CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

DEAN S. BARR *v.* MFI MANAGEMENT, INC., ET AL.

FIH, LLC *v.* DEAN S. BARR ET AL.
(AC 47069)

Moll, Westbrook and Sheldon, Js.

Syllabus

In two separate actions that were consolidated for trial, which involved allegations of fraud in connection with private investments, B, the plaintiff in the first action and the named defendant in the second action, and M, a defendant in the second action, appealed from the trial court's judgments for the named defendant et al. in the first action and F Co., the plaintiff in the second action. After the actions had been consolidated, the parties represented to the trial court in several joint case management proposals that the actions would be tried to a jury and filed jury claims in the separate actions they brought. F Co. thereafter filed motions to erase both of the consolidated actions from the jury docket, arguing, inter alia, that B's jury claim was untimely under the applicable statute (§ 52-215). The trial court granted F Co.'s motions to erase, reasoning that the jury claims in both actions were untimely, that the parties had not provided written consent to a jury trial under § 52-215, and that a jury claim could be withdrawn at any time in the absence of prejudice to the opposing party. B and M claimed that the trial court improperly removed the actions from the jury docket and proceeded with a bench trial. *Held*:

This court reversed the judgments of the trial court and remanded the actions for a jury trial, as § 52-215 permits a case to be entered at any time on the jury docket upon the parties' written consent, and the trial court, in granting F Co.'s motions to erase, improperly focused on the timing of the

parties' jury claims, which was not pertinent to whether they provided written consent by virtue of their jury claims.

This court determined that B's filing of a jury claim in the action he brought, along with the F Co.'s filing of a certificate of closed pleadings in that action, which also indicated that the matter would be tried to a jury, constituted written consent by both parties to enter the consolidated actions on the jury docket in accordance with § 52-215, and F Co. further expressed its consent to having the two actions tried together to a jury when it thereafter filed its own jury claim in the action it brought.

The trial court erred in granting F Co.'s motions to erase and in concluding that F Co. retained the right to unilaterally withdraw its consent to a jury trial once the action it brought was properly placed on the jury docket, as nothing in § 52-215 authorized such a unilateral change and, with it, the unilateral denial of an opponent's right to a jury trial, and the placement of a case on the jury list upon the written consent of all parties fixed each party's right to a jury trial and prevented the court from erasing the case from the jury docket except by agreement of all parties.

Argued February 10—officially released September 9, 2025

Procedural History

Action, in the first case, to recover damages for, inter alia, defamation, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk and transferred to the Complex Litigation Docket, where the action was withdrawn as against the defendant Joseph Meehan et al.; thereafter, the court, *Lee*, *J.*, granted in part the motion to dismiss filed by the named defendant et al.; subsequently, action, in the second case, to recover damages for, inter alia, violation of the Connecticut Uniform Securities Act, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk and transferred to the Complex Litigation Docket; thereafter, the court, *Ozalis*, *J.*, granted the motion for judgment filed by the defendant Lazar Milstein et al. in the first case as to certain counts of the complaint; subsequently, the action in the first case was withdrawn in part, and the cases were consolidated for trial; thereafter, the named defendant et al. in the second case filed a counterclaim; subsequently, the court, *Ozalis*, *J.*, granted in part the motion for

summary judgment filed by the named defendant et al. in the first case and granted in part the motion for summary judgment filed by the counterclaim defendant et al. in the second case; thereafter, the court, *Ozalis*, *J.*, granted the motions filed by the named defendant et al. in the first case and the plaintiff in the second case to erase the cases from the jury docket; subsequently, the cases were tried to the court, *Ozalis*, *J.*; judgments in part for the named defendant et al. in the first case and for the plaintiff in the second case; thereafter, the court, *Ozalis*, *J.*, granted the motions filed by plaintiff in the first case and named defendant et al. in the second case to modify the court's damages award, and the plaintiff in the first case and the named defendant et al. in the second case appealed to this court. *Reversed*; *new trial.*

Joseph M. Pastore III, with whom were *Melissa Rose McClammey* and *Paul Fenaroli*, and, on the brief, *Tyler Rutherford*, for the appellants (plaintiff in the first case, named defendant et al. in the second case).

Jonathan M. Freiman, with whom were *Emmett Gilles* and, on the brief, *James I. Glasser* and *David Norman-Schiff*, for the appellees (named defendant et al. in the first case, plaintiff in the second case).

Opinion

SHELDON, J. The sole issue in this appeal is whether the trial court improperly removed the parties' consolidated actions from the jury docket less than one month before trial was scheduled to begin and thereafter proceeded to judgment in both actions with a bench trial. The appellants, Dean S. Barr and Joseph Meehan (collectively, Barr parties), appeal from the judgments rendered against them following that trial in favor of the appellees, FIH, LLC (FIH), MFI Management, Inc. (MFI), LAZ May 10, LLC (LAZ May 10), Lazer Milstein, and

Nesanel Milstein (collectively, FIH parties).[1] The Barr parties claim that the court improperly removed the actions from the jury docket because, inter alia,[2] they properly had been entered in the docket as a jury case upon written consent of all parties pursuant to General Statutes § 52-215.[3] We agree, and accordingly reverse the judgments of the trial court and remand both actions for a jury trial.

Our principal focus in this case is on § 52-215, which governs the manner in which a case may be entered on the jury docket. Section 52-215 sets forth four different

[1] As explained subsequently in this opinion, the present appeal involves two actions, with counterclaims filed in each action, in which the parties are variously identified as plaintiffs and defendants. For convenience, we refer to the appellants collectively as the Barr parties and the appellees collectively as the FIH parties, and we refer to the parties individually by name when appropriate.

[2] The Barr parties also claim that the court improperly removed the actions from the jury docket because the actions properly were entered on the jury docket by order of the court and by way of Barr's original complaint. In light of our conclusion, we do not fully address these alternative arguments. See footnote 17 of this opinion.

[3] General Statutes § 52-215 provides in relevant part: "The following-named classes of cases shall be entered in the docket as jury cases upon the written request of either party made to the clerk within thirty days after the return day: Appeals from probate involving the validity of a will or paper purporting to be such, appeals from the actions of commissioners on insolvent estates, and, except as hereinafter provided, civil actions involving such an issue of fact as, prior to January 1, 1880, would not present a question properly cognizable in equity, except that there shall be no right to trial by jury in civil actions in which the amount, legal interest or property in demand does not exceed two hundred fifty dollars or in a summary process case. When, in any of the above-named cases an issue of fact is joined, the case may, within ten days after such issue of fact is joined, be entered in the docket as a jury case upon the request of either party made to the clerk; and any such case may at any time be entered in the docket as a jury case by the clerk, upon written consent of all parties or by order of court. All issues of fact in any such case shall be tried by the jury, provided the issues agreed by the parties to be tried by the court may be so tried. All cases not entered in the docket as jury cases under the foregoing provisions . . . shall be entered on the docket as court cases, and shall, with all issues of law and issues of fact, other than those hereinbefore specified, which may be joined in actions entered on the docket as jury cases, be disposed of as court cases."

ways in which a case may be entered on the docket as a jury case: (1) upon the written request of either party within thirty days after the return day, (2) upon the request of either party within ten days after an issue of fact is joined, (3) upon written consent of all parties, or (4) by order of court. We are principally concerned with the language in § 52-215 that provides that a case "may at any time be entered in the docket as a jury case by the clerk, upon written consent of all parties" and consider whether the Barr parties are correct in claiming that the parties' filings in the present case satisfied that provision.

With those questions in mind, we turn first to the facts of this case, as found by the trial court, and the procedural history by which the judgments herein challenged were rendered. The Barr parties are the cofounders of Foundation Capital Partners, LLC (Foundation), a company formed in 2010 to act as a general partner and to manage the operations of a private equity fund, Foundation Capital Partners, LP. Barr was the managing partner of Foundation, and Meehan was its chief operating officer. Pursuant to Foundation's operating agreement, Barr and Meehan each held approximately 46 percent of the management interest in Foundation.

FIH is a company that was specifically created in February, 2014, to invest in Foundation. FIH is solely owned by LAZ May 10, and Lazer is the sole manager of FIH and LAZ May 10. Lazer's son, Nesanel, holds an economic interest in FIH and is an agent and authorized representative of FIH.

Nesanel was first contacted about the possibility of investing in Foundation in October, 2013. MFI, a corporation owned solely by Nesanel, entered into a nondisclosure agreement with Foundation in November, 2013.[4] Between November, 2013, and February, 2014, Nesanel

[4] As previously noted, FIH was not created until February, 2014.

and Greg Dyra, a hedge fund expert and investment advisor, worked together through MFI to perform due diligence as to the advisability of FIH investing in Foundation. In so doing, Nesanel and Dyra visited Foundation's offices, spoke to Foundation employees and investors, and evaluated Foundation's investment strategy, financial projections, and investment progress.

Hall O'Donnell, an employee of Foundation, provided Nesanel and Dyra with certain due diligence materials, which represented that Foundation had an experienced management team whose members had known each other for many years and worked well together. Such materials further represented that Foundation's investment pipeline had become increasingly active in recent months, which Barr corroborated by presenting Nesanel and Dyra with a performance model for Foundation, which showed that it expected to complete four deals by June, 2014.

While conducting due diligence as to FIH's possible investment in Foundation, Dyra learned that the Barr parties were married to sisters, and that Barr and his then wife, Meehan's sister-in-law, were in the midst of a divorce. Barr told Dyra, however, that his divorce "posed no threat" to Foundation or to FIH's potential investment in it. Barr specifically told Dyra that his divorce would not interfere with his relationship with Meehan and that they could still work together professionally.

In February, 2014, FIH made a series of investments in Foundation totaling $6.75 million. The approval for FIH's investments was given by Lazer on the recommendation of Nesanel, who, in turn, based his recommendation on input he had received from Dyra. Nesanel claimed that he based his recommendation on a number of factors, including the representations by Barr and Meehan that Foundation had a strong management

team that worked well together and had a strong pipeline of deals ready to proceed.

Less than one month after FIH made its investments, Meehan asked to meet with Dyra. At the meeting, Meehan told Dyra that Barr's behavior had deteriorated rapidly after FIH made its investments. Meehan advised FIH, through Dyra, that he was no longer able to control Barr and, as a result, that the future of Foundation was being threatened. On April 1, 2014, Meehan provided Dyra with a memorandum he had drafted, which he titled "Project Soothsayer" (Project Soothsayer memorandum), along with a series of emails in support thereof. In the Project Soothsayer memorandum, Meehan wrote that Barr was "actively destroying value for [Foundation's] members, due to his rampant financial difficulties, his functional inability to . . . tell the truth at any juncture, his rude and dismissive attitude towards his colleagues, and his desire to be the only point of contact with potential investments or investors." The memorandum further stated, inter alia, that Barr had few, if any, hedge fund contacts; Barr had no fundraising ability; Barr had exceptionally poor judgment and made exceedingly rash decisions without consideration of the opinions of Foundation staff; Barr's divorce would be messy, expensive and protracted; and Barr was misusing corporate funds for personal matters. Meehan concluded the memorandum by stating that Barr needed to be removed immediately from his leadership position at Foundation and that, in order to make that happen, FIH needed to buy out Barr's interest in Foundation.

Dyra delivered the Project Soothsayer memorandum to Nesanel. Nesanel claimed to be shocked by what he read, as the Project Soothsayer memorandum contained information not previously disclosed to him or Dyra. The supporting evidence, including the emails

accompanying the memorandum, predated FIH's investments in Foundation, but none of them had been shown to FIH during the due diligence period. Nesanel subsequently provided the Project Soothsayer memorandum and the accompanying emails to a representative of the Bancroft Family Trust (Bancroft), which had invested in Foundation prior to FIH. As time went on, Foundation was unable to close on any of the deals on which it claimed to have been working when FIH made its investments.

In June, 2014, Dyra, on behalf of FIH, and a representative of Bancroft met with Barr and presented him with a proposed memorandum of understanding that would have required both Barr and Meehan to step down from their positions at Foundation if FIH and Bancroft provided additional financing to Foundation as Meehan had proposed. Within twenty-four hours of this meeting, Barr rejected the proposed memorandum of understanding.

In August, 2014, Nesanel, on behalf of FIH, wrote to Barr and Meehan at Foundation, requesting the recission of FIH's investments. In support of this request, Nesanel wrote that FIH had been "improperly induced into investing in [Foundation] in the first place." Meehan, on behalf of Foundation, refused FIH's request for recission, citing the extensive due diligence performed by Nesanel and Dyra before FIH made its investments.

In September, 2014, O'Donnell and Joseph Elmlinger, who had previously worked for Foundation, created a new company, IM Partners, for the express purpose of pursuing potential acquisitions of hedge fund management companies. Elmlinger and O'Donnell solicited FIH to invest in IM Partners. In addition, IM Partners obtained an informal agreement with Fortress Credit Corporation (Fortress)—which already had an agreement with

Foundation[5]—that gave Fortress the option of investing up to $1 billion in deals sourced by IM Partners. Ultimately, however, FIH declined to invest in IM Partners, and IM Partners never completed any deals with Fortress.

Around this same time, Nesanel connected separately with Joel Holsinger, a representative of Fortress whom he had met while conducting due diligence on Foundation. Nesanel also arranged a meeting with a representative of Bancroft, Foundation's other large shareholder that had previously joined FIH in presenting the proposed memorandum of understanding to Barr. Thereafter, there were communications between Nesanel and Bancroft in which Bancroft's representative mentioned meeting with Nesanel "when we have determined that Fortress will partner with us toward a new venture . . . ." There were also later communications among Elmlinger, Lazer, and Nesanel that mentioned "an investment in NewCo . . . ."[6] Nesanel wrote to Holsinger to request a meeting with him and the representative of Bancroft on October 28, 2014. On that same date, Holsinger, on behalf of Fortress, declined to fund a deal that Foundation had been pursuing with a London based hedge fund called Arrowgrass Capital Partners LLP.

Meehan resigned from Foundation in November, 2014. Fortress subsequently terminated its agreement with

[5] Fortress had an agreement with Foundation that gave Fortress the option, at its discretion, to invest in deals sourced by Foundation. The agreement required that Foundation provide Fortress with an exclusive "first look" or "right of first refusal" on potential deals.

[6] As discussed subsequently in this opinion, Barr alleged that the FIH parties had created a new company and attempted to get Fortress to invest in the new company instead of in Foundation. Specifically, Barr claimed that the FIH parties conspired with former employees of Foundation, including Elmlinger and O'Donnell, and Bancroft to form NewCo, a new company that would implement Foundation's strategy without Barr or Meehan. Barr further claimed that the FIH parties took Barr's funding source, Fortress, and made Fortress end its relationship with Barr and Foundation.

Foundation and wrote to Barr, telling him that he had made "numerous misrepresentations" about its role to investors.[7] Barr closed Foundation on June 25, 2015. During its existence, Foundation did not make any acquisitions in pursuit of its business strategy and never generated any income. Foundation operated solely through capital contributions by outside investors such as FIH, which were used to pay salaries and operating expenses.

In September, 2017, Barr commenced an action against the FIH parties (Barr action).[8] In Barr's second amended complaint, he raised claims, inter alia, of violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq.; intentional infliction of emotional distress; and fraudulent misrepresentation.[9] Barr's claims were based, inter alia, on allegations that the FIH parties had published "shocking and blatant lies about [him] and his purported unfitness for a management position at [Foundation]" in order to cause Fortress not to invest in Foundation and, instead, to deflect that investment to a new company established by the FIH parties.

[7] Barr speculated that it was Nesanel who told Fortress that he had made misrepresentations to investors.

[8] Meehan, Dyra, Elmlinger and O'Donnell also were named as defendants in the Barr action. Barr, however, withdrew his claims against Meehan, Elmlinger and O'Donnell. In addition, the court dismissed the claims against Dyra for defective service of process.

[9] Barr also raised claims of defamation, negligent misrepresentation, civil conspiracy to defraud, breach of fiduciary duty, unjust enrichment, statutory theft, and tortious interference with a business expectancy. After the FIH parties had filed a motion to strike the second amended complaint in the Barr action, Barr agreed to strike his claims alleging defamation, negligent misrepresentation, and statutory theft, and the court further granted the FIH parties' motion to strike Barr's claims for unjust enrichment and tortious interference with a business expectancy. The FIH parties filed a motion for judgment on those counts, which the court granted. In addition, Barr subsequently withdrew his counts for civil conspiracy to defraud and breach of fiduciary duty.

In February, 2020, FIH commenced its own action against Barr, Meehan, and Foundation (FIH action). The operative complaint in that action asserted claims of violation of the Connecticut Uniform Securities Act (CUSA), General Statutes § 36b-2 et seq.; negligent misrepresentation; unjust enrichment; and intentional misrepresentation/fraudulent inducement.[10] These claims were based on FIH's allegations that Barr and Meehan had fraudulently induced FIH to invest in Foundation. Specifically, FIH alleged that Barr and Meehan had misrepresented to it that Foundation had an increasing number of active deals in its investment pipeline, and that Barr's ongoing divorce from Meehan's sister-in-law " 'posed no threat' " to Barr's and Meehan's ability to work together effectively.

Barr denied FIH's claims and filed a counterclaim against it in the FIH action. Barr's counterclaim asserted claims sounding in recoupment on the basis, inter alia, of the same alleged violation of CUTPA he had raised as an affirmative claim for relief in the Barr action. The Barr action and the FIH action subsequently were consolidated, by consent of the parties, for trial purposes only.[11]

On May 23, 2022, Barr filed a claim for trial by jury in the Barr action. On that same date, the FIH parties filed a certificate of closed pleadings in that action,

[10] FIH also raised these claims in a counterclaim in the Barr action. Because FIH asserted identical claims in the FIH action, however, the court granted Barr's motion to dismiss the counterclaim on the basis of the prior pending action doctrine.

[11] The actions were consolidated on December 16, 2020, after the parties filed a joint proposed case management order that "advise[d] the court that they consent to the consolidation of this matter with [the FIH action] for trial purposes only . . . ." That joint proposed case management order specifically mentioned jury selection and, as explained later in this opinion, the parties continued to make certain filings indicating that the consolidated actions would be tried to a jury by proposing the date on which jury selection should begin.

indicating therein that the case would proceed as a jury trial by checking off the box for "jury trial" on the official Judicial Branch form. On August 1, 2022, FIH filed a claim for trial by jury in the FIH action. On that same date, FIH filed a certificate of closed pleadings in that action, similarly indicating therein that the case would proceed as a jury trial, by checking off the box for "jury trial" on the official Judicial Branch form.

There were also several other filings by the parties, prior to the filing of their respective jury claims, that reflected their mutual selection of a jury trial in these consolidated cases. For instance, Barr, who was self-represented at the time he commenced his action against the FIH parties, included a footer on each page of his original complaint, filed September 22, 2017, with the notation "Jury Trial Requested." Barr did not file a jury claim form, however, or pay the fee required for such a filing, until May 23, 2022. Shortly after Barr commenced his action, however, on December 22, 2017, the FIH parties filed an application to refer that action to the Complex Litigation Docket on which they checked the box indicating that the matter had been "claimed for jury trial." In addition, almost three years later, on August 25, 2020, the FIH parties filed a corresponding application to refer the FIH action to the Complex Litigation Docket on which they too checked the box indicating that that matter had been "claimed for jury trial." Consistent with these filings, on December 16, 2020, the parties jointly filed a proposed case management order in the Barr action in which they stated that that action had been scheduled for a consolidated trial with the FIH action, with "jury selection beginning on November 15, 2022, at 10 a.m. and trial beginning December 5, 2022, at 10 a.m." Later joint filings of amended case management orders on December 27, 2021, and May 4, 2022, similarly represented that the

consolidated actions would be tried to a jury by specifying dates for both the selection of the jury and the start of evidence at trial.

In December, 2022, the court ruled on motions for summary judgment that the FIH parties had filed. In the Barr action, the court rendered summary judgment in favor of the FIH parties on Barr's claims of intentional infliction of emotional distress and fraudulent misrepresentation. The court denied in part the FIH parties' motion for summary judgment, as it related to Barr's affirmative CUTPA claim, because it concluded, inter alia, that a genuine issue of material fact existed as to whether the FIH parties' exploration of potential transactions involving Fortress, outside of their relationship with Foundation, was unfair and/or deceptive, and thus in violation of CUTPA. In the FIH action, the court rendered summary judgment in favor of the FIH parties on Barr's counterclaim and all of Barr's recoupment claims except for his CUTPA claim.

On January 31, 2023, the court issued a scheduling order in which it ordered jury selection to begin on February 14, 2023. On February 3, 2023, the FIH parties filed a case flow request in both actions seeking to reschedule jury selection. In a joint statement attached to the request, the parties stated that the court's scheduling orders and electronic docket had long indicated that trial would begin on March 6, 2023, but did not specifically identify a date for jury selection. The parties further stated that, "[b]ased on the scheduling orders and electronic docket, all parties planned that trial proceedings would begin on March 6, 2023—jury selection first, with evidence to follow," and that, "given the prior scheduling orders, the parties did not anticipate that jury selection would proceed prior to March 6, 2023, and therefore structured their schedules accordingly." Given the professional and personal conflicts of the parties, the FIH parties requested that jury selection

begin on March 8, 2023, with evidence to follow immediately after jury selection. The FIH parties also conveyed the Barr parties' position that they could make themselves available to conduct jury selection in late February or early March.

On February 8, 2023, the court held a trial management conference. The court opened the conference by stating that it first wanted to discuss the issue of jury selection, which was then scheduled to begin the following Wednesday. The court explained that it had looked at a scheduling order it had issued on May 9, 2022, in which it had ordered the parties to file, inter alia, a certificate of closed pleadings and had scheduled evidence to commence on March 6, 2023. The court stated that it had noticed that jury selection was not scheduled in that order and, when trying to determine the reason why, it had realized that the claim for a jury trial had not been filed until May 23, 2022, after the court's scheduling order was issued.

The court then told the parties: "[C]learly, the jury claims have been filed. You are entitled to a jury trial, nobody has moved to strike them for any reason, and we're doing that, and the question is scheduling." As the court continued to discuss the timing of jury selection, however, the FIH parties' counsel interjected as follows: "[O]bviously, there have been notices for jury trials filed, but the record should be clear, for my clients, we're fine to proceed before the court if that were a possibility, and stick to the original schedule, I suppose that's in [the Barr parties' counsel's] court, but we would be fine proceeding with a courtside trial." The Barr parties' counsel responded that the Barr parties wanted to preserve their right to a jury trial. The court then proposed the possibility of trying the actions separately, with the FIH action proceeding as a bench trial and the Barr action proceeding as a jury trial. The Barr parties' counsel responded that he would consider that

option and discuss it with his clients. The court thereupon scheduled a status conference for February 10, 2023, concerning whether the FIH action would proceed as a bench trial or as a jury trial.

