IN RE GABRIEL S., JR.*
(SC 20788)

Robinson, C. J., and McDonald, D'Auria, Mullins, Ecker and Alexander, Js.

Syllabus

The respondent father appealed from the trial court's judgment terminating his parental rights with respect to his child, G. Shortly after G was born, the petitioner, the Commissioner of Children and Families, filed a petition of neglect, was granted temporary custody of G, and placed G in a foster home. Thereafter, using a preprinted form issued by the Judicial Branch, the petitioner filed a petition to terminate the respondent's parental rights pursuant to statute (§ 17a-112 (j) (3) (E)), which requires the petitioner to prove, inter alia, that the respondent's parental rights with respect to another child previously had been terminated pursuant to a petition filed by the petitioner. At trial, the petitioner's counsel presented evidence that the respondent's parental rights previously had been terminated in Rhode Island. At the end of the petitioner's case, the respondent's counsel argued that the petitioner had failed, as a matter of law, to satisfy the requirements for termination set forth in § 17a-112 (j) (3) (E) because the petitioner did not present any evidence that the respondent's parental rights previously had been terminated in Connecticut. The petitioner's counsel indicated his belief that the termination petition had been amended to include grounds for termination under § 17a-112 (j) (3) (B) (i), and, in the event it had not been amended, he moved to do so. The trial court granted counsel's oral motion to amend the petition, as well as a six week continuance of the trial to allow the respondent's counsel an opportunity to reevaluate the petitioner's position. The petitioner then filed a written motion to amend the petition to terminate the respondent's parental rights and, pursuant to the relevant rules of practice (§ 33a-1 (b)), an amended summary of the facts, both of which identified § 17a-112 (j) (3) (B) (ii) as the basis for termination. Under that provision, the petitioner was required to demonstrate, inter alia, that the respondent had failed to rehabilitate and that G had been in the petitioner's custody for at least fifteen months. Although the court granted the petitioner's written motion to amend, the petitioner did not amend the preprinted, form petition to reflect that the petitioner was seeking termination under § 17a-112 (j) (3) (B) (ii).

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

When trial resumed after the continuance, the only additional evidence the petitioner presented was the amended summary of the facts, which repeated the original allegations and alleged that G had been in the petitioner's custody for more than fifteen months. The respondent testified about his attempts to comply with the steps that would facilitate G's return to his custody but never claimed that he did not receive notice that termination was being sought under § 17a-112 (j) (3) (B) (ii). The trial court granted the petition to terminate the respondent's parental rights pursuant to § 17a-112 (j) (3) (B) (ii), finding, inter alia, that the respondent had failed to rehabilitate and that G had been in the petitioner's custody for more than fifteen months. On appeal from the trial court's judgment, the respondent claimed that his due process right to adequate notice of the grounds for terminating his parental rights was violated insofar as the petitioner was allowed to amend the termination petition after the close of evidence and insofar as his parental rights were terminated pursuant to § 17a-112 (j) (3) (B) (ii) when the petitioner never amended the preprinted, form petition to indicate that the petition was premised on that particular provision of the statute.

Held that the respondent's due process right to adequate notice of the grounds for terminating his parental rights was not violated, as the petitioner's amended summary of the facts, along with the trial court's granting of a continuance, afforded the respondent constitutionally adequate notice that the petitioner had elected to rely on § 17a-112 (j) (3) (B) (ii) in seeking to terminate his parental rights as to G:

There was no merit to the respondent's claim that principles of due process required strict compliance with certain statutory (§ 45a-715 (b) (6) and (c)) procedures and rules of practice (§ 33a-1 (a)) governing petitions to terminate parental rights, as those provisions did not clearly and unambiguously require the petitioner to amend the grounds for termination in the preprinted, form petition, rather than in the summary of the facts, in the event the trial court grants the petitioner permission to amend the termination petition.

Even if this court assumed that the petitioner violated the statutory notice provisions and the rules of practice, principles of due process are not violated when the respondent parent has been provided adequate notice of the amendment to the termination petition and a reasonable opportunity to prepare a response, as the price of requiring strict compliance with those provisions in child dependency cases would be unacceptably high in light of the strong public interest in the prompt resolution of such proceedings, in which the welfare of a child is at issue and delay is inherently prejudicial.

In the present case, although the petitioner's counsel initially indicated that he would be adding § 17a-112 (j) (3) (B) (i) as a ground for termination when he orally moved to amend the termination petition, he clarified

in both the amended summary of the facts and the written motion to amend the petition, which superseded the oral motion and was granted by the trial court, that § 17a-112 (j) (3) (B) (ii) was the specific basis for termination.

Moreover, in light of the amended summary of the facts and the written motion to amend, the respondent could not reasonably have believed that, when the trial resumed after the continuance, the petitioner would seek to adjudicate the termination petition under either § 17a-112 (j) (3) (B) (i) or (E), especially when the pursuit of termination under § 17a-112 (j) (3) (E) already had been shown to be unviable and when the respondent testified exclusively about his attempts to comply with the specific steps that would facilitate the return of G to his custody, which was relevant only to termination under § 17a-112 (j) (3) (B) (ii).

Furthermore, the respondent expressed no surprise or confusion when, at the recommencement of the trial after the continuance, the petitioner's counsel indicated that he was seeking termination pursuant to the amended summary of the facts, which was premised on § 17a-112 (j) (3) (B) (ii).

In addition, even if strict compliance with the statutory notice provisions and rules of practice was required and the petitioner's failure to strictly comply violated due process, any such violation was harmless beyond a reasonable doubt because, to the extent the respondent claimed that he did not receive adequate notice that the petitioner would proceed under § 17a-112 (j) (3) (B) (ii), the respondent did not claim that there was additional evidence on the issue of his rehabilitation that he would have presented if he had received adequate notice, the uncontroverted evidence showed that G had been in the petitioner's custody for at least fifteen months at the time of trial, and the respondent did not claim that he could produce evidence to the contrary.

Argued March 29—officially released July 14, 2023**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of New London, Juvenile Matters at Waterford, where the court, *Hoffman*, *J.*, granted the petitioner's motion to amend the petition; thereafter, the case was tried to the court, *Hoffman*, *J.*;

** July 14, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

judgment terminating the respondents' parental rights, from which the respondent father appealed. *Affirmed.*

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

Elizabeth Bannon, assistant attorney general, with whom were *Evan O'Roark*, assistant attorney general, and, on the brief, *William Tong*, attorney general, for the appellee (petitioner).

Opinion

ROBINSON, C. J. This appeal requires us to determine whether the trial court violated the constitutional due process right of the respondent father, Gabriel S., to adequate notice of the grounds for terminating his parental rights when, after the close of evidence, it granted the motion of the petitioner, the Commissioner of Children and Families, to amend the petition to allege a different ground for the termination of his parental rights pursuant to General Statutes § 17a-112 (j) (3).[1]

[1] General Statutes § 17a-112 (j) provides in relevant part: "The Superior Court, upon notice and hearing as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that (1) the Department of Children and Families has made reasonable efforts to locate the parent and to reunify the child with the parent in accordance with subsection (a) of section 17a-111b, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts, except that such finding is not required if the court has determined at a hearing pursuant to section 17a-111b, or determines at trial on the petition, that such efforts are not required, (2) termination is in the best interest of the child, and (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, abused or uncared for in a prior proceeding, or (ii) is found to be neglected, abused or uncared for and has been in the custody of the commissioner for at least fifteen months and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . [or] (E) the parent of a child under the age of seven years who is neglected, abused or uncared for, has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period

The petitioner initially filed a petition to terminate the parental rights of the respondent with respect to his minor child, Gabriel S., Jr. (Gabriel), pursuant to § 17a-112 (j) (3) (E) (ground (E)). After the conclusion of evidence, the respondent requested that the court deny the petition on the ground that the petitioner had failed to present any evidence that would support a finding that he previously had had his parental rights terminated with respect to another child pursuant to a petition filed by the petitioner, as is required under ground (E). The trial court then granted the petitioner's motion to amend the petition to allege another ground for termination pursuant to Practice Book § 34a-1 (d).[2] The trial court also granted a continuance to allow the respondent to prepare a response to the amended petition. Thereafter, the petitioner filed an amended summary of the facts in support of the petition, alleging that grounds for termination of the respondent's parental rights existed pursuant to § 17a-112 (j) (3) (B) (ii) (ground (B) (ii)). The petitioner did not, however, amend the petition itself to reflect the new ground for termination alleged in the amended summary of the facts. At the conclusion of the continued trial, the trial court granted the petition to terminate the respondent's parental rights as to Gabriel on ground (B) (ii). The respondent now appeals[3] from the judgment of the trial

of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such parent's parental rights of another child were previously terminated pursuant to a petition filed by the Commissioner of Children and Families . . . ."

[2] Practice Book § 34a-1 (d) provides: "A petition may be amended at any time by the judicial authority on its own motion or in response to a motion prior to any final adjudication. When an amendment has been so ordered, a continuance shall be granted whenever the judicial authority finds that the new allegations in the petition justify the need for additional time to permit the parties to respond adequately to the additional or changed facts and circumstances."

[3] The respondent appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

court terminating his parental rights, claiming that the court violated his due process right to adequate notice of the grounds for the petition to terminate his parental rights by (1) allowing the petitioner to amend the petition after the close of evidence, and (2) terminating the respondent's parental rights pursuant to ground (B) (ii) when the petitioner never filed an amended petition alleging that ground. We disagree, and, accordingly, we affirm the trial court's judgment.

The record reveals the following undisputed facts and procedural history. Gabriel, the son of Santasia S. and the respondent, was born in January, 2020, at Lawrence + Memorial Hospital in New London. Upon learning of the respondent's history as a sex offender, hospital staff reported their concerns about the child's safety to the petitioner. On January 17, 2020, the petitioner filed a petition of neglect and an order of temporary custody on behalf of Gabriel. The trial court, *Driscoll*, *J.*, found Gabriel to be in immediate physical danger from his surroundings and vested temporary custody of Gabriel in the petitioner. The same day, the petitioner filed a neglect petition on Gabriel's behalf and placed him in a nonrelative foster home, where he currently remains.

Thereafter, the petitioner filed a petition to terminate the respondent's parental rights pursuant to ground (E).[4] Under ground (E), the petitioner was required to prove that (1) the respondent had failed or was unable or unwilling to rehabilitate such that he could assume a responsible position in Gabriel's life within a reasonably foreseeable time, and (2) the respondent's parental rights to another child previously had been terminated

[4] The petitioner also sought termination of the parental rights of Gabriel's mother, Santasia S. The trial court ultimately granted that petition on the ground that she voluntarily and knowingly consented to the termination of her parental rights. The court's termination of the parental rights of Santasia S. is not at issue in this appeal.

pursuant to a petition filed by the petitioner. See General Statutes § 17a-112 (j) (3) (E). In support of the second adjudicatory ground, the petitioner alleged that, in 2019, the respondent's parental rights with respect to two children had been terminated in Rhode Island.

Trial on the petition began on April 25, 2022. The petitioner presented evidence, as relevant to this appeal, in the form of an exhibit that the respondent's parental rights previously had been terminated in Rhode Island, which the trial court, *Hoffman*, *J.*,[5] admitted without objection by the respondent. The respondent presented no evidence. At the conclusion of the petitioner's case, counsel for the respondent argued that the petitioner had failed, as a matter of law, to establish under ground (E) that the respondent's parental rights previously had been terminated pursuant to a petition filed by the petitioner because the evidence showed that his parental rights to two children previously had been terminated in Rhode Island, not Connecticut. Counsel for the petitioner did not dispute that the petitioner was required to establish that the previous terminations of parental rights had occurred in Connecticut but stated that he had been under the impression that the petition had been "amended to allege [grounds for termination of the respondent's parent rights pursuant to § 17a-112 (j) (3) (B) (i) (ground (B) (i))]. But, [in] the event it wasn't amended, the [petitioner] would move to amend the petition right now." Counsel for the petitioner argued that, under Practice Book § 34a-1 (d), the trial court had the authority to allow an amendment "up until the point that the adjudication enters."

Counsel for the respondent then argued that principles of due process required the court to deny the petitioner's eleventh hour motion to amend the petition. Counsel for the respondent also requested that, if the

[5] All subsequent references to the trial court are to Judge Hoffman.

trial court were to grant the motion, it also grant a continuance so that he could reevaluate the respondent's position. The court granted the petitioner's motion to amend and the respondent's request for a continuance.

The next day, the petitioner filed an amended summary of the facts[6] that alleged substantially the same facts that originally had been alleged in support of ground (E), but also alleging that Gabriel had been in the custody of the petitioner for more than fifteen months, as is required under ground (B) (ii). See General Statutes § 17a-112 (j) (3) (B) (ii). On the day after he filed the amended summary of the facts, the petitioner's counsel filed a written motion to amend the petition to terminate the respondent's parental rights by removing ground (E) and adding ground (B) (ii). Ground (B) (ii) required the petitioner to establish that (1) Gabriel was neglected, abused or uncared for and had been in the petitioner's custody for at least fifteen months, and (2) the respondent had been provided specific steps to take to facilitate the return of Gabriel to him and had failed to achieve such degree of personal rehabilitation as would encourage the belief that, within a reasonable time, he could assume a responsible position in Gabriel's life. See General Statutes § 17a-112 (j) (3) (B) (ii). The trial court granted the written motion. The petitioner never amended the petition itself, which is a preprinted form promulgated by the Judicial Branch, to indicate that the petitioner was now seeking an adjudication pursuant to ground (B) (ii) instead of ground (E).

Following the continuance, trial on the petition for termination of the respondent's parental rights resumed

[6] Practice Book § 33a-1 (b) provides in relevant part that "[a] summary of the facts substantiating the allegations of the petition . . . shall be attached thereto and shall be incorporated by reference."

on June 6, 2022. The only additional evidence offered by the petitioner's counsel was the amended summary of the facts. The respondent testified on his own behalf and asked the trial court to deny the petition to terminate his parental rights, but he made no claim that the petitioner's counsel had failed to provide adequate notice that the petitioner was seeking termination of his parental rights pursuant to ground (B) (ii).

The trial court ultimately found that the petitioner had proven by clear and convincing evidence the existence of grounds for termination under ground (B) (ii), namely, that the respondent had failed to rehabilitate[7] and that Gabriel had been in the custody of the petitioner for more than fifteen months. The court also made the required written findings under § 17a-112 (k). Finally, the court found by clear and convincing evidence that terminating the respondent's parental rights would be in the best interest of Gabriel pursuant to § 17a-112 (j) (2). Accordingly, the court granted the petition for termination of the respondent's parental rights. This appeal followed.

On appeal, the respondent claims that the trial court violated his right to adequate notice under the due process clause of the fourteenth amendment to the United States constitution by (1) allowing the petitioner to amend the petition to terminate his parental rights after the close of evidence, and (2) terminating his parental rights pursuant to ground (B) (ii) when the petitioner never filed an amended petition alleging that ground.[8]

[7] Because the respondent does not challenge on appeal the reasonableness of the factual findings with respect to ground (B) (ii), we need not recite the evidence that supported those conclusions.

[8] To the extent that these claims were not raised at trial, the petitioner concedes that they are reviewable under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015).

In addition to these claims, the respondent contends that (1) "the trial court's memorandum of decision does not clarify whether it terminated the [respondent's] parental rights based on ground [(B) (i)] or ground [(B) (ii)],"

Although the respondent has ostensibly presented two distinct claims in support of his challenge to the trial court's ruling, the essence of both claims is that he was deprived of adequate notice of the grounds for terminating his parental rights due to the petitioner's failure to complete the preprinted petition form in strict compliance with the governing statute and the rules of practice. See General Statutes § 45a-715 (b) and (c); Practice Book § 33a-1 (a). We disagree and conclude that the amended summary of the facts filed by the petitioner's counsel in this case, in conjunction with the trial court's granting of the respondent's request for a continuance, afforded the respondent constitutionally adequate notice that the petitioner had elected to rely on ground (B) (ii).

Our resolution of the respondent's claims is guided by familiar due process principles. It is well established that a person in jeopardy of having his or her parental rights terminated has a constitutional due process right

and (2) the petitioner never articulated good cause for her motion to amend the petition. To the extent that the respondent suggests that reversal of the judgment is warranted on these grounds, we disagree. The trial court noted in its memorandum of decision that it was required to determine whether the respondent had failed to rehabilitate pursuant to "§ 17a-112 (j) (3) (B)." (Internal quotation marks omitted.) The failure to rehabilitate language is found in § 17a-112 (j) (3) (B) (ii), not in § 17a-112 (j) (3) (B) (i). In addition, the trial court found that the evidence "clearly and convincingly establishes that . . . [Gabriel] has been in the custody of [the petitioner] for at least fifteen months," which is a requirement found only in ground (B) (ii). It is clear, therefore, that the court's ruling was premised on ground (B) (ii).

