IN RE ARIELLA M. ET AL.*
(AC 48293)

Seeley, Wilson and Lavine, Js.

Syllabus

The respondent father appealed from the trial court's judgment terminating his parental rights with respect to his minor children. He claimed, inter alia, that the court improperly determined that he had failed to achieve the requisite degree of personal rehabilitation required by statute (§ 17a-112 (j) (3) (B) (i)). *Held*:

This court determined that there was no practical relief it could afford the respondent father with respect to his claim that the trial court improperly found that he was unable or unwilling to benefit from efforts by the Department of Children and Families to reunify him with his children, as the

* 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.

Moreover, 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.

father's claim was rendered moot because he challenged only one of the two independent bases in § 17a-112 (j) (1) for upholding the court's determination that the department had made reasonable reunification efforts without challenging the court's finding that those efforts themselves were reasonable.

The trial court's unchallenged factual findings, including findings regarding the respondent father's parenting ability, his failure to address the children's sexualized behavior and his volatile relationship with their mother, supported the court's determination, by clear and convincing evidence, that the father had failed to achieve such a degree of personal rehabilitation pursuant to § 17a-112 (j) (3) (B) (i) as would encourage the belief that, within a reasonable time, considering the children's ages and needs, he could assume a responsible caretaking and parentlng position in their lives.

The trial court properly determined, on the basis of abundant evidence in the record, that termination of the respondent father's parental rights was in the children's best interests, as the father did not challenge any of the court's findings in support of its best interest determination, including its findings that the father had ignored the children's specific needs and disregarded the importance of stability and permanency in their lives.

Argued June 5—officially released August 18, 2025**

Procedural History

Petitions by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor children, brought to the Superior Court in the judicial district of Litchfield, Juvenile Matters at Torrington, and transferred to the Superior Court in the judicial district of Middlesex, Child Protection Session at Middletown, where the cases were tried to the court, *Hon. Barbara M. Quinn*, judge trial referee; judgments terminating the respondents' parental rights, from which the respondent father appealed to this court. *Appeal dismissed in part*; *affirmed*.

David B. Rozwaski, assigned counsel, for the appellant (respondent father).

Daniel M. Salton, assistant attorney general, with whom, on the brief, was *William Tong*, attorney general, for the appellee (petitioner).

** August 18, 2025, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

James P. Sexton, assigned counsel, for the minor children.

Opinion

WILSON, J. The respondent father appeals from the judgments of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families, terminating his parental rights with respect to his minor children,[1] Ariella M. and Emilia M.[2] On appeal, the respondent claims that the court improperly determined that (1) he was unable or unwilling to benefit from reunification efforts, (2) he failed to rehabilitate sufficiently, and (3) termination of his parental rights was in the children's best interests. We conclude that the appeal is moot as to the first claim and dismiss that portion of the appeal. We otherwise affirm the judgments of the trial court.

The following relevant facts and procedural history, taken from this court's decision in a related appeal by the children's mother, Cydney; see *In re Emilia M.*, 233 Conn. App. 565, A.3d (2025), petition for cert. filed (Conn. July 21, 2025) (No. 250121); were found by the trial court, or are otherwise undisputed in the record. "[The respondent] is . . . forty-eight years old. . . . Of significance is his long substance abuse history during which time he was heavily addicted to heroin. During those years, more than ten years ago, he was arrested and convicted of illegal sexual contact with a

[1] We note that the attorney for the minor children filed a statement with this court adopting the petitioner's brief.

[2] The trial court also rendered judgments terminating the parental rights of the minor children's mother, Cydney M., who filed a separate appeal, *not* challenging the termination of her parental rights but, rather, concerning the minor children's right to conflict free counsel. See *In re Emilia M.*, 233 Conn. App. 565, A.3d (2025), petition for cert. filed (Conn. July 21, 2025) (No. 250121). We hereinafter refer to the respondent father as the respondent and to Cydney M. by her first name.

minor and remains under probation, [in] the [Department of Children and Families' (department)] [c]entral [r]egistry for investigation of sexual abuse of a minor and is also on the Connecticut sex offender registry. At present and for some time, he receives Suboxone for his addiction and has tested negative for any illicit substances in his urine screens since 2017, indicating no opiate or cocaine use, his probation officer testified at trial. [The respondent] was recently diagnosed with post-traumatic stress disorder, attention deficit hyperactivity disorder and generalized anxiety disorder."

"[Cydney], who has been diagnosed with major depressive disorder, post-traumatic stress disorder, and attention deficit hyperactivity disorder, as well as opioid use in standing remission and borderline personality disorder . . . is now thirty-one years old, and her first child was born when she turned twenty-five. She met [the respondent], the father of her two children, approximately ten years ago, and they were married in 2015. . . . [The respondent] is some seventeen years older than [Cydney], and he has two adult children from earlier relationships. . . . [Cydney] and [the respondent] have had a volatile relationship marked with intimate partner violence and ongoing difficulties related to significant mental health issues and ongoing drug use by both. All who have counseled or interviewed the parents have spoken of a toxic relationship that is harmful to both of them but which they had not been able to set aside during the course of these proceedings. In the past, each has represented to [the department] and their therapeutic counselors that they were not in a relationship when, secretly, they remained involved with each other until very recently. . . . Ending their relationship was a necessary predicate to each of the parents' rehabilitation efforts, as their intimate partner violence and escalating arguments and fights negatively impacted

their two daughters and were a continuing source of trauma for the children.

"During the time between the birth of Ariella, the oldest child, in 2018, and September 12, 2022, when . . . orders of temporary custody with neglect petitions were filed [by the petitioner], there were a total of nine referrals to [the department] due to the ever escalating, more serious intimate partner violence and neglectful care of the two children, Emilia having been born in September, 2020. The difficulties and arguments that arose between the parents were exacerbated by [Cydney's] mental health difficulties [and] her out-of-control behaviors and reflected the ever growing toxic relationship between [Cydney] and [the respondent].

"In August, 2022, the department received a referral from the children's maternal grandmother alleging that [the respondent] was touching the children inappropriately while the children were naked. [Cydney] apparently had videotaped the children in the nude demonstrating the alleged acts of sexual abuse by [the respondent] and accusing their father of touching them inappropriately.[3] [Cydney] subsequently admitted that

[3] "The trial court specifically found that the 'the police [had] reported to [the department] that [Cydney] had sexually exploited her children by taking videos of them on her cell phone in the nude. . . . [Cydney] also had sent similar videos to a friend, who also reported her to the police for 'kiddy porn.' It appeared that [Cydney] was regularly coaching the children to accuse [the respondent] of sexual abuse, as he was on probation and was a registered sex offender. She has several times admitted that she did coach them because of her concerns. She was arrested on December 1, 2022, [on] charges of possession of child pornography and promoting minor[s] [in an] obscene performance, as well as risk of injury to children. She was incarcerated at York Correctional Institution and subsequently released on bond. There is a full no contact protective order in place protecting the children from [Cydney], who, with the exception of one supervised visit during a psychological evaluation, has had no contact with her children since November, 2022, when a motion to suspend visitation was granted by the court. [Cydney] was ultimately convicted of these charges and sentenced to a period of incarceration from January, 2024, to June, 2024.' " *In re Emilia M.*, supra, 233 Conn. App. 569 n.5.

she had coached the children. Following these events, the petitioner sought and received orders of temporary custody for the children, who were placed in the foster home of their aunt. . . . While in the home of their aunt, the children engaged in sexualized behaviors that became too difficult for their aunt to handle, which resulted in the children being separated, with Ariella being placed in the care of her maternal grandmother[4] and Emilia ultimately being placed with a foster family." (Footnotes in original; internal quotation marks omitted.) *In re Emilia M.*, supra, 233 Conn. App. 568–70.

On March 6, 2023, the trial court, *Aaron, J.*, adjudicated the children neglected, committed them to the care and custody of the petitioner, and ordered specific steps for the respondent to take to facilitate the return of the children to him. The steps required, inter alia, that the respondent take part in counseling and make progress toward individual treatment goals; address intimate partner violence and domestic violence with a therapist; and cooperate with the service providers recommended for counseling, in-home support services, substance abuse assessment or treatment, and intimate partner violence services.[5] The specific steps

[4] "In March, 2024, the maternal grandmother could no longer take care of Ariella, who, ultimately, was placed in the same foster home as Emilia." *In re Emilia M.*, supra, 233 Conn. App. 570 n.6.

[5] The specific steps in their entirety required that the respondent keep all appointments set by or with the department; cooperate with the department's home visits; let the department know where he resides; immediately let the department know about any changes in the makeup of the household; take part in counseling and make progress toward identified treatment goals; accept in-home support services referred by the department and cooperate with them; submit to a substance abuse evaluation and follow the recommendations about treatment; submit to random drug testing; not use illegal drugs or abuse alcohol or medicine; cooperate with court-ordered evaluations or testing; get and maintain adequate housing and a legal income; comply with any restraining or protective orders or other appropriate safety plan approved by the department; address intimate partner violence and domestic violence with a therapist; not break the law; cooperate with the children's therapy; visit the children as often as permitted; inform the department of any person he would like the department to consider as a placement resource

further provided that the identified treatment goal for the respondent was to "[d]evelop insight into maintaining a household void of substance use, intimate partner violence, [and] abuse." On December 8, 2023, the petitioner filed petitions for the termination of the parental rights of both the respondent and Cydney with respect to the children, alleging that the parents had failed to achieve a sufficient degree of personal rehabilitation as would encourage the belief that, given the age and needs of the children, they could assume a responsible position in their lives within a reasonable time. The trial on the termination of parental rights petitions was held over five nonconsecutive days in July and August, 2024.[6] The respondent and Cydney appeared, and each were represented by counsel. During the trial, the petitioner presented testimony from multiple witnesses, including Koren Kermashek, a clinician who provided treatment to the respondent; Kerin Foley, a licensed therapist and clinical social worker who provided couples counseling to the respondent and Cydney; Jessica Biren Caverly, a licensed psychologist who performed a psychological and parenting evaluation of the respondent and Cydney, which was admitted

for the children; tell the department the names and addresses of the children's grandparents; sign releases allowing the department to communicate with service providers to check on his attendance, cooperation, and progress toward identified goals; sign releases allowing the children's attorney and guardian ad litem to review the children's medical, psychological, psychiatric, and/or educational records; and cooperate with the service providers recommended for counseling, in-home support services, substance abuse assessment or treatment, and intimate partner violence services.

[6] While the petitions were pending, Cydney filed a motion seeking a permanent transfer of guardianship of the children to their maternal grandmother. The trial on the termination petitions was consolidated with the hearing on the motion to transfer guardianship. In its memorandum of decision terminating both parents' parental rights, the trial court also denied Cydney's motion to transfer guardianship, concluding, inter alia, that "[t]he proposed placement would not foster the sustained growth, development and well-being of [the] two young girls, nor the continuity and stability of their environment."

into evidence as exhibit H, as well as a neuropsychological evaluation of the respondent, admitted into evidence as exhibit I; Morgan McGinnis, a department social worker assigned to the case; and Eric Smith, a department social work supervisor involved in the case. The respondent presented testimony from Erin O'Brien, his probation officer, and also testified himself.[7]

On October 7, 2024, the court, *Hon. Barbara M. Quinn*, judge trial referee, issued a memorandum of decision, in which the court found that the department had made reasonable efforts to reunify the respondent with the children and that the respondent was unable to benefit from reunification efforts. The court further found that the respondent had failed to achieve an appropriate degree of personal rehabilitation as would encourage the belief that, within a reasonable time, he could assume a responsible position in the children's lives and determined that termination of the respondent's parental rights was in the best interests of the children. Pursuant to General Statutes § 17a-112 (j) (3) (B) (i), the court granted the petitions for the termination of the respondent's parental rights.[8] This appeal followed. Additional facts and procedural history will be set forth as necessary.

Before addressing the respondent's claims, we set forth the following relevant legal principles. "Proceedings to terminate parental rights are governed by § 17a-112. . . . Under [that provision], 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)]

[7] During the proceedings, counsel for Cydney also presented testimony from witnesses.

[8] The trial court also granted the petitions for the termination of Cydney's parental rights. See footnote 2 of this opinion.

exists by clear and convincing evidence. The [petitioner] . . . in petitioning to terminate those rights, must allege and prove one or more of the statutory grounds. . . . Subdivision (3) of § 17a-112 (j) carefully sets out . . . [the] situations that, in the judgment of the legislature, constitute countervailing interests sufficiently powerful to justify the termination of parental rights in the absence of consent. . . . Because a respondent's fundamental right to parent his or her child is at stake, [t]he statutory criteria must be strictly complied with before termination can be accomplished and adoption proceedings begun. . . .

"Section 17a-112 (j) provides in relevant part: The Superior Court, upon notice and hearing . . . may grant a petition . . . if it finds by clear and convincing evidence that (1) the [department] has made reasonable efforts to locate the parent and to reunify the child with the parent in accordance with subsection (a) of section 17a-111b, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts, except that such finding is not required if the court has determined at a hearing pursuant to section 17a-111b, or determines at trial on the petition, that such efforts are not required, (2) termination is in the best interest of the child, and (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, abused or uncared for in a prior proceeding, or (ii) is found to be neglected, abused or uncared for and has been in the custody of the [petitioner] for at least fifteen months 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 . . . .

"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." (Citation omitted; internal quotation marks omitted.) *In re Autumn O.*, 218 Conn. App. 424, 430–31, 292 A.3d 66, cert. denied, 346 Conn. 1025, 294 A.3d 1026 (2023).

I

The respondent first claims that the trial court erred in its findings that he was unable or unwilling to benefit from reunification efforts. Specifically, the respondent claims that this finding is "clearly erroneous because there is no evidence contrary to the evidence of consistent employment, medication management, and compliance with probation." Moreover, he argues that the court focused on the " 'toxic relationship' " between the respondent and Cydney, which, "by itself, should not be the basis for a finding that the [respondent] is unable or unwilling to benefit from services." The respondent does not, however, challenge the court's determination that the department had made reasonable efforts to reunify him with the children. Because the respondent challenges only one of the two bases for the court's determination that § 17a-112 (j) (1) had been satisfied, we conclude that this portion of the respondent's appeal is moot.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [this] court's subject matter jurisdiction . . . . Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable. . . . A case is considered moot if [the] court cannot grant the

appellant any practical relief through its disposition of the merits . . . . In determining mootness, the dispositive question is whether a successful appeal would benefit the plaintiff or defendant in any way. . . .

"Section 17a-112 (j) (1) provides in relevant part that the Superior Court may grant a petition [for termination of parental rights] . . . if it finds by clear and convincing evidence that . . . the [department] has made reasonable efforts to locate the parent and to reunify the child with the parent . . . *unless* the court finds . . . that the parent is unable or unwilling to benefit from reunification efforts . . . . In construing that statutory language, our Supreme Court has explained that, [b]ecause the two clauses are separated by the word unless, this statute plainly is written in the conjunctive. Accordingly, the department must prove either that it has made reasonable efforts to reunify or, alternatively, that the parent is unwilling or unable to benefit from reunification efforts. . . . [E]ither showing is sufficient to satisfy this statutory element. . . .

"Because either finding, standing alone, provides an independent basis for satisfying § 17a-112 (j) (1) . . . in cases in which the trial court concludes that *both* findings have been proven, a respondent on appeal must demonstrate that both determinations are improper. If the respondent fails to challenge either one of those independent alternative bases . . . the trial court's ultimate determination that the requirements of § 17a-112 (j) (1) were satisfied remains unchallenged and intact. . . . In such instances, the appeal is moot, as resolution of a respondent's claim of error in her favor could not [afford] her any practical relief." (Citation omitted; emphasis altered; internal quotation marks omitted.) *In re Kharm A.*, 218 Conn. App. 750, 757–59, 292 A.3d 1286 (2023).

In the present case, the trial court found that the department had made reasonable efforts to reunify the

respondent with the children *and* that he was unable or unwilling to benefit from reunification efforts. In his principal appellate brief, the respondent recognizes that the court determined that both findings had been proven,[9] yet he failed to demonstrate that *both* determinations were improper. On appeal, the respondent challenges *only* the court's finding that he was unable or unwilling to benefit from the department's reunification efforts. Although the statement of issues in and introduction to his appellate brief reference the issue of whether reasonable efforts toward reunification were made, the respondent's brief is devoid of any legal analysis on this point. See, e.g., *Stubbs* v. *ICare Management, LLC*, 198 Conn. App. 511, 529–30, 233 A.3d 1170 (2020) (declining to review claim as inadequately briefed because it was referenced in plaintiff's brief only in statement of issues, introduction, and heading of argument section). In the context of his argument that the court erred in finding that he had failed to achieve a sufficient degree of rehabilitation, the respondent makes several references to the efforts the department made at reunification. These references, however, do not constitute an adequately briefed claim that the department's efforts were inadequate. See *In re S. G.*, 229 Conn. App. 834, 843–44 n.9, 328 A.3d 737 (2024) ("To the extent that those references . . . can be construed as a challenge to the court's finding that the department made reasonable efforts to reunify the respondent with the children, we conclude that such a claim is inadequately briefed and, therefore, decline to review it. See *State* v. *Buhl*, 321 Conn. 688, 724, 138 A.3d 868 (2016) ('Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an

[9] In his principal appellate brief, the respondent argued: "The trial court, in making its decision, found that the [department] had made reasonable efforts to reunify the [respondent], but due to continued mental health issues and the 'toxic relationship' with [Cydney] . . . the [respondent] was unable or unwilling to benefit in his reunification services . . . ."

issue by failure to brief the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs.' ")).

Because the respondent failed to properly challenge the trial court's findings with respect to the two separate and independent bases set forth in § 17a-112 (j) (1), this court is unable to grant him any practical relief with respect to this claim. See *In re Kharm A.*, supra, 218 Conn. App. 759 ("[b]ecause the respondent challenges only one of the two separate and independent bases set forth in § 17a-112 (j) (1), there is no practical relief that this court can afford her with respect to her claim"). His claim, therefore, is moot. Accordingly, this portion of the appeal is dismissed.

II

The respondent next claims that the trial court's determination that he had failed to rehabilitate sufficiently was unsupported by the evidence. We are not persuaded.

"Failure of a parent to achieve sufficient personal rehabilitation is one of [the] statutory grounds on which a court may terminate parental rights pursuant to § 17a-112. . . . Concerning the failure to achieve personal rehabilitation, § 17a-112 (j) (3) (B) (i) provides for the termination of parental rights when the minor child has been found to have been neglected, abused or uncared for in a prior proceeding and the parent of such child 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.

"Personal rehabilitation as used in [§ 17a-112 (j) (3) (B) (i)] refers to the restoration of a parent to [his]

former constructive and useful role as a parent. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [his] ability to manage [his] own life, but rather whether [he] has gained the ability to care for the particular needs of the child at issue. . . . An inquiry regarding personal rehabilitation requires us to obtain a historical perspective of the respondent's child-caring and parenting abilities. . . . 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 [his] ability to manage [his] life and may have achieved a level of stability within [his] limitations, such improvements, although commendable, are not dispositive on the issue of whether, within a reasonable period of time, [he] could assume a responsible position in the life of [his child]. . . .

"[T]he appropriate standard of review 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; internal quotation marks omitted.) *In re Mikhail M.*, 230 Conn. App. 86, 88–89, 328 A.3d 758, cert. denied, 351 Conn. 907, 330 A.3d 132 (2025).

In determining that the respondent had failed to rehabilitate sufficiently, the trial court found that, "although [the respondent] has engaged in therapy for many years, attended many of the services that were offered to him, his limitations are such that he has not benefited from

those services nor learned to change his behavior in any meaningful way. His failure to separate from Cydney, even while she was incarcerated, lying to his therapist of many years about this central failure, indicates a man who goes through the motions of complying with what is required of him while resisting and undermining any benefit from the services provided to him. Even if he were able to have his children in his care, the court concludes from the clear and convincing evidence that he has shown no signs of rehabilitation so that he could be expected to responsibly care for them and their needs in the reasonably foreseeable future." With respect to both parents, the court similarly found that "[n]either parent was ever able to comply with the steps ordered for them. The clear and convincing evidence demonstrates that neither has made sufficient progress for a long enough period of time to assume either one is stable, has adequately treated his or her mental health difficulties, including through medication. The intimate partner violence between them was evident until very recently, and whether they have finally ended their toxic relationship is still in doubt. The evidence demonstrates that this was so both on the adjudicatory date in December, 2023, and in the time that has elapsed since then. Whatever changes each may have achieved, it was unfortunately too little and too late for them to assume their children's care in the reasonably foreseeable future. Both children require stability and permanency. The court finds from the clear and convincing evidence that the grounds for termination of Cydney's and [the respondent's] parental rights have been proven by [the petitioner]."

In support of its conclusion, the trial court also focused on the intimate partner violence between the respondent and Cydney as well as the respondent's parenting ability. Specifically, the court found that, in the fall of 2022, the respondent and Cydney began

attending couples counseling to preserve their marriage, during which "[t]he couples counselor tried to help Cydney and [the respondent] with their communications. She attempted to teach them to listen openly to each other, establish with people outside their marriage, and deal with other marital issues. . . . Nonetheless, their relationship continued with toxic impact on each of their lives, to which their counselors testified at trial." Further, "[a]ll who have counseled or interviewed the parents have spoken of a 'toxic relationship' that is harmful to both of them but which they had not been able to set aside during the course of these proceedings. In the past, each has represented to [the department] and their therapeutic counselors that they were not in a relationship when, secretly, they remained involved with each other until very recently. Their representations were accepted by their counselors and featured significantly in the counselors' assessment of the parents' progress and their recommendations." (Footnote omitted.) As a result of the respondent's and Cydney's "ongoing and active concealment" of their relationship, the court found that assessments of the parents' progress "cannot now carry much weight, as the progress each counselor lauded had not in fact taken place," and "whether they have finally ended their toxic relationship is still in doubt."

With respect to the parenting ability of the respondent, the court relied on the opinion of Caverly, who testified and performed evaluations of the parents that were admitted into evidence. Specifically, the court stated: "In her opinion, both parents required further parenting education, and each of them needed to learn about implementing a wide range of discipline strategies for their daughters. Each needed to learn how to approach discipline now and when their children are older. In particular, it was imperative for them to learn how to address the unsafe behaviors she noted that

each of them permitted during the parent-child portion of the evaluation. At that time, in January, 2023, [Caverly] continued to recommend that both children remain in foster care, as each parent had significant mental health needs that were not being appropriately addressed. . . .

"[Caverly] performed a psychological parenting and interaction assessment with [the respondent] and the children. She noted that, while Ariella remembered him, Emilia seemed to have not much of a recollection of him in her life. [Caverly] recommended that he engage in parenting education and that [he] not only complete that education, but also be able to demonstrate his ability to better supervise his children. She was concerned about his cognitive functioning due to his long-term drug use and discrepancies in his test scores. She believed his limitations would make it more difficult for him to learn the material he needed to master and recall in order to parent successfully. She also found it of concern that Ariella's sexualized behaviors increased significantly after seeing [the respondent] in the evaluation, but those apparently abated after a time. [Caverly's] recommendations for [the respondent] also included his continued engagement in individual therapy and psychiatric medication management. Subsequent to the evaluation, he was referred to CT Kids Matter for parenting and offender counseling with his probation officer. At trial, he testified as to his present situation and his inability to assume primary care of his children." (Footnotes omitted.)

Moreover, specific to the children's sexualized behavior, the trial court found that "[b]oth Cydney and [the respondent] thought their daughters' behavior was normal and did nothing to intervene and redirect their children when they were engaging in such sexualized conduct."

Notwithstanding these factual findings, the respondent maintains that "there was more than sufficient evidence to make a determination that [the respondent], with continuing services, could, within a reasonable period of time, make sufficient progress to reunify with his children." In support of this argument, he relies on evidence in the record reflecting that (1) despite the absence of visitation, Ariella was excited to see him, (2) Caverly recommended that the respondent see a neurologist to determine if there are any issues impacting his cognitive functioning that could lead to further recommendations to assist him, (3) he was compliant with various programs through probation, and (4) he was compliant with his medication regimen. In sum, the respondent argues that the evidence "clearly demonstrate[s] that the respondent . . . has been engaged in services, is making progress, and is committed to remaining engaged in services."

The trial court's decision makes clear that the court recognized that the respondent had engaged in therapy and many of the services offered to him; however, the court deemed the respondent's efforts to be "too little and too late for [him] to assume [his] children's care in the reasonably foreseeable future." As the court found, the respondent had failed to address the intimate partner violence between himself and Cydney, given their inability to separate and the subsequent concealment of their relationship. As a result of the respondent's and Cydney's "ongoing and active concealment" of their relationship, the court found that assessments of the parents' progress "cannot now carry much weight, as the progress each counselor lauded had not in fact taken place." The court also made findings as to the respondent's parenting ability and his failure to understand and address the children's sexualized behavior. The respondent does not challenge any of the court's subordinate findings.

Although there was evidence of progress on the part of the respondent, this does not undermine the trial court's reliance on its subordinate findings that demonstrate that he had failed to rehabilitate sufficiently. See *In re Sheila J.*, 62 Conn. App. 470, 481–82, 771 A.2d 244 (2001) (court's determination that respondent failed to rehabilitate sufficiently was proper notwithstanding respondent's having demonstrated efforts and taken steps toward rehabilitation, which were "too little and too late"). We conclude that there is sufficient evidence in the record to support the court's determination that the petitioner had proven, by clear and convincing evidence, that the respondent failed to achieve the degree of personal rehabilitation that would encourage the belief that, within a reasonable time, considering the ages and needs of the children, he could assume a responsible position in their lives.

III

The respondent's final claim is that the trial court improperly determined that terminating his parental rights was in the children's best interests. We disagree.

We begin our analysis by setting forth the relevant legal principles and standard of review. "In the dispositional phase of a termination of parental rights hearing, the emphasis appropriately shifts from the conduct of the parent to the best interest of the child. . . . It is well settled that we will overturn the trial court's decision that the termination of parental rights is in the best interest of the [child] only if the court's findings are clearly erroneous. . . . The best interests of the child include the child's interests in sustained growth, development, well-being, and continuity and stability of [his or her] environment. . . . In the dispositional phase of a termination of parental rights hearing, the trial court must determine whether it is established by clear and convincing evidence that the continuation of

the respondent's parental rights is not in the best interest of the child. In arriving at this decision, the court is mandated to consider and make written findings regarding seven factors delineated in [§ 17a-112 (k)]. . . . The seven factors serve simply as guidelines for the court and are not statutory prerequisites that need to be proven before termination can be ordered. . . . There is no requirement that each factor be proven by clear and convincing evidence." (Internal quotation marks omitted.) *In re Bianca K.*, 188 Conn. App. 259, 273, 203 A.3d 1280 (2019); see also *In re S. G.*, supra, 229 Conn. App. 861–62 ("[a]n appellate tribunal will not disturb a trial court's finding that termination of parental rights is in a child's best interest unless that finding is clearly erroneous" (internal quotation marks omitted)).

In the present case, the trial court addressed each of the factors set forth in § 17a-112 (k)[10] in the dispositional

[10] General Statutes § 17a-112 (k) provides: "Except in the case where termination of parental rights is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding: (1) The timeliness, nature and extent of services offered, provided and made available to the parent and the child by an agency to facilitate the reunion of the child with the parent; (2) whether the Department of Children and Families has made reasonable efforts to reunite the family pursuant to the federal Adoption and Safe Families Act of 1997, as amended from time to time; (3) the terms of any applicable court order entered into and agreed upon by any individual or agency and the parent, and the extent to which all parties have fulfilled their obligations under such order; (4) the feelings and emotional ties of the child with respect to the child's parents, any guardian of such child's person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties; (5) the age of the child; (6) the efforts the parent has made to adjust such parent's circumstances, conduct, or conditions to make it in the best interest of the child to return such child home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court may give weight to incidental visitations, communications or contributions, and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child; and (7) the extent to which a parent has been

portion of its decision. The court made the following relevant findings. First, the department made reasonable efforts to provide timely services to both the respondent and Cydney, tailored to their needs. Specifically, the department required mental health services, substance abuse services, intimate partner violence services, and parenting services that "were offered to both [parents], and neither had benefited from them." Second, the department made reasonable efforts to reunite the respondent and the children in light of the services made available to the respondent, who "had more than adequate time and many services to assist [him] in [his] hoped for rehabilitation, but [he] was [not] able to achieve any substantial progress toward that goal." Third, the respondent failed to complete most of the specific steps ordered by the court and is "not in a position to safely care for [his] daughters within a reasonable period of time, as [he] [cannot] yet conduct [himself] in the manner required to parent these girls safely and provide for their emotional welfare." Fourth, "Emilia has developed significant emotional ties to her foster family, with whom she has lived for more than a year. . . . Ariella has not been with her new foster family for the same length of time as her sister. She is attached to her mother and to her [maternal] grandmother . . . to whose care she wishes to return." Fifth, Ariella was six years old, and Emilia was four years old at the time of trial. Sixth, the respondent was "prohibited from visiting with [his] children by court order and, except for contact during the evaluation, [had] not seen them since late 2022."

After discussing the factors set forth in § 17a-112 (k), the trial court found that "Cydney and [the respondent]

prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent."

are not able to have the children in their care, as Cydney admits she cannot care for them, and [the respondent] is in the same position. There is no question that these children, at six and four years of age, require permanent and competent caretakers who can consistently and reliably deal with their special needs, their emotional requirements and provide daily loving care for both of them. . . . After considering Ariella's and Emilia's ages and the totality of circumstances, including the strength of Ariella's bond to her grandmother and the other familial connections, the court concludes, from the clear and convincing evidence, that, even despite Ariella's bond to her grandmother and also to her mother, termination of their parents' rights [with respect] to them is [in] these young girls' best interests." (Citation omitted.)

There is abundant evidence in the record to support the trial court's conclusion that it was in the best interests of the children to terminate the respondent's parental rights. Moreover, the respondent does not challenge any particular finding made by the court in support of its best interest determination. Rather, the respondent makes only two brief arguments in support of his claim that the court improperly determined that termination of his parental rights was in the best interests of the children, neither of which we find persuasive.[11]

[11] The respondent raises an additional argument that warrants little discussion. He argues that "[m]ultiple placements of a child in nonrelative foster homes can have a destabilizing effect on the emotional welfare of a minor child. . . . [T]he two children reside in separate nonrelative foster homes, but . . . the maternal grandmother and maternal aunt are allowed to have contact through the foster parent. In light of the continuing contact with family members, there is no reason why a plan cannot be put [into] place to reestablish the relationship between the [respondent] and his children." (Citations omitted.)

This argument has no merit. We first observe that the respondent's assertion is inconsistent with the trial court's finding that the children have resided in the same fictive kin foster home since June, 2024, which counsel for the respondent conceded at oral argument. Moreover, the respondent fails to demonstrate how the continuing contact between the children and

First, the respondent argues that, by not allowing him to have continuing contact with his children, the termination of his parental rights will have a negative effect on the children and therefore is not in their best interests. Specifically, the respondent contends that he "loves his children and his oldest daughter, at least, has a positive recollection [of] her father, and, in light of [his] continuing efforts and work on his issues, it would be in the best interests of the minor children not to terminate parental rights but, rather, to remand the case to work on the [respondent's] relationship with his children so that the children will have a father who can be a part of their lives in some form." This argument "is inconsistent with our Supreme Court's repeated recognition of 'the importance of permanency in children's lives.' *In re Davonta V.*, [285 Conn. 483, 494, 940 A.2d 733 (2008); see id.] ('Virtually all experts, from many different professional disciplines, agree that children need and benefit from continuous stable home environments. . . . [S]table and continuous care givers are important to normal child development. Children need secure and uninterrupted emotional relationships with the adults who are responsible for their care.')." *In re Ja'La L.*, 201 Conn. App. 586, 596, 243 A.3d 358 (2020), cert. denied, 336 Conn. 909, 244 A.3d 148 (2021).

Second, the respondent argues that the trial court improperly based its best interest determination on its underlying finding that the children required "daily loving care" because "[t]he respondent . . . loves his children and wants to be able to have a loving relationship with his children, even if he cannot provide for the day-to-day care of his children. A requirement of providing day-to-day care is not a requirement of being a parent. . . . Even though the [respondent] will have to work at reestablishing his relationship with his children, it is

other family members is relevant to the question before us as to whether the trial court erred in terminating the *respondent's* parental rights.

in the children's best interests to allow the [respondent] to do so because they deserve the right to have a relationship with their father." (Citation omitted.) First, we disagree with the respondent's assertion that his inability to provide the children with "daily loving care" was the basis for the court's best interest determination. A review of the court's decision makes clear that the court considered numerous factors in its determination, unchallenged by the respondent, including those found by the court pursuant to § 17a-112 (k).

To the extent that the trial court considered the respondent's ability to provide "daily loving care," however, the respondent's argument similarly disregards " 'the importance of permanency in children's lives' "; *In re Ja'La L.*, supra, 201 Conn. App. 596; and, moreover, ignores the specific needs of the children. The court made several findings as to the children's need for stability and permanency in the context of their particular circumstances. With respect to Ariella, the court found that "Ariella is considered a medically complex child due to her diagnosis of nephrotic syndrome, which is a kidney disorder. She needs caregivers to monitor her diet and follow medication administration directions from her physicians. She requires a parent who can coordinate and attend multiple appointments in a timely manner in order to ensure that Ariella's needs are met." Regarding both children, the court found that the intimate partner violence and escalating arguments between the respondent and Cydney were a continuing source of trauma for the children. Further, the court found that both children had been exposed to sexual conduct while in the care of their parents and became hypersexualized. The court found that both children continue with therapy to overcome the trauma they experienced in their family of origin. Considering the needs of the children, the court found that "these children, at six and four years of age, require permanent

and competent caretakers who can consistently and reliably deal with their special needs, their emotional requirements, and provide daily loving care for both of them." The respondent does not challenge any of these underlying findings as to the children's needs nor does he challenge the court's findings as to his inability to meet those needs.

Our review of the record demonstrates that the trial court properly considered the specific needs of the children and the abilities of the respondent in determining whether termination of his parental rights was in the best interests of the children. See *In re Ja'La L.*, supra, 201 Conn. App. 594, 597 (concluding that respondent's claim that she should have been permitted more time to rehabilitate before her parental rights were terminated ignored particular needs of children). To the extent that the respondent invites this court to second-guess the trial court's assessment that the children's need for permanency and stability outweighs the benefits of maintaining a connection between him and the children, he has not afforded us a basis on which to do so. See *In re Aubrey K.*, 216 Conn. App. 632, 671, 285 A.3d 1153 (2022) (reviewing court declined to second-guess trial court's best interest determination in light of facts that strongly support it), cert. denied, 345 Conn. 972, 286 A.3d 907 (2023). Accordingly, we conclude that the respondent has failed to demonstrate that the court erred in its determination that termination of his parental rights was in the children's best interests.

The appeal is dismissed with respect to the respondent's claim that the trial court erred in finding that he was unable or unwilling to benefit from the department's reunification efforts; the judgments are affirmed in all other respects.

In this opinion the other judges concurred.

HOUSING AUTHORITY OF THE TOWN OF MANCHESTER *v.* BRANDON CYR ET AL.
(AC 47023)

Elgo, Moll and Harper, Js.

Syllabus

The plaintiff housing authority appealed from the trial court's judgment dismissing its summary process action against the defendant tenant. The plaintiff claimed, inter alia, that the court improperly dismissed the action after concluding that the pretermination notice, also known as a *Kapa* notice, and the notice to quit were both invalid and, therefore, that the court lacked subject matter jurisdiction over the action. *Held*:

The trial court improperly determined that the *Kapa* notice sent to the defendant was invalid on the basis that the notice alleged conduct constituting serious nuisance that had occurred one year prior to its issuance, as there was no time requirement contained in the language of the statute (§ 47a-15) governing the form of a *Kapa* notice.

The trial court improperly determined that the *Kapa* notice sent to the defendant was invalid because it failed to refer to specific provisions of the lease or the statutory sections that had been violated as a result of the conduct alleged in the notice, as such specificity was not required pursuant to § 47a-15 or our case law and the notice identified eight specific instances of conduct by the defendant that constituted violations of the lease, the plaintiff's rules and regulations, and his obligations as a tenant pursuant to statute (§ 47a-11), and amounted to a nuisance, which was sufficient to inform the defendant and protect against premature, discriminatory, or arbitrary eviction.

The trial court improperly determined that the notice to quit was invalid or defective and, therefore, deprived the court of subject matter jurisdiction, as the notice sufficiently tracked the language of the relevant statute (§ 47a-23 (a) and (b)) and informed the defendant of the reasons for the notice to quit by setting forth specific instances of his conduct.

The trial court did not lack subject matter jurisdiction on the basis of the defendant's alternative argument that the plaintiff, which the defendant asserts was a federally subsidized landlord and was required to provide notices that complied with the requirements of the applicable federal statute (42 U.S.C. § 1437d (*l*)) and regulation (24 C.F.R. § 966.4 (*l*) (3)), failed to provide sufficient information to the defendant regarding grievance procedures, as he provided no authority to support his claim that, as a result of this alleged insufficiency in the notices, the notices were invalid.

Argued October 8, 2024—officially released August 26, 2025

Procedural History

Summary process action, brought to the Superior Court in the judicial district of Hartford, Housing Session, where the court, *Esperance-Smith*, *J.*, granted the named defendant's motion to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Reversed*; *further proceedings*.

Michael S. Wrona, for the appellant (plaintiff).

Sally R. Zanger, for the appellee (named defendant).

Opinion

HARPER, J. In this summary process action, the plaintiff, the Housing Authority of the town of Manchester, appeals from the judgment of dismissal rendered by the trial court in favor of the defendant Brandon Cyr.[1] On appeal, the plaintiff claims that the court improperly granted the defendant's motion to dismiss after concluding that the pretermination notice and notice to quit were invalid and that, therefore, it lacked subject matter jurisdiction to hear the summary process action. The defendant disagrees and further contends, for the first time on appeal and as an alternative ground for affirming the judgment of the trial court, that the pretermination notice and notice to quit did not comply with federal notice requirements, and, therefore, the court lacked subject matter jurisdiction.[2] We conclude that

[1] The plaintiff's complaint also named a John Doe defendant and a Jane Doe defendant (Doe defendants). Counts three and four of the complaint are directed against the Doe defendants, alleging that they never had a right or privilege to occupy the property leased to the defendant Brandon Cyr, or, in the alternative, that the Doe defendants once had such a right or privilege, but it has since terminated. The Doe defendants were nonappearing parties before the trial court and are not participating in this appeal. Accordingly, we refer in this opinion to Brandon Cyr as the defendant.

[2] As a matter of appellate procedure, we note that the defendant did not preserve this claim for review by filing a preliminary statement of issues in accordance with our rules of practice. Practice Book § 63-4 (a) (1) provides in relevant part: "If any appellee wishes to: (A) present for review alternative grounds upon which the judgment may be affirmed; (B) present for review adverse rulings or decisions of the court which should be considered on

the court improperly dismissed this summary process action.

The following facts and procedural history are relevant to our review. On February 5, 2018, the plaintiff leased the property located at 56-F House Drive in Manchester (premises) to the defendant.[3] On March 5, 2023, the plaintiff sent the defendant a pretermination notice (*Kapa* notice)[4] notifying him of conduct constituting a serious nuisance pursuant to General Statutes § 47a-15,[5] nuisance pursuant to General Statutes § 47a-

appeal in the event the appellant is awarded a new trial; or (C) claim that a new trial rather than a directed judgment should be ordered if the appellant is successful on the appeal, that appellee shall file a preliminary statement of issues within twenty days from the filing of the appellant's preliminary statement of the issues." See generally *State* v. *Martin M.*, 143 Conn. App. 140, 151, 70 A.3d 135 (this court may, but is not required to, review alternative ground for affirmance not raised in accordance with rules of practice so long as appellant will not be prejudiced), cert. denied, 309 Conn. 919, 70 A.3d 41 (2013).