The next day, February 9, 2023, the Barr parties filed a memorandum in the FIH action titled "Statement Regarding Jury Trial." In the memorandum, the Barr parties argued that the clerk had entered the case on the docket as a jury case after FIH filed its jury claim, and thus they were entitled to have their case tried to a jury, pursuant to § 52-215, which provides that a case "shall" be tried by a jury once it is entered on the docket as a jury case, unless the parties agree to a bench trial. The Barr parties stated that they wanted to exercise their right to a jury trial, and thus they declined to agree to trying the matter to the court. They also argued that, even though they did not file a claim for a jury, they did not waive their right to a jury trial. Finally, citing *Hammer* v. *Posta*, 170 Conn. App. 701, 709, 155 A.3d 801 (2017), the Barr parties argued that, once a plaintiff files a jury claim, there is no reason for a defendant to file a jury claim.

On February 10, 2023, the FIH parties filed motions to erase both of the consolidated actions from the jury docket.[12] In their motion to erase in the Barr action, the FIH parties argued that Barr's jury claim was untimely because, pursuant to § 52-215, it was not filed within thirty days from the return date or within ten days after the final joinder of the issues of fact, which had taken place on September 20, 2021, eight months before Barr filed his jury claim. The FIH parties further argued that Barr's failure to file a timely jury claim constituted a waiver of his right to file such a claim. The FIH parties acknowledged that they could have filed their motion

[12] The FIH parties filed two separate motions to erase, one in each of the actions.

to erase sooner but noted that there was "no appellate decision or rule of practice establishing a time limitation on the filing of an objection to a jury trial claim," citing *Aldin Associates Ltd. Partnership* v. *Hess Corp.*, 176 Conn. App. 461, 477, 170 A.3d 682 (2017). In their separate motion to erase in the FIH action, FIH contended the actions were "well suited to adjudication by the court" and that a bench trial would avoid the inefficiency and added costs of a jury trial. FIH argued that its own jury claim was untimely pursuant to § 52-215 because it was not filed until August 1, 2022, a few days after July 28, 2022, which would have been ten days from when the final joinder of the issues of fact in that action occurred. FIH further argued that, given the untimeliness of its jury claim in the FIH action, the Barr parties could not reasonably have relied on that claim as a basis for failing to file their own claim in that action in a timely manner, and, thus, that they had waived their right to a jury trial in that action as well.

The Barr parties filed objections to the FIH parties' motions to erase the actions from the jury docket. The Barr parties argued, inter alia,[13] that the parties repeatedly and frequently had consented in writing to trying both consolidated actions to a jury, and, pursuant to § 52-215, that a case "may at any time be entered in the docket as a jury case by the clerk, upon written consent of all parties . . . ." The FIH parties filed replies on February 15, 2023, in which they denied that they had ever consented to a jury trial.

The court heard oral argument on the motions to erase on February 16, 2023. At the hearing, the court

[13] The Barr parties also argued that Barr first made a timely request for a jury trial when he filed his original complaint, by including the words "jury trial requested" in the footer of every page. At the subsequent hearing on the FIH parties' motions, however, the Barr parties' counsel acknowledged that Barr's request for a jury trial in this manner was legally insufficient.

first inquired of the Barr parties why they had not filed their own jury claim in the FIH action. The Barr parties' counsel explained that they were relying on the "historical consent and the filing by the [FIH parties]." The court asked if the Barr parties' counsel had had any conversation with the FIH parties' counsel around that time as to who was going to file a jury claim. The Barr parties' counsel responded that he personally did not have such a conversation with the FIH parties' counsel, but that his cocounsel, who was then away on vacation, would have. The FIH parties' counsel responded that he had no recollection of such a conversation, but he too had not reviewed the relevant emails. He also stated: "It would not surprise me if we had an email that said, hey, we'll be filing a jury claim today. But was there ever an email where we said FIH consents to a jury claim; no, there was nothing to that effect, Your Honor."

The parties subsequently filed supplemental memoranda of law in each action in support of their respective positions. They addressed the court's inquiry at the hearing about the correspondence between the parties regarding the jury claim filed by Barr in the Barr action on May 23, 2022, and the jury claim filed by FIH in the FIH action on August 1, 2022.

The Barr parties attached copies of certain email chains to their supplemental memoranda of law. Specifically, with respect to the Barr action, the Barr parties provided the court with emails dated May 22 and 23, 2022, in which the FIH parties' counsel contacted the Barr parties' counsel about filing the certificate of closed pleadings. The Barr parties' counsel responded: "The [c]ertificate looks fine, thank you. Please confirm whether you will also be filing [c]laim for [j]ury ([f]orm JD-CL-53) together with the [c]ertificate." The FIH parties' counsel responded: "Can you please file the [j]ury [c]laim [f]orm? We can still handle filing of the [c]ertificate of [c]losed [p]leadings, once the [j]ury [c]laim

[f]orm has been filed. Or if you will file, that's fine too (but the e-filing system will not allow us to file the certificate without the jury claim form being filed first). Thanks." The Barr parties' counsel responded: "Yes. Please see attached the [j]ury [c]laim [f]orm to be filed," and the FIH parties' counsel responded: "Sure. Just serve us the 'as-filed' version. Thanks." After the Barr parties' counsel sent the copy of the filed jury claim, the FIH parties' counsel responded: "Thank you . . . . We will proceed with filing the [certificate] of [c]losed [p]leadings." The Barr parties argued that, in light of these communications between the parties and the certificate of closing pleadings filed by FIH in the Barr action, in which FIH had checked off the box for "jury trial," the requirements set forth in § 52-215 for "written consent of all parties" had been met.

With respect to the FIH action, the Barr parties provided the court with emails dated August 1, 2022, in which the Barr parties' counsel asked the FIH parties' counsel to "[p]lease confirm that you will be filing the certificate of closed pleadings today in the FIH matter," which the FIH parties' counsel subsequently confirmed. The Barr parties claimed that, after this email correspondence, FIH filed a claim for a jury trial and, shortly thereafter, the certificate of closed pleadings indicating that the case, which had been consolidated for trial purposes with the Barr action, would proceed as a jury trial.

In their supplemental memoranda of law in response, the FIH parties argued that the emails submitted by the Barr parties did not demonstrate their consent to a jury trial. Specifically, with respect to the Barr action, the FIH parties argued, inter alia, that the emails were "nothing more than run-of-the-mill logistical emails between counsel concerning the filing of a certificate of closed pleadings," and claimed that "both parties were proceeding on the misapprehension that [Barr's]

jury claim could still be timely submitted." Regarding the FIH action, FIH argued that the email correspondence submitted by the Barr parties did not mention a jury claim or a jury trial, but instead only discussed the filing of the certificate of closed pleadings. Accordingly, it argued that "[n]othing in the proffered email chain demonstrates that [the Barr parties] were relying on [FIH's] jury claim or that the parties jointly consented in writing to having a jury trial."

On February 17, 2023, the court issued memoranda of decision granting the FIH parties' motions to erase the actions from the jury docket.[14] In its decisions, the court first determined that the jury claims filed in both actions were untimely inasmuch as they were not filed within thirty days from the return dates or within ten days after the final joinder of the issues of fact in those actions. With respect to the Barr action, the court found that "no adequate reason was presented for [Barr's] filing of a jury claim eight months after issue was joined. [Barr] could and should have timely filed the jury claim when he saw the [FIH parties] had not timely filed one in this action to protect his rights, but chose not to do so." The court reached a similar conclusion in the FIH action, explaining that "the [Barr parties] easily could have filed a claim for jury themselves within thirty days after the return day or within ten days of issue being joined. For whatever reason, the [Barr parties] made the decision not to do so." The court rejected the Barr parties' argument that they had relied on FIH's filing of the jury claim in failing to file their own, because FIH's claim was untimely filed. In addition, the court found that the emails attached to the Barr parties' supplemental memorandum did not reflect an agreement between the parties that FIH would file the jury claim,

[14] The court issued two separate, but substantially similar, memoranda of decision, with one decision issued in each action.

because the emails only concerned the filing of the certificate of closed pleadings.

The court rejected the Barr parties' argument that the parties had provided written consent to a jury trial in both actions. The court relied, in so ruling, on the FIH parties' arguments in their motions to erase and in their replies to the Barr parties' objections. Specifically, the court determined that the parties' various proposed scheduling orders that mentioned jury selection did not operate as the written consent required because, "[w]hile a party may reflect its intent in proposed scheduling orders to claim a case for jury, it does not get a jury trial unless it properly complies with § 52-215 and Practice Book § 14-10. To find otherwise would make § 52-215 and Practice Book § 14-10 irrelevant, which they clearly are not."

In addition, in the Barr action, the court rejected Barr's contention that the FIH parties' checking off the box for "jury trial" on the May 23, 2022 certificate of closed pleadings constituted written consent to a jury trial, explaining: "[Barr] enormously inflates and erroneously interprets the meaning of that checked box to be an opposing parties' 'written consent.' He also completely ignores the fact that he filed a claim for jury trial on the very same day, and the certificate of closed pleadings accurately reflects that filing."

The court reached a similar conclusion with respect to the certificate of closed pleadings filed in the FIH action. In that action, however, the court agreed with the Barr parties that the jury claim filed by FIH "means the agreement to a jury trial in that case." Nevertheless, it concluded that "[a] party is free to change [its] position and withdraw its claim for a jury trial at any time, even shortly before trial." The court further concluded that the Barr parties were not entitled to claim that they relied on FIH's filing of that jury claim in failing

to file their own, because they "cannot get the benefit of an untimely filed jury claim."

The court also found that there were no "compelling circumstances" to warrant denying the FIH parties' motions. The court explained: "The closest the court came to a compelling circumstance was the [Barr parties'] argument on February 16, 2023, that counsel for all parties had agreed that [FIH] would timely file the jury claim and the [Barr parties] relied on that position. However, there is no evidence that there was an agreement that [FIH] would timely file a jury claim. The only evidence before this court was that [FIH] would file the certificate of closed pleadings by August 1, 2022, the date the court ordered it to be filed by. . . . Even if the [Barr parties] believed that a jury claim was to be filed by [FIH] on [the] same date as the certificate of closed pleadings was filed, they should have known that this was too late to file a claim for a jury trial and taken action to file a timely claim. This court has no evidence before it that the [Barr parties] were tricked into complacency with respect to the timely filing of the jury claim." (Citation omitted.) Finally, the court concluded that the Barr parties would not be prejudiced by proceeding with a bench trial rather than a jury trial.

The court held a bench trial at the end of March, 2023. On August 21, 2023, the court issued a single memorandum of decision resolving both actions by rendering judgments in them in favor of the FIH parties. The court found, in the FIH action, that FIH had proven its claim that the Barr parties had violated CUSA and that they were also liable for negligent misrepresentation and fraudulent misrepresentation. In light of its conclusions on those claims, the court did not consider the FIH parties' alternative claim of unjust enrichment. The court also found that Barr had failed to prove that the FIH parties had violated CUTPA. Accordingly, the court rejected the affirmative CUTPA claim alleged in

the Barr action and the recoupment claim based on the same alleged violation of CUTPA in the FIH action. The court thereafter awarded FIH $6.75 million in damages, plus prejudgment interest at the rate of 8 percent per year, in addition to attorney's fees and costs.

On August 29, 2023, the Barr parties filed a motion to reduce the amount of the award in light of certain settlement payments that FIH had received in a separate federal case that was based on the same underlying facts.[15] The court granted the Barr parties' motion and modified the award to $6,987,833.33, inclusive of interest, before attorney's fees and costs.[16] This appeal followed.

[15] In 2015, FIH filed an action in federal court asserting federal securities law claims and the same state law claims asserted in the present case against Foundation, Barr, and Meehan, among others. The United States District Court for the District of Connecticut rendered summary judgment against FIH on FIH's federal securities law claims and dismissed FIH's state law claims for lack of subject matter jurisdiction. See *FIH, LLC* v. *Foundation Capital Partners, LLC*, United States District Court, Docket No. 3:15-cv-785 (JBA) (D. Conn. January 31, 2018), vacated, 920 F.3d 134 (2d Cir. 2019). The United States Court of Appeals for the Second Circuit vacated the judgment in its entirety. See *FIH, LLC* v. *Foundation Capital Partners, LLC*, 920 F.3d 134, 146 (2d Cir. 2019).

On remand, the District Court concluded that its dismissal of the state law claims remained in place and proceeded to trial on the federal securities law claims. See *FIH, LLC* v. *Foundation Capital Partners, LLC*, United States District Court, Docket No. 3:15-cv-785 (JBA) (D. Conn. October 22, 2019), aff'd sub nom. *FIH, LLC* v. *Barr*, Docket No. 20-489, 2021 WL 5286659 (2d Cir. November 15, 2021). A jury found in favor of Barr and Meehan. *FIH, LLC* v. *Barr*, Docket No. 20-489, 2021 WL 5286659, *1 (2d Cir. November 15, 2021). The Second Circuit subsequently upheld the jury's verdict and the District Court's decision not to exercise supplemental jurisdiction over the state law claims. See id., *2–6.

The other defendants—except for Foundation, which never appeared in the federal action—settled with FIH before trial. Id., *1 n.1. The Barr parties' motion to reduce the amount of the award in the present action was based on FIH's settlement with these parties, as it claimed that "FIH received certain amounts in consideration of withdrawing its claims against those parties."

[16] On January 23, 2024, after a hearing, the court awarded FIH $3,158,174.38 in attorney's fees and $214,730.97 in costs.

On appeal, the Barr parties claim that the court improperly removed both actions from the jury list and proceeded with a bench trial. Specifically, the Barr parties claim that (1) the two actions, which had been consolidated for trial, had properly been entered in the docket as a jury case upon written consent of all parties pursuant to § 52-215,[17] and (2) once the case was properly entered on the jury docket, the court lacked the authority to remove it from the jury docket in the absence of the parties' mutual consent. The FIH parties respond that (1) they did not consent to having a jury trial in these consolidated actions, and that when they made statements in their written filings suggesting to the contrary—that the case would be tried to a jury—they were merely operating under the mistaken belief that the jury claims in the two actions had been timely filed, and (2) the trial court properly concluded that FIH was entitled to withdraw its "late filed" jury claim in the FIH action, and thus it properly ordered that that

[17] The Barr parties also argue that Barr timely requested a jury trial by including the notation "Jury Trial Requested" in his original complaint. See footnote 13 of this opinion. As the Barr parties acknowledged at the February 16, 2023 hearing, however, requesting a jury trial in this manner is legally insufficient. See *Beizer* v. *Goepfert*, 28 Conn. App. 693, 702, 613 A.2d 1336 (1992) (jury claim was not properly filed where plaintiff failed to file jury docket claim slip and failed to pay jury claim fee), cert. denied, 224 Conn. 901, 615 A.2d 1044 (1992), cert. denied, 507 U.S. 973, 113 S. Ct. 1416, 122 L. Ed. 2d 786 (1993); *Christiano* v. *Cavallo*, Docket No. CV-13-6020247-S, 2015 WL 4380346, *2 (Conn. Super. June 26, 2015) ("[s]imply including a claim for a jury trial in a complaint [i]s insufficient"); see also Practice Book § 14-10 ("All claims of cases for the jury shall be made in writing, served on all other parties and filed with the clerk within the time allowed by General Statutes § 52-215. The jury claim fee shall be paid at the time the jury claim is filed.").

In addition, the Barr parties contend that the actions were properly placed on the jury docket by order of the court. Specifically, the Barr parties argue that certain scheduling orders issued by the court, which scheduled jury selection and set deadlines for the parties to file any proposed jury instructions and jury interrogatories, "would each independently justify the matters being entered on the jury list . . . ." None of these orders, however, specifically enters the actions on the jury docket in the first instance. Accordingly, we focus our analysis on the Barr parties' claim regarding written consent.

action be erased from the jury docket. We agree with the Barr parties.

We begin by setting forth the standard of review and legal principles relevant to this claim. The question of whether parties have provided written consent to a jury trial pursuant to § 52-215 may be a mixed question of fact and law, with the historical facts subject to review for clear error and the legal question of whether the established subsidiary facts constitute written consent subject to plenary review. See *State* v. *Andres C.*, 349 Conn. 300, 317 n.11, 315 A.3d 1014 (whether statement has been adopted or approved for purposes of rules of practice "may be a mixed question of fact and law, with the historical facts subject to review for clear error and the legal question of whether the established subsidiary facts constitute adoption or approval subject to plenary review"), cert. denied, U.S. , 145 S. Ct. 602, 220 L. Ed. 2d 236 (2024).

There is no factual issue in the present case, however, because the relevant subsidiary facts—namely, the written filings of the parties—are undisputed. The issue of whether those undisputed facts met the legal standard for written consent set forth in § 52-215 is a question of law over which our review is plenary. See id. (issue presented question of law where relevant subsidiary facts were undisputed); see also *Burns* v. *Adler*, 325 Conn. 14, 33, 155 A.3d 1223 (2017) (whether undisputed facts met legal standard was question of law); *Bridgeport* v. *Plan & Zoning Commission*, 277 Conn. 268, 275, 890 A.2d 540 (2006) (whether party complied with certain statutory notice requirements was mixed question of fact and law subject to plenary review when facts were undisputed and dispute concerned "the trial court's application of [the statute] to those facts").

Furthermore, "[t]o the extent that the trial court's decision . . . requires us to construe [§ 52-215], our

review is also plenary and is guided by our well established legal principles regarding statutory construction. . . . In construing statutes, 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.) *Maghfour* v. *Waterbury*, 340 Conn. 41, 46, 262 A.3d 692 (2021).

We next turn to the legal principles governing the placement of civil actions on the jury docket. General Statutes § 51-239b provides: "In civil actions a jury shall be deemed waived unless requested by either party in accordance with the provisions of section 52-215." As stated previously in this opinion, § 52-215 identifies four ways in which a case may be entered on the docket as a jury case: (1) "upon the written request of either party made to the clerk within thirty days after the return day," (2) "within ten days after such issue of fact is joined . . . upon the request of either party," (3) "at any time . . . upon written consent of all parties," and (4) "at any time . . . by order of court."

The first two methods set forth in § 52-215—involving requests made within thirty days after the return day or within ten days after such issue of fact is joined—contain "statutory deadlines" by which a party may, unilaterally, have the case placed on the jury docket. *Palumbo* v. *Barbadimos*, 163 Conn. App. 100, 118, 134 A.3d 696 (2016). If a party fails to comply with either of those statutory time limits, that party "waive[s] [his] right to unilaterally claim [his] . . . action to the jury docket," and the opposing party "acquire[s] the right to have the parties' dispute decided by the trial court." Id., 118–19. Even if a jury claim is untimely filed pursuant to those statutory deadlines, however, the trial court

retains the discretion to deny a motion to strike the case from the jury docket. See *Falk* v. *Schuster*, 171 Conn. 5, 7–8, 368 A.2d 40 (1976) (trial court's refusal to strike case from jury docket was not abuse of its discretion even though request for jury was not filed within statutory period and case was erroneously entered on jury docket in first instance); see also, e.g., *Commission on Human Rights & Opportunities ex rel. Devito* v. *BTB Group, LLC*, Docket No. CV-22-6018129-S, 2025 WL 520942, *1–2 (Conn. Super. February 11, 2025).

The other two methods set forth in § 52-215 provide that a case may be placed on the jury docket "at any time" either upon written consent of all parties or by order of the court. Section 52-215, however, does not state precisely what kind of written consent or order of the court is required to satisfy that provision.

In the present case, the trial court ruled initially that the Barr parties had failed to satisfy the third prong of § 52-215 by showing that FIH had consented in writing to placing these consolidated cases on the jury list. It based that conclusion on two findings: first, that the FIH parties never filed any writing expressly consenting to placing the cases on the jury list, but merely submitted documents making passing references to the prospect of trying the cases to a jury; and second, that such passing references were made in documents filed for other purposes, without addressing the propriety of placing the case on the jury list, because the FIH parties and their counsel were unaware that they had the right to withhold consent to a jury trial due to the Barr parties' failure to file their jury claim form within the time prescribed by § 52-215 for the unilateral exercise of their right to a jury trial.

The trial court further ruled, as an alternative basis for granting the FIH parties' motion to erase the cases

from the jury docket, that, even if they could be deemed to have consented in writing to placing the case on the jury docket in the FIH action, they retained the right to withdraw their consent at any time as long as their exercise of that right did not prejudice the rights of their opponents. Here, then, the trial court ruled that the FIH parties were entitled to have these cases erased from the jury list because the Barr parties would not be prejudiced by trying the cases to the court, as the court itself was very familiar with the cases based on its recent handling of summary judgment motions addressing them on the merits, and thus could bring the cases to trial fairly and expeditiously on the schedule established in the most recent case management order.[18]

I

The Barr parties challenge all aspects of the trial court's rulings on the motions to erase, contending first that the FIH parties' written filings clearly expressed their consent to trying the cases to a jury and that

[18] Specifically, in concluding that the Barr parties would not be prejudiced by its removal of the actions from the jury docket, the court explained: "The [Barr parties] have argued that they are prejudiced because they believed that this case was going to be tried before a jury, this issue has arisen shortly before trial to their detriment, and they want a jury to determine [FIH's] claims and their recoupment claim. [The Barr parties] believe they are prejudiced if this case is tried before this court. [FIH] conversely argues that it would be prejudiced if this case were not tried by the court due to the economic savings and efficiency that arises from trying a bench trial versus a jury trial and the nature of the disputes in the cases. In these two consolidated cases, the parties have asserted complex multimillion dollar investment claims relating to a private equity fund, which makes this case an appropriate candidate for courtside resolution. This court also has great familiarity with the claims alleged by the parties. In the past six months, it has decided three separate motions for summary judgment filed in this case and the related Barr case, and this court is well equipped to: (1) understand the claims asserted in both cases; (2) [understand] how the cases are interrelated; (3) properly evaluate the evidence; (4) apply the law; and (5) render a just and fair verdict in both cases. Thus, this court finds that the [Barr parties] would not be prejudiced by a bench trial on the claims asserted by the parties in this case and the Barr case."

they were bound by those filings notwithstanding their lawyers' professed ignorance concerning their clients' right not to consent to a trial by jury after the statutory deadlines for the Barr parties to unilaterally file a jury claim had passed. The Barr parties contend, and we agree, that the consolidated actions properly were entered on the jury docket after both parties provided written consent to a jury trial through their filings in those actions.