With respect to the respondent's claim that the petitioner did not show good cause for the amendment of the petition, we note that, at oral argument before this court, counsel for the petitioner represented that, if the trial court had denied the oral motion to amend the petition, he would simply have withdrawn the petition and filed a new one premised on ground (B) (ii) the next day. The respondent made no claim that the petitioner would have been barred from doing so. Accordingly, we find unpersuasive the respondent's argument that he was harmed by the trial court's granting of the motion to amend in the absence of a showing of good cause because, if the motion had been denied, he would have prevailed as a matter of law in his attempt not to have his parental rights terminated.

to adequate notice of the grounds for termination. See, e.g., *In re Baby Girl B.*, 224 Conn. 263, 295–96, 618 A.2d 1 (1992). "Notice is not a mere perfunctory act in order to satisfy the technicalities of a statute, but has, as its basis, constitutional dimensions. An elementary and fundamental requirement of due process in any proceeding [that] is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (Internal quotation marks omitted.) Id. "Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that [a] reasonable opportunity to prepare will be afforded, and it must set forth the alleged misconduct with particularity." (Internal quotation marks omitted.) *In re Donna M.*, 33 Conn. App. 632, 638, 637 A.2d 795, cert. denied, 229 Conn. 912, 642 A.2d 1207 (1994), and cert. denied, 229 Conn. 912, 642 A.2d 1207 (1994). "[T]here is no violation of due process when a party in interest is given the opportunity at a meaningful time for a court hearing to litigate the question [at issue]." *Hartford Federal Savings & Loan Assn.* v. *Tucker*, 196 Conn. 172, 176–77, 491 A.2d 1084, cert. denied, 474 U.S. 920, 106 S. Ct. 250, 88 L. Ed. 2d 258 (1985).

In support of his claim that his due process rights were violated, the respondent claims that the statutory procedures and rules of practice governing petitions to terminate parental rights clearly require the petitioner to amend the grounds elected on the preprinted petition form, which is promulgated by the Judicial Branch, when the petitioner has been granted permission to amend a petition. Specifically, he relies on § 45a-715 (b) (6) ("[the petition to terminate parental rights] shall set forth with specificity . . . the facts upon which termination is sought, [and] the legal grounds authorizing termination"), § 45a-715 (c) ("[i]f the information

required under subdivisions (2) and (6) of subsection (b) of this section is not stated, the petition shall be dismissed"), and Practice Book § 33a-1 (a) ("[t]he petitioner shall set forth with reasonable particularity, including statutory references, the specific conditions which have resulted in the situation which is the subject of the petition"). He effectively claims that principles of due process require strict compliance with these procedures. We disagree.

First, contrary to the respondent's contention, these provisions do not clearly and unambiguously require the petitioner to amend the preprinted form petition to terminate parental rights, rather than the summary of the facts, when the trial court has granted a motion to amend. We note that Practice Book § 33a-1 (b) provides in relevant part that the "summary of the facts substantiating the allegations of the petition . . . shall be attached thereto and shall be incorporated by reference." Accordingly, it is arguable that an amendment to the summary of the facts would be incorporated into, and thereby amend, the petition itself. See *In re T.C.*, 307 Mont. 244, 250, 37 P.3d 70 (2001) (in determining whether petition to terminate parental rights provided adequate notice of ground for termination, court considered petitioner's "claim *as a whole* and . . . the reason and spirit of the allegations" (emphasis added; internal quotation marks omitted)). Although we recognize that this procedure would result in a potential internal inconsistency, with the preprinted form petition indicating one ground for termination and the amended summary of the facts another, it would be reasonable to conclude that the later filing would supersede the earlier one, particularly when it asserts in detail a specific new ground for the termination of parental rights.[9]

[9] As we discuss more fully subsequently in this opinion, although it is not entirely clear to us whether the rules of practice required the petitioner to amend the petition itself, it is indisputable that principles of due process require the petitioner to provide actual notice that clearly identifies the ground for the petition.

Second, even if we were to assume that the petitioner violated the statutory provisions and rules of practice, we conclude that principles of due process are not violated when the record establishes that the parent has actually been provided adequate notice of an amendment and a reasonable opportunity to prepare a response. See *In re Baby Girl B.*, supra, 224 Conn. 295–96; see also *Dennis* v. *Dejong*, 557 Fed. Appx. 112, 118 (3d Cir. 2014) (although dependency petition "was not filed in strict compliance with the time required by state law, the question of what process is due for purposes of the [d]ue [p]rocess [c]lause is a matter of federal constitutional law, not state law," and due process was satisfied because parents received adequate, actual notice of proceeding (internal quotation marks omitted)); *Giovanni* v. *Lynn*, 48 F.3d 908, 912 (5th Cir.) ("[When] a liberty . . . interest is infringed, the process [that] is due under the United States [c]onstitution is that measured by the due process clause, not that called for by state regulations. . . . Mere failure to accord the procedural protections called for by state law or regulation does not of itself amount to a denial of due process." (Citation omitted.)), cert. denied sub nom. *Giovanni* v. *Stalder*, 516 U.S. 860, 116 S. Ct. 167, 133 L. Ed. 2d 109 (1995); *In re Petition by Wayne County Treasurer*, 478 Mich. 1, 10 n.19, 732 N.W.2d 458 (2007) (when government does not strictly comply with statutory notice provision, procedure "is sound as long as there is constitutionally adequate notice"); *In re Consolidated Reports & Return by Tax Claims Bureau*, 132 A.3d 637, 645 (Pa. Commw.) (strict compliance with statutory notice requirement was not required when government proved that party received actual notice), appeal denied, 636 Pa. 653, 141 A.3d 482 (2016). A strict compliance requirement would be particularly inappropriate in this context in light of the significant differences between child dependency proceedings, in which

the welfare of a child is at issue and delay is inherently prejudicial, and other judicial proceedings. Cf. *In re Amias I.*, 343 Conn. 816, 840, 276 A.3d 955 (2022) ("the significant differences between child dependency proceedings and other judicial proceedings militate decisively against applying a per se reversible error rule in dependency cases"); id. ("[w]e cannot agree . . . that prejudice is irrelevant in a dependency proceeding when the welfare of the child is at issue and delay in resolution of the proceeding is inherently prejudicial to the child" (internal quotation marks omitted)). Indeed, "[t]he price that would be paid for [requiring strict compliance with statutory notice provisions and the rules of practice in child dependency cases], in the form of needless reversals of dependency judgments, is unacceptably high in light of the strong public interest in prompt resolution of these cases so that the children may receive loving and secure home environments as soon as reasonably possible."[10] (Internal quotation marks omitted.) Id., 840–41.

We conclude, as a matter of law, that the respondent's due process rights were not violated because he received actual notice of the grounds for the termination provision. The record reveals that, although counsel for the petitioner indicated that he would be adding ground (B) (i) as a ground for termination when he made the oral motion, he clarified the specific basis for termination the next day when he filed the amended summary of the facts, stating that he was relying on ground (B) (ii). The petitioner's counsel also expressly stated that he was adding ground (B) (ii) in his written motion to amend the petition, which superseded the oral motion,

[10] We emphasize that we conclude only that principles of due process do not require strict adherence with the rules of practice governing notice of the grounds for a petition to terminate parental rights, but require only that the petitioner provide actual notice. We express no opinion on the issue of whether due process requires strict compliance with other procedural rules and statutes governing termination proceedings.

and which the trial court also granted. In light of these filings, we conclude that the respondent could not reasonably have believed that, after the trial court granted the petitioner's motion to file an amended petition, as well as granting a six week continuance to allow the respondent to prepare a response, there was any real possibility that, when the trial resumed, the petitioner would again proceed pursuant to ground (E), which had already been shown to be unviable as a matter of law. Nor could the respondent reasonably have been unsure as to whether the petitioner intended to proceed under ground (B) (i) or (B) (ii) when the petitioner's written filings, which followed and superseded the oral motion, made it clear that the petitioner intended to proceed under ground (B) (ii). Indeed, the respondent expressed no surprise or confusion when, at the continuation of the trial on June 6, 2022, counsel for the petitioner indicated that he was seeking termination of the respondent's parental rights pursuant to the amended summary of the facts, which was premised on ground (B) (ii). To the contrary, after the petitioner's counsel indicated that he did not intend to call any witnesses, the respondent proceeded to testify on his own behalf about his attempts to comply with the specific steps that had been provided to him to facilitate the return of Gabriel to his custody, which evidence was relevant only to ground (B) (ii).[11]

Moreover, even if we were to assume that the statutory and Practice Book provisions governing petitions to terminate parental rights require the petitioner to amend the form petition and that the failure to comply strictly with that requirement violates due process, any

[11] We further note that Gabriel's attorney stated during closing argument that "the [petitioner] has amended the petition to include [ground (B) (i)] failure to rehabilitate . . . ." Counsel for the petitioner stated that Gabriel's attorney had "misspoken" and that the petition actually had been amended to include a claim under ground (B) (ii). Counsel for the respondent did not respond to this remark.

such violation would be harmless beyond a reasonable doubt in the present case. See, e.g., *In re Amias I.*, supra, 343 Conn. 833–34, 840 (when party establishes constitutional error in dependency proceeding, petitioner must demonstrate harmlessness beyond reasonable doubt). To the extent that the respondent claims that he did not receive adequate notice that his failure to rehabilitate would be one of the grounds for terminating his parental rights when the trial continued because it was possible that the petitioner would proceed under ground (B) (i), any constitutional violation was harmless beyond a reasonable doubt because he makes no claim that there was additional evidence on that issue that he would have presented if he had received adequate notice.[12] Cf. *In re Ivory W.*, 342 Conn. 692, 732 n.26, 271 A.3d 633 (2022) (suggesting that, even if trial court improperly denied motion for continuance in termination of parental rights proceeding, denial was harmless because "the respondent [mother never] explained how the testimony that she would have given if the trial court had granted her motion for a continuance would have affected the outcome of the termination proceeding"). Similarly, to the extent that the respondent claims that he was not on notice that the petitioner would claim under ground (B) (ii) that Gabriel had been in her custody for at least fifteen months, the uncontroverted evidence in the record shows that Gabriel had been in the petitioner's custody since January 17, 2020, and the respondent makes no claim that he could produce evidence to the contrary.[13]

[12] As we previously explained, the respondent testified on his own behalf on this issue upon continuation of the trial.

[13] Indeed, at oral argument before this court, counsel for the respondent was unable to articulate any prejudice that the respondent had suffered as a result of the purported lack of adequate notice of ground (B) (ii) as a basis for the petition to terminate his parental rights. Nevertheless, he maintained that the respondent's due process rights were violated, thereby effectively contending that a failure to provide adequate notice is structural error. As we already indicated, however, this court previously has held that "the significant differences between child dependency proceedings

In support of his claim to the contrary, the respondent relies on the Appellate Court's decisions in *In re Donna M.*, supra, 33 Conn. App. 632, and *In re Christian P.*, 98 Conn. App. 264, 907 A.2d 1261 (2006). Both of these cases are distinguishable. In *In re Donna M.*, supra, 634, an attorney for the minor child filed a petition seeking a determination of neglect premised on an allegation by the child's mother that the child's father had sexually abused her. Thereafter, the Department of Children and Youth Services (department) moved to amend the petition to include allegations of neglect against the mother. Id., 635. A hearing on the petition commenced on April 21, 1992, at which the department withdrew its motion to amend the petition, and the child's attorney requested permission to amend the petition, which the trial court granted. Id. The child's "mother objected to the commencement of evidence prior to the filing of the amended petition. The trial court overruled the objection and commenced trial." Id. On July 17, 1992, while the hearing on the neglect petition was still pending, the child's attorney filed an amended petition, alleging that, "in the event that the allegations of sexual abuse by the father were not true . . . the mother was abusing the child by . . . fabricating false claims of sexual abuse . . . ." Id., 636. The mother again objected on the ground that the trial was at an advanced stage, and the trial court again overruled her objection. Id. Thereafter, the trial court found that the mother had intentionally made false reports of sexual abuse and that these actions constituted neglect and abuse. Id., 637. On the basis of those findings, the court ordered that the child be committed to the custody of the department for a period of eighteen months. Id. On appeal, the Appellate Court concluded that, because the amended

and other judicial proceedings militate decisively against applying a per se reversible error rule in dependency cases." *In re Amias I.*, supra, 343 Conn. 840. We see no reason to depart from that rule in the present case.

petition was filed after a significant amount of evidence had been produced at trial, and because the amendment changed the basic nature of the alleged misconduct, allowing the amendment was fundamentally unfair and violated the mother's due process right. Id., 639. *In re Donna M.* is distinguishable because, unlike in the present case, the amended petition changed the basic nature of the alleged misconduct, and the court did not order a continuance of the neglect proceeding to afford the mother an opportunity to prepare a response to the new allegations. Here, the only new allegation contained in the amended petition was that the child had been in the petitioner's custody for fifteen months, and the court allowed a six week continuance so that the respondent could prepare a response.

In *In re Christian P.*, supra, 98 Conn. App. 266, the petitioner filed a petition to terminate the respondent mother's parental rights with respect to one of her children under ground (E) on the basis of the mother's failure to rehabilitate. The petitioner did not allege the lack of an ongoing parent-child relationship pursuant to § 17a-112 (j) (3) (D). Id. Nevertheless, the trial court terminated the mother's parental rights with respect to the child on the ground that she had no ongoing parental relationship with the child. Id. On appeal, the Appellate Court concluded that, because the mother did not have notice that her parental rights could be terminated on that ground, termination on that ground was improper. Id., 268. *In re Christian P.* is distinguishable because the petitioner filed *nothing* in that case that would have placed the mother on notice that termination of her parental rights was being sought on the ground that she had no ongoing parental relationship with the child. In contrast, in the present case, the petitioner filed a motion to amend the petition and an amended summary of the facts, both of which expressly indicated that the petitioner was seeking termination of the respondent's

parental rights under ground (B) (ii). We further note that, unlike both *In re Christian P.* and *In re Donna M.*, even if there had been a failure to provide adequate notice of the ground for the petition in the present case, any such failure was harmless because the respondent has made no claim that, if he had received adequate notice, he could have produced evidence to rebut the petitioner's claims under ground (B) (ii) that he had failed to rehabilitate and that Gabriel had been in the petitioner's custody for at least fifteen months.

For the foregoing reasons, we conclude that the trial court did not violate the respondent's constitutional due process right to adequate notice when it granted the petitioner's motion to amend the petition to terminate his parental rights after the close of evidence and terminated the respondent's parental rights pursuant to ground (B) (ii) when the petitioner never amended the preprinted form petition to indicate that the petition was premised on that ground. We therefore affirm the judgment of the trial court terminating the respondent's parental rights pursuant to § 17a-112 (j) (3) (B) (ii).

The judgment is affirmed.

In this opinion the other justices concurred.

HARTFORD POLICE DEPARTMENT *v.* COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES ET AL.
(SC 20669)
(SC 20674)

Robinson, C. J., and D'Auria, Mullins, Ecker and Alexander, Js.

Syllabus

The defendant P filed a complaint with the named defendant, the Commission on Human Rights and Opportunities, alleging that P's former employer, the plaintiff, the Hartford Police Department, had discriminated against P on the basis of his ancestry. Upon graduating from the

police academy, P, who is Vietnamese, began a probationary period of employment, which included a field training program and during which superior officers were required to complete daily observation reports evaluating his performance. P received a satisfactory rating upon completion of the field training program and then continued to receive generally satisfactory daily evaluations from his superior officers, including K, who previously had been disciplined for making discriminatory and/or racist remarks to other individuals. Subsequently, on two separate occasions, K made certain remarks to P about his grammar and writing skills, criticizing P's accent, inquiring into P's ethnicity, nationality, educational background, and whether the Hartford citizens with whom P interacted could understand him. When P indicated that he would file a grievance against K if he did not stop making such comments, K stated that P should "watch what [he says] or [he] won't be around [for] long." K told other superior officers about his interactions with P and sent a memo to the commander of the police academy, calling P argumentative and confrontational. Thereafter, multiple officers began, for the first time, to label P as argumentative and confrontational in their daily observation reports. One officer wrote a memo noting that numerous daily observation reports were missing from P's file. In addition, days after K sent his memo to the commander, P was contacted about an incident that had occurred seven months earlier during field training, when P lost a piece of the hat to his uniform. When interviewed by the commander, P stated that, at the time he lost the hat piece, he had been ordered by his superior officer to include in his incident report a false statement about another officer, but the commander did not discuss the matter with the officer who purportedly gave P the order. In a memo to the chief of police, the commander of the police academy did not mention P's version of events and instead relied on P's inclusion of the false statement as evidence that there were issues with P's truthfulness. Thereafter, P was involved in an incident during which he responded to a scene where two officers were entwined on the ground with a suspect. P pulled out his Taser but did not use it. When questioned about the incident, P explained that he did not use the Taser because he did not have a clear shot at the suspect or hear the other officers order him to use it. The questioning officer accused P of lying and wrote a memo to the commander of the police academy inaccurately stating that P's failure to follow orders resulted in injury to a fellow officer. Ultimately, the chief of police decided to terminate P's employment, relying on the memos about the hat piece and the Taser incident, as well as P's lack of truthfulness. Before the human rights referee, the police department contended that P's employment was terminated because of his poor performance, his lying in the incident report about the hat piece, his untruthfulness about the Taser incident, and his concealment of his daily observation reports. The referee found in P's favor, concluding, inter alia, that P had established a prima facie case of

discrimination on the basis of his ancestry, that the purported reasons for his termination were pretextual, that K had intended to cause the termination of P's employment, and that K's discriminatory animus had tainted other officers' reviews of P. The trial court upheld the referee's decision, agreeing that P had established a prima facie case of discrimination, and the police department appealed to the Appellate Court. The Appellate Court reversed the trial court's judgment, determining that P had failed to establish a prima facie case of discrimination and, alternatively, that substantial evidence did not support the referee's finding of intentional discrimination. With respect to the failure to establish a prima facie case, the Appellate Court reasoned that there was not substantial evidence to establish a sufficient casual connection between K's discriminatory animus and the decision to terminate P's employment. Thereafter, on the granting of certification, P and the commission appealed to this court. *Held*:

1. The Appellate Court incorrectly determined that P had failed to establish a prima facie case of discrimination, as the circumstances surrounding the termination of P's employment gave rise to an inference of discrimination:

In the context of determining whether discriminatory remarks give rise to an inference sufficient to establish a prima facie case of employment discrimination under Connecticut law, the discriminatory intent of the person who made the remarks may be transferred to the individual who made the adverse employment decision, so long as the employee establishes that discrimination animated the actions of the individual who made the remarks and that there was a causal connection between those actions and the adverse employment decision.