Despite the defendant's noncompliance with our rules of practice, we will review his alternative ground for affirmance because it implicates the subject matter jurisdiction of the trial court and, therefore, may be raised at any time. See, e.g., *North Branford Citizens Against Bulk Propane Storage* v. *North Branford*, 230 Conn. App. 335, 341 n.5, 330 A.3d 196 (2025); *Robinson* v. *V. D.*, 229 Conn. App. 316, 325, 328 A.3d 198 (2024); *Milford Redevelopment & Housing Partnership* v. *Glicklin*, 228 Conn. App. 593, 602, 325 A.3d 971 (2024), cert. denied, 351 Conn. 902, 329 A.3d 239 (2025).

[3] We note that the record in this case does not contain the lease executed by the parties.

[4] A *Kapa* notice refers to the form of pretermination notice that is required under General Statutes § 47a-15, which provides in relevant part: "Prior to the commencement of a summary process action, except in [certain cases] . . . the landlord shall deliver a written notice to the tenant specifying the acts or omissions constituting the breach and that the rental agreement shall terminate upon a date not less than fifteen days after receipt of the notice. If such breach can be remedied by repair by the tenant or payment of damages by the tenant to the landlord, and such breach is not so remedied within such fifteen-day period, the rental agreement shall terminate except that (1) if the breach is remediable by repairs or the payment of damages and the tenant adequately remedies the breach within such fifteen-day period, the rental agreement shall not terminate . . . ." See *Kapa Associates* v. *Flores*, 35 Conn. Supp. 274, 277–79, 408 A.2d 22 (1979).

[5] General Statutes § 47a-15 provides in relevant part: "For the purposes of this section, 'serious nuisance' means (A) inflicting bodily harm upon

32,[6] violations of a tenant's statutory obligations pursuant to General Statutes § 47a-11,[7] violations of the lease and/or the plaintiff's rules and regulations, and/or a failure to require other persons on the premises with the defendant's consent to conduct themselves in a manner that will not disturb the neighbors' peaceful

another tenant or the landlord or threatening to inflict such harm with the present ability to effect the harm and under circumstances which would lead a reasonable person to believe that such threat will be carried out, (B) substantial and wilful destruction of part of the dwelling unit or premises, (C) conduct which presents an immediate and serious danger to the safety of other tenants or the landlord, or (D) using the premises or allowing the premises to be used for prostitution or the illegal sale of drugs or, in the case of a housing authority, using any area within fifteen hundred feet of any housing authority property in which the tenant resides for the illegal sale of drugs. . . ." See also *Suburban Greater Hartford Realty Management Corp.* v. *Edwards*, 123 Conn. App. 295, 300, 1 A.3d 1138 (2010) (serious nuisance may be committed in one of four ways).

[6] General Statutes § 47a-32 provides: "In any action of summary process based upon nuisance, that term shall be taken to include, but shall not be limited to, any conduct which interferes substantially with the comfort or safety of other tenants or occupants of the same or adjacent buildings or structures."

[7] General Statutes § 47a-11 provides: "A tenant shall: (a) Comply with all obligations primarily imposed upon tenants by applicable provisions of any building, housing or fire code materially affecting health and safety; (b) keep such part of the premises that he occupies and uses as clean and safe as the condition of the premises permit; (c) remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner to the place provided by the landlord pursuant to subdivision (5) of subsection (a) of section 47a-7; (d) keep all plumbing fixtures and appliances in the dwelling unit or used by the tenant as clean as the condition of each such fixture or appliance permits; (e) use all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in the premises in a reasonable manner; (f) not wilfully or negligently destroy, deface, damage, impair or remove any part of the premises or permit any other person to do so; (g) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises or constitute a nuisance, as defined in section 47a-32, or a serious nuisance, as defined in section 47a-15; and (h) if judgment has entered against a member of the tenant's household pursuant to subsection (c) of section 47a-26h for serious nuisance by using the premises for the illegal sale of drugs, not permit such person to resume occupancy of the dwelling unit, except with the consent of the landlord."

enjoyment of the premises or commit violations of the lease. The conduct set forth in the March, 2023 *Kapa* notice was alleged to have occurred in 2022 and included: (1) the defendant's June, 2022 arrest for breach of the peace in the second degree, use of drug paraphernalia, and assault in the third degree; (2) the defendant's use of illegal narcotics in the premises, which resulted in his near overdose; (3) the defendant's permitting another individual to consume narcotics in the premises; (4) the defendant's March, 2022 threatening statement to a neighbor; (5) the defendant's conduct, and his granting permission to those in the premises with his consent, to act in a manner that would disturb his neighbors' peaceful enjoyment or constitute violations of the lease; (6) the defendant's permitting unauthorized occupants to reside in the premises; (7) the defendant's September, 2022 arrest for breach of the peace in the second degree and threatening in the second degree; and (8) the defendant's November, 2022 arrest for violating the condition of release in the first degree. The *Kapa* notice further provided that, assuming such violations were subject to cure,[8] the defendant was required to do so by March 28, 2023.[9] Thereafter, on April 18, 2023, the plaintiff served the defendant with a notice to quit possession for conduct in violation of the lease agreement, the plaintiff's rules and regulations, and the defendant's statutory obligations as a tenant pursuant to § 47a-11, as well as for conduct constituting a nuisance pursuant to § 47a-32, and/or serious

[8] We note that not all alleged violations are subject to cure. See, e.g., *Housing Authority* v. *Harris*, 225 Conn. 600, 606, 625 A.2d 816 (1993) ("[a]lthough removing the person who sold drugs from the apartment will eliminate the cause of the nuisance, it cannot eliminate any effects of the drug sale that have already occurred"); *Housing Authority* v. *Brown*, 129 Conn. App. 313, 321–22, 19 A.3d 252 (2011) (legislature did not intend to create ability to "repair" drug related criminal activity with respect to § 47a-15).

[9] See footnote 5 of this opinion.

nuisance pursuant to § 47a-15. The notice to quit reasserted the eight instances of conduct that had been listed in the *Kapa* notice as the reasons for the termination of the lease, and added the following: (1) the defendant's (and others on the premises with his consent) breaking of windows that occurred most recently in April, 2023; (2) the defendant's April, 2023 threat to harm his neighbor physically; (3) the use of the premises by John Doe and Jane Doe, who once may have had the right or privilege to so do, but such right or privilege has terminated; and (4) the use of the premises by John Doe and Jane Doe who never had the right or privilege to do so. The notice to quit also contained the following language: "The tenant has the following: (a) the right to reply to this [notice to quit]; (b) the right to inspect the file; and (c) the right to a grievance, if appropriate. . . ."

The defendant did not quit possession. The plaintiff then served the defendant with a summary process summons and complaint on June 16, 2023, seeking immediate possession of the premises. Three of the five counts were directed against the defendant[10] and alleged violations of a tenant's responsibilities pursuant to § 47a-11, lease violations, and nuisance.

On July 31, 2023, the defendant filed a motion to dismiss the complaint, along with a memorandum of law. See Practice Book § 10-30.[11] Specifically, he argued that the notice to quit did not comply with General Statutes § 47a-23 (b) because it lacked sufficient information to allow him to prepare a defense. The defendant further contended that the notice to quit did "not state which of the alleged behaviors or incidents alleged is a violation of each statutory provision cited . . . [and

[10] Counts three and four of the complaint were directed against the Doe defendants. See footnote 1 of this opinion.

[11] Practice Book § 10-30 (a) provides in relevant part: "A motion to dismiss shall be used to assert: (1) lack of jurisdiction over the subject matter . . . ."

did] not state which lease provision is alleged to have been violated." Finally, the defendant's motion to dismiss concluded by stating that, because the notice to quit did not advise him sufficiently to prepare a defense, it was invalid, and, therefore, the court lacked jurisdiction.

On August 10, 2023, the plaintiff filed an objection to the defendant's motion to dismiss. It asserted that it was not pursuing the summary process action on the ground of serious nuisance. The plaintiff further countered that the notice to quit provided the defendant with sufficient information to allow him to defend against the action, and, therefore, it was valid. The defendant filed a response to the plaintiff's objection four days later. The court, *Esperance-Smith, J.*, heard argument on the defendant's motion on August 15, 2023.[12]

On October 18, 2023, the court issued its memorandum of decision granting the defendant's motion to dismiss. It began its analysis by summarizing the positions of the parties as follows: "As it relates to the lease violation claim[s], the defendant argues that the lease agreement includes a list of acceptable reasons for termination of a public housing tenant's lease and that the notice to quit and the pretermination notice do not specify or clarify the lease provisions that are alleged to be violated sufficiently enough to allow the defendant to prepare a defense. The defendant further argues that the statutory language that was included in the notice to quit alleging grounds of violation of §§ 47a-11 and 47a-32 do not provide separate and distinct reasons for the tenant and does not set out the factual basis for the reasons. Therefore, according to the defendant, [the

[12] At this hearing, the plaintiff repeated the representation in its objection to the defendant's motion to dismiss that it was not pursuing the summary process action on the basis of a serious nuisance.

language of the notice to quit] makes it difficult for the defendant to decipher which provisions of the lease and statute are being invoked for which alleged incident or behavior. The plaintiff contends that the notice to quit provided detailed, specific, and sufficient information to allow the defendant to defend against the action, as required by statute."

After setting forth the relevant legal principles, the court addressed the parties' arguments. First, it granted the motion to dismiss to the extent that the plaintiff had alleged serious nuisance due to the ambiguity in the complaint regarding such claim. The court then turned to the issue of the claims pertaining to nuisance and violations of the lease. It explained that the *Kapa* notice set forth conduct that began in April, 2022, and occurred throughout that year. The court reasoned: "The *Kapa* notice is intended to give the defendant notice of a defect and provide the defendant with fifteen days to cure the alleged defect, but if the acts upon which [it is] based occurred a year prior, the [*Kapa*] notice is improper. In the notice to quit . . . there is no supplemental [*Kapa*] notice which includes these events with an opportunity for the defendant to cure." The court further determined that "[t]he notice to quit fails to provide sufficient detail for the defendant to be apprised of what portions of the lease the defendant was in violation of or which of the many possible breaches of tenant obligations that are listed in the referenced statute that the plaintiff is proceeding on. The notice to quit must be carefully constructed so as to specify which counts the plaintiff is basing its summary process action on. Additionally, a clear and concise pretermination notice must be sent to the defendant describing the violations alleged as well as providing the [defendant] with the opportunity to cure. *The plaintiff failed to serve a valid notice to quit that provided sufficient specificity to allow the defendant to prepare a defense*

to the summary process action." (Emphasis added.) For these reasons, the court granted the defendant's motion to dismiss the summary process complaint.

Thereafter, the plaintiff filed a motion for reargument and for clarification. It argued that the court improperly imposed an obligation to cite specific provisions in the lease that had been violated and that such a requirement is absent from the applicable statutes and case law. Additionally, the plaintiff contended that the court improperly engaged in a "hypertechnical dissection of the wording" of the notice to quit. Further, the plaintiff claimed that the conduct set forth in the *Kapa* notice was criminal in nature, and thus not subject to cure, and therefore it was irrelevant that the defendant was not provided an opportunity to cure. The defendant filed an objection to the motion to reargue and for clarification. On November 20, 2023, the court denied the plaintiff's motion without further discussion. This appeal followed.

I

The plaintiff principally claims that the court improperly granted the defendant's motion to dismiss its summary process action after concluding that the *Kapa* notice and the notice to quit were invalid. First, the plaintiff argues that the court improperly determined that the *Kapa* notice was invalid because it alleged conduct that had occurred one year prior to its issuance. Second, the plaintiff contends that the court improperly concluded that the *Kapa* notice was invalid because it did not refer to specific provisions of the lease or statutory sections that had been violated as a result of the conduct alleged in these notices.[13] Finally, the plaintiff

[13] In its appellate brief, the plaintiff also argues that the court improperly granted the motion to dismiss after engaging in a hypertechnical dissection of the notices. We need not address this claim given our resolution in favor of the plaintiff.

asserts that the court also improperly determined that the notice to quit was insufficient due to a lack of specificity. We agree with the plaintiff that the court, in granting the motion to dismiss, improperly concluded that the *Kapa* notice and notice to quit were invalid.

The following legal principles are relevant to our resolution of this claim. "A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . A claim that a court lacks subject matter jurisdiction may be raised at any time during the proceedings, including on appeal. . . . There is no doubt that the Superior Court is authorized to hear summary process cases . . . . The jurisdiction of the Superior Court in summary process actions, however, is subject to [certain] condition[s] precedent. . . . [B]efore a landlord may pursue its statutory remedy of summary process . . . the landlord must prove its compliance with all the applicable preconditions set by state and federal law for the termination of a lease. . . . When a defendant is a tenant of federally subsidized housing, federal law must be followed in addition to state law." (Citations omitted; internal quotation marks omitted.) *Milford Redevelopment & Housing Partnership* v. *Glicklin*, 228 Conn. App. 593, 602–603, 325 A.3d 971 (2024), cert. denied, 351 Conn. 902, 329 A.3d 239 (2025); see also *Housing Authority* v. *Stevens*, 209 Conn. App. 569, 577, 267 A.3d 927, cert. denied, 343 Conn. 907, 273 A.3d 234 (2022); *Housing Authority* v. *Rogriguez*, 178 Conn. App. 120, 126–27, 174 A.3d 844 (2017).

Additionally, we note that, "[w]hen a . . . court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of

the complaint in their most favorable light. . . . In this regard, a court 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. . . . The motion to dismiss . . . admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone. . . . In undertaking this review, we are mindful of the well established notion that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Connecticut Center for Advanced Technology, Inc.* v. *Bolton Works, LLC*, 191 Conn. App. 842, 845, 216 A.3d 813, cert. denied, 333 Conn. 930, 218 A.3d 69 (2019).

Next, we briefly summarize the principles relating to a summary process action. "[S]ummary process is a special statutory procedure designed to provide an expeditious remedy. . . . It enable[s] landlords to obtain possession of leased premises without suffering the delay, loss and expense to which, under the common-law actions, they might be subjected by tenants wrongfully holding over their terms. . . . Summary process statutes secure a prompt hearing and final determination. . . . Therefore, the statutes relating to summary process must be narrowly construed and strictly followed." (Internal quotation marks omitted.) *Housing Authority* v. *Stevens*, supra, 209 Conn. App. 575; see also *Sullivan* v. *Lazzari*, 135 Conn. App. 831, 836 n.5, 43 A.3d 750 (relief available in summary process action is possession of premises), cert. denied, 305 Conn. 925, 47 A.3d 884 (2012); *Oxford House at Yale* v. *Gilligan*, 125 Conn. App. 464, 471, 10 A.3d 52 (2010) (summary process aimed at deciding simple question of who is entitled to possession). Guided by these principles, we turn to the specific arguments raised by the plaintiff in this appeal.

A

The plaintiff first argues that the court improperly determined that the *Kapa* notice was invalid because it alleged conduct that had occurred one year prior to its issuance. The defendant counters that the March 5, 2023 *Kapa* notice contained " 'stale' allegations" pertaining to conduct that had occurred in 2022, and, therefore, the court properly concluded that the *Kapa* notice in the present matter did not satisfy the requirements of § 47a-15. We agree with the plaintiff.

As an initial matter, we identify the relevant legal principles pertaining to a *Kapa* notice. "Pursuant to § 47a-15, before a landlord may proceed with a summary process action, except in those situations specifically excluded, the landlord must first deliver a [*Kapa*] notice to the tenant specifying the alleged violations and offer the tenant a . . . period to remedy. . . . The legislative purpose [of a *Kapa* notice] is to discourage summary evictions against first offenders . . . . *Section 47a-15 is separate from and preliminary to the maintenance of a summary process action* pursuant to . . . § 47a-23. . . .

"The text of § 47a-15 is clear and unambiguous: Prior to the commencement of a summary process action . . . the landlord shall deliver a written notice to the tenant specifying the acts or omissions constituting the breach and that the rental agreement shall terminate upon a date not less than fifteen days after receipt of the notice. . . . [I]f substantially the same act or omission for which notice was given recurs within six months, the landlord may terminate the rental agreement in accordance with the provisions of [§§] 47a-23 to 47a-23b, inclusive." (Citations omitted; emphasis added; internal quotation marks omitted.) *Housing Authority* v. *Rodriguez*, 178 Conn. App. 120, 126–27, 174 A.3d 844 (2017); see also *Marrinan* v. *Hamer*, 5

Conn. App. 101, 104, 497 A.2d 67 (1985) (statute creates reconciliation period to allow errant tenants to remedy their first miscue). The *Kapa* notice has been described as a precondition to the right to serve a notice to quit. *Bridgeport* v. *Barbour-Daniel Electronics*, *Inc.*, 16 Conn. App. 574, 593, 548 A.2d 744 (*Borden*, *J.*, dissenting), cert. denied, 209 Conn. 826, 552 A.2d 432 (1988); see also *Housing Authority* v. *Harris*, 225 Conn. 600, 605, 625 A.2d 816 (1993). Simply stated, a *Kapa* notice "must be sufficient to apprise the tenant of the information the tenant needs to protect herself against premature, discriminatory or arbitrary eviction. . . . To further this salutary purpose, the notice requirements of § 47a-15 must be construed strictly." (Internal quotation marks omitted.) *Housing Authority* v. *Harris*, supra, 605; see also *St. Paul's Flax Hill Co-operative* v. *Johnson*, 124 Conn. App. 728, 735, 6 A.3d 1168 (2010), cert. denied, 300 Conn. 906, 12 A.3d 1002 (2011).

Resolving whether the trial court properly determined that a proper evaluation of a *Kapa* violation includes a consideration of whether the allegations were stale, we must engage in statutory interpretation. "[I]ssues of statutory interpretation constitute questions of law over which the court's review is plenary. The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of whether the language does so apply. . . . When construing a statute, [the court's] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other

statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Commissioner of Public Health* v. *Colandrea*, 221 Conn. App. 631, 654, 302 A.3d 370 (2023), cert. denied, 348 Conn. 932, 306 A.3d 474 (2024); see also *Reverse Mortgage Solutions, Inc.* v. *Widow(er), Heir(s) and/or Creditors of the Estate of Beryl E. Rowland*, 231 Conn. App. 761, 770, 334 A.3d 1054 (2025); *HUD/Willow Street Apartments* v. *Gonzalez*, 68 Conn. App. 638, 647, 792 A.2d 165 (2002).

Section 47a-15 provides in relevant part: "Prior to the commencement of a summary process action, except in the case in which the landlord elects to proceed under sections 47a-23 to 47a-23b, inclusive, to evict based on nonpayment of rent, on conduct by the tenant which constitutes a serious nuisance or on a violation of subsection (h) of section 47a-11, if there is a material noncompliance with section 47a-11 which materially affects the health and safety of the other tenants or materially affects the physical condition of the premises, or if there is a material noncompliance by the tenant with the rental agreement or a material noncompliance with the rules and regulations adopted in accordance with section 47a-9, and the landlord chooses to evict based on such noncompliance, the landlord shall deliver a written notice to the tenant specifying the acts or omissions constituting the breach and that the rental agreement shall terminate upon a date not less than fifteen days after receipt of the notice. If such breach can be remedied by repair by the tenant or payment of damages by the tenant to the landlord, and such breach is not so remedied within such fifteen-day period, the rental agreement shall terminate except that (1) if the

breach is remediable by repairs or the payment of damages and the tenant adequately remedies the breach within such fifteen-day period, the rental agreement shall not terminate; or (2) if substantially the same act or omission for which notice was given recurs within six months, the landlord may terminate the rental agreement in accordance with the provisions of sections 47a-23 to 47a-23b, inclusive. . . .''

The text of § 47a-15 does not address the time frame in which a *Kapa* notice must be served on a tenant with respect to the alleged conduct that was the basis for the termination of the lease. ''It is our duty to interpret statutes as they are written. . . . Courts cannot, by construction, read into statutes provisions which are not clearly stated. . . . The legislature is quite aware of how to use language when it wants to express its intent to qualify or limit the operation of a statute.'' (Internal quotation marks omitted.) *State* v. *Fetscher*, 162 Conn. App. 145, 152, 130 A.3d 892 (2015), cert. denied, 321 Conn. 904, 138 A.3d 280 (2016); see *Thomas* v. *Dept. of Developmental Services*, 297 Conn. 391, 412, 999 A.2d 682 (2010) (courts are not in business of writing statutes, as that is province of legislature, and role of courts is to interpret statutes as written); *Glanz* v. *Commissioner of Motor Vehicles*, 210 Conn. App. 515, 524, 270 A.3d 766 (2022) (intent of drafters of statutes derived from words used); see also *State* v. *Obas*, 320 Conn. 426, 437–38, 130 A.3d 252 (2016) (Supreme Court rejected state's argument that ignored absence of temporal limitation in statutory text and engrafted such limitation into statute); *Lamar* v. *Boehringer Ingelheim Corp.*, 138 Conn. App. 826, 835, 54 A.3d 1040 (this court is constrained to read statute as written and may not read into clearly expressed legislation provisions that do not find expression in its words), cert. denied, 307 Conn. 943, 56 A.3d 951 (2012).

The trial court did not cite to any authority for its conclusion that, "if the acts upon which [the *Kapa* notice] is based occurred a year prior, the [*Kapa*] notice is improper." In their respective briefs to this court, the parties have not provided us with any binding authority regarding this conclusion made by the trial court. We conclude, therefore, that the court improperly inserted a time requirement into § 47a-15 that is not contained in the statutory language. See, e.g., *Housing Authority* v. *Martin*, 95 Conn. App. 802, 813–14, 898 A.2d 245 (§ 47a-15 requires only that landlord deliver *Kapa* notice and that notice state that breach is not remediable; there is no statutory requirement that landlord further allege that continuing violation exists), cert. denied, 280 Conn. 904, 907 A.2d 90 (2006). Accordingly, we disagree with the conclusion of the trial court that such a requirement exists and that the *Kapa* notice in this case was invalid.

B

Next, the plaintiff argues that the court improperly concluded that the *Kapa* notice was invalid because it failed to refer to specific provisions of the lease or statutory sections that had been violated as a result of the conduct alleged in the notice. We agree and conclude that, contrary to the arguments of the defendant, such specificity is not required pursuant to the statutory language or our case law.

In its memorandum of decision, the trial court explained that, in a summary process case, the *Kapa* notice must be specific enough to allow the tenant to recognize the violations and to either cure or defend against them. It stated further that "a clear and concise [*Kapa*] notice must be sent to the defendant describing the violations alleged as well as providing the defendant with the opportunity to cure." It would appear, therefore, that the court implicitly determined that the *Kapa* notice in the present case lacked sufficient specificity

as part of its conclusion that it lacked subject matter jurisdiction over the plaintiff's summary process action.

In *Jefferson Garden Associates* v. *Greene*, 202 Conn. 128, 520 A.2d 173 (1987), our Supreme Court addressed the standards by which to test the adequacy of notices sent to a defendant in a summary process action, including a *Kapa* notice. Id., 142–43. Specifically, it explained that, "[i]n order to demonstrate its compliance with the notices required for a proper termination, a landlord must show that the notices given to the tenant apprised her of the information a tenant needs to protect herself against premature, discriminatory or arbitrary eviction." Id., 143. To further this salutary purpose, the requirements of § 47a-15 must be construed strictly; however, strict construction does not require ritualistic compliance with statutory or regulatory mandates. Id., 143–44. It further noted that "judicial appraisal [of the sufficiency of a *Kapa* notice] must reflect the purpose that [such a notice was] meant to serve . . . [and] not every deviation from the strict requirements of either statutes or regulations warrants dismissal of an action for summary process. When good cause for termination of a lease has clearly been shown, and when notices of termination have been sent in strict compliance with statutory timetables, a landlord should not be precluded from pursuing summary eviction proceedings because of hypertechnical dissection of the wording of the notices that he has sent." (Citation omitted.) Id., 145; see also *Josephine Towers, L.P.* v. *Kelly*, 199 Conn. App. 829, 839–40, 238 A.3d 732 (§ 47a-15 requirements were met where notice set forth violations of rental agreement, house rules and regulations, and material noncompliance with statutory obligations), cert. denied, 335 Conn. 966, 240 A.3d 281 (2020).

Additionally, this court has stated that the text of § 47a-15 clearly and unambiguously provides that the *Kapa* notice must specify, inter alia, the acts and omissions constituting the breach of the lease agreement.

Housing Authority v. *Rodriguez*, supra, 178 Conn. App. 127. Neither the text of § 47a-15 nor the relevant case law imposes a requirement that the *Kapa* notice must set forth the precise statutory or lease violations based on the improper conduct alleged.

In the present case, the March, 2023 *Kapa* notice identified eight specific instances of conduct by the defendant—including his arrests, his use of illegal narcotics, his allowance of the use of narcotics on the premises, his threats made to a neighbor, and his allowance of unauthorized occupants to reside in the premises—that constituted violations of the lease, the plaintiff's rules and regulations, and his statutory obligations as a tenant, and amounted to a nuisance. We conclude that this *Kapa* notice was sufficient to inform the defendant and protect against premature, discriminatory, or arbitrary eviction. See *Housing Authority* v. *DeRoche*, 112 Conn. App. 355, 362, 962 A.2d 904 (2009); see also *Milford Redevelopment & Housing Partnership* v. *Glicklin*, supra, 228 Conn. App. 612 (*Kapa* notice provided information necessary for defendant to defend herself against possible eviction and thus was valid). We conclude, therefore, that the trial court's conclusion regarding the sufficiency of the *Kapa* notice was improper.

C

The plaintiff next claims that the court improperly concluded that the notice to quit was insufficient and, therefore, the summary process complaint was subject to dismissal. Specifically, it argues that the court erred in its conclusion that the "notice to quit fails to provide sufficient detail for the defendant to be apprised of what portions of the lease the defendant was in violation of" because the relevant statute and case law do not contain such a requirement of specificity. We agree.

As an initial matter, we note that, "[b]efore the [trial] court can entertain a summary process action and evict a tenant, the owner of the land must previously have served the tenant with notice to quit. . . . As a condi-

tion precedent to a summary process action, proper notice to quit [pursuant to § 47a-23] is a jurisdictional necessity." (Internal quotation marks omitted.) *Suburban Greater Hartford Realty Management Corp.* v. *Edwards*, 123 Conn. App. 295, 299, 1 A.3d 1138 (2010); see also *St. Paul's Flax Hill Co-operative* v. *Johnson*, supra, 124 Conn. App. 734. Simply stated, there is no subject matter jurisdiction in the absence of a valid notice to quit. *Wilkes* v. *Thomson*, 155 Conn. App. 278, 281, 109 A.3d 543 (2015). Finally, we note that the notice to quit terminates the lease between the parties. *Towers* v. *Kelly*, supra, 199 Conn. App. 837; see also *Waterbury Twin, LLC* v. *Renal Treatment Centers–Northeast, Inc.*, 292 Conn. 459, 466, 974 A.2d 626 (2009); *St. Paul's Flax Hill Co-operative* v. *Johnson*, supra, 735.

In his motion to dismiss, the defendant argued that the plaintiff listed "specific allegations of actions . . . taken . . . by the defendant" in its notice to quit rather than setting forth "the reason or reasons for the notice to quit possession or occupancy using the statutory language or words of similar import . . . ." He further contends that the notice to quit fails to identify which allegations of improper behavior amount to a violation of the statutory provision cited, nor does it state which lease provisions are alleged to have been violated. In conclusion, the defendant claimed that, "[b]ecause the notice to quit did not advise [him] sufficiently of the reasons for the action in order to permit him to prepare a defense, it is invalid." In granting the defendant's motion to dismiss, the court reasoned: "The notice to quit fails to provide sufficient detail for the defendant to be apprised of what portions of the lease the defendant was in violation of or which of the many possible breaches of tenant obligations that are listed in the referenced statute that the plaintiff is proceeding on. The notice to quit must be carefully constructed so as to specify which counts the plaintiff is basing its summary process action on. . . . The plaintiff failed

to serve a valid notice to quit that provided sufficient specificity to allow the defendant to prepare a defense to the summary process action." "Summary process actions are governed by § 47a-23 (a), which provides in relevant part: When the owner or lessor . . . desires to obtain possession or occupancy of any land or building, any apartment in any building, [or] any dwelling unit . . . and (1) when a rental agreement or lease of such property, whether in writing or by parol, terminates for any of the following reasons: (A) By lapse of time; (B) by reason of any expressed stipulation therein; (C) violation of the rental agreement or lease or of any rules or regulations adopted in accordance with section 47a-9 or 21-70 . . . (E) nonpayment of rent when due for commercial property; (F) violation of section 47a-11 . . . such owner or lessor . . . shall give notice to each lessee or occupant to quit possession or occupancy of such land, building, apartment or dwelling unit . . . .

"Section 47a-23 (b) specifies the type of notice required when serving a notice to quit: The notice shall be in writing substantially in the following form: I (or we) hereby give you notice that you are to quit possession or occupancy of the (land, building, apartment or dwelling unit, or of any trailer or any land upon which a trailer is used or stands, as the case may be), now occupied by you at (here insert the address, including apartment number or other designation, as applicable), on or before the (here insert the date) for the following reason (here insert the reason or reasons for the notice to quit possession or occupancy using the statutory language or words of similar import, also the date and place of signing notice)." (Emphasis omitted; internal quotation marks omitted.) *Vidiaki, LLC* v. *Just Breakfast & Things!!! LLC*, 133 Conn. App. 1, 17–18, 33 A.3d 848 (2012).

In the present case, the April, 2023 notice to quit specified twelve instances of conduct by the defendant,

or individuals in the premises acting with his consent, that "was done in violation of [the defendant's] [l]ease [a]greement, the [h]ousing [a]uthority's [r]ules and [r]egulations, constitutes a violation of your statutory obligations as a tenant pursuant to General Statutes § 47a-11, constitutes a nuisance pursuant to General Statutes § 42a-32 and/or serious nuisance pursuant to General Statutes § 47a-15." Our law recognizes that the notice to quit generally is considered adequate when the language of that notice tracks the language of § 47a-23 (a). *Vidiaki, LLC* v. *Just Breakfast & Things!!! LLC*, supra, 133 Conn. App. 18; see also *Sullivan* v. *Lazzari*, supra, 135 Conn. App. 840; *Thomas E. Golden Realty Co.* v. *Society for Savings*, 31 Conn. App. 575, 580, 626 A.2d 788 (1993). In the present case, the plaintiff's notice to quit generally tracked the statutory language. The defendant argued, and the trial court agreed, that the notice to quit failed to provide sufficient detail to inform the defendant of the specific lease provisions and/or statutory sections on which the plaintiff was proceeding with respect to its efforts to end the lease and regain possession of the premises. We disagree, however, that our law requires such specificity.

In *Vidiaki, LLC* v. *Just Breakfast & Things!!! LLC*, supra, 133 Conn. App. 1, the defendant claimed that the notice to quit had failed to sufficiently apprise it of the specific lease violations alleged by the plaintiff. Id., 15. The trial court determined that it was "plausible" that the defendant did not know all of the purported lease violations that the plaintiff would ultimately claim in its complaint, and, therefore, the notice to quit was invalid. Id., 16. As a result of this conclusion, the trial court dismissed the counts of the complaint based on the claimed lease violations. Id.

On appeal, this court reached a contrary conclusion on the basis that the notice to quit sufficiently apprised the defendant of the alleged lease violations because it tracked the statutory language of § 47a-23 (a) and

(b). Id. Specifically, we noted that the notice to quit contained language that informed the defendant to quit possession or occupancy for violations of the lease, which is one of the bases set forth in the relevant statutory framework. Id., 18; see General Statutes § 47a-23 (a) (1) (C). Furthermore, the language in the notice to quit regarding violations of the lease tracked the language of § 47a-23 (b). *Vidiaki, LLC* v. *Just Breakfast & Things!!! LLC*, supra, 133 Conn. App. 18. This court further concluded: "Although the notice to quit did not lay out specifically the alleged lease violations, the notice tracked the statutory language . . . . Because the notice to quit adequately met the requirements of § 47a-23, the court improperly dismissed count one for lack of subject matter jurisdiction." (Footnote omitted.) Id., 19–20.

The plaintiff's notice to quit in the present case, like the notice to quit in *Vidiaki, LLC* v. *Just Breakfast & Things!!! LLC*, supra, 133 Conn. App. 1, tracked the statutory language and generally informed the defendant of the reasons for the notice to quit and the termination of the lease between the parties. It therefore was not defective so as to deprive the trial court of jurisdiction. The requirement imposed on the plaintiff by the court in this matter simply is not found in the statutory language or our case law. The notice to quit set forth specific instances of conduct by the defendant, such as his assorted arrests, his use of illegal narcotics, his allowing others to consume narcotics, his threats to a neighbor, and his allowing unauthorized occupants to reside in the premises. Furthermore, the notice to quit also generally informed the defendant that such conduct was done in violation of the lease agreement, the rules and regulations of the plaintiff, his statutory obligations as a tenant pursuant to § 47a-11, and constituted a nuisance. It is not required that the plaintiff identify the specific lease provisions or statutes that such conduct violated. See General Statutes § 47a-15.

It is "inconceivable" that the defendant was not aware of the conduct that formed the basis of the termination of his lease. *Southland Corp.* v. *Vernon*, 1 Conn. App. 439, 452–53, 473 A.3d 318 (1984). Accordingly, we conclude that the court improperly determined that the notice to quit was invalid or defective.

II

The defendant claims, as an alternative ground for affirming the judgment of the trial court, that the plaintiff's notices did not comply with federal notice requirements, and, as a result, the court lacked subject matter jurisdiction. Specifically, he argues that the plaintiff's notices were insufficient under federal law because they informed the defendant only that he was entitled to a grievance hearing if such a proceeding was appropriate. We are not persuaded.

"When a defendant is a tenant of federally subsidized housing, federal law must be followed in addition to state law." (Internal quotation marks omitted.) *Milford Redevelopment & Housing Partnership* v. *Glicklin*, supra, 228 Conn. App. 603; see also *Presidential Village, LLC* v. *Perkins*, 332 Conn. 45, 56, 209 A.3d 616 (2019). "Under federal law, 42 U.S.C. § 1437d (*l*)[14] and 24 C.F.R.

[14] Section 1437d (*l*) of title 42 of the United States Code provides in relevant part: "Each public housing agency shall utilize leases which . . . (4) require the public housing agency to give adequate written notice of termination of the lease which shall not be less than—

"(A) a reasonable period of time, but not to exceed 30 days—

"(i) if the health or safety of other tenants, public housing agency employees, or persons residing in the immediate vicinity of the premises is threatened; or

"(ii) in the event of any drug-related or violent criminal activity or any felony conviction;

"(B) 14 days in the case of nonpayment of rent; and

"(C) 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply;

"(5) require that the public housing agency may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause;

"(6) provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-

§ 966.4 (*l*) (3),[15] a landlord is required to issue a preter-

related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy;

"(7) specify that with respect to any notice of eviction or termination, notwithstanding any State law, a public housing tenant shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination;

"[8] provide that any occupancy in violation of section 13661 (b) of this title (relating to ineligibility of illegal drug users and alcohol abusers) or the furnishing of any false or misleading information pursuant to section 13662 of this title (relating to termination of tenancy and assistance for illegal drug users and alcohol abusers) shall be cause for termination of tenancy; [and]

"(9) provide that it shall be cause for immediate termination of the tenancy of a public housing tenant if such tenant—

"(A) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or attempt to commit a crime, which is a felony under the laws of the place from which the individual flees . . . or

"[B] is violating a condition of probation or parole imposed under Federal or State law.

"For purposes of paragraph [6], the term 'drug-related criminal activity' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 802 of Title 21)." (Footnotes omitted.)

[15] Section 966.4 (3) of title 24 of the Code of Federal Regulations provides in relevant part: "(iii) A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a notice of lease termination under paragraph (*l*) (3) (i) of this section.

"(iv) *When the* [*public housing authority* (*PHA*)] *is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination* (see § 966.51 (a) (1)), *the tenancy shall not terminate* (even if any notice to vacate under State or local law has expired) *until the time for the tenant to request a grievance hearing has expired, and* (if a hearing was timely requested by the tenant) *the grievance process has been completed.*

"(v) *When the PHA is not required to afford the tenant the opportunity for a hearing under the PHA administrative grievance procedure for a grievance concerning the lease termination* (see § 966.51 (a) (2)), *and the PHA has decided to exclude such grievance from the PHA grievance procedure, the notice of lease termination* under paragraph (*l*) (3) (i) of this *section shall: (A) State that the tenant is not entitled to a grievance hearing on the termination. (B) Specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that* [*Department of Housing and Urban Development* (*HUD*)] *has determined that this eviction*

mination notice before commencing a summary process action." (Footnotes added.) *Housing Authority* v. *Martin*, supra, 95 Conn. App. 808.

In his brief to this court, the defendant asserts, without citation to the record, that the plaintiff is a federally subsidized landlord. He then states that the plaintiff is therefore required to comply with the requirements of 42 U.S.C. § 1437 (*l*) and 24 C.F.R. § 966.4 (*l*) (3). Pursuant to this federal authority, the defendant contends that the plaintiff was required to notify him of his right to a grievance hearing in accordance with the plaintiff's grievance procedures when such a hearing is required. See 24 C.F.R. § 966.4 (*l*) (3) (ii) (2023). Additionally, he argues that, if such a hearing was not required and the defendant had decided to exclude a grievance concerning termination of the lease under its procedures, then the notices were required to (1) notify the defendant that he is not entitled to a grievance hearing, (2) specify the judicial eviction procedure to be used and state that the federal government has determined that this procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in this context, and (3) state whether the eviction was for criminal activity or drug related criminal activity. See 24 C.F.R. § 966.4 (*l*) (3) (v) (C) (2023).

For the first time on appeal, the defendant claims that the plaintiff's notices failed to meet the requirements of federal law. Specifically, he notes that the notices merely informed him, inter alia, of his right to reply and the right to a grievance hearing, if appropriate.[16]

procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. (*C*) *State whether the eviction is for a criminal activity* as described in § 966.51 (a) (2) (i) (A) *or for a drug-related criminal activity* as described in § 966.51 (a) (2) (i) (B)." (Emphasis added.)

[16] In the present case, the *Kapa* notice contained the following information: "The tenant has the following: (a) the right to reply to this [n]otice and (b) the right to a grievance hearing, if appropriate, and (c) the right to inspect the findings. The [l]ease cannot terminate until after the cure date referenced

Essentially, the defendant contends that the information regarding a grievance hearing contained in the plaintiff's notices was insufficient by merely stating that he was entitled to a grievance hearing, if appropriate. The defendant further contends that he was not required to show prejudice, and, as a result of the plaintiff's failure to comply with federal statutory and regulatory requirements, the notices were invalid and the trial court lacked jurisdiction to hear the summary process action.