In reaching this conclusion, we first consider the meaning of the term "written consent" as used in § 52-215. Because the legislature has not defined the term "written consent," as used in that provision, it is appropriate to consult contemporaneous dictionary definitions. See, e.g., *Cerame* v. *Lamont*, 346 Conn. 422, 428, 291 A.3d 601 (2023).[19] "In the absence of a definition of terms in the statute itself, [w]e may presume . . . that the legislature intended [a word] to have its ordinary meaning in the English language, as gleaned from the context of its use. . . . Under such circumstances, it is appropriate to look to the common understanding of the term as expressed in a dictionary." (Internal quotation marks omitted.) *Efstathiadis* v. *Holder*, 317 Conn. 482, 488, 119 A.3d 522 (2015); see also General Statutes § 1-1 (a) ("[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language"). "[A]lthough dictionaries from the time a statute was enacted are often considered the most persuasive . . . later editions also can be instructive, particularly those from the time when a statute is revised but retains the language at

[19] The parties do not argue that § 52-215 is ambiguous or that this court should therefore resort to extratextual sources, such as legislative history, to ascertain the statute's intended meaning. Nevertheless, we note that the language regarding "written consent" first appeared in the 1902 revision of the statute and, because of the age of that provision, no legislative history is available addressing the language at issue. See General Statutes (1902 Rev.) § 720.

issue." (Internal quotation marks omitted.) *9 Pettipaug, LLC* v. *Planning & Zoning Commission*, 349 Conn. 268, 280, 316 A.3d 318 (2024). The term "written consent" has been a part of § 52-215 and its predecessor provisions since 1902. See General Statutes (1902 Rev.) § 720.[20] Section 52-215 was most recently revised in 1982 by No. 82-160, § 104, of the 1982 Public Acts, and that revision retained the language regarding written consent. Accordingly, we look to dictionary definitions from that time.

Webster's New Collegiate Dictionary contemporaneously defined the term "consent," when used as a noun, to mean "compliance in or approval of what is done or proposed by another: acquiescence," or "agreement as to action or opinion." Webster's New Collegiate Dictionary (1981) p. 239. Similarly, Black's Law Dictionary defined "consent," in relevant part, as "[a] concurrence of wills. Voluntarily yielding the will to the proposition of another; acquiescence or compliance therewith." Black's Law Dictionary (5th Ed. 1979) p. 276.

In *Efstathiadis* v. *Holder*, supra, 317 Conn. 488–89, our Supreme Court sought to define the term "consent" in connection with the phrase "without such other person's consent," as used in General Statutes § 53a-73a (a) (2), the statute criminalizing sexual assault in the fourth degree. Also turning to dictionary definitions for guidance in that case, our Supreme Court explained: "The term 'consent' is defined with substantial similarity in numerous sources. Webster's Third New International Dictionary (2002) defines consent as a 'capable, deliberate and voluntary agreement to or concurrence in some act or purpose implying physical and mental

[20] Notably, the predecessor provisions of § 52-215 provided that a case may be entered on the jury docket, at any time, by consent of the parties—without requiring *written* consent of the parties—dating back to 1855. See Public Acts 1855, c. XXVI, § 28; see also General Statutes (1866 Rev.) tit. 1, c. IX, § 127.

power and free action . . . .' The American Heritage Dictionary of the English Language (3d Ed. 1992) similarly defines 'consent' as the voluntary '[a]cceptance or approval of what is planned or done by another . . . .' "

With these definitions in mind, and in the exercise of our plenary review over the interpretation of pleadings,[21] we are persuaded that Barr's filing of the jury claim in the Barr action, along with the FIH parties' prompt filing of the certificate of closed pleadings in that action, indicating that the matter would be tried by a jury, constituted written consent by all parties to enter the case on the jury docket in accordance with § 52-215.

In concluding that the parties did not provide written consent to a jury trial in the Barr action by way of these pleadings, the trial court stated that "[Barr] . . . completely ignores the fact that he filed a claim for jury trial on the very same day, and the certificate of closed pleadings accurately reflects that filing." We are convinced, however, that the timing of the parties' filings supports, rather than undermines, Barr's argument that the FIH parties consented to a jury trial. After Barr filed his jury claim, the FIH parties did not file an objection, a motion to strike, or otherwise express opposition to a jury trial. Instead, they filed the certificate of closed pleadings, in which their experienced counsel checked off the box indicating that the matter would proceed as a jury trial.[22] In so doing, the FIH parties expressed,

[21] "[T]he interpretation of pleadings . . . always presents a question of law subject to our plenary review." *Rutherford* v. *Slagle*, 352 Conn. 27, 48, 334 A.3d 988 (2025).

[22] The certificate of closed pleadings contains a section that states: "The pleadings being closed, the case will proceed as a(n): *(Select all that apply)*." The form lists as options: "Jury Trial"; "Hearing in Damages to the Court"; "Hearing in Damages to the Jury"; "Administrative Appeal"; "Non-Jury Matter *(court trial)*." The form displays a box next to each option, and counsel for the FIH parties marked an "x" in the box next to "Jury Trial."

at the very least, their acquiescence in, agreement with, or approval of Barr's claim for a jury trial.

Moreover, FIH's filing of its own jury claim in the FIH action, which had been consolidated with the Barr action for trial, further expressed its consent, in writing, to having the two cases tried together by a jury. Although the Barr parties did not file a jury claim of their own in the FIH action, they did not file a motion to strike FIH's jury claim. Indeed, the parties' filings of the jury claim and certificate of closed pleadings in the Barr action essentially reflected their consent to proceed to a jury trial in the FIH action as well because the parties already had agreed to consolidate the two cases with one another for purposes of trial.

In reaching a contrary conclusion—that the parties did not provide written consent to a jury trial—the trial court improperly focused on the timing of the parties' jury claims. For instance, the court stated that it considered that the cases were consolidated and that jury claims had been filed by the parties in both actions but stated that they were "*untimely* requests for a jury case in violation of [§ 52-215] . . . ." (Emphasis added.) The timing of the parties' unilateral jury claims, however, is not pertinent to the question of whether the parties provided written consent to a jury trial by virtue of those jury claims pursuant to § 52-215, because that provision provides that "[a] case may *at any time* be entered in the docket as a jury case by the clerk, upon written consent of all parties . . . ." (Emphasis added.) Whereas a party's right to file a jury claim, and thus unilaterally to insist upon a trial by jury, is in fact time limited, its right to place a case on the jury list upon written consent of all parties may be exercised at any time, including, logically, at any time after the initial deadline for the filing of a unilateral jury claim has passed. Naturally, there would be no need to place a case on the jury list by the consent of the parties if the

party had already claimed the case for a jury trial before the statutory deadline.

In their appellate brief, the FIH parties contend that the parties' filings were insufficient to reflect their written consent to a jury trial for a number of reasons, including that their "passing references" to a jury trial instead only reflected their "misapprehension" or "mistaken belief" that Barr's jury claim had been timely filed. The FIH parties, like the trial court, focus on the timing of the jury claims. They argue that, because Barr's jury claim was untimely, they had a vested right to a bench trial, and " 'written consent' to the waiver of a vested right . . . is legally operative only when the consenting party is aware of the rights thereby relinquished." They further argue that "a consenting party must be aware that it has a right to refuse rather than proceeding on the mistaken belief that agreement is the only option," and, in the present case, they were unaware that they had a vested right to a bench trial until the February 8, 2023 trial management conference when the trial court pointed out that both parties' jury claims were untimely filed.[23] We are not persuaded.

As an initial matter, the FIH parties cannot prevail on their claim because, contrary to their argument, the parties' jury claims and the certificate of closed pleadings—which, as explained previously, explicitly indicated that the matter was to proceed as a jury trial—did not contain mere "passing references" to a jury trial. The parties' other filings, which reference jury selection and note that the actions had been "claimed for jury

[23] The FIH parties also suggest that the Barr parties never obtained their consent to a jury trial because "[the Barr parties] never asked FIH to sign a form indicating its consent to a jury trial, and the parties never submitted a joint written statement of consent to a jury trial to the clerk." Section 52-215, however, does not reference any particular form for the parties to sign to express their consent to a jury trial, nor does that provision require such consent to be submitted as a joint filing.

trial," are consistent with and confirmative of the consent of both parties to try these cases on a consolidated basis before a jury.

Moreover, we are not persuaded that a professed "misapprehension" on the part of the FIH parties' counsel can invalidate their consent to a jury trial.[24] Not only does a lawyer's mistake as to the facts material to advice given to a client not relieve the client of the consequences of following that advice, but the lawyers' claimed mistake in this case—as to the timeliness of the Barr parties' jury claim—was not in fact material to his clients' right not to consent to placing these cases on the jury list.

In addition, the FIH parties' focus, in their argument, on their right to a bench trial and the attendant waiver of that right is misplaced. Significantly, § 52-215 does not contain any language requiring a party to expressly waive its right to a bench trial in order to provide written consent to a jury trial. In *Palumbo* v. *Barbadimos*, supra, 163 Conn. App. 119, this court discussed the circumstances under which a party obtains the right to a bench trial. In *Palumbo*, however, this court did not discuss the waiver of that right, and that case did not involve a claim that the parties had provided written consent to a jury trial. Instead, *Palumbo* focused on what actions the plaintiff was permitted to take *unilaterally* once she failed to file a jury claim pursuant to the statutory deadlines set forth in § 52-215. This court explained: "Having failed to comply with either of the time periods set out in § 52-215, the plaintiff waived

[24] In the FIH parties' appellate brief, they argue that "FIH's counsel proceeded to file a certificate of closed pleadings and jury claim form based on the misapprehension that Barr's jury claim was timely and the belief that FIH's case needed to be filed as a jury case because it was consolidated for trial with Barr's case. . . . If FIH's counsel had appreciated that Barr's jury claim in Barr's case was untimely, however, FIH would never have filed the jury claim in FIH's case."

her right to *unilaterally* claim her original action to the jury docket. . . . At that time, the defendant acquired the right to have the parties' dispute decided by the trial court. Although that right was subject to divestment by the trial court should it choose to exercise its own discretion to order a jury trial, the decision to do so was outside the control of the plaintiff and was never requested in this case. It is reasonable to infer from the defendant's choice not to exercise his own right to claim the matter to the jury docket that he perceived some advantage to proceeding with a bench trial and that a divestment of that right by the plaintiff's actions would prejudice him." (Citation omitted; emphasis added.) Id., 118–19; see also id., 119 ("the defendant had acquired a right to a bench trial that could no longer be divested *unilaterally* by the plaintiff" (emphasis added)).

Moreover, the cases cited by the FIH parties that discuss consent in a variety of different contexts—primarily criminal cases—are distinguishable from the present case. Many of the cases involve the validity of consent to a search conducted by the police. See *State* v. *Jenkins*, 298 Conn. 209, 214, 3 A.3d 806 (2010) (defendant provided consent to search his vehicle); *State* v. *Brunetti*, 279 Conn. 39, 45, 901 A.2d 1 (2006) (defendant's father provided consent to search his home, where defendant also resided), cert. denied, 549 U.S. 1212, 127 S. Ct. 1328, 167 L. Ed. 2d 85 (2007); *State* v. *Martinez*, 49 Conn. App. 738, 740–43, 718 A.2d 22 (defendant's wife provided consent to search apartment she shared with defendant), cert. denied, 247 Conn. 934, 719 A.2d 1175 (1998); *State* v. *Vaught*, Docket Nos. CR-11-264263-S and CR-11-266931T, 2013 WL 1715703, *3 (Conn. Super. April 2, 2013) (defendant provided consent to search his residence), aff'd, 157 Conn. App. 101, 115 A.3d 64 (2015). Consent provided in such circumstances, therefore, gives rise to concerns that are not

present here. For instance, because those cases involve interactions between police officers and members of the general public, a concern may be raised about whether the consent provided is the product of improper police coercion. See, e.g., *State* v. *Jenkins*, supra, 251; *State* v. *Brunetti*, supra, 71; *State* v. *Martinez*, supra, 745. Moreover, providing consent to a search has constitutional implications under the fourth amendment to the federal constitution and article first, § 7, of the state constitution. See, e.g., *State* v. *Jenkins*, supra, 249 ("[a] warrantless search is not unreasonable under either the fourth amendment to the constitution of the United States or article first, § 7, of the constitution of Connecticut if a person with authority to do so has freely consented to the search" (internal quotation marks omitted)). In the present case, by contrast, the issue of consent involves filings by an experienced attorney regarding a matter of trial strategy.

Apart from the significant differences in the circumstances and implications of consent provided in those cases, they also do not support the FIH parties' arguments. First, to the extent that the FIH parties argue that these cases impose an obligation for a party to be advised of its right to refuse to consent, they are incorrect. In *Brunetti*, *Martinez*, and *Vaught*, although the parties who provided consent to a search were advised of their right to refuse to consent, that fact was not dispositive of the court's conclusion that consent was voluntarily provided. See *State* v. *Brunetti*, supra, 279 Conn. 71; *State* v. *Martinez*, supra, 49 Conn. App. 742, 745; *State* v. *Vaught*, supra, 2013 WL 1715703, *4.[25] Indeed, our Supreme Court has explained: "[W]hile the

[25] On appeal in *Vaught*, this court concluded that the trial court had properly found that the defendant voluntarily consented to a search of his residence. See *State* v. *Vaught*, 157 Conn. App. 101, 105, 118–19, 115 A.3d 64 (2015). Significantly, though, in reaching that conclusion, this court did not even mention that the consent form advised the defendant of his right to refuse to consent to a search. See id., 119.

subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent." (Internal quotation marks omitted.) *State* v. *Jenkins*, supra, 298 Conn. 251; see also *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 248–49, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973) ("[v]oluntariness is a question of fact to be determined from all the circumstances, and while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent").

In addition, the FIH parties suggest in their appellate brief that they had only acquiesced to a jury trial, which they argue was insufficient to constitute consent. Specifically, they argue that "[w]ritten consent entailing a waiver of rights must . . . be active and explicit, as opposed to mere acquiescence—a specific form of consent that entails only passivity or lack of protest." (Emphasis omitted; internal quotation marks omitted.) In support of this contention, the FIH parties rely on *State* v. *Devalda*, 306 Conn. 494, 508, 50 A.3d 882 (2012), and *State* v. *Morrison*, Docket No. CR-07-0229487-S, 2009 WL 2357478, *5 (Conn. Super. June 16, 2009). In *Devalda*, however, the court's instructional error concerning the defendant's kidnapping charge was based on the clear language of General Statutes § 53a-91 (1) (B), which permits acquiescence of a victim to satisfy the statute's restraint element only in certain limited circumstances. See *State* v. *Devalda*, supra, 507 ("[the] court omitted the clear language of § 53a-91 (1) (B), which permits restraint to occur by acquiescence of a victim only when that victim 'is a child less than sixteen years old or an incompetent person' " (emphasis omitted)). In the present case, § 52-215 does not address acquiescence or include any such limiting language.

The FIH parties' reliance on *Morrison* similarly is misplaced. In that case, the court held that "[c]onsent is not established by mere acquiescence *to police authority*." (Emphasis added.) *State* v. *Morrison*, supra, 2009 WL 2357478, *4; see *State* v. *Jenkins*, supra, 298 Conn. 249–50 ("[t]he state must affirmatively establish that the consent was voluntary; mere acquiescence *to a claim of lawful authority* is not enough to meet the state's burden" (emphasis added; internal quotation marks omitted)); see also *Bumper* v. *North Carolina*, 391 U.S. 543, 548–49, 88 S. Ct. 1788, 20 L. Ed. 2d 797 (1968) ("When a prosecutor seeks to rely [on] consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely and voluntarily given. This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority." (Footnote omitted.)). As already stated, the present case does not involve any concerns related to police authority. Finally, and significantly, the consent in the present case did not entail "only passivity or lack of protest," as the FIH parties suggest. (Internal quotation marks omitted.) This was not a case in which the FIH parties simply failed to object to Barr's jury claim; rather, as explained previously in this opinion, they took affirmative actions to consent to a jury trial by filing the certificate of closed pleadings in the Barr action and by filing their own jury claim in the FIH action. Accordingly, these consolidated cases were properly entered on the jury docket after all parties provided written consent to do so pursuant to § 52-215.

II

Having concluded that these consolidated actions properly were entered on the docket as a jury case after all parties provided written consent to so do under the third prong of § 52-215, we must next address whether the FIH parties were entitled to withdraw their consent to a jury trial unilaterally, and if so, whether the court

had the authority to erase this case from the jury docket on the basis of such unilateral withdrawal of consent.

In the present case, although the trial court did not characterize the parties' filings as written consent, it acknowledged that the jury claim filed by FIH in the FIH action "means the agreement to a jury trial in that case," and it considered the issue of withdrawal in that context. Then, however, without citation to legal authority, the court ruled that FIH's agreement to trial by jury had become inoperative due to its unilateral withdrawal of its jury claim, which it justified by holding that "[a] party is free to change [its] position and withdraw its claim for a jury trial at any time, even shortly before trial."

As for a consenting party's claimed right to change its mind and withdraw its consent to jury trial unilaterally—at any time, for any reason, as long as its opponent is not prejudiced by erasing the case from the jury docket—the Barr parties disagree, noting that nothing in the statute authorizes such a unilateral change in tactics, and with it the unilateral denial of its opponent's right to a trial by jury. We agree with the Barr parties.

The FIH parties have cited no authority, and we have found none, to support the proposition that an action properly entered on the jury docket by written consent of the parties may be removed from that docket at the discretion of the court, or upon a party's unilateral withdrawal of consent, at any time. Section 52-215 sets forth the four different ways in which a case may be entered on the docket as a jury case and then specifically states that "[a]ll issues of fact in any such case *shall* be tried by the jury, provided the issues agreed by the parties to be tried by the court may be so tried." (Emphasis added.) Our Supreme Court has explained that, "[i]n interpreting statutory text, this court has

often stated that the use of the word shall, though significant, does not invariably create a mandatory duty. . . . The usual rule, however, is that [t]he . . . use of the word shall generally evidences an intent that the statute be interpreted as mandatory." (Internal quotation marks omitted.) *1st Alliance Lending, LLC* v. *Dept. of Banking*, 342 Conn. 273, 282, 269 A.3d 764 (2022); see also *State* v. *Reddy*, 135 Conn. App. 65, 73, 42 A.3d 406 (2012) ("the use of the word 'shall' in the statutes generally suggests a mandatory obligation"). Therefore, although not dispositive, the use of the term "shall" in § 52-215 supports our conclusion that, in the absence of some material legal error in placing the case on the jury list in the first place, such as the lack of written consent by all parties or proof that the purported consent of any party was the product of coercion or was obtained involuntarily,[26] the placement of a case on the jury list upon written consent of all parties fixes each such party's right to a jury trial and prevents the court from erasing the case from the jury docket except by the mutual agreement of all parties. See General Statutes § 52-215 ("[a]ll issues of fact in any such case *shall* be tried by the jury, provided the issues *agreed by the parties* to be tried by the court may be so tried" (emphasis added)). In other words, once the parties provide written consent to a jury trial and the case is properly placed on the jury list, no party retains the unilateral power to withdraw the case from the jury list thereafter. Although § 52-215 grants the court authority to exercise its discretion to order a jury trial; see *Palumbo* v. *Barbadimos*, supra, 163 Conn. App. 119; see also *Falk* v. *Schuster*, supra, 171 Conn. 8; the statute grants the trial court no authority to order a court trial once the case has been placed on the jury docket. See General Statutes § 52-215.

[26] Although there may be other circumstances that necessitate removal of an action from the jury docket even without the consent of all parties, we have no occasion to consider that question in the present case.

Accordingly, we agree with the Barr parties that the case was properly placed on the jury docket upon written consent of the parties and that the trial court erred in concluding that the FIH parties retained the right to withdraw their consent unilaterally once the case was properly placed on that docket.

The judgments are reversed and the cases are remanded for a new trial before a jury.

In this opinion the other judges concurred.

ANGELO CURTO *v.* ROBERT D. HARTMANN, SR., ET AL.
(AC 47129)

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

Syllabus

The defendants appealed from the trial court's judgment for the plaintiff on his claims of fraud and violation of the Connecticut Unfair Trade Practices Act (CUTPA) (§ 42-110a et seq.) in connection with a loan agreement between the parties. The defendants claimed, inter alia, that the court erred in finding that the three year statutes of limitations governing the plaintiff's claims had been tolled by their fraudulent concealment pursuant to statute (§ 52-595). *Held*:

The trial court correctly determined that § 52-595 tolled the statutes of limitations governing the plaintiff's fraud and CUTPA claims, as sufficient evidence supported the court's finding that the defendants intentionally concealed from the plaintiff the facts necessary to establish his claims and, due to the defendants' conduct in repeatedly and falsely representing to the plaintiff that he would be repaid, the plaintiff did not become aware of his causes of action until almost two years after the defendant H had knowingly misappropriated the loaned funds.

The trial court's punitive damages award pursuant to statute (§ 42-110g (a)) on the CUTPA claim did not constitute an abuse of its discretion, as the court reasonably could have concluded that the defendants' conduct in knowingly misappropriating the loaned funds and repeatedly engaging in deceptive acts to conceal the fraud and delay the plaintiff from pursing legal action warranted the amount of the award.

Argued May 19—officially released September 9, 2025

Procedural History

Action to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of Fairfield and transferred to the judicial district of Ansonia-Milford, where the case was tried to the court, *Hon. Arthur A. Hiller*, judge trial referee; judgment in part for the plaintiff, from which the defendants appealed to this court. *Affirmed.*

Trent A. LaLima, with whom, on the brief, was *Virginia M. Gillette*, for the appellants (defendants).

Juda J. Epstein, for the appellee (plaintiff).

Opinion

CRADLE, C. J. The defendants, Robert D. Hartmann, Sr. (Hartmann), and HSGCHG Investments, LLC (HSGCHG),[1] appeal, following a trial to the court, from the judgment rendered in favor of the plaintiff, Angelo Curto, on his claims of fraud and violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq.[2] On appeal, the defendants claim that the trial court (1) erred in tolling the statutes of limitations governing the plaintiff's claims and (2) abused its discretion in awarding excessive punitive damages to the plaintiff. We affirm the judgment of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to this appeal. On August 25, 2016, the defendants signed a "funding agreement" (loan agreement) with the plaintiff, pursuant to which the plaintiff loaned the defendants $100,000 to fund a concert scheduled for October 8, 2016. The loaned funds were to be spent in accordance with a proposed budget

[1] Hartmann is the principal of HSGCHG, which conducts business in Connecticut by and through Hartmann.

[2] Pursuant to CUTPA, "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." General Statutes § 42-110b (a).

that was attached to the loan agreement. In return, the defendants agreed to repay the plaintiff the principal sum of $100,000 plus one third of the net proceeds from ticket sales for the concert.[3] Hartmann executed the loan agreement on behalf of HSGCHG and in his individual capacity, and the funds were deposited into Hartmann's account on September 1, 2016.

