the complaint alleges

[11] Paragraphs nine and ten of the complaint contain the following recitation of the defendant's alleged offensive conduct during the course of the grievance proceedings: the defendant "falsely alleged that [the plaintiffs], through their alleged conduct in the hiring process for the construction control inspector position, had violated merit system principles ('MSP') because there had been a 'quid pro quo' arrangement between the selecting official and the successful applicant ('JW') in which Mary Robinson, using her position as [a human resources] specialist, in some way participated. . . .

"[T]he defendant also falsely alleged that: a. Michael Robinson was part of the alleged conspiracy; b. JW is the best childhood friend of one of the Robinsons' sons; c. The hiring official was pressured into selecting JW acting against his better judgment; d. Mary Robinson had the means to and may have inappropriately influenced the referral lists used to select a candidate, and covered her tracks with various deceptions; e. Michael Robinson said that he would lie to protect Mary Robinson because she could get in a lot of trouble; f. Veterans' preference laws were violated; g. JW was unfairly advanced through the quid pro quo arrangement and his personal relationship with [human resources] officials, while [the defendant] was unfairly treated because of his known affiliation with the union; h. Management favors persons who do not affiliate with the union; i. Mary Robinson threatened to investigate anyone who organized or helped the union to organize; j. An insinuation that wrongdoing led to a change in Mary Robinson's scope of work circa 2010 when it was determined that Michael Robinson's position as [National Association of Government Employees] union steward, which

that the defendant made several false allegations and statements regarding the plaintiffs, both in his application for a civil protection order and during the subsequent hearing on the application before the Superior Court.[12] Having considered all relevant factors, we are

he had just obtained at that time, raised an appearance of potential conflicts of interest, and an assertion that both Robinsons were accused of unfair labor practices based on this situation; k. Mary Robinson had exerted inappropriate control over hiring at the academy for years; *l.* Mary Robinson received the 'report of hire' of JW although she should not have had access to it; m. Michael Robinson, acting on his own behalf and on behalf of Mary Robinson, relentlessly harassed and threatened [the defendant] about the grievance; n. Mary Robinson cut another employee 'out of the loop' on the JW hiring process; o. Mary Robinson 'helped' JW with his resume for the job posting but did not help anyone else; p. Michael Robinson encouraged [the defendant] not to post for the open position because Mary Robinson could get him a supervisory job; q. Michael Robinson made 'continual transits to and from [Mary Robinson's] office with reports about [the defendant]; and r. Michael Robinson threatened and harassed [the defendant] about filing the grievance."

[12] Paragraphs twenty-five through twenty-seven of the complaint contain the following recitation of the defendant's alleged conduct as it relates to the civil protection order: In the civil protection order application, the defendant "falsely claimed that he was unsafe at work because Michael Robinson had followed and threatened him at work . . . [and] that he was in imminent danger. . . . [The defendant] falsely accused Michael Robinson of having 'laid in wait [for him at the gun show] in attempt to threaten and harass [him]. . .'; of stalking him at work several times and threatening him about the [union grievance]; kicking at and attempting to take the trailer hitch from his vehicle; backing into his vehicle; continuing 'to come at' him as he was walking to his vehicle and that another club member had to physically restrain him; and threatened his job." At the contested hearing on the civil protection order application, the defendant testified that "a. He had told his supervisor at the academy that Michael Robinson had stalked and harassed him at work; b. Michael Robinson tried to remove his trailer hitch from and was kicking his vehicle after the [gun show]; c. Michael Robinson carries a concealed weapon, implying that he was carrying a weapon during the [gun show] incident . . . and that he would present a danger if he were carrying one . . . d. Michael Robinson kicked open the door of his own vehicle and 'came at' [the defendant]; e. (Implied that) his [fourteen] year old son was in danger on account of Michael Robinson's behavior after the [gun show], and that he and his family generally were unsafe when Michael Robinson was around; f. (Via a recording) said loudly enough to be heard by several people that Michael Robinson is 'crazy,' has 'mental health issues,' should go see his doctor, and should 'go get the help

persuaded that both the union grievance proceedings and the proceeding on the civil protection order application qualify as either a judicial or quasi-judicial proceeding, and, accordingly, any pertinent statements made within the context of those proceedings should be afforded absolute immunity under the litigation privilege.

First, we conclude that the union grievance proceedings are quasi-judicial in nature for purposes of applying absolute immunity. In *Preston* v. *O'Rourke*, 74 Conn. App. 301, 314 n.6, 811 A.2d 753 (2002), this court recognized and resolved a split in authority over "whether communications made in the course of grievance or arbitration proceedings provided for by collective bargaining agreements should be accorded absolute . . . immunity." The court concluded that the "better result is the protection of absolute immunity." Id. That determination is consistent with our Supreme Court's subsequent decision in *Craig* v. *Stafford Construction, Inc.*, 271 Conn. 78, 80–81, 93, 856 A.2d 372 (2004), in which it held that an investigation conducted by the internal affairs division of the city of Hartford's police department constituted a quasi-judicial proceeding for the purpose of affording absolute immunity to the citizen whose claim of racial bias had given rise to the investigation. Although the court in *Craig* recognized "the debilitating affect that a false allegation of racial discrimination can have on a police officer"; id., 95; it nonetheless concluded "that the policy of encouraging citizen complaints against those people who wield extraordinary

you need, bud'; g. Michael Robinson threatened him with force; h. Michael Robinson had damaged [the defendant's] vehicle, but then admitted there was no damage to either vehicle . . . i. The plaintiffs threatened his job, threatened his livelihood, and 'knowing that, you know, [Mary Robinson] is in [human resources], and that he has this information, and I'm done when I get back to the Coast Guard. I don't feel safe'; and j. (implied that) one or both of the plaintiffs committed perjury during the hearing, asking Mary Robinson whether she thought it was 'appropriate to not tell the truth in court?' "

power within the community outweighs the need to protect the reputation of the police officer against whom the complaint is made." Id., 96.

Here, as was the case in *Craig*, the Coast Guard officials who heard the union grievance may not have possessed all of the aforementioned enumerated powers that we look to in determining whether proceedings are quasi-judicial. See *Priore* v. *Haig*, supra, 344 Conn. 648. Such deficit is not dispositive, however, of whether the proceeding was quasi-judicial in nature. Rather, we look to the overall facts and circumstances in making our determination.

The defendant was a federal employee and a member of a collective bargaining unit, and he initiated a formal grievance process as set forth in the relevant collective bargaining agreement. The matter was then adjudicated by Coast Guard administrative officials, who ascertained and evaluated the relevant facts and exercised judgment and discretion in applying all relevant rules, regulations and procedures applicable to the union grievance process. See, e.g., 5 U.S.C. § 7121 (setting forth minimum requirements for grievance procedures in collective bargaining agreements governed by federal labor relations statutes). The officials' resolution of the grievance had the potential to impact not only the employment status and other rights of the defendant as the complainant but potentially those of the plaintiffs, other Coast Guard personnel engaged in the hiring process, and the recipient of the job sought by the defendant. Accordingly, we perceive nothing of import in the present case that warrants treating the union grievance proceedings differently than the proceedings at issue in *Craig* or *Preston*. Moreover, as a matter of sound policy, extending absolute immunity to the union grievance proceedings helps to alleviate any possible chilling effect on employees who may have good faith criticisms regarding the hiring practices of powerful government

agencies like the Coast Guard. In short, we are persuaded that the union grievance proceedings at issue were quasi-judicial in nature.

Very little additional discussion is warranted as to whether the proceeding pertaining to the application for a civil protection order was a judicial proceeding for purposes of absolute immunity. The filing of the application initiated an action in the Superior Court that resulted in a hearing at which a judge heard testimony, ascertained the relevant facts, and exercised judgment and discretion in applying the relevant law. The decision on the application potentially affected the personal rights of the parties. Applications for civil protection orders will often involve the disclosure of highly personal and potentially unfavorable information that is highly pertinent to the order being sought. Sound public policy favors granting absolute immunity in this context so that parties seeking the court's protection will not be chilled from bringing these matters to the attention of the court for fear of subsequent civil litigation.

Having reviewed the allegations set forth in the complaint; see footnotes 11 and 12 of this opinion; we conclude that the written statements and/or factual assertions that the defendant allegedly made regarding the plaintiffs in his grievance application and in the application seeking a civil protection order, as well as any oral statements or testimony made during the hearings before the Superior Court or the Coast Guard administrative officials, qualify as statements made during the course of a judicial or quasi-judicial proceeding. Specifically, the subject matter of the alleged statements and assertions—irrespective of their veracity or any ill intent on the part of the defendant—all directly related either to the defendant's purported rationale for bringing his union grievance or for seeking a civil protection order. In other words, all statements were pertinent to the subject matter of the grievance or protection order

proceedings such that they qualify for absolute immunity under the litigation privilege.