Although the federal version of the transferred intent doctrine differed from the state counterpart, insofar as the federal version includes the additional requirement that the supervisor with discriminatory animus must have intended to cause an adverse employment decision, it was unnecessary for this court to decide whether that additional requirement was mandated under the law of this state because, even if it was, there was substantial evidence that K intended to cause the termination of P's employment.

The referee could have inferred that K intended for P's employment to be terminated on the basis of, inter alia, his comment that P should "watch" what he says or he would not be around for long and his history of discriminatory behavior, and the fact that there was other evidence from which another decision maker might have reached a different conclusion about K's intent was of no consequence in light of the deferential standard of review applicable to the decision of the human rights referee.

With respect to whether there was a causal connection between K's discriminatory animus and the decision to terminate P's employment,

there was evidence from which the referee could have inferred that the police chief had reviewed K's memo about his interactions with P, and, even if the police chief did not read K's memo, it was of no consequence because there was substantial evidence from which the referee could have inferred that the decision to terminate P's employment was nonetheless influenced by K's discriminatory animus, insofar as K's memo and vocal complaints about P led other supervisors to complain about P's attitude, which had never previously been an issue, those complaints about P's attitude were included in memos that the police chief did review in deciding to terminate P's employment, including the memo from the commander of the police academy about the hat piece incident, and none of P's evaluations prior to his interactions with K noted argumentative or confrontational behavior, which evidenced a temporal connection between K's memo and the various complaints about P.

2. The Appellate Court incorrectly concluded that the referee's finding of intentional discrimination was not supported by substantial evidence, as the record supported the referee's conclusion that the proffered reasons for terminating P's employment were false and, thus, pretextual:

With respect to the police department's reliance on P's lying in the incident report about the hat piece, the referee credited P's testimony that the issue reemerged nearly one year after the incident occurred and that the issue of P's truthfulness was not raised at the time of that incident but, rather, only after K and other officers complained about P's attitude, the referee noted that the investigation into P's truthfulness was one-sided insofar as it did not include an interview of the officer who purportedly told P to lie in the report, and both of those facts supported the referee's finding that the reliance on the hat piece incident as a reason for terminating P's employment was pretextual.

As to the police department's reliance on P's alleged untruthfulness about the Taser incident, the referee found that the officer who interviewed P about that incident was not credible, that P did not have a clear shot at the suspect upon an independent review of a video recording of the incident, and that no independent investigation was done to confirm or disprove P's version of events, and those findings supported the referee's conclusion that the reliance on the Taser incident as a basis for terminating P's employment was pretextual.

With respect to the claim that P had concealed his daily observation reports, the record supported the referee's finding that K's discriminatory animus influenced other officers to complain about P's poor attitude and truthfulness, creating skepticism about the officer's complaints, including the complaint about the missing reports.

Moreover, the referee's finding that the proffered reasons for terminating P's employment were false was further supported by various other factors considered by the referee, including K's history of discriminatory conduct

toward others, the nexus between K's discriminatory animus and the police chief's termination decision, the increase in negative remarks about P's attitude, the temporal proximity between K's memo to the commander of the police academy and the reemergence of the hat piece issue, and inadequate investigations into the hat piece incident, the Taser incident, and the incidents between P and K.

Furthermore, the referee was justified in concluding that she could not credit or rely on the police department's documentation of P's alleged dishonesty, unprofessional behavior and unsatisfactory job performance in light of her findings that K's discriminatory animus influenced a majority of the documentation, none of P's performance reviews prior to the incidents with K involved allegations of argumentative or confrontational behavior, and the police department's witnesses lacked credibility as a result of their inconsistent testimony.

Argued February 17—officially released July 18, 2023

Procedural History

Appeal from the decision of the human rights referee of the named defendant sustaining a complaint of discrimination filed by the defendant Khoa Phan, brought to the Superior Court in the judicial district of New Britain and tried to the court, *Hon. Henry S. Cohn*, judge trial referee, who, exercising the powers of the Superior Court, rendered judgment affirming the decision of the referee, from which the plaintiff appealed to the Appellate Court, *Prescott*, *Clark* and *DiPentima*, *Js.*, which reversed the trial court's judgment and remanded the case with direction to render judgment sustaining the plaintiff's appeal, and the defendants, on the granting of certification, filed separate appeals with this court; thereafter, the appeals were consolidated. *Reversed*; *judgment directed.*

Megan K. Grant, human rights attorney, with whom were *Michael E. Roberts*, human rights attorney, and *James V. Sabatini*, for the appellants (defendants).

Daniel J. Krisch, for the appellee (plaintiff).

Opinion

D'AURIA, J. In this certified appeal, the defendants, Khoa Phan and the Commission on Human Rights and Opportunities (commission), appeal from the judgment of the Appellate Court, reversing the trial court's judgment upholding the decision of the presiding human rights referee (referee), who determined that the plaintiff, the Hartford Police Department, had discriminated against Phan on the basis of his Asian and Vietnamese ancestry by terminating his employment as a probationary police officer. On appeal, the defendants claim that the Appellate Court incorrectly concluded that there was not substantial evidence in the record to support the referee's determination of intentional discrimination because Phan had failed to establish either an inference of discrimination in his prima facie case or, alternatively, that the plaintiff's proffered reasons for terminating Phan's employment were pretextual. Our thorough review of the voluminous administrative record leads us to agree with the defendants, and, accordingly, we reverse the Appellate Court's judgment.

We note initially that the crux of the error that we find in this case lies in the Appellate Court's application of the appropriate standard of judicial review of a referee's factual findings.[1] Therefore, before recounting the referee's findings—necessarily in some detail—we begin with a review of those administrative principles.

"Our review of an agency's factual determination is constrained by General Statutes § 4-183 (j), which mandates that a court shall not substitute its judgment for

[1] "[T]he scope of the trial court's review of the [referee's] decision and the scope of our review of that decision are the same. . . . In other words, the trial court's [and/or the Appellate Court's] decision in this administrative appeal is entitled to no deference from this court." (Citation omitted.)) *Commissioner of Correction* v. *Freedom of Information Commission*, 307 Conn. 53, 63–64 n.15, 52 A.3d 636 (2012).

that of the agency as to the weight of the evidence on questions of fact. . . . [I]t is [not] the function of the trial court [or] of this court to retry the case . . . . An agency's factual determination must be sustained if it is reasonably supported by substantial evidence in the record taken as a whole. . . . Substantial evidence exists if the administrative record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . This substantial evidence standard is highly deferential and permits less judicial scrutiny than a clearly erroneous or weight of the evidence standard of review." (Internal quotation marks omitted.) *Board of Education* v. *Commission on Human Rights & Opportunities*, 266 Conn. 492, 503–504, 832 A.2d 660 (2003).

More specifically, "in defining substantial evidence in the directed verdict formulation, [this court] has said that it is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." (Internal quotation marks omitted.) *Stratford Police Dept.* v. *Board of Firearms Permit Examiners*, 343 Conn. 62, 81, 272 A.3d 639 (2022). As a result, "[i]n determining whether an administrative finding is supported by substantial evidence, the reviewing court must defer to the agency's assessment of the credibility of witnesses. . . . Ultimately, [t]he question is not whether the trial court would have reached the same conclusion but whether the record before the [agency] supports the action taken." (Citations omitted; internal quotation marks omitted.) *Miko* v. *Commission on Human Rights & Opportunities*, 220 Conn. 192, 200–201, 596 A.2d 396 (1991).

In the present case, the Appellate Court reversed the trial court's judgment, which had upheld the referee's ruling in favor of Phan, because the Appellate Court determined that substantial evidence did not support

the referee's finding of intentional discrimination. *Hartford Police Dept.* v. *Commission on Human Rights & Opportunities*, 208 Conn. App. 755, 757, 789, 267 A.3d 883 (2021). We conclude, however, that the Appellate Court failed to apply properly the standard of review it had correctly recited. Although it is true that, in determining if substantial evidence supports the referee's factual findings, a reviewing court must consider the record as a whole, the Appellate Court here improperly substituted its own judgment for that of the referee as to the weight of the evidence on the dispositive questions of fact. Our deferential standard of review allows for the record to contain competing evidence that would allow a different fact finder to reach a different conclusion. Specifically, in assessing the referee's factual findings, the Appellate Court relied on evidence that the referee explicitly found not to be credible.

The following facts, found by the referee, are important to our review of the defendants' claims on appeal. Phan, who is of Vietnamese nationality, was hired as a police officer for the plaintiff on December 14, 2009. After graduating from the police academy on July 2, 2010, Phan was classified as a probationary police officer. This probationary period lasts for one year, starting with a field training program. Phan participated in this field training program, which consisted of four phases over the span of several weeks and involved different rotations with different field training officers. Phan had to pass each phase of the field training program to move to the next phase. To evaluate his performance, Phan's field training officers completed daily observation reports. Officer Steven Citta was Phan's field training officer for phase I of the program. For phases II, III and IV, Phan's field training officers were, respectively, Officer Tyrone Boland, Officer Vincent Benvenuto, and Citta again. Although Phan did not pass phase II with Boland, and had to repeat that phase with Officer Chris-

tian Billings, this did not result in the automatic termination of his employment. During phase IV, Citta noted in his daily observation reports that Phan's skills had improved.

On October 29, 2010, Phan completed the field training program and received a probationary employee performance evaluation indicating that his performance was satisfactory. At this point, Phan was considered a Hartford police officer, but he remained in his probationary period until July 2, 2011, and, therefore, the sergeants in charge during his shifts had to complete daily observation reports for each day that he worked. These daily observation reports evaluated Phan in the areas of appearance, attitude, interpersonal skills, care of equipment, and performance in the following skill areas: patrol, investigation, phones and radios, conflict, report writing, and policies and procedures. After Phan completed the field training program, Sergeants Paul Cicero, David Marinelli, and Steven Kessler, among others, supervised him during his remaining probationary period and evaluated his performance in daily observation reports. These three sergeants had been promoted together and occasionally socialized outside of work. Between October 29, 2010, and February 1, 2011, Phan received several unsatisfactory evaluations regarding specific skills, including some evaluations relating to his uniform. He did not, however, receive any evaluations stating that he was confrontational or argumentative.

Then, in January and February, 2011, two incidents occurred involving Phan and Kessler, who previously had been disciplined for making discriminatory and/or racist remarks.[2] First, on January 23, 2011, Phan asked

[2] In particular, there was evidence of three discrimination complaints filed against Kessler—one by another police officer, another sent anonymously, and a third regarding discriminatory comments about citizens of Hartford. Both the complaint by the other officer and the complaint regarding discriminatory comments about citizens of Hartford were substantiated. Kessler was suspended for six days for his comments to another officer. As to the discriminatory comments about citizens of Hartford, although then Police

Kessler to review and sign off on a report about a motor vehicle accident. In addition to other negative comments Kessler made about the report, he told Phan that his report was "probably the shittiest thing I've ever read." Kessler criticized Phan's grammar and threw the report in the trash. Ultimately, however, Kessler approved the report with very few changes. After reviewing the revised report, Kessler asked Phan if the victim involved in the motor vehicle accident was Chinese. Phan stated that he did not know but believed the victim spoke Cantonese. In response, Kessler asked Phan: "What are you?" Phan responded that he was Vietnamese, to which Kessler responded: "Vietnamese, Cantonese, it's all the same shit . . . ." Phan then asked Kessler to sign off on an overtime card, as the edits to the report had caused him to work overtime, but Kessler refused and stated that Phan was lucky he "didn't wipe [his] ass with the report."

Then, on February 4, 2011, Phan asked Kessler to sign a domestic warrant. Kessler again insulted Phan's grammar and report writing skills. Kessler asked Phan if he had gone to college and taken English classes. Phan replied that he had, but Kessler then proceeded to give Phan a fifteen to twenty minute grammar lesson. Afterward, Kessler asked Phan if he was born in the United States. Phan responded that he moved to the United States when he was eleven years old, to which Kessler replied that this explained the problem and that English was a hard language. Laughing at Phan, Kessler asked if the citizens of Hartford had a hard time understanding him. Kessler also stated that criminals must be laughing at Phan behind his back because of his accent. When Phan asked Kessler to stop making these kinds of comments, Kessler replied that he had stripes

Chief James C. Rovella initially proposed a thirty day suspension, after negotiations with Kessler's union representative, Kessler was suspended ten days.

on his arm so that he was " 'the man' " and would determine when their conversation was over. When Phan stated that he would file a grievance against Kessler if he did not stop his remarks, Kessler ordered Phan out of his office, warning him to "watch what you tell me or you won't be around long." Following these incidents, Kessler told other sergeants about his concerns with Phan, including that Phan had yelled at him.

Approximately two weeks after that February, 2011 incident, Kessler sent a memo to Lieutenant Peter H. Bergenholtz, commander of the police academy, regarding Kessler's interactions with Phan.[3] After Kessler's memo, Phan's ratings in his daily observation reports changed. Before February 4, 2011, none of Phan's evaluations noted confrontational or argumentative behavior. After the incidents with Kessler, however, multiple evaluations from different officers labeled Phan as argumentative and confrontational: the same language Kessler had used to describe Phan's actions. Additionally, two days after Kessler's memo to Bergenholtz, Cicero wrote an interoffice memo to Lieutenant Michael Cacioli explaining that Phan's file, which was supposed to contain his daily observation reports, contained only five of his forty reports. This memo led Cacioli to send an interdepartmental memo to Captain James Bernier, discussing both the lack of reports in Phan's folder and Kessler's memo regarding the February 4 incident.

Moreover, on February 18, 2011, four days after Kessler's memo was sent, Phan was contacted by the police academy about an incident that had occurred on or about July 19, 2010, during phase II of his field training

[3] In the memo, Kessler noted that he had followed up with other sergeants who had more frequent contact with Phan and learned that Phan was struggling with his job competency. Kessler also wrote that Phan had been confrontational and argumentative with him, including yelling at him. Kessler recommended in the memo that Phan be " 'unplugged' " from his current assignment and be retrained on the supervisor/subordinate relationship.

program. On that day, Phan had lost his hat piece—the shield on an officer's hat that includes his badge number—while working in the police department's report writing room. Phan reported the lost hat piece to his field training officer, Boland. Boland told Phan to keep looking for the lost item. In August, 2010, another superior officer instructed Phan to write a report about the lost hat piece. In that case incident report, upon Boland's instructions, Phan noted that he previously had reported the lost hat piece to Sergeant Gregory Weston, even though he had not done so. When Weston learned about this false portion of the report, he was angry and ordered Phan to file a corrected report. Phan did so but also explained to Weston that he had acted on Boland's instructions. After receiving a new hat piece in September, 2010, Phan believed the incident to be closed until February 18, 2011, when he was contacted by the police academy with questions about the lost hat piece. Later, Sergeant Jeffrey Rousseau and Bergenholtz interviewed Phan about the hat piece incident. Phan told these men that Boland had ordered him to add the false sentence about Weston into the report. Rousseau and Bergenholtz never interviewed Boland about this issue, however, and did not mention Phan's version of events in their report. Instead, in his memo to the chief of police, Daryl K. Roberts, Bergenholtz relied on Phan's inclusion of the false statement as evidence that there were issues with Phan's truthfulness.

On February 25, 2011, Phan attended a performance review meeting with Bergenholtz and Rousseau. During this meeting, Bergenholtz told Phan that he had heard that Phan had been yelling at Kessler. Phan denied this allegation but indicated that he intended to file a grievance against Kessler. Bergenholtz responded that, if Phan had threatened him with filing a grievance, he would have fired Phan immediately. This statement

scared Phan so that he did not further explain his problems with Kessler during this meeting.

Following this meeting, on March 28, 2011, Cicero sent a memo to Cacioli about the February, 4, 2011 incident between Phan and Kessler, as well as the missing daily observation reports. The memo also included a summary of an incident that allegedly occurred on February 15, 2011, in which Phan told Cicero that he had not been trained on how to send a message out through the police department's mobile data terminal system (MDT), despite Citta's statement that he had trained Phan about how to do so. However, Phan did not have a daily observation report documenting the MDT incident or referencing his training on and/or use of the MDT system. Cicero then sent another memo to Cacioli, repeating the issues raised in his prior memos.