In its reply brief, the plaintiff counters that the defendant "essentially argues that any minor deviation from 24 C.F.R. § 966.4 must automatically lead to a dismissal." It further contends that this argument is contrary to our law, citing *Jefferson Garden Associates* v. *Greene*, supra, 202 Conn. 128, and *Housing Authority* v. *Curtis*, Superior Court, judicial district of Danbury, Docket No. SP-05-12308 (March 27, 2006) (41 Conn. L. Rptr. 129) (court concluded that tenant's claim that landlord failed to include specific language from federal regulation constituted hypertechnical attack that exalted form over substance and determined that notice complied with said regulation despite minor deviation). Our Supreme Court has emphasized that, with regard to both state and federal law, a landlord, in demonstrating its compliance with the notices required to proceed with a summary process action, must show that the notices apprised the tenant of the information needed to protect against premature, discriminatory, or arbitrary eviction. *Jefferson Garden Associates* v. *Greene*, supra, 202 Conn. 143 (citing *Joy* v. *Daniels*, 479 F.2d 1236, 1241 (4th Cir. 1973), and *Anderson* v. *Denny*, 365 F.

above." The notice to quit provided the defendant with the following information: "The tenant has the following: (a) the right to reply to this [n]otice; (b) the right to inspect the file; and (c) the right to a grievance, if appropriate. The [l]ease cannot terminate until the grievance deadline has passed or the grievance, if requested, has been conducted."

Supp. 1254, 1260 (W.D. Va. 1973)). Ritualistic compliance with statutory or regulatory mandates is not required. *Jefferson Garden Associates* v. *Greene*, supra, 144. It further explained: "For such tenants [of federally subsidized housing], despite a recognition that a loss of federally subsidized housing implicates due process rights under the fifth amendment to the United States constitution, federal law has moved away from requiring either a special federal forum or special federal forms. Federal courts have concluded that a tenant's right to fair adjudication of good cause for the termination of his tenancy can be vindicated by recourse to the normal judicial process of state court eviction procedures." Id.

Given this development, our Supreme Court concluded that judicial evaluation of compliance with both federal and state requirements for notices regarding the termination of a lease must reflect the purpose that these notices were meant to serve. Id., 145. "As we have held in other contexts, in which regulatory and constitutional rights were also implicated . . . *not every deviation from the strict requirements of either statutes or regulations warrants dismissal of an action for summary process. When good cause for termination of a lease has clearly been shown, and when notices of termination have been sent in strict compliance with statutory timetables, a landlord should not be precluded from pursuing summary eviction proceedings because of hypertechnical dissection of the wording of the notices that he has sent.*" (Citation omitted; emphasis added.) Id.

In the present case, the reasons underlying the termination of the lease contained in the plaintiff's notices constituted good cause for terminating the lease. See id., 145–46. The defendant does not argue to the contrary. Instead, he baldly asserts that the notices were insufficient with respect to the information contained

therein regarding the matter of a grievance hearing. He has not provided us any authority to support his claim that, as a result of this claimed deficiency regarding the availability of a grievance hearing, the court lacked subject matter jurisdiction over the summary process action.[17] In light of our Supreme Court's reasoning in *Jefferson Garden Associates* v. *Greene*, supra, 202 Conn. 128, and the general presumption in favor of jurisdiction, we conclude that the plaintiff's lack of strict compliance in this matter did not render its notices defective so as to deprive the trial court of subject matter jurisdiction.

The judgment is reversed and the case is remanded for further proceedings in accordance with this opinion.

In this opinion the other judges concurred.

MARILEE CORR CLARK *v.* EMPLOYEES' REVIEW BOARD ET AL.
(AC 47020)

Alvord, Suarez and Westbrook, Js.

Syllabus

The plaintiff, a former managerial employee of the Department of Revenue Services who was not included in any collective bargaining agreement, appealed from the trial court's judgment dismissing her appeal from the decision of the defendant board, which found that the department's decision to terminate the plaintiff's employment was not arbitrary or taken without reasonable cause pursuant to statute (§ 5-202 (c)). The plaintiff claimed, inter

[17] We note that a landlord's failure to comply with the federal statutory requirements has been held to be enforceable in other procedural contexts. See *Poole* v. *Housing Authority*, 202 F. Supp. 3d 617, 623–25 (W.D. La. 2016) (failure to comply with federal housing statutes resulted in summary judgment rendered in favor of tenant); see also *Samuels* v. *District of Columbia*, 770 F.2d 184, 193–98 (D.C. Cir. 1985) (private enforcement of housing statute and regulations available under 42 U.S.C. § 1983); *Conway* v. *Housing Authority*, 239 F. Supp. 2d 593, 597–99 (W.D.N.C. 2002) (noting that Congress intended to give public housing tenant right to enforce grievance procedures through private right of action pursuant to 42 U.S.C. § 1983).

alia, that the court failed to use the proper just cause standard applicable to permanent state employees. *Held*:

The trial court properly upheld the department's decision to terminate the plaintiff's employment utilizing a just cause standard pursuant to the applicable statute (§ 5-240) and regulation (§ 5-240-1a (c)), as the plaintiff's assertions that she was entitled to progressive discipline prior to the termination of her employment or to the application of the common-law seven step test to determine just cause conflicted with the statutory and regulatory definitions that the legislature has adopted for nonunion employees.

The trial court did not make certain improper legal and factual findings that were not made by the defendant, as the court correctly determined that there was substantial evidence in the record to support the termination of the plaintiff's employment on the basis of her engagement in activities that were detrimental to the best interest of the department and that the defendant's finding of just cause was supported by substantial evidence.

The trial court properly dismissed the plaintiff's administrative appeal, as there was substantial evidence in the record to support the defendant's factual findings and the termination of the plaintiff's employment from state service for just cause.

Argued February 11—officially released August 26, 2025

Procedural History

Appeal from the decision of the named defendant finding that the termination of the plaintiff's employment by the Department of Revenue Services was not arbitrary or taken without reasonable cause, brought to the Superior Court in the judicial district of New Britain and tried to the court, *Budzik*, *J.*; judgment dismissing the appeal, from which the plaintiff appealed to this court. *Affirmed*.

Marilee Corr Clark, self-represented, the appellant (plaintiff).

Krista D. O'Brien, assistant attorney general, with whom were *Ksenya Hentisz*, assistant attorney general, and, on the brief, *William Tong*, attorney general, for the appellees (defendants).

Opinion

SUAREZ, J. The self-represented plaintiff, Marilee Corr Clark, appeals from the judgment of the trial court dismissing her administrative appeal from the decision of the defendant Employees' Review Board (board),[1] finding that the decision of the Department of Revenue Services (department)[2] to terminate the plaintiff's employment was not arbitrary or taken without reasonable cause pursuant to General Statutes § 5-202 (c).[3] On appeal, the plaintiff claims that (1) the court failed

[1] The board is a creature of statute. General Statutes § 5-201 provides in relevant part: "(a) There shall be an Employees' Review Board consisting of seven members . . . .

"(b) The board shall hear and act upon appeals filed with it in accordance with section 5-202. The board, or any three of its members designated by the board, may serve as a hearing panel and render a decision. . . ."

The scope of the board's authority is governed by General Statutes § 5-202. See *State* v. *State Employees' Review Board*, 231 Conn. 391, 406 n.17, 650 A.2d 158 (1994); see also footnote 3 of this opinion. Section 5-202, in turn, is part of the State Personnel Act, codified in General Statutes §§ 5-193 through 5-269, the purpose of which is to "establish a system of public employment based on merit principles, eliminate political patronage, personal favoritism and discrimination against disfavored political and religious factions, and thereby prevent governmental corruption." *Dept. of Administrative Services* v. *Employees' Review Board*, 226 Conn. 670, 681, 628 A.2d 957 (1993).

[2] Mark Boughton, the Commissioner of Revenue Services, was also named as a defendant in this action. We refer to the board and to Boughton collectively as the defendants and individually when appropriate.

[3] General Statutes § 5-202 provides in relevant part: "(a) Any employee who is not included in any collective bargaining unit of state employees and who has achieved a permanent appointment as defined in section 5-196 may appeal to the Employees' Review Board if such employee receives an unsatisfactory performance evaluation or is demoted, suspended or dismissed . . . . Such employee must have complied with preliminary review procedures . . . .

"(c) Upon receiving an appeal, the board shall assign a time and place for a hearing and shall give notice of such time and place to the parties concerned. The hearing panel shall not be bound by technical rules of evidence prevailing in the courts. If, after hearing, a majority of the hearing panel determines that the action appealed from was arbitrary or taken without reasonable cause, the appeal shall be sustained; otherwise, the appeal shall be denied. . . ."

to utilize the proper "just cause" standard applicable to permanent state employees, (2) the court made certain improper factual findings that were not made by the board, and (3) the board's findings of fact were unsupported by substantial evidence in the administrative record.[4] We affirm the judgment of the court dismissing the plaintiff's administrative appeal.

The record reflects the following relevant facts and procedural history. The plaintiff is an attorney who served as the tax legal director of the department from 2015 until the termination of her employment in October, 2020. As tax legal director, the plaintiff was a manager in the classified service and was, therefore, a permanent state employee not included in any collective bargaining agreement.[5] See General Statutes §§ 5-196 and 5-198. At all relevant times, the plaintiff reported to then acting commissioner of the department, John Biello, and to the first assistant commissioner, Louis Bucari. The plaintiff's duties included supervising the research unit and legal division, which included drafting and amending tax legislation and regulations.

[4] In the statement of issues in her principal appellate brief, the plaintiff identifies seven issues for this court's review. We have reframed the plaintiff's claims, in some instances condensing closely related claims, to more accurately reflect the arguments in her brief. See, e.g., *Thomas* v. *Cleary*, 229 Conn. App. 15, 17 n.2, 326 A.3d 1109 (2024). Additionally, to the extent that any of these issues are mentioned in the statement of issues but are not subsequently discussed or developed in the plaintiff's brief, they have been abandoned. See, e.g., *Ramos* v. *State*, 230 Conn. App. 524, 530, 330 A.3d 278 (2025) ("[when] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned" (internal quotation marks omitted)).

[5] See General Statutes § 5-196 (6) (classified service means "every office or position in the state service, whether full-time or part-time, for which compensation is paid, except those offices and positions specified in section 5-198 or otherwise expressly provided by statute"); see also General Statutes § 5-196 (20) (permanent position means "any position in the classified service which requires or which is expected to require the services of an incumbent without interruption for a period of more than six months").

It is undisputed that the plaintiff and Bucari had a history of discord, and, when Biello became acting commissioner in January, 2020, he met with the plaintiff to discuss how she and Bucari could work better together. The plaintiff responded that she could not work with Bucari. In or around January, 2020, the plaintiff applied for employment with the Office of the Attorney General, specifically indicating interest in the finance group, which represents the department in tax matters.

On February 3, 2020, the plaintiff called William Chapman, the director of government and community affairs for the Connecticut Bar Association (CBA), to inquire as to whether the CBA was planning to bring forward a particular proposed bill, Senate Bill No. 941, which related to the repeal of the succession tax, during the 2020 legislative session.[6] After this phone call, the plaintiff sent an email to Chapman, using her personal email address, containing proposed statutory language relating to Senate Bill No. 941. The plaintiff's revision proposed adding the following relevant language in section 5 of the bill: "Any first assistant commissioner so appointed shall serve at the pleasure of the attorney general and will be exempt from classified service."[7]

[6] The prior commissioner of the department, Scott Jackson, had expressed concerns with Senate Bill No. 941. Specifically, Jackson was concerned that the bill may have the unexpected effect of causing confusion relating to the position of first assistant commissioner.

[7] See General Statutes § 12-389 (a) ("[t]he commissioner shall appoint a First Assistant Commissioner of Revenue Services, who shall be an attorney at law, and shall be the attorney in charge of succession and transfer taxes and shall have authority to act as attorney for the commissioner in all matters relating thereto"); General Statutes § 12-389 (b) ("The Attorney General may delegate to the Commissioner of Revenue Services "the authority to appoint an attorney to represent the commissioner in matters relating to certain appeals to the Superior Court from an order, decision or determination or disallowance of the Commissioner of Revenue Services. The Attorney General may enter into a memorandum of understanding with the Commissioner of Revenue Services which shall list the types of appeals which are the subject of such delegation.")

The administrative record contains a memorandum of understanding, entered into in 2003, between the Office of the Attorney General and the

(Internal quotation marks omitted.) No one at the department reviewed this language before the plaintiff sent it to Chapman. Chapman forwarded the plaintiff's email to the members of the Judiciary Committee. Chapman believed that the plaintiff was communicating the proposal on behalf of the department and that the draft language had been reviewed by the commissioner.

On February 6, 2020, Nicole Lake, director of legislative affairs for the Office of the Attorney General, wrote to Ernest Adamo, a legislative liaison with the department, regarding her concerns with the plaintiff's proposed language, specifically her concern that it would shift the authority to appoint a first assistant commissioner from the commissioner of the department to the Attorney General, that the first assistant commissioner position would be exempt from classified service, and that the department would not retain the authority to litigate its own tax cases in the Superior Court. The next day, Biello scheduled a team meeting, which was attended by the plaintiff, at which he gave verbal instructions that any discussions or drafts concerning the succession tax or General Statutes § 12-389; see footnote 7 of this opinion; must come through him. The plaintiff did not inform Biello, or anyone else at the meeting, that she already had provided proposed language on that very legislation to Chapman. After the meeting, the plaintiff met with Biello alone and told him that there "may be" a proposal that would impact § 12-389. She did not, however, disclose to Biello at that

department pursuant to § 12-389 (b), and it is undisputed that, since that time, the department has litigated its own tax cases pursuant to that memorandum under the first assistant commissioner.

The plaintiff asserted at oral argument before this court that, if she had not acted on the proposed legislation, § 12-389 would have been "fully repealed." We decline to engage in the speculation that the plaintiff invites. Furthermore, the dispositive fact remains that the plaintiff failed to disclose to Biello the proposed statutory language that she sent to Chapman, notwithstanding her knowledge of a direct order to do so.

time that she already had emailed proposed language to Chapman.

On February 9, 2020, Biello emailed sixteen department employees, including the plaintiff, to reiterate that anything involving the succession tax or § 12-389 had to go through him. On the morning of February 10, 2020, Chapman asked Biello about the succession tax bill that was going to be considered by the Judiciary Committee. Biello was unaware of the plaintiff's proposed changes to the succession tax and later was forced to testify in opposition to the bill, stating that he did not authorize the language concerning the appointment by the Attorney General of the first assistant commissioner position or the exemption from classified service for that position. The plaintiff's husband, Nathaniel Clark, testified in support of the legislation. Clark is not an employee with the department or a state employee.[8] Later on February 10, 2020, the plaintiff was placed on paid administrative leave, pending an investigation.

On March 4, 2020, the plaintiff was issued written notice of a predisciplinary hearing pursuant to *Board of Education* v. *Loudermill*, 470 U.S. 532, 546, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985), which was held on September 22, 2020.[9] The plaintiff appeared at the hearing and was represented by counsel. Following the hearing, the department formally notified the plaintiff by a letter dated September 29, 2020, that it was dismissing her from state employment for just cause pursuant to

[8] It is undisputed that the proposed legislation, which ultimately was submitted as raised House Bill No. 5050, did not pass.

[9] "[A] tenured public employee is entitled to oral or written notice of the charges against [her], an explanation of the employer's evidence, and an opportunity to present [her] side of the story before termination. . . . The opportunity to present one's side of the story is generally referred to as a *Loudermill* hearing." (Citation omitted; internal quotation marks omitted.) *AFSCME, Council 4, Local 2663* v. *Dept. of Children & Families*, 317 Conn. 238, 243 n.3, 117 A.3d 470 (2015).

§§ 5-240-1a (c), 5-240-5a and 5-240-8a (b) of the Regulations of Connecticut State Agencies (regulations),[10] effective October 13, 2020. The September, 2020 letter stated that the department determined that the plaintiff engaged in wilful and egregious conduct that violated the department's Code of Ethics[11] and General Rules of Conduct, as well as § 5-240-1a (c) (8), (11) and (13) of the regulations.

Thereafter, the plaintiff filed a timely grievance with the board, challenging the termination of her employment. Pursuant to § 5-202 (j),[12] the grievance was initially brought to the Office of Labor Relations for a

[10] Section 5-240-5a (a) of the Regulations of Connecticut State Agencies provides: "An appointing authority may dismiss an employee for just cause."

Section 5-240-1a (c) of the Regulations of Connecticut State Agencies provides in relevant part that " '[j]ust cause' means any conduct for which an employee may be suspended, demoted or dismissed and includes, but is not limited to, the following . . . (8) Deliberate violation of any law, state regulation or agency rule . . . (11) Neglect of duty, or other employment related misconduct . . . (12) Insubordination . . . [or] (13) Engaging in any activity which is detrimental to the best interests of the agency or of the state. . . ."

Section 5-240-8a (a) of the Regulations of Connecticut State Agencies provides in relevant part: "Within one week of a decision by the appointing authority to suspend an employee, demote an employee except at the request of an employee or dismiss an employee, the appointing authority shall provide written notice, in addition to any notice that may have been provided in accordance with the prediscipline procedure, to the employee stating the appointing authority's decision, the reasons for the decision, the effective date of the decision and informing the employee of any right to further review or appeal that the employee may have pursuant to either . . . [§] 5-202 or an applicable collective bargaining agreement."

[11] The record contains the plaintiff's signed acknowledgment of the department's Code of Ethics, which states: "Proper functioning of the government requires that the agency/department, the courts, other state agencies and the public be able to rely fully on the truthfulness of government employees in matters of official interest."

[12] General Statutes § 5-202 (j) provides in relevant part: "The third level of the preliminary review procedure preparatory to the filing of an appeal from an alleged grievable action under subsection (a) of this section including dismissal, demotion or suspension shall be the Secretary of the Office of Policy and Management or the secretary's designated representative. . . . The Secretary of the Office of Policy and Management or the secretary's

"step three"[13] conference. At the conference, the Office of Labor Relations heard the parties, through counsel, on their positions regarding whether the department had reasonable cause to terminate the plaintiff's employment, and reviewed documentation submitted by the parties. The Office of Labor Relations denied the grievance in a written decision dated December 29, 2020.

The plaintiff thereafter filed a timely appeal from the denial of her grievance to the board pursuant to § 5-202 (a). The board held an evidentiary hearing that spanned six days, during which it heard testimony from several witnesses, including the plaintiff, and received voluminous documentary evidence. The plaintiff was represented by counsel throughout the grievance process and was permitted to present evidence and to cross-examine witnesses. The parties also filed post-hearing briefs and reply briefs.

The board subsequently issued a decision concluding that the termination of the plaintiff's employment was not arbitrary or unreasonable pursuant to § 5-202 (c). The board noted that, in the common law of labor arbitration, a "seven step test" is "well established as a guide to determine whether just cause exists for the various levels of discipline that an employer may impose on a worker for misconduct.[14] These criteria are often

designated representative shall reply to such employee not later than thirty calendar days from the date such grievance is received or not later than fifteen calendar days from the date of a meeting convened for the purpose of reviewing such grievance, in which case such meeting shall be convened not later than thirty calendar days from the date such grievance is received."

[13] A "step three" conference constitutes the third level of the preliminary review procedure under § 5-202 (j), before an alleged grievable action may be appealed to the board. See footnote 12 of this opinion.

[14] The seven step test was first articulated in 1966 by "Arbitrator Carroll R. Daugherty [who] issued an award in *Enterprise Wire Co.* v. *Enterprise Independent Union*, 46 Lab. Arb. Rep. (BNA) 359 (Mar. 28, 1966), where, in the absence of a contractual definition of just cause, he established a seven prong[ed] approach to determine whether just cause existed for discipline. Soon thereafter, other arbitrators adopted these standards, labeling them 'Daugherty tests of just cause.' " *Hartford Municipal Employees*

applied by the [board] in its analysis of disciplinary cases. For 'egregious' misconduct, the severest discipline (termination) may be imposed without considering so-called 'progressive discipline.' " (Footnote added.) The board found, on the basis of Biello's testimony, which it found credible, that the plaintiff's proposed legislation "struck at the heart" of the department's operations and undermined its ability to appoint its own first assistant commissioner. The board found that the plaintiff's conduct was motivated by her personal interests, rather than those of the department. Furthermore, the board stated that the plaintiff's lack of disclosure over four days was an "intentional act of serious misconduct, a breach of the employee-employer relationship and a breach of trust." The board therefore concluded that it found two levels of serious misconduct: the plaintiff's failure to comply with Biello's instructions, and her personal motives in drafting the proposed legislation. It found that the plaintiff's misconduct was egregious, and, therefore, "progressive discipline was not a factor." Accordingly, the board denied the plaintiff's grievance and found that the plaintiff's employment was properly terminated for just cause.

The plaintiff thereafter filed an administrative appeal from the board's decision to the Superior Court pursuant to General Statutes §§ 4-183 and 5-202 (m).[15] Following a hearing, the court upheld the board's decision and dismissed the plaintiff's administrative appeal. In its

Assn. v. *Hartford*, 128 Conn. App. 646, 662, 19 A.3d 193 (*Flynn, J.*, dissenting), cert. denied, 301 Conn. 934, 23 A.3d 730 (2011).

[15] General Statutes § 5-202 (m) provides in relevant part: "Either the Secretary of the Office of Policy and Management or any employee or group of employees aggrieved by a decision of the Employees' Review Board may appeal from such decision in accordance with section 4-183. . . ."

General Statutes § 4-183 (a) provides in relevant part: "A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. . . ."

memorandum of decision dated September 14, 2023, the court concluded that there was substantial evidence in the record to sustain the board's decision finding just and reasonable cause for the termination of the plaintiff's employment on the basis of insubordination and the plaintiff's proposing legislation for the purpose of furthering her own interests, rather than the department's or the state's interests. The court stated that the plaintiff's unilateral actions in proposing the legislation provided substantial evidence of a deliberate disregard of Biello's instructions. The court noted that the fact that the plaintiff sent the proposed language on February 3, 2020, before Biello's instructions on February 7, and repeated on February 9, 2020, did not immunize her actions because "[a]ny reasonable, good faith interpretation by such an employee of the acting commissioner's instruction that all legislations regarding the succession tax go through [him] would include the idea that . . . Biello was instructing that he be informed of legislative proposals on that very issue that had been sent to the General Assembly just days before." The court also found substantial, "overwhelming" evidence in the record that the plaintiff acted in pursuit of her own personal motives by drafting the proposed legislation to remove the first assistant commissioner from classified service. Therefore, the court dismissed the plaintiff's administrative appeal. This appeal followed. Additional facts will be set forth as necessary.

The legal principles governing our review of decisions of administrative agencies are well established. "[J]udicial review of an administrative agency's action is governed by the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq., and the scope of that review is limited. . . . When reviewing the trial court's decision, we seek to determine whether it comports with the [UAPA]. . . . [R]eview of an administrative agency decision requires a court to determine

whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither this court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Conclusions of law reached by the administrative agency must stand if . . . they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . The court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of [its] discretion. . . .

"Moreover, [a]lthough the interpretation of statutes is ultimately a question of law . . . it is the well established practice of [our appellate courts] to accord great deference to the construction given [a] statute by the agency charged with its enforcement. . . . It is also well established that courts should accord deference to an agency's formally articulated interpretation of a statute when that interpretation is both time-tested and reasonable. . . . Our Supreme Court has determined, however, that the traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation . . . ." (Citations omitted; internal quotation marks omitted.) *PMC Property Group, Inc.* v. *Public Utilities Regulatory Authority*, 189 Conn. App. 268, 273–74, 207 A.3d 114 (2019).

I

The plaintiff first claims that the court failed to utilize the proper "just cause" standard applicable to permanent state employees pursuant to General Statutes § 5-240 (c). Specifically, the plaintiff asserts that (1) the

board and the court failed to "apply any of the seven accepted tests for determining 'just cause' in the context of terminating a permanent state employee's employment in the classified service," and (2) she was entitled to progressive discipline prior to the termination of her employment.[16] The defendants, however, argue that the plaintiff's assertions conflict with the statutory and regulatory definitions that the legislature has adopted for nonunion employees and that she was not entitled to progressive discipline or to the application of the common-law seven step test to determine just cause in the absence of any indication otherwise from the legislature. We agree with the defendants.

Although the parties agree that our review of this appeal is governed by the UAPA, they disagree as to the proper standard of review that should apply to this claim. The plaintiff contends that de novo review applies because her first claim requires this court to analyze the relevant statutes and regulations governing just cause for terminating a permanent employee, including § 5-240. The defendants counter that we must defer to the board's conclusions of law and assert that the board's interpretation of its "statutory obligations under § 5-202 (c) is time-tested because it has been formally articulated and applied for an extended period of time." (Internal quotation marks omitted.) The defendants have not, however, argued that there is a time-tested agency interpretation of either § 5-240 or the regulations promulgated therewith that define "just cause," or that the plaintiff's claim that the seven step test should be applied to § 5-240 has been subjected to judicial scrutiny.

[16] The plaintiff also asserts in her statement of issues that the court erred in "affirming the [board's] decision on alternat[ive] grounds." Upon our review, the plaintiff's brief contains no analysis of such a claim and, therefore, we decline to address it as it is inadequately briefed. See, e.g., *Sicignano* v. *Pearce*, 228 Conn. App. 664, 690–91, 325 A.3d 1127 (2024), cert. denied, 351 Conn. 908, 330 A.3d 881 (2025).

We conclude that the defendants' argument conflates § 5-202 (c), which limits the board's scope of review to determining whether the "action appealed from was arbitrary or taken without reasonable cause," with the merits of the plaintiff's claim, namely, that the department terminated her employment without just cause pursuant to § 5-240. In order to determine whether the department's actions were "arbitrary or taken without reasonable cause," the board held a hearing pursuant to § 5-202 (c) and issued its own factual findings within the scope of its review, to assess the department's conclusion that there was just cause to terminate the plaintiff's employment. The board's decision states that the parties agreed that the issues before it were (1) whether the termination of the plaintiff's employment was for reasonable or just cause, and (2) "[i]f not, what shall be the remedy?" Therefore, we conclude that the issues of whether (1) a "just cause" standard must be met for the discipline of a managerial employee, and (2) "whether the traditional 'just cause' standard that utilizes the seven [part test] for determining whether 'just cause' exists applies to managerial employees who are permanent state employees in the classified service for the state of Connecticut," raise questions of statutory interpretation, over which our review is plenary. See, e.g., *Meriden* v. *Freedom of Information Commission*, 338 Conn. 310, 320, 258 A.3d 1 (2021); see also, e.g., *Secretary of the Office of Policy & Management* v. *Employees' Review Board*, 267 Conn. 255, 262, 837 A.2d 770 (2004).

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning,

General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and [common-law] principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *Meriden* v. *Freedom of Information Commission*, supra, 338 Conn. 320–21.

We begin with the text of the relevant statute. Section 5-240 (c) provides in relevant part: "An appointing authority may dismiss any employee in the classified service when the authority considers the *good of the service will be served thereby*. . . ." (Emphasis added.) Section 5-240-5a (a) of the regulations provides that "[a]n appointing authority may dismiss an employee for just cause." Section 5-240-1a (c) of the regulations specifically defines just cause as "any conduct for which an employee may be suspended, demoted or dismissed and includes, but is not limited to, the following . . . (8) [d]eliberate violation of any law, state regulation or agency rule . . . (11) [n]eglect of duty, or other employment related misconduct . . . (12) [i]nsubordination . . . [or] (13) [e]ngaging in any activity which is detrimental to the best interests of the agency or of the state. . . ."

We conclude, on the basis of the plain language of § 5-240 and § 5-240-1a (c) of the regulations, that a just cause standard governed the department's termination

of the plaintiff's employment. See, e.g., *Wagner* v. *Connecticut Personnel Appeal Board*, 170 Conn. 668, 672, 368 A.2d 20 (1976) ("[u]nder [§] 5-240 . . . an employee cannot be dismissed arbitrarily or without reasonable cause" (citation omitted)).[17] In the present case, the plaintiff has not cited to any appellate authority, and we have found none, in which this court, or our Supreme Court, has definitively stated that the seven part test must be applied in every case concerning just cause in employment termination cases. Neither § 5-240 nor §§ 5-240-1a and 5-240-7a of the Regulations of Connecticut State Agencies mandate that progressive discipline must occur before proceedings to terminate an employee's employment. The plaintiff essentially asks us to graft additional language onto the applicable statutes and regulations that does not exist. It is well settled, however, that "[i]t is not the role of this court to engraft additional requirements onto clear statutory language." (Internal quotation marks omitted.) *Cochran* v. *Dept. of Transportation*, 350 Conn. 844, 865–66, 327 A.3d 901 (2024); see *PPC Realty, LLC* v. *Hartford*, 350 Conn. 347, 358, 324 A.3d 780 (2024); see also, e.g., *Secretary of the Office of Policy & Management* v. *Employees' Review Board*, supra, 267 Conn. 274 ("[I]t is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is the function of the

[17] The plaintiff asserts that, at oral argument before the trial court, counsel for the defendants had argued that a just cause standard did not apply to her as a managerial employee. The plaintiff cites a portion of the transcript in which the defendants' counsel stated that "[t]he collective bargaining employees' rights to progressive discipline to just cause for discharge, the seven step test, those are negotiated between . . . with the union representing the employees. And, that is absent as applied to the plaintiff here, being a noncollective bargaining unit employee." (Internal quotation marks omitted.) We do not interpret counsel's statement as an assertion that the plaintiff was not subject to a just cause standard but, rather, that she was not entitled to progressive discipline. Moreover, the defendants have not disputed on appeal that permanent, nonunion state employees in the classified service, such as the plaintiff, are subject to termination of their employment by the department for just cause.

legislature." (Internal quotation marks omitted.)). "[Courts] are not in the business of writing statutes; that is the province of the legislature. Our role is to interpret statutes as they are written. . . . [We] cannot, by [judicial] construction, read into statutes provisions [that] are not clearly stated." (Internal quotation marks omitted.) *Aldin Associates Ltd. Partnership* v. *State*, 230 Conn. App. 223, 249, 330 A.3d 613, cert. granted, 351 Conn. 911, 330 A.3d 882 (2025).

At oral argument before this court, the plaintiff argued that notice of the possible consequences of an employee's conduct is the "biggest issue in this case." The statutes and regulations governing the disciplinary process for employees such as the plaintiff, however, do not require that notice of the possible consequences of an employee's conduct be given before disciplinary proceedings may be commenced. Although notice of the possible consequences of an employee's conduct is one of the elements of the seven step test the plaintiff advocates, the seven step test is not mandated in § 5-240. It also is not included in the applicable regulation that delineates the prediscipline procedures that must be followed prior to the termination of employment. See Regs., Conn. State Agencies § 5-240-7a (a). Prior notice of the decision to suspend an employee, including an opportunity to be heard pursuant to *Loudermill*, is required under § 5-240-7a of the regulations. As outlined previously, however, the record reveals that those required pretermination procedures were followed in the present case.[18]

[18] To the extent the plaintiff seeks to raise claims that the administrative process provided by the department and the board violated her due process rights, such claims are abandoned due to inadequate briefing. Apart from arguing that she was entitled to "progressive discipline," which was not required by any governing statute or regulation, the plaintiff has not pointed to any other ways in which her due process rights were violated. See Regs., Conn. State Agencies § 5-240-7a. At one point in her brief, the plaintiff asserts that she was not provided with the full report of Kristen Brierley, an investigator for the department, prior to her *Loudermill* hearing, but she provides no meaningful analysis of why Brierley's redacted report, which

In its decision, the board noted that it could have used the seven step test advocated by the plaintiff as guidance in determining whether just cause existed to terminate her employment.[19] It did not, however, because the board determined that the application of the seven step test was not necessary in light of its finding that the plaintiff's conduct was "egregious,"[20]

was disclosed in full prior to the contested hearing before the board, deprived her of the ability to understand the charges raised against her.

Moreover, the plaintiff has not applied the traditional three part balancing test set forth in *Mathews* v. *Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), to determine "what safeguards the federal constitution requires to satisfy procedural due process." (Internal quotation marks omitted.) *Turn of River Fire Dept., Inc.* v. *Stamford*, 159 Conn. App. 708, 712 n.2, 123 A.3d 909 (2015). "It is well established that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.) Id.; see also *Frauenglass & Associates, LLC* v. *Enagbare*, 149 Conn. App. 103, 110–11, 88 A.3d 1246 (federal due process claim was inadequately briefed when defendant failed to mention balancing test let alone include analysis of *Mathews* test as applied to facts of defendant's case), cert. denied, 314 Conn. 927, 101 A.3d 273 (2014). Accordingly, we deem any procedural due process claim abandoned due to inadequate briefing and decline to review it.

[19] The plaintiff argues that the trial court incorrectly concluded that the seven step test to determine just cause was inapplicable because she was a nonunion employee. We agree with the board that the seven step test could have been used as guidance in the present case, even though the plaintiff was not a union employee. We conclude, however, that the board did not *have* to apply that test because it found that the plaintiff's conduct was egregious. Thus, any error relating to the court's conclusion that the seven step test could not have been applied to a nonunion employee was harmless because it does not affect our result. See *Board of Selectmen* v. *Freedom of Information Commission*, 294 Conn. 438, 456, 984 A.2d 748 (2010) (harmless error standard in civil case is whether improper ruling would likely affect result).

[20] The plaintiff asserts, without citation to authority, that "most cases that find egregious misconduct involve conduct that is inherently criminal in nature." She further asserts that even some criminal behavior is not sufficient for termination without progressive discipline, citing *State* v. *Connecticut Employees Union Independent*, 322 Conn. 713, 142 A.3d 1122 (2016). In that case, our Supreme Court held that an arbitrator did not violate public policy by reinstating an employee's employment, when the employee had smoked

which was supported by substantial evidence in the record. See part III of this opinion; see also *Hannifan* v. *Sachs*, 150 Conn. 162, 166, 187 A.2d 253 (1962) (concluding that responsibility imposed on board to determine whether appointing authority has not acted arbitrarily or without reasonable cause "requires an exercise of judgment and discretion"). We decline the plaintiff's invitation, therefore, to place a judicial gloss on § 5-240 that would be inconsistent with the legislature's clear statutory language. See, e.g., *State* v. *DeCiccio*, 315 Conn. 79, 149, 105 A.3d 165 (2014) ("[w]e previously have declined to place a gloss on a statute that contradicts its plain meaning"); *Keller* v. *Beckenstein*, 305 Conn. 523, 536–37, 46 A.3d 102 (2012) (same). This is particularly so given that the board is an administrative agency, and its scope of authority is strictly limited by statute. "An administrative agency, as a tribunal of limited jurisdiction, must act strictly within its statutory authority. . . . [An administrative agency] possesses no inherent power. Its authority is found in a legislative grant, beyond the terms and necessary implications of which it cannot lawfully function." (Citations omitted; internal quotation marks omitted.) *State* v. *State Employees' Review Board*, 231 Conn. 391, 406, 650 A.2d 158 (1994); see also *Turrill* v. *Erskine*, 134 Conn. 16, 23, 54 A.2d 494 (1947) (board's authority is limited to

marijuana at work. Id., 716. That case is distinguishable, however, because the arbitrator specifically had noted that the employee "did not engage in . . . a breach of trust or show . . . a lack of character . . . ." (Internal quotation marks omitted.) Id., 719. In the present case, the board explicitly *did* find that the plaintiff's lack of disclosure was a breach of trust.

The plaintiff also relies on *Stratford* v. *AFSCME, Council 15, Local 407*, 315 Conn. 49, 105 A.3d 148 (2014), which involved a police officer's dishonest conduct. That case, too, is distinguishable, first, because it addressed a distinct procedural issue, namely, whether an arbitration award reinstating the officer violated public policy, and second, because the dishonesty at issue in that case did not compromise the officer's ability to perform his official duties and was not disruptive. Id., 50. In the present case, by contrast, the board found that the plaintiff's proposal, which she intended to conceal from Biello, "struck at the heart" of the department's operations.

determination of whether appointing authority acted improperly).

Lastly, the plaintiff argues that "[t]he seven tests for determining 'just cause' is itself the subject of a treatise that is currently in its third edition . . . . A. Koven & S. Smith, [Just Cause: The Seven Tests (3d Ed. 2006)]," and asserts that our Supreme Court, in *AFSCME, Council 4, Local 1565* v. *Dept. of Correction*, 298 Conn. 824, 829–30, 6 A.3d 1142 (2010), "cited" the same seven step test. In that case, however, our Supreme Court merely listed the seven factors that the arbitrator had utilized "as *guidance* in her deliberations . . . ." (Emphasis added; internal quotation marks omitted.) *AFSCME, Council 4, Local 1565* v. *Dept. of Correction*, supra, 829. Our Supreme Court did not, however, state that these factors must be applied in all cases in which just cause is at issue. Id., 829–30. We decline the plaintiff's invitation to do so now and, accordingly, reject the plaintiff's claim.

II

The plaintiff also asserts that the court made certain improper factual findings that were not made by the board. We are not persuaded.

We first set forth the applicable standard of review. "When reviewing the trial court's decision, we seek to determine whether it comports with the [UAPA]," and we defer to the board's factual findings, unless they are unsupported by substantial evidence. (Internal quotation marks omitted.) *PMC Property Group, Inc.* v. *Public Utilities Regulatory Authority*, supra, 189 Conn. App. 273–74; see also *Gonzalez* v. *State Elections Enforcement Commission*, 145 Conn. App. 458, 464, 77 A.3d 790 ("[o]ur task is to review the court's decision to determine whether it comports with the . . . [UAPA] . . . and whether the court reviewing the administrative agency acted unreasonably, illegally, or

in abuse of discretion" (internal quotation marks omitted)), cert. denied, 310 Conn. 954, 81 A.3d 1181 (2013).

First, the plaintiff contends that the court made improper legal and factual findings with respect to insubordination. Specifically, she asserts that insubordination was not one of the grounds for just cause enumerated in § 5-240-1a (c) of the regulations that the board explicitly found in determining that there was just cause to terminate her employment. We conclude that, even if the board did not use the exact word "insubordination," it found that the plaintiff's actions constituted misconduct because she "def[ied] a direct instruction by the boss . . . ." The trial court looked to the dictionary definition of "insubordination," which defines the term as "a willful disregard for an employer's instructions." Black's Law Dictionary (11th Ed. 2019) p. 953. As the term "insubordination" was not specifically defined in § 5-240-1a (c) (12) of the regulations, it was proper for the trial court to look to the common usage of that term as defined in the dictionary.[21] See, e.g., *Greenwich Retail* v. *Greenwich*, 233 Conn. App. 78, 87, A.3d (2025). The court's determination that there was substantial evidence in the record that just cause existed to terminate the plaintiff's employment on the basis of her insubordination was reasonable and grounded in the board's factual findings. Moreover, in addition to the board's finding that the plaintiff defied a direct order from Biello, the board also found that the plaintiff's conduct was in furtherance of her own interests, rather than those of the department, because her proposed legislation "struck at the heart" of the

[21] The plaintiff asserts that the court should have relied on the "standard that has been used by the state of Connecticut" in determining insubordination. In support of this argument, the plaintiff cites to an employees' manual for the state Department of Transportation, which discusses principles of progressive discipline. The defendants argue, and we agree, that this manual was not applicable to employees of the plaintiff's department.

department's operations. Thus, the trial court determined that there was also substantial evidence in the record, and we agree, for the termination of the plaintiff's employment on the basis of her engagement in activities that were detrimental to the best interests of the department, pursuant to § 5-240-1a (c) (13) of the regulations. See part III of this opinion.

Second, the plaintiff argues that the court improperly found that she "wilfully disregarded the [department's] preexisting policy that proposals affecting [department] operations be shared with the agency and be approved by the commissioner." (Internal quotation marks omitted.) We agree with the defendants that, even if the court erroneously found that there was a preexisting rule that the plaintiff must obtain the approval of Biello before introducing draft legislation, any error was not harmful because such a rule *was* articulated by Biello on February 7, 2020, and she failed to disclose the fact that she already had proposed such legislation without Biello's approval. See, e.g., *Board of Selectmen* v. *Freedom of Information Commission*, 294 Conn. 438, 456–57, 984 A.2d 748 (2010) (concluding that agency was not entitled to relief because any impropriety on part of trial court was harmless). The board's finding that the plaintiff's failure to disclose her proposal constituted just cause for her termination is supported by substantial evidence. See part III of this opinion. The plaintiff's arguments are, therefore, unavailing.