The defendants, however, ended up canceling the scheduled concert.[4] Consequently, the plaintiff contacted the defendants and requested repayment of the principal sum. In response, Hartmann told the plaintiff that the money had been spent on advertising and to pay performers and staff for the canceled concert. Hartmann further represented to the plaintiff that the defendants would file a claim against the insurance policy they had purchased for the concert, which they would then use to reimburse the plaintiff. In addition, Hartmann subsequently represented to the plaintiff that the concert would be rescheduled for the summer of 2017 and that the plaintiff would be reimbursed from the proceeds of that concert. The concert, however, was never rescheduled, and despite Hartmann's subsequent repeated representations to the plaintiff that he was pursuing legal action against the defendants' insurance carrier to collect on the insurance policy so that they could repay the plaintiff, no such insurance policy was ever procured or produced by the defendants.

On March 14, 2018, the plaintiff "made written demand upon the defendants for repayment of all sums due [to him]" under the loan agreement, but the defendants "failed and/or refused to comply."[5] Thereafter, on April

[3] In addition, "pursuant to the terms of the loan [agreement], Hartmann personally guaranteed [the plaintiff] repayment of all sums due and owing thereunder."

[4] It is undisputed in the record that the defendants canceled the concert due to inclement weather.

[5] In addition to not receiving repayment of the principal sum of the amount loaned, the plaintiff had not received "any portion of the preconcert ticket

27, 2018, the plaintiff obtained a bank statement detailing the transactions on the account into which Hartmann had deposited the loaned funds (bank statement). Upon review of the bank statement, the plaintiff discovered that Hartmann had spent "only a minimal amount" of the funds in accordance with the loan agreement and proposed budget and, instead, had used most of the funds to pay "for his personal expenses." Specifically, on September 2, 2016, the day after the funds had been deposited, Hartmann made a payment of $38,908.25 toward his personal mortgage and a payment of $12,000 to a construction company for "something unrelated to the [concert]." Later that month, on September 28, 2016, Hartmann made a second payment of $38,908.25 toward his personal mortgage.

Thereafter, the plaintiff commenced the present action against the defendants by way of an eight count complaint in February, 2020.[6] On May 20, 2022, the defendants filed an answer and, on June 17, 2022, filed several special defenses related to the plaintiff's ability to recover damages under the loan agreement.[7] The case was tried to the court, *Hon. Arthur A. Hiller*, judge trial referee, on September 19 and 29, 2022. Following the conclusion of evidence on the first day of trial, the court asked the plaintiff whether he wished to amend his complaint, to which plaintiff's counsel stated that he was withdrawing five of the eight counts against the

sales . . . [or] the advance ticket sales" from the canceled concert, as required pursuant to the terms of the loan agreement.

[6] The plaintiff alleged breach of contract (count one), breach of common-law duty of good faith and fair dealing (count two), breach of statutory duty of good faith and fair dealing (count three), fraud (count four), violation of CUTPA (count five), unjust enrichment (count six), and civil theft (count seven). In count eight, the plaintiff "demand[ed] an accounting of how all sums borrowed . . . were used . . . by the defendants."

[7] Specifically, the defendants asserted as special defenses: (1) lack of mutual assent; (2) ambiguity; (3) lack of consideration; (4) statute of frauds; (5) illegal contract; and (6) frustration of purpose.

defendants and proceeding only on count one, alleging breach of contract, count four, alleging fraud against Hartmann,[8] and count five, alleging CUTPA violations against both defendants.[9] In response, the defendants, through counsel, orally requested to amend their pleadings to add as a special defense that the plaintiff's fraud and CUTPA claims were barred by the respective statutes of limitations. The court instructed the defendants to file amended pleadings reflecting their new special defense of statutes of limitations and further stated that it would permit the parties to file supplemental briefs on that issue.

On that same date, the defendants filed an amended special defense and accompanying memorandum of law, in which they asserted that the plaintiff's fraud claim was barred by the three year statute of limitations pursuant to General Statutes § 52-577,[10] and the plaintiff's CUTPA claim was barred by the three year statute of limitations pursuant to General Statutes § 42-110g (f).[11] On September 22, 2022, the plaintiff filed a reply to the defendants' amended special defense, along with a supporting memorandum of law, in which he asserted:

[8] The plaintiff alleged in count four: "Hartmann made false statements to induce the plaintiff to enter into the [loan] agreement . . . and to delay [the plaintiff from] enforcing his rights . . . thereunder. . . . [Hartmann] made false statements regarding his intention to repay [the plaintiff] and the need to pursue a claim against the defendants' insurance policy in order to repay [the plaintiff]. . . . The false representations of . . . Hartmann constituted a pattern and a continuing course of fraudulent conduct that continued up until at least March, 2018."

[9] The plaintiff alleged in count five: "The acts and conduct of the defendants as alleged hereinabove are unfair, unethical, immoral, oppressive and violative of public policy, all in violation of [CUTPA]. . . . The defendants are liable for punitive damages . . . pursuant to [CUTPA]."

[10] General Statutes § 52-577 provides: "No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of."

[11] General Statutes § 42-110g (f) provides in relevant part: "An action under [CUTPA] may not be brought more than three years after the occurrence of a [CUTPA] violation . . . ."

"Though the defendants are correct that the statute of limitations is three years for both fraud and CUTPA, [his] complaint affirmatively alleges, and evidence has been produced to show . . . conduct [by the defendants] . . . which constitutes fraudulent concealment [of those causes of actions]. . . . The plaintiff could not have known until he received [the bank] statement on April 27, 2018, that the [loaned funds] were [misappropriated] and/or stolen in derogation of the [loan] agreement." The plaintiff, therefore, contended that the defendants' fraudulent concealment had tolled the statutes of limitations for his fraud and CUTPA claims until April 27, 2018, "which . . . was the last in a series of acts intended to obfuscate fraudulent conduct," and, accordingly, those claims had been timely brought.

On November 3, 2022, the court issued a memorandum of decision finding in favor of the defendants on the plaintiff's breach of contract claim,[12] and in favor of the plaintiff on his fraud and CUTPA claims. As to the plaintiff's fraud claim, the court found that Hartmann "committed fraud in the inducement" in that he knowingly "made false representations as statements of fact regarding how the defendants were to spend the [loaned funds] . . . in order to induce the plaintiff to provide the . . . loan." Specifically, the court found that Hartmann "used the solicitation budget [attached to the loan agreement] to induce the plaintiff to lend the defendants $100,000" to fund a concert in accordance with that budget, "knowing that [this representation was] untrue," and subsequently "spent the majority of the [loaned funds] on matters not [contemplated by] the budget [or] associated with the [concert] at all." As to the plaintiff's CUTPA claim, the court found that Hartmann, after fraudulently inducing the plaintiff into loaning the funds, misappropriated those funds "on expenses

[12] The plaintiff does not challenge the judgment with respect to the breach of contract claim.

wholly unrelated to the [concert],'' and that his subsequent misrepresentations to the plaintiff regarding an insurance policy and the rescheduling of the concert ''were intended to, and did, obfuscate and delay the plaintiff from commencing legal action.'' The court found that these ''deceptive acts'' constituted fraud and were ''immoral, unethical, and unfair, and, therefore, support[ed] a finding of CUTPA [violations].''

The court further found in favor of the plaintiff on the defendants' special defense of statutes of limitations. Although the court noted that the plaintiff had filed the present action outside of the three year statutes of limitations for his fraud and CUTPA claims,[13] the court found that ''[t]he plaintiff has established by clear, precise, and unequivocal evidence that the defendants fraudulently concealed [from him the existence of such] cause[s] of action.'' The court, therefore, concluded that the statutes of limitations governing those counts had been tolled pursuant to General Statutes § 52-595, which provides that, ''[i]f any person, liable to an action by another, fraudulently conceals from him the existence of the cause of such action, such cause of action shall be deemed to accrue against such person so liable therefor at the time when the person entitled to sue thereon first discovers its existence.'' The court noted that ''[t]he analysis of how the defendants' conduct amounted to fraudulent concealment and tolled the statute of limitations is identical'' with respect to both counts. Specifically, the court found that ''[t]he plaintiff repeatedly reached out to the defendants regarding the status of his repayment'' and that ''[t]he defendants intentionally concealed [Hartmann's misappropriation of the funds]

[13] The court found that the date of occurrence of the acts or omissions complained of in both counts four and five; see footnotes 8 and 9 of this opinion; was ''either the date the defendants signed the loan agreement, August 25, 2016, or the date the [concert] was supposed to take place, October 8, 2016.''

from the plaintiff" by making repeated misrepresentations regarding how the money had been spent, the purported insurance policy, and the rescheduling of the concert. The court found that these misrepresentations, as well as the defendants' "two year delay in providing" the plaintiff with the bank statement which revealed Hartmann's misappropriation of the funds, "[were] intended to, and did, obfuscate and delay the plaintiff from discovering [the] fraud and CUTPA violations and commencing legal action."

With respect to the plaintiff's CUTPA claim specifically, the court acknowledged that in *Fichera* v. *Mine Hill Corp.*, 207 Conn. 204, 213–17, 541 A.2d 472 (1988), our Supreme Court, faced with a similar issue, rejected the plaintiffs' claim that fraudulent concealment could be used to toll the statute of limitations for their CUTPA claim.[14] The trial court in the present case, however,

[14] In *Fichera* v. *Mine Hill Corp.*, supra, 207 Conn. 206, the plaintiffs had seen an advertisement for a residential subdivision being developed by the defendants. When the plaintiffs visited the property, the defendants' sales agents represented that the development would include, among other features, a community recreation center. Id. When the plaintiffs subsequently purchased four lots in the subdivision in May, 1979, the defendants' attorney represented at the closing of title that the recreation center would be completed by May, 1980. Id. On June 16, 1981, however, the plaintiffs learned, from a letter written by the defendants' attorneys to the planning commission, that the defendants did not intend to construct the recreation center. Id., 207. In January, 1984, the plaintiffs commenced the underlying action against the defendants, alleging, inter alia, violation of CUTPA. Id., 208.

In rejecting the plaintiffs' claim that the three year statute of limitations for their CUTPA claim had been tolled by the defendants' alleged fraudulent concealment, our Supreme Court reasoned that "the only evidence of any affirmative conduct of the defendants" constituting a misrepresentation had occurred at the closing of title in 1979. Id., 214. Accordingly, although the plaintiffs did not discover that misrepresentation until June 16, 1981, the court held that their CUTPA claim was barred by the statute of limitations because the only deceptive acts by the defendants that could have formed the basis of that claim had occurred more than three years prior to the commencement of the action, and the plaintiffs had not presented any evidence of any other conduct of the defendants after the misrepresentation that had transpired in 1979 that would support a finding of fraudulent concealment. Id.

emphasized that our Supreme Court in *Fichera* v. *Mine Hill Corp.*, supra, 216, expressly left open the question of whether fraudulent concealment could toll the statute of limitations for a CUTPA claim "in factual settings different from [that] case."[15] Because the trial court found the facts of this case to be distinguishable from those in *Fichera*,[16] it concluded that *Fichera* did not bar the application of § 52-595 to the plaintiff's CUTPA claim in the present case.

Accordingly, the court found that, pursuant to § 52-595, the defendants' fraudulent concealment had tolled the statutes of limitations for the plaintiff's fraud and CUTPA claims until April 27, 2018, the date that the plaintiff discovered the existence of such causes of action. Relying on the fact that the plaintiff commenced the present action within three years of that date, the court held that his fraud and CUTPA claims were not barred by the statutes of limitations. The defendants subsequently filed a motion for reargument and reconsideration, which the court denied. Thereafter, the court, following a hearing in damages, awarded the plaintiff $509,303 in damages, interest, attorney's fees, and costs, which included $100,000 in compensatory

[15] The court noted that "[s]everal Superior Court cases interpret *Fichera* [v. *Mine Hill Corp.*, supra, 207 Conn. 204] as holding that fraudulent concealment cannot be applied to CUTPA claims" but concluded that "those cases do not adequately address *Fichera*'s unique fact pattern," which involved the defendants committing "an initial deceptive act, which occurred outside of the statute of limitations [for CUTPA]," but "committing no further act to conceal their [initial] wrongdoing." (Citations omitted; internal quotation marks omitted.)

[16] The court reasoned that, "[u]nlike in *Fichera* [v. *Mine Hill Corp.*, supra, 207 Conn. 214], the defendants in the present case have performed more deceptive acts other than the initial deceitful act. Specifically . . . the defendants [in the present case] made numerous false representations about repaying the plaintiff from proceeds of a second [concert] and/or insurance lawsuit, and those misrepresentations were intended to and did obfuscate and delay the plaintiff from discovering a cause of action [pursuant to CUTPA] and commencing legal action."

damages and $240,894 in punitive damages under CUTPA. This appeal followed.

I

The defendants first claim that the court erred in finding that § 52-595 had tolled the statutes of limitations governing the plaintiff's fraud and CUTPA[17] claims

[17] The defendants argue that the court erred as a matter of law in applying § 52-595 to the plaintiff's CUTPA claim because "the rationale of *Fichera* [v. *Mine Hill Corp.*, supra, 207 Conn. 215–17] . . . indicate[s] [that] such tolling is not available for CUTPA claims." The defendants, however, concede in their principal appellate brief that "[our Supreme Court in] *Fichera* stated it was applying this rationale to [the] specific facts [of the present case] . . . ." In addition, during oral argument before this court, counsel for the defendants expressly conceded that *Fichera* did not hold, as a matter of law, that fraudulent concealment cannot toll the statute of limitations for CUTPA claims.

On appeal, the defendants do not meaningfully challenge the court's finding that the facts of this case are distinguishable from those in *Fichera*. Rather, in arguing that the court improperly applied § 52-595 to the plaintiffs' CUTPA claim in derogation of *Fichera*, the defendants rely on several Superior Court decisions "that have interpreted *Fichera* [as holding] that fraudulent concealment does not apply to CUTPA claims." First, we emphasize that this court is not bound by decisions of the Superior Court. See, e.g., *Freidheim* v. *McLaughlin*, 217 Conn. App. 767, 799, 290 A.3d 801 (2023). Second, the trial court acknowledged several of the Superior Court decisions cited by the defendants on appeal but correctly concluded that those decisions had misinterpreted *Fichera*. See footnote 15 of this opinion. This court and our Supreme Court repeatedly have held that *Fichera*, contrary to the defendants' claim on appeal and the Superior Court decisions on which they rely, does not stand for the premise that the statute of limitations for CUTPA claims cannot be tolled by fraudulent concealment as a matter of law. See, e.g., *Willow Springs Condominium Assn., Inc.* v. *Seventh BRT Development Corp.*, 245 Conn. 1, 46, 717 A.2d 77 (1998) (*Fichera* "does not stand for the proposition that independent fraudulent or deceptive acts taking place within [the] three year period [prior to the filing of CUTPA action] that have been undertaken for the purpose of concealing actionable conduct occurring prior to the three year period cannot independently form the basis of a CUTPA violation"); *Randolph* v. *Mambrino*, 216 Conn. App. 126, 142 n.10, 284 A.3d 645 (2022) ("*Fichera* did not hold that § 52-595 is inapplicable for purposes of CUTPA, only that that tolling provision did not apply under the specific facts of that case"); see also *Normandy* v. *American Medical Systems, Inc.*, 340 Conn. 93, 112 n.18, 262 A.3d 698 (2021) (expressly reserving question of whether statute of limitations for CUTPA claims may be equitably tolled). Accordingly, the defendants' argument is without merit.

because, they argue, the plaintiff failed to present sufficient evidence of fraudulent concealment. We disagree.

We begin by setting forth our standard of review and the legal principles relevant to the defendants' claim. "Whether a particular action is barred by the statute of limitations is a question of law to which we apply a plenary standard of review. . . . The factual findings that underpin that question of law, however, will not be disturbed unless shown to be clearly erroneous." (Citation omitted; internal quotation marks omitted.) *Prime Bank* v. *Vitano, Inc.*, 198 Conn. App. 136, 141, 232 A.3d 1265 (2020). "[I]t is axiomatic that [t]he trial court's [factual] findings are binding [on] this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *K. S.* v. *R. S.*, 350 Conn. 692, 750, 326 A.3d 187 (2024).

"The question before us is whether the [plaintiff] [has] adduced any credible evidence that . . . the defendants fraudulently concealed the existence of the [plaintiff's] cause[s] of action. To meet this burden, it was not sufficient for the [plaintiff] to prove merely that it was more likely than not that the defendants had concealed the cause[s] of action. Instead, the [plaintiff] had to prove fraudulent concealment by the more exacting standard of clear, precise, and unequivocal evidence. . . . Under our case law, to prove fraudulent concealment, the [plaintiff] [was] required to show: (1) [the defendants'] actual awareness, rather than imputed knowledge, of the facts necessary to establish the [plaintiff's] cause[s] of action; (2) [the defendants']

intentional concealment of these facts from the [plaintiff]; and (3) [the defendants'] concealment of the facts for the purpose of obtaining delay on the [plaintiff's] part in filing a complaint on [his] cause[s] of action." (Internal quotation marks omitted.) *Medical Device Solutions, LLC* v. *Aferzon*, 207 Conn. App. 707, 745–46, 264 A.3d 130, cert. denied, 340 Conn. 911, 264 A.3d 94 (2021). "Generally, fraudulent concealment requires a showing of affirmative acts of concealment." Id., 749.

On appeal, the defendants challenge the court's finding of fraudulent concealment only with respect to the second element.[18] Specifically, they argue that the plaintiff established the facts necessary for his fraud and CUTPA claims on the date of the canceled concert, and, therefore, the court erred in finding that the defendants had intentionally concealed such facts on the basis of their subsequent misrepresentations to the plaintiff. In support of their claim, the defendants rely on the plaintiff's testimony at trial that, pursuant to his understanding of the loan agreement, he would receive proceeds

[18] The defendants argue that the court erred in applying § 52-595 to the plaintiff's claims because he failed to " 'affirmatively plead [fraudulent concealment]' " in his reply to the defendants' special defense of statute of limitations. (Internal quotation marks omitted.) In its memorandum of decision, the court noted that, "[a]lthough the plaintiff did not specifically cite § 52-595 in [his] reply, the plaintiff did discuss fraudulent concealment and cited . . . case law discussing § 52-595." Accordingly, the court interpreted the plaintiff's reply as "making the argument that the statute of limitations is tolled because of fraudulent concealment pursuant to . . . § 52-595 . . . ."

On appeal, the defendants argue that the court erred in "interpret[ing] [the plaintiff's reply] as sufficiently pleading fraudulent concealment" because the plaintiff, in his reply and supporting memorandum of law, "did not analyze [the] facts [of the case] under the three prong test for fraudulent concealment." The defendants, however, fail to cite any supporting authority for their claim or advance a substantive legal or factual argument in support of their contention that such an analysis is necessary to sufficiently plead fraudulent concealment. "We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Internal quotation marks omitted.) *State* v. *Buhl*, 321 Conn. 688, 724, 138 A.3d 868 (2016). Accordingly, because the defendants'

from ticket presales *prior* to the October 8, 2016 concert. On the basis of that testimony, the defendants contend that the fact that the plaintiff had not received any such proceeds by the date of the scheduled concert should have put him on notice that the defendants "never intended to meet [their] repayment obligations."[19] Accordingly, the defendants contend that the plaintiff "had sufficient [facts] to make a [fraud and CUTPA] claim from the moment the concert date passed in October, 2016," and, therefore, the "[l]ater obfuscations [by the defendants] described by the trial court" are insufficient to support the court's finding that the defendants had intentionally concealed from the plaintiff the facts necessary to establish his fraud and CUTPA causes of action. We are not persuaded.

The court, in addressing the second element, found that "[t]he plaintiff repeatedly reached out to the defendants regarding the status of his repayment," and "[t]he defendants knew . . . that Hartmann [had] spent the [funds] on matters unrelated to the [concert]," but the defendants "intentionally concealed this fact from the plaintiff by making false representations that Hartmann [had] spent the money [on expenses] for the [canceled] concert" and that "the defendants would reimburse the plaintiff from an insurance policy payout . . . [or] proceeds from a subsequent [concert]." On the basis of those findings, the court concluded that "the plaintiff did not become aware of his cause[s] of action for fraud [and CUTPA violations] until . . . April 27, 2018," when he obtained the bank statement revealing Hartmann's misappropriation of the funds and, thus, learned that the foregoing representations by Hartmann had been false.[20] We agree with the trial court's conclusion

argument that the plaintiff failed to sufficiently plead fraudulent concealment is inadequately briefed, we decline to review it.

[19] See footnote 5 of this opinion.

[20] As we stated previously, the court additionally found that the defendants' "two year delay" in providing the bank statement to the plaintiff "was intended to, and did, obfuscate and delay the plaintiff from discovering [the]

that, contrary to the defendants' claim on appeal, the fact that the plaintiff had not received any presale ticket proceeds by the date of the scheduled concert, in and of itself, was insufficient to demonstrate that the plaintiff was aware of actionable fraud and CUTPA claims against the defendants. Although this may have provided the plaintiff with the facts necessary to establish a cause of action for breach of contract, we cannot conclude that it would have provided the plaintiff with the facts necessary to establish his fraud and CUTPA claims, which were predicated on Hartmann's misappropriation of the loaned funds and his subsequent misrepresentations to the plaintiff. We further conclude, on the basis of our thorough review of the record, that the trial court's findings were supported by sufficient evidence. The court heard ample witness testimony describing Hartmann's repeated misrepresentations in response to the plaintiff's requests for repayment following the cancelation of the concert.[21] Furthermore,

fraud and CUTPA violations . . . ." On appeal, the defendants argue that, because they owed no fiduciary duty to the plaintiff, the court "improperly used [that] delay . . . as a basis for fraudulent concealment" because "[t]his places a duty to disclose on the [defendants] that is barred by [our] case law." See, e.g., *Medical Device Solutions, LLC* v. *Aferzon*, supra, 207 Conn. App. 751 (declining to hold that "violation of a contractual duty to disclose in the absence of a fiduciary duty is sufficient to constitute fraudulent concealment"). The defendants' argument, however, is misplaced because it mischaracterizes the court's memorandum of decision. The court's finding of fraudulent concealment in this case did not rely on the defendants' mere failure to notify the plaintiff of Hartmann's fraud but, rather, the "affirmative steps" taken by the defendants afterwards "to conceal that [fraud], as evidenced by [the defendants' repeated misrepresentations to the plaintiff]." See *Medical Device Solutions, LLC* v. *Aferzon*, supra, 752 (in absence of fiduciary duty, evidence of "additional fraudulent behavior" beyond mere nondisclosure can toll statute of limitations pursuant to § 52-595).

[21] Specifically, the plaintiff testified that he "requested [his] money back" shortly after the concert was canceled and told Hartmann that they could just "void the loan" if the defendants refunded the principal sum, but Hartmann represented that he was unable to do so because he already had spent the funds on expenses related to the canceled concert. The court also heard testimony from Brian Mahoney, who, acting as the plaintiff's agent, drafted the loan agreement and served as a broker between the parties. Mahoney testified that he also asked Hartmann about the status of the money owed

the plaintiff explicitly testified that he did not discover that Hartmann's numerous representations following the cancelation of the concert were false, and that Hartmann in fact had misappropriated the loaned funds to pay for his personal expenses, until he obtained the bank statement in April, 2018.[22]

Accordingly, on the basis of our examination of the trial court's findings and the evidentiary record in support thereof, we conclude that the trial court correctly found that the defendants intentionally concealed from the plaintiff the facts necessary to establish his fraud and CUTPA claims and that the court properly determined that the statutes of limitations were tolled by the defendants' fraudulent concealment.