Despite these various complaints, Phan continued to receive acceptable marks in his April and May, 2011 daily observation reports. On June 4, 2011, however, another incident involving Phan occurred that was video-recorded from a police cruiser's camera but without audio. Phan arrived at the scene of an incident after Officer Jeffrey Hopkins and Officer Luis Ruiz already were present and standing near the suspect. As Phan approached, lowering his radio, an altercation ensued when the suspect struck Hopkins, causing Ruiz to struggle with the suspect on the ground. Phan pulled out his Taser but did not use it because the other officers and the suspect were entwined on the ground; the referee found, based on her review of the video, that Phan did not have a clear shot at the suspect. Phan put away his Taser, after which the suspect was physically subdued.

After this incident, Sergeant Edward Yergeau questioned Phan about why he did not use his Taser. Phan

responded that he did not have a clear shot.[4] Yergeau then asked why Phan did not use his Taser when Ruiz and Hopkins ordered him to do so. Phan responded that he did not hear those orders. Believing Ruiz' and Hopkins' version of the events, however, Yergeau accused Phan of lying because the officers had told Yergeau that they had ordered Phan to use his Taser. Yergeau also disagreed that Phan did not have a clear shot at the suspect. After this discussion, Yergeau wrote a memo to Bergenholtz stating that Phan had been instructed to use his Taser before the suspect struck Hopkins and that Phan's failure to do so resulted in Hopkins being injured. This memo was inaccurate, however, because, in Ruiz' testimony regarding the Taser incident, he stated that he allegedly had ordered Phan to use his Taser after the suspect struck Hopkins, not before.

The plaintiff terminated Phan's employment on June 18, 2011, weeks before his probationary period was scheduled to end on July 2, 2011. Roberts made the decision to terminate Phan's employment, with the approval of the director of human resources, Santiago Malave. Roberts and Malave relied on Bergenholtz' memo about the lost hat piece, even though this memo failed to include Phan's allegation that Boland had ordered him to put the false statement into his report. They also received Yergeau's memo regarding the Taser incident. When Roberts fired Phan, he gave Phan a copy of this memo and told Phan that his lack of truthfulness was one of the main reasons he was being dismissed. Despite Phan's request that he watch a video recording of the Taser incident, Roberts refused.

[4] Although the plaintiff challenged the referee's determination, after her review of the video, that Phan did not have a clear shot at the suspect during the altercation, the plaintiff does not continue to press this challenge before this court.

Phan filed an Affidavit of Illegal Discriminatory Practice with the commission, alleging that the termination of his employment was a result of his Asian/Vietnamese ancestry. After a hearing and the filing of posthearing briefs, the referee found in Phan's favor, concluding that the plaintiff illegally had discriminated against Phan when it fired him from his position as a probationary police officer. Among other things, the referee ordered the plaintiff to pay Phan $210,596 in back pay, plus $25,000 in emotional distress damages. *Hartford Police Dept.* v. *Commission on Human Rights & Opportunities*, supra, 208 Conn. App. 769.

The plaintiff appealed from the referee's order, and the trial court, *Schuman*, *J.*, sustained the appeal, "concluding that the referee improperly had applied [a] 'mixed motive' analysis to the discrimination claim rather than a 'pretext' analysis." Id. The trial court remanded the case for a new hearing before the agency. Id.

On remand, the referee again found in Phan's favor, concluding that, under either the mixed motive or pretext analysis, the plaintiff had discriminated against him. In her decision, the referee found that "[Phan's] overall performance had been satisfactory until his meetings with [Kessler]. [Phan's daily observation reports] actually improved steadily after March [2011] until his completion of the probationary period. He was not terminated at the actual time of the lost hat piece, for failing a section of the field training, despite being a probationary employee who could be terminated for almost any reason. The untimely investigation into [Phan's] hat piece, followed by the one-sided investigation into [Phan's] decision not to use his Taser, and the completely discredited testimony of several of [the plaintiff's] witnesses attempting to illustrate [Phan's] untruthfulness regarding the Taser incident, are more than sufficient evidence to prove pretext. There are too many contradictions and inconsistencies to believe that

[the plaintiff's] termination of [Phan's employment] was legitimate." (Internal quotation marks omitted.) Id.

The plaintiff appealed from the referee's second decision, and the trial court, *Hon. Henry S. Cohn*, judge trial referee, affirmed the referee's decision but remanded the case to the referee for a new order on damages because the prior order regarding damages was more than four years old. Id., 770 and n.15. The plaintiff appealed to the Appellate Court, claiming that the trial court had improperly held that substantial evidence supported the referee's finding of intentional discrimination. Id., 770. The Appellate Court held that Phan had failed to satisfy his burden of establishing a prima facie case of discrimination and, alternatively, that the record did not support the referee's conclusion that the plaintiff's reasons for terminating Phan's employment were pretextual. Id.

Phan and the commission filed separate petitions with this court for certification to appeal, which we granted, limited to the following issue: "Did the Appellate Court properly reverse the trial court's judgment upholding the decision of the . . . referee on the basis that the evidence was insufficient to support a determination of intentional discrimination?" *Hartford Police Dept.* v. *Commission on Human Rights & Opportunities*, 340 Conn. 919, 267 A.3d 195 (2022); accord *Hartford Police Dept.* v. *Commission on Human Rights & Opportunities*, 340 Conn. 920, 267 A.3d 196 (2022). We will detail additional facts and procedural history as required.

I

The following well settled general legal principles govern both the question of whether Phan established his prima facie case of employment discrimination and whether he established that the plaintiff's proffered reasons for the termination of his employment were pre-

textual, both of which were necessary for him to have established intentional discrimination. "The framework this court employs in [such cases] . . . under Connecticut law was adapted from the United States Supreme Court's decision in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) (*McDonnell Douglas*), and its progeny. . . . Under this analysis . . . for the employee to first make a prima facie case of discrimination, the plaintiff must show: (1) the plaintiff is a member of a protected class; (2) the plaintiff was qualified for the position; (3) the plaintiff suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances that give rise to an inference of discrimination. . . . The employer may then rebut the prima facie case by stating a legitimate, nondiscriminatory justification for the employment decision in question. . . . This burden is one of production, not persuasion; it can involve no credibility assessment. . . . The employee then must demonstrate that the reason proffered by the employer is merely a pretext and that the decision actually was motivated by illegal discriminatory bias." (Citations omitted; internal quotation marks omitted.) *Feliciano* v. *Autozone, Inc.*, 316 Conn. 65, 73–74, 111 A.3d 453 (2015).

II

The defendants claim that the Appellate Court incorrectly determined that Phan had failed to establish his prima facie case. Specifically, they argue that there was substantial evidence to support the referee's finding that a causal connection existed between Kessler's discriminatory animosity and the termination of Phan's employment, creating an inference of discrimination. We agree.

The following additional facts and procedural history are relevant to this claim. After the trial court concluded

in the plaintiff's first administrative appeal that the referee had applied the wrong test to the facts she found regarding Phan's discrimination claim, the referee and the parties on remand agreed that no additional hearing or evidence was required. The referee allowed the parties additional opportunity for oral argument and then, relying on her original findings of fact, determined that Phan had satisfied his prima facie burden under the pretext analysis adopted by the *McDonnell Douglas-Burdine*[5] line of cases. As to the fourth prong of the prima facie case—the only prong at issue on appeal—the referee found an inference of discrimination based on Kessler's discriminatory animus, which she found tainted the reviews of other supervisors, culminating in the termination of Phan's employment. In support of this finding, the referee relied on the following facts. First, until his confrontations with Kessler, who previously had been disciplined for making discriminatory and/or racist remarks, Phan's performance reviews and daily observation reports were mostly satisfactory concerning his general attitude. After the two incidents between Phan and Kessler, Kessler complained to other sergeants that Phan was argumentative and confrontational, including in a memo to Bergenholtz. As a result of Kessler's complaints, other sergeants for the first time began making negative comments about Phan's attitude. For example, only after Kessler's complaints did Cicero give Phan negative marks in attitude in his daily observation reports and then write a memo to Cacioli about Phan's maintenance of his reports file. Only after Kessler's complaints did Marinelli give Phan negative marks in attitude in his daily observation reports and then write a memo about his performance deficiencies, including his attitude, which none of his daily observation reports supported. Kessler socialized with,

[5] *Texas Dept. of Community Affairs* v. *Burdine*, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981).

was friends with, and complained about Phan to Cicero and Marinelli.

From this evidence, coupled with Phan's testimony regarding what Kessler had said to him, which the referee credited, the referee determined that Kessler bore a discriminatory animus against Phan based on his nationality. Additionally, the referee found that there was a causal connection between Kessler's discriminatory animus and the termination of Phan's employment—specifically, that Kessler's discriminatory animosity motivated other supervising officers to complain about Phan's attitude. The referee determined that a causal connection could be inferred from the temporal proximity between the incidents with Kessler and the complaints of poor attitude, and the temporal proximity between the incidents with Kessler and the reraising of the lost hat piece issue, which was not sufficiently investigated to determine Phan's truthfulness.

Upon the plaintiff's appeal after remand, the trial court agreed with the referee that Phan had established a prima facie case of discrimination, determining that substantial evidence existed to create a sufficient nexus between Kessler's discriminatory animus and Roberts' decision to terminate Phan's employment. The Appellate Court disagreed with the trial court and the referee, determining that there was not substantial evidence to establish this causal connection because the referee never made a specific factual finding that Kessler's memo was included in the memorandum package Roberts had reviewed. See *Hartford Police Dept.* v. *Commission on Human Rights & Opportunities*, supra,208 Conn. App. 778. Rather, the referee found that Roberts had access to only two memos, neither of which mentioned Kessler's memo. Id. Additionally, reviewing the record as a whole, the Appellate Court determined that there was no causal connection between Kessler's discriminatory

animus and the determination to terminate Phan's employment. Id., 778–85.

The only disputed prong of the prima facie case at issue in this appeal is whether the circumstances of this case gave rise to an inference of discrimination. In determining whether substantial evidence supports the referee's finding that the adverse employment action occurred under circumstances that give rise to an inference of discrimination, mere "speculation of discrimination" is insufficient. *Craine* v. *Trinity College*, 259 Conn. 625, 644, 791 A.2d 518 (2002). Nevertheless, "[t]he level of proof required to establish a prima facie case is minimal and need not reach the level required to support a jury verdict in the plaintiff's favor." Id., 638. "Circumstances contributing to a permissible inference of discriminatory intent may include . . . the employer's criticism of the plaintiff's performance in ethnically degrading terms . . . or the sequence of events leading to the plaintiff's discharge . . . or the timing of the discharge . . . ." (Citations omitted.) *Chambers* v. *TRM Copy Centers Corp.*, 43 F.3d 29, 37 (2d Cir. 1994).

Discriminatory remarks by themselves may give rise to an inference sufficient to establish the fourth prong of a prima facie case. Although "stray remarks, even if made by a [decision maker]," "are not sufficient to give rise to an inference of discrimination"; (internal quotation marks omitted) *Fletcher* v. *ABM Building Value*, 775 Fed. Appx. 8, 13 (2d Cir. 2019); discriminatory statements may show that discrimination resulted in an employee's termination when "a nexus exists between these allegedly discriminatory statements and the [employer's] decision to terminate . . . ." (Internal quotation marks omitted.) *Feliciano* v. *Autozone, Inc.*, supra, 316 Conn. 76. It is not necessary for the decision maker to have made the discriminatory statements himself, but, rather, under certain circumstances, the speaker's discriminatory intent may be transferred to the

decision maker. See *United Technologies Corp.* v. *Commission on Human Rights & Opportunities*, 72 Conn. App. 212, 234, 804 A.2d 1033, cert. denied, 262 Conn. 920, 812 A.2d 863 (2002).

This transferred intent theory for establishing an inference of discrimination has been the subject of several cases in the last two decades, which warrants examination. The seminal case in Connecticut for this theory is *United Technologies Corp.* v. *Commission on Human Rights & Opportunities*, supra, 72 Conn. App. 212, which involved a claim of gender discrimination. The hearing officer for the defendant commission[6] found in favor of the defendant employee, Gale Nestor, because, in deciding to terminate Nestor's employment, the decision maker, Martin R. Berr, relied on a letter written by her supervisor, Joseph E. Burns, Jr., who had a discriminatory motive in sending the letter to Berr.[7] Id., 214–16, 220. The employer, Pratt & Whitney Aircraft Division (Pratt & Whitney), appealed from the hearing officer's decision, but the trial court dismissed the appeal. Id., 214. Pratt & Whitney then appealed from that dismissal to the Appellate Court, claiming that

[6] Prior to July 1, 1998, General Statutes § 46a-57 referred to the commission's fact finders as "hearing officers." Public Acts 1998, No. 98-245, § 1, replaced the term "hearing officers" with "human rights referees."

[7] The hearing officer found that Nestor's supervisor, Burns, had discriminatory animus against her, leading Burns to send a letter to his manager, Berr, regarding an alleged physical altercation involving Nestor. *United Technologies Corp.* v. *Commission on Human Rights & Opportunities*, supra, 72 Conn. App. 216–17, 220. This letter resulted in an investigation that the commission's hearing officer found defective. Id., 232. Although the report produced as a result of this investigation did not state who started the altercation at issue, both Burns and Berr decided that Nestor was at fault. Id. Burns recommended Nestor's termination from employment, and Berr agreed. Id. Based on these facts, the Appellate Court held that Burns' discriminatory intent could be transferred to Pratt & Whitney under the transfer of intent doctrine because Pratt & Whitney had "allowed Burns' defective summation of the incident and his discriminatory motive to taint Berr and, therefore, to taint Pratt & Whitney's decision to terminate Nestor's employment." Id., 234.

substantial evidence did not support the commission's finding that gender discrimination had occurred because there was no "finding of discriminatory intent or motive on the part of Pratt & Whitney or any of its employees." Id., 233. In rejecting this claim, the court in *United Technologies Corp.* summarized the relevant law on the transferred intent doctrine: "Our law allows for the transfer of intent to discriminate . . . . It is true that [w]ithout some proof of an improper motive, [a plaintiff's] case must fail. . . . Nevertheless, companies may be held liable for discrimination even where the decision-making official did not intentionally discriminate if the information used by that official in deciding to terminate a worker's employment was filtered through another employee who had a discriminatory motive." (Citation omitted; internal quotation marks omitted.) Id., 234–35. The Appellate Court held that, because the information Berr used to decide to terminate Nestor's employment came from Burns, who had a discriminatory motive, "the commission's conclusion that Pratt & Whitney improperly terminated Nestor's employment on the basis of gender was permissible." Id., 235.

Since *United Technologies Corp.*, the United States Supreme Court has recognized a version of the transferred intent doctrine, which it labeled the "cat's paw" theory, in *Staub* v. *Proctor Hospital*, 562 U.S. 411, 415–16, 131 S. Ct. 1186, 179 L. Ed. 2d 144 (2011). In *Staub*, the court "consider[ed] the circumstances under which an employer may be held liable for employment discrimination based on the discriminatory animus of an employee who influenced, but did not make, the ultimate employment decision."[8] Id., 413. The court noted

[8] In *Staub*, Linda Buck, the hospital's vice president of human resources, had terminated the plaintiff's employment at the hospital. *Staub* v. *Proctor Hospital*, supra, 562 U.S. 414–15. Buck's decision to terminate the plaintiff's employment had been based on his personnel file, which included allegedly false complaints from Michael Korenchuk, a supervisor, who previously had made comments hostile to the plaintiff's military obligations. Id. Buck, however, did not adequately investigate Korenchuk's complaint. Id., 415.

that it was possible that "the discriminatory motive of one of the employer's agents . . . can be aggregated with the act of another agent . . . to impose liability on [the employer]." Id., 418. Specifically, the court articulated the following standard:[9] "[I]f a supervisor performs an act motivated by [unlawful] animus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause[10] of

The plaintiff argued that Korenchuk had fabricated his complaints based on his hostility to the plaintiff's obligations as a military reservist. Id. A jury ultimately found that the plaintiff's military status was a motivating factor in the hospital's decision to discharge him and awarded him $57,640 in damages. Id.

We note that, although *Staub* was decided under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. § 4301 et seq. (2006), the United States Supreme Court expressly indicated in *Staub* that USERRA was similar to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. See *Staub* v. *Proctor Hospital*, supra, 562 U.S. 417. Because of this, since *Staub*, federal courts of appeals have applied the holding in *Staub* to Title VII cases. See *Vasquez* v. *Empress Ambulance Service, Inc.*, 835 F.3d 267, 272 (2d Cir. 2016) ("[O]ur sister circuits have overwhelmingly adopted the [cat's paw] theory [from *Staub*] in Title VII retaliation cases. See, e.g., *Zamora* v. [*Houston*], 798 F.3d 326, 332–34 (5th Cir. 2015) [cert. denied, 578 U.S. 975, 136 S. Ct. 2009, 195 L. Ed. 2d 215 (2016)]; [*Equal Employment Opportunity Commission*] v. *New Breed Logistics*, 783 F.3d 1057, 1069–70 (6th Cir. 2015); *Bennett* v. *Riceland Foods, Inc.*, 721 F.3d 546, 551–52 (8th Cir. 2013); *Hicks* v. [*Forest Preserve District*], 677 F.3d 781, 789–90 (7th Cir. 2012); *McKenna* v. [*Philadelphia*], 649 F.3d 171, 180 (3d Cir. 2011) [cert. denied, 566 U.S. 938, 132 S. Ct. 1918, 182 L. Ed. 2d 773 (2012)].").