As previously noted, absolute immunity pursuant to the litigation privilege bars not only actions for defamation but a variety of legal theories or causes of actions that similarly may be construed as retaliatory on the basis of written and oral statements made during the course of a judicial or quasi-judicial proceeding. See *Deutsche Bank AG* v. *Vik*, supra, 349 Conn. 137–38. Thus, absolute immunity bars not only the plaintiffs' defamation count but also those counts of the plaintiffs' complaint sounding in invasion of privacy by false light and intentional and negligent infliction of emotional distress. See *Dorfman* v. *Smith*, 342 Conn. 582, 612–13, 271 A.3d 53 (2022) (litigation privilege bars negligent infliction of emotional distress claim); *Simms* v. *Seaman*, 308 Conn. 523, 569, 69 A.3d 880 (2013) (claim of intentional infliction of emotional distress is subject to litigation privilege); *Tucker* v. *Bitonti*, 34 Conn. Supp. 643, 647, 382 A.2d 841 (App. Sess. 1977) (absolute immunity bars claim of invasion of privacy if challenged conduct occurred in course of judicial proceedings).

We nevertheless agree with the plaintiffs that, in accordance with our Supreme Court's holding in *Rioux* v. *Barry*, 283 Conn. 338, 927 A.2d 304 (2007), absolute immunity cannot be invoked to bar those counts seeking to recover on theories of statutory and common-law vexatious litigation. Id., 343. The court in *Rioux* explained that absolute immunity does not attach to statements that provide the grounds for the tort of vexatious litigation, reasoning as follows: "[T]he fact that the tort of vexatious litigation itself employs a test that balances the need to encourage complaints against the need to protect the injured party's interests counsels strongly against a categorical or absolute immunity from a claim of vexatious litigation." Id., 347. The court noted that the stringent requirements that a plaintiff

must establish, including that the prior proceeding was initiated by the defendant against the plaintiff and had terminated in the plaintiff's favor, "provide adequate room for both appropriate incentives to report wrongdoing and protection of the injured party's interest in being free from unwarranted litigation. Thus, because the tort of vexatious litigation strikes the proper balance, it is unnecessary to apply an additional layer of protection to would-be litigants in the form of absolute immunity." Id.

For the reasons provided, we conclude that, with the exception of the statutory and common-law vexatious litigation counts, all counts of the plaintiffs' underlying complaint are barred by absolute immunity under the litigation privilege and, therefore, must be dismissed. Because, however, the vexatious litigation counts are not subject to dismissal on that same ground, we still must consider whether the court improperly failed to dismiss those counts pursuant to the defendant's special motion to dismiss.

II

In addition to invoking absolute immunity, the defendant claims that the trial court improperly denied his special motion to dismiss filed pursuant to § 52-196a on the ground that the conduct alleged in the complaint failed to relate to a matter of public concern and, thus, fell outside of the protections afforded by § 52-196a. For the reasons that follow, we agree that the trial court should have granted the special motion to dismiss in part because, with respect to the alleged statements made in connection with the grievance proceeding, the defendant's conduct related to the exercise of a protected right in connection with a matter of public concern, and the plaintiffs cannot, as a matter of law, establish probable cause that they can prevail on their

vexatious litigation counts with respect to the grievance proceeding.

"A special motion to dismiss filed pursuant to § 52-196a . . . is not a traditional motion to dismiss based on a jurisdictional ground. It is, instead, a truncated evidentiary procedure enacted by our legislature in order to achieve a legitimate policy objective, namely, to provide for a prompt remedy." *Elder* v. *Kauffman*, 204 Conn. App. 818, 824, 254 A.3d 1001 (2021). Section 52-196a (e) (3), as previously noted, provides as follows: "The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint . . . is based on the moving party's exercise of its right of free speech, right to petition the government, or right of association[13] under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, *unless* the party that brought the complaint . . . sets forth with particularity the circumstances giving rise to the complaint . . . and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint . . . ." (Emphasis added; footnote added.) Accordingly, by its plain language, the statute requires courts to engage in

[13] General Statutes § 52-196a (a) provides in relevant part the following definitions: "(2) 'Right of free speech' means communicating, or conduct furthering communication, in a public forum on a matter of public concern; (3) 'Right to petition the government' means (A) communication in connection with an issue under consideration or review by a legislative, executive, administrative, judicial or other governmental body, (B) communication that is reasonably likely to encourage consideration or review of a matter of public concern by a legislative, executive, administrative, judicial or other governmental body, or (C) communication that is reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, administrative, judicial or other governmental body; (4) 'Right of association' means communication among individuals who join together to collectively express, promote, pursue or defend common interests . . . ."

a two step process when resolving an anti-SLAPP motion to dismiss. First, the court must determine if the defendant has demonstrated that the complaint is based on the defendant's exercise of one of the enumerated rights and in connection with a matter of public concern. Our review of whether a defendant satisfies this initial burden by alleging conduct that falls within the ambit of the anti-SLAPP statute involves a question of statutory construction over which our review is plenary. See *Chapnick* v. *DiLauro*, 212 Conn. App. 263, 269, 275 A.3d 746 (2022). Second, if the court determines that a defendant has met this initial burden, it must turn to whether the plaintiffs can demonstrate probable cause that they will prevail on the merits of the complaint, taking into consideration all valid defenses.

Section 52-196a (a) (1) defines a "[m]atter of public concern" as "an issue related to (A) health or safety, (B) environmental, economic or community well-being, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work."[14] Although appellate courts in this state have not had an opportunity to meaningfully analyze the statutory definition regarding what constitutes a matter of public concern, both state and federal courts have addressed what constitutes a matter of public concern in the context of considering whether speech or conduct is protected under the first amendment. As

[14] With regard to whether the defendant's alleged conduct during the union grievance proceedings involved a matter of public concern, the trial court properly considered whether the matter satisfied the "government, zoning, and other regulatory matters" category; see General Statutes § 52-196a (a) (1) (C); or the "public official or public figure" category. See General Statutes § 52-196a (a) (1) (D). With regard to the alleged conduct during the protection order proceedings, the court first noted that the defendant had not clearly articulated a basis for dismissal but nonetheless considered whether that conduct potentially involved a matter of public concern under the "health or safety" category. See General Statutes § 52-196a (a) (1) (A).

the United States Court of Appeals for the Second Circuit recently stated: "[S]peech on matters of public concern is at the heart of [f]irst [a]mendment protection. . . . Whether speech addresses a matter of public concern is to be determined by the content, form, and context of [the relevant] statement, as revealed by the whole record. . . . Speech that relates to any matter of political, social, or other concern to the community . . . which may include conduct implicat[ing] public safety and welfare . . . for example, generally falls within the heart of the [f]irst [a]mendment's protection." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Rupp* v. *Buffalo*, 91 F.4th 623, 635 (2d Cir. 2024).

Moreover, courts in California and Nevada, which have similar anti-SLAPP statutes, have utilized the following principles for distinguishing between a public and private interest: "First, public interest does not equate with mere curiosity. . . . Second, a matter of public interest should be something of concern to a substantial number of people. . . . Thus, a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest. . . . Third, there should be some degree of closeness between the challenged statements and the asserted public interest . . . the assertion of a broad and amorphous public interest is not sufficient . . . . Fourth, the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of [private] controversy. . . . Finally, those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure. . . . A person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people." (Citations omitted; internal quotation marks omitted.) *Weinberg* v. *Feisel*, 110 Cal. App. 4d 1122, 1132, 2 Cal. Rptr.

3d 385 (2003); see also *Smith* v. *Zilverberg*, 137 Nev. 65, 68, 481 P.3d 1222 (2021); 61A Am. Jur. 2d 448, Pleading § 380 (2021). We agree that these factors are useful in evaluating whether a defendant's actions implicate a matter of public concern for purposes of our anti-SLAPP statute.

Turning first to the alleged conduct related to the defendant's efforts to obtain a civil protection order, we agree with the trial court's analysis that this conduct arises out of a wholly private dispute between the parties that does not have any appreciable connection to a matter of public concern. Accordingly, such conduct falls outside the ambit of § 52-196a and its intended protections. As the trial court aptly explained in its memorandum of decision, a number of Superior Court decisions have held that a party's statements pertaining to criminal activities potentially may implicate a matter of public concern under the "health or safety" prong of the statutory definition. See General Statutes § 52-296a (a) (1) (A). In those cases, however, the criminal activity in question had a connection not just to the health and safety of the parties involved but potentially to the health and/or safety of the public or community at large. This context is missing in the present case. Although the defendant's application for a civil protective order concerned some activity that, if charged and proven, potentially was criminal in nature, we are not convinced that the health and safety of the public itself is implicated so as to raise a matter of public concern under § 52-196a. Rather, the allegations and statements made by the defendant involved conduct that was wholly personal in nature, arising out of a verbal argument between the parties. The defendant has failed to convince us on appeal that the court improperly determined that the conduct alleged in the complaint regarding the civil protection order did not involve a health or safety issue connected to a matter of public

concern and thus was not entitled to the protections of § 52-196a. Accordingly, the court properly denied in part the special motion to dismiss.