III

The plaintiff next claims that the board made factual findings that are unsupported by substantial evidence in the record.[22] Specifically, the plaintiff challenges the

[22] In this section of her brief, the plaintiff revisits her argument that the court improperly found that there was a preexisting rule that the plaintiff was required to obtain approval from her superiors before introducing legislation. In part II of this opinion, we rejected the plaintiff's contention. We need not address that issue again here.

board's findings that (1) she failed to inform Biello or anyone else at the February 7, 2020 meeting that she had already submitted draft language in connection with the succession tax bill, (2) her lack of disclosure of the proposed legislation was an intentional act of serious misconduct, and (3) the testimony of her husband, Nathaniel Clark, in support of her proposed legislation was the result of her improper influence. The defendants counter that the evidence in the record supports the conclusion that the plaintiff's actions were against the interests of her department and were in contravention of Biello's clear directives that any proposed legislation come through him. We agree with the defendants.

We begin by setting forth the standard of review governing this claim. As noted previously, "under the UAPA, judicial review of an agency's factual determination is governed by the substantial evidence standard, which is highly deferential and permits less judicial scrutiny than a clearly erroneous or weight of the evidence standard of review. . . . Under the substantial evidence standard, [t]he question is not whether the evidence would also support a different, or even inconsistent conclusion but whether there is substantial evidence to support the [agency's] decision . . . ." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Commission on Human Rights & Opportunities* v. *Dance Right, LLC*, 230 Conn. App. 53, 75, 329 A.3d 1008 (2025).

The following additional facts are relevant to our resolution of the plaintiff's claim. At the hearing before the board, the defendants produced an investigative report by Kristen Brierley. That report, which was admitted into evidence before the board, reveals that Brierley interviewed Adamo, who expressed being " 'flabbergasted' " at the plaintiff's proposed language. Sherman had also expressed concerns with the language and, in response, the plaintiff told Sherman that

she would speak to Biello about the proposed language. When she did meet with Biello in a one-on-one meeting on February 7, 2020, however, she did not tell him that she had already sent proposed language to Chapman. Rather, she indicated that " 'there may be' " a proposal that would impact § 12-389. Biello testified: "She didn't say that it was the CBA or anything like that. She just said she's aware there may be another piece of legisl[ation] that affects [§] 12-389, and that if I liked, she could draft some language for the department." On February 10, 2020, the plaintiff sent an email to Paul Mounds in the Office of the Governor, which stated: "[Biello] has already made it clear that he fully supports our current [f]irst [a]ssistant [c]ommissioner . . . [Bucari], and will seek legislation to protect him and his job. . . . Unless the administration wants to fully support . . . Bucari in keeping his position, the governor's office will need to weigh in on whether it wants to keep the position of [f]irst [a]ssistant [c]ommissioner, what that role should entail . . . and whether it should be made clear that the position is intended to be an appointed position."

The plaintiff argues that the board improperly found that she "failed to inform . . . Biello, or anyone else at the [February 7, 2020] meeting, that she had already provided language to . . . Chapman on the succession tax and [§] 12-389." (Internal quotation marks omitted.) The plaintiff states that she spoke with Adamo and Sherman "about the legislative proposal and her discussions with . . . Chapman prior to the [department] meeting. We conclude that, even if the plaintiff had discussed the proposed language with Adamo and Sherman, there is substantial evidence in the record that she did *not* disclose that language with the one person who issued the directive to the department that any proposals relating to § 12-389 must come through him: Biello.

The plaintiff also challenges the board's finding that her "lack of disclosure over [four] days was an intentional act of serious misconduct."[23] (Internal quotation marks omitted.) The plaintiff asserts that this finding was not supported by the record because she asked to meet with Biello on February 7, 2020, after the team meeting; however, the record reveals that, during that meeting, the plaintiff still did not disclose to Biello that *she* had sent draft legislation to Chapman that would have fundamentally changed the department's operations. The board credited Biello's testimony that the plaintiff's proposal "struck at the heart" of the department's operations, and we do not disturb the board's credibility determinations on appeal. See, e.g., *Idlibi* v. *State Dental Commission*, 212 Conn. App. 501, 518–19, 275 A.3d 1214 ("It is well established that it is the exclusive province of the trier of fact to make determinations of credibility, crediting some, all, or none of a given witness' testimony. . . . [A]n administrative agency is not required to believe any witness . . . . As a reviewing court, we may not retry the case or pass on the credibility of witnesses. . . . We must defer to the trier of fact's assessment of the credibility of the witnesses that is made on the basis of its firsthand observation of their conduct, demeanor and attitude." (Internal quotation marks omitted.)), cert. denied, 345 Conn. 904, 282 A.3d 980 (2022).

The plaintiff also challenges the board's discussion of her husband Nathaniel Clark's testimony as "guilt by

[23] The plaintiff also argues that, although Biello sent the department an email on Sunday, February 9, 2020, reiterating his directive, she did not receive the email until the next day, February 10, 2020, at which time she was placed on paid administrative leave. The plaintiff, however, was present at the February 7, 2020 meeting, at which time Biello verbally gave the directive that any legislation relating to § 12-389 must come through him. Moreover, on that same date, the plaintiff met with Biello alone, at which time she could have disclosed the proposed legislation but did not. Accordingly, we reject the plaintiff's contention that she had "fewer than eight business hours" within which to comply with Biello's directive.

association . . . ." (Internal quotation marks omitted.) In its written decision, the board stated that Nathaniel Clark, a computer engineer, who "had never appeared before at a legislative committee," attended the hearing accompanied by the plaintiff, to support the proposal that she drafted. The board noted Nathaniel Clark's testimony before the Judiciary Committee that Bucari was "problematic" and that protecting his position as first assistant commissioner would be "galling." (Internal quotation marks omitted.) As the plaintiff herself has conceded, her relationship with Bucari was poor. The board stated that Nathaniel Clark "could only have been influenced by [the plaintiff] in personally attacking Bucari." We interpret the board's discussion relating to Nathaniel Clark as noting evidence in the record that reasonably supported its conclusion that the plaintiff was motivated by her own personal interests in drafting the legislation, rather than those of the department, which was one of the grounds for just cause enumerated in § 5-240-1a (c) (13) of the regulations.

Moreover, in light of the evidence in the record, we cannot say that the board acted unreasonably, illegally or in abuse of its discretion. The board's finding that the termination of the plaintiff's employment was for just cause was supported by substantial evidence in the administrative record. There is substantial evidence that the plaintiff engaged in serious misconduct by failing to comply with Biello's clear instructions. Biello testified before the board that, on February 7, 2020, he held a team meeting at which he "made it verbally clear if there was to be any discussion regarding the succession tax or if anyone was asked to provide input or draft anything . . . that it needed to come through me . . . ." As stated previously, the board credited Biello's testimony, and we do not disturb that credibility determination on appeal. See *Idlibi* v. *State Dental Commission*, supra, 212 Conn. App. 518–19. Even when

the plaintiff met with Biello alone after the February 7, 2020 meeting, she did not disclose that she had sent language to Chapman but stated instead that there " 'may be' " a proposal that could impact § 12-389. Notwithstanding the plaintiff's claim that she had fewer than eight business hours to comply with Biello's directive, she was still able to email the Office of the Governor on Monday, February 10, 2020, instead of Biello, about the legislation.

There also was substantial evidence to support the board's finding that the plaintiff's actions were motivated by her own personal motives, rather than the best interest of the department. Regs., Conn. State Agencies § 5-240-1a (c) (13). The personal animus between the plaintiff and Bucari, who was the first assistant commissioner and held the very position the plaintiff's proposed legislation sought to take away from the department's control, is not disputed. The plaintiff admitted that she sent the legislation at issue to Chapman using her personal email address, and, although she stated at oral argument before this court that her actions were taken in her official capacity, the board reasonably found that the use of her personal email and cell phone to communicate with Chapman, rather than through official department lines of communication, constituted evidence that she intended to conceal her actions from Biello. These facts all supported the board's conclusion that the plaintiff's actions were detrimental to the department she was hired to serve and are supported in the record. Accordingly, we conclude that there was substantial evidence in the record to support the termination of the plaintiff's employment from state service for just cause.

The judgment is affirmed.

In this opinion the other judges concurred.

ROBERT P. MATUSZ *v.* WELLMORE BEHAVIORAL HEALTH, INC.
(AC 47616)

Suarez, Clark and Keller, Js.

Syllabus

The plaintiff landlord appealed from the trial court's judgment, rendered after a jury trial, for the defendant tenant on the complaint alleging, inter alia, negligence in connection with a fire that caused damage to the plaintiff's rental property. The plaintiff claimed, inter alia, that the court improperly granted the defendant's motion in limine to preclude certain testimony and evidence of noneconomic damages. *Held*:

This court declined to review the plaintiff's inadequately briefed claim that the trial court improperly failed to provide the plaintiff's requested charge to the jury regarding a landlord's obligations to maintain a leased premises.

This court declined to address the plaintiff's claim that the trial court improperly granted the defendant's motion in limine, as, even if this court were to assume that the granting of the motion in limine was improper, the plaintiff could not demonstrate harm because his claim applied only to damages and the jury determined that the defendant was not liable for the fire at the plaintiff's property.

Argued February 20—officially released August 26, 2025

Procedural History

Action to recover damages for, inter alia, the defendant's alleged negligence, and for other relief, brought to the Superior Court in the judicial district of Waterbury, where the court, *D'Andrea*, *J.*, granted in part the defendant's motion for summary judgment; thereafter, the court, *D'Andrea*, *J.*, granted the defendant's motion in limine to preclude certain testimony and evidence; subsequently, the case was tried to the jury before *D'Andrea*, *J.*; verdict and judgment for the defendant, from which the plaintiff appealed to this court. *Affirmed.*

Eddi Z. Zyko, for the appellant (plaintiff).

Andrew P. Barsom, with whom, on the brief, was *Charles F. Gfeller*, for the appellee (defendant).

Opinion

KELLER, J. The plaintiff, Robert P. Matusz, appeals from the judgment of the trial court rendered in favor of the defendant, Wellmore Behavioral Health, Inc., on his claim that a fire caused by the defendant's negligence caused damage to his rental property. On appeal, the plaintiff claims that the court improperly (1) failed to provide his requested charge to the jury regarding a landlord's obligations to maintain a leased premises and (2) granted the defendant's motion in limine to preclude testimony and evidence of noneconomic damages. We conclude that the plaintiff's first claim is not reviewable due to inadequate briefing. As to his second claim, we determine that, even if we assume, arguendo, that the court erred in granting the defendant's motion in limine, any such error was harmless. Accordingly, we affirm the judgment of the trial court.

The jury reasonably could have found the following facts. At all relevant times, the plaintiff, a practicing podiatrist, owned a building located at 150 Meadow Street in Naugatuck (property or premises) that is located next to his professional office. Since purchasing the property in 1987, the plaintiff has leased the first floor to commercial entities. In 2012, the plaintiff and the defendant, a regional behavioral health agency, entered into a lease agreement regarding the first floor of the property. The defendant took possession of the property in October, 2012, and had a photocopier installed. The parties extended their lease agreement several times. Thereafter, the defendant leased a new photocopier from a third party, and this device was installed at the property in March, 2019. There was a dedicated wall outlet located behind the photocopier that went directly to the electrical panel. The photocopier was plugged directly into that electrical outlet, and the defendant did not use extension cords at the property.

On the morning of Saturday, June 1, 2019, three employees of the defendant arrived at the property for work. These employees noticed a smell of rubber burning. They investigated to determine the cause and location of this smell but were unable to do so. The defendant's on call supervisor directed one of the employees to contact the Naugatuck Fire Department (fire department), which she did.

After arriving at the property, members of the fire department searched for the cause of the burning rubber smell. They were unable to detect any fire or visible smoke. A thermal imaging camera was used on the walls and ceilings, but, despite the efforts of the firefighters, the source of the odor could not be determined. None of the circuit breakers in the electrical panel had been tripped. Upon completion of the assessment of the property, the firefighter in charge determined that no further action was required. In his opinion, the photocopier was the source of the smell. He directed the defendant's employees to unplug the photocopier and to contact an electrician on Monday, June 3, 2019. An employee of the defendant unplugged the photocopier as instructed.

At some point, the plaintiff arrived at the property. The plaintiff spoke with a firefighter and inquired as to what he should do. The plaintiff was told that the photocopier should remain unplugged and that the windows should be opened. He secured the property and was the last person to leave. At that time, he noted that the photocopier had been unplugged.

The following evening, a fire started at the property at 10:20 p.m. The plaintiff arrived at the scene at approximately 10:45 p.m. and observed that the property was "fully engulfed" in flames. The property sustained substantial damage. Due to the extensive damage, and other factors, including the COVID-19 pandemic, restoration

of the almost 150 year old building took more than four years. During this time period, the plaintiff incurred expenses and suffered the loss of rental income.

Edwin Dalton, the Naugatuck deputy fire marshal, was the person responsible for investigating the property to determine the cause and origin of the fire. As part of his investigation, he attended interviews with the defendant's employees and conducted an examination of the damage to the property following the fire. On the basis of his observations, Dalton determined that the fire "was heaviest in the center of the room, not in the [perimeter]." He located the cord for the photocopier and observed there was a dedicated wall outlet located behind that unit that went directly to the electrical panel. Dalton located a rare downward burn pattern in the ceiling known as a "saddle burn."[1] In the area of the saddle burn, Dalton also found a "floating splice" of electrical wires leading into a fluorescent light.[2] Dalton noted the absence of any extension cords and that "every cord [in the defendant's office] was unplugged."

Dalton subsequently learned of the June 1, 2019 call to the fire department regarding the odor of burning rubber. He investigated the photocopier as a possible source of the June 2, 2019 fire. He concluded that the photocopier was unplugged on June 2, 2019, and eliminated it as the cause, concluding that it "had nothing to do with the fire, other than being in the room of the fire."[3] The breaker for the circuit that supplied power

[1] Dalton explained that a "saddle burn" is characterized by its downward burn pattern, which is "not normal" and "very rare."

[2] Dalton testified that "floating splices" were common in a method of running electrical wires in a building known as "not-in-tune wiring" that is no longer used in modern construction. He also indicated that current construction standards would require the use of a junction box with a cover.

[3] Dalton further testified: "The plug [of the photocopier] was right there. There was no extension cord found anywhere. [Although one of the defendant's employees had mentioned the possibility of an extension cord, members of the fire department] found no extension cord. Every cord we found

to the photocopier had not been tripped, and the wall where its outlet was located was one of the least damaged in the room, further indicating that it was not the cause of the fire. Dalton opined that the fire was caused by "[t]he floating [wire] splice above the ceiling where that saddle burn was" and iterated that the photocopier was not the cause of the fire.

The plaintiff's insurance company, Quincy Mutual Fire Insurance Company, also conducted an investigation regarding the cause of the June 2, 2019 fire. That investigation reached the same conclusions as Dalton. Specifically, the insurance company's investigator determined that "the [photocopier] machine and the circuit that the [photocopier] was attached to . . . did not cause the fire [and that] the . . . arcing in the . . . ceiling from the spliced wires caused the fire . . . ."

On November 4, 2020, the plaintiff commenced the present action against the defendant. In his initial complaint, the plaintiff alleged claims of breach of contract, violation of the covenant of good faith and fair dealing, and negligence. On January 10, 2022, the defendant moved for summary judgment with respect to the entirety of the plaintiff's complaint.

On April 27, 2023, the court, *D'Andrea*, *J.*, issued a memorandum of decision granting the defendant's motion for summary judgment as to the contractual counts and denying it as to the negligence count. With respect to the plaintiff's claim for breach of contract, the court determined that "[n]one of the three [lease] provisions cited were violated by the defendant that would create an actionable claim under the lease" and

went directly to something. . . . A couple of things had a large cord [that] reached ten feet but it was coiled up behind. The copier was one of them that had a . . . four or five foot long cord, if I remember correctly. There was a coil behind there. It wouldn't reach anywhere but the outlet that it was for."

make the defendant liable for the fire.[4] As to the second count of the complaint, the court agreed with the defendant's arguments that the covenant of good faith and fair dealing is not implicated by conduct that does not impair rights set forth by contract and that such a claim failed in the absence of bad faith. As there was no genuine issue of material fact to support a conclusion that the defendant acted with a sinister motive or bad faith or that the terms of the lease had been breached, the court granted the defendant's motion as to this count of the complaint.

As to count three, alleging negligence, the court noted that the defendant argued there was no genuine issue of material fact that it had not caused the fire. In response, the plaintiff presented the affidavit of an expert, Michael V. Musco, a professional engineer, who opined that the photocopier, even unplugged, could have started the fire and that the circuit breaker should have been turned off. The plaintiff's expert further

[4] The plaintiff alleged, inter alia, that the defendant had violated paragraphs 8.5 and 8.6 of the lease. Article 8 of the lease sets forth various covenants of the defendant as the tenant. Paragraph 8.5 provides in relevant part: "The [defendant] covenants and agrees that the [defendant] shall not make or erect any structural improvements, structural alterations, structural replacements, structural additions or structural accessions in any manner whatsoever to the leased premises without the prior written consent of the [plaintiff]. In connection with [the defendant's] nonstructural improvements, [the defendant] shall not need [the plaintiff's] prior written consent for nonstructural alterations, decorations, installations, additions or improvements to the lease premises occurring thereafter." Paragraph 8.6 states that the defendant shall provide the plaintiff with copies of all government permits and authorizations that may be required for such work.

In granting the defendant's motion for summary judgment, the court concluded that installation of the photocopier entailed nothing more than having the device brought into the property and plugged in and therefore was not a structural improvement within the language of the lease. Thus, there was no breach of paragraph 8.5 of the parties' lease. Furthermore, as the installation of the photocopier did not require any type of permit or authorization from the government, the court determined that there was no breach of paragraph 8.6.

stated that the employees of the defendant should have contacted an electrician on June 1, 2019, to evaluate the conditions at the property. The plaintiff also pointed to evidence that one of the defendant's employees had stated that she thought the photocopier had been plugged into an extension cord. In denying the motion for summary judgment as to this count, the court noted, inter alia, that the parties' experts disagreed as to the cause of the fire and that "[n]either can provide an opinion at this point in time sufficient to eliminate any genuine issue of material fact as to the cause of the fire."

On May 1, 2023, the defendant filed its answer and special defense.[5] Thereafter, the plaintiff filed a reply denying the defendant's special defense and setting

[5] Specifically, the special defense set forth the following: "1. Subsequent to the fire, an investigation as to the cause of the fire was conducted by the [fire department].

"2. The Naugatuck fire marshal produced a report of his findings as to the most likely cause of the fire which opines that the fire was the result of electrical arcing causing pyrolysis in the ceiling of the structure caused by improper/spliced wiring and floating junctions in the electrical wiring. A true and accurate copy of the Naugatuck fire marshal's report is attached hereto as exhibit A.

"3. At the time of the fire on June 2, 2019, [the defendant's] office was closed and [none of the defendant's employees were] present at the premises nor had any [employee of the defendant] been present at the premises since the prior afternoon.

"4. On June 1, 2019, the [photocopier] as alleged in the complaint was unplugged, not energized and remained unplugged and not energized at the time of the fire.

"5. The plaintiff was the last person to leave and secured the premises on June 1, 2019, after the [fire department] responded to [the defendant's] call regarding an odor of wires burning on said date.

"6. The [photocopier] was not, at any time prior to June 1, 2019, plugged into an extension cord, power strip or any other portable wiring device. Prior to June 1, 2019, the [photocopier] had been plugged directly into and energized by a wall mounted electrical outlet.

"7. The Naugatuck fire marshal's investigation did not discover any evidence that an extension cord, power strip or any other portable wiring device was present in the premises occupied by [the defendant].

"8. Neither [the defendant] nor the [photocopier] were either the legal or proximate cause of the fire at the premises."

forth multiple matters in avoidance of the special defense.[6] That same day, he filed a claim for a jury trial and a certificate of closed pleadings. On April 5, 2024, the plaintiff filed a revised complaint sounding only in negligence. Although the fact that the parties had entered into a lease was pleaded, there is no allegation in the revised complaint that the defendant violated any specific provision of the lease, which is consistent with the court's rendering of summary judgment in favor of the defendant on the contractual counts alleged in the original complaint.

The trial was conducted over four days in April, 2024. The plaintiff requested no interrogatories, and none were submitted to the jury. Following the conclusion of the presentation of evidence, arguments of counsel, and the instructions from the court, the jury returned a verdict in favor of the defendant. The court accepted, recorded, and rendered judgment in accordance with the jury's verdict. This appeal followed. Additional facts will be set forth as necessary.

I

The plaintiff first claims that the court improperly failed to provide his requested charge to the jury regarding a landlord's obligations to maintain a leased premises. Specifically, he argues that it was reasonably possi-

[6] The court charged the jury on this special defense, although it pleads facts that are inconsistent with the allegations in the plaintiff's complaint and could be construed as merely a prolonged denial. We note that "[t]he purpose of a special defense is to plead facts that are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action. . . . [S]ee also Practice Book 10-50 ([f]acts which are consistent with [the plaintiff's] statement [of fact] but show, notwithstanding, that the plaintiff has no cause of action, must be specially alleged)." (Citation omitted; internal quotation marks omitted.) *Danbury* v. *Dana Investment Corp.*, 249 Conn. 1, 17, 730 A.2d 1128 (1999); see also *Dept. of Public Health* v. *Estrada*, 349 Conn. 223, 246–47, 315 A.3d 1081 (2024).

The plaintiff did not challenge the legal sufficiency of the defendant's special defense. See, e.g., *Doe* v. *Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 398, 119 A.3d 462 (2015) (motion to strike used to contest legal sufficiency of special defense); *Barasso* v. *Rear Still Hill Road, LLC*,

ble that the jury was misled by the instructions given by the court. The defendant responds that the court properly instructed the jury and, additionally, that this claim is inadequately briefed.[7] We agree that the plaintiff failed to brief his jury instruction claim adequately and, therefore, decline to review its merits.

The following additional facts and procedural history are necessary. On April 15, 2024, the plaintiff filed an "amended preliminary charge to the jury." Two days later, he filed a "second amended preliminary charge to the jury." Therein, he sought several additions to the court's proposed jury instructions. Specifically, the plaintiff requested that the court instruct the jury regarding the duty of reasonable care, and the limits of this duty, owed by a landlord to a tenant.[8] Additionally, the plaintiff requested that the court instruct the jury on the law pertaining to the lessor and lessee relationship.[9] The plaintiff's counsel requested an instruction to the jury that was "[b]asically . . . in accordance

64 Conn. App. 9, 13, 779 A.2d 198 (2001) (same). Similarly, he has not challenged the propriety of the defendant's special defense on appeal.

[7] In its appellate brief, the defendant argues that the proposed instructions that the plaintiff claims should have been given to the jury were based on the Connecticut Civil Jury Instructions that are used in actions where an invitee on leased property is injured, and, therefore, these instructions are not relevant to the facts of this case. Moreover, the defendant contends that the revised complaint does not contain any specific allegation, nor was there any evidence admitted, from which the landlord-tenant relationship applied to the plaintiff's allegations of negligence. The defendant posits that it is not clear why the model instructions were required to be given as the sole issue in this case was whether the negligence of the defendant caused the fire and the landlord-tenant relationship amounted to an ancillary matter during the trial.

[8] Specifically, the plaintiff requested the following language be included in the court's charge: "Thus, as a matter of common law, although landlords owe a duty of reasonable care as to those parts of the property over which they have retained control, landlords generally [do] not have a duty to keep in repair any portion of the premises leased to and in the exclusive possession and control of the tenant. And [the defendant] cannot delegate [its] responsibility for safety to a contractor . . . ." (Internal quotation marks omitted.)

[9] The plaintiff requested the following instruction: " 'A lease is more than a mere licence; it is a contract for the possession and profits of lands and

with Connecticut Civil Jury Instructions §§ 3.9-6 and 3.9-7."[10]

During the charging conference, the court requested that the plaintiff's counsel explain why the instructions to the jury should include information regarding the lessor and lessee relationship and landlord and tenant law. After hearing from the parties, the court took a recess to consider the plaintiff's request. After resuming

tenements on the one side, and a recompense of rent or other income on the other; or, in other words, a conveyance to a person for life, or years, or at will, in consideration of a return of rent or other recompense.' . . . The agreement conferred a right known technically as a profit a prendre. . . . A lease transfers an estate in real property to a tenant for a stated period, with a reversion in the owner after the expiration of the lease. Its distinguishing characteristic is the surrender of possession by the landlord to the tenant so that he may occupy the land or tenement leased to the exclusion of the landlord himself. . . .

"Ordinarily, a tenant takes the demised premises as he finds them, and the landlord is not liable for defective conditions (that is, conditions making the premises not reasonably safe for the reasonably . . . anticipated uses which the tenant would make of them) within the demised area. . . . While the general rule has often been phrased as an assumption by the tenant of the risk of defective conditions within the demised premises, the phrase 'assumption of risk' is somewhat misleading, in Connecticut at least, since it suggests that the landlord must allege and prove, in an affirmative defense, the assumption of risk by [a] tenant. This is not the law. The use of the phrase 'assumption of risk' in this connection is avoided by many, if not most, skilled text writers. . . . Assumption of risk in its true factual sense, under an affirmative defense, is illustrated in *Dean* v. *Hershowitz*, 119 Conn. 398, 411, 177 A. 262 [(1935)] . . . .

"The general rule has, however, certain exceptions or at least apparent exceptions. The burden is on . . . the tenant to allege and prove the facts necessary to take his case out of the general rule of 'caveat emptor' as to defects within the demised premises by alleging and proving that he is within one or more of the exceptions. . . . In the first place, the rule does not apply to defects, whether resulting from faulty design or from disrepair, existing at the beginning of the tenancy if they (a) were not discoverable on reasonable inspection by the tenant, and (b) were defects with a knowledge of which the landlord was chargeable. . . . It should be noted that actual knowledge, by the tenant, of a given defect is fatal to his case, even if the defect was not discoverable upon reasonable inspection." (Citations omitted.)

[10] See Connecticut Civil Jury Instructions 3.9-6 and 3.9-7, available at http://www.jud.ct.gov/JI/Civil/Civil.pdf (last visited August 14, 2025).

the charging conference, the court explained to counsel that, in its view, there was "no need to instruct the jury on any landlord-tenant issues because . . . it's peripheral to the property damages claim . . . . And [any] instruction from me I think would cloud the property damage claim and [lead] to some confusion on the jury." The plaintiff's counsel noted his exception to the court's ruling on the record.

On appeal, the plaintiff claims that the court improperly failed to include part of his request to charge regarding the obligations, and attendant limitations, of a landlord with respect to maintaining a leased premises in its jury instructions. In his appellate brief, the plaintiff sets forth the applicable standard of review and then identifies certain legal principles regarding landlord-tenant law. He then lists various facts from the case and includes a lengthy quotation from the transcript of the trial. In its appellate brief, the defendant contends, inter alia, that the plaintiff's brief lacks "additional argument or analysis, aside from the two conclusory and generic assertions [that the request to charge was 'apropos to the facts of the case' and the error in not giving the proposed charge was harmful as it likely affected the verdict. Furthermore, the plaintiff's brief does not] even remotely [address] the burden imposed on the plaintiff to challenge the rejection of a proposed jury instruction under the applicable authorities." We agree with the defendant.

"A challenge to the validity of jury instructions presents a question of law. Our review of this claim, therefore, is plenary. . . . When reviewing [a] challenged jury instruction . . . we must adhere to the well settled rule that a charge to the jury is to be considered in its entirety, read as a whole, and judged by its total effect rather than by its individual component parts. . . . [T]he test of a court's charge is not whether it is as accurate upon legal principles as the opinions of a court

of last resort but whether it fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules of law. . . . As long as [the instructions] are correct in law, adapted to the issues and sufficient for the guidance of the jury . . . we will not view the instructions as improper. . . . Therefore, [o]ur standard of review on this claim is whether it is reasonably probable that the jury was misled. . . .

"It is well established that not every improper jury instruction requires a new trial because not every improper instruction is harmful. [W]e have often stated that before a party is entitled to a new trial . . . he or she has the burden of demonstrating that the error was harmful. . . . An instructional impropriety is harmful if it is likely that it affected the verdict. . . . [T]o determine whether the court's instructional impropriety was harmless, we consider not only the nature of the error, including its natural and probable effect on a party's ability to place his full case before the jury, but the likelihood of actual prejudice as reflected in the individual trial record, taking into account (1) the state of the evidence, (2) the effect of other instructions, (3) the effect of counsel's arguments, and (4) any indications by the jury itself that it was misled." (Citations omitted; internal quotation marks omitted.) *Zhuleku* v. *Naugatuck Valley Radiology Associates*, 232 Conn. App. 143, 155–56, 336 A.3d 101, cert. denied, 352 Conn. 907, 335 A.3d 846 (2025); see also *Kent Literary Club of Wesleyan University* v. *Wesleyan University*, 338 Conn. 189, 207–208, 257 A.3d 874 (2021); *Walencewicz* v. *Jealous Monk, LLC*, 228 Conn. App. 349, 379–80, 325 A.3d 271, cert. denied, 350 Conn. 927, 326 A.3d 249 (2024).

The plaintiff's appellate brief fails to contain any citation to authority or legal analysis as to why the court's instructions that did not include his requested language were improper and harmful in light of the evidence or

arguments before the jury and the effect of the court's other instructions. Additionally, the plaintiff does not discuss why the court's determination that his proposed instructions would confuse the jury was improper. As this court repeatedly has observed, "[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.) *Kosiorek* v. *Smigelski*, 138 Conn. App. 695, 717–18, 54 A.3d 564 (2012), cert. denied, 308 Conn. 901, 60 A.3d 287 (2013). Additionally, our Supreme Court has instructed that "without adequate briefing on the harmfulness of an alleged error, the [plaintiff] is not entitled to review of [the] claim on the merits." (Internal quotation marks omitted.) *MacDermid, Inc.* v. *Leonetti*, 328 Conn. 726, 748, 183 A.3d 611 (2018).

For this court to judiciously and efficiently consider a claim of error raised on appeal, the plaintiff, as the party claiming error, must clearly and fully set forth his arguments and may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited. See *Hadji* v. *Snow*, 232 Conn. App. 829, 858, A.3d (2025), petition for cert. filed (Conn. June 23, 2025) (No. 240412). It was incumbent on the plaintiff to provide a meaningful analysis of his claim of instructional error and to include citations to relevant legal authority *and* an application of that law to the facts in the present case. See id.; see also *C. W.* v. *Warzecha*, 225 Conn. App. 137, 146–47, 314 A.3d 617 (2024) (claim deemed inadequately briefed when party *provided no applicable legal* authority or *meaningful analysis* in support of claim). Stated differently, "[i]t is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument,

and put flesh on its bones." (Internal quotation marks omitted.) *State* v. *Foster*, 217 Conn. App. 476, 529, 289 A.3d 191 (*Seeley*, *J.*, concurring), cert. granted, 346 Conn. 920, 291 A.3d 1041 (2023). Mindful of these principles, we conclude that this claim is inadequately briefed and, therefore, decline to review it.

II

The plaintiff next claims that the court improperly granted the defendant's motion in limine to preclude testimony and evidence of noneconomic damages. Specifically, the plaintiff argues that the court improperly concluded that noneconomic damages were unavailable in this case. He also asserts that the court improperly prevented him from repleading his case when it denied the defendant's motion to strike the allegation in the revised complaint seeking noneconomic damages but granted its motion in limine seeking to exclude testimony and evidence regarding noneconomic damages and that, by doing so, the court improperly decided a dispositive issue of law in the context of a motion in limine. The defendant counters, inter alia, that any error regarding the granting of the motion in limine was harmless. We agree with the defendant that, under the specific facts and circumstances of this case, the plaintiff has failed to demonstrate that he suffered harm sufficient to warrant reversal, even if we were to assume that the granting of the motion in limine was improper.[11]

[11] In its appellate brief, the defendant argues that the plaintiff's claim challenging the court's granting of the motion in limine is really a challenge to the court's denial of the motion to strike. On the basis of that argument, the defendant claims that we lack subject matter jurisdiction over this appeal because (1) the plaintiff was not aggrieved by the denial of the motion to strike, and (2) the denial of a motion to strike is not an appealable final judgment. In his reply brief, the plaintiff reiterates that he is challenging the court's granting of the motion in limine, not the denial of the motion to strike. Although ordinarily "[a] possible absence of subject matter jurisdiction must be addressed and decided whenever the issue is raised"; (internal quotation marks omitted) *Wucik* v. *Planning & Zoning Commission*, 113 Conn. App. 502, 506, 967 A.2d 572 (2009); given the plaintiff's clarification in his reply brief that he is not challenging the court's denial of the motion

The following additional facts are necessary for the resolution of this claim. On April 1, 2024, pursuant to Practice Book § 15-3,[12] the defendant filed a motion in limine to preclude testimony and evidence of noneconomic damages.[13] Therein, the defendant asserted: "[Following the granting of summary judgment in favor of the defendant on the plaintiff's contractual claims] the sole remaining claim at issue in this action is for property damage alleged to have been caused by a fire at a commercial rental property owned by the plaintiff. . . . The plaintiff suffered no personal injuries as a result of the allegedly negligent action, the premises was not his primary residence and the testimony and evidence of damages at issue must be constrained to purely economic damages under established Connecticut law for property damage cases. Therefore, any testimony and/or evidence of noneconomic damages must be precluded as a matter of law." (Citation omitted.) The defendant subsequently contended, principally

to strike, we need not address the defendant's argument that the plaintiff is not aggrieved by the denial of its motion to strike and that the denial of the motion to strike is not a final judgment.

[12] Practice Book § 15-3 provides: "The judicial authority to whom a case has been assigned for trial may in its discretion entertain a motion in limine made by any party regarding the admission or exclusion of anticipated evidence. If a case has not yet been assigned for trial, a judicial authority may, for good cause shown, entertain the motion. Such motion shall be in writing and shall describe the anticipated evidence and the prejudice which may result therefrom. All interested parties shall be afforded an opportunity to be heard regarding the motion and the relief requested. The judicial authority may grant the relief sought in the motion or such other relief as it may deem appropriate, may deny the motion with or without prejudice to its later renewal, or may reserve decision thereon until a later time in the proceeding."

[13] "Economic damages are defined as compensation determined by the trier of fact for pecuniary losses . . . . Noneconomic damages are defined as compensation determined by the trier of fact for all nonpecuniary losses including, but not limited to, physical pain and suffering and mental and emotional suffering. . . . [E]conomic damages are akin to special damages, and noneconomic damages are akin to general damages." (Internal quotation marks omitted.) *DeVito* v. *Schwartz*, 66 Conn. App. 228, 234, 784 A.2d 376 (2001).

relying on decisions from the Superior Court, that "Connecticut law is clear that in cases where the negligent conduct results only in property damage a party may not recover noneconomic damages."

On the same day the plaintiff filed his revised complaint,[14] the defendant, pursuant to Practice Book § 10-39,[15] moved to strike the paragraph in the revised complaint that sought damages for the plaintiff's "great shock, pain, emotional stress, anguish, loss of the quality of his life, fear for his present and future well-being as well as his life itself and [continued] damages in the future." The defendant again asserted that noneconomic damages were not recoverable in this property damage case sounding only in negligence.[16] On April 9, 2024, the plaintiff filed a memorandum in opposition to the defendant's motion to strike. That same day, the

[14] As previously set forth in this opinion, the trial court granted in part and denied in the part the defendant's motion for summary judgment on April 27, 2023. Four days later, the defendant filed its answer to the original complaint. Following his October 4, 2023 claim for a jury trial and filing of a certificate of closed pleadings, the plaintiff revised his complaint on April 5, 2024. It does not appear that the defendant filed a revised answer. We assume that the court and the parties considered the May 1, 2023 answer applicable to the amended complaint. See Practice Book § 10-61; see also, e.g., *Cavalier* v. *Yaworski*, Docket No. CV-06-4034586-S, 2011 WL 263173, *2 (Conn. Super. January 3, 2011) (in light of party's failure to file any pleadings after filing of third revised complaint, earlier answer became applicable to operative complaint); *Waldo* v. *R.H.M. Properties, LLC*, Docket No. 557367, 2001 WL 1659274, *1 and n.1 (Conn. Super. November 30, 2001) (answer filed prior to filing of revised complaint regarded as applicable to said revised complaint to extent possible).

[15] Practice Book § 10-39 (a) provides in relevant part: "A motion to strike shall be used whenever any party wishes to contest: (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted . . . ."

[16] Specifically, the defendant argued that the revised complaint contained "no allegation of personal injury nor other aggravating factors pleaded . . . which would permit the plaintiff to assert a claim for noneconomic damages under Connecticut law. Accordingly, under well established authorities concerning the lack of availability of noneconomic damages in property damage cases, the aforementioned provisions . . . must be stricken."

court heard argument from the parties regarding this motion.

On April 16, 2024, the court issued decisions pertaining to the defendant's motion in limine and its motion to strike. It noted that numerous decisions from the Superior Court had considered this issue and referred to this court's decision in *Myers* v. *Hartford*, 84 Conn. App. 395, 853 A.2d 621, cert. denied, 271 Conn. 927, 859 A.2d 582 (2004), for guidance.[17] Specifically, the trial court cited to *Mulvey* v. *Trabka*, Docket No. CV-20-6098504-S, 2021 WL 2592369 (Conn. Super. June 3, 2021), and the analysis and reasoning contained therein that concluded that Connecticut generally has not recognized claims for negligent infliction of emotional distress in situations involving property damage alone.[18] As a result, the court determined that the allegation seeking noneconomic damages for "great shock,

[17] In *Myers*, a city animal control officer removed a roaming dog to a veterinary clinic and ordered it to be euthanized due to the animal's poor physical condition. See *Myers* v. *Hartford*, supra, 84 Conn. App. 396–97. The animal control officer did not seek authorization from a veterinarian as required by statute, nor did he inform the owner of the dog of the seizure. Id., 397. Several days later, the plaintiff learned that the animal had been euthanized. Id. The plaintiff commenced an action against various parties alleging, inter alia, intentional and negligent infliction of emotional distress. Id. The trial court granted the defendants' motion for a directed verdict on the basis of qualified municipal immunity pursuant to General Statutes § 52-557n (a) (2). Id.

This court affirmed the judgment of the trial court, albeit on different grounds. Id., 398. We determined that General Statutes § 7-465 (a) applied, and, in order to prevail, the plaintiff was required to set forth a colorable common-law claim against the municipal employees. Id., 402. We explained that "[*o*]*ur common law has never recognized a right to sue an individual for intentional or negligent infliction of emotional distress resulting from injury to such property as a pet*. Therefore, by pleading only claims for intentional and negligent infliction of emotional distress, the plaintiff has not set forth a colorable common-law claim against the defendant employees, and the municipality cannot be held liable for indemnification." (Emphasis added.) Id.

[18] The Superior Court acknowledged that cognizable claims for negligent infliction of emotional distress have been found in some situations involving claims of property damage, such as when heating oil was discharged onto

pain, emotional stress, anguish, loss of the quality of [the plaintiff's] life, fear for his present and future well-being as well as his life itself" was not recognized under our law given these facts and circumstances as alleged. For these reasons, the court granted the defendant's motion to preclude the plaintiff from introducing any evidence related to noneconomic damages. The court, however, also issued an order denying the defendant's motion to strike. The court did not provide any reasoning for its decision regarding the motion to strike, and neither party sought further explanation or moved the court to take any further action regarding this order.