[9] The United States Supreme Court explicitly rejected the standard used by the United States Court of Appeals for the Seventh Circuit: "[U]nder Seventh Circuit precedent, a cat's paw case could not succeed unless the [nondecision maker] exercised such singular influence over the [decision maker] that the decision to terminate was the product of blind reliance. . . . [T]he singular influence rule does not require the [decision maker] to be a paragon of independence: It is enough that the [decision maker] is not wholly dependent on a single source of information and conducts her own investigation into the facts relevant to the decision." (Citations omitted; internal quotation marks omitted.) *Staub* v. *Proctor Hospital*, supra, 562 U.S. 416.

[10] The United States Supreme Court defined "proximate cause" under this cat's paw theory as requiring "only some direct relation between the injury asserted and the injurious conduct alleged, and excludes only those link[s] that [are] too remote, purely contingent, or indirect. . . . We do not think that the ultimate [decision maker's] exercise of judgment automatically

the ultimate employment action, then the employer is liable . . . .'' (Emphasis omitted; footnote omitted; footnote added.) Id., 422. The court explained that, ''[w]hen a decision to fire is made with no unlawful animus on the part of the firing agent, but partly on the basis of a report prompted (unbeknownst to that agent) by discrimination, discrimination might perhaps be called a 'factor' or a 'causal factor' in the decision . . . .'' Id., 418–19. ''[I]f the employer's investigation results in an adverse action for reasons unrelated to the supervisor's original biased action . . . then the employer will not be liable. But the supervisor's biased report may remain a causal factor if the independent investigation takes it into account without determining that the adverse action was, apart from the supervisor's recommendation, entirely justified.'' Id., 421. In other words, ''if the independent investigation relies on facts provided by the biased supervisor . . . then the employer (either directly or through the ultimate decision maker) will have effectively delegated the [fact-finding] portion of the investigation to the biased supervisor.'' (Internal quotation marks omitted.) *Rajaravivarma* v. *Board of Trustees for the Connecticut State University System*, 862 F. Supp. 2d 127, 149 (D. Conn. 2012).

This court did not address the transferred intent doctrine until approximately four years after the decision in *Staub*. In *Feliciano* v. *Autozone, Inc.*, supra, 316 Conn. 67–68, the plaintiff, Doris Feliciano, appealed from the Appellate Court's affirmance of the trial court's judgment rendered in favor of the defendant, her employ-

renders the link to the supervisor's bias remote or purely contingent. The [decision maker's] exercise of judgment is also a proximate cause of the employment decision, but it is common for injuries to have multiple proximate causes. . . . Nor can the ultimate [decision maker's] judgment be deemed a superseding cause of the harm. A cause can be thought superseding only if it is a cause of independent origin that was not foreseeable.'' (Citations omitted; footnote omitted; internal quotation marks omitted.) *Staub* v. *Proctor Hospital*, supra, 562 U.S. 419–20.

er, Autozone, Inc., on, among other things, a claim that the defendant unlawfully had terminated her employment based on her national origin, religion and race, in violation of the Connecticut Fair Employment Practices Act, General Statutes § 46a-51 et seq. Specifically, the plaintiff argued that the trial court and the Appellate Court incorrectly determined that she had failed to establish the fourth prong of her prima facie case: that the circumstances surrounding her termination gave rise to an inference of discrimination based on her national origin, religion or race. Id., 77–78. The plaintiff relied on evidence of the discriminatory animus of Michael Balboni, who was a manager at Autozone, Inc. Id., 68, 75, 77–78. In particular, the plaintiff contended that this animus should have been imputed to the defendant. See id., 75, 78.

In deciding this issue, this court in *Feliciano* cited to *Staub*, noting that a supervisor's discriminatory animus may be attributed to the employer if there is a nexus between the allegedly discriminatory statements and the employer's adverse employment action, which, in that case, was its decision to terminate the plaintiff's employment. Id., 75. In *Feliciano*, however, we determined that there was not substantial evidence of a causal connection between the employer's decision to terminate the plaintiff's employment and Balboni's discriminatory comments because "there [was] no evidence that Balboni ever . . . influenced the investigation that resulted in the plaintiff's termination in any way." Id., 78. More specifically, there was no evidence that Balboni's discriminatory animus influenced the defendant's decision to terminate the plaintiff's employment. In reaching this determination, we clarified that an inference of the defendant's discriminatory intent can be made from another employee's discriminatory animus only if there is "affirmative evidence of a causal connection between [the employ-

ee's] discriminatory animus toward the plaintiff and the defendant's termination of her employment . . . ." Id., 80.

The plaintiff in *Feliciano* responded that "the jury reasonably could have disbelieved the defendant's evidence that Balboni was not involved in any way in the decision to terminate her employment, and such disbelief would be sufficient to raise a genuine issue of material fact as to Balboni's involvement." (Emphasis omitted.) Id., 78–79. We rejected this argument, explaining that disbelief of an employer's explanation for an adverse employment action is not sufficient to raise an inference of discrimination under the plaintiff's prima facie case, but, rather, such disbelief "in combination with the plaintiff's prima facie case of discrimination, may, under some circumstances, be sufficient to meet the plaintiff's ultimate burden of proving intentional discrimination . . . ." (Citations omitted; emphasis omitted.) Id., 79.

Since *Feliciano*, this court has not addressed the "cat's paw" theory again, but the Appellate Court did so in *Jones* v. *Dept. of Children & Families*, 172 Conn. App. 14, 16–17, 158 A.3d 356 (2017). In *Jones*, the plaintiff appealed from the trial court's judgment rendered in favor of the defendant. Id., 16. The trial court determined that the plaintiff had not satisfied his burden of showing intentional discrimination because he did not produce sufficient evidence for the cat's paw theory to apply. Id. The Appellate Court upheld the trial court's judgment, noting that, prior to *Staub*, the Appellate Court had recognized "a transferred intent theory that was loosely analogous to the cat's paw theory of liability articulated in *Staub*." Id., 30. In applying the *Staub* cat's paw theory, the court determined that there was no causal connection or nexus between the discriminatory animus of the employee's supervisor and the adverse

employment action, making the cat's paw theory inapplicable. Id., 31.

Based on this case law, the Appellate Court in the present case stated that any reliance on the transferred intent theory of liability, as stated in *United Technologies Corp.*, was "misplaced" because it had been replaced by the standard used in *Staub*. *Hartford Police Dept.* v. *Commission on Human Rights & Opportunities*, supra, 208 Conn. App. 775. Although it is true that, in *Feliciano*, this court followed the standard used in *Staub*, we have never held that this standard differed from or replaced the transferred intent standard from *United Technologies Corp*. First, although we may use federal case law as guidance in developing our own discrimination law, we are not bound by federal law. See, e.g., *State* v. *Commission on Human Rights & Opportunities*, 211 Conn. 464, 470, 559 A.2d 1120 (1989). Second, the two standards are more than "loosely analogous . . . ." *Jones* v. *Dept. of Children & Families*, supra, 172 Conn. App. 30. Both the *United Technologies Corp*. transferred intent theory and the *Staub* cat's paw theory require the employee to establish that discrimination animated the supervisor's actions and to show a causal connection between those actions and the adverse employment decision. The only difference between the two standards is that *Staub* requires that the supervisor with the discriminatory animus must have intended to cause an adverse employment decision. We need not decide today, however, whether this additional requirement is mandated under our state's law because, even if we assume that it is, there was substantial evidence that Kessler intended to cause the termination of Phan's employment.

The plaintiff does not dispute the referee's finding that Kessler had discriminatory animus against Phan based on his Vietnamese nationality. Rather, the plaintiff contends that there is no evidence that Kessler

intended for Phan's employment to be terminated, or, assuming he did, that there was a causal connection between Kessler's discriminatory animus and the decision to terminate Phan's employment.

As to Kessler's intent, although the plaintiff and the Appellate Court are correct that, in his memo, Kessler did not recommend termination of employment but only retraining, even if we assume that Kessler had to specifically intend for Phan's employment to be terminated and not only that some adverse employment decision take place, this is not the only evidence in the record from which the referee could have inferred Kessler's intent. Phan testified that Kessler warned him during one of their altercations that Phan "better watch what you tell me or you won't be around long." The referee credited this testimony. There also was testimony that Kessler had discussed the February, 4, 2011 incident, including the fact that Phan yelled at him, with other sergeants and members of the police department. Additionally, the referee relied on Kessler's history of discriminatory behavior. See footnote 2 of this opinion; see also *Elston* v. *Talladega County Board of Education*, 997 F.2d 1394, 1406 (11th Cir. 1993) (holding that discriminatory intent may be established by, among other things, history of discriminatory official actions); *United Technologies Corp.* v. *Commission on Human Rights & Opportunities*, supra, 72 Conn. App. 230 ("the evidence related to [the coworkers'] prior acts made it more probable that Pratt & Whitney's decision to terminate Nestor's employment was discriminatory in nature"). Given both that the level of proof required to establish a prima facie case is minimal, and that a court's review of the referee's decision is limited and highly deferential, the referee reasonably inferred from this evidence that Kessler intended for Phan's employment to be terminated. See *Board of Education* v. *Commission on Human Rights & Opportunities*, supra, 266

Conn. 503–504; *Craine* v. *Trinity College*, supra, 259 Conn. 638. The fact that there was also other evidence from which another decision maker, including this court, might have reached a different conclusion about Kessler's intent, does not change our determination that substantial evidence supports the referee's finding under our deferential standard of review.

As to the causal connection between Kessler's discriminatory animus and the decision to terminate Phan's employment, the parties' dispute centers on whether substantial evidence supported a finding that Roberts received Kessler's memo, creating the required causal connection to raise an inference of discrimination. The referee made no specific factual finding as to whether Roberts received and reviewed Kessler's memo, but, as explained, our review is not limited to those findings. Reviewing the record as a whole, we agree with the trial court that substantial evidence supported the referee's finding of a causal connection. In particular, there was evidence in the record from which the referee could have inferred that Roberts had reviewed Kessler's memo. Specifically, the referee admitted into evidence a report of disciplinary infraction that Cicero had prepared. Attached to this report were a number of documents, one of which showed that Roberts, Bernier, and Cacioli had signed off on the report, noting that they agreed with Cicero's findings. Cicero's findings, which were stated in a memo to Cacioli, were also attached to the report. Cicero's findings included a detailed discussion of Kessler's memo, the daily observation reports missing from Phan's file, and Phan's various unsatisfactory marks. Also attached to the report was Kessler's memo. Based on the attachments to the report and Roberts' sign-off on the report, the referee reasonably could have inferred that Roberts had reviewed Kessler's memo in making his decision to terminate Phan's employment.

Additionally, to raise an inference of discrimination based on the transferred intent theory, federal case law, which we find persuasive on this issue, does not require Roberts to have read Kessler's memo for it to have nonetheless influenced his decision. Rather, it is necessary only that the decision maker relied on information that was tainted by the supervising employee's discriminatory animosity.[11] See *Gusman* v. *Unisys Corp.*, 986 F.2d 1146, 1147 (7th Cir. 1993) ("[a]n employer cannot escape responsibility for wilful discrimination by multiple layers of paper review, when the facts on which the reviewers rely have been filtered by a manager [with a discriminatory animus]"); see also *Kientzy* v. *McDonnell Douglas Corp.*, 990 F.2d 1051, 1057 (8th Cir. 1993) (same); *Stoller* v. *Marsh*, 682 F.2d 971, 977 (D.C. Cir. 1982) ("When a supervisor . . . deliberately places an inaccurate, discriminatory evaluation into an employee's file, he intends to cause harm to the employee. . . . [T]he employer . . . cannot escape Title VII[12] liability

[11] The plaintiff argues that the Appellate Court correctly determined that there was no evidence in the record to support the referee's finding that Kessler's discriminatory animus influenced Roberts' decision to terminate Phan's employment. In particular, the plaintiff argues that "[a] nexus between bias and termination is especially implausible if 'the final termination decision was made after an independent review of the [employee's] performance based on concrete, objective factors' . . . . *Jones* v. *Dept. of Children & Families*, [supra, 172 Conn. App. 31]." (Footnote omitted.) The plaintiff contends that such an independent review occurred here because Roberts based his decision on his review of a package of documents regarding Phan's deficiencies.

This argument fails, however, because Roberts did not conduct any review of Phan's alleged conduct—either independently or through others not tainted by Kessler's discriminatory animus. Rather, he relied solely on the memos, complaints, and evaluations by Phan's supervisors. Reliance on these documents does not constitute an independent review or investigation in the present case because, as explained, there was evidence that Kessler's discriminatory animus influenced the creation of these documents. Notably, for example, neither Roberts nor any other untainted supervisor reviewed the video footage of the Taser incident, despite Phan's request that Roberts do so to verify Phan's recollection of events.

[12] Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (2018).

simply because the final [decision maker] was not personally motivated by discrimination." (Citation omitted; footnote added.)), cert. denied, 460 U.S. 1037, 103 S. Ct. 1427, 75 L. Ed. 2d 787 (1983). The referee reasonably could have inferred from substantial evidence in the record that Kessler's memo and complaints influenced other sergeants to complain about Phan's attitude, which never had been an issue, and that these complaints were included in the memos that Roberts reviewed in making his decision to terminate Phan's employment. Importantly, as to which documents Roberts reviewed in making his decision to terminate Phan's employment, the referee specifically found that Roberts received Bergenholtz' June 16, 2011 memo,[13] which stated that "Phan was found to have been less than truthful with several other supervisors during his probationary review period . . . . Phan previously demonstrated a poor attitude and an unprofessional demeanor when dealing with supervisors . . . ." Bergenholtz testified that his findings were based in part on "input from the supervisors who directly interacted with . . . Phan" and that he obtained input via "phone calls, emails, [and] through memos" such as Kessler's. From this evidence, the referee reasonably inferred that references in Bergenholtz' June 16, 2011 memo about multiple instances of a poor attitude with supervisors referred to the complaints from Kessler and other supervisors.

There was also substantial record evidence to support the referee's finding that the complaints from other supervisors referenced in Bergenholtz' memo were influenced by Kessler's memo and vocal complaints, and thus Kessler's animus tainted Roberts' decision. In particular, there was evidence from which the referee

[13] Although not disputed, this finding is supported by Bergenholtz' testimony that he sent this memo with his findings to Roberts and the director of human resources, who, together, decided to terminate Phan's employment.

determined that Kessler, Cicero, and Marinelli were friends—specifically, testimony that they were promoted to sergeant together and socialized outside of work.[14] There also was evidence that Kessler complained to other supervisors about Phan's attitude. For example, there was evidence that Cicero saw Kessler's memo to Bergenholtz because Cicero's March 28, 2011 memo specifically summarizes Kessler's memo. There also was evidence that Rousseau, who revived the investigation into Phan's missing hat piece after the Kessler incidents, was present during the meeting with Phan and Bergenholtz when Bergenholtz addressed Kessler's allegation that Phan had yelled at him. As to Yergeau, who wrote the incorrect and discredited memo about the Taser incident without investigating Phan's side of the story, there was evidence that Kessler had talked to him about Phan.

Finally, there was evidence of a temporal connection[15] between Kessler's memo and the complaints about Phan,

[14] The plaintiff disputes this finding because there was competing testimony in the record showing that these men rarely socialized and were not friends. The referee explicitly did not credit Kessler's competing testimony that these men were not friends but, rather, explicitly credited the testimony that these men socialized outside of work and had been promoted together, from which the referee reasonably inferred their friendship. In reviewing whether substantial evidence supports a factual finding, we cannot rely on uncredited testimony. Moreover, the fact that there was evidence going both ways does not lead us to conclude that substantial evidence did not support the referee's finding of friendship among the three men. Additionally, the plaintiff argues, even if the finding of friendship is not error, this finding cannot raise an inference of discrimination because it improperly presumes that friends will lie for each other. The plaintiff misunderstands the relevance of this evidence. The fact that these men were friends, coupled with Kessler's having complained to them about Phan and the timing of their complaints about Phan's attitude, together raised an inference that Kessler's discriminatory animus influenced their reviews of Phan's performance.