Contrastingly, we conclude that the court erroneously concluded that the defendant failed to meet his initial burden of proving that the allegations in the complaint regarding his conduct during the course of the union grievance proceedings implicated the exercise of his constitutional right to petition the government in connection with a matter of public concern. As set forth subsequently in this opinion, we agree with the defendant that the court's reasoning for denying the special motion to dismiss, at least with respect to this aspect of the complaint, cannot be sustained. In addition, pursuant to the second part of the § 52-196a analysis, we conclude as a matter of law that the plaintiffs cannot demonstrate probable cause that they would prevail on their vexatious litigation counts with respect to the grievance proceedings because the grievance action was not an action brought against the plaintiffs. Accordingly, the court should have granted in part the special motion to dismiss.

There is no dispute that the Coast Guard, as a federal agency, is a governmental body. Accordingly, the statements forming the basis of the plaintiffs' complaint with respect to the grievance proceedings unquestionably were communications made in the context of the defendant exercising his right to petition the government, as contemplated by the anti-SLAPP statute, as they were made "in connection with an issue under consideration or review by a legislative, executive, administrative, judicial or *other governmental body* . . . ." (Emphasis added.) General Statutes § 52-196a (a) (3) (A). The record before the court also established that his alleged statements pertaining to the grievance related to a matter of public concern because they involve a dispute

that was governed by a valid collective bargaining agreement between the Coast Guard and the defendant's union and raised potential improprieties in the hiring process at the academy that necessarily implicated more than just the defendant's own employment and personal grievances. In particular, the defendant's speech touched on the possible existence of anti-union sentiment within the academy and quid pro quo arrangements between management officials and others related to hiring. Although the defendant's statements also concerned the personal dispute between the parties, the allegations sufficiently implicate potential and significant issues regarding the hiring practices within a governmental entity, which are issues that would be of concern to the general public. Accordingly, we disagree with the court's reasoning that the defendant's special motion to dismiss failed due to his failure to establish that his alleged conduct with respect to the grievance proceedings did not relate to an exercise of a protected right in connection with a matter of public concern.

This does not end the query, however. Even if the court failed to properly recognize that the defendant, at least in part, met his initial burden under § 52-196a, the plaintiffs may yet prevail in defeating the special motion to dismiss if they can demonstrate probable cause that they can prevail on the merits of their vexatious litigation counts regarding the grievance proceedings. A determination of whether allegations of a complaint, assuming they are true, demonstrate the existence of probable cause raises a question of law. Therefore, it is unnecessary to remand the matter to the trial court. Instead, on the basis of our plenary review of the record, we conclude that the plaintiffs cannot demonstrate probable cause that they will prevail on their claim of statutory or common-law vexatious litigation to the extent those counts are based on the grievance proceedings.

A vexatious litigation action brought either pursuant to the common law or pursuant to General Statutes § 52-568 requires the prior commencement of a civil action and termination of that civil action in the plaintiffs' favor. The Supreme Court has held that proceedings initiated "before an administrative board that has power to take action adversely affecting the legally protected interests of [another]" can satisfy the prior action requirement. (Internal quotation marks omitted.) *DeLaurentis* v. *New Haven*, 220 Conn. 225, 248, 597 A.2d 807 (1991). The plaintiffs, however, cannot rely on the defendant's initiation of the grievance proceedings as satisfying the prior action requirement for the purposes of their statutory and common-law vexatious litigation counts because the union grievance was not an action brought against the plaintiffs, such as in a civil or administrative action. Rather, a union grievance is directed at the employer, claiming a breach of the collective bargaining agreement. Because the plaintiffs cannot, as a matter of law, demonstrate probable cause that they would prevail on their vexatious litigation counts with respect to the allegation pertaining to the grievance proceedings, the special motion to dismiss should be granted in part.

III

Finally, because we conclude that a portion of the plaintiffs' vexatious litigation counts are subject to dismissal pursuant to § 52-196a, we also must consider the plaintiffs' alternative ground for affirming the court's denial of the special motion to dismiss; namely, that § 52-196a is unconstitutional, both facially and as applied. The plaintiffs first argue that the statute requires the court to make factual findings that ought to be left to a jury, and, thus, the statute is unconstitutional because it deprives them of their state and federal constitutional rights to a jury trial and to petition for grievances. See Conn. Const., art. I, §§ 6, 10, and 19; U.S. Const., amend.

I. Second, they argue that the statute violates the separation of legislative and judicial powers as set forth in article second and article fifth, § 1, of the constitution of Connecticut. We conclude that both arguments lack merit.

"The constitutionality of a statute presents a question of law . . . over which our review is plenary. . . . While the courts may declare a statute to be unconstitutional, our power to do this should be exercised with caution, and in no doubtful case." (Citations omitted; internal quotation marks omitted.) *State* v. *Bonilla*, 131 Conn. App. 388, 392, 28 A.3d 1005 (2011). Our Supreme Court has stated that, "[i]n our assessment of whether [a] statute passes constitutional muster, we proceed from the well recognized jurisprudential principle that [t]he party attacking a validly enacted statute . . . bears the heavy burden of proving its unconstitutionality beyond a reasonable doubt and we indulge in every presumption in favor of the statute's constitutionality." (Internal quotation marks omitted.) *State* v. *Jason B.*, 248 Conn. 543, 556, 729 A.2d 760, cert. denied, 528 U.S. 967, 120 S. Ct. 406, 145 L. Ed. 2d 316 (1999). "Where a statute is challenged as being unconstitutional on its face, the burden is especially heavy." *State* v. *Ryan*, 48 Conn. App. 148, 154, 709 A.2d 21, cert. denied 244 Conn. 930, 711 A.2d 729, cert. denied, 525 U.S. 876, 119 S. Ct. 179, 142 L. Ed. 2d 146 (1998). With these principles in mind, we address the plaintiffs' arguments in turn.

A

The plaintiffs first argue that § 52-196a is unconstitutional, both facially and as applied, because it requires the court to make factual findings and, thus, deprives them of their federal and state constitutional rights to a jury trial and to petition for grievances. We conclude that the plaintiffs have failed to meet their burden of

demonstrating the unconstitutionality of the statute beyond a reasonable doubt.[15]

Article first, § 19, of the constitution of Connecticut, as amended by article four of the amendments, provides that "[t]he right of trial by jury shall remain inviolate." "This particular provision of our constitution has been consistently construed by Connecticut courts to mean that if there was a right to a trial by jury at the time of the adoption of the provision, then that right remains intact. . . . It is generally held that the right to a jury trial exists not only in cases in which it existed at common law and at the time of the adoption of [the] constitutional provisions preserving it, but also exists in cases substantially [similar] thereto." (Internal quotation marks omitted.) *Evans* v. *General Motors Corp.*, 277 Conn. 496, 509, 893 A.2d 371 (2006). "Litigants in a civil case have a constitutional right to have a question of fact decided by a jury. . . . Nevertheless, such a right may be subjected to reasonable conditions and regulations." (Citation omitted; internal quotation marks omitted.) *Beizer* v. *Goepfert*, 28 Conn. App. 693, 703, 613 A.2d 1336, cert. denied, 224 Conn. 901, 615 A.2d 1044 (1992), cert. denied, 507 U.S. 973, 113 S. Ct. 1416, 122 L. Ed. 2d 786 (1993); see also, e.g., General Statutes § 52-215 (excluding certain types of cases from right to

[15] No appellate court in this state has engaged in a detailed analysis regarding the constitutionality of § 52-196a. But see *Elder* v. *21st Century Media Newspaper, LLC*, 204 Conn. App. 414, 428, 254 A.3d 344 (2021) (rejecting claim that summary adjudications violate right to trial by jury), and *Elder* v. *Kauffman*, supra, 204 Conn. App. 833 (2021) (adopting reasoning in *Elder* v. *21st Century Media Newspaper, LLC*, supra, 204 Conn. App. 414, to summarily reject claim that § 52-196a was unconstitutional as applied because its application infringed on constitutional rights to redress and to trial by jury). At least one Superior Court, however, has upheld the statute against similar constitutional challenges as those raised in the present appeal. See *Gifford* v. *Taunton Press, Inc.*, Superior Court, judicial district of Danbury, Docket No. CV-18-6028897-S (July 11, 2019). Although the court's analysis is not binding on this court, it is well reasoned and persuasive and, to the extent applicable, we adopt the reasoning in this opinion.

jury trial and requiring parties to claim right to jury within specified time period); *Associated Investment Co. Ltd. Partnership* v. *Williams Associates IV*, 230 Conn. 148, 155, 645 A.2d 505 (1994) (excluding actions under CUTPA from right to jury trial).