The evidentiary phase of the trial concluded on April 18, 2024. The court informed counsel, outside of the presence of the jury, that pursuant to its prior ruling granting the defendant's motion in limine, the plaintiff was not entitled to, and thus the jury would not be instructed on, noneconomic damages. Counsel presented their closing arguments on April 19, 2024.

Following the court's instructions, the jury returned a verdict for the defendant later that day. On its verdict form, the jury indicated that it found in favor of the defendant. The court then rendered judgment for the defendant in accordance with the jury's verdict.

On appeal, the plaintiff argues that the court committed harmful error in granting the defendant's motion in limine to preclude evidence and testimony regarding noneconomic damages. In his reply brief, the plaintiff rephrases this argument, stating that the court erred when it "substituted a motion in limine for a motion to strike and effectively granted the motion to strike . . . ." He also asserts that the court improperly concluded that noneconomic damages were not available in the present matter.

property or raw sewage flowed into a home on more than one occasion, causing a continuing risk of physical exposure or a continuing fear for one's health and well-being. See *Mulvey* v. *Trabka*, supra, 2021 WL 2592369, *4.

The defendant counters, inter alia,[19] that, even if the court improperly granted its motion in limine, the plaintiff has failed to establish harm warranting reversal. We agree with the defendant that, under the facts and circumstances of this case, the plaintiff cannot demonstrate harm because his claim applies only to the issue of damages and the jury determined that the defendant was not liable for the fire at the plaintiff's property.

In order to prevail in his appeal, it is not enough for the plaintiff to demonstrate that the court's granting of the defendant's motion in limine was improper; he must also demonstrate harm. See *Coble* v. *Maloney*, 34 Conn. App. 655, 661, 643 A.2d 277 (1994); see also E. Prescott & J. Lavoie, Connecticut Appellate Practice and Procedure (8th Ed. 2023) § 8-4:3.1, p. 531. This court has explained: "Even when a trial court's evidentiary ruling is deemed to be improper, we must determine whether that ruling was so harmful as to require a new trial. . . . In other words, an evidentiary ruling will result in a new trial only if the ruling was both wrong and harmful. . . . *Harmful error occurs in a civil action when the ruling would likely affect the result. . . . It is the plaintiff's burden to show harmful error*." (Emphasis added; internal quotation marks omitted.) *Suntech of Connecticut, Inc.* v. *Lawrence Brunoli, Inc.*, 173 Conn. App. 321, 347, 164 A.3d 36 (2017), appeal dismissed, 330 Conn. 342, 193 A.3d 1208 (2018); see also *George* v. *Ericson*, 250 Conn. 312, 327, 736 A.2d 889 (1999); *Puchalski* v. *Mathura*, 82 Conn. App. 272, 275–76, 843 A.2d 685 (2004); see generally *Mercer* v. *Champion*, 139 Conn. App. 216, 228–29, 55 A.3d 772 (2012).

The specific claim advanced by the plaintiff pertains only to the issue of damages.[20] The record reveals, however, that the jury reached its verdict in favor of the

[19] See footnote 11 of this opinion.

[20] "The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury." (Internal quotation marks omitted.) *Gibson* v. *Denmo's Original Drive-In, LLC*, 232

defendant as to liability. In its jury charge, the court explained to the jury that "a civil trial as this has two issues: liability or legal fault and damages. You will reach the issue of damages only if you find liability in favor of the plaintiff. If you find that liability is established, you will have occasion to apply my instructions concerning damages. If you find that liability has not been established, then you will not consider damages." The court then instructed the jury on the allegations of negligence set forth in the revised complaint and causation. The foreperson checked a box on the verdict form indicating that it had found in favor of the defendant.[21]

On the basis of the court's instructions and the verdict form, we conclude that the jury determined that the fire was not caused by the negligence of the defendant. Therefore, even if the plaintiff persuaded this court that the court improperly granted the motion in limine and that he should have been afforded the opportunity to present testimony and evidence of noneconomic damages, the result of this appeal would not be different because he failed to establish the liability of the defendant. "If the jury returns a defendant's verdict, errors

Conn. App. 733, 749, 338 A.3d 404 (2025); see also *Roux* v. *Coffey*, 230 Conn. App. 130, 139, 330 A.3d 253, cert. denied, 351 Conn. 915, 331 A.3d 1217 (2025).

[21] The verdict form also contained a notation that the jury awarded the plaintiff zero dollars in economic damages. Although the jury filled out the verdict form in derogation of the court's instructions by finding for the defendant on liability and then indicating zero damages for the plaintiff, the court accepted the verdict without asking the jury to make any correction, and the plaintiff did not raise any issue as to the verdict form in the trial court by way of a motion for directed verdict or for a new trial. Furthermore, he has not raised any issue regarding the verdict form on appeal. See *Fontana* v. *Zymol Enterprises, Inc.*, 95 Conn. App. 606, 612, 897 A.2d 694 (2006) (jury found in favor of plaintiff on claims of breach of contract and breach of subsequent oral contract, awarding $30,000 and $0 in damages, respectively; on appeal, defendant claimed jury found in its favor on second count, and this court disagreed, noting that despite award of zero damages on that count, jury form clearly indicated jury found in favor of plaintiff and trial court correctly interpreted verdict as being in favor of plaintiff).

relating to damages are harmless." E. Prescott & J. Lavoie, supra, § 8-4:3.2, p. 532.

This principle is supported in our case law. For example, in *Murphy* v. *Soracco*, 174 Conn. 165, 383 A.2d 1350 (1978), the plaintiff's vehicle, which was stopped at an intersection, was hit in the rear by the defendant's vehicle. Id., 166. The plaintiff appealed, challenging various rulings made by the trial court. Id. The jury had returned a verdict for the defendant with respect to the plaintiff's negligence action. Id. With regard to the plaintiff's claim of error pertaining to the jury charge on damages, our Supreme Court stated: "Since the jury found in favor of the defendant, absolving him from liability, unless we find error in that conclusion it is not necessary to consider the claimed errors relating to damages. Any such errors would be harmless." Id.; see also *Sears* v. *Curtis*, 147 Conn. 311, 313, 160 A.2d 742 (1960) (Supreme Court did not address appellate claim pertaining to issue of damages when verdict was for defendant); *Attardo* v. *Connecticut Railway & Lighting Co.*, 144 Conn. 741, 742, 132 A.2d 70 (1957) (same).

Similarly, in *Wright* v. *Hutt*, 50 Conn. App. 439, 718 A.2d 969, cert. denied, 247 Conn. 939, 723 A.2d 320 (1998), the plaintiffs, Jacqueline and William Wright, filed a medical malpractice action against the defendant alleging the failure to obtain informed consent and loss of consortium. Id., 441. Following a verdict in favor of the defendant, the plaintiffs appealed. Id., 440. On appeal, one of the plaintiffs' claims was that the court improperly precluded experts from testifying regarding Jacqueline's anxieties regarding her medical condition and her future medical treatment. Id., 452. This court noted that this testimony was relevant to the damages element of the plaintiffs' negligence claim. Id., 452–53. This court concluded that the plaintiffs' claim regarding this evidence was harmless error and therefore without

merit. Id., 453. The court explained that "[*t*]*he jury found for the defendant . . . on the issue of liability. Accordingly, even assuming that the trial court improperly excluded this evidence* [*regarding damages*], *the plaintiffs cannot demonstrate that the court's rulings were harmful.* . . . In the absence of a showing that the evidence would have affected the final result, its exclusion is harmless." (Citation omitted; emphasis added; internal quotation marks omitted.) Id. For the foregoing reasons, we decline to address the plaintiff's claim that the court improperly granted the defendant's motion in limine.

The judgment is affirmed.

In this opinion the other judges concurred.

L. F. *v.* S. F.*
(AC 47318)

Alvord, Suarez and Palmer, Js.

Syllabus

The plaintiff mother appealed from the trial court's judgment denying her request for leave pursuant to the rule of practice (§ 25-26 (g)) to file a motion to modify custody of the parties' minor child. The plaintiff claimed that the court, without holding a hearing, improperly denied her request for leave, which alleged that the custody and visitation order in place contained an impermissible delegation of judicial authority. *Held*:

The trial court improperly denied the plaintiff's request for leave to file a motion for modification and, on the basis of *R. H.* v. *M. H.* (350 Conn. 432), the plaintiff was entitled to a hearing on her motion for modification, as she properly raised the claim of impermissible delegation of judicial authority

* 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.

in her motion for modification appended to her request for leave, consistent with the requirements of Practice Book § 25-26 (g).

Argued May 20—officially released August 26, 2025

Procedural History

Application for custody of the parties' minor child, and for other relief, brought to the Superior Court in the judicial district of Middlesex, where the court, *Diana*, *J.*, awarded the parties joint legal custody of the minor child; thereafter, the court, *Albis*, *J.*, granted the defendant's motion for modification of custody and his request to issue an order pursuant to Practice Book § 25-26 (g), requiring the plaintiff to file a request for leave prior to filing any motion for modification; subsequently, the court, *Sanchez-Figueroa*, *J.*, denied the plaintiff's request for leave to file a motion for modification, and the plaintiff appealed to this court. *Reversed*; *further proceedings*.

L. F., self-represented, the appellant (plaintiff).

Opinion

ALVORD, J. The self-represented plaintiff, L. F., appeals following the court's denial of her request for leave pursuant to Practice Book § 25-26 (g).[1] The plaintiff sought permission to file a motion for modification

[1] Practice Book § 25-26 (g) provides in relevant part: "Upon or after entry of judgment of a dissolution of marriage . . . the judicial authority may order that any further motion for modification of a final custody or visitation order shall be appended with a request for leave to file such motion and shall conform to the requirements of subsection (e) of this section. The specific factual and legal basis for the claimed modification shall be sworn to by the moving party or other person having personal knowledge of the facts recited therein. If no objection to the request has been filed by any party within ten days of the date of service of such request on the other party, the request for leave may be determined by the judicial authority with or without hearing. If an objection is filed, the request shall be placed on the next short calendar, unless the judicial authority otherwise directs. At such hearing, the moving party must demonstrate probable cause that grounds exist for the motion to be granted. . . ."

of custody with respect to the minor child, issue of the marriage between the plaintiff and S. F., the defendant in these postdissolution proceedings.[2] On appeal, the plaintiff claims that the court, without holding a hearing, improperly denied her request for leave, which primarily alleged that the custody and visitation order in place contained an impermissible delegation of judicial authority.[3] See *R. H.* v. *M. H.*, 350 Conn. 432, 444, 324 A.3d 720 (2024). We reverse the judgment of the trial court denying the plaintiff's request for leave and we remand the matter for a hearing on the plaintiff's motion for modification.

The record reveals the following relevant facts and procedural history. The parties' marriage was dissolved in Utah in 2018. The parties have one minor child, who was born in March, 2008. In May, 2021, the plaintiff commenced proceedings in the Connecticut Superior Court by filing, inter alia, an application for custody of the minor child. The court, *Diana*, *J.*, awarded the parties joint legal custody of the minor child and set a parenting time schedule whereby the parties exercised

[2] The defendant did not file a brief in this court. On February 24, 2025, this court ordered that this appeal shall be considered on the basis of the plaintiff's brief and appendix, the record, as defined by Practice Book § 60-4, and oral argument by the plaintiff.

[3] The plaintiff raises several other claims on appeal, all of which are untimely and constitute collateral attacks on prior orders of the court. Many of the plaintiff's untimely claims challenge an October, 2022 decision of the trial court. That decision was a final judgment, from which the plaintiff had twenty days to appeal. See Practice Book § 63-1 (appeal must be filed within twenty days of date notice of decision was given); see also, e.g., *Martowska* v. *White*, 149 Conn. App. 314, 321–22, 87 A.3d 1201 (2014) (plaintiff could not collaterally attack visitation orders when time to appeal such orders had expired). The plaintiff did not file the present appeal until January, 2024, and she appeals only from the order of the court denying her request for leave to file a motion for modification. Accordingly, to the extent the plaintiff seeks in this appeal to challenge the orders contained within the October, 2022 decision, such a challenge constitutes an untimely and impermissible collateral attack. See *Hebrand* v. *Hebrand*, 216 Conn. App. 210, 225, 284 A.3d 702 (2022).

parenting time on a weekly rotation. Subsequently, the defendant filed a motion for modification of custody and parenting time, alleging a substantial change in circumstances on the basis that the child had been refusing to participate in the weekly parenting time with the plaintiff.

On October 25, 2022, the court, *Albis*, *J.*, granted the defendant's motion for modification and entered orders in which it left unchanged the order of joint legal custody but awarded the defendant primary physical custody and final decision-making authority with respect to the child (October, 2022 decision). The court entered the following orders regarding visitation between the plaintiff and the child: "The [plaintiff] shall have reasonable contact with the child by telephone call, text message, and or video call. If the [plaintiff] makes a reasonable request of the [defendant] to facilitate such contact, then the [defendant] shall take reasonable measures to do so. The child shall be free to initiate contact with the [plaintiff] on her part, and [the defendant] shall do nothing to discourage or impede such contact at the child's initiative. The [plaintiff] shall have only such in-person visitation with the child as the parties may agree. [The defendant] shall not unreasonably withhold agreement to a visit, but in making his decision on whether to agree, he shall be entitled to take into account, among other factors that he deems relevant, the advice of the child's mental health providers."[4] Additionally, the court granted the defendant's request to issue a Practice Book § 25-26 (g) order, pursuant to which the plaintiff would be required to file a request for leave prior to filing any motion for modification. The plaintiff did not appeal from the October, 2022 decision.[5]

[4] The court also ordered the plaintiff to take a Breathalyzer test prior to the start of, and after the conclusion of, any in-person visitation.

[5] In November, 2022, the plaintiff filed a motion to open the judgment, which was denied in January, 2023.

In March and July, 2023, the plaintiff filed three requests for leave to file motions for modification, all of which were denied.[6] On December 13, 2023, the plaintiff filed a fourth request for leave to file a motion for modification, in which she identified the October, 2022 decision as the order that she was requesting to be modified. In her appended Judicial Branch motion for modification form, she indicated, inter alia, that the order provided visitation "at the discretion of [the defendant]." She checked the box to indicate that a substantial change in circumstances had occurred and attached a written motion for modification. Therein, she alleged, inter alia, that the court, in its October, 2022 decision, improperly had delegated its judicial authority in permitting the defendant to decide the nature and scope of the plaintiff's visitation with the minor child. The plaintiff cited *R. H.* v. *M. H.*, 219 Conn.

[6] In March, 2023, the plaintiff filed a request for leave to file a motion for modification, to which the defendant objected. The court, *Albis*, *J.*, denied the plaintiff's request for leave. On July 11, 2023, the plaintiff filed a second request for leave to file a motion for modification. Therein, she requested that the court remove the request for leave requirement, expressing her understanding that the provision should have been removed following the termination of the parties' participation in the Intensive Case Management program. The defendant filed an objection to the request for leave. The court, *Albis*, *J.*, denied the request for leave, explaining that no hearing was necessary because, inter alia, the request for leave failed to comply with the requirements of Practice Book § 25-26 (g). On July 25, 2023, the plaintiff filed an application for an emergency ex parte order of custody, which was denied that same day, and a third request for leave to file a motion for modification, to which the defendant did not file an objection. The court, *Albis*, *J.*, denied the request for leave on August 10, 2023.

On August 14, 2023, the plaintiff filed an appeal with this court, identifying on the appeal form that the decision being appealed was issued on July 25, 2023. The only decision issued on that date was the court's denial of the plaintiff's application for an emergency ex parte order of custody. On August 24, 2023, the plaintiff filed two motions for articulation, seeking articulation of the court's denials of the plaintiff's three requests for leave and her application for an emergency ex parte order of custody. On October 31, 2023, the court issued two articulations. On December 12, 2023, the plaintiff withdrew the appeal.

App. 716, 296 A.3d 243 (2023), which was issued by this court in June, 2023.

In *R. H.*, this court concluded that the trial court impermissibly had delegated its judicial authority when it issued an order that authorized the father to suspend visitation between the child and the mother in the event that the father, after consultation with the child's therapist, reasonably determined that visitation was causing negative behavioral or emotional consequences for the child. Id., 740. In July, 2023, this court granted the plaintiff's motion for reconsideration en banc. Prior to oral argument en banc before this court, the appeal was transferred to our Supreme Court. See *R. H.* v. *M. H.*, supra, 350 Conn. 438. Our Supreme Court, in its decision released in August, 2024, concluded that the challenged order constituted an impermissible delegation of judicial authority on the basis that "the trial court's visitation order effectively removes the court entirely from the decision-making process and delegates its authority to the plaintiff to suspend visitation." Id., 445.

In the present case, the plaintiff, in her fourth request for leave, asked the court to modify the existing orders pursuant to this court's decision in *R. H.* v. *M. H.*, supra, 219 Conn. App. 716. The defendant filed an objection to the request for leave. On January 7, 2024, the court, *Sanchez-Figueroa, J.*, summarily denied the request for leave. This appeal, challenging the court's denial of the December, 2023 request for leave, followed.

Following the filing of this appeal, the plaintiff filed a motion for articulation. On February 29, 2024, the court issued an order articulating its denial of the request for leave. The court stated, inter alia, that the request was denied without the necessity of a hearing on the basis that the plaintiff should have raised her claim that the court's October, 2022 visitation order constituted an improper delegation of judicial authority

either by a motion for reconsideration or "an appeal of that decision at the appropriate time." The court found that the request for leave constituted an improper challenge to the court's October, 2022 decision.[7]

On appeal, the plaintiff claims that the court improperly denied her request for leave to file a motion for modification, citing our Supreme Court's decision in *R. H.* v. *M. H.*, supra, 350 Conn. 432. We conclude, under the circumstances of this case, that the plaintiff is entitled to a hearing on her motion for modification.[8]

The plaintiff properly raised the claim of impermissible delegation of judicial authority in a motion for modification appended to a request for leave, consistent with

[7] The court also stated that it had denied the request for the following reasons: the request failed to comply with the requirements of Practice Book § 25-26 (e) and (g), the plaintiff's representation that the defendant had cancelled and modified visits several times was not properly addressed with a motion for modification, and the request for leave failed to allege a sufficient factual and legal basis for the requested modification of the court's October, 2022 decision.

[8] The plaintiff had been ordered to comply with Practice Book § 25-26, which "governs a litigant's ability to file a postdissolution motion for modification of a custody or visitation order." (Internal quotation marks omitted.) *J. Y.* v. *M. R.*, 215 Conn. App. 648, 669, 283 A.3d 520 (2022). See footnote 1 of this opinion. This court previously has held that "[t]he plain language of Practice Book § 25-26 (g) establishes that a hearing is *mandatory* when a timely objection to the request for leave has been filed . . . ." (Emphasis added.) *Morera* v. *Thurber*, 162 Conn. App. 261, 267, 131 A.3d 1155 (2016).

Ordinarily, a court's improper denial of an opposed motion for leave without holding a hearing would result in a remand to the trial court for a belated probable cause hearing on the request for leave. See id. The appropriate remand under the circumstances of the present case, however, is to direct the trial court to hold a hearing on the motion for modification. See Practice Book § 60-1 ("[t]he design of these rules being to facilitate business and advance justice, they will be interpreted liberally in any appellate matter where it shall be manifest that a strict adherence to them will work surprise or injustice"). The circumstances here include the passage of almost three years following the entry of the challenged visitation order, the child's approaching the age of majority, and the release of significant and potentially highly relevant Supreme Court precedent during the pendency of these proceedings.

the requirements of Practice Book § 25-26 (g). She cited pending appellate proceedings, in which the substantial issues raised therein subsequently were resolved by our Supreme Court in its decision concluding that a visitation order similar to that issued in the present case constituted an impermissible delegation of judicial authority. The plaintiff, on the basis of *R. H.* v. *M. H.*, supra, 350 Conn. 432, is entitled to a hearing on her motion for modification. See also *Milot* v. *Milot*, 234 Conn. App. 473, 477–79, A.3d (2025).

The judgment denying the plaintiff's December, 2023 request for leave to file a motion for modification is reversed and the case is remanded for a hearing on the plaintiff's motion for modification.

In this opinion the other judges concurred.

PAUL DUSHAY ET AL. *v.* SOUTHERN CONNECTICUT HOCKEY LEAGUE, LLC, ET AL.
(AC 46788)

Alvord, Suarez and Clark, Js.

Syllabus

The plaintiff appealed from the trial court's judgment rendered after it granted the defendant's motion for summary judgment on his negligence claim relating to injuries he sustained during a hockey practice at an ice rink owned and operated by W Co. The plaintiff claimed, inter alia, that the court improperly concluded that the defendant did not owe him a duty of care to ensure that his hockey team's practices were safe. *Held*:

The trial court correctly determined that there was no genuine issue of material fact that the defendant did not owe the plaintiff a duty of care, as there was no evidence presented indicating that the defendant reasonably could have foreseen the plaintiff's injuries.

Contrary to the plaintiff's claim, there was no genuine issue of material fact as to whether W Co. was acting as the defendant's agent or apparent agent during the practice when the plaintiff was injured, as the plaintiff did not present any evidence beyond mere assertions and conclusory statements that W Co. was acting as the defendant's agent with respect to practices

and no reasonable juror could find actual or apparent agency under the circumstances of this case.

Argued February 3—officially released August 26, 2025

Procedural History

Action to recover damages for personal injuries sustained as a result of the defendants' alleged negligence, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where Connor Dushay was substituted as the plaintiff; thereafter, the court, *Saadi*, *J.*, granted the named defendant's motion for summary judgment and rendered judgment thereon, from which the substitute plaintiff appealed to this court; subsequently, the complaint was withdrawn as to the defendant Wonderland of Ice Associates, Inc. *Affirmed.*

Michael E. Skiber, for the appellant (substitute plaintiff).

Nathan S. Rosadini, for the appellee (named defendant).

Opinion

SUAREZ, J. The plaintiff Connor Dushay[1] appeals from the summary judgment rendered by the trial court in favor of the defendant Southern Connecticut Hockey League, LLC,[2] on his claim of negligence relating to injuries he sustained during a hockey practice. On

[1] Connor Dushay was a minor at the time this action was commenced. Accordingly, his parents, the plaintiffs Paul Dushay and Ruth Dushay (parents), commenced this action as next friends on his behalf. After he reached the age of majority, the trial court granted the parents' motion to substitute Connor Dushay as the plaintiff. For clarity, all references in this opinion to the plaintiff are to Connor Dushay.

[2] Wonderland of Ice Associates, Inc. (Wonderland), was also named as a defendant in this action. The plaintiff withdrew his claim against Wonderland, which is not participating in this appeal. Accordingly, we refer in this opinion to Southern Connecticut Hockey League, LLC, as the defendant and to Wonderland by name.

appeal, the plaintiff claims that (1) the court improperly concluded that the defendant did not owe him a duty of care, and (2) there was a genuine issue of material fact as to whether Wonderland of Ice Associates, Inc. (Wonderland), was acting as the defendant's agent or apparent agent, or with apparent authority, at the time of the incident in question. We affirm the judgment of the court.

The following facts, viewed in the light most favorable to the plaintiff, and procedural history are relevant to this appeal. The defendant is a for-profit hockey league that offers divisions for youth athletes. In exchange for a registration fee, the defendant organizes and schedules ice time with local ice rinks for league games. Between April and June, 2018, the defendant held a spring league for high school age players (2018 spring season). A flyer created by the defendant advertising the 2018 spring season stated that it would include a "[ten] game season plus playoffs." The flyer does not state that practices are included in the 2018 spring season. Games for the 2018 spring season took place at local ice rinks in southern Connecticut, including Wonderland, which posted the defendant's flyer on its premises. The defendant and Wonderland entered into a written agreement with respect to the usage of Wonderland's facilities for 2018 spring season games. When its ice rink is not otherwise rented, Wonderland offers "ice time" to local players.

The plaintiff registered as a participant for the 2018 spring season. The plaintiff's team, the Jesuits, played their home games at Wonderland during the 2018 spring season. Wonderland offered the Jesuits ice time, or "open ice," when its ice rink was not otherwise rented.

On May 7, 2018, a group of Jesuits players, including the plaintiff, was at Wonderland, making use of "open ice" time. No coaches or other officials were present.

While on the ice, one of the plaintiff's teammates began to bully the plaintiff. The bullying culminated in the plaintiff's teammate sticking his hockey stick inside one of the plaintiff's skates and pulling his feet out from under him. The plaintiff fell, fracturing the tibia and fibula of his right leg.

On April 16, 2020, the present action was commenced. The complaint alleged that the plaintiff's injuries were caused by the defendant's negligence for, inter alia, failing "to provide adequate supervision during practice sessions," "to ensure that practice sessions would be held in a safe manner," and "to otherwise exercise a reasonable degree of care with respect to practice sessions." The defendant filed an answer and advanced three special defenses, including that any injuries sustained by the plaintiff were caused by the negligence of other individuals or entities "over which [it] had no control." On November 14, 2022, the defendant filed a motion for summary judgment and an accompanying memorandum of law, arguing that it did not owe the plaintiff a duty of care when he was injured at the practice because the defendant's league did not include practices.

In support of its motion for summary judgment, the defendant provided the court with documentary exhibits, including excerpts of deposition testimony from the plaintiff and his father, Paul Dushay; an affidavit of Daniel DiLauro, the owner of the defendant; and the flyer created by the defendant advertising the 2018 spring season.[3] In his affidavit, DiLauro averred that

[3] We note that, in the appendices to their principal appellate briefs, the parties have included pages of certain deposition testimony that were not included in the exhibits before the trial court when it ruled on the defendant's motion for summary judgment. We decline to consider any evidence that was not included in the parties' written submissions before the trial court. See, e.g., *Fiorelli* v. *Gorsky*, 120 Conn. App. 298, 307 n.3, 991 A.2d 1105 (evidence that was not before trial court when it decided motion for summary judgment will not be considered on appeal), cert. denied, 298 Conn. 933, 10 A.3d 517 (2010).

the defendant does not "own, maintain, control, and/or possess any ice rinks or ice skating facilities"; "[n]o additional ice time or team practices were included in the registration and entry fee with the [defendant] for the 2018 spring league season"; "[a]t no point did the [defendant] ever schedule, offer, provide, and/or supervise any additional ice time or team practices for [the plaintiff] or his hockey team at Wonderland . . . [on] or around [the date of the plaintiff's injury]"; and "[a]ny additional team practices or 'stick-times' the plaintiff claims he participated in were at the discretion of the local rinks and were completely distinct and separate from the [defendant] and the [ten] game season." Moreover, the spring 2018 season flyer makes no mention of team practices.

On May 22, 2023, the plaintiff filed an opposition to the defendant's motion for summary judgment. In his memorandum of law, the plaintiff contended that he presented sufficient evidence from which a reasonable jury could find that the defendant owed him a duty of care as a matter of law or, alternatively, that Wonderland had acted as the defendant's agent or apparent agent. In support thereof, the plaintiff submitted as exhibits (1) excerpts of deposition testimony from the plaintiff; John Ferguson, a hockey director for Wonderland; John Dilley, a volunteer who organized the Jesuits team for the 2018 spring season; and DiLauro, (2) the agreement between the defendant and Wonderland concerning the 2018 spring season, and (3) certain email correspondence. Section 1.1 of the written agreement between the defendant and Wonderland provides that Wonderland will provide "[i]ce time, *for games* . . . per the submission by [the defendant] . . . . Additional ice [slots] may be scheduled by written submission, based on availability." (Emphasis added.)

On August 7, 2023, the court issued a memorandum of decision granting the defendant's motion for summary

judgment. The court noted that it was undisputed that the ice rink where the plaintiff was injured was owned and operated by Wonderland. The court rejected the plaintiff's arguments that the 2018 spring season included practices on the basis of the flyer and the written agreement, each of which only referenced games. The court determined that there was "no evidence in the record that [could] reasonably support a conclusion that the defendant . . . had the right to possess the rink at issue, [that it] had the ability to control the playing conditions, or that [it] had made any representations to that effect." As to the plaintiff's claim of negligent supervision, the court noted that there was no reasonable basis for the plaintiff's claim that the defendant was responsible for supervising hockey practices at Wonderland's ice rink. The court also rejected the plaintiff's agency argument, stating that there was "no evidence or allegation beyond the plaintiff's mere conclusory assertions of an agency relationship between [the defendant] and [Wonderland]," and, therefore, no reasonable fact finder could determine that an agency relationship existed as to the practice at which the plaintiff was injured. The court concluded that the defendant met its burden of "showing the nonexistence of any issue of material facts as to whether it owed a duty of care to the plaintiff." The court therefore rendered summary judgment in favor of the defendant. This appeal followed.

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

is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and [only on such a showing] the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . [I]ssue-finding, rather than issue-determination, is the key to the procedure. . . . [T]he trial court does not sit as the trier of fact when ruling on a motion for summary judgment. . . . [Its] function is not to decide issues of material fact, but rather to determine whether any such issues exist. . . . Our review of the decision to grant a motion for summary judgment is plenary. . . . We therefore must decide whether the court's conclusions were legally and logically correct and find support in the record." (Internal quotation marks omitted.) *Eldridge* v. *Hospital of Central Connecticut*, 230 Conn. App. 666, 670, 330 A.3d 604 (2025).

"[T]ypically [d]emonstrating a genuine issue requires a showing of evidentiary facts or substantial evidence outside the pleadings from which material facts alleged in the pleadings can be warrantably inferred. . . . Moreover, [t]o establish the existence of a material fact, it is not enough for the party opposing summary judgment merely to assert the existence of a disputed issue. . . . Such assertions are insufficient regardless of whether they are contained in a complaint or a brief. . . . Further, unadmitted allegations in the pleadings do not constitute proof of the existence of a genuine issue as to any material fact. . . . Mere statements of legal conclusions . . . and bald assertions, without more, are insufficient to raise a genuine issue of material

fact capable of defeating summary judgment." (Internal quotation marks omitted.) *Gough* v. *Saint Peter's Episcopal Church*, 143 Conn. App. 719, 728–29, 70 A.3d 190 (2013).

I

The plaintiff first claims that the court improperly concluded that the defendant did not owe him a duty of care. Specifically, he argues that the evidence in the record, viewed in the light most favorable to the plaintiff as the nonmoving party, raised a dispute as to whether the defendant owed the plaintiff a duty of care to ensure that the Jesuits' "team practices" during the 2018 spring season were safe.[4] We disagree.

"[A] cause of action in negligence is comprised of four elements: duty; breach of that duty; causation; and actual injury. . . . Duty is a legal conclusion about relationships between individuals, made after the fact,

[4] The plaintiff also asserts that the trial court applied an incorrect legal standard relating to the issue of the defendant's duty. Specifically, he argues that the court did not specifically analyze the foreseeability or the public policy prongs of a duty analysis. The defendant counters that, "[d]espite not saying the word 'foreseeable,' the court evaluated whether the [defendant] knew and/or had control over the hockey practice in question . . . [and] acknowledged that there was 'not a modicum of evidence in the record to serve as a reasonable basis for the plaintiff's claims that the [defendant] was responsible for supervising the hockey practices . . . .' " A fair reading of the court's memorandum of decision leads us to conclude that the court implicitly found that it was not foreseeable that an ordinary person in the defendant's position would have foreseen the harm that resulted in the present case. See, e.g., *Berman* v. *Berman*, 203 Conn. App. 300, 311, 248 A.3d 49 (2021) (fair reading of court's memorandum of decision revealed that court implicitly found substantial change in circumstances).

Moreover, on our plenary review, for the reasons explained subsequently in this opinion, we agree with the court's conclusions as a matter of law. See, e.g., *Jarmie* v. *Troncale*, 306 Conn. 578, 583–84, 50 A.3d 802 (2012) (concluding, after conducting common-law duty analysis, that trial court correctly concluded that plaintiff did not adequately allege common-law duty of care in case in which plaintiff asserted that trial court should have undertaken "particularized examination" of foreseeability and public policy prongs).

and imperative to a negligence cause of action. The nature of the duty, and the specific persons to whom it is owed, are determined by the circumstances surrounding the conduct of the individual." (Internal quotation marks omitted.) *Roux* v. *Coffey*, 230 Conn. App. 130, 139, 330 A.3d 253, cert. denied, 351 Conn. 915, 331 A.3d 1217 (2025).

"Issues of negligence are ordinarily not susceptible of summary adjudication but should be resolved by trial in the ordinary manner. . . . Nevertheless, [t]he issue of whether a defendant owes a duty of care is an appropriate matter for summary judgment because the question is one of law. . . . The existence of a duty is a question of law and only if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand. . . . [Our Supreme Court has] stated that the test for the existence of a legal duty of care entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for [his] negligent conduct should extend to the particular consequences or particular plaintiff in the case. . . . The first part of the test invokes the question of foreseeability, and the second part invokes the question of policy." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Streifel* v. *Bulkley*, 195 Conn. App. 294, 304–305, 224 A.3d 539, cert. denied, 335 Conn. 911, 228 A.3d 375 (2020).

"Although it has been said that no universal test for [duty] ever has been formulated . . . our threshold inquiry has always been whether the specific harm alleged by the plaintiff was foreseeable to the defendant. The ultimate test of the existence of the duty to

use care is found in the foreseeability that harm may result if it is not exercised. . . . By that is not meant that one charged with negligence must be found actually to have foreseen the probability of harm or that the particular injury which resulted was foreseeable, but the test is, would the ordinary [person] in the defendant's position, knowing what he knew or should have known, anticipate that harm of the general nature of that suffered was likely to result . . . ." (Internal quotation marks omitted.) *Jarmie* v. *Troncale*, 306 Conn. 578, 590, 50 A.3d 802 (2012).

The crux of the present appeal is whether the defendant owed a duty to the plaintiff. The dispositive issue, therefore, is whether the specific harm alleged by the plaintiff was foreseeable to the defendant. "The first inquiry in the two-pronged test for the existence of a legal duty requires determining whether an ordinary person in the defendant's position, knowing what the defendants knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result." *Gough* v. *Saint Peter's Episcopal Church*, supra, 143 Conn. App. 730; see also id., 729–30 ("[t]he ultimate test of the existence of the duty to use care is found in the foreseeability that harm may result if it is not exercised" (internal quotation marks omitted)).

With these principles in mind, we turn to the evidence presented to the trial court for consideration in ruling on the defendant's motion for summary judgment. A review of the undisputed evidence demonstrates that the defendant established that it did not possess or control Wonderland's ice rink, where the May 7, 2018 practice at issue took place, and that there was no evidence presented that the defendant was involved in or had any knowledge of the practice such that it reasonably could have foreseen the plaintiff's injuries.

The defendant offered evidence through DiLauro's affidavit that it contracts with local rinks to conduct

league games, that the defendant did not possess or control Wonderland's ice rink, the premises where the injury occurred, and that "[n]o additional ice time or team practices were included in the registration and entry fee . . . ." It is undisputed that the plaintiff's injuries did not occur during a game. The defendant also submitted the flyer that it created for the 2018 spring season that explicitly states that the registration fee includes a "[ten] game season plus playoffs." The burden then shifted to the plaintiff to dispute that evidence. As previously noted, in support of his opposition, the plaintiff submitted the agreement between Wonderland and the defendant, deposition testimony of various witnesses, and email correspondence in an attempt to establish that there was a genuine issue of material fact that the defendant owed a duty to the plaintiff to ensure that coaches supervised "team practice sessions . . . ."

After reviewing the parties' submissions, the court concluded that the defendant met its burden of showing the nonexistence of any material facts as to whether it owed a duty of care to the plaintiff. The court rejected the plaintiff's argument that there was a genuine issue of material fact as to whether the 2018 spring season included practices. Although the plaintiff pointed to an email that Paul Dushay had sent to Dilley in which he indicated that he believed that the defendant was responsible for supervising practices,[5] the court rejected that statement as "no more than a mere assertion of thought without a modicum of supporting evidence in the record . . . ."[6]

[5] The record indicates that Paul Dushay sent an email to Dilley after the incident in question, stating: "[L]ast week at an unsupervised uncoached practice involving horseplay, [the plaintiff] suffered a compound fracture to his leg requiring major surgery to repair. I thought this league had adult supervision, I guess I was wrong."

[6] We note that the plaintiff argued that the trial court improperly focused "on the ownership or physical control of the premises in question, without crediting the plaintiff's argument that the control of the premises was not determinative because the plaintiff alleged a claim of negligence and that [the defendant] had a duty [to supervise the practice] . . . ." This argument

Applying the governing legal principles to the facts of the present case, we conclude that the defendant did not owe the plaintiff a duty of care. Specifically, the plaintiff did not establish a genuine issue of material fact as to whether the defendant knew or should have known that the plaintiff was attending a May 7, 2018 practice at which he could have been injured. The evidence, instead, established unequivocally that the 2018 spring season included only games, and not practices. Without any evidence indicating that the defendant reasonably could have foreseen the harm that was caused, the plaintiff's argument that the defendant owed a duty to supervise the practice must fail.

The only evidence in the record that the plaintiff has pointed to that relates to practices is Paul Dushay's email and deposition testimony, which reflect his belief that the defendant's 2018 spring season included practices.[7] We agree with the trial court that this conclusory assertion was not enough to create a genuine issue of material fact with respect to this issue, in light of the clear evidence in the record revealing that practices were *not* included. See, e.g., *Bisson* v. *Wal-Mart Stores, Inc.*, 184 Conn. App. 619, 626, 195 A.3d 707 (2018) ("[m]ere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court [in support of a motion for summary judgment]" (internal quotation marks omitted)).

The plaintiff argues that the court did not review the evidence in the light most favorable to him and

ignores that the court explicitly analyzed the plaintiff's negligent supervision claim and stated that the plaintiff did not provide anything more than a mere assertion in support of his claim that the defendant "was responsible for supervising the hockey practices at [Wonderland's] ice rink."

[7] To the extent that Paul Dushay testified that he believed he saw "a poster at [Wonderland's ice rink] saying that [the defendant's league included] practices and games," there is no such poster in the record before this court.

"improperly made findings concerning disputed material facts." The plaintiff lists several facts that he claims created genuine issues of material fact as to the defendant's duty of care. In so doing, the plaintiff makes various conclusory assertions as to alleged factual issues, without referring to any evidence in support of those assertions. See, e.g., *Cazenovia Creek Funding I, LLC* v. *White Eagle Society of Brotherly Help, Inc., Group 315, Polish National Alliance*, 351 Conn. 722, 731, 333 A.3d 508 (2025) ("[i]t is not enough . . . for the opposing party merely to assert the existence of . . . a disputed issue" (internal quotation marks omitted)); *Agosto* v. *Premier Maintenance, Inc.*, 185 Conn. App. 559, 569–70, 197 A.3d 938 (2018) ("a party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment" (internal quotation marks omitted)).

The plaintiff first points to the undisputed fact that the defendant organized the 2018 spring season. That fact, however, does not create any dispute as to the *scope* of the 2018 spring season and whether it included practices. The plaintiff also states that his injuries "occurred in the course of [the defendant's] 2018 spring league season." Although it is true that the incident occurred on May 7, 2018, during the same time frame as the 2018 spring season, that does not necessarily bring the practice at which the plaintiff was injured within the scope of risk that the defendant should reasonably have foreseen. Likewise, the plaintiff asserts that his injuries occurred at a team practice, again without referring to any evidence that practices were included in the 2018 spring season.

The plaintiff also relies on the defendant's flyer advertising the 2018 spring season in support of his assertion that his injuries "occurred during one of the Jesuits' team practices at [Wonderland's ice rink], a rink featured and designated by [the defendant]" in the flyer.