[15] The plaintiff contends that the referee placed too strong of an emphasis on the temporal proximity of these acts. It argues that Kessler's discriminatory remarks were too remote relative to the termination of Phan's employment because several layers of review preceded Phan's termination after Kessler's memo. This argument, however, assumes that Kessler's memo and comments did not influence the other layers of review. As discussed, there

and Phan's having been given negative marks in overall attitude from other supervisors.[16] Specifically, prior to February 4, 2011, none of Phan's evaluations noted confrontational or argumentative behavior. Then, in Phan's daily observation report for February 4, 2011, Cicero noted that Phan had been "confrontational [and] argumentative." Similarly, on February 8, 2011, Marinelli gave Phan an unsatisfactory evaluation, noting that Phan had been "resistant, challenging" Marinelli's orders. Later, in Phan's February, 2011 summary evaluation, Bergenholtz inaccurately noted that Phan had received unsatisfactory remarks in overall attitude throughout his probationary period, having been "argumentative" with two supervisors.[17]

was substantial evidence from which the referee could infer that Kessler's memo and comments in fact influenced the other layers of review. See *Rossova* v. *Charter Communications, LLC*, 211 Conn. App. 676, 701–702, 273 A.3d 697 (2022) ("[T]he [employer] mistakenly conflates the concept of temporal proximity evidence with evidence establishing a sequence of events that transpired following the [supervisor's discriminatory comments]. . . . [T]he broader sequence of events leading up to and including an adverse employment decision provides important context that may establish whether there exists a nexus between those two events.").

[16] The plaintiff argues that "the referee's reliance on the fact that Phan's evaluations worsened after the Kessler incidents . . . is 'a textbook illustration of the post hoc ergo propter hoc fallacy.' . . . [Although] 'temporal proximity' can be a piece of the causation puzzle . . . that the Kessler incidents and some of Phan's poor evaluations 'occurred in sequence . . . is insufficient to establish the requisite causal connection.' " (Citations omitted.) But it is not only the fact that Phan received poor evaluations after the incidents with Kessler that allowed the referee to infer a causal connection between Kessler's discriminatory animus and the termination of Phan's employment; rather, the connection is also based on the fact that Phan received multiple, negative reviews regarding his attitude, specifically for being argumentative and confrontational, after the incidents with Kessler, when he never had received similar reviews before the incidents with Kessler. This shows a sequence of events from which the referee could infer a causal connection. See *Rossova* v. *Charter Communications, LLC*, 211 Conn. App. 676, 701–702, 273 A.3d 697 (2002).

[17] Although Phan had received two prior unsatisfactory marks in attitude, neither evaluation contained any note about confrontational and/or argumentative behavior. The first unsatisfactory mark in overall attitude occurred on November 20, 2010, but the note accompanying this mark did not state that Phan was argumentative or confrontational but only that he lacked

From these findings of fact, the referee reasonably inferred that the "two supervisors" referenced in Bergenholtz' memo included either Kessler or two supervisors who were tainted by Kessler's memo and vocal complaints about Phan. Thus, substantial evidence supports the referee's finding that Kessler's discriminatory animus influenced the reviews and complaints of other supervisors. This, in turn, provides substantial evidence for the referee's finding that Bergenholtz' reliance on Kessler's memo and the memos of the other supervisors tainted by Kessler's discriminatory animosity allowed for Kessler's discriminatory animus to influence Bergenholtz' memo, which, in turn, influenced the decision of Roberts, who indisputably considered Bergenholtz' memo in making his decision to terminate Phan's employment without conducting any additional, independent investigation.

Nevertheless, the plaintiff argues that the Appellate Court correctly determined that no record evidence supports the referee's finding that Kessler influenced other supervisors to negatively review Phan's attitude.[18]

initiative and had to be told what to do multiple times. The second unsatisfactory mark occurred on December 21, 2010, but the note accompanying this mark merely stated that Phan had been absent and unavailable when needed.

[18] The plaintiff and the Appellate Court improperly relied on *Jones* in asserting that there was not substantial evidence in the present case to raise an inference of discrimination because, as in *Jones*, there was no evidence of a causal connection. This reading of *Jones* ignores our standard of review. In *Jones*, the court was reviewing a trial court's failure to employ the cat's paw theory to find liability. Examining the evidence, the Appellate Court held that substantial evidence supported the trial court's finding of no nexus between the supervisor's discriminatory animus and the termination of the plaintiff's employment. As we explained, the relevant evidentiary standard for making out a prima facie case in combination with the more deferential standard of review of an administrative agency decision allow for the possibility that one fact finder might come to a conclusion different from another fact finder on the same evidence and neither would be reversible. Thus, in *Jones*, the Appellate Court determined that the evidence at issue was sufficient to support the trial court's finding. But that does not mean that the same evidence would not also sufficiently support the opposite finding of a causal connection.

In so arguing, the plaintiff, like the Appellate Court, relies on the fact that there was no direct evidence that Kessler's comments and memo motivated the other sergeants because they all testified that they were not so motivated, and, thus, Kessler played no part in the decision to terminate Phan's employment, as he did not influence the actual decision maker. This argument ignores the fact that the referee found the testimony that they were friends credible over the testimony that the sergeants were not friends, that they did not discuss Phan with Kessler, and that they were not influenced by Kessler. Additionally, this argument ignores the evidence already discussed, which supported the referee's finding that Kessler's comments and memo in fact influenced the reviews of Phan by other supervisors.[19]

Accordingly, substantial record evidence supported the referee's finding of a causal connection between Kessler's discriminatory animus and the decision to terminate Phan's employment, raising an inference of discrimination.

III

Because we conclude that the referee correctly determined that Phan had established his prima facie case, we must address the Appellate Court's alternative holding that substantial evidence did not support the referee's finding of intentional discrimination. We conclude to the contrary that substantial record evidence supports the referee's finding of intentional discrimination.

An employee may satisfy his burden of establishing intentional discrimination, "either directly, with evidence that the employer was motivated by a discrimina-

[19] Like the Appellate Court, the plaintiff contends that disbelief of these supervisors' testimony is not enough to establish a causal connection. But, as we explained, the referee did not merely rely on her disbelief of their testimony to find a causal connection but also on other circumstantial evidence.

tory reason, or indirectly, by proving that the reason given by the employer was pretextual. . . . [E]vidence establishing the falsity of the legitimate, nondiscriminatory reasons advanced by the employer may be, in and of itself, enough to support the trier of fact's ultimate finding of intentional discrimination." (Citations omitted; internal quotation marks omitted.) *Jacobs* v. *General Electric Co.*, 275 Conn. 395, 401, 880 A.2d 151 (2005).

In applying this standard, we previously have addressed some confusion over the scope of the plaintiff's burden—specifically, whether the plaintiff must establish both that the employer's proffered nondiscriminatory reason was false and that a discriminatory reason motivated the employer's adverse employment actions. See id., 402–403. On two prior occasions, however, this court has resolved this issue in line with case law from the United States Court of Appeals for the Second Circuit. See id., 403, citing *Gordon* v. *Board of Education*, 232 F.3d 111, 117 (2d Cir. 2000); *Board of Education* v. *Commission on Human Rights & Opportunities*, supra, 266 Conn. 511–12. For example, in *Board of Education* v. *Commission on Human Rights & Opportunities*, supra, 492, the plaintiff employer argued that, to establish pretext, the defendant employee must establish "both that the [employer's stated] reason was false, and that discrimination was the real reason." (Emphasis omitted; internal quotation marks omitted.) Id., 511. We rejected this argument, explaining that the United States Supreme Court specifically has held "that evidence establishing the falsity of the legitimate, nondiscriminatory reasons advanced by the employer may be, in and of itself, enough to support the trier of fact's ultimate finding of intentional discrimination." Id.; see also *Reeves* v. *Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147–48, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000). Thus, in the present case, Phan was not required

to establish both that the plaintiff's proffered reasons were false and that discrimination was the real reason for the termination of his employment.

"In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the [fact finder] is entitled to consider a party's dishonesty about a material fact as affirmative evidence of guilt. . . . Moreover, once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for its decision. . . . Thus, a [complainant's] prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." (Internal quotation marks omitted.) *Board of Education* v. *Commission on Human Rights & Opportunities*, supra, 266 Conn. 508–509. For falsity to establish pretext, the plaintiff "must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable [fact finder] could rationally find them unworthy of credence, and hence infer that the employer did not act for [the asserted nondiscriminatory] reasons." (Internal quotation marks omitted.) *Tomasso* v. *Boeing Co.*, 445 F.3d 702, 706 (3d Cir. 2006).

"This is not to say that such a showing by the [complainant] will always be adequate to sustain a [fact finder's] finding of liability. Certainly, there will be instances [in which], although the [complainant] has established a prima facie case and set forth sufficient evidence to reject the [employer's] explanation, no rational [fact finder] could conclude that the action was

discriminatory." (Internal quotation marks omitted.) *Board of Education* v. *Commission on Human Rights & Opportunities*, supra, 266 Conn. 509. "For instance, an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, or if the [complainant] created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred." (Internal quotation marks omitted.) *Perez-Dickson* v. *Bridgeport*, 304 Conn. 483, 516, 43 A.3d 69 (2012). In determining pretext—specifically, in determining whether the record conclusively reveals some other nondiscriminatory reason for the employer's decision—we caution courts reviewing administrative decisions of a referee that this determination must be made while applying our highly deferential standard of review, which requires that a reviewing court abide by a referee's credibility findings and requires a relatively low level of proof, i.e., "something less than the weight of the evidence . . . ." (Internal quotation marks omitted.) *Stratford Police Dept.* v. *Board of Firearms Permit Examiners*, supra, 343 Conn. 81. We emphasize that this standard is more deferential than the standard of review applied to findings of fact made by trial courts or juries. See *Board of Education* v. *Commission on Human Rights & Opportunities*, supra, 503–504. In General Statutes §§ 46a-57 (b) and 46a-84 (b) (1), the legislature explicitly created a forum and a procedure for addressing workplace discrimination claims, and that procedure is accompanied by specific "limitation[s] on the power of the courts to overturn a decision of [the] administrative agency . . . ." (Internal quotation marks omitted.) *Dufraine* v. *Commission on Human Rights & Opportunities*, 236 Conn. 250, 260, 673 A.2d 101 (1996).

Besides falsity of the proffered reasons, other circumstances from which a fact finder may find pretext include "prior treatment of [the] plaintiff; the employer's policy and practice regarding minority employment (including statistical data); disturbing procedural irregularities (e.g., falsifying or manipulating . . . criteria); and the use of subjective criteria." (Internal quotation marks omitted.) *Jaramillo* v. *Colorado Judicial Dept.*, 427 F.3d 1303, 1308 (10th Cir. 2005). "[L]ow evaluation scores may be a pretext for discrimination, especially [when] . . . an employer uses subjective criteria such as 'attitude' and 'teamwork' to rate its employees." *Tomasso* v. *Boeing Co.*, supra, 445 F.3d 706.

To establish pretext when an employer proffers more than one reason for terminating an employee's employment, the employee generally must submit evidence showing that "each of the employer's justifications is pretextual. . . . However, we recognize that when the plaintiff casts substantial doubt on many of the employer's multiple reasons, the [fact finder] could reasonably find the employer lacks credibility. Under those circumstances, the [fact finder] need not believe the employer's remaining reasons." (Citation omitted; internal quo tation marks omitted.) *Bryant* v. *Farmers Ins. Exchange*, 432 F.3d 1114, 1126 (10th Cir. 2005); see also *Tomasso* v. *Boeing Co.*, supra, 445 F.3d 707; *Jaramillo* v. *Colorado Judicial Dept.*, supra, 427 F.3d 1308.

In the present case, the plaintiff asserted that its reasons for terminating Phan's employment were "his overall pattern of poor performance, as well as three incidents: (1) lying in an official police report about having lost his hat and hat piece; (2) concealing [his] [d]aily [o]bservation [r]eports; and (3) being untruthful when questioned about a Taser incident." (Internal quotation marks omitted.) *Hartford Police Dept.* v. *Commission on Human Rights & Opportunities*, supra, 208 Conn. App. 785–86. The referee did not believe

these reasons, finding: "The untimely investigation into [Phan's] hat piece, followed by the one-sided investigation into [Phan's] decision not to use his Taser, and the completely discredited testimony of several of [the plaintiff's] witnesses attempting to illustrate [Phan's] untruthfulness regarding the Taser incident, are more than sufficient evidence to prove pretext. There are too many contradictions and inconsistencies to believe that [the plaintiff's] termination of [Phan's employment] was legitimate."

The referee did not find the plaintiff's reliance on Phan's lying in the police report about the lost hat piece to be a credible reason because the referee credited Phan's testimony that this issue reemerged only after Kessler and then other sergeants complained about Phan's attitude, nearly one year after the event. In addition to this temporal proximity, the referee determined that this reason was false because there was a one-sided investigation into Phan's truthfulness. The referee's credibility determination is supported by evidence showing that, although Phan told his supervisors that Boland had ordered him to include the false information in his police report, the investigation into the missing hat piece incident did not include interviewing Boland, and the final investigation report did not mention Phan's allegations that Boland had told him to add the false information. The referee also credited Phan's testimony that Rousseau and Bergenholtz did not raise any issues about his truthfulness with him at the time of the hat piece incident but instead that Phan had learned about these issues after his employment was terminated when he reviewed the relevant documents he had received during the discovery phase of this case. These facts support the referee's finding that the hat piece incident was pretextual, masking discriminatory purposes embedded in the termination of Phan's employment.

As to the plaintiff's reliance on Phan's alleged untruthfulness when questioned about the Taser incident, the referee did not find this to be a credible reason for the termination of Phan's employment either. Rousseau testified that his review of the video of the Taser incident contributed to his belief that Phan had lied about not hearing Ruiz and Hopkins order him to use his Taser and about not having had a clear shot at the suspect. The referee specifically found Rousseau not credible, however, because, despite his adamant contention that Phan had a clear shot at the suspect during the tussle, Rousseau could not correctly identify the suspect in the video. Further, after her independent review of the video, the referee agreed with Phan that he did not have a clear shot at the suspect. Because of the flaws in Rousseau's testimony and the report about the Taser incident, the referee explicitly found Phan's version of events more credible than the plaintiff's. Specifically, although the referee did not explicitly find that Phan told the truth about not hearing an order to use his Taser, she credited Phan's testimony that, despite Yergeau's writing in a report that Phan ultimately admitted to having heard the order to use his Taser, Phan never said that and maintained that he never heard any order to use his Taser. Additionally, the referee found that no independent investigation was done to confirm or disprove Phan's version of events. Accordingly, the record supports the referee's underlying factual findings that support her conclusion that this reason was pretextual, and we also must defer to the referee's credibility determinations.

The trial court did not specifically address the defendant's third proffered reason for Phan's termination: concealing his daily observation reports. However, in support of her finding of pretext, the referee relied on the changes in Phan's performance evaluations, in

particular, in the area of attitude. As we already explained, the referee found, and the record supports, that Kessler's discriminatory animus influenced other supervisors to complain about Phan's poor attitude and truthfulness, creating skepticism about any of the supervisor's complaints, including the issue with the missing daily observation reports. See *Jaramillo* v. *Colorado Judicial Dept.*, supra, 427 F.3d 1308. Additionally, the referee questioned Cicero's credibility, calling into question the veracity of his memo regarding the missing daily observation reports, because Phan's reports did not support the allegations in Cicero's memos about Phan's alleged conduct. Thus, the record supports the referee's finding that all three of the plaintiff's proffered reasons were false.

Under governing case law, the referee's finding of falsity, coupled with Phan's prima facie case, is sufficient to establish pretext. See *Board of Education* v. *Commission on Human Rights & Opportunities*, supra, 266 Conn. 508–509. This finding of falsity, however, was not the only factor the referee considered in determining that Phan had established his claim of intentional discrimination. In addition to not believing the plaintiff's proffered reasons, the referee relied on the following evidence in making a finding of pretext: the nexus between Kessler's discriminatory animus and Roberts' decision to terminate Phan's employment; Kessler's past history of discriminatory conduct; the increase in negative marks regarding Phan's attitude, a subjective criterion by nature; the temporal proximity of raising the hat piece issue again soon after Kessler's memo; and the inadequate investigation into Phan's allegations about the two incidents with Kessler, the Taser incident, and the incident with Boland and Weston regarding the report of the lost hat piece. These factors, in combina-

tion with Phan's prima facie case and the referee's disbelief of the plaintiff's proffered reasons, further support the referee's finding of pretext.

Nevertheless, the plaintiff argues that "a claim of pretext falters in the face of 'contemporaneous evidence' of poor performance," including documentation of dishonesty, unprofessional behavior, and unsatisfactory job performance from both before and after the incidents with Kessler. As we explained, this argument fails because the referee was justified in finding that Kessler's discriminatory animus influenced a majority of this documentation. As to the unsatisfactory job performance reviews before the incidents with Kessler, as explained, none involved allegations of argumentative or confrontational behavior. The referee found this sudden change in a highly subjective criterion to be pretextual. See *Tomasso* v. *Boeing Co.*, supra, 445 F.3d 706; see also *Williams* v. *Daiichi Sankayo, Inc.*, 947 F. Supp. 2d 1234, 1251 (N.D. Ala. 2013) ("in some instances when a factual dispute exists over a particular evaluation of an employee, a sudden change in evaluation can be evidence of pretext"). Based on that and the referee's determination that the plaintiff's witnesses lacked credibility as a result of their inconsistent testimony, the referee reasonably determined that she could not credit or rely on these documents. As a result of these credibility determinations, coupled with our well established administrative law principles—including those concerning review of decisions of an agency that the legislature established to adjudicate workplace discrimination claims—we will not disturb a referee's factual findings when supported by substantial evidence, as they are here.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion the other justices concurred.