Section 52-196a does not offend the right to a trial by jury because it does not require trial courts to resolve disputed issues of fact or to dismiss claims that otherwise would survive summary judgment or a motion for directed verdict. The plaintiff has not directed us to any particular language in the anti-SLAPP statute that requires a court to resolve disputed issues of fact. Rather, the court is tasked first with considering, on the basis of the facts as alleged in the complaint, whether the defendant can show by a preponderance of the evidence that the opposing party's action is based on the defendant's exercise of a protected right. Only if the defendant meets this burden, does the burden then shift to the plaintiff, who must demonstrate only that probable cause exists that the plaintiff will prevail on the merits of the cause of action asserted. Probable cause does not require fact-finding by the court. Rather, "[t]he legal idea of probable cause is a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it." (Internal quotation marks omitted.) *TES Franchising, LLC* v. *Feldman*, 286 Conn. 132, 137, 943 A.2d 406 (2008).

Thus, as explained by the Superior Court, a court considering a special motion to dismiss "does not need to make factual findings, but merely needs to determine, given all of the evidence provided by the parties, if there is any likelihood a reasonable juror could find in favor of the plaintiff. . . . If the answer is no, the court must dismiss the case and would, thus, only be dismissing a case that would be subject to dismissal on a motion

for directed verdict or to set aside the jury verdict in favor of the plaintiff." (Citation omitted.) *Gifford* v. *Taunton Press, Inc.*, Superior Court, judicial district of Danbury, Docket No. CV-18-6028897-S (July 11, 2019). Accordingly, we conclude that the anti-SLAPP statute does not, on its face or as applied, violate the plaintiffs' constitutional right to a jury trial under either the federal or state constitutions.

B

The plaintiffs also argue that § 52-196a violates the separation of legislative and judicial powers as set forth in article second and article fifth, § 1, of the constitution of Connecticut. According to the plaintiffs, § 52-196a is constitutionally invalid because "it is essentially a Practice Book rule, and usurps the power . . . [of] the Judicial Branch to adopt rules of practice and govern court procedure and to govern the conduct of litigation in the state courts." This argument lacks merit and requires little discussion.

Article second of the constitution of Connecticut, as amended by article eighteen of the amendments, provides in relevant part: "The powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; and those which are judicial, to another. . . ." Conn. Const., amend XVIII.

"[T]he primary purpose of [the separation of powers] doctrine is to prevent commingling of different powers of government in the same hands. . . . The constitution achieves this purpose by prescribing limitations and duties for each branch that are essential to each branch's independence and performance of assigned powers. . . . Nevertheless, [t]he rule of separation of governmental powers cannot always be rigidly applied. . . . Our state government is not divided in any such

way that all acts of the nature of the functions of one department can never be exercised by another department; such a division is impracticable, and if carried out would result in the paralysis of government. . . .

"In challenges to a statute's constitutionality on the ground that it impermissibly infringes on the judicial authority in violation of separation of powers principles, [a] statute will be held unconstitutional on [separation of powers] grounds [only] if: (1) it governs subject matter that not only falls within the judicial power, but also lies exclusively within judicial control; or (2) it significantly interferes with the orderly functioning of the Superior Court's judicial role." (Citations omitted; internal quotation marks omitted.) *State* v. *McCleese*, 333 Conn. 378, 415, 215 A.3d 1154 (2019).

Contrary to the assertions of the plaintiffs, they have failed to establish beyond a reasonable doubt that either prong of the aforementioned test is implicated by § 52-196a. Although the plaintiffs would have us view § 52-196a as usurping the role of the Superior Court to set rules of practice governing court procedures and the manner in which litigation is conducted by state courts, this argument is a bridge too far. Rather than merely mandating court procedures, the anti-SLAPP statute creates a substantive statutory right to be free from litigation, the purpose of which is to punish or intimidate citizens who exercise their rights to free speech and/or to petition the government. The creation of such rights is certainly within the powers and province of the legislative branch. "[W]here public policy, as perceived by the legislature, requires a simple and prompt proceeding in order to implement parties' rights, the legislature is not prohibited by the constitution from creating a statutory proceeding which provides for that simplicity and promptness, and which, in order to insure simplicity and promptness, enacts as part and parcel of the statutory proceeding certain minimal procedural

incidents. In such a case, the legislature is acting within its historic and traditional function of defining rights and prescribing remedies." *Fishman* v. *Middlesex Mutual Assurance Co.*, 4 Conn. App. 339, 356, 494 A.2d 606, cert. denied, 197 Conn. 806, 499 A.2d 57, and cert. denied, 197 Conn. 807, 499 A.2d 57 (1985). Section 52-196a clearly falls within this category of statute and, despite including procedural directives, does not offend principles of separation of power.

The plaintiffs have not claimed that § 52-196a conflicts with any existing rules of practice or procedure promulgated by the Superior Court. Moreover, although the promulgation and adoption of rules of practice clearly fall within the power of the Judicial Branch; see General Statutes § 51-14; it is not a power that lies *exclusively* within judicial control. At times, the legislature may promulgate statutes that contain procedures to be employed by the courts of this state. We simply are unconvinced that § 52-196a significantly interferes with the orderly functioning of the Superior Court's judicial role. As we have indicated, the statute is really no more than a form of summary judgment. See *Elder* v. *Kauffman*, supra, 204 Conn. App. 824. In short, we reject the plaintiffs' alternative ground for affirming the court's decision to deny the special motion to dismiss, as that ruling pertains to the vexatious litigation counts to the extent those counts are premised on the defendant's statements and/or actions in pursuing a civil protection order.

To summarize, we conclude that all counts of the complaint, with the exception of the counts sounding in common-law and statutory vexatious litigation, are barred by absolute immunity under the litigation privilege. With respect to the vexatious litigation counts, we affirm in part and reverse in part the court's decision to deny the special motion to dismiss as to those counts, concluding that the court should have granted the

motion to the extent that those counts rely on statements made in connection with the union grievance proceedings, but properly denied the motion with respect to any and all statements made in connection with the proceedings to obtain a civil protection order.

The judgment is reversed in part as to the denial of the motion to dismiss and the case is remanded with direction to dismiss all counts of the plaintiffs' complaint except those portions of the statutory and common-law vexatious litigation counts related to the protection order proceedings; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

NHAN VU *v.* N. L.*
(AC 46645)

Elgo, Suarez and Clark, Js.

Syllabus

The plaintiff appealed from the judgment of the trial court denying his motion to open the judgment of dismissal rendered for the defendant. The plaintiff claimed that the court abused its discretion in denying his motion to open. *Held*:

The trial court did not abuse its discretion in denying the motion to open the judgment, as the court reasonably could have concluded that, although an alleged calendaring mistake by the plaintiff's counsel led to the plaintiff's absence from the hearing on the motion to dismiss, it did not excuse the plaintiff's failure to respond to the defendant's motion to dismiss in the previous three months, well beyond the thirty day time period specified in our rule of practice (§ 10-31 (a)).

Argued September 13—officially released November 26, 2024

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

Procedural History

Action to recover damages for, inter alia, breach of fiduciary duty, and for other relief, brought to the Superior Court in the judicial district of New Britain, where the court, *Knox*., *J.*, granted the defendant's motion to dismiss and rendered judgment thereon; thereafter, the court denied the plaintiff's motion to open the judgment, and the plaintiff appealed to this court. *Affirmed*.

Clifford S. Thier, for the appellant (plaintiff).

N. L., self-represented, the appellee (defendant).

Opinion

ELGO, J. The plaintiff, Nhan Vu, appeals from the judgment of the trial court denying his motion to open the judgment of dismissal rendered in favor of the self-represented defendant, N. L. On appeal, the plaintiff claims that the court abused its discretion in denying his motion to open. We affirm the judgment of the trial court.

The relevant facts are not in dispute. On September 7, 2022, the plaintiff commenced a civil action against the defendant sounding in theft and breach of fiduciary duty. The return date specified on his summons and complaint was September 20, 2022. On that date, the plaintiff filed his return of service.

On October 17, 2022, the defendant filed a motion to dismiss predicated on the plaintiff's failure to comply with General Statutes § 52-46a, which requires process in civil actions to be returned to the clerk of the Superior Court "at least six days before the return day." There is no indication in the record that the court acted on that motion to dismiss.

On October 27, 2022, the plaintiff filed a "motion for leave to amend the return date on the summons and

complaint."[1] In that motion, the plaintiff requested permission to amend his complaint to specify a revised return date of November 8, 2022. The defendant filed an objection to that request, in which she averred that the claims set forth in the complaint were (1) "factually untrue" and (2) barred by the statute of limitations contained in General Statutes § 52-577. On November 22, 2022, the court overruled the defendant's objection, stating that the defendant had provided an "[i]mproper legal basis to object to a request to amend." At the same time, there is no indication in the record that the court granted the plaintiff's motion for leave to amend his summons and complaint.