The flyer, however, is clear: the 2018 spring season included a "ten game season plus playoffs." Nothing in the flyer states that practices were included in a team's registration fee. The flyer explicitly states that the registration fee is "$3,250 per team: [ten] games plus playoffs with [b]est of [t]hree [s]eries [f]inals." This evidence, therefore, supports, rather than contradicts, the court's conclusion that the 2018 spring season did not include practices.

The agreement between the defendant and Wonderland is equally clear. Wonderland agreed to provide ice time "for games" to the defendant for the 2018 spring season. Although the agreement states that additional ice slots "may be scheduled by written submission," no such additional written submissions are in the record. To the extent that the plaintiff argues that the agreement does not contain a provision specifically *excluding* practices, we decline to read additional language into the agreement. "In interpreting a contract courts cannot add new or different terms." (Internal quotation marks omitted.) *Brown* v. *Brown*, 199 Conn. App. 134, 150, 235 A.3d 555 (2020).

The plaintiff asserts that the facts that Wonderland collected fees for the 2018 spring season and made ice time available to players who were also participating in the league create genuine issues of material fact that "[the defendant] knew or should have known that [the] Jesuits team would have team practices at [Wonderland's ice rink]." The fact that Wonderland collected fees for the defendant may have been relevant to their relationship within the scope of the 2018 spring season, but, as stated previously, the 2018 spring season included only games. Furthermore, the plaintiff has not submitted any evidence indicating that the defendant was involved in any way with Wonderland's offering ice time to players when its rink was not otherwise reserved. Although the plaintiff refers to an email from

DiLauro that he claims demonstrates DiLauro's awareness that Dilley was involved with the Jesuits, our review of the email in question reveals that it, too, explicitly related to games. DiLauro's email stated: "I would appreciate if everyone who committed to the team can make an effort and attend the remaining *games* on your schedule." (Emphasis added.) As the court noted, Dilley testified in his deposition that he coordinated practices "on behalf of Wonderland . . . ."

Although the plaintiff asserts that he was entitled to have the issue of foreseeability decided by a jury, we conclude that reasonable minds could not differ as to whether the harm inflicted in the present case was foreseeable to the defendant. "Many harms are quite literally foreseeable . . . [but] liability attaches only for *reasonably* foreseeable consequences." (Emphasis in original; internal quotation marks omitted.) *Gough* v. *Saint Peter's Episcopal Church*, supra, 143 Conn. App. 731. Moreover, "[t]he fundamental purpose of summary judgment is preventing unnecessary trials. . . . If a plaintiff is unable to present sufficient evidence in support of an essential element of his cause of action at trial, he cannot prevail as a matter of law." (Internal quotation marks omitted.) *Hassiem* v. *O & G Industries, Inc.*, 197 Conn. App. 631, 636, 232 A.3d 1139, cert. denied, 335 Conn. 928, 235 A.3d 525 (2020). We therefore conclude that the harm that the plaintiff's teammate[8] intentionally inflicted on him was not reasonably foreseeable and that the defendant satisfied its burden of showing that it was "quite clear what the truth is, and that excludes any real doubt as to the existence of

[8] In light of our conclusion that the defendant did not owe a duty of care with respect to practices, we need not address the defendant's argument that it was not liable for the intentional conduct of the plaintiff's teammate in the absence of a "special relationship of custody or control . . . ." (Internal quotation marks omitted.)

any genuine issue of material fact." (Internal quotation marks omitted.) *Agosto* v. *Premier Maintenance*, supra, 185 Conn. App. 568–69. Accordingly, the court correctly determined that there was no genuine issue of material fact that the defendant did not owe the plaintiff a duty of care.[9]

II

The plaintiff next claims that there was a genuine issue of material fact as to whether Wonderland was acting as the defendant's agent or apparent agent[10] at the time of the practice in question.[11] Specifically, the plaintiff argues that there was evidence in the record on the basis of which a reasonable jury could find that Wonderland was acting as the defendant's agent with regard to the 2018 spring season and that the court failed to view the record in the light most favorable to him in determining that there was no such agency relationship with respect to practices. We disagree.

"Three elements are required to show the existence of an agency relationship: (1) a manifestation by the principal that the agent will act for him; (2) acceptance

[9] Because we determine that there is no duty of care on the basis of our conclusion that the harm was not reasonably foreseeable, it is not necessary to analyze the second prong of the test by undertaking a public policy analysis. See, e.g., *Gough* v. *Saint Peter's Episcopal Church*, supra, 143 Conn. App. 732 n.7.

[10] The plaintiff's appellate brief relies on the doctrines of apparent agency and apparent authority interchangeably. We note that these are distinct doctrines; see *Cefaratti* v. *Aranow*, 321 Conn. 593, 601 n.6, 141 A.3d 752 (2016); and that the plaintiff did not raise, and the trial court did not address, the issue of apparent authority. To the extent the plaintiff claims for the first time on appeal that there was a genuine issue of material fact with respect to whether Wonderland acted with the apparent authority of the defendant, we decline to address that unpreserved claim.

[11] We note that the plaintiff's complaint does not allege an agency relationship or a claim of vicarious liability, and the issue of agency was first raised in his opposition to the defendant's motion for summary judgment. Because the trial court addressed the plaintiff's argument, and the defendant has not argued that it is not properly before us, we address this claim.

by the agent of the undertaking; and (3) an understanding between the parties that the principal will be in control of the undertaking. . . . Although stated as a three part test, [our Supreme Court] has also acknowledged there are various factors to be considered in assessing whether [an agency] relationship exists [that] include: whether the alleged principal has the right to direct and control the work of the agent; whether the agent is engaged in a distinct occupation; whether the principal or the agent supplies the instrumentalities, tools, and the place of work; and the method of paying the agent. . . . In addition, [a]n essential ingredient of agency is that the agent is doing something at the behest and for the benefit of the principal." (Internal quotation marks omitted.) *Bank of America, N.A.* v. *Gonzalez*, 187 Conn. App. 511, 516–17, 202 A.3d 1092 (2019). Although we agree with the plaintiff that agency is ordinarily a question of fact, "when no reasonable fact finder could find that an agency relationship existed . . . then the issue of agency becomes a legal question." (Citation omitted.) *Yale University* v. *Out of the Box, LLC*, 118 Conn. App. 800, 807 n.5, 990 A.2d 869 (2010).

Apparent agency may be established in tort cases in one of two ways. "First, the plaintiff may establish apparent agency by proving that: (1) the principal held itself out as providing certain services; (2) the plaintiff selected the principal on the basis of its representations; and (3) the plaintiff relied on the principal to select the specific person who performed the services that resulted in the harm complained of by the plaintiff. Second, the plaintiff may establish apparent agency in a tort action . . . by establishing that: (1) the principal held the apparent agent or employee out to the public as possessing the authority to engage in the conduct at issue, or knowingly permitted the apparent agent or employee to act as having such authority; (2) the plaintiff knew of these acts by the principal, and actually

and reasonably believed that the agent or employee or apparent agent or employee possessed the necessary authority . . . and (3) the plaintiff detrimentally relied on the principal's acts, i.e., the plaintiff would not have dealt with the tortfeasor if the plaintiff had known that the tortfeasor was not the principal's agent or employee." (Citation omitted.) *Cefaratti* v. *Aranow*, 321 Conn. 593, 624–25, 141 A.3d 752 (2016). With respect to the second standard, our Supreme Court has "emphasize[d] that this standard is narrow, and . . . that it will be only in the rare tort action that the plaintiff will be able to establish the elements of apparent agency by proving detrimental reliance." Id., 625.

Our review of the evidence in the record reveals that there is no genuine issue of material fact that Wonderland was not acting as the defendant's agent or apparent agent with respect to practices. As we stated in part I of this opinion, the court correctly concluded that there was no genuine issue of material fact that practices were not included in the defendant's 2018 spring season. The only evidence in the record regarding practices reveals that these sessions were offered as "ice time" by Wonderland to players and/or their parents. Dilley testified in his deposition that Wonderland would "[d]irectly" reach out to him to schedule ice time if the Jesuits wanted to practice. Ferguson similarly testified that he would offer ice time to local players "[i]f [he] had it available." None of the witnesses affiliated with Wonderland or the defendant, therefore, provided any evidence that the defendant was involved in any way with or made aware of practice sessions. Upon our plenary review, we conclude that any evidence of a relationship between the defendant and Wonderland, including the written agreement that explicitly defined the scope of that relationship, applied only to 2018 spring season games. There is no evidence in the record

that the defendant manifested an intention that Wonderland would host practices on behalf of the defendant, as required to establish an agency relationship with respect to practices. Nor is there evidence that the defendant either held itself out as providing practices in connection with the 2018 spring season or held Wonderland out as having the authority to host such practices on the defendant's behalf, as required to establish apparent agency.

The plaintiff points to several pieces of evidence in the record in an attempt to establish a genuine issue of material fact as to actual or apparent agency. Specifically, he points to the agreement between the defendant and Wonderland; however, that agreement specifically references only games. See part I of this opinion. There also was evidence that Wonderland posted the defendant's flyer at its premises and that Ferguson, the hockey director at Wonderland, collected entry fees for the defendant's 2018 spring season. This evidence could have constituted evidence of an agency relationship for games within the scope of the 2018 spring season but not for unofficial practices that were not included therein. The plaintiff also points to the deposition testimony of Paul Dushay, in which he stated that he believed that the participation fee included practices and games, and that Ferguson was an agent of the defendant. The court concluded, however, and we agree, that the plaintiff did not present any evidence beyond mere assertions and conclusory statements that Wonderland was acting as an agent for the defendant with respect to practices. Such assertions do not supply the factual predicate necessary to create a genuine issue of material fact. See, e.g., *Bisson* v. *Wal-Mart Stores, Inc.*, supra, 184 Conn. App. 641 ("when opposing parties tell two different contradictory stories, one of which is contradicted by [the] record so that no reasonable jury

could believe it, [the] court should not adopt that version of [the] facts"); *Yancey* v. *Connecticut Life & Casualty Ins. Co.*, 68 Conn. App. 556, 561, 791 A.2d 719 (2002) (vague generalizations may not supply factual predicate to raise genuine issue of material fact). The plaintiff offered no evidence that the defendant held out Wonderland as having authority to hold official league "practices," particularly when such practices were not included in the 2018 spring season. See, e.g., *Hallas* v. *Boehmke & Dobosz, Inc.*, 239 Conn. 658, 674–75, 686 A.2d 491 (1997) (concluding that no reasonable juror could find agency relationship when there was no evidence that alleged principal held out agent to plaintiffs as having authority to bind it). To the extent that the plaintiff subjectively believed that an agency relationship existed, the belief was not reasonable based on the other evidence presented.[12] See 1 Restatement (Third), Agency § 2.05, comment (c), p. 146 (2006) ("[t]he operative question is whether a reasonable person in the position of the third party would believe such an agent, as the actor appears to be, to have authority to do a particular act").

The plaintiff also argues that the practices were conducted "for the benefit of [the defendant's] 2018 spring league team, the Jesuits team, and for the benefit of the league, which also is relevant to the question of agency." It is true that "[a]n essential ingredient of agency is that the agent is doing something at the behest

[12] We also reject the plaintiff's arguments that the defendant's flyer and the agreement between Wonderland and the defendant "did not expressly advise parents or interested youth that 2018 spring league team practices were excluded." These arguments essentially ask us to impose an affirmative duty on the defendant, by mere implication, for an injury that occurred outside the scope of the defendant's relationship with the plaintiff. We decline to do so. See 2 Restatement (Third), Torts § 40, p. 39 (2012) ("[a]n actor in a special relationship with another owes the other a duty of reasonable care with regard to risks that arise *within the scope of the relationship*" (emphasis added)).

and for the benefit of the principal." (Internal quotation marks omitted.) *Wesley* v. *Schaller Subaru, Inc.*, 277 Conn. 526, 543, 893 A.2d 389 (2006). In the present case, however, there is no evidence that the practices were scheduled or held at the behest of, or for the benefit of, the defendant. See, e.g., *Beckenstein* v. *Potter & Carrier, Inc.*, 191 Conn. 120, 138, 464 A.2d 6 (1983) (trial court correctly determined that there was insufficient evidence to establish agency relationship when there was no evidence that agent was working for benefit of principal). Ferguson testified that Wonderland offered ice time to local players free of charge. Only Wonderland was involved in the scheduling of open ice time for practices. To the extent that the plaintiff argues that the practices, apart from any pecuniary benefit, would enhance the skills of the 2018 spring season participants, thereby benefitting the defendant, such an indirect benefit is insufficient to hold the defendant liable. To conclude otherwise could lead to absurd results. For example, under the plaintiff's conception, a pickup practice held at a local park by team members would be sufficient to hold a sports league liable for injuries at the practice, even if the practice was not part of official league activities, merely because the practice improved the players' skills and, as a result, enhanced the level of play during games.

Therefore, we conclude that no reasonable juror could find actual or apparent agency in these circumstances. Accordingly, we reject the plaintiff's second claim.

The judgment is affirmed.

In this opinion the other judges concurred.

ROGER B. *v.* COMMISSIONER OF CORRECTION*
(AC 47136)

Elgo, Moll and Lavine, Js.

Syllabus

The petitioner, who had been convicted of various crimes as a result of incidents that occurred between 1995 and 2000, appealed, on the granting of certification, from the habeas court's judgment denying his second petition for a writ of habeas corpus. He claimed, inter alia, that his criminal trial counsel, C, and his counsel in two previous habeas trials, R and B, had rendered ineffective assistance by failing to raise a statute of limitations defense regarding the eighteen month delay between the issuance of the warrant for the petitioner's arrest in 2005 and the execution of the warrant in 2007. *Held*:

The habeas court properly concluded that the petitioner was required to present new evidence in his third habeas trial, which B had not previously introduced, to demonstrate that C and B had rendered ineffective assistance, as the petitioner's claim that the court improperly applied the law of the case doctrine was based on his misunderstanding of that doctrine.

The habeas court incorrectly determined that the petitioner failed to establish that C and B had rendered ineffective assistance of counsel, as the new evidence presented at the third habeas trial established that the police had made no attempts at all to serve him with the arrest warrant, and an expert's testimony laid bare C's misunderstanding of the required showing of prejudice under *State* v. *Crawford* (202 Conn. 443) that was the basis of C's failure to file a motion to dismiss the charges against the petitioner.

The petitioner satisfied his burden to establish that he was prejudiced under *Strickland* v. *Washington* (466 U.S. 668) as a result of C's failure to rely on the delay in the execution of the arrest warrant, and, in conjunction with other evidence adduced at the habeas trial, B's failure to introduce into evidence a blank arrest warrant service record form that had been in the possession of the police, which provided a devastating counterpoint that would have undermined the credibility of the state's vague and unsupported assertions at the criminal trial regarding its efforts to execute the warrant, left no question that the police did not exercise due diligence in executing

* In accordance with our policy of protecting the privacy interests of the victims of sexual abuse and the crime of risk of injury to a child, we decline to use the petitioner's full name or to identify the victims or others through whom the victims' identities may be ascertained. See General Statutes § 54-86e.

the warrant without unreasonable delay; accordingly, the habeas court's judgment was reversed and the case was remanded with direction to grant the writ of habeas corpus, to vacate the petitioner's conviction and to order a new trial.

Argued February 19—officially released August 26, 2025

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the petition was withdrawn in part; thereafter, the case was tried to the court, *Bhatt*, *J.*; judgment denying the petition, from which the petitioner, on the granting of certification, appealed to this court. *Reversed*; *judgment directed.*

Jeremy A. Kemp, assigned counsel, with whom, on the brief, was *Joseph Patten Brown III*, assigned counsel, for the appellant (petitioner).

Rebecca R. Zeuschner, deputy assistant state's attorney, with whom, on the brief, were *David R. Shannon*, state's attorney, and *Elizabeth M. Moseley*, senior assistant state's attorney, for the appellee (respondent).

Opinion

MOLL, J. The petitioner, Roger B., appeals, following the granting of his petition for certification to appeal, from the habeas court's judgment denying his amended petition for a writ of habeas corpus. On appeal, he claims that the court (1) incorrectly applied the law of the case doctrine to conclude that it was bound by this court's most recent decision in this matter, *Roger B.* v. *Commissioner of Correction*, 190 Conn. App. 817, 212 A.3d 693, cert. denied, 333 Conn. 929, 218 A.3d 70 (2019), and cert. denied, 333 Conn. 929, 218 A.3d 71 (2019) (*Roger B. II*), and (2) improperly denied his habeas petition, which was predicated on the alleged ineffective assistance of his prior habeas counsel and trial counsel. We agree with the petitioner's second claim

and, accordingly, reverse the judgment of the habeas court.

Because the present case has a somewhat convoluted procedural history, we first provide a broad outline of the postconviction proceedings. After the petitioner's conviction was affirmed by our Supreme Court on appeal, on August 21, 2008, he filed a petition for a writ of habeas corpus (first petition) alleging that his trial counsel, Attorney Christopher Cosgrove, had rendered ineffective assistance of counsel. The denial of that petition was reversed in part by this court and remanded for a second habeas trial. See *Roger B.* v. *Commissioner of Correction*, 157 Conn. App. 265, 267, 116 A.3d 343 (2015) (*Roger B. I*). Following the second habeas trial, this court affirmed the denial of the first petition. See *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 817. On December 12, 2019, the petitioner filed a second petition for habeas corpus. The operative petition is his second amended petition filed on January 5, 2023 (second amended petition). In the second amended petition, he alleges ineffective assistance of counsel as to Cosgrove and both of his prior habeas counsel, Attorney Roger L. Crossland and Attorney Bruce McIntyre.

On direct appeal, our Supreme Court set forth the following relevant background.[1] Between 1995 and 2000, the petitioner lived with his girlfriend and her three children. *State* v. *Roger B.*, 297 Conn. 607, 609, 999 A.2d 752 (2010). During that time period, the petitioner sexually assaulted two of the children on numerous occasions. Id., 610. In February, 2000, the two victims were placed in the custody of the Department of Children and Families (department) for reasons unrelated

[1] We confine our summary of the facts to those necessary to provide context for the issue presented in this appeal. For a full recitation of the facts that the jury reasonably could have found, see *State* v. *Roger B.*, 297 Conn. 607, 609–10, 999 A.2d 752 (2010).

to the abuse. Id. Sometime in the next few months, both victims independently reported the abuse to their foster mother, who reported the allegations to the department, which then reported the allegations to the New Milford Police Department. Id., 610, 612.

"On July 17, 2000, Detective James M. Mullin watched a forensic interview of the [victims]. . . . On August 31, 2000, the petitioner gave Mullin a statement and permission for the police to search his apartment and storage unit. . . . The petitioner left Connecticut approximately five months after he gave the statement to Mullin. . . .

"The police completed their investigation in 2000 and discovered no additional evidence between 2000 and 2005. . . . On July 6, 2005, the police obtained a warrant to arrest the petitioner." (Citations omitted; emphasis omitted.) *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 823. As the first habeas court recognized, because "the sexual abuse was 'reported' by the victims to the police on July 17, 2000, when the police viewed the forensic interviews of the victims," the applicable limitations period of five years; see footnote 5 of this opinion; commenced on that date. See, e.g., *State* v. *George J.*, 280 Conn. 551, 566, 910 A.2d 931 (2006) ("the limitations period commences only when the actual victim notifies the specified authorities"), cert. denied, 549 U.S. 1326, 127 S. Ct. 1919, 167 L. Ed. 2d 573 (2007). Accordingly, the warrant was issued weeks before the expiration of the limitations period.[2]

On July 7, 2005, one day after the warrant was issued, the police posted a wanted persons notice in the

[2] In his direct appeal, the petitioner claimed that the almost five year delay in issuing the warrant violated his constitutional right to due process pursuant to the fourteenth amendment to the United States constitution. Our Supreme Court rejected that claim on the ground that the record was inadequate for review "because it contain[ed] no evidence demonstrating that the [petitioner] suffered actual prejudice as a result of the delay." *State* v. *Roger B.*, supra, 297 Conn. 612.

National Crime Information Center (NCIC) database. That notice specified that the warrant was nonextraditable and identified Mullin as the contact person regarding extradition. On that same day, the police received notice through the NCIC database that the petitioner was living at 120 Berry Street in Greenfield, Indiana.[3] Despite that notice, the warrant was not made extraditable until sixteen months later, in November, 2006, when Attorney David S. Shepack, then the state's attorney for the judicial district of Litchfield, authorized extradition from any location within the continental United States. The habeas court found that "[t]he importance of making the warrant extraditable is that if an individual who is sought is located in another state, where Connecticut police do not have jurisdiction, Connecticut can receive cooperation of local law enforcement, take that individual into custody, and begin extradition proceedings to Connecticut."

Mullin testified at the petitioner's criminal trial and two of the habeas trials regarding the efforts undertaken by the New Milford police to execute the warrant. At the criminal trial, when asked why the warrant was not issued until almost five years after the petitioner's crimes had been reported, Mullin responded, "[b]ecause that's when it was drawn up." He testified that he first learned, at some unspecified time, from motor vehicle records that the petitioner had relocated to Indiana. He acknowledged that the police also learned that the petitioner had obtained a driver's license in Indiana under his name and that he used his Social Security number in connection with employment. Mullin further testified that the police "eventually" identified an address for the petitioner and "had some marshals go out there to see if he was out there, but he had left

[3] The petitioner relocated within Indiana on several occasions before eventually moving to Alabama. *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 823–24.

already." The police finally located the petitioner in Alabama, Mullin testified, through his Social Security number and employment records. When asked why he had not contacted the petitioner's family members to learn of his location, Mullin testified that he wanted to avoid the possibility that they might alert the petitioner about the warrant.

During the first habeas trial, Mullin admitted that he first learned of the petitioner's location in Indiana when the New Milford police received the NCIC notice with that information one day after the warrant was issued. He produced several documents pertaining to his attempts to locate and arrest the petitioner. "These documents were a letter from . . . Shepack dated November 8, 2006, three printouts dated December 11, 2006, and a printout dated January 24, 2007. There were no documents in his file recording any efforts made between July 6, 2005, and November 8, 2006." Mullin could not recall whether he had gone to the petitioner's last known location in Connecticut to attempt to serve the warrant. He stated that, at some point, members of the United States Marshals Service went to the petitioner's address in Indiana, then informed him that the petitioner was not at that location. He could not recall the names of the marshals who went to the petitioner's Indiana residence, did not provide the names of the marshals with whom he communicated, and acknowledged that he had no documentation of those communications or of the alleged attempt to serve the warrant on the petitioner in Indiana, but stated that it was not unusual for documentation of such communications to be lacking. Mullin testified again at the third habeas trial. With the exception of an inability to recollect many of the relevant events given the passage of time, much of his testimony largely mirrored that provided in the first habeas trial.

Although it is unclear from the record when the petitioner relocated to Alabama, law enforcement ultimately found him living there. On December 11, 2006, the police department of Huntsville, Alabama, posted multiple notices on the national law enforcement telecommunications service, first inquiring whether the warrant for the petitioner's arrest was still active and whether Connecticut would extradite, then informing the New Milford police that the petitioner had been arrested as a fugitive from justice. On January 24, 2007, the petitioner was transported to New York, where he was served with the arrest warrant and taken into custody.

"The petitioner was charged in a substitute information with offenses that occurred on various dates between October 1, 1995, and February 1, 2000. A jury found the petitioner guilty of one count of sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (2), two counts of sexual assault in the fourth degree in violation of General Statutes § 53a-73a (a) (1) (A), and three counts of risk of injury to a child in violation of General Statutes § 53-21 (2). In April, 2008, the trial court, *Sheldon*, *J.*, sentenced the petitioner to a total effective term of twenty-nine years in prison, execution suspended after twenty-three years, and thirty years of probation. . . . The petitioner's conviction was affirmed on direct appeal." (Citation omitted.) *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 824.

Although the petitioner's trial counsel, Cosgrove, was aware of the availability of a statute of limitations claim, he did not file a motion to dismiss or assert an affirmative defense on the basis of the delays in both issuing and executing the arrest warrant because "he did not believe that there was a basis for doing so." Specifically, Cosgrove "determined that the delays did not hinder the defense in any way, in that no new information

arose during the period, no witnesses went missing, and the witnesses were able to recall events." He arrived at that conclusion after conducting his own research, then consulting with appellate lawyers for the Office of the Chief Public Defender.

At the trial on his first habeas petition, during which he was represented by Crossland, the petitioner claimed that Cosgrove had rendered ineffective assistance by failing to file a motion to dismiss or to assert an affirmative defense predicated on the applicable statute of limitations.[4] *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 825–26. The habeas court denied the petition. In its memorandum of decision, the court first noted that the arrest warrant had been issued approximately two weeks prior to the expiration of the five year limitations period set forth in General Statutes (Rev. to 1999) § 54-193a.[5] In its analysis of the petitioner's ineffective assistance claim, although the court found that the warrant was executed on January 24, 2007, which indisputably is beyond the five year limitations period, it did not consider whether the delay in executing the warrant was reasonable. The court simply stated that Cosgrove had not performed deficiently by failing to file a motion to dismiss because he "did the math and determined that the warrant was executed within the applicable statute of limitations period."

[4] In his first petition, the petitioner alleged additional grounds in support of his claim of ineffective assistance of counsel and raised two additional claims: an actual innocence claim and the due process claim that our Supreme Court had rejected in the direct appeal. See footnote 2 of this opinion.

[5] General Statutes (Rev. to 1999) § 54-193a, which has subsequently been repealed, was the applicable statute of limitations at the time that the petitioner committed the offenses and provided in relevant part: "Notwithstanding the provisions of section 54-193, no person may be prosecuted for any offense involving sexual abuse, sexual exploitation or sexual assault of a minor except within two years from the date the victim attains the age of majority or within five years from the date the victim notifies any police officer or state's attorney acting in his official capacity of the commission of the offense . . . ."

On appeal, this court reversed in part the judgment of the habeas court. See *Roger B.* v. *Commissioner of Correction*, supra, 157 Conn. App. 289. Specifically, this court concluded that, in rejecting the petitioner's claim that Cosgrove was ineffective in failing to raise a statute of limitations defense, the habeas court improperly limited its discussion to the facts pertaining to the issuance of the warrant within the limitations period and failed to consider whether the delay in executing the warrant was reasonable. Id., 278–79. Accordingly, this court remanded the case to the habeas court for a second trial on the petition, limited to the issue of whether Cosgrove had rendered ineffective assistance by failing to raise a statute of limitations defense based on the state's delay in executing the warrant. See id., 279–80. This court explained that, on remand, if the petitioner met his initial burden to prove that he was not elusive and was available and readily approachable, "the burden would shift, and the subsequent evidentiary analysis would include consideration of whether the respondent [the Commissioner of Correction] would have succeeded in proving that the delay was not unreasonable. This analysis would involve [an] examination of the police actions leading up to the execution of the warrant." Id., 279.

The petitioner was represented at the second trial on the first petition by McIntyre, who called no witnesses and introduced no new evidence, instead relying solely on the transcripts and evidence from the first habeas trial. A single witness testified at trial, Cosgrove, who was called by the respondent. The habeas court again denied the petition. The court relied on former General Statutes § 54-193 (d), now General Statutes § 54-193 (e), which provided in relevant part: "If the person against whom an . . . information . . . for any of said offenses is brought has fled from and resided out of this state during the period so limited, it may be

brought against such person at any time within such period, during which such person resides in this state . . . .'' The petitioner's relocation outside the state of Connecticut, the court reasoned, had tolled the statute of limitations, thus rendering the delay in the execution of the arrest warrant irrelevant because both the issuance and service of the warrant had occurred within the limitations period. The only claim that Cosgrove could have raised on the petitioner's behalf at trial, the court explained, was that the warrant was stale in violation of his right to due process, a claim that would have required him to prove that the delay was unjustifiable because it resulted in actual prejudice to the petitioner. See footnote 4 of this opinion. The habeas court concluded that Cosgrove had correctly determined that this was a showing he could not make.

This court affirmed the judgment of the habeas court. See *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 853. During the pendency of that appeal, this court had ordered sua sponte the habeas court to make additional factual findings on the basis of the existing record related to the petitioner's statute of limitations defense, including whether the petitioner ''was not elusive, was available and was readily approachable, and if so, whether the delay in executing the warrant was unreasonable.'' Id., 830.

In its articulation issued in response to this court's order, the habeas court again theorized that the statute of limitations had been tolled pursuant to § 54-193 (d) when the petitioner relocated outside Connecticut. Given that principle, the court reasoned, § 54-193 (d) represented a legislative determination that relocation outside Connecticut constitutes elusive behavior. Even in the absence of that legal starting point, however, the court explained, it independently had arrived at the same finding by ''employing the common meanings of [the terms] elusive, available, and approachable . . . .''

Relying on the petitioner's relocation to Indiana within months after having been questioned by the police, without leaving a forwarding address, the court determined that the petitioner had failed to sustain his burden to prove that he was not elusive and was available and readily approachable.

This court concluded that the habeas court improperly determined that (1) § 54-193 (d) had tolled the statute of limitations, and (2) the petitioner had failed to prove that he was not elusive and was available and readily approachable. See *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 840. Section 54-193 (d), this court explained, applies only to toll the statute of limitations prior to the issuance of a warrant. Id., 841. Because the warrant for the petitioner's arrest had issued within the limitations period, § 54-193 (d) was inapplicable to the present case. Id. The inquiry as to whether the petitioner was elusive, this court stated, pertained to whether the delay in *executing* the warrant was reasonable. See id. In arriving at its determination that the petitioner had failed to show that he was not elusive, however, the habeas court improperly focused almost exclusively on his movements and actions prior to the issuance of the warrant and made no factual findings regarding the petitioner's postissuance actions, except to find that the petitioner had moved from Indiana to Alabama.[6] Id., 842.

This court also concluded, however, that the habeas court properly determined that the petitioner had not met his burden to prove both prongs of the test set forth in *Strickland* v. *Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), to establish ineffective assistance of counsel. To prevail under

[6] The state has not challenged in this appeal the habeas court's determination that this court's decision in *Roger B. II* established that the petitioner was not elusive.

Strickland, this court explained, the petitioner had to prove both that Cosgrove's failure to raise the statute of limitations was objectively unreasonable and that the petitioner was prejudiced by that failure because there was a reasonable probability that the state would have been unable to prove that the delay in executing the warrant was reasonable. See *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 842–46; see also *State* v. *Crawford*, 202 Conn. 443, 450–51, 521 A.2d 1034 (1987) (setting forth principles governing claim challenging prosecution based on execution of warrant outside statute of limitations); *State* v. *Woodtke*, 130 Conn. App. 734, 741–42, 25 A.3d 699 (2011) (applying burden shifting test to evaluate defendant's statute of limitations claim pursuant to *Crawford*). In concluding that the petitioner had failed to demonstrate that Cosgrove's performance was deficient, this court observed that, in addition to conducting his own research, Cosgrove had consulted appellate lawyers for the Office of the Chief Public Defender, and that the petitioner had not presented any "expert testimony to contradict the opinions of Cosgrove and the appellate lawyers with whom he consulted." *Roger B.* v. *Commissioner of Correction*, supra, 852. As to prejudice, this court concluded that the petitioner had "failed to demonstrate [that there was a reasonable probability] that the state would not have been able to prove that the delay in the execution of the warrant was reasonable." Id., 853.

The petitioner subsequently filed his second petition for a writ of habeas corpus. In his second amended petition, he claims that Cosgrove rendered ineffective assistance by failing to raise the statute of limitations at trial and that Crossland and McIntyre also rendered ineffective assistance as a result of their various alleged failures in litigating this claim in support of the first habeas petition.[7] At the third habeas trial, the petitioner

[7] The second amended petition also alleged in a separate count that, because the state had failed to execute the warrant for the petitioner's arrest

called Mullin, Shepack, Crossland, Attorney Deren Manasevit, who represented the petitioner in both of his prior habeas appeals, and Attorney Frank Riccio, who offered expert testimony. In addition to documentary evidence introduced in the first two habeas trials, the petitioner introduced three new pieces of evidence, which we discuss in detail herein.

In its memorandum of decision, the habeas court observed that, because Crossland's representation of the petitioner in the first habeas trial had resulted in the granting of a new trial on the first petition; see *Roger B.* v. *Commissioner of Correction*, supra, 157 Conn. App. 289; the court was not required to consider whether Crossland had rendered ineffective assistance. That is, to prevail on the second petition, the petitioner was required to prove only that McIntyre and Cosgrove had rendered ineffective assistance. In considering whether the petitioner had made that showing, the habeas court took as its starting point this court's conclusions in *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 817, as to the first petition, namely, that the petitioner had satisfied his burden to prove that he was not elusive and was available and readily approachable, but that he had failed to prove both prongs of *Strickland*. Given this court's holding in *Roger B. II* affirming the denial of the first petition, the habeas court explained that, for the petitioner to prevail on the second petition, he was required to produce new evidence at the third trial, which, if it had been produced earlier during the habeas proceedings, would have demonstrated that Cosgrove's failure at the criminal trial to raise the state's delay in executing the

with due diligence, his conviction, sentence, and incarceration were obtained in violation of his right to due process pursuant to the fifth and fourteenth amendments to the United States constitution, and article first, §§ 8 and 9, of the Connecticut constitution. This count was the subject of a motion to dismiss and subsequently was withdrawn.

warrant was objectively unreasonable, and that, if Cosgrove had raised the statute of limitations, there was a reasonable probability that the state would have been unable to prove that the delay was reasonable. The court denied the petition based on its conclusion that the petitioner had failed to demonstrate that Cosgrove rendered ineffective assistance of counsel. The petitioner then filed a petition for certification to appeal, which the court granted, and this appeal followed.

During the pendency of this appeal, this court remanded the case to the habeas court "to resolve the following questions: (1) whether the habeas court credited the testimony of . . . Mullin that only local attempts to serve an arrest warrant would be logged in the warrant service record, which was introduced in the third habeas trial as exhibit 30; and (2) whether . . . McIntyre's decision not to introduce the warrant service record into evidence in the second habeas trial was objectively reasonable, particularly considering the determination of the third habeas court as set forth in its October 4, 2023 memorandum of decision that, if McIntyre had introduced it into evidence, 'there is a reasonable probability that, combined with all the other evidence, he would have been able to show that the state would not have been able to prove that the delay was reasonable.' " We discuss the habeas court's findings in response to this court's order in part II of this opinion. Additional facts and procedural history will be set forth as necessary.

I

The petitioner first claims that the habeas court improperly concluded that, unless he produced new evidence that, had it been produced earlier in the habeas proceedings, would have demonstrated that Cosgrove rendered ineffective assistance, this court's conclusions in *Roger B.* v. *Commissioner of Correction*, supra, 190

Conn. App. 817, required that the petition be denied. The petitioner contends that, in doing so, the habeas court improperly applied the law of the case doctrine. We disagree.

The petitioner's claim reflects a misunderstanding of the law of the case doctrine, the concept of precedential authority, the required showing in a "habeas on a habeas" action, and the decision of the habeas court. Although a trial court decision "does not establish binding precedent" (internal quotation marks omitted); *In re Emma F.*, 315 Conn. 414, 432, 107 A.3d 947 (2015); "[t]he law of the case doctrine expresses the practice of judges generally to refuse to reopen what [already] has been decided . . . . New pleadings intended to raise again a question of law which has been already presented on the record and determined adversely to the pleader are not to be favored. . . . [When] a matter has previously been ruled [on] interlocutorily, the court . . . may treat that [prior] decision as the law of the case, if it is of the opinion that the issue was correctly decided, in the absence of some new or overriding circumstance." (Internal quotation marks omitted.) *Glastonbury* v. *Sakon*, 172 Conn. App. 646, 657, 161 A.3d 657 (2017).

In the present case, the habeas court did not consider the effect of a previous ruling of a trial court but, rather, this court's decision in *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 817, affirming the final judgment of the second habeas court denying the petitioner's first petition for a writ of habeas corpus. Under these circumstances, the law of the case doctrine simply does not apply, and there is no indication in the decision of the habeas court that it relied on that doctrine. Instead, the court relied on a principle of black letter law, reasoning that, unless the present case is distinguishable from *Roger B. II*, that decision constitutes controlling precedent that the habeas court was

required to follow. See, e.g., *Ferrigno* v. *Cromwell Development Associates*, 44 Conn. App. 439, 443, 689 A.2d 1150 (1997) ("[i]t is axiomatic that [a] decision of [an appellate court] is a controlling precedent until overruled or qualified" (internal quotation marks omitted)), aff'd, 244 Conn. 189, 708 A.2d 1371 (1998). The court's statement that the petitioner was required to produce new evidence in order for the court to depart from the holding of *Roger B. II* is properly grounded on that principle.

The habeas court's conclusion also finds support in the legal principles governing the court's consideration of a "habeas on a habeas," the term commonly used to refer to a petition for a writ of habeas corpus that raises a claim of ineffective assistance of prior habeas counsel. See, e.g., *Sinchak* v. *Commissioner of Correction*, 126 Conn. App. 684, 686, 14 A.3d 343 (2011). In *Lozada* v. *Warden*, 223 Conn. 834, 842–43, 613 A.2d 818 (1992), "our Supreme Court established that habeas corpus is an appropriate remedy for the ineffective assistance of appointed habeas counsel, authorizing what is commonly known as a habeas on a habeas, namely, a second petition for a writ of habeas corpus . . . challenging the performance of counsel in litigating an initial petition for a writ of habeas corpus . . . [that] had claimed ineffective assistance of counsel at the petitioner's underlying criminal trial or on direct appeal. . . . [T]he court in *Lozada* . . . emphasized that a petitioner asserting a habeas on a habeas faces the herculean task . . . of proving in accordance with *Strickland* v. *Washington*, [supra, 466 U.S. 687], both (1) that his appointed habeas counsel was ineffective, and (2) that his trial counsel was ineffective." (Internal quotation marks omitted.) *Lebron* v. *Commissioner of Correction*, 204 Conn. App. 44, 50, 250 A.3d 44, cert. denied, 336 Conn. 948, 250 A.3d 695 (2021).

Accordingly, to prevail on his second habeas petition, the petitioner was required to demonstrate not only that Cosgrove had rendered ineffective assistance, but also that McIntyre's failure to make that required showing in the second trial on the first petition constituted ineffective assistance. The habeas court properly concluded that, to meet his burden, the petitioner would have to present new evidence, not introduced by McIntyre, that demonstrated that both Cosgrove and McIntyre had rendered ineffective assistance of counsel.

II

The petitioner next claims that the habeas court improperly concluded that he failed to prove that Cosgrove and McIntyre had rendered ineffective assistance of counsel. He points out that, because the habeas court's analysis began with this court's conclusion in *Roger B. II* that he had established that he was not elusive and was available and readily approachable, the only remaining issues were whether he also had satisfied his burden to prove that (1) there was a reasonable probability that, if Cosgrove had relied on *Crawford* at trial, the state would have been unable to demonstrate that the delay in executing the warrant was reasonable, (2) Cosgrove's failure to raise *Crawford* during the criminal trial constituted deficient performance, and (3) McIntyre's failure to make this showing in the second trial on the first petition constituted ineffective assistance of counsel. The petitioner argues that the habeas court improperly concluded that he had failed to meet his burden and relies on three new pieces of documentary evidence introduced during the third habeas trial, as well as testimony from two new witnesses, Shepack and Riccio. That new evidence, he contends, demonstrates that the state would have been unable to prove that the delay in executing the warrant

was reasonable, thus proving both deficient performance and prejudice as to both Cosgrove and McIntyre pursuant to *Strickland*.