II

Next, the defendants claim that the court abused its discretion in awarding the plaintiff an excessive amount of punitive damages under CUTPA. We disagree.

to the plaintiff, and Hartmann represented that "he spent all the [loaned funds] on the [canceled concert]," that the defendants had "some kind of insurance, which . . . should . . . [cover] the cost of the [canceled concert]," and that the defendants "[were] going to reschedule the [concert]." Mahoney further testified that, when he followed up with Hartmann "months . . . after" the cancelation of the concert, Hartmann again represented that he "[does not] have the cash [to repay the plaintiff] right now but [the defendants were] suing [their insurance carrier] and were going to get the new [concert] scheduled as soon as [they could]."

Finally, the court was presented with copies of emails between Mahoney and Hartmann, which included a March 7, 2018 email in which Hartmann himself stated that he had told the plaintiff that the "[loaned] funds [had been] spent on advertising, staff, and entertainment" for the canceled concert and that "[the defendants] have filled [out a claim] with [their] insurance carrier" in order to get the proceeds to repay the plaintiff. As stated herein, the court found, and the evidence supports, that neither representation Hartmann admitted to making was truthful.

[22] In addition, the court reasonably could have inferred from the emails between Hartmann and Mahoney, and the plaintiff's March 14, 2018 letter of demand to the defendants, that, in March, 2018, sixteen months after the concert had been canceled, the plaintiff still was unaware that Hartmann had used the loaned funds on expenses unrelated to the concert and that his representations regarding how the funds had been spent and a purported insurance policy were not truthful. See, e.g., *Falls Church Group, Ltd.* v.

Pursuant to CUTPA, "[t]he court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper." General Statutes § 42-110g (a). "Awarding punitive damages . . . under CUTPA is discretionary . . . and the exercise of such discretion will not ordinarily be interfered with on appeal unless the abuse is manifest or injustice appears to have been done. . . . In order to award punitive . . . damages, evidence must reveal a reckless indifference to the rights of others or an intentional and wanton violation of those rights. . . . Awarding punitive damages based on a multiple of a plaintiff's actual damages is a recognized method for determining punitive damages under CUTPA. . . .

"In determining whether a punitive damages award pursuant to § 42-110g (a) is so excessive as to constitute an abuse of discretion, we look to the factors that the United States Supreme Court discussed in *Exxon Shipping Co.* v. *Baker*, 554 U.S. 471, 503, 128 S. Ct. 2605, 171 L. Ed. 2d 570 (2008)." (Citations omitted; internal quotation marks omitted.) *Pointe Residential Builders BH, LLC* v. *TMP Construction Group, LLC*, 213 Conn. App. 445, 461–62, 278 A.3d 505 (2022). Those factors include, among others, "the degrees of relative blameworthiness, i.e., whether the defendant's conduct was reckless, intentional or malicious . . . whether the wrongdoing was hard to detect . . . [and] whether the . . . compensatory damages were small, providing a low incentive to bring the action . . . ." (Citations omitted; internal quotation marks omitted.) *Ulbrich* v. *Groth*, 310 Conn. 375, 454, 78 A.3d 76 (2013).

At the hearing in damages, the plaintiff's counsel requested that the court award $300,000 in punitive

Tyler, Cooper & Alcorn, LLP, 281 Conn. 84, 110, 912 A.2d 1019 (2007) (in proving fraudulent concealment, "[p]roof by circumstantial evidence is sufficient where rational minds could reasonably and logically draw the necessary inferences" (internal quotation marks omitted)).

damages under CUTPA, an amount equal to three times the compensatory damages. In response, counsel for the defendants argued that the defendants' conduct did not warrant an award of punitive damages. Specifically, the defendants' counsel noted that the bank statement reveals that the defendants had made several payments, totaling $19,701.72, on expenses related to "an actual concert,"[23] which, according to counsel, demonstrated "that [the defendants had] some intention to actually [put on a concert and] pay back the plaintiff . . . even if they [were not] honest about where the money would go." The court disagreed that punitive damages were not warranted, emphasizing that "there was evidence [that Hartmann] used [some of the loaned funds] for his own [benefit] along the way, including paying his mortgage off . . . and [then] lie[d] about insurance for the [concert]." In other words, Hartmann had "cheated [the plaintiff] out of that money and used it where it [was not] supposed to be used . . . ." The court, however, concluded that the proper base for its calculation of punitive damages was $80,298.28, which was equal to the plaintiff's compensatory damages of $100,000 minus the $19,701.72 that the defendants had put toward an actual concert. The court then multiplied that base figure by three, resulting in approximately $240,894 in punitive damages under CUTPA.

[23] As we stated previously in this opinion, the court found that Hartmann, after receiving the plaintiff's loaned funds in September, 2016, had used $89,816.50 of the plaintiff's $100,000 loan to make three payments, two to his mortgage company and one to a construction company, for "expenses wholly unrelated to the [concert]." We note for clarification that, on the basis of our thorough review of the record, we do not interpret the argument of the defendant's counsel at the hearing in damages as claiming that the defendants spent $19,701.72 *of the plaintiff's $100,000 loan* on expenses related to the concert. The record indicates that the total projected budget of the concert was $300,000, and, thus, the plaintiff's $100,000 loan only partially funded the concert, with the remaining $200,000 to be funded by the defendants themselves and/or by third parties other than the plaintiff. Accordingly, on our review of the record, we interpret counsel's accounting of the defendants' expenditures, which the plaintiff did not challenge, as claiming that, out of the *entire* $300,000 budget for the concert, a total of $19,701.72 had gone toward expenses related to an actual concert.

On appeal, the defendants argue that the amount of the court's punitive damages award was excessive, and therefore an abuse of its discretion, because the factors discussed previously in this section "favor a smaller award in this case." The defendants advance several arguments in support of their claim, none of which we find persuasive.

First, the defendants argue that "some of the [loaned] funds went to legitimate concert expenses, showing a true intent to arrange the concert," thereby "mov[ing] [the defendants'] conduct, and failure to repay [the plaintiff], from malicious to reckless." We do not agree with the defendants' interpretation of the evidence,[24] and, even if we had, it would provide no basis to conclude that the court's award of punitive damages was excessive. We reiterate that the specific conduct that the court found to have violated CUTPA, and, therefore, the factual predicate for its award of punitive damages, was Hartmann's *misappropriation of the funds*, coupled with his subsequent misrepresentations to the plaintiff to conceal that fraud. Thus, the court's award of punitive damages was not predicated on the defendants' intent, or lack thereof, in entering the loan agreement, but, rather, the fact that Hartmann, irrespective of his initial intent, subsequently used a significant portion of the loaned funds for his personal expenses in derogation of the loan agreement.[25]

[24] We are not convinced that a few concert related transactions totaling $19,701.72, which amounts to a mere 7 percent of the $300,000 total budget for the scheduled concert, evinces the defendants' genuine intent to put on an actual concert. Moreover, the defendants fail to meaningfully explain how Hartmann's knowing misappropriation of 80 percent of the plaintiff's loaned funds for his own benefit was reckless, rather than malicious, merely because he had not misappropriated *all* of the funds allocated for the concert.

[25] Indeed, the basis of the court's award of punitive damages—Hartmann's misappropriation of the funds—is plainly evident from the fact that the court expressly excluded from its calculation the amount of money that the defendants had spent on expenses related to an actual concert.

Next, the defendants argue that "[their] wrongdoing was not hard to detect" because the plaintiff had loaned the funds pursuant to a written agreement, and, therefore, "the funds were not taken surreptitiously" and "[t]he [plaintiff] was always going to become aware [that] his funds were taken and not returned." This argument merits little discussion. As stated herein, the violation of CUTPA, and, thus, the court's award of punitive damages, was predicated on Hartmann's surreptitious misappropriation of the loaned funds for his own benefit and his subsequent "deceptive acts" which were intended to, and did, prevent the plaintiff from becoming aware that his money had been taken and would not be returned.

Finally, the defendants, without citation to any supporting authority, argue that the amount of the court's punitive damages award was excessive because the compensatory damages award was "already a significant amount . . . ." As we stated previously, "[a]warding punitive damages based on a multiple of a plaintiff's actual damages is a recognized method for determining punitive damages under CUTPA"; (internal quotation marks omitted) *Pointe Residential Builders BH, LLC* v. *TMP Construction Group, LLC*, supra, 213 Conn. App. 461; and our Supreme Court has upheld punitive damage awards that were calculated in a manner consistent with the method used by the court in the present case. See, e.g., *Ulbrich* v. *Groth*, supra, 310 Conn. 456 (court did not abuse its discretion in awarding punitive damages under CUTPA equal to three times compensatory damages); *Votto* v. *American Car Rental, Inc.*, 273 Conn. 478, 486, 871 A.3d 981 (2005) (same).

Under the circumstances of the present case, we cannot conclude that the court's award of punitive damages constituted an abuse of its discretion. Rather, we conclude that the trial court reasonably could have concluded that the defendants' conduct, which included

Hartmann's knowing misappropriation of the loaned funds for his own benefit almost immediately after they were deposited into his account, together with the fact that Hartmann, for a period of almost two years thereafter, repeatedly engaged in "deceptive acts" intended to conceal his fraud and delay the plaintiff from pursuing legal action, warranted the amount of the award. See *Ulbrich* v. *Groth*, supra, 310 Conn. 456. Accordingly, we conclude that the amount of the trial court's punitive damages award did not constitute an abuse of its discretion.

The judgment is affirmed.

In this opinion the other judges concurred.

D. K. *v.* D. F.*
(AC 47860)

Moll, Westbrook and Pellegrino, Js.**

Syllabus

The defendant, whose marriage to the plaintiff had previously been dissolved, appealed from the trial court's judgment denying his motion to modify custody of the parties' minor children and to allow him visitation. The defendant claimed, inter alia, that the court improperly concluded that joint legal custody and visitation was not in the best interests of the children. *Held*:

* 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.

** This appeal originally was argued before a panel of this court consisting of Judges Prescott, Moll and Westbrook. Thereafter, Judge Pellegrino was added to the panel in place of Judge Prescott, who did not participate in the decision of the case. Judge Pellegrino has read the briefs and appendices and listened to a recording of oral argument prior to participating in this decision.

The trial court did not abuse its discretion in denying the defendant's motion for modification of custody and visitation, as the trial court considered many factors in determining whether modification of custody and visitation was in the children's best interests and, in the absence of evidence to the contrary, which was not present in this case, this court presumed that the trial court properly weighed all the evidence before it.

The trial court properly articulated its basis for concluding that modification of custody and visitation was not in the children's best interests pursuant to the statute (§ 46b-56), as the court stated that it had considered all of the statutory factors set out in § 46b-56 (c) and it was not required to consider any particular factors or to assign weight to the factors that it considered.

The trial court did not impermissibly delegate its judicial authority to the plaintiff by giving her discretion to decide the nature and scope of the defendant's visitation rights, as the court's initial custody order in the dissolution judgment granted the plaintiff sole legal custody of the children and did not grant the defendant any visitation rights, and the fact that the court left open the possibility of visits at the discretion of the plaintiff did not transform the court's decision-making into impermissible delegation.

This court declined to review the defendant's inadequately briefed claim that the trial court failed to apply § 46b-56 (g) when it denied his motion for modification.

Argued February 14—officially released September 9, 2025

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Waterbury and tried to the court, *Ficeto*, *J.*; judgment dissolving the marriage and granting certain other relief; thereafter, the court, *Rapillo*, *J.*, denied the defendant's motion for modification of custody and visitation, and the defendant appealed to this court. *Affirmed.*

D. F., self-represented, the appellant (defendant).

Opinion

WESTBROOK, J. In this postdissolution matter, the defendant, D. F., appeals from the trial court's denial of his postjudgment motion for modification of custody

and visitation.[1] Although the self-represented defendant's appellate brief is not a model of clarity, we construe his claims to be that the court improperly (1) concluded that joint legal custody and visitation is not in the children's best interests pursuant to General Statutes § 46b-56, (2) delegated its judicial authority to the plaintiff, D. K., by giving her discretion to decide the nature and scope of the defendant's visitation rights, and (3) failed to apply § 46b-56 (g). We disagree and, accordingly, affirm the judgment of the court.

The following facts, which are undisputed in the record, and procedural history are relevant to this appeal. The defendant and the plaintiff were married on December 16, 2014, and they have two minor children together, E and F. E was born in February, 2016, and F was born in June, 2022.

In July, 2022, the defendant was arrested following a domestic violence incident, and the criminal court subsequently issued a protective order prohibiting the defendant from contacting the plaintiff. Later that month, the plaintiff alleged that the defendant repeatedly attempted to contact her through text messages, emails, and phone calls. As a result, on August 1, 2022, the state obtained a warrant to arrest the defendant for, inter alia, violating a protective order in violation of General Statutes § 53a-223 (criminal matter). On August 2, 2022, the defendant was arrested, and, on August 3, 2022, the criminal court, under a new docket number, issued another protective order prohibiting the defendant from contacting the plaintiff.

In August, 2022, after the defendant had been arrested, the plaintiff initiated dissolution proceedings against

[1] The plaintiff, D. K., did not file a brief with this court. We therefore decide the appeal on the basis of the record and the defendant's brief and oral argument. See *Batista* v. *Cortes*, 203 Conn. App. 365, 366 n.1, 248 A.3d 763 (2021).

the defendant (family matter). In the family matter, the plaintiff filed a motion for custody of the parties' minor children. The defendant filed an objection to the plaintiff's motion, arguing that the court should deny her motion and, instead, grant him sole custody of the children. The plaintiff filed proposed orders that provided, inter alia, that she be given sole legal and physical custody of the children. In December, 2022, the family court dissolved the parties' marriage and ordered that the plaintiff have sole legal and physical custody of their minor children. The court did not order visitation for the defendant. The court also approved the plaintiff's proposed orders and attached them to the judgment.

On April 4, 2023, in the criminal matter, the defendant, pursuant to a plea agreement, pleaded guilty to criminal violation of a protective order. On June 27, 2023, the court, *Schwartz*, *J.*, sentenced the defendant to eighteen months of incarceration and issued a standing criminal protective order (protective order) that was to remain in effect until April 4, 2048. The protective order, inter alia, prohibits the defendant from contacting the plaintiff. It also provided that "[c]ontact with [F] . . . [was] permissible if approved by [the] family court." The defendant completed his sentence and was released from prison on February 1, 2024.

In February, 2024, the defendant filed in the family matter a postjudgment motion for modification of custody and visitation, seeking joint custody of and visitation with his children. The family court subsequently ordered the defendant to participate in a parenting education program, which he completed.

On April 26, 2024, in the criminal matter, the defendant filed a motion to modify the protective order, asking the court to terminate the protective order so that he could develop a relationship with the plaintiff that

would be beneficial for their children. On May 23, 2024, the defendant filed a supplemental motion to modify the protective order, requesting that the court terminate or modify the protective order to "allow the defendant [to have] contact with [the plaintiff] strictly within the scope of the interests of the children according to the approved . . . parenting plan . . . ." In his supplemental motion, the defendant argued that the "protective order is a significant impediment for restoring and developing a normal relationship between the defendant and the children."

On June 3, 2024, the criminal court held a hearing on the defendant's motion to modify the protective order.[2] The court thereafter issued an order denying

[2] At the hearing, the following colloquy took place between the criminal court and the defendant concerning the family matter:

"The Court: All right, well, have you gone to family court and looked to have custody of your children?

"The Defendant: Yes, as I mentioned, we're scheduled for [a hearing] . . . .

"The Court: Okay. And there's nothing in the [protective order] that prevents you from having contact with your children, right?

"The Defendant: Except that they live with [the plaintiff] [and] it becomes really difficult to contact them. . . .

"The Court: . . . As far as your children, there's nothing in [the protective] order that says you can't contact your children. But I get that if [the plaintiff] has sole custody and you can't contact her, it's very difficult for you to have any relationship with your children. . . . But the real place to have this argument is in family court, not here. And if you file your motion and [the family court] say[s] that the standing criminal protective order is an issue for [the court] . . . then come back here, and you can talk to me. But as its stands right now, there's nothing preventing you, by this court's order, from having a relationship [with your children]. So, I'd say talk to family court and work it out there. But I'm going to deny your motion to modify [the protective order] at this time. . . .

"The Defendant: And I can return . . . if the family court decide[s] that . . . the [protective order] is [an] impediment? . . .

"The Court: . . . What I'm saying is go to family court, ask to have contact with your children, and if the judge says well, you can't because of my order, then you can come back and you can tell me that. But I wouldn't tell any judge in family court that I'm willing to do anything. Because as of right now, all I'm doing is denying your motion."

the defendant's motion to modify the protective order, and the defendant appealed from that decision.[3]

On July 24, 2024, the family court, *Rapillo*, *J.*, held a hearing on the defendant's motion for modification of custody and visitation. The plaintiff was not present.[4] At the hearing, the following colloquy took place between the court and the defendant:

"The Court: So, you filed a motion to modify. Understand that with a motion to modify, the court can't make any orders that I don't find to be in the child's best interest. I know under the judgment file, it gives the [plaintiff] sole legal custody and doesn't make any orders with regard to visitation.

"The Defendant: No, there is nothing.

"The Court: Right, because she has sole legal custody, so that means it's up to her. That's what sole legal custody means. So, you filed a motion to modify. What is it that you are looking [for], and why do you believe that would be in the children's best interest[s]?"

The defendant thereafter argued that joint legal custody and visitation is in the children's best interests because he has a good relationship with E and he has concerns about the plaintiff's parenting. He additionally argued that there had been a substantial change in circumstances because his incarceration was the basis for awarding the plaintiff sole legal custody, and he is no longer incarcerated. The court asked the defendant

[3] Contemporaneously with this opinion, this court issued a memorandum decision affirming the judgment of the criminal court denying the defendant's motion to modify the protective order. See *State* v. *Denis F.*, 235 Conn. App. 901, A.3d (2025).

[4] The defendant was unable to locate the plaintiff's residence for the purpose of serving her with notice of the hearing. After several attempts to serve notice on the plaintiff, the court ordered that the defendant serve a notice by publication. Notice was subsequently published in the Legal Notices section on the Judicial Branch website from June 5 through 19, 2024.

whether he had engaged in services or therapy since he had been released from incarceration, and the defendant responded that he had completed a parenting education program. The court also asked the defendant when he had last seen his children, which the defendant explained was before he was incarcerated. The defendant additionally explained to the court that the protective order allows him to contact F if the family court approves. The following exchange then took place between the court and the defendant:

"The Court: You haven't had any contact [with the children]. You're basically asking to assume full control over their lives for kids that [you] haven't had contact with in a number of years. . . . I will find that there's been a change in circumstances since you've been released from prison, but I can't make a finding today that . . . changing the orders would be in the kids' best interest[s] . . . . This is based on what the record shows would be in the kids' best interest[s]. So, I'm going to deny the motion to modify, and I would suggest that, before you file another one, you get yourself engaged in some sort of therapy . . . that will hopefully give you some insight and be able to think about what would be in the kids' best interest[s]. . . .

"The Defendant: Can I have a visit? . . . Can I contact them?

"The Court: For now, I'm not going to order that, no.

"The Defendant: Why?

"The Court: Because I don't think it would be in the kids' best interest[s], and that's what the court has to consider."

Later that day, the court issued an order denying the defendant's motion for modification of custody and visitation. This appeal followed.

After filing the present appeal, the defendant, pursuant to Practice Book § 66-5, filed a motion for articulation. In his motion for articulation, the defendant argued that the family court failed to "state the reasons upon which the court rejected the postjudgment motion for modification" pursuant to General Statutes § 46b-56a (b).[5] He also argued that the court "failed to undertake all available measures to locate [the plaintiff] to be served with the notice, such as: ask the plaintiff's attorney, contact relatives, [and] contact current and previous employers." He requested that the court articulate: (1) "the statutory authority the court relie[d] upon in denying the postjudgment motion for modification of the sole custody into [a] joint custody and visitation"; and (2) "the statutory authority the court relie[d] upon in disregarding to resort to all available means to locate an individual to be served."

On August 28, 2024, the court issued an order, which provides: "After hearing testimony from the [defendant] and considering all the statutory factors set out in . . . § 46b-56 (c), the court determined by a preponderance of the evidence that a modification of the orders would not be in the best interests of the minor children. The court declines to articulate on the [defendant's] second request related to efforts to locate the [plaintiff]. The statutes and case law do not place a duty on the court to locate parties. The [defendant] was afforded ample opportunity to effectuate service and effective service was accomplished." We turn now to the defendant's claims on appeal.

[5] General Statutes § 46b-56a (b) provides: "There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage. If the court declines to enter an order awarding joint custody pursuant to this subsection, the court shall state in its decision the reasons for denial of an award of joint custody."

I

The defendant first claims that the family court improperly concluded that joint legal custody and visitation is not in the children's best interests pursuant to § 46b-56.[6] Specifically, he argues that the court failed

[6] General Statutes § 46b-56 provides in relevant part: "(a) In any controversy before the Superior Court as to the custody or care of minor children . . . the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children . . . . [T]he court may assign parental responsibility for raising the child to the parents jointly, or may award custody to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. . . .

"(b) In making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests. Such orders may include, but shall not be limited to: (1) Approval of a parental responsibility plan agreed to by the parents pursuant to section 46b-56a; (2) the award of joint parental responsibility of a minor child to both parents, which shall include (A) provisions for residential arrangements with each parent in accordance with the needs of the child and the parents, and (B) provisions for consultation between the parents and for the making of major decisions regarding the child's health, education and religious upbringing; (3) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent where sole custody is in the best interests of the child; or (4) any other custody arrangements as the court may determine to be in the best interests of the child.

"(c) In making or modifying any order . . . the court shall consider the best interests of the child, and in doing so, may consider, but shall not be limited to, one or more of the following factors: (1) The physical and emotional safety of the child; (2) the temperament and developmental needs of the child; (3) the capacity and the disposition of the parents to understand and meet the needs of the child; (4) any relevant and material information obtained from the child, including the informed preferences of the child; (5) the wishes of the child's parents as to custody; (6) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (7) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (8) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (9) the ability of each parent to be actively involved in the life of the child; (10) the child's adjustment to his or her home, school and community environments; (11) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the

to (1) consider evidence regarding the plaintiff's parenting or (2) articulate which factors it considered pursuant to § 46b-56 (c). We are not persuaded.