IN RE ELAINE M. COLE
(SC 20746)

Robinson, C. J., and McDonald, D'Auria,
Mullins, Ecker and Alexander, Js.

Syllabus

Pursuant to statute (§ 55-3), "[n]o provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have a retrospective effect."

In November, 2021, the debtor, C, filed a bankruptcy petition under chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Connecticut, claiming, inter alia, a statutory (§ 52-352b (21)) homestead exemption in the amount of $250,000. The public act (P.A. 93-301) that created the homestead exemption allowed a debtor to protect up to $75,000 of the value of his or her primary residence from attachment in postjudgment or bankruptcy proceedings. Public Act 93-301, however, included a carve-out whereby the homestead exemption could not be claimed for debts accrued prior to the act's effective date of October 1, 1993. The legislature subsequently passed an amendment (P.A. 21-161), effective October 1, 2021, that repealed the previous version of § 52-352b and replaced it with a new version, which increased the homestead exemption from $75,000 to $250,000 but did not include any carve-out for preexisting debts. The trustee of the bankruptcy estate objected to C's claimed homestead exemption of $250,000, arguing that, although her bankruptcy proceeding was commenced after October 1, 2021, all of her debts were incurred prior to that date. Relying on the principle embodied in § 55-3, the parties focused their arguments before the Bankruptcy Court on the issue of whether P.A. 21-161 enacted a procedural amendment, which presumptively applies retroactively, or a substantive amendment, which presumptively applies only prospectively. The Bankruptcy Court overruled the trustee's objection, concluding that the amendment was intended to apply retroactively to preexisting debts and, accordingly, that C was entitled to the $250,000 homestead exemption. The trustee appealed from the decision of the Bankruptcy Court to the United States District Court for the District of Connecticut, which certified to this court a question concerning whether P.A. 21-161 applied retroactively or only prospectively to debts incurred by a debtor before that act took effect. *Held*:

1. This court concluded, as a threshold matter, that the answer to the certified question was a matter of state, rather than federal, law for choice of law purposes:

Under the federal statute (11 U.S.C. § 522 (b) (3) (A)) specifying what property can be exempted from a debtor's chapter 7 bankruptcy estate, a debtor may protect "any property that is exempt under . . . State or local law that is applicable on the date of the filing of the petition," and, accordingly, this court clarified that the question presented by this appeal was whether the expanded homestead exemption contained in P.A. 21-161 was applicable to C's case, given that the expanded exemption was in effect when her bankruptcy petition was filed but not when her underlying debts were incurred.

Moreover, in determining whether the applicability of a state exemption statute, as recognized under 11 U.S.C. § 522 (b) (3) (A), is a matter of federal bankruptcy law or state law, this court recognized that there is a split of federal authority on this choice of law question but assumed that the Bankruptcy Court would adhere to the rule adopted by the United States Court of Appeals for the Second Circuit, pursuant to which state law governs.

2. The expanded, $250,000 homestead exemption set forth in P.A. 21-161 applies in bankruptcy proceedings filed on or after October 1, 2021, the effective date of the act, regardless of when the underlying debts accrued:

a. The trustee could not prevail on his claim that the expanded homestead exemption does not apply to debts incurred prior to the effective date of P.A. 21-161:

P.A. 21-161 was silent as to the accrual date of the debts that are the subject of the postjudgment or bankruptcy proceeding governed by the amended homestead exemption, nothing in the language of the act indicated that the legislature had intended to carve out preexisting debts from the reach of that exemption, and § 52-352b, as part of the statutory scheme that regulates postjudgment procedures, simply defines what property is exempt, that is, what property is not subject to any court order for purposes of debt collection.

b. This court rejected the trustee's claim that it should find in P.A. 21-161 an implicit carve-out for debts accrued prior to the act's October 1, 2021 effective date insofar as the legislature had included such a carve-out in P.A. 93-301:

The trustee's argument that the legislature, having been aware of the carve-out language in P.A. 93-301, would have clearly indicated if it had intended not to include a similar carve-out for preexisting debts in P.A. 21-161 was unavailing because it was inconsistent with basic rules of statutory interpretation, pursuant to which the fact that the legislature included a special carve-out for preexisting debts in the original homestead exemption but did not include one in P.A. 21-161 indicated an

intent not to exclude preexisting debts from the scope of the expanded homestead exemption set forth in P.A. 21-161.

c. There was no merit to the trustee's claim that this court should find in P.A. 21-161 an implicit carve-out for debts accrued prior to the act's October 1, 2021 effective date because a failure to do so would improperly give the act retroactive effect without the express authorization of the legislature:

Although the parties' arguments centered primarily around the issue of whether P.A. 21-161 was a procedural or substantive amendment for purposes of § 55-3, which applies only if the amendment has a "retrospective effect," this court concluded that § 55-3 did not apply to the present case because the increased homestead exemption set forth in P.A. 21-161 did not constitute retroactive legislation when C's bankruptcy proceeding was initiated after the effective date of the act.

Moreover, because it is not always apparent whether a new law has a "retrospective effect," especially when the statutory changes solely alter the future, rather than the past, legal consequences of previous transactions or occurrences, this court looked to the approaches taken by the United States Supreme Court in *Landgraf* v. *USI Film Products* (511 U.S. 244), in which the majority concluded that a new statute has a retroactive effect if it impairs established rights of the parties, imposes new duties or obligations that they could not reasonably have anticipated, or disturbs other reasonable, settled expectations, and in which the concurrence concluded that the focus of the retroactivity inquiry should not be on whether the amendment affects vested rights but, rather, on the relevant activity that the amendment regulates, and clarified that both approaches were part of a proper retroactivity analysis under Connecticut law.

The application of P.A. 21-161 to preexisting debts would not constitute a retroactive application under either of the *Landgraf* approaches.

Specifically, under the majority's approach in *Landgraf*, there was no claim that P.A. 21-161 imposed any new duties or obligations on the parties, and applying the increased homestead exemption to preexisting debts would not be fundamentally unfair, insofar as it allegedly would frustrate the settled expectations of unsecured lenders who extended credit to C while the lower, $75,000 exemption was in place, because there was no evidence in the record that C's unsecured creditors ever considered the equity in C's home or relied on the size of the homestead exemption when they decided to extend C credit, and the creditors were presumed to have been aware that the legislature could increase the size of the homestead exemption at any time and that their rights might otherwise be adversely impacted by changes in federal or state law.

Furthermore, under the concurrence's approach in *Landgraf*, applying P.A. 21-161 to preexisting debts would not qualify as a retroactive application of the law because the accrual of those debts was not the primary or principal activity that the act sought to regulate, insofar as § 52-352b is part of a chapter of the General Statutes that deals with postjudgment procedures, neither the original 1993 homestead exemption nor the 2021 amendment made any reference to the source or nature of the underlying debts involved, instead focusing entirely on the enforcement process, and, accordingly, it was clear that the purpose of the 2021 amendment was to specify the exemptions that were presently available to the debtor.

Argued December 12, 2022—officially released July 18, 2023

Procedural History

Petition for bankruptcy relief, brought to the United States Bankruptcy Court for the District of Connecticut, where the court, *Tancredi*, *J.*, overruled the trustee's objection to the debtor's claim for a homestead exemption, and the trustee appealed to the United States District Court for the District of Connecticut, where the court, *Bolden*, *J.*, certified a question of law to this court concerning whether No. 21-161, § 1, of the 2021 Public Acts applied retroactively to debts incurred by the debtor before the act took effect.

Jeffrey Hellman, for the appellant (trustee).

Jenna N. Sternberg, for the appellee (debtor).

Opinion

McDONALD, J. In 1993, the legislature, for the first time, enacted a so-called "homestead act," whereby a debtor could protect up to $75,000 of the value of a primary residence from attachment in postjudgment proceedings or bankruptcy. See Public Acts 1993, No. 93-301, § 2 (P.A. 93-301). Although P.A. 93-301 had an effective date of October 1, 1993, and thus applied to any proceedings initiated on or after that date, the act included a special carve-out: the homestead exemption could not be claimed for debts accrued prior to the

effective date.[1] See P.A. 93-301, § 3. In 2021, the legislature amended the homestead act and replaced it with a new version that included several changes from the prior version of the act. For purposes of this appeal, the relevant change made by the legislature was to increase the exemption from $75,000 to $250,000,[2] but this time the legislature did not include any carve-out for preexisting debts. See Public Acts 2021, No. 21-161, § 1 (P.A. 21-161). The primary question presented by this appeal, which reaches us in the form of a certified question in a bankruptcy appeal from the United States District Court for the District of Connecticut, is whether we should nevertheless read a carve-out into the 2021 public act. We decline to do so.

I

On November 22, 2021, the debtor, Elaine M. Cole, filed a petition for bankruptcy relief under chapter 7 of the United States Bankruptcy Code; 11 U.S.C. § 701 et seq. (2018); in the United States Bankruptcy Court for the District of Connecticut. *In re Cole*, 642 B.R. 208, 211 (Bankr. D. Conn. 2022). At that time, the debtor owned a home in Mystic that she valued at $589,000, with equity of more than $350,000, and that was under contract for sale. See id., 211, 213. Pursuant to General Statutes § 52-352b (21), she claimed a homestead exemption in her home in the amount of $250,000. See id., 211, 214.

The trustee of the bankruptcy estate, Anthony S. Novak, objected to the claimed homestead exemption. Id., 211. The trustee argued, among other things, that the debtor could not use the increased homestead amount because, although the bankruptcy proceeding was commenced

[1] The relevant statutory language is set forth in part II B 2 of this opinion.

[2] The act maintained the $75,000 exemption for money judgments arising out of certain tort claims that are not relevant to the present case. Public Acts 2021, No. 21-161, § 1; see also part II B 1 of this opinion.

after the October 1, 2021 effective date of P.A. 21-161, § 1, all of the debtor's debts were incurred prior to that date. See id., 211–12.

Relying on the principle, embodied in General Statutes § 55-3,[3] that procedural amendments to a statute presumptively apply retroactively, whereas substantive amendments presumptively apply only prospectively; see, e.g., *State* v. *Nathaniel S.*, 323 Conn. 290, 295, 146 A.3d 988 (2016); the arguments of the parties before the Bankruptcy Court centered around the question of whether P.A. 21-161, § 1, enacted a procedural or substantive amendment to the homestead act. See *In re Cole*, supra, 642 B.R. 212, 218. The Bankruptcy Court, focusing less on the procedural/substantive distinction and more on various canons of statutory construction, concluded that the amendment was intended to apply "retroactively" to preexisting debts. Id., 220–24. Accordingly, the court overruled the trustee's objection and concluded that the debtor was entitled to the $250,000 homestead exemption. Id., 224.

The trustee appealed from the decision of the Bankruptcy Court to the United States District Court for the District of Connecticut. The District Court indicated that it was inclined to agree with the conclusion of the Bankruptcy Court that P.A. 21-161, § 1, applies to preexisting debts in any bankruptcy proceeding brought on or after the effective date. Nevertheless, the District Court determined that the absence of an authoritative state court decision, the importance of the issue, and the capacity of certification to resolve the litigation all counseled for certification of the question to this court. The District Court therefore certified to this court the

[3] General Statutes § 55-3 provides: "No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have a retrospective effect."

We will use the terms "retrospective" and "retroactive" interchangeably.

question of "[w]hether [P.A.] 21-161 applies retroactively to debts incurred by the debtor before [P.A.] 21-161 took effect or prospectively." We accepted certification but, pursuant to General Statutes § 51-199b (k), and for the reasons discussed in part II B 3 of this opinion, we will answer a slightly modified version of the certified question: does the expanded homestead exemption contained in P.A. 21-161, § 1, apply in bankruptcy proceedings filed on or after the effective date of the act to debts that accrued prior to that date? We answer that question in the affirmative.

II

A

Because the certified question involves the intersection of federal bankruptcy law and Connecticut law governing postjudgment proceedings, we first must determine, as a threshold matter, whether the answer is dictated by federal or state law. As we explain more fully hereinafter, although there is a split of federal authority on this question, we assume that the Bankruptcy Court will adhere to the choice of law rule that has been adopted by the United States Court of Appeals for the Second Circuit, pursuant to which state substantive law governs. See, e.g., *CFCU Community Credit Union* v. *Hayward*, 552 F.3d 253, 259 (2d Cir. 2009).

The federal statute at issue is 11 U.S.C. § 522, which specifies what property can be exempted from a debtor's chapter 7 bankruptcy estate.[4] The statute provides that, by default, debtors can choose to avail themselves

[4] "Under the [federal Bankruptcy] Code, all property of the debtor, including exempt property, initially becomes part of the bankruptcy estate. The debtor is thereafter permitted to assert exemptions by filing a list of property that he or she claims as exempt. . . . [T]he exemptions augment the debtor's 'fresh start' by allowing the debtor to take back certain assets from the bankruptcy estate." (Citations omitted.) *Gernat* v. *Belford*, 192 B.R. 601, 603 (D. Conn.), aff'd sub nom. *In re Gernat*, 98 F.3d 729 (2d Cir. 1996).

of either the limited exemptions that are afforded under federal bankruptcy law or, if more generous, the exemptions afforded under state, local, or other federal law.[5] That provision, now codified at 11 U.S.C. § 522 (b), was enacted in 1978, prior to the original Connecticut homestead act.

Section 522 provides in relevant part that a debtor who opts for the alternative exemption can protect "any property that is exempt under Federal [nonbankruptcy] law . . . or State or local law that is *applicable* on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition . . . ." (Emphasis added.) 11 U.S.C. § 522 (b) (3) (A) (2018). So, the question presented by this appeal is whether Connecticut's homestead exemption, as increased under P.A. 21-161, § 1, is *applicable* to the debtor's case, given that the amended, $250,000 homestead exemption was in effect when her bankruptcy petition was filed on November 22, 2021, but not when the underlying debts accrued.

The threshold question is whether the applicability of a state exemption statute, as recognized under 11 U.S.C. § 522, is determined by federal bankruptcy law, which would preempt any contrary state law under the supremacy clause of the United States constitution; see U.S. Const., art. VI, cl. 2; or is a matter of state law because the intent of Congress was to incorporate state exemption law fully into the Bankruptcy Code. The

[5] Under the Bankruptcy Code, states can choose to opt out of the federal bankruptcy exemptions, so that only those afforded by state law are available in a federal bankruptcy proceeding conducted in that state. See 11 U.S.C. § 522 (b) (2) (2018). Approximately one third of the states, including Connecticut, have not opted out. See, e.g., G. Sullivan, "A Fresh Start to Bankruptcy Exemptions," 2018 BYU L. Rev. 335, 339 (2018); J. Salisbury, Note, "Are They or Aren't They 'Retirement Funds'? The Case for Including Funds from an Inherited IRA in a Debtor's Bankruptcy Estate," 80 Mo. L. Rev. 871, 884 n.142 (2015).

federal courts of appeals and other federal courts are divided on this question. See, e.g., J. Lockhart, Annot., "What Constitutes State or Local Law That Is Applicable on Date of Filing of Bankruptcy Petition for Purposes of Applying 11 U.S.C.A. § 522 (b) (3) (A) or Its Predecessor in Opt-Out States," 76 A.L.R. Fed. 2d 333, 405–12, §§ 27–28 (2013).

Some courts have held that, under 11 U.S.C. § 522, the Bankruptcy Code preempts any contrary state law, and, therefore, any state exemption statutes in effect at the time a bankruptcy petition is filed apply, regardless of whether the state legislature intended a particular exemption statute to apply only prospectively, retroactively, or only under certain circumstances. See, e.g., *In re Morinia*, Docket No. 11-07-12803 SA, 2008 WL 5157501, *3 (Bankr. D.N.M. August 13, 2008); *In re Skjetne*, 213 B.R. 274, 275, 278 (Bankr. D. Vt. 1997). As the United States Bankruptcy Appellate Panel of the First Circuit explained, "we must discern the outer limits of a state law's ability to control an exemption's operative characteristics in the bankruptcy universe." *In re Leicht*, 222 B.R. 670, 677 (B.A.P. 1st Cir. 1998). "[A]lthough through § 522 (b) Congress provided states with the opportunity to define the category and content of exemptions resident debtors may invoke in bankruptcy (going so far as to authorize states to opt out of the federal exemption scheme), it defined the operative effect of exemptions in bankruptcy through [§] 522 (c) and (f). . . . As a consequence, those provisions of the [state] homestead statute that limit the exemption's vitality against certain categories of claims cannot hold sway against conflicting [Bankruptcy] Code provisions." (Internal quotation marks omitted.) Id. On this view, the answer to the certified question would be easy: because P.A. 21-161, § 1, took effect prior to the date the debtor's bankruptcy petition was filed, the new,

higher exemption would apply as a matter of federal law.