As we explained in part I of this opinion, given this court's decision in *Roger B. II*, we conclude that the habeas court properly began with the proposition that the petitioner had established that he was not elusive and was available and readily approachable. We also conclude that the findings of the habeas court regarding the new evidence and testimony introduced by the petitioner establish that both McIntyre and Cosgrove had rendered ineffective assistance of counsel. See *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 844 ("[i]n a habeas appeal, this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous, but our review of whether the facts as found by the habeas court constituted a violation of the petitioner's constitutional right to effective assistance of counsel is plenary" (internal quotation marks omitted)).

A

We begin by reviewing the relevant legal principles. The standard of review in a habeas corpus proceeding challenging the effective assistance of trial counsel is well settled. "The habeas judge, as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given to their testimony. . . . [T]his court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous . . . . The application of the habeas court's factual findings to the pertinent legal standard, however, presents a mixed question of law and fact, which is subject to plenary review." (Internal quotation marks omitted.) *Lebron* v. *Commissioner of Correction*, supra, 204 Conn. App. 51.

"To succeed on a claim of ineffective assistance of counsel, a habeas petitioner must satisfy the two-pronged test articulated in *Strickland* v. *Washington*,

[supra, 466 U.S. 687]. *Strickland* requires that a petitioner satisfy both a performance prong and a prejudice prong. To satisfy the performance prong, a claimant must demonstrate that counsel made errors so serious that counsel was not functioning as the counsel guaranteed . . . by the [s]ixth [a]mendment." (Internal quotation marks omitted.) *Tierinni* v. *Commissioner of Correction*, 230 Conn. App. 318, 328–29, 329 A.3d 969, cert. denied, 351 Conn. 917, 332 A.3d 293 (2025). "[T]here is a strong presumption in favor of concluding that counsel's performance was competent. . . . In order to overcome that presumption, *the petitioner bears the burden* of proving that counsel's representation fell below an objective standard of reasonableness. . . . [T]he performance inquiry must be whether counsel's assistance was reasonable *considering all the circumstances*. . . . Thus, the question of whether counsel's behavior was objectively unreasonable is not only one on which the petitioner bears the burden of proof; its resolution turns on a fact intensive inquiry." (Emphasis in original; internal quotation marks omitted.) *Banks* v. *Commissioner of Correction*, 225 Conn. App. 234, 246–47, 314 A.3d 1052, cert. denied, 349 Conn. 922, 321 A.3d 1130 (2024).

"With respect to the prejudice component of the *Strickland* test, the petitioner must demonstrate that counsel's errors were so serious as to deprive the [petitioner] of a fair trial, a trial whose result is reliable. . . . It is not enough for the [petitioner] to show that the errors had some conceivable effect on the outcome of the proceedings. . . . Rather, [t]he [petitioner] must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." (Internal quotation marks

omitted.) *Soto* v. *Commissioner of Correction*, 215 Conn. App. 113, 120, 281 A.3d 1189 (2022).

It is well established that "the issuance of an arrest warrant within the limitation period set forth in [the applicable statute of limitations] commences a prosecution for purposes of satisfying the statute of limitations, so long as the warrant is executed without unreasonable delay." *State* v. *A. B.*, 341 Conn. 47, 49, 266 A.3d 849 (2021); see also *State* v. *Crawford*, supra, 202 Conn. 450–51. "When an arrest warrant has been issued, and the prosecutorial official has promptly delivered it to a proper officer for service, he has done all he can under our existing law to initiate prosecution and to set in motion the machinery that will provide notice to the accused of the charges against him. When the prosecutorial authority has done everything possible within the period of limitation to evidence and effectuate an intent to prosecute, the statute of limitations is [satisfied]." (Footnote omitted.) *State* v. *Crawford*, supra, 450. Our Supreme Court has recognized, however, that "some limit as to when an arrest warrant must be executed after its issuance is necessary in order to prevent the disadvantages to an accused attending stale prosecutions, a primary purpose of statutes of limitation[s]." Id.

In light of that recognition, our Supreme Court has held that, "in order to [satisfy] the statute of limitations, an arrest warrant, when issued within the time limitations . . . must be executed without unreasonable delay" and has declined to "adopt a per se approach as to what period of time to execute an arrest warrant is reasonable." Id., 450–51. Instead, the court has stated that "[a] reasonable period of time is a question of fact that will depend on the circumstances of each case. If the facts indicate that an accused consciously eluded the authorities, or for other reasons was difficult to apprehend, these factors will be considered in

determining what time is reasonable. If, on the other hand, the accused did not relocate or take evasive action to avoid apprehension, failure to execute an arrest warrant for even a short period of time might be unreasonable and fail to [satisfy] the statute of limitations." Id., 451.

To prevail on a claim that a delay in executing a warrant was unreasonable pursuant to *Crawford*, the defendant bears the initial burden to prove that he "was not elusive, was available and was readily approachable . . . ." (Internal quotation marks omitted.) *State* v. *Swebilius*, 325 Conn. 793, 804–805, 159 A.3d 1099 (2017). When the defendant has met that burden, thereby demonstrating "his availability for arrest, he has done all that is required to carry his burden; the burden then shifts to the state to demonstrate that any period of delay in executing the warrant was not unreasonable." Id., 804; see also *State* v. *Woodtke*, supra, 130 Conn. App. 740 ("once a defendant puts forth evidence to suggest that she was not elusive, was available and was readily approachable, the burden shifts to the state to prove that the delay in executing the warrant was not unreasonable" (internal quotation marks omitted)).

With respect to the nature of the state's burden to show reasonableness, our Supreme Court has declined "to specify the precise actions that [law enforcement officials] must undertake to serve a warrant with due diligence, or the precise timeline within which they must act . . . ." *State* v. *Swebilius*, supra, 325 Conn. 808. The state must, however, "present some credible and persuasive factual basis for inaction when [such officials] fail to observe the statute of limitations. This requirement is consistent with the principle that, when a judicial doctrine, for all practical purposes, extends the statute [of limitations] beyond its stated term, that doctrine should be applied in only limited circumstances . . . ." (Internal quotation marks omitted.) Id.,

808–809. The court recently elaborated on the meaning of "due diligence" in this context, explaining that it "means doing everything reasonable, not everything possible. . . . Due diligence does not require a party to do everything possible to attain its objective, but, at the same time, it requires something more than nonchalance. The state exercises due diligence, in short, if it undertakes efforts to execute a warrant by persevering application . . . [made] in good earnest." (Citations omitted; internal quotation marks omitted.) *State* v. *Freeman*, 344 Conn. 503, 518–19, 281 A.3d 397 (2022).

As this court has explained, in the habeas context, the petitioner bears the burden to prove both the performance and prejudice prongs of *Strickland*. That requirement, when understood in conjunction with the *Crawford* burden shifting test, means that a habeas petitioner who asserts an ineffective assistance of counsel claim predicated on *Crawford* must first prove that he was not elusive and was available and readily approachable. Although that showing would shift the burden to the state in a direct proceeding, in a habeas action, because the petitioner must prove both *Strickland* prongs in order to prevail, if a petitioner demonstrates he was not elusive, he must then prove that (1) his trial counsel's failure to challenge the delay in executing the warrant was objectively unreasonable, and (2) if trial counsel had challenged the arrest warrant on the basis of the statute of limitations, there is a reasonable probability that the state would have been unable to demonstrate that any delay in executing the warrant was reasonable. Compare *Gonzalez* v. *Commissioner of Correction*, 122 Conn. App. 271, 285–86, 999 A.2d 781 (because petitioner failed to prove he was not elusive, burden would not have shifted at trial, and petitioner failed to prove reasonable probability existed that he would have prevailed on motion to dismiss), cert.

denied, 298 Conn. 913, 4 A.3d 831 (2010), with *Thompson* v. *Commissioner of Correction*, 91 Conn. App. 205, 215–16, 880 A.2d 965 (2005) (upon concluding that petitioner demonstrated that he had not been elusive, reviewing court applied *Crawford* burden shifting inquiry within *Strickland* context and determined that, had petitioner filed motion to dismiss, reasonable probability existed that trial court would have dismissed failure to appear charge), appeal dismissed, 280 Conn. 509, 909 A.2d 946 (2006).

B

We next summarize the new evidence and testimony presented at the third habeas trial and the habeas court's findings regarding that new evidence. The petitioner produced three new pieces of documentary evidence and new testimony at the third habeas trial that he contends demonstrate that the police failed to exercise reasonable diligence in executing the warrant and that Cosgrove's and McIntyre's performances were deficient. We first discuss the new documentary evidence, exhibits 22, 23, and 30. Briefly, exhibits 22 and 23 are notices posted on national law enforcement databases after the warrant was made extraditable; exhibit 30 is the arrest warrant service record form that the New Milford police had on file for the petitioner. We discuss each of the exhibits in turn.

1

Exhibits 22 and 23 are printouts of entries into the NCIC database. The New Milford police entered exhibit 22 into the NCIC database on November 16, 2006, about one week after the warrant was made extraditable. The entry indicates that it modifies the information pertaining to the "wanted person" who is the subject of the entry, then identifies the petitioner by name, lists the offenses charged in the warrant, and identifies his address as 120 Berry Street in Greenfield, Indiana. The

warrant is expressly designated in the entry as "extraditable." Exhibit 23 comprises two entries into the NCIC database made by the United States Marshals Service in Indianapolis on November 20, 2006. The two entries were logged into the database nine minutes apart and set forth virtually identical information. Specifically, both provide that "full extradition" had been authorized "unless otherwise noted" in a field reserved for miscellaneous remarks.[8] In the miscellaneous remarks field, both entries noted that Connecticut "will extradite from any location" and named Mullin as the contact person.

Both Crossland and McIntyre testified that, although they had seen these documents, they decided not to introduce them into evidence. Crossland testified that he viewed exhibit 22 as duplicative of other pieces of evidence that he had introduced during the first habeas trial and that he did not "see the value of saying the same thing a third or fourth time." McIntyre concurred in Crossland's evaluation of exhibit 22 and stated that, rather than introduce it into evidence in the second habeas trial, he had decided to rely on the evidence adduced by Crossland in the first trial. As to exhibit 23, Crossland explained that he viewed the entry as potentially confusing because, rather than simply stating that full extradition had been authorized, it added the qualification, "unless otherwise noted in the MIS field." McIntyre was not asked why he decided not to introduce exhibit 23 into evidence.

The petitioner contended that exhibit 22 demonstrated that, had his warrant been made extraditable at an earlier time, he would have been apprehended and extradited sooner. The habeas court, however,

[8] The entry identified the field as the "MIS field," which is the field reserved in the NCIC database for "miscellaneous remarks." See appendix_c_ncic _abbreviations_final.pdf (last visited August 20, 2025).

found this exhibit to be duplicative of evidence presented in support of the first petition. The court considered the significance of exhibit 22 in conjunction with exhibit 20, the July 7, 2005 entry posted in the NCIC database by the New Milford Police Department, which listed the warrant as nonextraditable. That is, the court reasoned, exhibit 22, when compared with exhibit 20, merely demonstrates that, shortly after the warrant was made extraditable, the NCIC database was updated accordingly. That same proposition, however, had been proven through different evidence presented in the first two habeas trials. That evidence included the July 7, 2005 NCIC entry, which was introduced as a full exhibit in the first two habeas trials, and demonstrated that the warrant initially was nonextraditable. The court noted that other relevant evidence introduced in the first two trials included: Shepack's November 8, 2006 letter authorizing the extradition of the petitioner from anywhere within the continental United States; two December 11, 2006 entries posted in the law enforcement telecommunications system by the Huntsville, Alabama police department, the first inquiring as to whether the warrant remained active, and the second informing the New Milford Police Department that the petitioner had been arrested as a fugitive from justice; a December 11, 2006 facsimile cover page from the New Milford Police Department to the Huntsville Police Department noting that extradition authorization and a copy of the arrest warrant were attached; and a December 11, 2006 entry in the NCIC database by the Huntsville Police Department indicating that the petitioner had been located and noting that full extradition had been authorized.

In light of this evidence introduced in the prior habeas trials, the habeas court concluded that exhibit 22 offered nothing new in support of the petitioner's argument. The evidence adduced at the prior habeas trials,

the court explained, demonstrated that the warrant was not made extraditable until November, 2006, approximately sixteen months after the warrant was issued, and that the petitioner was located and arrested soon thereafter.

With respect to exhibit 23, the two November 20, 2006 entries posted in the NCIC database by the United States Marshals Service in Indiana indicating that the warrant was extraditable, the habeas court rejected the petitioner's arguments that this evidence would undermine Mullin's testimony that he had communicated previously with the United States Marshals Service regarding this case and that the exhibit also would prove that the New Milford Police Department failed to exercise due diligence in executing the warrant. The court concluded that exhibit 23 had little value and demonstrated simply that the United States Marshals Service was informing the New Milford Police Department of its awareness that the warrant was now extraditable.

2

The third piece of new evidence introduced at the habeas trial was exhibit 30, an arrest warrant service record form relating to the petitioner. The headings on the form list the petitioner's case number, specify the date the warrant was logged into the system, and identify Mullin as the officer assigned to the case. The remainder of the form, which includes spaces for officers to log attempts to serve the warrant, is blank. The petitioner argued that this exhibit would have demonstrated that the New Milford police failed to make any efforts to execute the warrant.

Crossland testified that Mullin had provided him with the arrest warrant service record during the first habeas trial, but Crossland had decided not to use it because he was concerned that the document was a "gimmick" or a "poison pill . . . ." McIntyre determined not to

offer the document into evidence, believing that it lacked "value" because it was unsigned and gave no indication of when it was created or by whom. Although he admitted that, if used in conjunction with the absence of any documentary evidence of any contacts with the United States Marshals Service, the document could have been useful to prove that there were no such contacts, he emphasized that, in his view, the blank record proved, at most, a failure to document attempts to serve the warrant, not a failure to make such attempts. Given the ambiguity of the blank form, McIntyre was concerned that, if he had attempted to present it as evidence, he would be faced with a "trial within the trial" over its meaning and significance.

Mullin also offered testimony regarding the arrest warrant service record. He acknowledged that the form reflected that the warrant was logged into the system on July 7, 2005, and that the form's purpose was to keep track of attempts to serve the warrant. He could not recall, however, whether he had made any attempts to serve the warrant, or when he had learned that the petitioner was living out of state. Moreover, his testimony as to whether an attempt to serve the warrant on the petitioner outside the state of Connecticut would be entered into the warrant service record was equivocal. He first stated that it would not be entered, but then suggested that, under certain circumstances, such an attempt might be logged on the form. He then stated that only local attempts would be logged on the form.

In response to this court's May 29, 2025 remand order, requesting that the habeas court clarify whether it credited Mullin's testimony that only local attempts to serve the warrant would be logged on the warrant service record, the habeas court did not find it "to be either credible or not credible." The court cited to the twenty-three years that had passed between the relevant events and Mullin's testimony at the time of the third habeas

trial, noted that Mullin's recollection had to be refreshed several times during his testimony, and, finally, noted the equivocal nature of Mullin's testimony.

Notwithstanding the habeas court's understandable difficulty in determining whether to credit Mullin's testimony, it is significant that the court nonetheless made the factual finding that the arrest warrant service record is intended to log "*all* attempts made to serve a warrant . . . ." (Emphasis in original.) That factual finding renders immaterial the court's inability to determine whether to credit Mullin's testimony that the record was used to log only local attempts.

The habeas court further determined that the arrest warrant service record was a "significant document that should have been introduced at the prior habeas trial by [McIntyre] and, had he introduced it, there is a reasonable probability that, combined with all the other evidence, he would have been able to show that the state would not have been unable to prove that the delay was reasonable." The court explained: "The warrant service record is a document that exists for precisely one reason: to document any attempts made to serve a warrant. In [the petitioner's] case, it is completely blank. At the prior habeas trials, Mullin was asked to bring the police department's file pertaining to [the petitioner], which he did, and to produce from that file any documentation to support his testimony that he made attempts to locate [the petitioner] in order to serve the warrant. There were no documents in his file recording any efforts made between July 6, 2005, and November 8, 2006, nor was there documentation of any communications with the [United States Marshals Service]. Mullin testified that he was aware, as of the day after the warrant was signed, of [the petitioner's] address in Indiana. Yet the only evidence of any attempt made by Mullin to serve the warrant is his testimony of unspecified attempts to contact the [United States

Marshals Service] at times unknown, that are not documented in any fashion." On the basis of these facts, the court concluded that, in light of the blank arrest warrant service record, the evidence did not demonstrate that the state had exercised due diligence by undertaking efforts to execute the warrant " 'by persevering application' . . . ." (Emphasis omitted.) See *State* v. *Freeman*, supra, 344 Conn. 519.

In response to this court's May 29, 2025 remand order, the habeas court found that McIntyre's decision not to introduce the arrest warrant service record was not objectively reasonable. McIntyre's proffered basis for his decision, that the record was unsigned, not filled out, and it was unknown whether it had been brought to the attention of any detective, did not provide a reasonable explanation for his decision. The arrest warrant service record, the court found, "which is meant to log *all* attempts made to serve a warrant, is blank. Introducing the document can only help [the petitioner] establish that the state did not attempt to serve the warrant with due diligence and without unreasonable delay. Indeed, it serves to establish that the police *made no attempts at all* to serve the warrant. [McIntyre's] argument that the [record] 'might only establish that the police did not record attempts to serve the warrant' also fails because that was precisely already the state's argument: that they did attempt to serve the warrant despite scant to no evidence to support that position. Failing to introduce that document falls below the standard of a reasonably competent defense attorney." (Emphasis in original.)

3

The petitioner also presented the expert testimony of Riccio. Riccio testified that, as of the time of the habeas trial, he had been practicing as a criminal defense attorney for twenty-four years and that he had

testified as a legal expert on approximately twenty-five occasions. Over the course of his career, he had encountered issues involving an unreasonable delay in executing a warrant at least ten times. He testified that the primary means by which defendants challenge the delayed execution of a warrant is to file a motion to dismiss, although he acknowledged that some defendants elect to assert an affirmative or special defense. In a motion to dismiss predicated on an allegedly unreasonable delay in executing a warrant, a defendant sets forth facts in support of his initial burden to prove that he was not elusive. If the defendant carries his burden, the state then must prove the delay was reasonable by presenting evidence that it exercised due diligence in executing the warrant. If the state is unable to make that showing, the case is dismissed. Riccio testified that, pursuant to *Crawford*, a defendant need not prove "actual prejudice" as a result of the delay, such as missing witnesses. Instead, the focus is entirely on the reasonableness of the delay itself, beginning with the consideration of whether the defendant was elusive, and, if not, whether the state exercised due diligence in executing the warrant. A criminal defense attorney who fails to file a motion to dismiss when there is evidence that there has been an unreasonable delay in executing a warrant, Riccio testified, does not meet the standard of care, and failing to file such a motion would make it difficult to raise the issue on appeal. In a case such as the present one, in which the police were aware that the petitioner was living openly in another state but waited more than one year to execute the warrant, which was marked nonextraditable for the majority of that time period, Riccio testified, the standard of care would require filing a motion to dismiss predicated on *Crawford*.

The habeas court credited Riccio's testimony that "reasonably competent criminal defense attorneys

would have raised this clear statute of limitations issue in the trial court." The court did not, however, view the testimony, "which is expert opinion testimony, as the kind of evidence needed for this court to conclude differently than" this court did in *Roger B. II*. The habeas court reasoned that this court, "[f]aced with this exact record," had concluded that Cosgrove did not perform deficiently; the habeas court therefore considered itself bound by this court's holding in *Roger B. II*.

C

In light of the habeas court's findings regarding the new evidence and testimony presented at the third habeas trial, we now consider whether the petitioner established both prongs of *Strickland* as to Cosgrove and McIntyre. As we stated in part I of this opinion, the habeas court properly concluded that, in the absence of new evidence, it was bound by this court's holding in *Roger B. II* that the petitioner had failed to demonstrate that Cosgrove's failure to raise the state's delay in executing the warrant constituted ineffective assistance of counsel. We part ways with the habeas court, however, as to whether the petitioner accomplished that task in the third habeas trial. As we explain, we conclude that, given the habeas court's underlying factual findings regarding the warrant service record and the expert testimony introduced by the petitioner, he established both deficient performance and prejudice as to Cosgrove and McIntyre. We discuss each of these in turn.

1

The blank warrant service record is relevant to our consideration of *Strickland*'s prejudice prong and to our consideration of whether McIntyre's performance was deficient. Standing alone, the blank form would raise some questions concerning whether the New Milford police made any attempts to execute the arrest

warrant. Considered in conjunction with the other evidence adduced at the habeas trial (i.e., evidence that supported the petitioner's claim that the New Milford police failed to make any significant effort to execute the warrant), the production of the blank warrant service record satisfies the petitioner's burden to demonstrate prejudice.

The habeas court's factual findings aptly capture the necessary context for this determination. We begin with the most basic finding—that eighteen months passed between the issuance of the warrant, two weeks prior to the expiration of the statute of limitations, and its execution. Of course, the passage of time, while relevant, is not dispositive as to whether the police failed to exercise due diligence in serving a warrant. Both this court and our Supreme Court have emphasized that there is no "per se approach as to what period of time to execute an arrest warrant is reasonable." *State* v. *Crawford*, supra, 202 Conn. 451; see also *State* v. *Soldi*, 92 Conn. App. 849, 856, 887 A.2d 436 (noting absence of per se approach in context of considering whether five year delay in serving defendant with arrest warrant was reasonable), cert. denied, 277 Conn. 913, 895 A.2d 792 (2006). The more pertinent inquiry is—what transpired during that time period? That is, in determining whether a habeas petitioner has demonstrated a reasonable probability that the state would be unable to demonstrate that the delay in executing the warrant was reasonable, courts must consider "whether the defendant may have been difficult to apprehend" during the relevant time period, and "the police department's actions in executing the warrant." *State* v. *Woodtke*, supra, 130 Conn. App. 744. We turn to these two factors.

Without question, even given the petitioner's showing that he was not elusive, his relocation to Indiana five

months after Mullin questioned him, as well as his subsequent relocations within that state and then to Alabama, are relevant to the inquiry insofar as those relocations may demonstrate that the petitioner may have been difficult to apprehend. *Crawford* and its progeny recognize the significance of a wanted person's relocation in evaluating the reasonableness of the state's efforts to execute a warrant. See, e.g., *State* v. *Ali*, 233 Conn. 403, 415, 660 A.2d 337 (1995) (recognizing relevance of relocation by accused in determining whether police efforts in executing arrest warrant were reasonable); *State* v. *Crawford*, supra, 202 Conn. 451 (same). That significance is diminished, however, by the fact that the New Milford police received notice on July 7, 2005—the day after the warrant issued—that the petitioner lived at 120 Berry Street in Greenfield, Indiana. Indeed, locating the petitioner appears not to have been the problem. At the petitioner's criminal trial, Mullin acknowledged that he independently had been able to locate the petitioner through Indiana's motor vehicle records.

Another factor that minimizes the significance of the petitioner's relocation outside Connecticut is that he was located and apprehended within two months after the warrant was made extraditable, despite the fact that, by that time, he had moved from Indiana to Alabama. The quick turnaround after the warrant was made extraditable must be understood in conjunction with the trial court's finding that, with respect to a wanted person who is located outside the jurisdiction of Connecticut, designating a warrant as extraditable allows Connecticut law enforcement to "receive cooperation of [out-of-state] local law enforcement, take that individual into custody, and begin extradition proceedings to Connecticut." Consistent with the court's finding, that is precisely what happened in the present case—

as soon as the warrant was made extraditable, out-of-state local law enforcement acted on it. Specifically, the multiple entries in the NCIC database shortly after it was updated to reflect the change in the warrant's status—by both the United States Marshals Service and the police department of Huntsville, Alabama—indicate that the reason for the lack of prior efforts on the part of out-of-state law enforcement was the failure to designate the warrant as extraditable.

The actions undertaken by the New Milford police in executing the warrant were at best minimal. The record reveals that designating a warrant as extraditable does not require significant time or effort on the part of law enforcement. Mullin testified that, once the target of a warrant is determined to be living outside this jurisdiction, the police contact the state's attorney's office to have the warrant made extraditable and then update the NCIC database accordingly. Consistent with that testimony, the warrant for the petitioner's arrest was made extraditable by virtue of a single sentence letter sent by Shepack to Mullin on November 8, 2006, stating: "Please be advised that the [s]tate of Connecticut authorizes extradition of [the petitioner] . . . from any location within the continental United States." And the decision to designate a warrant as extraditable, Shepack testified, ordinarily "should be made within hours." In the present case, that decision was made sixteen months after the warrant issued, despite the fact that the New Milford police learned, one day later, the particular street address where the petitioner lived in Indiana. Although it is true that the petitioner subsequently relocated within Indiana, and then to Alabama, it was undisputed that the New Milford police were aware that he lived outside this jurisdiction and that he had a driver's license in Indiana under his name and used his Social Security number to obtain employment. At no point during any of the three habeas trials or the

criminal trial, however, was any evidence presented providing an explanation for the failure to make the warrant extraditable during those sixteen months.

Evidence of other efforts to execute the warrant, of course, would be relevant to our consideration of whether the police exercised due diligence. Mullin's testimony at the criminal trial and the habeas trials suggested that, notwithstanding his failure to have the warrant made extraditable, he had been in communication with the United States Marshals Service, and it had unsuccessfully attempted to serve the warrant on the petitioner in Indiana. His testimony, in fact, was the sole evidence presented that any attempts had been made to serve the warrant on the petitioner prior to November, 2006. The habeas court aptly described Mullin's testimony, however, as vague—he provided no names, no times or dates, locations, and no documentation of any of the alleged communications with the United States Marshals Service.

The blank arrest warrant service record, which the habeas court expressly found had one purpose—i.e., it was intended to document *all* attempts to serve the warrant on the petitioner—provides a devastating counterpoint to Mullin's vague and unsupported testimony regarding efforts to execute the warrant prior to November, 2006. This record is precisely the type of evidence that evinces the "nonchalance" that our Supreme Court deemed the opposite of the " 'persevering application' " required to support a conclusion that law enforcement exercised due diligence in executing a warrant. *State* v. *Freeman*, supra, 344 Conn. 519. As we stated, this document alone would not have sufficed to demonstrate prejudice. We view it, however, in light of the failure of the New Milford police to designate the warrant as extraditable, a task that easily could have been accomplished soon after the warrant's issuance; the fact that the petitioner's street address was known to

the police one day after the warrant was issued; the evidence that the petitioner used his own name and Social Security number to obtain a driver's license and employment; and the absence of any documentary evidence demonstrating that the New Milford police made any efforts, prior to November, 2006, to execute the warrant. Considered in this context, the blank warrant service record leaves no question that, in the present case, the police did not exercise due diligence in executing the warrant without unreasonable delay. Accordingly, we conclude that the petitioner has demonstrated that he was prejudiced by McIntyre's failure to introduce the warrant service record during the second habeas trial, and that he was prejudiced by Cosgrove's failure to rely at the criminal trial on the delay in executing the warrant.

Given the significance of this document, we agree with the conclusion of the habeas court that McIntyre's proffered reasons for not introducing it—that it was unsigned, not filled out, and it was unknown whether it had been brought to the attention of any detective—were not reasonable. The reason the warrant service record provides significant support for the petitioner's position is precisely *because* it is not filled out. As the habeas court explained, the warrant service record would have helped to "establish that the state did not attempt to serve the warrant with due diligence and without unreasonable delay. Indeed, it serves to establish that the police made no attempts at all to serve the warrant." (Emphasis omitted.) This document would have undermined the credibility of Mullin's uncorroborated and vague testimony regarding attempts to execute the warrant. We agree with the habeas court that failing to introduce it was objectively unreasonable.

2

Riccio's testimony provides precisely the piece of evidence that this court observed in *Roger B.* v. *Commissioner of Correction*, supra, 190 Conn. App. 852,

was lacking in support of the claim in the petitioner's first habeas petition that Cosgrove rendered deficient performance by failing to file a motion to dismiss or to assert an affirmative defense based on the delay in executing the warrant. Two aspects of Riccio's testimony are key to our conclusion that the petitioner satisfied his burden to prove that Cosgrove's performance was deficient. First, his testimony made clear that the primary means by which a delay in executing a warrant would be challenged would be by way of a motion to dismiss. Considering that such a motion would be filed outside the presence of a jury, the worst that could have happened to the petitioner is that Cosgrove would not have prevailed on the motion. In other words, the petitioner could not have suffered any prejudice had Cosgrove filed a motion to dismiss. Indeed, as Riccio testified, failing to file a motion to dismiss precluded the petitioner from raising a claim challenging a denial of that motion in the direct appeal.

In fact, Cosgrove offered no strategic reason for failing to file a motion to dismiss and only stated that he believed he did not have a basis for filing one. Riccio's testimony reveals the key flaw in that rationale. His testimony highlighted that Cosgrove was relying on an incorrect legal rule when he concluded that, because he could not demonstrate actual prejudice resulting from the delay, such as missing witnesses or destroyed evidence, he had no basis for filing a motion to dismiss. Ricco correctly testified that, when the issue is whether a state's delay in executing a warrant beyond the applicable limitations period was unreasonable, a defendant need not demonstrate actual prejudice. Cosgrove's belief that he would have to make that showing reflects an incorrect understanding of the required showing of prejudice under *State* v. *Crawford*, supra, 202 Conn. 450–51, in which our Supreme Court set forth the applicable principles that govern a defendant's claim that

the state has executed a warrant outside the statute of limitations. Specifically, under *Crawford* and its progeny, the prejudice to a defendant is having to defend a criminal action that the state lacked authority to bring. See *Thompson* v. *Commissioner of Correction*, supra, 91 Conn. App. 216 (petitioner satisfied burden to show prejudice by demonstrating reasonable probability that, if trial counsel had filed motion to dismiss based on delay in executing warrant, motion would have been granted). Accordingly, Riccio's testimony demonstrated that Cosgrove misunderstood the applicable law and failed to file a motion to dismiss despite the absence of any prejudice that would have inured to the petitioner had Cosgrove done so. We therefore agree with the habeas court's conclusion that a reasonably competent attorney "would have raised this clear statute of limitations issue in the trial court." Therefore, we conclude that the petitioner demonstrated that Cosgrove's performance was deficient.

The judgment is reversed and the case is remanded with direction to grant the second amended petition for a writ of habeas corpus, to vacate the petitioner's underlying conviction of sexual assault in the first degree, sexual assault in the fourth degree, and risk of injury to a child, and to order a new trial.

In this opinion the other judges concurred.

U.S. BANK NATIONAL ASSOCIATION, TRUSTEE *v.* ISRAEL MELCON ET AL.
(AC 47211)

Elgo, Moll and Seeley, Js.

Syllabus

The defendant property owners appealed from the trial court's denial of their second motion to open a judgment of strict foreclosure rendered for the plaintiff. The defendants had filed their first motion to open the judgment

of strict foreclosure on the defendants' law day, which the court denied that same day without explanation. The defendants did not appeal from the denial of the first motion to open. The defendants claimed that the court incorrectly determined that it lacked subject matter jurisdiction to open the judgment of strict foreclosure on the ground that title already had vested in the plaintiff, thereby rendering the defendants' second motion to open moot. *Held*:

The trial court improperly denied the defendants' second motion to open, as, pursuant to the rule of practice ((2023) § 61-11 (a)) and relevant case law, vesting of title to the property could not occur during the twenty day appeal period after the denial of the first motion to open, and, because law days do not automatically reset after the conclusion of an appeal period in which no appeal is filed, the court retained subject matter jurisdiction over the motion because title had not yet vested in the plaintiff.

Argued January 15—officially released August 26, 2025

Procedural History

Action to foreclose a mortgage on certain real property owned by the named defendant et al., and for other relief, brought to the Superior Court in the judicial district of New Britain, where the named defendant et al. were defaulted for failure to plead; thereafter, the court, *Hon. Joseph M. Shortall*, judge trial referee, granted the plaintiff's motion for a judgment of strict foreclosure and rendered judgment thereon; subsequently, the court, *Hon. Joseph M. Shortall*, judge trial referee, denied the motion to open the judgment filed by the named defendant et al., and the named defendant et al. appealed to this court. *Reversed*; *further proceedings*.

John A. Sodipo, for the appellants (named defendant et al.).

Benjamin T. Staskiewicz, for the appellee (plaintiff).

Opinion

ELGO, J. In this foreclosure action, the defendants Israel Melcon and Antonia Melcon appeal from the judgment of the trial court denying their August 21, 2023 postjudgment motion to open the judgment of strict foreclosure in favor of the plaintiff, U.S. Bank National

Association.[1] On appeal, the defendants claim that the court incorrectly determined that it lacked subject matter jurisdiction to open the judgment of strict foreclosure on the ground that title already had vested in the plaintiff, thereby rendering the defendants' motion to open moot.[2] We agree with the defendants and, accordingly, reverse the judgment of the trial court.

The following undisputed facts and procedural history are relevant to resolving the defendants' claim. The plaintiff brought this foreclosure action against the defendants in January, 2020. The complaint alleged that the plaintiff, a successor in interest with respect to the mortgage of certain residential property in Rocky Hill owned by the defendants, had accelerated the note due to default. In 2021, a default judgment was entered against the defendants following their failure to plead.[3] On August 1, 2022, the court rendered a judgment of strict foreclosure with respect to the property and set a law day of August 29, 2022. On November 18, 2022, the plaintiff filed a claim for statutory stay, representing that the defendants had filed a bankruptcy petition on August 29, 2022, triggering a stay of the foreclosure

[1] HOP Energy, LLC, also was named as a defendant based on its judgment lien on the property, but did not appear in the foreclosure action and has not participated in this appeal. We refer to Israel Melcon and Antonia Melcon, who were self-represented through most of the underlying proceedings but who are now represented by counsel, as the defendants throughout this opinion. At all relevant times, U.S. Bank National Association has functioned as trustee and successor in interest to Bank of America, National Association, which was the trustee and successor by merger to LaSalle Bank National Association, the trustee for Morgan Stanley Mortgage Loan Trust 2007-8XS. For convenience, we refer to U.S. Bank National Association as the plaintiff throughout this opinion.

[2] On appeal, the defendants also claim that the court improperly denied their motion to reconsider its denial of the motion to open the judgment. In light of our conclusion that the court improperly denied the defendants' motion to open, we need not reach that issue.

[3] From the inception of this foreclosure action until August, 2023, the defendants were self-represented. From August 18, 2023, through this appeal, the defendants have been represented by counsel.

proceedings, and that the stay had been lifted by the bankruptcy court in October, 2022.[4] On January 26, 2023, the plaintiff moved to reset the law days and reenter the judgment of strict foreclosure. The court granted the plaintiff's motion on April 3, 2023, rendered a new judgment of strict foreclosure, and set a new law day of May 1, 2023.

On April 24, 2023, pursuant to the standing orders of the court, the plaintiff filed a notice of reentry and modification of the judgment of strict foreclosure, asserting that the law day for the defendants was May 1, 2023, and that, if they did not redeem their interest in the property, title would vest with the plaintiff on May 3, 2023. On May 1, 2023, the defendants filed a motion to open the judgment and extend the law day (first motion to open).[5] In support of that motion, the defendants filed an affidavit that stated that, although they understood that they "no longer can stay in [their] home," they were attempting to orchestrate a sale of the property to "people in [their] circle . . . ." The defendants also pointed to their daughter's "severe anxiety" as an additional good cause to extend the law day as they "continue to rethink [their] future . . . ." The motion was denied the same day, without explanation by the court.[6]

On June 26, 2023, the plaintiff filed a motion for a deficiency judgment that contained a proposed order

[4] The defendants filed their bankruptcy petition on August 29, 2022, in the United States Bankruptcy Court for the District of Connecticut. Pursuant to 11 U.S.C. § 362, an automatic stay against the assets of the defendants—including the property in question in the present action—issued. The bankruptcy court issued an order granting relief from the automatic stay on October 19, 2022, thereby permitting the foreclosure action to proceed.

[5] The defendants simultaneously filed a motion for an expedited hearing on the motion to extend the law day, which also was denied that same day by the court.

[6] The court's order denying the motion to open the judgment stated that the defendants "need not vacate the premises until an execution of ejectment is obtained by the plaintiff."

that stated, inter alia, that the court "finds that the mortgaged property was not redeemed and that title to said property vested in the plaintiff on May 3, 2023." On August 21, 2023, now represented by counsel, the defendants filed a second motion to open the judgment (second motion to open), which is the subject of this appeal. In that motion, the defendants argued that the court's denial of their first motion to open created a new twenty day appeal period, rendering the passing of the May 1, 2023 law day ineffective. The defendants argued that, as a result of these events, title never vested in the plaintiff.[7] The plaintiff objected to the second motion to open and argued, inter alia, that title had vested on May 3, 2023.[8]

On September 18, 2023, the court denied the defendants' second motion to open. The court's order stated: "The court denied the defendants' [first] motion to open on May 1, 2023. The defendants are correct that the denial stayed the law day until the twenty day appeal period expired. Because the defendants took no appeal, no stay was in effect thereafter. By operation of law, the new law day was May 22, 2023. Title vested in the plaintiff on May 24, 2023. The court lacks authority to open the judgment thereafter. General Statutes § 49-15."[9] The defendants then filed a motion to reconsider

[7] The parties mutually represent that the plaintiff recorded a certificate of foreclosure on the land records on May 24, 2023, and subsequently purported to sell the property to a third-party purchaser.

[8] The plaintiff argues on appeal that the court should have "dismissed the [second] motion to open as being moot" rather than having denied the motion, "based upon title already vesting and the trial court no longer having jurisdiction. See *Argent Mortgage Co., LLC* v. *Huertas*, 288 Conn. 568, 569–70, 953 A.2d 868 (2008), and *Thompson Gardens West Condominium Assn., Inc.* v. *Masto*, 140 Conn. App. 271, 274, 59 A.3d 276 (2013)." Because we conclude that title did not vest and the court, therefore, retained jurisdiction, the plaintiff's observation that the motion should have been dismissed—if such jurisdiction was, in fact, lacking—is academic.

[9] General Statutes § 49-15 (a) (1) provides in relevant part that no judgment of strict foreclosure "shall be opened after the title has become absolute in any encumbrancer . . . ."

and reargue, to which the plaintiff objected. In their motion, the defendants argued that the court had failed to consider "controlling law" when it denied the second motion to open. More specifically, the defendants argued that "there is no case law in this state" that supports the court's analysis that the appellate stay "somehow automatically caused the law day to reset by itself."

In its objection, the plaintiff argued, inter alia, that the court "clearly recognizes that the original law days did not commence on May 1, 2023, as argued by the defendants. The court's order, then, contemplates that law days are ineffective during an appeal period but, by common sense implication at least, the order goes on to articulate that the law days would recommence upon the expiration of the twenty day appeal period following the May 1, 2023 denial of the [first] motion to open. In this way, the court has applied the law and the defendants' reliance upon some misapplication of law is wholly inadequate to support reconsideration."

The court denied the defendants' motion to reargue and granted the motion to reconsider but declined to "depart from that earlier ruling denying the defendants' [second motion to open]."[10] The defendants then timely filed their appeal from the court's denial of their second motion to open.[11]

Subsequently, this court, sua sponte, ordered the trial court to articulate "the factual and legal basis for its

[10] The plaintiff's certificate of foreclosure was filed on May 24, 2023. That certificate of foreclosure stated that title had vested on May 3, 2023. In its appellate brief, the plaintiff states that this certificate of foreclosure "does not reference the correct date of vesting of title" and that the plaintiff "will have a corrected document recorded after the completion of this appeal." The plaintiff now asserts that title vested on May 24, 2023.

[11] Our Supreme Court has held that the denial of a motion to open is an appealable final judgment. See *Connecticut National Mortgage Co.* v. *Knudsen*, 323 Conn. 684, 687 n.8, 150 A.3d 675 (2016) ("[t]he denial of a motion to open a judgment of strict foreclosure is an appealable final judgment itself and distinctly appealable from the underlying judgment"); see also Practice Book §§ 61-11 and 63-1.