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

"Our standard of review of a trial court's decision regarding custody, visitation and relocation orders is one of abuse of discretion. . . . [T]he trial court's decision on the matter of custody is committed to the exercise of its sound discretion and its decision cannot be overridden unless an abuse of that discretion is clear. . . . The controlling principle in a determination respecting custody is that the court shall be guided by the best interests of the child. . . . In determining what is in the best interests of the child, the court is vested with a broad discretion. . . . [T]he authority to exercise the judicial discretion [authorized by § 46b-56] . . .

court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (12) the stability of the child's existing or proposed residences, or both; (13) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (14) the child's cultural background; (15) the effect on the child of the actions of an abuser, if any domestic violence . . . has occurred between the parents or between a parent and another individual or the child; (16) whether the child or a sibling of the child has been abused or neglected . . . and (17) whether the party satisfactorily completed participation in a parenting education program . . . . The court is not required to assign any weight to any of the factors that it considers, but shall articulate the basis for its decision. . . ."

is not conferred [on] this court, but [on] the trial court, and . . . we are not privileged to usurp that authority or to substitute ourselves for the trial court. . . . A mere difference of opinion or judgment cannot justify our intervention. Nothing short of a conviction that the action of the trial court is one [that] discloses a clear abuse of discretion can warrant our interference. . . .

"The trial court has the opportunity to view the parties [firsthand] and is therefore in the best position to assess the circumstances . . . in which such personal factors as the demeanor and attitude of the parties are so significant. . . . [E]very reasonable presumption should be given in favor of the correctness of [the trial court's] action. . . . We are limited in our review to determining whether the trial court abused its broad discretion to award custody based upon the best interests of the child as reasonably supported by the evidence. . . . In employing our abuse of discretion standard, [t]he trial court's findings are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . .

"Before modifying a custody order, a court must satisfy two requirements. First, modification of a custody award must be based upon either a material change [in] circumstances which alters the court's finding of the best interests of the child . . . or a finding that the custody order sought to be modified was not based upon the best interests of the child. . . . Second, the court shall consider the best interests of the child and in doing so may consider [the] several factors [set forth in § 46b-56 (c)]." (Citations omitted; footnote omitted;

internal quotation marks omitted.) *Thomas* v. *Cleary*, 229 Conn. App. 15, 26–28, 326 A.3d 1109 (2024). "In considering whether to modify visitation orders, as opposed to custody orders, a court is not required to find as a threshold matter that a change in circumstances has occurred. . . . Instead, [i]n modifying an order concerning visitation, the trial court shall be guided by the best interests of the child . . . ." (Internal quotation marks omitted.) *J. Y.* v. *M. R.*, 215 Conn. App. 648, 658–59, 283 A.3d 520 (2022).

In the present case, the court found that there had been a material change of circumstances since the initial custody order because the defendant, who was incarcerated at the time of the initial custody and visitation order, had been released from prison. The court found, however, that modification of custody and visitation was not in the children's best interests because the defendant had not had contact with his children since before he was incarcerated, and, since he had been released from prison, he had not engaged in any therapy or services other than the court-ordered parenting education program.

The defendant does not argue that any of the court's factual findings are clearly erroneous. Rather, he argues that the court "failed to give weight to the factual issues presented by [him], particularly, to the facts [showing] that the [plaintiff] has repeatedly exhibited signs of hostile behavior toward the children including attempts to cause physical damage to the children and causing mental harm to [E]." In support of this argument, he contends that "the court refused to accept into evidence [his] written statement where [he] listed factual circumstances that might have led the court to reconsider sole custody on the grounds of the best interest[s] of the children." We disagree.

There is no indication in the record that the defendant offered or that the court refused to accept any written

statement by the defendant concerning the plaintiff's parenting. At the hearing on the defendant's motion, he stated: "[Y]ou have my postjudgment motion for modification. I listed there things that, in my opinion, [raise] serious concern[s] about, you know, [the plaintiff's] real and genuine attitude [toward] the children." The defendant's motion for modification, however, did not include or attach any written statements concerning the plaintiff's parenting. In fact, the defendant admits, in his appellate brief, that "the [alleged] circumstances had been written in the statement which *had not been attached to the case*." (Emphasis added.)

Moreover, there is no indication that the court did *not* consider the evidence regarding the plaintiff's parenting. At the hearing on the defendant's motion for modification, the defendant testified as follows: "First of all, [the plaintiff] likes to drink. Uh, second of all, she did many things that would have questioned her love [for] the children. Putting (indiscernible) in the legs, feeding junk food, uh, not preparing food for the school as it's supposed to be, not dressing right, not feeding her right, not changing the water. So, many things that shows . . . her attitude. She had these kids in order to have [an] advantage against me, to manipulate me. And during [our] entire time together, she created [a] very toxic environment that has really serious influence on me . . . ."

"[T]he trier [of fact] is bound to consider all the evidence which has been admitted, as far as admissible, for all the purposes for which it was offered and claimed. . . . [W]e are not justified in finding error upon pure assumptions as to what the court may have done. . . . We cannot assume that the court's conclusions were reached without due weight having been given to the evidence presented and the facts found. . . . Unless the contrary appears, this court will assume that the court acted properly." (Internal quotation

marks omitted.) *Moye* v. *Commissioner of Correction*, 168 Conn. App. 207, 229, 145 A.3d 362 (2016), cert. denied, 324 Conn. 905, 153 A.3d 653 (2017); see also *Watson Real Estate, LLC* v. *Woodland Ridge, LLC*, 187 Conn. App. 282, 294 n.11, 202 A.3d 1033 (2019) ("[i]t is difficult . . . for an appellant successfully to challenge a fact finder's consideration and weighing of evidence . . . [as] we . . . are entitled to presume that the trial court acted properly and considered all the evidence" (internal quotation marks omitted)). The court may consider many factors in determining whether modification of custody and visitation is in the children's best interests and, in the absence of evidence to the contrary, we presume that the court properly weighed all the evidence before it.

The defendant additionally argues that the court improperly failed to articulate which of the factors set forth in § 46b-56 (c) it considered in concluding that modification of custody and visitation was not in the children's best interests. We disagree.

Although § 46b-56 (c) provides that the court "shall articulate the basis for its decision," the statute also states that "[t]he court is not required to assign any weight to any of the factors that it considers . . . ." This court has further explained that the trial court is not required to consider *all* of the factors set forth in § 46b-56 (c). See *In re Paulo T.*, 213 Conn. App. 858, 875, 279 A.3d 766 (2022) ("the court considered and balanced the most relevant factors set forth in § 46b-56 (c) in accordance with our law"), aff'd, 347 Conn. 311, 297 A.3d 194 (2023); *Weaver* v. *Sena*, 199 Conn. App. 852, 864, 238 A.3d 103 (2020) (holding that court did not abuse its discretion by focusing on certain § 46b-56 (c) factors in best interest analysis); *Watrous* v. *Watrous*, 108 Conn. App. 813, 825, 949 A.2d 557 (2008)

(explaining that language of § 46b-56 (c) does not compel consideration of any particular factor or factors when determining best interests of children).

In the present case, the court stated, in response to the defendant's motion for articulation, that it considered "all the statutory factors set out in [§] 46b-56 (c) . . . ." At the hearing on the defendant's motion for modification, the court indicated that it afforded significant weight to the fact that the defendant had not had contact with the children since before his incarceration and had not engaged in therapy or services since his release from prison. Notably, the court suggested that the defendant should engage in therapy to gain "insight and be able to think about" the children's best interests before he files another motion for modification of custody and visitation.[7] As the court is not required to consider any particular factors or assign weight to the factors that it considered, we conclude that the court properly articulated its basis for concluding that modification of custody and visitation is not in the children's best interests pursuant to § 46b-56. The court, therefore, did not abuse its discretion in denying the motion for modification.

II

The defendant next claims that the family court improperly delegated its judicial authority to the plaintiff by giving her discretion to decide the nature and scope of the defendant's visitation rights. Specifically, the defendant contends that the court "misinterpreted the law, particularly . . . § 46b-56 (a) by stating that: 'because [the plaintiff] has sole legal custody . . . that means it [is] up to her . . . to decide the [defendant's] visitation rights.' " We disagree.

[7] The defendant is not precluded from filing another motion for modification of custody and/or visitation. See Practice Book § 25-26.

We begin with the standard of review and the relevant legal principles. "Whether the trial court improperly delegated its judicial authority is a legal question over which we have plenary review. . . .

"It is well settled . . . that [n]o court in this state can delegate its judicial authority to any person serving the court in a nonjudicial function. The court may seek the advice and heed the recommendation contained in the reports of persons engaged by the court to assist it, but in no event may such a nonjudicial entity bind the judicial authority to [issue] any order or [to render a] judgment so advised or recommended. . . . A court improperly delegates its judicial authority to [a nonjudicial entity] when that person is given authority to issue orders that affect the parties or the children. Such orders are part of a judicial function that can be done only by one clothed with judicial authority." (Citation omitted; internal quotation marks omitted.) *R. H.* v. *M. H.*, 350 Conn. 432, 440, 324 A.3d 720 (2024).

"[T]he statutory language [of § 46b-56] itself precludes a trial court from delegating decision-making authority over whether a parent has visitation rights to anyone who is not a judge. . . . Only the trial court can modify its prior order regarding visitation. With respect to child custody and visitation orders, § 46b-56 grants the trial court continuing jurisdiction to make or modify any proper order regarding the education and support of the children and of care, custody and visitation . . . according to the court's perception of the best interests of the child. . . . This judicial responsibility cannot be delegated, nor can the parties abrogate it by agreement. . . . In the final analysis, the court retains jurisdiction to determine and advance the best interests of the child. . . . [A] trial court improperly delegates its judicial authority [under § 46b-56]

when that court removes itself entirely from the decision-making process." (Citations omitted; emphasis omitted; internal quotation marks omitted.) Id., 441–42.

Our Supreme Court has differentiated among three scenarios concerning a trial court's delegation of its judicial authority under § 46b-56: (1) the trial court "plainly decide[s] that [a parent] should not have any *right* to custody or visitation," but "[leaves] open the possibility of voluntary visits at the discretion of [a third party]"; (emphasis in original) *Zilkha* v. *Zilkha*, 180 Conn. App. 143, 172, 183 A.3d 64, cert. denied, 328 Conn. 937, 183 A.3d 1175 (2018); (2) the trial court grants a noncustodial parent visitation rights and issues an order "allowing [a third party] to alter, change, or modify the [parent's] visitation *schedule* while not permitting [the third party] to reduce, suspend, or terminate the [parent's] *access* to their child"; (emphasis added) *R. H.* v. *M. H.*, supra, 350 Conn. 444; and (3) the trial court grants a noncustodial parent visitation rights and issues an order allowing a third party to "dictate the scope of [the parent's] contact with [the child] . . . ." (Internal quotation marks omitted.) Id., 443. Our Supreme Court has indicated that the first two scenarios do not constitute an impermissible delegation of judicial authority; see id., 444–45; but that the third scenario is an improper delegation of the trial court's judicial authority because "a trial court cannot remove itself entirely from the decision-making process" and authorize a third party to "modify [a noncustodial parent's] *right* to visitation." (Emphasis in original; internal quotation marks omitted.) Id., 444. The present case concerns the first scenario.

In *Zilkha* v. *Zilkha*, supra, 180 Conn. App. 143, the trial court's postdissolution order limited the defendant's visitation with his teenage children to voluntary visitation at their discretion. Id., 165. On appeal, the defendant claimed that the trial court impermissibly

delegated its judicial authority to the children in giving them sole discretion over his visitation. Id., 168. This court rejected the defendant's claim, stating: "[R]ather than delegating its responsibility, the court exercised its authority and met its obligation to decide issues of custody and visitation by denying the defendant's motions [for modification]. This adjudication by the court was the *antithesis of a delegation* because it plainly decided that the defendant should not have any *right* to custody or visitation. The fact that the court's order left open the possibility of voluntary visits at the discretion of the teenagers does not transform the court's decision-making into impermissible delegation." (Emphasis altered.) Id., 172.

The present case is similar to *Zilkha*. Here, the court's initial custody order granted the plaintiff sole legal custody of the children and did not grant the defendant *any visitation rights*. At the hearing on the defendant's motion for modification, the court explained that, under the initial custody and visitation order, the defendant has no right to visitation and, therefore, visitation is at the discretion of the plaintiff. The court thereafter denied the defendant's motion for modification, leaving the initial custody and visitation order in place. Because the court, like the trial court in *Zilkha*, decided that the defendant should not have any *right* to custody or visitation, the fact that the court left open the possibility of visits at the discretion of the plaintiff does not transform the court's decision-making into impermissible delegation. See id. Thus, we conclude that the court did not impermissibly delegate its judicial authority to the plaintiff.

III

Finally, the defendant claims that the family court failed to apply § 46b-56 (g).[8] We conclude that this claim

[8] General Statutes § 46b-56 (g) provides: "A parent not granted custody of a minor child shall not be denied the right of access to the academic,

is inadequately briefed and, therefore, we decline to consider it.

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

"In addition, briefing is inadequate when it is not only short, but confusing, repetitive, and disorganized. . . . We are mindful that [i]t is the established policy of the Connecticut courts to be solicitous of [self-represented] litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party. . . . Nonetheless, [a]lthough we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law." (Internal quotation marks omitted.) *Thomas* v. *Cleary*, supra, 229 Conn. App. 35–36.

In the present case, the defendant's appellate brief contains two references to § 46b-56 (g). First, the issues presented section of the defendant's appellate brief identifies the following issue: "Whether the [family] court committed legal and factual errors as it applied . . . [§] 46b-56 (g)?" Second, the argument section provides in relevant part: "The [family] court failed to apply

medical, hospital or other health records of such minor child, unless otherwise ordered by the court for good cause shown."

[§] 46b-56 (g). 'The noncustodial parent retains a statutory right of access to the academic, medical, hospital or other health records of the child[ren] unless it is otherwise ordered by the court for the good cause shown.' " In his appellate brief, the defendant merely recites the language of § 46b-56 (g) and asserts, in a single conclusory statement, that the court failed to apply that statutory provision. He does not provide any legal authority, facts, or analysis to support his claim that the court failed to apply § 46b-56 (g) or how such failure rendered improper the court's denial of his motion for modification.

Although we "allow the defendant some latitude as a self-represented litigant," the sparsity and lack of substantive argument render his brief "inadequate for us to conduct any meaningful review of" this claim. (Internal quotation marks omitted.) *Thomas* v. *Cleary*, supra, 229 Conn. App. 37; see also *C. B.* v. *S. B.*, 211 Conn. App. 628, 630–31, 273 A.3d 271 (2022) (declining to review claim when briefing was sparse, conclusory, disorganized, and confusing). Because the defendant has failed to challenge, in any meaningful way, the court's denial of his motion for modification on the ground that the court failed to apply § 46b-56 (g), we decline to review this claim.

The judgment is affirmed.

In this opinion the other judges concurred.

MEGHAN MCCARTAN BUGGELLI
v. ROYCE BUGGELLI
(AC 46331)

Moll, Westbrook and Pellegrino, Js.

Syllabus

The plaintiff, whose marriage to the defendant had previously been dissolved by a judgment rendered by a New Jersey court, appealed from the trial

court's denial of her motions seeking reimbursement from the defendant for extracurricular, healthcare and college expenses incurred on behalf of their minor children. The plaintiff claimed, inter alia, that the court improperly denied her motion concerning extracurricular and healthcare expenses because it misinterpreted the parties' settlement agreement, as incorporated into the dissolution judgment and as modified by a postjudgment consent order. *Held*:

The trial court improperly construed the modified settlement agreement in determining that the plaintiff waived her right to seek reimbursement for the claimed extracurricular and healthcare expenses on the ground that she did not provide the defendant with the purported requisite notice, as the consent order, in clear and unambiguous terms, removed the notice requirements of the original settlement agreement with which the plaintiff originally had to comply in order to be entitled to reimbursement from the defendant for extracurricular and healthcare expenses.

The trial court improperly construed the modified settlement agreement to require the plaintiff to submit reimbursement requests for extracurricular and healthcare expenses to the defendant by email, as, pursuant to that agreement, the defendant's obligation to reimburse the plaintiff for extracurricular and healthcare expenses was not dependent on the plaintiff's provision of either notice to the defendant of said expenses or the submission of reimbursement requests for said expenses to him by any particular method of delivery.

The trial court's articulation, issued following the filing of the plaintiff's appeal, did not modify its original decision denying the plaintiff's motion for contribution toward college expenses, as the articulation provided that, pursuant to *Newburgh* v. *Arrigo* (88 N.J. 529), the court had placed great emphasis on its findings demonstrating that the plaintiff had engaged in conduct that was detrimental to the relationship between the defendant and the children, and, insofar as the articulation stated that the defendant should not be obligated to pay any college expenses so long as the plaintiff continued to block any relationship he might have with the children, that statement aligned with this court's interpretation of the original decision to require consideration of the *Newburgh* factors in determining whether the defendant's obligation to contribute toward college expenses arose.

The trial court improperly relied on the *Newburgh* factors in denying the plaintiff's motion for contribution toward college expenses, as the college expense provisions of the modified settlement agreement were ambiguous as to whether the parties agreed to terms concerning the allocation of their college expense contributions, and the ambiguity created a threshold factual issue that was required to be resolved in an evidentiary hearing before the motion for college expenses could be adjudicated.

Argued June 2—officially released September 9, 2025

Procedural History

Motions by the plaintiff seeking, inter alia, reimbursement from the defendant for certain expenses incurred on behalf of the parties' children in connection with a foreign judgment of dissolution, and other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Hon. James G. Kenefick, Jr.*, judge trial referee, denied the plaintiff's motions, and the plaintiff appealed to this court. *Reversed*; *further proceedings*.

Brandon B. Fontaine, with whom, on the brief, was *Meaghan E. Collins*, for the appellant (plaintiff).

Dyan M. Kozaczka, with whom, on the brief, were *Thomas D. Colin* and *Ross M. Kaufman*, for the appellee (defendant).

Opinion

MOLL, J. In this postjudgment dissolution matter, the plaintiff, Meghan McCartan Buggelli, appeals from the judgment of the trial court denying her motions seeking from the defendant, Royce Buggelli, (1) reimbursement for extracurricular and healthcare expenses incurred by the plaintiff for the parties' children and (2) contribution toward the children's college expenses. The plaintiff claims that the court improperly denied her motion concerning extracurricular and healthcare expenses because it misinterpreted the parties' settlement agreement, as incorporated into the dissolution judgment and as modified by a postjudgment consent order.[1] We agree with this claim. The plaintiff further claims that the court improperly (1) modified, by way of an articulation, its original decision denying the motion regarding college expenses and (2) denied the motion regarding

[1] We address the plaintiff's claims in a different order than they are presented in her principal appellate brief.

college expenses. We conclude that (1) the court's articulation did not modify its original decision denying the motion regarding college expenses, but (2) the parties' modified settlement agreement contains an ambiguity that materially affects the merits of the motion regarding college expenses, such that the court's denial of the motion cannot stand. Accordingly, we reverse the judgment of the trial court.

The following undisputed facts, as found by the trial court or as gleaned from the record, and procedural history are relevant to our resolution of this appeal. The parties were married on October 21, 2000. Four children were born of the marriage: (1) Emma, who was nineteen years old and a freshman at Colgate University at the time of the court's decision; (2) Courtenay and Sydney, who were seventeen years old and seniors in high school at the time of the court's decision; and (3) Juliette, who was twelve years old at the time of the court's decision. On February 16, 2016, the parties were divorced in New Jersey. The dissolution judgment incorporated a settlement agreement executed by the parties that same day (original settlement agreement). The original settlement agreement contains various provisions regarding the children, including terms governing (1) custody and parenting time, (2) extracurricular expenses, (3) healthcare expenses, and (4) college expenses.

Subsequent to the dissolution judgment, issues arose with respect to the defendant's parenting time, whereupon the defendant filed with the Family Part of the Chancery Division of the Superior Court of New Jersey (New Jersey trial court) a motion to reinstate his parenting time, which the New Jersey trial court denied without prejudice on May 12, 2017, pending the completion of reunification therapy.[2] Thereafter, the parties executed a consent order, which the New Jersey trial court

[2] The New Jersey trial court further determined that the plaintiff failed to comply with a prior order regarding reunification therapy.

entered as a court order on March 16, 2018 (consent order). The prefatory language of the consent order provides, inter alia, that the defendant had "voluntarily determined that he wishes to relinquish legal and residential custody to the plaintiff and forgo all future parenting time . . . ." The consent order further provides, inter alia, that (1) the plaintiff has "sole physical and sole residential custody of the . . . children," (2) the defendant "relinquishes all future parenting time and future communications with the . . . children," and (3) the plaintiff has "sole and exclusive authority to make all decisions concerning the children, without the need to consult with, advise, notify, or obtain the consent of, the defendant."

In August, 2018, unbeknownst to the defendant, the plaintiff moved with the children to Connecticut and, sometime later, successfully changed the children's last names through Probate Court proceedings. Subsequently, the defendant filed with the New Jersey trial court a motion for reunification and visitation. On November 22, 2019, the New Jersey trial court dismissed that motion for lack of subject matter jurisdiction and relinquished exclusive, continuing jurisdiction over any child custody issues in the matter.

In February, 2020, pursuant to General Statutes § 46b-71,[3] the plaintiff registered the New Jersey dissolution

[3] General Statutes § 46b-71 provides: "(a) Any party to an action in which a foreign matrimonial judgment has been rendered, shall file, with a certified copy of the foreign matrimonial judgment, in the court in this state in which enforcement of such judgment is sought, a certification that such judgment is final, has not been modified, altered, amended, set aside or vacated and that the enforcement of such judgment has not been stayed or suspended, and such certificate shall set forth the full name and last-known address of the other party to such judgment and the name and address of the court in the foreign state which rendered such judgment.

"(b) Such foreign matrimonial judgment shall become a judgment of the court of this state where it is filed and shall be enforced and otherwise treated in the same manner as a judgment of a court in this state; provided such foreign matrimonial judgment does not contravene the public policy of the state of Connecticut. A foreign matrimonial judgment so filed shall

judgment in the Superior Court in the judicial district of New Haven. On October 15, 2021, the plaintiff filed a motion seeking reimbursement from the defendant for extracurricular and healthcare expenses that she had incurred for the children (motion for extracurricular and healthcare expenses), to which the defendant filed an objection on November 2, 2021. On January 20, 2022, the plaintiff filed a motion seeking contribution from the defendant toward the children's college expenses (motion for college expenses). On October 20, 2022, the trial court, *Hon. James G. Kenefick, Jr.*, judge trial referee, held an evidentiary hearing on those two motions.[4] Both parties testified at the hearing and, prior to the hearing, submitted financial affidavits. Following the hearing, both parties filed posthearing briefs.