On December 14, 2022, the defendant, now represented by counsel, filed an amended motion to dismiss the plaintiff's original complaint on the ground that the process was not returned to the clerk of the Superior Court at least six days before the return date, as required by § 52-46a.[2] On January 24, 2023, the plaintiff requested

[1] Because more than thirty days had passed since the return day, the plaintiff was not permitted to amend his complaint as of right. See Practice Book § 10-59. He therefore was required under our rules of practice to obtain permission to do so "[b]y order of judicial authority . . . ." See Practice Book § 10-60.

[2] On appeal, the plaintiff contends that his October 27, 2022 filing of a request to amend his original complaint and summons rendered the defendant's December 14, 2022 amended motion to dismiss "moot ab initio" because any defects in his original complaint had been cured by that filing. The plaintiff has provided this court with no authority for that proposition in the context of amendments sought pursuant to Practice Book § 10-60. Although the plaintiff was permitted under our rules of practice to amend any defect in his original complaint as of right "during the first thirty days after the return day"; Practice Book § 10-59; he did not do so. Instead, he filed a request for leave to amend his original complaint beyond that time period pursuant to Practice Book § 10-60 on October 27, 2022. Because the defendant did not consent to that request and filed an objection thereto, the plaintiff was obligated under our rules of practice to secure an "order of judicial authority" to permit the requested amendment. See Practice Book § 10-60 (a) (1). The record before us lacks such an order by the court.

To be sure, the court overruled the defendant's objection to the plaintiff's request. The court nevertheless did not grant the plaintiff's request to amend his original complaint or enter an order to that effect. Rather, the court

a continuance of argument on the defendant's motion to dismiss at short calendar. The court granted that continuance request and thereafter ordered an "in person hearing" on the defendant's motion, which was scheduled for March 20, 2023. (Emphasis omitted.)

It is undisputed that both the defendant and her legal counsel appeared in court for the scheduled hearing on March 20, 2023. The plaintiff also appeared and filed another motion for a continuance at that time, stating that his counsel was out of state. The court granted that continuance request as well.

The hearing on the motion to dismiss was rescheduled and ultimately held on April 17, 2023. Neither the

simply stated that the defendant had set forth an "[i]mproper legal basis to object to a request to amend." There also is no indication in the record that the plaintiff affirmatively attempted to obtain a ruling from the court on his request for permission to amend his original complaint. As a result, the record lacks any ruling by the court on that request. See, e.g., *Acadia Ins. Co.* v. *O'Reilly*, 138 Conn. App. 413, 415, 53 A.3d 1026 (2012) (no indication in record that trial court ever acted on plaintiff's request for permission to amend complaint), cert. denied, 308 Conn. 904, 61 A.3d 1097 (2013).

"It is well established that [i]t is the appellant's burden to provide an adequate record for review. . . . It is, therefore, the responsibility of the appellant to move for an articulation or rectification of the record . . . to ask the trial judge to rule on an overlooked matter." (Internal quotation marks omitted.) *McCarthy* v. *Chromium Process Co.*, 127 Conn. App. 324, 335, 13 A.3d 715 (2011). The plaintiff in the present case did not request an articulation from the trial court as to the basis of its April 17, 2023 decision and whether it had concluded that his original complaint remained operative. Because the court granted the defendant's December 14, 2022 amended motion to dismiss *the plaintiff's original complaint*, we reasonably may presume that the court determined that the defendant's October 27, 2022 request to amend his original complaint had not been granted and that his original complaint remained operative. See, e.g., *White* v. *Latimer Point Condominium Assn., Inc.*, 191 Conn. App. 767, 780–81, 216 A.3d 830 (2019) ("This court will neither speculate with regard to the rationale underlying the court's decision nor, in the absence of a record that demonstrates that error exists, presume that the court acted erroneously. . . . [We] do not presume error; the trial court's ruling is entitled to the reasonable presumption that it is correct unless the party challenging the ruling has satisfied its burden demonstrating the contrary." (Citations omitted; internal quotation marks omitted.)). This case, therefore, is not one in which the defendant's amended motion to dismiss was patently meritless, as the plaintiff suggests.

plaintiff nor his counsel appeared at that hearing. By order dated April 17, 2023, the court stated: "The motion to dismiss is granted with prejudice. The plaintiff did not file an opposition to the motion to dismiss nor appear at the hearing, which was duly noticed and scheduled, on April 17, 2023. Accordingly, a judgment of dismissal shall enter."[3]

On May 8, 2023, the plaintiff filed a motion to open the judgment of dismissal pursuant to General Statutes § 52-212a and Practice Book § 17-4, alleging that his "failure to appear or oppose the motion to dismiss resulted from mistake, accident, inadvertence, reasonable cause, or excusable neglect . . . ." In support thereof, the plaintiff's counsel, Attorney Clifford S. Thier, provided an affidavit, in which he stated that his travel on March 21, 2023, his subsequent positive test for COVID-19 on March 22, 2023, and his "brain fog" allegedly related to COVID-19 caused him to calendar the wrong date of the April 17, 2023 hearing.

On May 17, 2023, the defendant, again acting in a self-represented capacity, filed an objection to the plaintiff's motion to open the judgment of dismissal. In that objection, the defendant argued, inter alia, that, because the plaintiff's counsel "receives reminders via mail, email, text, etc.," his failure to appear for the April 17, 2023 hearing was "inexcusable." The defendant also stated that, when she appeared at court on March 20, 2023, she witnessed the plaintiff at "the clerk's office confirming that the hearing [on the motion to dismiss] would

[3] In his appellate brief, the plaintiff argues that it is improper for a trial court to render a judgment of dismissal in response to the failure of a party or its counsel to appear at a scheduled court proceeding. The precedent of this court indicates otherwise. See *Rzayeva* v. *75 Oxford Street, LLC*, 111 Conn. App. 77, 78, 957 A.2d 539 (2008) (trial court rendered judgment of dismissal "after the plaintiff failed to attend the hearing on the motion to dismiss"); *Talit* v. *Northwest Airlines, Inc.*, 58 Conn. App. 102, 107, 752 A.2d 1131 (2000) (trial court rendered judgment of dismissal after "[the] plaintiff and her counsel failed to appear for a status conference").

be rescheduled for April 17, 2023, at 10:30 a.m." In addition, the defendant averred that the plaintiff had brought a prior action against her that was "essentially about the same" subject matter, which action too resulted in a judgment of dismissal in her favor.[4]

The plaintiff filed a reply to the defendant's objection on May 22, 2023, and the defendant filed a surreply on June 12, 2023. The court heard argument from the parties on June 26, 2023. The court thereafter denied the motion to open, finding that (1) "the plaintiff had sufficient notice and opportunity to respond to the motion to dismiss," (2) the plaintiff had not addressed "his numerous opportunities to respond to the motion to dismiss" in light of the multiple continuances that the court had granted, and (3) the plaintiff had not shown that the dismissal was "based on mistake, error or excusable neglect." From that judgment, the plaintiff now appeals.

On appeal, the plaintiff claims that the court improperly denied his motion to open the judgment of dismissal. We disagree.

It is well established that the courts of this state "have the inherent authority to open, correct or modify judgments, but this authority is restricted by statute and the rules of practice. . . . Pursuant to [§] 52-212a, a civil judgment may not be opened unless a motion to open is filed within four months following the date on

[4] "It is well established that an appellate court may take judicial notice of the court files in another suit between the parties . . . ." (Internal quotation marks omitted.) *Ammar I.* v. *Evelyn W.*, 227 Conn. App. 827, 835 n.9, A.3d (2024). We note that, by order dated March 2, 2022, the trial court rendered a judgment of dismissal in favor of the defendant in the plaintiff's prior civil action against her "as a sanction for the plaintiff's failure to appear for the trial management conference after receiving notice of the conference . . . ." *Vu* v. *Lewis*, Superior Court, judicial district of New Britain, Docket No. CV-21-5029878-S (March 2, 2022). The plaintiff did not challenge the propriety of that judgment of dismissal by way of appeal to this court.

which it was rendered. When a motion to open is timely filed, our review is limited to whether the court has acted unreasonably or has abused its discretion." (Citation omitted; internal quotation marks omitted.) *TD Banknorth, N.A.* v. *White Water Mountain Resorts of Connecticut, Inc.*, 133 Conn. App. 536, 541, 37 A.3d 766 (2012). "A motion to open . . . a judgment . . . is addressed to the [trial] court's discretion, and the action of the trial court will not be disturbed on appeal unless it acted unreasonably and in clear abuse of its discretion. . . . In determining whether the trial court abused its discretion, this court must make every reasonable presumption in favor of its action. . . . The manner in which [this] discretion is exercised will not be disturbed so long as the court could reasonably conclude as it did." (Internal quotation marks omitted.) *Bhatia* v. *Debek*, 287 Conn. 397, 417, 948 A.2d 1009 (2008).