September 18, 2023 denial of the defendants' [second motion to open] wherein the court held that the law day was reset to May 22, 2023 '[b]y operation of law.' " On February 29, 2024, the court filed an articulation, in which it stated: "This court's denial of the defendants' motion to open on May 1, 2023, created an appellate stay of twenty days that expired on May 21, 2023. As a matter of law, therefore, no law day set within that period would be valid, and once the appellate stay expired, a new law day would be effective. Had the defendants taken an appeal from the court's denial, the appellate stay would have remained in effect. They failed to do so or to take any other action that might arguably have extended the appellate stay beyond May 21, 2023. While the court might have set a new law day when it denied the [first] motion to open, it was not required to do so. In the absence of such an order, the first law day, for the holder of the equity of redemption, was the first Monday after the expiration of the appellate stay, that is, May 22, 2023. The defendants and a junior lienholder having failed to redeem, title vested in the plaintiff on May 24, 2023."[12]

On appeal, the defendants contend that the court improperly denied their second motion to open. According to the defendants, the court retained jurisdiction to hear their motion when no party moved to reset the law day following the expiration of the appellate stay.

[12] On April 9, 2024, the defendants filed a motion for further articulation, in which they sought clarification of the court's use of the term "operation of law," noting that the court had provided "no legal authority that would qualify as 'operation of law.' " The defendants argued that there is no legal basis to assert that the law day automatically resets without court action and that the court did not so act by issuing any order or notice following the May 1, 2023 ruling. The court denied the defendants' motion for further articulation, and the defendants then filed in this court a motion for review of the trial court's denial of the motion for further articulation. We granted review but denied the relief requested.

In response, the plaintiff concedes that "[t]his denial by operation of law pursuant to Practice Book § 63-1 (a) created a new twenty day appeal period in which the May 1, 2023 law day could not run. Because the trial court did not set a new law day in its order, by operation of law, the law day was stayed for that twenty day appeal period before the law days once again could run."[13] The plaintiff correctly points out that the defendants have not cited any "standing order, statute, Practice Book section or case law that requires the trial court to reset law days after a denial of a motion to open a judgment of strict foreclosure." Conceding that courts "do periodically" and sua sponte order new law days, the plaintiff nonetheless argues that "this practice is not required under our rules of practice or any statutory authority" and is, instead, "simply a courtesy" and "within the [court's] discretion . . . ."

This case thus presents a question of first impression as to whether an appeal period automatically, by operation of law, extends a previously established law day without the court acting to set—and provide notice of—a new law day. "Because the principal issue on appeal concerns questions of law, namely, subject matter jurisdiction and the scope of the appellate stay provisions in the rules of practice, our review is plenary." (Internal quotation marks omitted.) *Lending Home Funding Corp.* v. *REI Holdings, LLC*, 214 Conn. App. 703, 710,

[13] Practice Book § 63-1 (a) provides: "Unless a different time period is provided by statute, an appeal must be filed within twenty days of the date notice of the judgment or decision is given. The appeal period may be extended if permitted by Section 66-1 (a). If circumstances give rise to a new appeal period as provided in subsection (c) of this rule, such new period may be similarly extended as long as no extension of the original appeal period was obtained. If a motion is filed within the appeal period that might give rise to a new appeal period as provided in subsection (c) of this rule, the appeal may be filed either in the original appeal period, which continues to run, or in the new appeal period. As used in this rule, 'appeal period' includes any extension of such period obtained pursuant to Section 66-1 (a)."

281 A.3d 1 (2022) (*Lending Home*). When a trial court "draws conclusions of law . . . 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.) *Chamerda* v. *Opie*, 185 Conn. App. 627, 637–38, 197 A.3d 982, cert. denied, 330 Conn. 953, 197 A.3d 893 (2018); see also *In re Ava W.*, 336 Conn. 545, 553, 248 A.3d 675 (2020) ("[a] determination regarding a trial court's subject matter jurisdiction presents a question of law, and . . . we exercise plenary review" (internal quotation marks omitted)).[14]

The following legal principles and rules of practice are relevant to the defendant's claim. "In Connecticut, a mortgagee has legal title to the mortgaged property and the mortgagor has equitable title, also called the equity of redemption. . . . The equity of redemption gives the mortgagor the right to redeem the legal title previously conveyed by performing whatever conditions are specified in the mortgage, the most important of which is usually the payment of money. . . . Under our law, an action for strict foreclosure is brought by a mortgagee who, holding legal title, seeks not to enforce a forfeiture but rather to foreclose an equity of redemption unless the mortgagor satisfies the debt on or before his law day. . . . Accordingly, [if] a foreclosure decree has become absolute by the passing of the law days, the outstanding rights of redemption have

[14] The plaintiff argues in its appellate brief that the applicable standard of review is the abuse of discretion standard. Under that standard, a court's granting or denial of a motion to open a judgment is afforded great latitude, and such an action by a trial court "will not be disturbed on appeal unless it clearly appears that the trial court has abused its discretion." (Internal quotation marks omitted.) *U.S. Bank National Assn.* v. *Rothermel*, 339 Conn. 366, 381, 260 A.3d 1187 (2021). Where a court, however, has determined, as a matter of law, that it lacks subject matter jurisdiction to hear a motion to open a judgment, as occurred in this case, our review of that legal determination is plenary. See *Pennymac Corp.* v. *Tarzia*, 215 Conn. App. 190, 200 n.8, 281 A.3d 469 (2022).

been cut off and the title has become unconditional in the plaintiff, with a consequent and accompanying right to possession. . . . Thus, once the law day passes and title vests in the [plaintiff], no practical relief is available [p]rovided that this vesting has occurred pursuant to an authorized exercise of jurisdiction by the trial court . . . . In other words, § 49-15 (a) (1) . . . generally prohibits mortgagors from obtaining practical relief after the passage of the law days and, as a result, [renders] . . . postvesting motions to open a judgment . . . moot. . . . On the other hand, it is well established that law days that are set forth in a judgment of strict foreclosure can have no legal effect if an appellate stay is in effect because to give them legal effect would result in an extinguishment of the right of redemption pending appeal."[15] (Citations omitted; internal quotation marks omitted.) *Lending Home Funding Corp.* v. *REI Holdings, LLC*, supra, 214 Conn. 711–12; see also *U.S. Bank National Assn.* v. *Rothermel*, 339 Conn. 366, 375, 260 A.3d 1187 (2021) ("[i]n Connecticut, the passage of the law days in an action for strict foreclosure extinguishes a mortgagor's equitable right of redemption and vests absolute title in the encumbrancer"). "Law days in a strict foreclosure cannot run if a motion to open is filed during the appeal period but is yet to be ruled on.

[15] Section 49-15 sets forth the conditions under which a party may move to open a judgment of strict foreclosure. As this court previously has explained, "§ 49-15 prescribes only four conditions for opening a judgment of strict foreclosure: (1) that the motion be in writing; (2) that the movant be a person having an interest in the property; (3) that the motion be acted upon before an encumbrancer has acquired title; and (4) that cause, obviously good cause, be shown for opening the judgment." (Internal quotation marks omitted.) *Connecticut Housing Finance Authority* v. *McCarthy*, 204 Conn. App. 330, 339, 253 A.3d 494 (2021). Further, "[i]n order to be entitled to an opening of a judgment pursuant to § 49-15, the movant bears the burden of establishing the existence of good cause. . . . [G]ood cause for opening a [judgment] pursuant to § 49-15 . . . cannot rest entirely upon a showing that the original foreclosure judgment was erroneous. Otherwise that statute would serve merely as a device for extending the time to appeal from the judgment." (Citation omitted; internal quotation marks omitted.) Id., 340.

. . . Law days are ineffective while the appeal period is pending. To conclude otherwise would be tantamount to depriving a party of judicial review and, therefore, of due process of law." (Citations omitted.) *Continental Capital Corp.* v. *Lazarte*, 57 Conn. App. 271, 273–74, 749 A.2d 646 (2000). "Because of delays incident to the legal process of appeal, the judgment of the trial court [becomes] ineffective in an essential respect, and what is in effect a new judgment [becomes] necessary. . . . In other words, the law days are ineffective pending the stay because to treat them otherwise would carry out the judgment in violation of the stay." (Citation omitted; internal quotation marks omitted.) *RAL Management, Inc.* v. *Valley View Associates*, 278 Conn. 672, 683, 899 A.2d 586 (2006).

"[A] judgment of strict foreclosure may be opened only upon a finding that the court lacked jurisdiction over either the person or the case at the time the judgment of strict foreclosure was entered. Anything less would appear to be in direct contravention of the strictures of § 49-15 (a) and our subsequent case law." (Internal quotation marks omitted.) *Deutsche Bank National Trust Co.* v. *Pardo*, 170 Conn. App. 642, 652, 155 A.3d 764, cert. denied, 325 Conn. 912, 159 A.3d 231 (2017).[16]

[16] In *Deutsche Bank National Trust Co.* v. *Pardo*, supra, 170 Conn. App. 642, the court had set a law day of May 19, 2015. Id., 645. The defendant filed a motion to open the judgment on May 12, prior to the law day, but the motion was not heard until May 26—after the law day had passed, and without any record of the defendant requesting a hearing on the motion to open prior to the law day. Id., 652–53. As we noted then, "[a] critical factor to be recognized in connection with a motion to reopen a judgment of strict foreclosure is that the motion must be heard, and not merely filed, prior to the vesting of title. . . . [W]e have not found any basis in the law for the proposition that a mere *challenge* to jurisdiction tolls the running of the law days." (Citations omitted; emphasis in original; footnote omitted; internal quotation marks omitted.) Id. Crucially, in *Pardo*, the appeal period had passed but the law day had not when the motion to open was filed. Id., 645. The reason that such a motion must be heard in order to toll the passing of the law day is that any denial of such a motion opens a new appeal period. See Practice Book § 63-1 (a); *Continental Capital Corp.* v. *Lazarte*,

No less importantly, we must keep in mind that "[t]he law governing strict foreclosure lies at the crossroads between the equitable remedies provided by the judiciary and the statutory remedies provided by the legislature. . . . Because foreclosure is peculiarly an equitable action . . . the court may entertain such questions as are necessary to be determined in order that complete justice may be done. . . . In exercising its equitable discretion, however, the court must comply with mandatory statutory provisions that limit the remedies available to a foreclosing mortgagee. . . . It is our adjudicatory responsibility to find the appropriate accommodation between applicable judicial and statutory principles. Just as the legislature is presumed to enact legislation that renders the body of the law coherent and consistent, rather than contradictory and inconsistent . . . [so] courts must discharge their responsibility, in case by case adjudication, to assure that the body of the law—both common and statutory—remains coherent and consistent." (Internal quotation marks omitted.) *Seminole Realty, LLC* v. *Sekretaev*, 192 Conn. App. 405, 416, 218 A.3d 198, cert. denied, 334 Conn. 905, 220 A.3d 35 (2019).

Several rules of practice are relevant to this claim, including Practice Book (2023) § 61-11 (a), which allows for an automatic stay of execution in noncriminal cases,[17] and Practice Book (2023) § 61-11 (g), which

supra, 57 Conn. App. 273 ("[l]aw days in a strict foreclosure cannot run if a motion to open is filed during the appeal period but is yet to be ruled on").

[17] Practice Book (2023) § 61-11 (a) provides: "Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to file an appeal has expired. If an appeal is filed, such proceedings shall be stayed until the final determination of the cause. If the case goes to judgment on appeal, any stay thereafter shall be in accordance with Section 71-6 (motions for reconsideration), Section 84-3 (petitions for certification by the Connecticut Supreme Court), and Section 71-7 (petitions for certiorari by the United States Supreme Court)." This language was changed in 2025. See Practice Book § 61-11 (a). Relatedly, Practice Book (2023) § 63-1 (c) (1) provides in relevant part that a new appeal period is created under certain conditions:

governs the operation of an appellate stay within the strict foreclosure context.[18] These provisions, however, do not address directly whether the expiration of an appellate stay automatically operates to extend a law day that has been previously set by the court.

In *Lending Home Funding Corp.* v. *REI Holdings, LLC*, supra, 214 Conn. App. 703, this court considered a similar set of circumstances, wherein the trial court had concluded that it lacked subject matter jurisdiction to hear a motion to open and vacate a judgment of strict foreclosure due to the vesting of title resulting from the passing of the law day. Id., 707–709. We concluded that when the law day "passed during the appellate stay period [it] could not have had the legal effect of vesting absolute title in the plaintiff. . . . Accordingly, the court's determination that it did not have

"If a motion is filed within the appeal period that, if granted, would render the judgment, decision or acceptance of the verdict ineffective, either a new twenty day period or applicable statutory time period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion . . . ."

[18] Practice Book (2023) § 61-11 (g) provides: "Strict foreclosure—motion rendering ineffective a judgment of strict foreclosure. In any action for foreclosure in which the owner of the equity has filed, and the court has denied, at least two prior motions to open or other similar motion, no automatic stay shall arise upon the court's denial of any subsequent contested motion by that party, unless the party certifies under oath, in an affidavit accompanying the motion, that the motion was filed for good cause arising after the court's ruling on the party's most recent motion. Such affidavit shall recite the specific facts relied on in support of the moving party's claim of good cause. If, notwithstanding the submission of such an affidavit of good cause, the plaintiff contends that there is no good cause to stay the court's judgment of strict foreclosure pending resolution of the appeal, the plaintiff may seek termination of the automatic stay by filing a motion requesting such relief accompanied by an affidavit stating the basis for the plaintiff's claim. In the event such a motion to terminate stay is filed, it shall be set down for argument and the taking of evidence, if necessary, on the second short calendar next following the filing of the motion. There shall be no automatic appellate stay in the event that the court grants the motion to terminate the stay and, if necessary, sets new law dates. There shall be no automatic stay pending a motion for review of an order terminating a stay under this subsection."

jurisdiction to hear the merits of the defendant's . . . motion to open the judgment of strict foreclosure was improper. To hold otherwise would circumvent the automatic stay provisions established by our rules of practice." (Citations omitted; internal quotation marks omitted.) Id., 719–20.

Additional procedural history and analysis of the *Lending Home* decision is helpful for resolving the defendants' claim. In *Lending Home*, the court denied the debtor's motion to open and also assigned a new law day. Id., 706. Prior to that law day, the debtor filed a motion to reargue the motion to open. Id. After the passing of the law day, the court denied the motion to reargue and sent notice to the parties. Id., 706–707. Twelve days later, the foreclosing party filed a certificate of foreclosure on the appropriate land records and also executed a quitclaim deed purporting to transfer the property. Id., 707. Months later, the debtor filed another motion to open, arguing that title never vested in the foreclosing party and that the purported transfer was therefore never effective. Id. The debtor claimed that, because it had filed the motion to reargue within the twenty day appeal period established by our rules of practice, the law day "had no legal effect . . . ." Id., 708. In essence, the debtor argued that there was good cause to open the judgment—due to both the court's failure to "sua sponte reassign a legally effective law day," as well as the plaintiff's "failure to move the court to set a new law day outside the appeal period . . . ." (Internal quotation marks omitted.) Id. The court denied the debtor's motion on the ground that it was without subject matter jurisdiction to hear the motion. Id., 709.

On appeal, this court interpreted Practice Book §§ 61-11 (a) and 63-1, as well as our Supreme Court's previous authority, to conclude that the filing of the motion to reargue extended the appellate stay period until the point in time at which "the parties received notice of

the court's ruling on that motion." Id., 710. We held that, because the law day fell within the extended appellate stay period, "it had no legal effect and could not vest absolute title" in the foreclosing party. Id.; see also *Continental Capital Corp.* v. *Lazarte*, supra, 57 Conn. App. 273 ("[l]aw days in a strict foreclosure cannot run if a motion to open is filed during the appeal period but is yet to be ruled on").[19]

The defendants argue that *Lending Home*, if not dispositive of the present case, is highly instructive. According to the defendants, the plaintiff's contention that the law days automatically reset upon a denial of a motion that opens a new appeal window is incompatible with our conclusion in *Lending Home*. Put differently, if the plaintiff is correct that the law day resets after an appeal period ends, then the trial court in *Lending Home* would have lacked jurisdiction to consider a motion to open, filed months after notice to the parties of the court's denial of the motion to reargue the motion to open. As the defendants argue, underlying the holding in *Lending Home* is the presumption that the law days

[19] We have also held that, when a party files a motion to open a judgment of strict foreclosure *outside* of the appeal period, no automatic stay is in place. See *First National Bank of Chicago* v. *Luecken*, 66 Conn. App. 606, 608, 785 A.2d 1148 (2001), cert. denied, 259 Conn. 915, 792 A.2d 851 (2002). The rule in foreclosure by sale situations functions similarly: "[I]n a foreclosure by sale, although the right of redemption is extinguished upon the court's approval of the foreclosure sale, a motion to open a judgment approving that sale, properly filed within the appeal period, acts as a stay of the proceedings to enforce or carry out the judgment. The mortgagor's right of redemption, therefore, survives the appeal period to the extent that the order may not be enforced until the appeal period has elapsed. To rule otherwise would take away a mortgagor's right to effectively appeal from the judgment approving the sale. By way of analogy, a court's approval of the sale in a foreclosure by sale is like the running of law days in a strict foreclosure matter in that it serves as the operative act which extinguishes the mortgagor's right of redemption and can deprive the court of subject matter jurisdiction to open or set aside that judgment when such a motion is filed outside of the appeal period." (Emphasis omitted.) *Wells Fargo Bank of Minnesota, N.A.* v. *Morgan*, 98 Conn. App. 72, 81, 909 A.2d 526 (2006).

do *not* reset automatically: "If it is true [as the plaintiff contends] that law days automatically reset by themselves after the expiration of the appeal period, then, arguably, the law days would have been extended automatically in the *Lending Home* case to take effect twenty-one days after the [ruling on the motion]."

We note that the setting of law days is not merely incidental to a judgment of strict foreclosure. "In a foreclosure action, the judgment must either find the issues for the defendant or determine the amount of the debt, direct a foreclosure and fix the law days." *Morici* v. *Jarvie*, 137 Conn. 97, 103, 75 A.2d 47 (1950). In a strict foreclosure, then, the fixing of law days is an essential part of the judgment. Our Supreme Court, for instance, determined that it was improper for the trial court to open the judgment during the pendency of an appellate stay merely to change the law days. See *RAL Management, Inc.* v. *Valley View Associates*, supra, 278 Conn. 682.

Relying on *RAL Management, Inc.*, the defendants argue that "the [court] cannot leave the judgment of foreclosure with ineffective law days in abeyance. At minimum, a new judgment is required." See *RAL Management, Inc.* v. *Valley View Associates*, supra, 278 Conn. 683 ("[b]ecause of delays incident to the legal process of appeal, the judgment of the trial court [becomes] ineffective in an essential respect, and what is in effect a new judgment [becomes] necessary" (internal quotation marks omitted)). As our Supreme Court has observed, "the law days are ineffective pending the stay because to treat them otherwise would carry out the judgment in violation of the stay. It necessarily follows, therefore, that if the law days have no legal effect and necessarily will lapse pending the appeal; see *Farmers & Mechanics Savings Bank* v. *Sullivan*, [216 Conn. 341, 348, 579 A.2d 1054 (1990)]; any change to those dates pending appeal similarly have no effect.

Indeed, the rules of practice anticipate such a circumstance by providing specific authority for the trial court to set new law days if the court's judgment is affirmed on appeal. See Practice Book § 17-10."[20] (Footnote omitted.) *RAL Management, Inc.* v. *Valley View Associates*, supra, 683–84.

Although the plaintiff acknowledges that vesting cannot occur during the appeal period, it contends that *Farmers & Mechanics Savings Bank* v. *Sullivan*, supra, 216 Conn. 341, stands for the proposition that only when an appeal is *filed* during the appeal period does the judgment become ineffective. In other words, according to the plaintiff, the law day must be reset only when an appeal is timely filed. According to this logic, after the appeal period had lapsed—without an appeal having been filed by the defendants subsequent to the court's denial of their first motion to open—"the law days started to run pursuant to operation of law." We are not persuaded.

In *Sullivan*, the trial court had rendered a judgment of strict foreclosure against a nonappearing, defaulted debtor and had set law days of February 29 through March 4, 1988. See *Farmers & Mechanics Savings Bank* v. *Sullivan*, supra, 216 Conn. 344. On February 8, a lienholder filed a motion to open and modify the judgment of strict foreclosure, which was not heard until after the passing of the law days. Id. On the final law day, the junior lienholder redeemed its interest in the property. Id.

[20] We note that Practice Book § 17-10 provides: "If a judgment fixing a set time for the performance of an act is affirmed on appeal by the Supreme Court and such time has elapsed pending the appeal, the judicial authority which rendered the judgment appealed from may, on motion and after due notice, modify it by extending the time." Although there is an important distinction between an appeal period in which no appeal has been filed and an appellate ruling that affirms a judgment after a time that had been fixed by the judgment has lapsed, this rule highlights the importance of due notice.

Thereafter, the defaulted debtor filed an appearance and a motion to open the judgment and to set new law days. Id., 344–45. Following the court's denial of all pending motions, the defaulted debtor appealed from the denial of its motion to open. Id., 345. On appeal, our Supreme Court concluded that "the trial court should have granted the [defaulted debtor's] motion to open the judgment of strict foreclosure and remand[ed] the case with direction to open the judgment and to order a foreclosure by sale." Id. The court relied, in part, on the fact that the lienholder, by filing a motion to open within the appeal period of the judgment, had rendered the law day ineffective. As the court stated, the effect of the filing of the lienholder's motion to open was "to stay the enforceability of the foreclosure judgment" until the motion was decided. Id., 347. In other words, even though it was not the lienholder who filed the appeal, it was the lienholder's motion to open, filed within the appeal period, that rendered ineffective the law days. Contrary to the plaintiff's contention in the present case, *Sullivan* supports our conclusion that a law day must be reset once it is rendered ineffective by an appellate stay. *Sullivan* also underscores the obvious point that notice of the law day protects not only the debtor but subsequent lienholders.

To be clear, neither this court nor our Supreme Court has held that law days reset automatically.[21] As we have explained previously in this opinion, the law day in a strict foreclosure action is predicated on the right of redemption, which, in the absence of notice, would be eviscerated. It is well established that "law days that are set forth in a judgment of strict foreclosure can have no legal effect if an appellate stay is in effect because to [do so] would result in an extinguishment of the right of redemption pending appeal." *Sovereign*

[21] We observe that the Rules Committee of the Superior Court remains free to amend the text of the relevant rules as it deems appropriate.

Bank v. *Licata*, 178 Conn. App. 82, 91 n.11, 172 A.3d 1263 (2017). We cannot endorse any result that permits a law day to pass silently. "Law days are ineffective while the appeal period is pending. To conclude otherwise would be tantamount to depriving a party of judicial review and, therefore, of due process of law." *Continental Capital Corp.* v. *Lazarte*, supra, 57 Conn. App. 273–74; see also *U.S. Bank National Assn.* v. *Rago*, 216 Conn. App. 200, 206, 284 A.3d 629 (2022) (holding that "the court erred in making updated findings sua sponte and without providing to the parties adequate notice and an opportunity to be heard").

On the facts of this case, as well as our review of the relevant statutes, rules of practice, applicable case law, and the principles of equity that undergird the foregoing, we conclude that law days do not automatically reset after the conclusion of an appeal period in which no appeal is filed. Here, the self-represented defendants, upon receiving notice that the court had denied their motion to open on May 1, 2023, nonetheless had no notice from the court as to whether or how this would impact their law day and right of redemption. The court's subsequent articulation of its order does not clarify the situation—stating only that the court "might" have changed the law day. Moreover, the record reflects that the plaintiff also was confused as to when title had vested—a confusion that lingers through the present appeal.[22] In order to fulfill its equitable purpose, a law day cannot pass silently, without all parties having proper notice. Our system of laws simply cannot countenance such a result.

[22] The plaintiff's actions suggest that it lacked clarity as to whether title had vested on May 3, 2023, as the plaintiff averred in its objection to the defendants' second motion to open, in its motion for a deficiency judgment and on the certificate of foreclosure, or on May 24, 2023, as the plaintiff claims on appeal in light of the court's February 29, 2024 articulation. See footnote 10 of this opinion.

We conclude that the court retained subject matter jurisdiction because title did not vest in the plaintiff on May 24, 2023. For that reason, the court improperly denied the motion to open on that basis.

The judgment is reversed and the case is remanded for the purpose of making a new finding as to the amount of the debt, for the setting of new law days, and for other proceedings according to law.

In this opinion the other judges concurred.

FRANK HARRIS *v.* COMMISSIONER OF CORRECTION (AC 47330)

Cradle, C. J., and Elgo and Wilson, Js.

Syllabus

The petitioner, who had been convicted of several crimes, appealed, on the granting of certification, from the habeas court's judgment denying his petition for a writ of habeas corpus. He claimed, inter alia, that his guilty plea to a charge of risk of injury to a child was not made knowingly, intelligently and voluntarily, in violation of his right to due process, because his criminal trial counsel failed to advise him that he would be required to register as a sex offender as a consequence of the plea. *Held*:

The petitioner's claim that his plea was not entered knowingly, intelligently and voluntarily was unavailing, as, although there was some uncertainty at the petitioner's plea proceeding as to whether his age at the time he committed the offense at issue might exempt him from the requirement of sex offender registration, the record amply reflected that the trial court expressly advised him during its plea canvass that he might have to register as a sex offender, the petitioner acknowledged on the record that he understood that possibility, and the habeas court credited the testimony of his criminal trial counsel that she had advised him of the registration requirement before he entered his plea.

The petitioner could not prevail on his claim that the habeas court erred in concluding that he failed to demonstrate that his criminal trial counsel rendered ineffective assistance in failing to advise him that he would be required to register as a sex offender as a result of his guilty plea, as, even if this court assumed that counsel's performance was deficient, the petitioner failed to demonstrate that he was prejudiced thereby, as the habeas court,

being the sole arbiter of the credibility of witnesses, was not required to accept the petitioner's testimony that he unequivocally would not have pleaded guilty or would have pursued a plea offer that did not require sex offender registration had he known he would be required to register as a sex offender.

Argued May 21—officially released August 26, 2025

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland and tried to the court, *Bhatt*, *J.*; judgment denying the petition, from which the petitioner, on the granting of certification, appealed to this court. *Affirmed.*

Judie Marshall, assigned counsel, for the appellant (petitioner).

Christopher A. Alexy, senior assistant state's attorney, with whom, on the brief, were *Margaret E. Kelley*, state's attorney, and *Elizabeth M. Moseley*, senior assistant state's attorney, for the appellee (respondent).

Opinion

CRADLE, C. J. In this certified appeal, the petitioner, Frank Harris, appeals from the judgment of the habeas court denying his petition for a writ of habeas corpus. On appeal, the petitioner claims that (1) his guilty plea to risk of injury to a child in violation of General Statutes § 53-21 (a) (2) was not knowingly, intelligently and voluntarily entered in violation of his right to due process because he was not advised that he would be required to register as a sex offender, and (2) his trial counsel, Susan Brown, rendered ineffective assistance in failing to so advise him. We affirm the judgment of the habeas court.

The following undisputed facts and procedural history are relevant to our resolution of the petitioner's claims on appeal. On November 15, 2018, the petitioner

pleaded guilty to burglary in the first degree in violation of General Statutes § 53a-101 (a) (2), assault in the second degree in violation of General Statutes § 53a-60 (a) (2), criminal mischief in the second degree in violation of General Statutes § 53a-116 (a) (1), risk of injury to a child in violation of § 53-21 (a) (2) and coercion in violation of General Statutes § 53a-192 (a) (3).[1]

At the plea hearing, the prosecutor, Amy L. Bepko, informed the court, *Brown*, *J.*: "I do believe that the [petitioner] needs to be advised of sex offender registration, although he was seventeen at the time of the offense, [so] I don't know how that affects registration." Following a sidebar conference with Bepko and defense counsel, the court advised the petitioner: "[T]here is the possibility . . . that you would be required to be placed on the sexual offender registry. The period, if you are required to be on it, would not be for a period in excess of ten years, and that will be made clear to you before the sentencing date of January 24, 2019. There is the possibility that you will have to be on the registry." When the court asked the petitioner if he understood, the petitioner responded, "[y]es."

On January 24, 2019, the trial court sentenced the petitioner to a total effective term of nine years of incarceration, execution suspended after four years, followed by ten years of probation. At the sentencing hearing, the court told the petitioner that he would be placed on the sexual offender registry for a period of ten years. The petitioner did not voice any objection, nor did he thereafter seek to withdraw his guilty plea.

In April, 2022, the petitioner filed this petition for a writ of habeas corpus, alleging that his plea to the risk

[1] The petitioner pleaded guilty to the risk of injury and coercion charges pursuant to the *Alford* doctrine. See *North Carolina* v. *Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

of injury charge was not entered knowingly, intelligently and voluntarily because he was not advised that he would be required to register as a sex offender. He also alleged that Brown had rendered ineffective assistance in failing to so advise him. He alleged that he would not have pleaded guilty to the risk of injury charge if he had known and understood that he would be required to register as a sex offender.

In his return, the respondent, the Commissioner of Correction, left the petitioner to his proof. By way of affirmative defense, the respondent alleged, inter alia,[2] that the petitioner's claims were procedurally defaulted and that the petitioner could not establish good cause for his failure to raise them at trial or on direct appeal, nor could he establish prejudice sufficient to excuse his default.

Following a two day trial, at which the petitioner, his mother, Bepko and Brown testified, the habeas court, *Bhatt*, *J.*, filed a memorandum of decision denying the petition for a writ of habeas corpus. In rejecting the petitioner's claim that his plea was not entered knowingly, intelligently and voluntarily, the court reasoned: "The court credits [Brown's] testimony that she was aware of the registration requirements . . . and that she advised [the petitioner] of those requirements before he entered his plea, between his plea and sentencing and on the day of sentencing. Furthermore, the court itself advised [the petitioner] that there was a possibility that he would be required to register for ten years and [that] it would be 'made clear' to him before sentencing. [The petitioner] acknowledged this on the record, prior to the court accepting the plea. Thus, he was fully aware of the consequences—potential and actual—prior to the

[2] The respondent also alleged that the petitioner had failed to state a claim on which relief can be granted. The habeas court rejected that argument. The respondent has not challenged that ruling on appeal.

court accepting the plea. Even if there was ambiguity at the time of the plea being accepted by the court, it was cleared up prior to sentencing and certainly at sentencing when the court informed [the petitioner] that he would have to register. He did not at that time seek to withdraw his plea or state on the record that he did not understand that consequence and did not wish to proceed further with his plea. Thus, his testimony that he was not aware of registration consequences is not credible."[3] (Footnote omitted.)

The habeas court then addressed the petitioner's ineffective assistance of counsel claim. The court explained: "[The petitioner] alleges that [Brown] performed deficiently by failing to adequately research the law governing sex offender registration; failing to make registration requirements a meaningful part of the plea negotiations; and failing to advise him that he would be required to register for ten years without exemption. All of these claims must be denied. [Brown's] credible testimony established that she was familiar with sex offender registration requirements and advised [the petitioner] of those requirements. She further testified that she constantly and repeatedly brought up [the petitioner's] age

[3] In discussing the respondent's affirmative defense of procedural default as to the petitioner's claim that his guilty plea was not made voluntarily, the habeas court explained: "The respondent has alleged that this claim is procedurally defaulted because it was not raised in the trial court or on appeal. . . . [The petitioner] responds that the claim cannot be procedurally defaulted because he did not find out until after the plea and sentencing that he would be required to register, and, therefore, he could not have raised this issue prior to sentencing. In the alternative, he asserts ineffective assistance of counsel as cause to excuse the procedural default. The court finds that [the petitioner] cannot prevail on this claim whether he procedurally defaulted or not." The court concluded, stating that "[the petitioner] cannot prove cause and prejudice, as discussed . . . in regard to [his due process claim]." Nonetheless, the court appears to have stopped short of making a finding of procedural default. Even if such finding were made, however, it would be unnecessary for us to review it because we conclude that the court properly rejected the petitioner's claims on the merits.

in pretrial negotiations in order to impress upon the state and the court his youth and her disagreement with [his] having to register as a sex offender and be subject to sex offender probation. Thus, there is no deficient performance.

"Even assuming deficient performance, [the petitioner] cannot prove prejudice for two reasons: first, [Bepko] testified that, even if she were amenable to changing the charge to sexual assault in the fourth degree, she would have asked the court to impose sex offender registration. [The petitioner] has not proven a reasonable likelihood of a different outcome, i.e., [the court] would not have imposed registration anyway. Second, [Brown] testified that [the petitioner] accepted the offer because he wanted to limit his jail time. This is corroborated by [Bepko's] testimony that, during the sidebar, [Brown] told her and [the court] that the plea wasn't about registration—meaning that [the petitioner] was accepting the plea for reasons unrelated to the sex offender registration and would accept the offer regardless of whether he would be required to register. This is contemporaneous evidence of [the petitioner's] motivation to accept the plea. Also weighing against [the petitioner] is the offer he accepted—four years' incarceration—compared to the significant exposure he faced for all the charges pending against him. Even the charges he actually pled guilty to: burglary in the first degree, assault in the second degree, risk of injury, among others, exposed him to well over forty years' incarceration. Thus, the court does not find credible his testimony that, had he known he would be required to register, he would have rejected the offer and gone to trial. The court further notes that at no point did [the petitioner] state on the record that he was not told he would have to register and did not seek to withdraw his plea on the basis that he had not agreed to registration or did not want to accept a plea that included registration."

The petitioner thereafter filed a petition for certification to appeal, which the habeas court granted, and this appeal followed.

I

The petitioner first claims that the habeas court improperly rejected his claim that his guilty plea was not entered knowingly, intelligently and voluntarily because he did not know that he would be required to register as a sex offender. We disagree.

"[D]ue process requires that a plea be entered voluntarily and intelligently. . . . Because every valid guilty plea must be demonstrably voluntary, knowing and intelligent, we require the record to disclose an act that represents a knowing choice among available alternative courses of action, an understanding of the law in relation to the facts, and sufficient awareness of the relevant circumstances and likely consequences of the plea. . . . A determination as to whether a plea has been knowingly and voluntarily entered entails an examination of all of the relevant circumstances." (Internal quotation marks omitted.) *White* v. *Commissioner of Correction*, 182 Conn. App. 188, 194, 189 A.3d 171, cert. denied, 330 Conn. 904, 192 A.3d 425 (2018). Moreover, the fact that a defendant does not know with certainty the consequences of his plea does not necessarily render a plea uninformed and involuntary. Instead, in determining whether a plea is voluntarily and intelligently entered, "the ultimate issue to be resolved is whether the defendant was aware of actual *sentencing possibilities*, and, if not, whether accurate information would have made any difference in his decision to enter a [guilty] plea." (Emphasis added; internal quotation marks omitted.) *State* v. *Domian*, 235 Conn. 679, 688, 668 A.2d 1333 (1996).

"When reviewing the decision of a habeas court . . . [t]his court does not retry the case or evaluate the

credibility of the witnesses. . . . Rather, we must defer to the [trier of fact's] assessment of the credibility of the witnesses based on its firsthand observation of their conduct, demeanor and attitude. . . . The habeas judge, as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given to their testimony." (Internal quotation marks omitted.) *Lopez* v. *Commissioner of Correction*, 230 Conn. App. 437, 481, 330 A.3d 933 (2025).

The petitioner claims that his right to due process was violated because, at the time of the plea, he did not know he would be required to register as a sex offender as a consequence of the plea. A plea is not unknowing or involuntary, however, if the petitioner was aware of all of the sentencing possibilities. Here, the record amply reflects that, at the time of the plea, the petitioner was aware of the possibility that he would be required to register as a sex offender. The court expressly advised the petitioner that he might have to register, and the petitioner acknowledged that he understood the court's advisement. The petitioner argues that, "[e]ven though the habeas court did not credit the petitioner's testimony that he was unaware of registration, the petitioner's claim is nevertheless supported by the testimony of [Bepko, Brown and his mother], and the plea transcript." In so arguing, the petitioner focuses on the testimony whereby the witnesses indicated that they were not certain, at the time of the plea, that the petitioner would be required to register because he was seventeen years old when he committed the offense that exposed him to mandatory registration. Although there was some uncertainty at the time of the plea as to whether the petitioner's age at the time he committed the offense might exempt him from the registration requirement, the court canvassed the petitioner as to the possibility that he might be so required, and he acknowledged on the record that he understood

that possibility. Moreover, the court credited Brown's testimony that she had advised the petitioner of the registration requirement before he entered his plea. Accordingly, the petitioner's claim that his plea was not entered knowingly, intelligently and voluntarily is unavailing.

II

The petitioner also claims that the habeas court erred in rejecting his claim that Brown had rendered ineffective assistance in failing to advise him that he would be required to register as a sex offender. We disagree.

"Our standard of review of a habeas court's judgment on ineffective assistance of counsel claims is well settled. In a habeas appeal, this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous, but our review of whether the facts as found by the habeas court constituted a violation of the petitioner's constitutional right to effective assistance of counsel is plenary . . . . To succeed on a claim of ineffective assistance of counsel, a habeas petitioner must satisfy the two-pronged test articulated in *Strickland* v. *Washington*, [466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)]. *Strickland* requires that a petitioner satisfy both a performance prong and prejudice prong. . . . It is well settled that [a] reviewing court can find against a petitioner on either ground, whichever is easier. . . . [B]ecause a successful petitioner must satisfy both prongs of the *Strickland* test, failure to satisfy either prong is fatal to the habeas petition." (Citations omitted; internal quotation marks omitted.) *James P.* v. *Commissioner of Correction*, 224 Conn. App. 636, 644–45, 312 A.3d 1132, cert. denied, 349 Conn. 911, 314 A.3d 603 (2024).

In the present case, the habeas court denied the habeas petition on the ground that the petitioner had failed to demonstrate both deficient performance and

prejudice with respect to his claim of ineffective assistance of counsel. We need not decide whether Brown rendered deficient performance because, even if we assume, without deciding, that her performance was deficient, we agree with the habeas court's conclusion that the petitioner failed to demonstrate that he was prejudiced by her allegedly deficient performance.

"To establish prejudice in cases involving guilty pleas, the petitioner must show a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. . . . [A] petitioner must make more than a bare allegation that he would have pleaded differently and gone to trial . . . ." (Citations omitted; internal quotation marks omitted.) Id., 645–46. "[A] petitioner's assertion after he has accepted a plea that he would have insisted on going to trial suffers from obvious credibility problems . . . and should be assessed in light of the likely risks that pursuing that course would have entailed." (Internal quotation marks omitted.) Id., 646.

The petitioner argues that he demonstrated prejudice because he testified "unequivocally" that he would not have pleaded guilty if he had known that he would be required to register as a sex offender. As the sole arbiter of the credibility of witnesses and the weight to be given their testimony, the court found the petitioner's testimony not credible, particularly in light of the fact that the charges to which he pleaded exposed him to the possibility of forty years of incarceration.

The petitioner also argues that he would have pursued a plea offer that did not require him to register as a sex offender if he had known that he would be required to register as a sex offender by pleading guilty to risk of injury to a child. The court credited Bepko's testimony that registration was important to the state and that she would have argued for registration even

if she had agreed to charge the petitioner with an offense that did not carry mandatory registration. The petitioner therefore has failed to demonstrate that he was prejudiced by Brown's allegedly deficient performance. Accordingly, the petitioner cannot prevail on his ineffective assistance of counsel claim.

The judgment is affirmed.

In this opinion the other judges concurred.