On February 24, 2023, the court issued a memorandum of decision denying the motion for extracurricular and healthcare expenses and the motion for college expenses. On March 16, 2023, the plaintiff filed this appeal. On April 19, 2024, in response to an order issued by this court on March 27, 2024, the trial court issued an articulation of its decision.[5] Additional facts and procedural history will be set forth as necessary.

have the same effect and may be enforced or satisfied in the same manner as any like judgment of a court of this state and is subject to the same procedures for modifying, altering, amending, vacating, setting aside, staying or suspending said judgment as a judgment of a court of this state; provided, in modifying, altering, amending, setting aside, vacating, staying or suspending any such foreign matrimonial judgment in this state the substantive law of the foreign jurisdiction shall be controlling."

[4] The court considered other motions during the evidentiary hearing, which motions are not germane to this appeal.

[5] On December 14, 2023, pursuant to Practice Book § 66-5, the plaintiff filed a motion for articulation, to which the defendant filed an opposition on December 22, 2023. On January 2, 2024, the trial court denied the motion for articulation. On January 22, 2024, pursuant to Practice Book § 66-7, the plaintiff filed a motion for review. On March 27, 2024, this court granted the plaintiff's motion for review and granted, in part, the relief requested, ordering the trial court to articulate certain aspects of its decision.

Before turning to the plaintiff's claims, we note that the original settlement agreement contains a choice of law provision, which was unaffected by the consent order and which states in relevant part: "The place or places of execution of [the original settlement] [a]greement shall have no bearing on the law governing its interpretation, because it is understood and agreed by both parties that the [original settlement] [a]greement shall be construed and governed in accordance with the laws of the [s]tate of New Jersey, exclusive of conflicts of law principles. . . ." Thus, insofar as we must interpret the original settlement agreement, or the original settlement agreement as modified by the consent order (modified settlement agreement), New Jersey contract law governs.

Pursuant to New Jersey contract law, "we apply basic contract principles because [a]n agreement that resolves a matrimonial dispute is no less a contract than an agreement to resolve a business dispute. . . . According to those principles, we must discern and implement the common intention of the parties. . . . Therefore, our role when interpreting marital settlement agreements is to consider what is written in the context of the circumstances at the time of drafting and to apply a rational meaning in keeping with the expressed general purpose. . . . In doing so, the words of an agreement are given their ordinary meaning. . . . Therefore, where the parties' intent is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result." (Citations omitted; internal quotation marks omitted.) *Woytas* v. *Greenwood Tree Experts, Inc.*, 237 N.J. 501, 511–12, 206 A.3d 386 (2019). "A contract is ambiguous if its terms are susceptible to at least two reasonable alternative interpretations. . . . When a contract is ambiguous in a material respect, the parties

must be given the opportunity to illuminate the contract's meaning through the submission of extrinsic evidence. . . . While extrinsic evidence should never be permitted to modify or curtail the terms of an agreement, a court may consider all of the relevant evidence that will assist in determining the intent and meaning of the contract in attempting to resolve ambiguities in the document." (Citations omitted; internal quotation marks omitted.) *Capparelli* v. *Lopatin*, 459 N.J. Super. 584, 604, 212 A.3d 979 (App. Div. 2019).

Although we apply New Jersey contract law in interpreting the original settlement agreement and the modified settlement agreement, "procedural issues such as the standard of review are governed by Connecticut law." *Ferri* v. *Powell-Ferri*, 326 Conn. 438, 447, 165 A.3d 1137 (2017). "[T]he standard of review in family matters is well settled. An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. . . . Our deferential standard of review, however, does not extend to the court's interpretation of and application of the law to the facts. It is axiomatic that a matter of law is entitled to plenary review on appeal." (Footnote omitted; internal quotation marks omitted.) *K. D.* v. *D. D.*, 214 Conn. App. 821, 825–26, 282 A.3d 528 (2022).

I

We first address the plaintiff's claim that the trial court improperly denied the motion for extracurricular and healthcare expenses. For the reasons that follow, we agree with the plaintiff.

The following additional facts and procedural history are relevant to our resolution of this claim. Paragraph 3.3 of the original settlement agreement sets forth terms regarding the children's extracurricular activities. Paragraph 3.3 provides in relevant part: "The parties agree that the [plaintiff] and/or [the defendant] may enroll the children in extracurricular activities . . . . The parties agree that they shall pay a maximum of $100 per month per child jointly for said expense without the necessity of consultation and/or agreement with the other party and deemed [preauthorized]. . . . [The defendant's] maximum cost per child per month is $45 . . . . Provided that the [defendant's] prorated monthly share of the activity does not exceed $45, [the plaintiff] may sign up the child for that activity without the need to obtain [the defendant's] consent, however [the plaintiff] shall notify [the defendant] of her intent to sign up the child or children for such an activity, within a reasonable time frame prior (under the [circumstances]), or waives reimbursement. Any expense above $100 per month per child, must be decided jointly by [the defendant] and [the plaintiff] and consented thereto. Extracurricular activities . . . shall be paid for 55% by [the plaintiff] and 45% [by the defendant] in accordance with the [c]hild [s]upport [g]uidelines if the parties so agree. In addition, although an activity might be considered '[preauthorized]' by this paragraph, [the plaintiff] must notify [the defendant] a reasonable time period prior to enrolling the child although [the defendant] understands that consent is not necessary. Any reimbursements due to [the plaintiff] shall occur on a monthly basis . . . ."

Paragraphs 4.2 and 4.3 of the original settlement agreement contain terms concerning the children's healthcare expenses. Paragraph 4.2 provides in relevant part: "[T]he [plaintiff] shall pay the first $250 per year per child towards unreimbursed medical expenses

incurred on behalf of the minor children. Thereafter, the payment of the non-reimbursable medical, dental, and prescription drug expenses incurred on behalf of the unemancipated children shall be allocated between the parties with 45% to the [defendant] and 55% to the [plaintiff]. The [plaintiff] shall give the [defendant] thirty days prior written notice before incurring any bill in excess of [$200] per treatment, except in an emergency, or $250 for series of treatment, except in an emergency. . . .''

Paragraph 4.3 of the original settlement agreement provides in relevant part: ''The [defendant] shall provide the [plaintiff] with reimbursement and/or payment of his share of any unreimbursed medical expenses incurred on behalf of the children within fourteen (14) days of the date the [plaintiff] submits the bills to him by personal delivery, email or regular mail. . . . The obligation of the [defendant] shall include [various enumerated healthcare] expenses, provided the notice of the provisions of this paragraph have been complied with, as well as the requirements set forth in paragraph 4.2. . . .''

The consent order contains the following relevant provisions. Paragraph 1 provides: ''Paragraph 1.1 of . . . the [original settlement agreement] . . . is hereby modified such that, effective with the entry of [the] [c]onsent [o]rder, the plaintiff shall have sole physical and sole residential custody of the . . . children . . . .''[6]

Paragraph 2 of the consent order provides: ''The defendant hereby relinquishes all future parenting time and future communications with the . . . children. Accordingly, [p]aragraphs 1.1 through 1.21 . . . of the [original

[6] Paragraph 1.1 of the original settlement agreement provides in relevant part: ''It is hereby agreed that it is in the best interest of the minor children that the parties will share joint legal custody with [the plaintiff] being the [p]arent of [p]rimary [r]esidence and the [defendant] being the [p]arent of [a]lternate [r]esidence. . . .''

settlement agreement], providing for the defendant's parenting time are hereby modified such that the defendant shall not have any future parenting time or communication with the children. However, nothing in [the consent] [o]rder is meant to prohibit the [c]hildren, in the event they wish and when of sufficient age, to contact the [d]efendant."

Paragraph 3 of the consent order provides: "As a result of having sole legal and residential custody of the children, the plaintiff shall have the sole and exclusive authority to make all decisions concerning the children, without the need to consult with, advise, notify, or obtain the consent of, the defendant. It is the specific intention and agreement of the parties that the plaintiff shall have the unilateral authority to make all decisions, of every nature, regarding the children, including, without limitation, decisions relating to the children's medical treatment, schooling, place of residence within or outside of New Jersey, choices of activities and vacations. [The] [c]onsent [o]rder eliminates the rights and obligations to notify, advise or consult with the defendant, or to obtain his consent and [p]aragraphs 1.2, through 1.21 . . . of the [original settlement agreement] are hereby modified to comport with this agreement that [the] plaintiff shall be able to make all decisions affecting the children unilaterally."

Paragraph 5 of the consent order provides: "[The] [d]efendant's requirement pursuant to . . . article XIV of the [original settlement agreement is] hereby modified in that [the] [d]efendant shall not be required to carry any life insurance for the benefit of the minor children and may cancel same and remove the children as beneficiaries."[7]

[7] Paragraph 14.1 of the original settlement agreement, contained within article XIV, provides: "The [defendant] shall name the [c]hildren as irrevocable beneficiaries of term life insurance in the minimum amount of $250,000 for each child for a total of $1,000,000 until each child is emancipated, designating the [plaintiff] as the [t]rustee of the proceeds of each individual $250,000 policy. The [plaintiff] shall name the [c]hildren the irrevocable beneficiaries of term life insurance in the minimum amount of $250,000 for each child for a total of $1,000,000 until each child is emancipated, designat-

Paragraph 6 of the consent order provides: "[Paragraph 37.1 of the original settlement agreement] is hereby declared null and void in that neither party shall have to disclose to the other party their home address.[8] In addition, neither party shall be required to inform the other party of their place of business, or its address. As a result, both parties agree that email shall be an acceptable means of service of process of any judicial documents. Each party shall provide the other with a designated email address to be used for service of process or other judicial document." (Footnote added.)

Paragraph 9 of the consent order provides: "All provisions of the [original settlement agreement], and the provisions of all [o]rders entered since the [j]udgment of [d]ivorce, that are not contrary to the provisions of [the] [c]onsent [o]rder, shall remain in full force and effect."

In his posthearing brief, the defendant argued that the plaintiff had waived her right to reimbursement for extracurricular and healthcare expenses because she had failed to abide by the applicable notice requirements set forth in the original settlement agreement, which requirements, the defendant maintained, were not modified by the consent order. In her posthearing brief, the plaintiff argued that the consent order altered the original settlement agreement by eliminating all notice requirements, such that, pursuant to the modified settlement agreement, she was not obligated to provide him with notice before seeking reimbursement for the claimed extracurricular and healthcare expenses.[9]

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ing the [defendant] as the [t]rustee of the proceeds of each individual $250,000 policy. Either party may reduce the coverage by $250,000 when each child is emancipated."

[8] Paragraph 37.1 of the original settlement agreement provides: "For so long as any provision of [the original settlement] [a]greement remains executory, each party shall, at all times, keep the other informed of his or her place of residence, and shall promptly notify the other of any change, giving the address of the new place of residence."

[9] As relief, the plaintiff requested (1) $15,940 in extracurricular expenses and (2) approximately $6073 in healthcare expenses. Additionally, the plain-

In addressing the motion for extracurricular and healthcare expenses, the court summarized the issue as "whether the plaintiff is required to give the defendant proper and timely notice of expenses incurred where she is seeking reimbursement of medical and extracurricular expenses . . . ." Ostensibly agreeing with the defendant's argument regarding the scope of the consent order, the court observed that the consent order "only refers to article I [containing paragraphs 1.1 through 1.21 of the original settlement agreement] . . . article XIV . . . and article XXXVII [containing] [p]aragraph 37.1 . . . . There is no reference to article III [containing paragraph 3.3] . . . [or] article IV [containing paragraphs 4.2 and 4.3] . . . ." The court further referenced the requirement set forth in paragraph 6 of the consent order that the parties provide one another with a "designated email address to be used for service of process or other judicial document," as they had "agree[d] that email shall be an acceptable means of service of process of any judicial documents."

The court proceeded to determine that the plaintiff "has not given the [defendant] proper notice of [the claimed extracurricular and healthcare] expenses and has waived reimbursement. [The plaintiff] clearly had the right to incur the expense[s] without [the defendant's] consent but should have sent him a copy of the bills by email requesting reimbursement. [The plaintiff's] claim that a judge in New Jersey suggested they use a common [application] called SupportPay is not credible.[10] There is no evidence in the record of proceedings in New Jersey to support that claim. [The plaintiff]

tiff requested that the court conduct another evidentiary hearing to receive evidence regarding (1) communications between the parties concerning the children's college education and (2) the defendant's receipt of bills from the plaintiff.

[10] During the evidentiary hearing, the plaintiff testified that (1) beginning in 2017, upon the recommendation of a New Jersey judge, she began uploading receipts for the children's extracurricular and healthcare expenses into the software application SupportPay and (2) both parties had access to SupportPay.

failed to use email as a means of providing that information to [the defendant]." (Footnote added.) The court denied the motion for extracurricular and healthcare expenses and ordered that, "[g]oing forward, the plaintiff needs to follow the existing orders regarding reimbursement for healthcare and extracurricular expenses . . . ."

In its ensuing articulation, the court stated that it had "note[d] [in its decision] that the plaintiff was using a[n] [application] called SupportPay to send invoices and bills to the defendant, which he never received as he was not signed up with [SupportPay]. The plaintiff testified that a [New Jersey judge] told [the parties] to use [SupportPay] back in 2017. The defendant disagrees and there is no evidence of such an order. As the defendant was not signed up with [SupportPay], he never received any bills or invoices [that the plaintiff had] sent through [SupportPay]. Finally, the plaintiff never filed a separate motion to open the hearing for additional testimony, which would have been a waste of time as [the plaintiff] was using . . . SupportPay to send [the defendant] bills and invoices. [The plaintiff] should have been using [the defendant's] email address rather than SupportPay."

The plaintiff contends that (1) the consent order modified the original settlement agreement so as to eliminate all notice requirements, and, therefore, the court incorrectly interpreted the modified settlement agreement to require her to provide notice to the defendant vis-à-vis extracurricular and healthcare expenses in order to trigger the defendant's obligation to reimburse her for such expenses, and (2) the court misconstrued the modified settlement agreement to require her to submit reimbursement requests for extracurricular and healthcare expenses to the defendant by email. We consider these contentions in turn.

A

The plaintiff asserts that the consent order modified the original settlement agreement by removing all notice requirements, such that the court misinterpreted the modified settlement agreement to contain notice requirements attendant to extracurricular and healthcare expenses. In response, the defendant argues that the court's analysis was correct because the consent order modified only those provisions of the original settlement agreement that the consent order expressly identified—paragraphs 1.1 through 1.21, article XIV, and paragraph 37.1—such that the notice requirements applicable to extracurricular and healthcare expenses set forth in paragraphs 3.3, 4.2, and 4.3 remain unaltered. We conclude that the court improperly construed the modified settlement agreement to maintain the notice requirements vis-à-vis extracurricular and healthcare expenses initially imposed in the original settlement agreement.

We construe the consent order, in clear and unambiguous terms, as having removed the notice requirements of the original settlement agreement with which the plaintiff originally had to comply in order to be entitled to reimbursement from the defendant for extracurricular and healthcare expenses. The first sentence of paragraph 3 of the consent order provides that the plaintiff is authorized "to make all decisions concerning the children, without the need to . . . notify . . . the defendant," and the third sentence provides, unequivocally and without qualification, that the consent order "eliminates the rights and obligations to notify . . . the defendant . . . ."[11] Taken together, these terms function to eliminate the language of (1) paragraph 3.3 of

[11] The third sentence of paragraph 3 of the consent order provides: "[The] [c]onsent [o]rder eliminates the rights and obligations to notify, advise or consult with the defendant, or to obtain his consent and [p]aragraphs 1.2, through 1.21 . . . of the [original settlement agreement] are hereby modified to comport with this agreement that [the] plaintiff shall be able to make

the original settlement agreement providing that the plaintiff "shall notify" the defendant of her intent to enroll any child in an extracurricular activity with an associated cost not exceeding the defendant's prorated monthly share of $45, with such notice to be provided within "a reasonable time frame" or "a reasonable time period" prior to enrollment, and with the plaintiff "waiv-[ing] reimbursement" if she failed to comply,[12] (2) paragraph 4.2 of the original settlement agreement providing that "[t]he [plaintiff] shall give the [defendant] thirty days prior written notice before incurring any bill in excess of [$200] per treatment, except in an emergency, or $250 for series of treatment, except in an emergency," and (3) paragraph 4.3 of the original settlement agreement providing that the defendant's obligation to reimburse the plaintiff for healthcare expenses was conditioned on the plaintiff's compliance with "the notice of the provisions of [paragraph 4.3]," which required the plaintiff to submit the relevant bills to the defendant "by personal delivery, email or regular mail."

We are not persuaded by the defendant's argument that the consent order modified only those provisions of the original settlement agreement expressly identified in the consent order. Paragraph 9 of the consent order provides that "[a]ll provisions of the [original settlement agreement], and the provisions of all [o]rders entered since the [j]udgment of [d]ivorce, *that are not*

all decisions affecting the children unilaterally." We do not construe the portion of this sentence regarding the modification of paragraphs 1.2 through 1.21 of the original settlement agreement as limiting the scope of the language eliminating the plaintiff's rights and obligations regarding, inter alia, notice.

[12] Paragraph 3.3 of the original settlement agreement also provides that "[a]ny expense above $100 per month per child, must be decided jointly by [the defendant] and [the plaintiff] and consented thereto." In her principal appellate brief, the plaintiff states that the foregoing language "is not relevant to this appeal, because [she] has never claimed money owed subject to this language, even though she has incurred those expenses." Thus, we need not discuss the effect of the consent order on this language.

contrary to the provisions of [*the*] [*c*]*onsent* [*o*]*rder*, shall remain in full force and effect." (Emphasis added.) We construe this language, stated conversely, to provide that *all provisions* of the original settlement agreement that *are contrary* to the terms of the consent order, regardless of their location within the original settlement agreement, are superseded.

Indeed, applying the defendant's reasoning leads to unworkable results. By way of example, paragraph 6.4 of the original settlement agreement provides: "[The plaintiff] represents that she wants her children to attend the best school possible irrespective of financial cost(s) and to consider the wishes of the child, while [the defendant] represents that he believes the cost of said school and the parties' finances at that time should dictate where each child attends school. The parties are unable to settle their dispute at this time and agree that the choice of school shall abide the event. Notwithstanding, *the parties agree that any school choice shall be based on consultation and agreement, and that neither party has a sole and exclusive right to decide which school each child will attend*." (Emphasis added.) The consent order, in clear and unambiguous terms, vests the plaintiff with "the sole and exclusive authority to make all decisions concerning the children, without the need to consult with, advise, notify, or obtain the consent of, the defendant," and reflects "the specific intention and agreement of the parties that the plaintiff shall have the unilateral authority to make all decisions, of every nature, regarding the children, including, without limitation, decisions relating to the children's . . . schooling," thereby superseding the consultation and agreement requirement of paragraph 6.4 of the original settlement agreement. Pursuant to the defendant's rationale, because paragraph 6.4 of the original settlement agreement is not referenced in the consent order,

the terms of paragraph 6.4 remain operational notwithstanding the irreconcilable language in the consent order.[13] Simply put, the defendant's interpretation of the consent order is untenable.

Pursuant to our construction of the modified settlement agreement, the plaintiff has no responsibility to send any notice to the defendant in order for his obligations to reimburse her for extracurricular and healthcare expenses to arise. Accordingly, we conclude that the court improperly construed the modified settlement agreement in determining that the plaintiff waived her right to seek reimbursement for the claimed extracurricular and healthcare expenses on the ground that she did not provide the defendant with the purported requisite notice.

B

The plaintiff also contends that the court misconstrued the modified settlement agreement to require her to submit reimbursement requests for extracurricular and healthcare expenses to the defendant by email. In response, the defendant argues that the court properly concluded that the plaintiff was not entitled to reimbursement for extracurricular and healthcare expenses in light of her failure to comply with the terms of the modified settlement agreement. We agree with the plaintiff.

Initially, we observe that, with respect to extracurricular expenses, the original settlement agreement is silent as to whether the plaintiff must use a particular delivery method to submit a reimbursement request to the defendant, and the consent order does not address

[13] In a footnote in his appellate brief, the defendant argues that "paragraph 6.4 of the [original] settlement agreement was never modified by the . . . consent order."

that subject.[14] Paragraph 3.3 of the original settlement agreement merely states that any extracurricular expense reimbursements owed by the defendant to the plaintiff "shall occur on a monthly basis . . . ." With respect to healthcare expenses, by comparison, paragraph 4.3 of the original settlement agreement requires the plaintiff to send bills, for the purpose of reimbursement, to the defendant "by personal delivery, email or regular mail." By its very terms, however, paragraph 4.3 of the original settlement agreement incorporated a notice requirement. Paragraph 4.3 provides in relevant part that "[t]he obligation of the [defendant] shall include [various enumerated healthcare] expenses, *provided the notice of the provisions of this paragraph have been complied with*, as well as the requirements set forth in paragraph 4.2. . . ." (Emphasis added.) As we conclude in part I A of this opinion, the consent order eliminated the notice requirements of paragraphs 3.3, 4.2, and 4.3 of the original settlement agreement. In other words, the modified settlement agreement does not tether the defendant's obligation to reimburse the plaintiff for healthcare expenses to the plaintiff's submission of reimbursement requests to the defendant "by personal delivery, *email* or regular mail." (Emphasis added.)

Insofar as the court's decision reflects that it interpreted paragraph 6 of the consent order to compel the

[14] We note that paragraph 3.3 of the original settlement agreement provides in relevant part: "The parties agree that the [plaintiff] and/or [the defendant] may enroll the children in extracurricular activities . . . regardless of whether any of the events or activities associated with such programs are scheduled to occur on the other's parenting time. This provision is to be cross-referenced with the terms of [paragraph] 1.1 (b). . . ." Paragraph 1.1 (b), in turn, sets forth terms concerning the defendant's parenting time and details the parties' responsibilities when the children's extracurricular activities are scheduled during the defendant's parenting time. Paragraph 1.1 (b) further provides: "All emails between the parties will pertain strictly to issues regarding the [parties'] children, including issues regarding child support/reimbursement, and issues regarding [certain] litigation . . . ." We do not discern anything in this language to reflect that the plaintiff must

plaintiff to email extracurricular and healthcare expense reimbursement requests to the defendant, that interpretation is incorrect. In clear and unambiguous terms, paragraph 6 of the consent order required, inter alia, the parties to provide each other with "a designated email address to be used for *service of process or other judicial document*." (Emphasis added.) The use of email contemplated in paragraph 6 applies to service of process or other judicial documents only and has no bearing on the delivery of reimbursement requests for extracurricular or healthcare expenses, which cannot rationally be characterized as "process" or "judicial document[s]."[15]

In sum, pursuant to the modified settlement agreement, the defendant's obligation to reimburse the plaintiff for extracurricular and healthcare expenses is not dependent on the plaintiff either (1) providing notice of said expenses to him or (2) submitting reimbursement requests for said expenses to him by any particular method of delivery.[16] Accordingly, we conclude that

submit reimbursement requests for extracurricular expenses to the defendant by email.