On appeal, the plaintiff claims that the affidavit provided by Thier demonstrates that his failure to appear at the April 17, 2023 hearing was due to "a calendaring error," which authorized the court to set aside the judgment of dismissal. In so arguing, the plaintiff relies on *Trumbull* v. *Palmer*, 161 Conn. App. 594, 129 A.3d 133 (2015), cert. denied, 320 Conn. 923, 133 A.3d 458 (2016), for the proposition that a trial court "may set aside the dismissal upon a timely motion explaining that the error resulted from a mistake . . . ."[5]

We do not disagree with the plaintiff in that regard. Our precedent recognizes that the trial court is empowered to grant a timely motion to open a judgment of dismissal upon such a showing, as *Trumbull* illustrates. See *Trumbull* v. *Palmer*, supra, 161 Conn. App. 600. At

[5] *Trumbull* did not involve a challenge to the trial court's exercise of its discretion to grant a motion to open. The issue in that case was whether the court lacked authority to do so. See *Trumbull* v. *Palmer*, supra, 161 Conn. App. 596.

the same time, while a court *may* grant a motion to open a judgment in such circumstances, it is under no obligation to do so. Rather, the court retains discretion to grant a motion to open in light of the particular facts and procedural history of each case.[6] See *Rzayeva* v. *75 Oxford Street, LLC*, 111 Conn. App. 77, 78, 957 A.2d 539 (2008) ("[w]hether to grant a motion to open [a judgment of dismissal] rests in the discretion of the trial court").

In the present case, the plaintiff attributes an alleged mistake on the part of Thier in calendaring the April 17, 2023 hearing due to his travel on March 21, 2023, his subsequent positive test for COVID-19 on March 22, 2023, and his related "brain fog." Although that alleged mistake may explain his failure to appear at the April 17, 2023 hearing, it does not explain his failure to respond in any manner to the defendant's amended motion to dismiss for more than three months prior to his travel in late March and subsequent illness, well beyond the thirty day time period specified in our rules of practice for parties to respond to motions to dismiss. See Practice Book § 10-31 (a).

In ruling on the motion to open, the trial court expressly found that "the plaintiff had sufficient notice and opportunity to respond to the motion to dismiss" and emphasized that he had not addressed "his numerous opportunities to respond to the motion to dismiss"

[6] The particular facts and procedural history surrounding a judgment of dismissal are critical considerations in a court's determination as to whether to exercise its discretion to grant a motion to open. For example, we note that *Trumbull*, like the present case, involved a plaintiff's attorney who mistakenly believed a court proceeding was scheduled on a different day. See *Trumbull* v. *Palmer*, supra, 161 Conn. App. 597. *Prior* to receiving any notice that a judgment of dismissal had been rendered in that case, the plaintiff's attorney "realized his mistake, contacted the court, and [then] learned of the dismissal." Id. In the present case, by contrast, it was only *after* receiving notice of the judgment of dismissal that Thier raised the issue of the alleged mistake on his part.

in light of the multiple continuances that had been granted by the court. Because the explanation provided in Thier's affidavit pertained solely to events occurring after March 20, 2023, the court reasonably could have concluded that it did not excuse the plaintiff's failure to respond to the defendant's amended motion to dismiss in the previous three months. Moreover, because this court presumes that the trial court undertook the proper analysis of the law; see *White* v. *FCW Law Offices*, 228 Conn. App. 1, 8, 323 A.3d 406 (2024); we presume that the court was aware that, under Connecticut law, our trial courts are authorized to render a judgment of dismissal in response to the failure of a party or its counsel to appear at a scheduled court proceeding. See *Rzayeva* v. *75 Oxford Street, LLC*, supra, 111 Conn. App. 78 (trial court rendered judgment of dismissal "after the plaintiff failed to attend the hearing on the motion to dismiss"); *Talit* v. *Northwest Airlines, Inc.*, 58 Conn. App. 102, 107, 752 A.2d 1131 (2000) (trial court rendered judgment of dismissal after "[the] plaintiff and her counsel failed to appear for a status conference").

In addition, our Supreme Court has observed that it is "well within the power of the trial court to take judicial notice of court files of other suits between the same parties . . . ." *Carpenter* v. *Planning & Zoning Commission*, 176 Conn. 581, 591, 409 A.2d 1029 (1979). Here, the court may have taken judicial notice of the fact that the plaintiff's prior civil action against the defendant involving a similar set of facts was dismissed by the trial court as a "sanction" for the plaintiff's failure to appear at a scheduled trial management conference; see footnote 4 of this opinion; particularly in light of the fact that the defendant apprised the court of that prior action in her objection to the motion to open.

Furthermore, we reiterate that the plaintiff did not seek an articulation from the trial court in this case.

See footnote 2 of this opinion. As a result, we may presume that the court, in granting the defendant's December 14, 2022 motion to dismiss the plaintiff's original complaint, determined that the defendant's motion was meritorious in light of the plaintiff's conceded noncompliance with § 52-46a with respect to his original complaint. See, e.g., *Orcutt* v. *Commissioner of Correction*, 284 Conn. 724, 739 n.25, 937 A.2d 656 (2007) ("in the absence of an articulation . . . [an appellate court will] presume that the trial court acted properly"); *Young* v. *Commissioner of Correction*, 104 Conn. App. 188, 190 n.1, 932 A.2d 467 (2007) (when decision lacks specificity, Appellate Court presumes trial court made necessary findings and determinations supported by record on which judgment is predicated), cert. denied, 285 Conn. 907, 942 A.2d 416 (2008).

A challenge to the propriety of a court's decision to deny a motion to open a judgment of dismissal is reviewed pursuant to the abuse of discretion standard. See *Rzayeva* v. *75 Oxford Street, LLC*, supra, 111 Conn. App. 78. Under that standard, "the action of the trial court will not be disturbed on appeal unless it acted unreasonably and in clear abuse of its discretion. . . . In determining whether the trial court abused its discretion, this court must make every reasonable presumption in favor of its action. . . . The manner in which [this] discretion is exercised will not be disturbed so long as the court could reasonably conclude as it did." (Internal quotation marks omitted.) *Bhatia* v. *Debek*, supra, 287 Conn. 417. On our review of the record before us, we cannot conclude that the court abused its discretion in denying the motion to open.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* BARRY PRINGLE
(AC 46414)

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

Syllabus

The defendant, who had been convicted, following pleas of guilty, of various crimes, appealed from the judgment of the trial court denying his motion to correct an illegal sentence. *Held*:

This court dismissed the defendant's appeal as moot, as he had successfully completed his sentence and, thus, there was no practical relief this court could afford him.

Argued September 12—officially released November 26, 2024

Procedural History

Information, in the first case, charging the defendant with two counts of the crime of possession of narcotics with intent to sell and one count each of the crimes of promoting prostitution in the second degree and interference with a search, and substitute information, in the second case, charging the defendant with the crime of sale of narcotics and, in a part B information, with being a persistent serious felony offender, and information, in the third case, charging the defendant with the crimes of attempt to commit murder, assault in the first degree, criminal use of a weapon, criminal possession of a firearm, illegal discharge of a firearm and reckless endangerment in the first degree, and information, in the fourth case, charging the defendant with the crimes of tampering with a witness and bribery of a witness and, in a part B information, with being a persistent serious felony offender, brought to the Superior Court in the judicial district of Waterbury, geographical area number four, where the defendant was presented to the court, *Fasano*, *J.*, on pleas of guilty to the charges of assault in the first degree, promoting

prostitution in the second degree, possession of narcotics with the intent to sell, sale of narcotics and tampering with a witness; judgments of guilty in accordance with the pleas; thereafter, the state entered nolle prosequis as to the remaining charges and withdrew the part B informations; subsequently, the court, *Hon. Roland D. Fasano*, judge trial referee, denied the defendant's motion to correct an illegal sentence, and the defendant appealed to this court. *Appeal dismissed.*

Barry Pringle, self-represented, the appellant (defendant).

Brett R. Aiello, assistant state's attorney, with whom, on the brief, were *Maureen Platt*, state's attorney, and *John Davenport*, former senior assistant state's attorney, for the appellee (state).

Opinion

PER CURIAM. The defendant, Barry Pringle, appeals from the judgment of the trial court denying his motion to correct an illegal sentence filed pursuant to Practice Book § 43-22. On appeal, he makes several arguments supporting his claim that the court improperly denied his motion to correct an illegal sentence. We dismiss the appeal as moot.

On February 5, 2016, the defendant pleaded guilty in four separate dockets, which were consolidated, to assault in the first degree in violation of General Statutes § 53a-59 (a) (1), promoting prostitution in the second degree in violation of General Statutes § 53a-87, possession of narcotics with intent to sell in violation of General Statutes (Rev. to 2013) § 21a-277 (a), and sale of narcotics in violation of General Statutes (Rev. to 2013) § 21a-278 (b). Additionally, he pleaded guilty under the *Alford* doctrine[1] to tampering with a witness

[1] "Under *North Carolina* v. *Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), a criminal defendant is not required to admit his guilt, but consents to being punished as if he were guilty to avoid the risk of proceeding to trial. . . . A guilty plea under the *Alford* doctrine is a judicial oxymoron

in violation of General Statutes § 53a-151. On the same day, the court, *Fasano*, *J.*, canvassed the defendant and sentenced him pursuant to a plea agreement to a total effective sentence of ten years of incarceration followed by ten years of special parole. On January 21, 2021, the defendant filed the operative motion to correct an illegal sentence in which he raised various claims. On April 8, 2021, the court denied the motion. This appeal followed.[2]

Thereafter, at a hearing on April 6, 2023, a prosecutor informed the court, *Schwartz*, *J.*, that an agreement had been made between the state and the defendant to modify the defendant's sentence to eliminate the ten year period of special parole. The court then found that good cause existed to modify the defendant's sentence to ten years of incarceration and to eliminate from his sentence the ten years of special parole.[3] On April 5, 2024, the defendant was discharged fully from the sentence imposed on February 5, 2016.

in that the defendant does not admit guilt but acknowledges that the state's evidence against him is so strong that he is prepared to accept the entry of a guilty plea nevertheless." (Emphasis omitted; internal quotation marks omitted.) *State* v. *Faraday*, 268 Conn. 174, 204–205, 842 A.2d 567 (2004).

[2] The defendant is self-represented on appeal, and we note that, although it is the established policy of the Connecticut courts to be solicitous of self-represented litigants and to allow self-represented litigants some latitude, we cannot overlook the rules of substantive law. See, e.g., *Traylor* v. *State*, 332 Conn. 789, 806, 213 A.3d 467 (2019).

[3] The state filed a motion to suspend the rules to permit the late filing of the April 6, 2023 transcript, which this court granted. The April 6, 2023 transcript reveals that the sentence modification only pertained to the defendant's sentence for his conviction of assault in the first degree, for which the defendant was sentenced on February 5, 2016, to ten years of incarceration followed by ten years of special parole. The sentencing court also sentenced him to five years of incarceration for promoting prostitution, five years of incarceration for possession of narcotics with intent to sell, five years of incarceration for tampering with a witness, and five years of incarceration for the sale of narcotics, all of which were to run concurrently for a total effective sentence of ten years of incarceration followed by ten years of special parole.

After oral argument before this court, we ordered the parties, sua sponte, to file additional supplemental memoranda addressing: "(1) Whether the defendant is serving any portion of the sentence imposed on February 5, 2016; and (2) [i]f not, whether the defendant's appeal from the trial court's denial of his motion to correct an illegal sentence must be dismissed as moot because this court cannot afford him practical relief. See *State* v. *Neary*, 177 Conn. App. 871 [173 A.3d 982] (2017), cert. denied, 328 Conn. 901 [177 A.3d 564] (2018)."

"[B]ecause mootness implicates this court's subject matter jurisdiction, it may be raised at any time, including by this court sua sponte, and is a threshold matter that must be resolved first. . . . This is so because [i]t is a [well settled] general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . Because mootness implicates subject matter jurisdiction, it presents a question of law over which our review is plenary." (Citations omitted; internal quotation marks omitted.) *American Tax Funding, LLC* v. *Design Land Developers of Newtown, Inc.*, 200 Conn. App. 837, 844, 240 A.3d 678 (2020). "In determining mootness, the dispositive question is whether a successful appeal would benefit the . . . defendant in any way." (Internal quotation marks omitted.) *State* v. *Marsala*, 204 Conn. App. 571, 576, 254 A.3d 358, cert. denied, 336 Conn. 951, 251 A.3d 617 (2021).

"[A]n appeal from a motion to correct an illegal sentence is rendered moot if the defendant completes the sentence while the appeal is pending because this court cannot afford the defendant any practical relief as to that sentence." *State* v. *Neary*, supra, 177 Conn. App.

873–74; see also *State* v. *Bradley*, 137 Conn. App. 585, 587 n.1, 49 A.3d 297, cert. denied, 307 Conn. 939, 56 A.3d 950 (2012).

In the present case, it is undisputed that the defendant has completed his sentence.[4] The defendant's sentence was modified to eliminate the ten year period of special parole and, on April 5, 2024, he was discharged fully from his sentence. Because the defendant successfully completed his sentence, there is no practical relief that we can afford the defendant as to the sentence imposed on February 5, 2016. See *State* v. *Neary*, supra, 177 Conn. App. 873–74. Accordingly, his claim and supporting arguments regarding the legality of his sentence are moot.[5]

The appeal is dismissed.

STATE OF CONNECTICUT *v.* RYAN BRYAN (AC 46657)

Alvord, Elgo and Clark, Js.

Syllabus

The defendant appealed from the trial court's denial of his motion to correct an illegal sentence. The defendant claimed, inter alia, that his guilty plea in the underlying criminal trial to being a persistent dangerous felony offender in violation of statute (§ 53a-40) was defective. *Held*:

The trial court improperly denied the defendant's motion to correct an illegal sentence because the motion challenged the validity of the defendant's guilty

[4] The defendant did not file a supplemental memorandum concerning mootness. He, however, stated at oral argument before this court that he was not incarcerated and that he was not on special parole because the special parole portion of his sentence had been eliminated. The state stated in its supplemental memorandum that the defendant's sentence was modified to eliminate the period of special parole and that he has been discharged fully from his remaining sentence.

[5] To the extent that the defendant challenges not only the legality of the sentence, but also his underlying convictions, such a claim is beyond the purview of a motion to correct an illegal sentence. See *State* v. *Neary*, supra, 177 Conn. App. 874 n.2.

plea and the propriety of the plea proceedings, rather than the sentence or sentencing proceedings, and, accordingly, the court lacked subject matter jurisdiction over the motion and should have dismissed the motion.

This court declined to review the defendant's unpreserved claim that the sentencing court improperly failed to specify which portion of his sentence was attributable to the enhancement imposed pursuant to § 53a-40.

Argued October 22—officially released November 26, 2024

Procedural History

Substitute information charging the defendant with two counts of the crime of assault in the first degree and with one count each of the crimes of criminal possession of a pistol or revolver, criminal possession of a firearm, and carrying a pistol without a permit, and, in a part B information, with being a persistent dangerous felony offender, brought to the Superior Court in the judicial district of New Haven, geographical area number seven, where the defendant was presented to the court, *Clifford, J.*, on a plea of guilty to one count of assault in the first degree, criminal possession of a firearm, and being a persistent dangerous felony offender; judgment of guilty in accordance with the plea; thereafter, the state entered a nolle prosequi as to the remaining charges; subsequently, the court, *Harmon, J.*, denied the defendant's motion to correct an illegal sentence, from which the defendant appealed to this court. *Improper form of judgment*; *reversed*; *judgment directed.*

Ryan Bryan, self-represented, the appellant (defendant).

Ronald G. Weller, senior assistant state's attorney, with whom, on the brief, were *Alexander O. Kosakowski*, *Scott A. Warden*, and *Bharbara V. Rocha*, certified legal interns, for the appellee (state).

Opinion

PER CURIAM. The self-represented defendant, Ryan Bryan, appeals from the judgment of the trial court

denying his motion to correct an illegal sentence filed pursuant to Practice Book § 43-22.[1] The defendant first claims that the court erred in denying his motion because his guilty plea to being a persistent dangerous felony offender pursuant to General Statutes § 53a-40[2] was defective or, in the alternative, that the court should have dismissed his motion for lack of subject matter jurisdiction, rather than denying it on the merits.[3] Second, the defendant claims, for the first time on appeal, that the sentencing court improperly failed to specify which portion of his sentence was attributable to the enhancement imposed pursuant to § 53a-40. With respect to the first claim, we conclude that the trial court lacked

[1] Practice Book § 43-22 provides: "The judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a sentence imposed in an illegal manner or any other disposition made in an illegal manner."

[2] General Statutes § 53a-40 provides in relevant part: "(a) A persistent dangerous felony offender is a person who . . . (1) (A) Stands convicted of . . . assault in the first degree . . . and (B) has been, prior to the commission of the present crime, convicted of and imprisoned under a sentence to a term of imprisonment of more than one year or of death, in this state or in any other state or in a federal correctional institution, for any of the . . . crimes enumerated in subparagraph (A) of this subdivision or an attempt to commit any of said crimes . . . .

"(i) When any person has been found to be a persistent dangerous felony offender, the court, in lieu of imposing the sentence of imprisonment authorized by the general statutes for the crime of which such person presently stands convicted, shall (1) sentence such person to a term of imprisonment that is not (A) less than twice the minimum term of imprisonment authorized for such crime, or (B) more than twice the maximum term of imprisonment authorized for such crime or forty years, whichever is greater, provided, if a mandatory minimum term of imprisonment is authorized for such crime, such sentence shall include a mandatory minimum term of imprisonment that is twice such authorized mandatory minimum term of imprisonment . . . ."