[15] The plaintiff also asserts that she provided the defendant with information concerning her claimed extracurricular and healthcare expenses (1) through the Support Pay application and (2) by email in October, 2021, in connection with the motion for extracurricular and healthcare expenses, such that she sufficiently complied with any applicable requirements regarding notice and delivery of reimbursement requests. In light of our conclusion that the modified settlement agreement did not impose any notice or delivery requirements on the plaintiff with respect to her claimed extracurricular and healthcare expenses, we need not discuss these assertions further.

[16] In her principal appellate brief, the plaintiff acknowledges that, in order to receive reimbursement from the defendant for extracurricular and healthcare expenses, she necessarily must provide information regarding her claimed expenses. As the plaintiff represents, "[n]aturally, if [she] would like contribution or reimbursement, she has a 'burden of proof' and would need to provide some information. [She] is not disputing that reality. Rather, [her] point is that the court orders do not require any notice and advisement, and therefore there is not any specific timing or method of delivery for the information. Likewise, there is no waiver or other penalty if the information is not provided a certain way. [She] could provide it to the defendant to resolve it or, in theory, it might be obtained through a court proceeding."

the court improperly construed the modified settlement agreement in denying the motion for extracurricular and healthcare expenses.[17] Because the court did not make factual determinations as to the sums, if any, of the claimed extracurricular and healthcare expenses to which the plaintiff is entitled, and as "[t]his court cannot find facts in the first instance"; *Casablanca* v. *Casablanca*, 190 Conn. App. 606, 622, 212 A.3d 1278, cert. denied, 333 Conn. 913, 215 A.3d 1210 (2019); we deem the proper remedy to be to reverse the denial of the motion for extracurricular and healthcare expenses and to remand the case for a new evidentiary hearing on the motion.

II

We next address the plaintiff's claims relating to the court's denial of the motion for college expenses. The plaintiff asserts that the court improperly (1) modified, by way of its articulation, its original decision denying the motion for college expenses, and (2) denied the motion for college expenses. For the reasons that follow, we conclude that (1) the court's articulation did not constitute an improper modification of its original decision denying the motion for college expenses, but (2) there is an ambiguity in the modified settlement agreement that is germane to the merits of the motion for college expenses, and, therefore, the court improperly denied the motion.

The following additional facts and procedural history are relevant to our resolution of these claims. Paragraph

[17] The plaintiff additionally claims that, even if the court correctly construed the modified settlement agreement, the court improperly determined that she had waived her right to the claimed extracurricular and healthcare expenses, thereby precluding her from again seeking reimbursement for those expenses after correcting the defects identified by the court. In light of our conclusion that the court misinterpreted the modified settlement agreement, thereby necessitating reversal of the court's judgment, we need not resolve this claim.

6.1 of the modified settlement agreement[18] provides: "In addition to all other payments required to be made by the parties hereunder, the parties agree to contribute to the college costs for the four (4) children in proportion to their respective incomes, including income from assets at the time, and New Jersey case law at that time. Nothing in . . . [a]rticle [VI] shall prevent the parties from agreeing otherwise."

Paragraph 6.2 of the modified settlement agreement provides in relevant part: "Both parties recognize that under current New Jersey law they are both responsible for providing a college or other [postsecondary] education for [the] children pursuant to factors listed in [*Newburgh* v. *Arrigo*, 88 N.J. 529, 443 A.2d 1031 (1982) (*Newburgh* factors)].[19] The parties agree that the allocation of same shall abide the event based on the parties' proportionate share of income at that time and as further modified in this agreement. . . . Prior to either

[18] We do not construe the consent order to have modified the terms of paragraphs 6.1, 6.2, or 6.3 of the original settlement agreement, such that these provisions are identical in the original settlement agreement and in the modified settlement agreement. For ease of reference, we refer to the modified settlement agreement in discussing these provisions.

[19] See *Newburgh* v. *Arrigo*, supra, 88 N.J. 545 ("[i]n evaluating the claim for contribution toward the cost of higher education, courts should consider all relevant factors, including (1) whether the parent, if still living with the child, would have contributed toward the costs of the requested higher education; (2) the effect of the background, values and goals of the parent on the reasonableness of the expectation of the child for higher education; (3) the amount of the contribution sought by the child for the cost of higher education; (4) the ability of the parent to pay that cost; (5) the relationship of the requested contribution to the kind of school or course of study sought by the child; (6) the financial resources of both parents; (7) the commitment to and aptitude of the child for the requested education; (8) the financial resources of the child, including assets owned individually or held in custodianship or trust; (9) the ability of the child to earn income during the school year or on vacation; (10) the availability of financial aid in the form of college grants and loans; (11) the child's relationship to the paying parent, including mutual affection and shared goals as well as responsiveness to parental advice and guidance; and (12) the relationship of the education requested to any prior training and to the overall long-range goals of the child").

party having an obligation to contribute to such expenses, and as a prerequisite to triggering either party's responsibility to contribute to said cost, the children shall first have the obligation to apply for reasonable federal student loans, scholarships, grants and, further, to utilize any funds accumulated by them personally and in the [prejudgment] children's [accounts established pursuant to 26 U.S.C. § 529 (§ 529 accounts)] already established . . . ." (Footnote added.)

Paragraph 6.3 of the modified settlement agreement provides in relevant part: "Since the parties are unable to agree at this juncture as to the responsibilities for the educational expenses of [the] children post [high school], the [parties] agree to confirm and attempt to reach a determination with regard to their mutual obligation at the time a child commences post [high school] education. In the eventuality that the parties cannot resolve those issues, the issues will be [brought] first to mediation . . . and then to a court of competent jurisdiction. The law at the time of the application shall control the parties' obligation to pay for the educational cost of [the] children. . . ."

In his posthearing brief, the defendant argued that, under New Jersey law, and, in particular, the *Newburgh* factors, he was relieved of any obligation pursuant to the modified settlement agreement to contribute to the children's college expenses. In her posthearing brief, the plaintiff argued that the *Newburgh* factors were inapplicable because the modified settlement agreement set forth the terms governing the parties' obligations regarding the children's college expenses.[20]

In addressing the motion for college expenses, the court summarized the issue to be "whether [the plaintiff] and the children need to follow the [*Newburgh*]

[20] As relief, the plaintiff requested (1) approximately $13,329 in college expenses for Emma's freshman year at Colgate University and (2) "orders regarding the payment of future college expenses."

factors . . . [as] referenced in article VI [containing paragraphs 6.1, 6.2, and 6.3] . . . of [the modified settlement agreement]." The court stated that, "[a]lthough the parties attempted mediation pursuant to [the modified settlement agreement], it broke down. One could argue that the [plaintiff] can then make all the decisions regarding college without input from the [defendant] . . . . However, th[e] court finds that the [plaintiff] and . . . Emma had an obligation to give [the defendant] access to the school for information regarding the finances, student aid, and academics. [The defendant] also had a right to know what other funds were available that could be applied to the cost of [Emma's] education. None of this was provided to the [defendant]." The court continued: "[I]t would appear that the [plaintiff] and . . . Emma want the [defendant] out of their li[ves] totally except for his financial help. The [plaintiff] was not cooperating with the reunification therapy in New Jersey. [The plaintiff] moves to Connecticut without telling [the defendant], she goes to Probate Court in Connecticut to change the minor children's [last] name[s], she does not give him proper notice for reimbursement of the expenses for medical and extracurricular expenses, she does not provide him with the financial information necessary to determine the net cost at Colgate [University], and Emma will not authorize his access to her account at Colgate [University] or respond to his email asking what she was studying.[21] . . . The court has carefully considered the specific facts of this case and the [*Newburgh*] factors . . . and finds that the [plaintiff] is not entitled to reimbursement for . . . the costs incurred at Colgate University for Emma's freshman year." (Footnote added.) The court then denied the motion for college expenses and ordered

[21] During the evidentiary hearing, the defendant testified that (1) he emailed Emma asking about her studies, which email she ignored, and (2) Emma declined to sign a release for him to access her financial information at Colgate University.

that, "[g]oing forward, the plaintiff needs to follow the existing orders regarding reimbursement . . . for the cost of college. The children also need to allow the [defendant] access to their financial and academic records at whatever college they attend."

In its ensuing articulation, with respect to its reliance on *Newburgh*, the court stated it had "considered all of the [*Newburgh*] factors . . . but gave more weight to the eleventh factor regarding 'the child's relationship to the paying parent, including mutual affection and shared goals as well as responsiveness to parental advice and guidance.' . . . It is clear from [the] court's factual findings in its [decision] that the [plaintiff] wanted no contact for herself or [the] children with the [defendant]. When [the defendant] attempted reunification with the children in New Jersey, the [New Jersey trial] court found the [plaintiff] in violation of the [defendant's] rights because of her failure to comply with reunification therapy pursuant to a prior court order. [The plaintiff] then moves to Connecticut without notice to the [defendant] and goes to Probate Court to have the last name[s] of the children changed. The [plaintiff] has blocked any relationship [the defendant] might have with the children and until that changes, he should not be obligated to share in the cost of college." (Citation omitted.)

The plaintiff claims that (1) the court's articulation improperly functioned to modify its original decision denying the motion for college expenses and (2) the court improperly denied the motion for college expenses because, inter alia, it incorrectly determined that the *Newburgh* factors were applicable. We conclude that (1) the court's articulation did not constitute an improper modification of its original decision denying the motion for college expenses, but (2) the court improperly denied the motion for college expenses on the basis of its application of the *Newburgh* factors

because the modified settlement agreement contains an ambiguity, the resolution of which affects the question of whether the *Newburgh* factors apply in this case.[22]

A

We first consider the plaintiff's contention that the court's articulation constitutes an improper modification of its original decision denying the motion for college expenses. The plaintiff maintains that (1) the original decision required her to comply with the "existing orders" concerning college expenses, in addition to requiring the children to permit the defendant to access their school records, in order to receive contribution from the defendant for college expenses in the future, whereas (2) the court's articulation created a "much higher standard" by relieving the defendant of any future obligation to contribute toward the children's college expenses until the plaintiff had ceased "block[ing] any relationship he might have with the children . . . ." We disagree.

"As a general rule, [a]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification. . . . An articulation may be necessary [if] the trial court fails completely to state any basis for its decision . . . or where the basis, although stated, is unclear. . . . The purpose of an articulation is to dispel any . . . ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby

[22] The plaintiff further claims that (1) if the *Newburgh* factors are applicable, then the court's analysis of the *Newburgh* factors was flawed, (2) the court misinterpreted the modified settlement agreement to require that the children's school records be shared with the defendant, and (3) the court failed to enter an order regarding the parties' obligations for future college expenses. In light of our conclusion that an ambiguity in the modified settlement agreement requires reversal of the court's judgment, we need not resolve these additional claims.

sharpening the issues on appeal." (Internal quotation marks omitted.) *Sabrina C.* v. *Fortin*, 176 Conn. App. 730, 750, 170 A.3d 100 (2017). "It is well settled that [a]n articulation is not an opportunity for a trial court to substitute a new decision nor to change the reasoning or basis of a prior decision. . . . Insofar as we must construe the . . . judgment and the court's [articulation], our review is plenary." (Citation omitted; internal quotation marks omitted.) *C. D.* v. *C. D.*, 218 Conn. App. 818, 828, 293 A.3d 86 (2023). "[J]udgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole. . . . [W]e are mindful that an opinion must be read as a whole, without particular portions read in isolation, to discern the parameters of its holding." (Internal quotation marks omitted.) *Buchenholz* v. *Buchenholz*, 221 Conn. App. 132, 138, 300 A.3d 1233, cert. denied, 348 Conn. 928, 304 A.3d 860 (2023).

We conclude that the court's articulation did not fashion a new requirement to be satisfied in order to trigger the defendant's obligation to contribute toward the children's future college expenses. In the original decision, the court framed the issue before it vis-à-vis the motion for college expenses to be whether the plaintiff and the children "need to follow the [*Newburgh*] factors," as referenced in the modified settlement agreement. The court proceeded to make findings regarding the defendant's postdissolution attempts at reunification with the children, as well as actions taken by the plaintiff and Emma that, as the court found, illustrated that they "want[ed] the [defendant] out of their li[ves] totally except for his financial help." Then, expressly stating that it had considered the *Newburgh* factors, the court

determined that the plaintiff was not entitled to contribution from the defendant for the costs incurred for Emma's freshman year at college, whereupon the court (1) denied the motion for college expenses and (2) ordered that "[g]oing forward, the plaintiff needs to follow the existing orders regarding reimbursement . . . for the cost of college [and] [t]he children also need to allow the [defendant] access to their financial and academic records at whatever college they attend."

We do not agree with the plaintiff's proposition that, in order for the defendant to be liable to contribute to future college expenses, the original decision *only* required (1) the plaintiff "to follow the existing orders regarding reimbursement for . . . the cost of college" and (2) the children to provide the defendant with access to their school records. Read in its entirety, we construe the original decision as reflecting a determination by the court that the *Newburgh* factors must be considered when deciding whether the defendant is obligated to contribute toward college expenses. In other words, we interpret the original decision to provide that the plaintiff, when seeking contribution from the defendant for college expenses in the future, must establish that (1) there has been compliance with existing orders regarding college expenses, (2) the defendant has been granted access by the children to their school records, *and* (3) when applied, the *Newburgh* factors justify an order mandating that the defendant contribute to the college expenses.

In light of our construction of the original decision, we reject the plaintiff's claim that the articulation modified the original decision. In its articulation, the court (1) explained that, although it had considered all of the *Newburgh* factors in the original decision, it had given "more weight" to the eleventh factor focusing on the relationship between the paying parent and the child, (2) recited findings that it had made in the original

decision reflecting "that the [plaintiff] wanted no contact for herself or [the] children with the defendant," and (3) stated that the plaintiff "has blocked any relationship [the defendant] might have with the children and until that changes, he should not be obligated to share in the cost of college." We discern no conflict between the original decision and the articulation. Clarifying the court's reasoning in the original decision, the articulation provided that, pursuant to *Newburgh*, the court had placed great emphasis on its findings demonstrating that the plaintiff had engaged in conduct that was detrimental to the relationship between the defendant and the children. Insofar as the articulation stated that the defendant should not be obligated to pay any college expenses so long as the plaintiff continued to "[block] any relationship he might have with the children," that statement aligns with our interpretation of the original decision to require consideration of the *Newburgh* factors in determining whether the defendant's obligation to contribute toward college expenses arises. Stated another way, the court's articulation provides that, pursuant to *Newburgh*, the defendant will have no obligation to contribute toward the children's college expenses as long as the plaintiff's conduct "block[ing] any relationship he might have with the children" persists.

In sum, we conclude that the articulation did not modify the original decision. Accordingly, the plaintiff's contention fails.

B

The plaintiff next asserts that the court improperly denied the motion for college expenses because it incorrectly determined that the *Newburgh* factors were applicable. The plaintiff maintains that the modified settlement agreement is clear and unambiguous in requiring the parties to pay for college expenses in proportion

to their respective incomes, such that the court should have enforced the terms of the modified settlement agreement rather than engaging in an analysis of the *Newburgh* factors. In response, the defendant argues that the modified settlement agreement mandates that the court apply the *Newburgh* factors in determining the parties' obligations to pay for college expenses. We conclude that the modified settlement agreement is ambiguous as to whether the parties agreed to terms concerning the allocation of their college expense contributions. In light of this ambiguity, we further conclude that the court improperly relied on the *Newburgh* factors to deny the motion for college expenses.[23]

The following legal principles are relevant to our analysis. "The [New Jersey] [l]egislature and [New Jersey] courts have long recognized a child's need for higher education and that this need is a proper consideration in determining a parent's child support obligation. . . . [*Newburgh*] set[s] forth a non-exhaustive list of twelve factors a court should consider in evaluating a claim for contribution toward the cost of higher education. . . . Six years [after *Newburgh* was decided], the [l]egislature essentially approved those criteria when amending the support statute, N.J. [Stat. Ann. §] 2A:34-23 (a).[24] . . . Thus, a trial court should balance the

[23] We note that the court did not determine expressly that the modified settlement agreement was clear and unambiguous in requiring the application of the *Newburgh* factors in relation to the motion for college expenses; however, the court (1) noted that the modified settlement agreement referred to the *Newburgh* factors, (2) stated that one of the issues before it was whether the plaintiff and the children needed to follow the *Newburgh* factors, and (3) applied the *Newburgh* factors. Accordingly, we conclude that the court necessarily determined that the modified settlement agreement, in clear and unambiguous terms, required it to apply the *Newburgh* factors in adjudicating the motion for college expenses.

[24] Section 2A:34-23 (a) of the New Jersey Statutes Annotated provides in relevant part: "In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, the court in those cases not governed by court rule shall consider, but not be limited to, the following factors:

"(1) Needs of the child;

statutory criteria of N.J. [Stat. Ann. §] 2A:34-23 (a) and the *Newburgh* factors, as well as any other relevant circumstances, to reach a fair and just decision whether and, if so, in what amount, a parent or parents must contribute to a child's educational expenses." (Citations omitted; footnote added; internal quotation marks omitted.) *Gac* v. *Gac*, 186 N.J. 535, 542–43, 897 A.2d 1018 (2006). "[W]here [however] parties to a divorce have reached an agreement regarding children attending college and how those college expenses should be divided, and no showing has been made that the agreement should be vacated or modified, the [trial court] need not apply all twelve factors pertinent to college expenses as identified in [*Newburgh*]. Rather, the court should enforce the agreement as written.[25]" (Footnote in original.) *Avelino-Catabran* v. *Catabran*, 445 N.J. Super. 574, 591, 139 A.3d 1202 (App. Div. 2016).

In light of these legal precepts, the question before us is whether the modified settlement agreement

"(2) Standard of living and economic circumstances of each parent;

"(3) All sources of income and assets of each parent;

"(4) Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost of each parent to obtain training or experience for appropriate employment;

"(5) Need and capacity of the child for education, including higher education;

"(6) Age and health of the child and each parent;

"(7) Income, assets and earning ability of the child;

"(8) Responsibility of the parents for the court-ordered support of others;

"(9) Reasonable debts and liabilities of each child and parent; and

"(10) Any other factors the court may deem relevant. . . ."

We note that N.J. Stat. Ann. § 2A:34-23 was amended effective January 8, 2024; see 2023 N.J. Laws, c. 238, § 6; however, said amendment has no bearing on this appeal. Accordingly, we refer to the current revision of N.J. Stat. Ann. § 2A:34-23.

[25] "In the absence of an agreement by the parties regarding the specific division of college costs, courts should balance the factors set forth in *Newburgh* and the statutory criteria of N.J. [Stat. Ann. §] 2A:34-23 (a), along with any other factors the court deems relevant to a fair allocation of

reflects an agreement by the parties regarding the division of their college expense obligations. On the basis of paragraphs 6.1, 6.2, and 6.3 of the modified settlement agreement (college expense provisions), we conclude that the modified settlement agreement is ambiguous in this regard. Paragraph 6.1 reasonably can be read as providing that the parties' incomes *and* the *Newburgh* factors,[26] as implicated by the phrase "New Jersey case law," must be considered in determining the allocation of the parties' college expense obligations. Paragraph 6.2, in contrast, states that "[t]he parties agree that the allocation of [their college expense obligations] shall abide the event based on the parties' proportionate share of income at that time and as further modified in this agreement," which reasonably can be interpreted to mean that the parties' incomes, alone, govern the issue.[27] Paragraph 6.3, then, provides that "the parties are unable to agree at this juncture as to the responsibilities for the educational expenses of [the] children post [high school]" and that, should they require judicial intervention to resolve a dispute in this respect, "[t]he law at the time of the application shall control the parties' obligation to pay for the educational cost of [the] children," which reasonably can be construed as stating that (1) the parties had not reached an agreement as to the division of their college expense obligations at the time of the original settlement agreement and (2) New Jersey law, including the *Newburgh* factors, shall govern that determination if the parties cannot resolve the issue without judicial intervention. It is

expenses." *Avelino-Catabran* v. *Catabran*, 445 N.J. Super. 574, 591 n.8, 139 A.3d 1202 (App. Div. 2016).

[26] We note that the *Newburgh* factors contemplate an analysis of the parents' finances. See *Newburgh* v. *Arrigo*, supra, 88 N.J. 545 (listing fourth *Newburgh* factor as "the ability of the parent to pay [the] cost [of higher education]" and sixth *Newburgh* factor as "the financial resources of both parents").

[27] The meaning of the phrase "as further modified by this agreement" in paragraph 6.2 of the modified settlement agreement is unclear.

reasonable to construe the college expense provisions to hinge the parties' college expense obligations on either (1) their incomes alone, or (2) New Jersey law, including the *Newburgh* factors, which encompass an examination of the parties' finances. In light of the competing, reasonable constructions of the college expense provisions, it necessarily follows that they are ambiguous.

Having concluded that the college expense provisions are ambiguous, we further conclude that the court improperly relied on the *Newburgh* factors to deny the motion for college expenses. The aforementioned ambiguity creates a threshold factual issue to be resolved before the motion for college expenses may be adjudicated. If the intent of the parties was to allocate their college expense obligations solely on the basis of their incomes, then the correct course would be for the court to enforce the modified settlement agreement as written without resorting to the *Newburgh* factors, provided "no showing has been made that the agreement should be vacated or modified";[28] *Avelino-Catabran* v. *Catabran*, supra, 445 N.J. Super. 591; however, if the parties did not intend for their incomes, alone, to determine their college expense obligations, then the court "should balance the factors set forth in *Newburgh* and the statutory criteria of N.J. [Stat. Ann. §] 2A:34-23 (a), along with any other factors the court deems relevant to a fair allocation of expenses." Id., 591 n.8; see also *Gac* v. *Gac*, supra, 186 N.J. 543. Under these circumstances, we deem the proper remedy to be to reverse the denial of the motion for college expenses and to remand the case for a new evidentiary hearing to resolve the ambiguity in the college expense provisions.[29] See

[28] Nothing in the record indicates that either party has sought to vacate or to modify the college expense provisions.

[29] If, on remand, the court determines that the parties did not intend to predicate their college expense obligations solely on their incomes, then the parties should be afforded an opportunity to present evidence to guide the court's analysis of the relevant factors under New Jersey law, including

Capparelli v. *Lopatin*, supra, 459 N.J. Super. 604 ("[w]hen a contract is ambiguous in a material respect, the parties must be given the opportunity to illuminate the contract's meaning through the submission of extrinsic evidence").

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

In this opinion the other judges concurred.

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the *Newburgh* factors. We leave it to the discretion of the court on remand to determine whether to hold separate evidentiary hearings addressing (1) the ambiguity of the college expense provisions, (2) the relevant factors pursuant to New Jersey law, if necessary, and (3) the motion for extracurricular and healthcare expenses; see part I of this opinion; or to address these issues in a single proceeding.