[3] The state argues both that the trial court lacked jurisdiction over the motion to correct *and* that this court lacks jurisdiction to review the defendant's claim on appeal. It is well established, however, that "[t]he trial court's lack of subject matter jurisdiction does not . . . deprive this court of appellate jurisdiction" to determine whether the trial court had jurisdiction. *Finley* v. *Inland Wetlands Commission*, 289 Conn. 12, 31 n.14, 959 A.2d 569 (2008).

subject matter jurisdiction over the defendant's claim and, accordingly, that the court should have dismissed the motion to correct. We further conclude that the defendant is not entitled to review of his unpreserved second claim. Accordingly, we reverse the judgment of the trial court and remand with direction to dismiss the defendant's motion to correct.

The following procedural history is relevant to the defendant's claims. On April 25, 2018, the defendant pleaded guilty to assault in the first degree in violation of General Statutes § 53a-59 (a) (1), and criminal possession of a firearm in violation of General Statutes § 53a-217 (a) (1). During the same plea hearing, the defendant also pleaded guilty to a part B information charging him with being a persistent dangerous felony offender in violation of § 53a-40 (a) (1).[4] As the basis for the persistent dangerous felony offender charge, the state alleged that the defendant previously had been convicted of attempt to commit assault in the first degree and that he had been imprisoned for more than one year for such conviction. On July 18, 2018, the court, *Clifford*, *J.*, sentenced the defendant to a term of seventeen years of incarceration, ten years of which was a mandatory minimum.

On July 18, 2022, the defendant filed the instant motion to correct an illegal sentence. The court, *Harmon*, *J.*, held a hearing on the defendant's motion on May 2, 2023, during which the defendant argued that he was improperly found to be a persistent dangerous felony offender because his guilty plea to the part B information was procedurally defective.[5] Specifically, the defen-

[4] We note that, although both parties cite to the transcripts of the plea and sentencing proceedings in their briefs, it appears from the record that such transcripts were not ordered or filed in accordance with Practice Book § 63-8. In light of our resolution of the defendant's claims, we need not address any issues regarding the adequacy of the record on appeal.

[5] Prior to the hearing, Attorney Justine Whalen was appointed as counsel for the defendant for the limited purpose of determining whether there was a sound basis for the motion to correct. See *State* v. *Casiano*, 282 Conn.

dant argued that, because § 53a-40 (a) (1) provides for a sentence enhancement for a person who "stands convicted" of an eligible offense after having been convicted of and imprisoned for a prior eligible offense; see footnote 2 of this opinion; the court was required to hold a separate plea proceeding on the part B information *after* it had accepted his guilty plea to the eligible offense with which he was charged in this case, namely, assault in the first degree. The defendant further argued that, because the court did not follow that procedure, "[it was] impossible for [him] to be considered to be a persistent [dangerous felony] offender at [the] time [he pleaded guilty to the part B information]" because he was "not yet convicted of assault [in the first degree]." The defendant further claimed that the alleged impropriety in the plea proceedings violated his right to due process. The court denied the defendant's motion on the record. This appeal followed.

The following legal principles and standard of review are applicable to the defendant's claims. "The determination of whether a claim may be brought via a motion to correct an illegal sentence presents a question of law over which our review is plenary." (Internal quotation marks omitted.) *State* v. *Smith*, 213 Conn. App. 848, 853, 279 A.3d 303, cert. denied, 345 Conn. 963, 285 A.3d 387 (2022). "A motion to correct an illegal sentence under Practice Book § 43-22 constitutes a narrow exception to the general rule that, once a defendant's sentence has begun, the authority of the sentencing court to modify that sentence terminates." (Internal quotation marks omitted.) Id., 853–54. "In order for the court to have jurisdiction over a motion to correct an

614, 627, 922 A.2d 1065 (2007). On April 24, 2023, Whalen filed a motion to withdraw her appearance on the ground that she had determined there was no sound basis for the motion to correct. At the outset of the hearing, the court granted the motion to withdraw; thereafter, the defendant elected to proceed in a self-represented capacity.

illegal sentence after the sentence has been executed, the sentencing proceeding, and not the [proceedings] leading to the conviction, must be the subject of the attack." (Internal quotation marks omitted.) *State* v. *Casiano*, 122 Conn. App. 61, 68, 998 A.2d 792, cert. denied, 298 Conn. 931, 5 A.3d 491 (2010).

"Our appellate courts have held that a trial court lacks subject matter jurisdiction over a motion to correct challenging alleged flaws in the plea process." *State* v. *King*, 220 Conn. App. 549, 563, 300 A.3d 626, cert. denied, 348 Conn. 918, 303 A.3d 1194 (2023); see id. (court lacked jurisdiction over motion to correct claiming that court failed to conduct proper canvass and make statutorily required findings prior to accepting plea); see also *State* v. *Das*, 291 Conn. 356, 363 n.3, 968 A.2d 367 (2009) ("[t]o the extent that the defendant's claims are based on alleged flaws in the court's acceptance of his plea, Practice Book § 43-22 is clearly inapplicable"); *State* v. *Boyd*, 204 Conn. App. 446, 456–57, 253 A.3d 988 (court lacked jurisdiction over motion to correct that was "nothing more than a collateral attack on the plea underlying the defendant's conviction rather than a true challenge to the legality of the sentence imposed or to the sentencing proceedings"), cert. denied, 336 Conn. 951, 251 A.3d 617 (2021).

With respect to the defendant's claim that his guilty plea to being a persistent dangerous felony offender was defective, we conclude that the court lacked jurisdiction over that claim because it challenges the validity of the defendant's guilty plea and the propriety of the plea proceedings, rather than the sentence or sentencing proceedings. The defendant argues in his brief that his "[s]entence is illegal because [his] plea on the underlying assault was not separated from the persistent [dangerous felony] offender enhancement." He further argues that "[t]o be charged with the part B information, there has to be a separate proceeding, then the defendant

has to be canvassed for persistent [dangerous felony] offender enhancement" and that "the lack of a second canvass deprived the defendant [of] procedural due process . . . ." Because the defendant's claim "is a collateral attack on the plea process rather than a true challenge to the legality of his sentence or the manner in which his sentence was imposed"; *State* v. *King*, supra, 220 Conn. App. 565; we conclude that the court lacked subject matter jurisdiction over the defendant's motion.

With respect to the defendant's unpreserved claim that his sentence lacked specificity with respect to the portion attributable to § 53a-40, the defendant seeks review under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989). This court, however, has declined to grant *Golding* review of an unpreserved claim on appeal from the denial of a motion to correct illegal sentence because "[o]ur rules of practice confer the authority to correct an illegal sentence on the trial court, and that court is in a superior position to fashion an appropriate remedy for an illegal sentence. . . . Furthermore, the defendant has the right, at any time, to file a motion to correct an illegal sentence and raise [a] . . . claim [challenging the legality of his sentence] before the trial court. Typically, our appellate courts afford review under *Golding* . . . in circumstances in which the failure to undertake such an extraordinary level of review, effectively, would preclude an appellant from obtaining *any* judicial review of the claim raised. That is not the case here." (Citation omitted; emphasis in original.) *State* v. *Starks*, 121 Conn. App. 581, 592, 997 A.2d 546 (2010); see also *State* v. *Heriberto B.*, 207 Conn. App. 192, 209–10, 261 A.3d 838, cert. denied, 340 Conn. 903, 263 A.3d 100 (2021); *State* v. *Syms*, 200 Conn. App. 55, 59–60, 238 A.3d 135 (2020); *State* v. *Brescia*, 122 Conn. App. 601, 604 n.3, 999 A.2d 848 (2010).

In the present case, the defendant may obtain review of his claim by filing a motion to correct in the trial court, which "is in a superior position to fashion an appropriate remedy for an illegal sentence." *State* v. *Starks*, supra, 121 Conn. App. 592. Accordingly, we decline to review the defendant's unpreserved claim.[6]

The form of the judgment is improper; the judgment denying the defendant's motion to correct an illegal sentence is reversed and the case is remanded with direction to render a judgment of dismissal.

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[6] As we recognized in *State* v. *Heriberto B.*, supra, 207 Conn. App. 192, although our Supreme Court has, in other circumstances, reviewed unpreserved claims on appeal from the denial of a motion to correct; see *State* v. *McCleese*, 333 Conn. 378, 425 n.24, 215 A.3d 1154 (2019); *State* v. *Evans*, 329 Conn. 770, 809 n.27, 189 A.3d 1184 (2018), cert. denied, U.S. , 139 S. Ct. 1304, 203 L. Ed. 2d 425 (2019); see also *State* v. *Arnold*, 205 Conn. App. 863, 868–69, 259 A.3d 716 (applying *Golding* but concluding that record was inadequate to review unpreserved claim), cert. denied, 339 Conn. 904, 260 A.3d 1225 (2021); those cases did not overrule *Starks* and, therefore, do not compel us to review the defendant's claim. See *State* v. *Heriberto B.*, supra, 210 n.15.