The Second Circuit, however, has reached a different conclusion with respect to the choice of law question, holding that whether and to what extent an exemption is applicable on the date a petition is filed is a matter solely of state law. See *CFCU Community Credit Union* v. *Hayward*, supra, 552 F.3d 259 ("[although] federal law governs the date on which the exemption comes into play, [state] law governs the nature and scope of the exemption"); see also *First National Bank of Mobile* v. *Norris*, 701 F.2d 902, 905 (11th Cir. 1983) (rejecting argument that 11 U.S.C. § 522 preempts state law regarding retroactive application of homestead amendments). We assume that the Bankruptcy Court will adhere to Second Circuit law on this point. See, e.g., *In re Pratt & Whitney Co.*, 140 B.R. 327, 331 (Bankr. D. Conn. 1992); see also, e.g., *In re Duda*, 182 B.R. 662, 667 (Bankr. D. Conn. 1995), aff'd sub nom. *Gernat* v. *Belford*, 192 B.R. 601 (D. Conn. 1996), aff'd sub nom. *In re Gernat*, 98 F.3d 729 (2d Cir. 1996). Accordingly, we must proceed on the assumption that *Hayward* controls and that it falls to this court to determine, as a matter of Connecticut law, whether the new exemption amount contained in P.A. 21-161, § 1, applied to the debtor's bankruptcy petition filed after the effective date of that statute, regardless of when the underlying debts accrued.

B

We turn our attention, therefore, to the trustee's argument that the legislature intended the amended homestead exemption to apply to bankruptcy petitions[6] filed

[6] The amended homestead exemption is codified at § 52-352b (21). By its terms, § 52-352b makes no mention of bankruptcy proceedings. Indeed, on its face, all of chapter 906 of the General Statutes is dedicated only to postjudgment proceedings. Nevertheless, there is little doubt that the legislature intended the homestead exemption, like all of the exemptions contained in § 52-352b, to be available in federal bankruptcy proceedings under 11 U.S.C. § 522 (b), as well.

on or after October 1, 2021, but did not intend debts accrued prior to that date to be subject to the higher exemption amount. We are not persuaded.

1

Because the applicability of the expanded homestead exemption presents a question of statutory interpretation, we begin with the text of the act. See General Statutes § 1-2z; see also *Maghfour* v. *Waterbury*, 340 Conn. 41, 46–47, 262 A.3d 692 (2021) (when addressing issue of retroactivity, we begin by asking whether legislature has expressly prescribed statute's proper reach).

Public Act 21-161, § 1, begins by repealing General Statutes (Rev. to 2021) § 52-352b in its entirety. It then provides, with respect to the homestead exemption: "The following property of any natural person shall be exempt . . . (21) The homestead of the exemptioner to the value of two hundred fifty thousand dollars, provided value shall be determined as the fair market value

Section 52-352b begins with the statement that "[t]he following property of any natural person shall be exempt . . . ." General Statutes § 52-352a (3), in turn, defines "exempt" expansively as "not subject to *any form of process* or court order for the purpose of debt collection . . . ." (Emphasis added.) To the extent that the statutory language is ambiguous in this respect, the legislative history confirms that the homestead exemption was intended to be used primarily in federal bankruptcy proceedings. This point is made repeatedly in the legislative histories of both the original version of the homestead act and the 2021 amendment. See, e.g., 36 H.R. Proc., Pt. 30, 1993 Sess., p. 10,828, remarks of Representative Dale W. Radcliffe ("[t]he amendment merely adds to several of those exemptions in the event of bankruptcy"); id., pp. 10,849–50, remarks of Representative Lee A. Samowitz (discussing application of homestead exemption in foreclosure and bankruptcy); id., p. 10,857, remarks of Representative Radcliffe ("[o]nly two states . . . provide no protection [whatsoever] for a . . . resident in the event of bankruptcy and that is really what this does"); see also, e.g., 64 H.R. Proc., Pt. 6, 2021 Sess., p. 4170, remarks of Representative Craig Fishbein (discussing exemptions in bankruptcy context); Conn. Joint Standing Committee Hearings, Judiciary, Pt. 3, 2021 Sess., pp. 1454–58, remarks of Attorney Susan M. Williams (discussing exemption in bankruptcy context); id., p. 1456, remarks of Attorney Williams ("three decades is much too long to wait to amend the home bankruptcy exemptions").

of the real property less the amount of any statutory or consensual lien which encumbers it, except that, in the case of a money judgment arising out of a claim of sexual abuse or exploitation of a minor, sexual assault or other wilful, wanton, or reckless misconduct committed by a natural person, to the value of seventy-five thousand dollars . . . .'' P.A. 21-161, § 1. Finally, the act provides that it is ''[e]ffective October 1, 2021 . . . .'' P.A. 21-161, § 1.

On its face, P.A. 21-161, § 1, is silent as to the accrual date of the debts that are the subject of the postjudgment proceeding or bankruptcy governed by the amended homestead exemption. Nothing in the language of the act indicates that the legislature intended to carve out preexisting (or any other) debts from the reach of the exemption. Section 52-352b is part of chapter 906 of the General Statutes, which regulates postjudgment procedures, and the statute simply defines what property is exempt, that is, ''not subject to any form of process or court order for the purpose of debt collection . . . .'' General Statutes § 52-352a (3). Accordingly, on the face of the statute, there is no reason to think that the expanded homestead exemption, which undisputedly applies in all bankruptcy proceedings brought on or after the effective date, does not apply to preexisting debts. See, e.g., *Southwick at Milford Condominium Assn., Inc.* v. *523 Wheelers Farm Road, Milford, LLC*, 294 Conn. 311, 320, 984 A.2d 676 (2009) (''if the legislature had intended to create any exception to this rule . . . we must assume that it would have said so expressly''); *Earl B.* v. *Commissioner of Children & Families*, 288 Conn. 163, 175–76, 952 A.2d 32 (2008) (similar); *Board of Education* v. *Booth*, 232 Conn. 216, 221, 654 A.2d 717 (1995) (''there is nothing in the definition of 'earnings' under [General Statutes] § 52-350a (5) to suggest that the legislature intended to limit the exemption from prejudgment garnishment only to those

debts payable prior to the termination of the employment relationship").

We do not understand the trustee to contest that this is the plain meaning of the statutory text. Rather, he contends that we should nevertheless find an implicit carve-out for preexisting debts for two reasons. First, the public act that created the prior version of the statute contained such a carve-out. See P.A. 93-301, §§ 2 and 3. Second, interpreting P.A. 21-161, § 1, not to include a similar carve-out would be to give the act retroactive effect without the express authorization of the legislature. We consider each argument in turn.

2

The trustee first contends that we should read a carve-out for preexisting debts into P.A. 21-161, § 1, because the legislature included such a carve-out in P.A. 93-301, the act that created the initial homestead exemption. Public Act 93-301, § 3, provides: "This act shall take effect October 1, 1993, *and shall be applicable to any lien for any obligation or claim arising on or after said date*." (Emphasis added.) The federal courts have read the highlighted language to create a carve-out for preexisting debts in bankruptcy proceedings. See, e.g., *Gernat* v. *Belford*, 192 B.R. 601, 604–605 (D. Conn.), aff'd sub nom. *In re Gernat*, 98 F.3d 729 (2d Cir. 1996). The trustee's argument appears to be that the legislature, having been aware of the language and judicial interpretations of the prior act, would have clearly indicated had it intended not to include a similar carve-out in P.A. 21-161, § 1.

Even if we were to agree with the trustee that it is appropriate to look to the legislative history of the act, however; see *Cohen* v. *Rossi*, 346 Conn. 642, 665–66, A.3d (2023) (plurality opinion); see also id., 705 n.10 (*Ecker*, *J.*, concurring in part and concurring in the judgment); we are not persuaded that the trustee's

interpretation is correct.[7] Indeed, the trustee's argument runs headlong into a basic rule of statutory interpretation. "As we have stated many times, [when] a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed." (Internal quotation marks omitted.) *Asylum Hill Problem Solving Revitalization Assn.* v. *King*, 277 Conn. 238, 256, 890 A.2d 522 (2006). This principle applies with equal force to reenactments of previous statutes. See, e.g., *Gilmore* v. *Pawn King, Inc.*, 313 Conn. 535, 543–48, 98 A.3d 808 (2014).

The fact that the legislature included a special carve-out for preexisting debts in the original homestead act but did not include one in the 2021 act indicates an intent *not* to exclude preexisting debts from the scope of the expanded homestead exemption. Indeed, it makes perfect sense that, when the legislature increased the homestead exemption in 2021 to keep pace with inflation, it would have opted to avoid the practical problems that could have arisen from carving out preexisting debts at that time.[8]

[7] Likewise, we have reviewed the legislative history of P.A. 21-161, § 1, and, to the extent that it is relevant, we find therein no support for the trustee's contention that the legislature intended to create a new carve-out for preexisting debts.

[8] As the Bankruptcy Court observed, if P.A. 21-161, § 1, repealed the prior homestead exemption, but the expanded one was applicable only to those debts accrued on or after October 1, 2021, then the practical effect could have been to create a "donut hole" in which the exemption was temporarily abolished in its entirety. See *In re Cole*, supra, 642 B.R. 221. That was certainly not the intent of the legislature. Furthermore, the Bankruptcy Court explained, even if the original homestead exemption did continue to follow debts accrued while it was in effect, the trustee's interpretation would significantly and unnecessarily complicate bankruptcy proceedings, as different exemption amounts could apply to portions of different debts that were accrued before and after the effective date. See id. ("asserting two applicable state homestead exemptions would be incongruous and would irreconcilably complicate the administration of a bankruptcy estate"); see also *In re Skjetne*, supra, 213 B.R. 278 (with respect to revolving credit

Finally, we turn our attention to the issue at the core of the certified question, as originally framed by the District Court. The trustee's primary argument is that interpreting P.A. 21-161, § 1, not to include a carve-out for preexisting debts would give the act retroactive effect without the express authorization of the legislature. Specifically, the trustee contends that P.A. 21-161, § 1, effected a substantive change in the law and that, under § 55-3, substantive amendments presumptively apply on a solely prospective basis. The debtor counters that the amendment was procedural rather than substantive in nature and, therefore, can be applied retroactively. In the alternative, the debtor argues that, regardless of whether we characterize the amendment as substantive or procedural, in the present case, it is being applied on a solely prospective basis, insofar as it applies to a bankruptcy proceeding that was initiated after the effective date of the act. Because we agree with the debtor that the enactment of the higher homestead exemption does not constitute retroactive legislation when applied to postenactment petitions, we need not resolve the question of whether the amendment was procedural or substantive in nature. In short, there is no retroactivity problem here.

"It is well established that § 55-3 is a rule of presumed legislative intent that statutes affecting substantive rights shall apply prospectively only. . . . The rule is rooted in the notion that it would be unfair to impose a substantive amendment that changes the grounds [on] which an action may be maintained on parties who have already transacted or who are already committed to litigation." (Internal quotation marks omitted.) *Shan-*

accounts, cautioning about "the tremendous cost . . . and the impossible task of knowing what debt is incurred prior to . . . and what debt is incurred after the effective date of the homestead amendment" (internal quotation marks omitted)).

non v. *Commissioner of Housing*, 322 Conn. 191, 202, 140 A.3d 903 (2016). This rule is easier stated than applied. See, e.g., id., 204. It is not always clear, for example, whether a particular change in the General Statutes qualifies as substantive or procedural. See, e.g., *Coley* v. *Camden Associates, Inc.*, 243 Conn. 311, 317–18, 702 A.2d 1180 (1997); see also, e.g., *Casiano* v. *Commissioner of Correction*, 317 Conn. 52, 80, 110, 115 A.3d 1031 (2015) (majority and dissenting justices disagreed over whether *Miller* v. *Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), announced watershed rule of criminal procedure for purposes of retroactivity), cert. denied sub nom. *Semple* v. *Casiano*, 577 U.S. 1202, 136 S. Ct. 1364, 194 L. Ed. 2d 376 (2016). Most of the briefing in the present case is addressed to that issue.

But dispositive considerations can arise well before we reach the substantive/procedural junction. Section 55-3 comes into play—that is, we only need to determine if a new provision of the General Statutes is substantive or procedural—only if the amendment would have a "retrospective effect." Section 55-3 does not define the term "retrospective effect," however, and whether a new law would have such an effect in a given case is not always apparent. See, e.g., *Shannon* v. *Commissioner of Housing*, supra, 322 Conn. 204 ("deciding when a statute operates retroactively is not always a simple or mechanical task" (internal quotation marks omitted)). As United States Supreme Court Justice Antonin Scalia explained in *Martin* v. *Hadix*, 527 U.S. 343, 119 S. Ct. 1998, 144 L. Ed. 2d 347 (1999), asking whether a change in the law is intended to operate retroactively "leaves open the key question: retroactive in reference to what?" Id., 362 (Scalia, J., concurring in part and concurring in the judgment).

Many retroactivity cases, and most of the easy ones, involve "what modern scholarship calls *primary retroactivity*—altering the past legal consequences of past

actions. [This includes] legislative creation of criminal or civil liability for completed acts, significantly lessening or adding onto the burdens of past contracts (particularly debt contracts), legislative termination of accrued claims for relief [regardless of whether they are] the subject of a pending action, and legislative undoing of final judgments no longer subject to appeal." (Emphasis added; footnotes omitted; internal quotation marks omitted.) A. Woolhandler, "Public Rights, Private Rights, and Statutory Retroactivity," 94 Geo. L.J. 1015, 1022–23 (2006). These situations tend to be governed by well established rules, such as that "[a] criminal statute is said to have [primary] retroactive application if it applies to crimes allegedly committed prior to its date of enactment." (Internal quotation marks omitted.) *State* v. *Bischoff*, 337 Conn. 739, 746, 258 A.3d 14 (2021); see also General Statutes § 1-1 (u) (passage or repeal of act presumptively does not affect pending actions).

More troublesome is so-called secondary retroactivity, which refers to statutory changes that solely alter the *future* legal consequences of past transactions or occurrences. See, e.g., *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204, 219, 109 S. Ct. 468, 102 L. Ed. 2d 493 (1988) (Scalia, J., concurring) (discussing distinction between primary and secondary retroactivity); J. Laitos, "Legislative Retroactivity," 52 Wash. U. J. Urb. & Contemp. L. 81, 84–85 (1997) (same). Many changes in the law could be characterized as retroactive in some respect. That is to say, they attach some new, future legal consequences to actions that were taken or decisions that were made prior to their enactment. See, e.g., A. Woolhandler, supra, 94 Geo. L.J. 1022 ("[s]ome modern judges and even more modern scholars see the retroactivity-prospectivity line in the civil context as logically illusory, because all legal change may defeat expectations, creating winners and losers"). That alone is not enough to render a statute retroactive. See, e.g.,

D. Bassett, "In the Wake of *Schooner Peggy*: Deconstructing Legislative Retroactivity Analysis," 69 U. Cin. L. Rev. 453, 467 (2001) ("[e]ven when laws expressly state that they are to be applied prospectively, it is virtually certain that they will affect expectations and prior transactions"). Indeed, we frequently have recognized that "a statute does not operate [retroactively] merely because it is applied in a case arising from conduct antedating the statute's enactment . . . or upsets expectations based in prior law." (Internal quotation marks omitted.) *Maghfour* v. *Waterbury*, supra, 340 Conn. 49–50.

Take alimony, for example. The legislature might amend the alimony laws to make them less favorable to either the payer or the payee. Such a law would almost certainly qualify as retroactive if applied to divorces and alimony awards that were finalized prior to its passage, and we would require a clear statement of legislative intent before applying it to them.[9] But, surely, applying the new law in a future divorce action to a couple who married in 1990 would not be characterized as a retroactive application, even though the substantive legal rules and duties that govern the couple will now differ from those that were in place when they made the choice to marry. In that case, the opposite presumption applies; we would assume that the new rules do apply to existing marriages, unless the legislature provides otherwise. The fact that the change in the law is substantive is of little moment. The reason for the different outcome is that the relevant reference point for purposes of retroactivity is the divorce, which happens

[9] This assumes that such application satisfied all relevant constitutional restraints. The question of whether application of a new or amended statute qualifies as retroactive—a matter largely of statutory interpretation—is distinct from the question of whether it violates the contract clause of the federal constitution or the ex post facto, takings, or due process provisions of the federal or state constitutions.

after the change in the law, and not the marriage, which happened before.

The relevant reference point is not always so intuitively clear. *Hadix* was a particularly thorny case. The attorney's fee statute at issue in that case arguably could have been retroactively applicable to five different categories of events.[10] Before the United States Supreme Court could assess whether the ordinary presumption against retroactivity applied, the court first had to identify the relevant reference point or points. See *Martin* v. *Hadix*, supra, 527 U.S. 357–58.

In the present case, as in the alimony hypothetical, there really are just two possibilities. The trustee contends that the accrual of the debts qualifies as one relevant reference point. If we permit the debtor to claim the expanded homestead exemption with respect to debts that accrued prior to the passage of P.A. 21-161, § 1, then its application will be retroactive as to

[10] Hadix addressed a provision of the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, § 803, 110 Stat. 1321, 1321-72 (codified as amended at 42 U.S.C. § 1997e (d) (3)), that placed new limits "on the fees that may be awarded to attorneys who litigate prisoner lawsuits." *Martin* v. *Hadix*, supra, 527 U.S. 347. In that case, the limits arguably could have applied "retroactively" with respect to five different points in time or categories of events: "(1) the alleged violation [on] which the fee-imposing suit is based (applying the new fee rule to any case involving an alleged violation that occurred before the PLRA became effective would be giving it retroactive application); (2) the lawyer's undertaking to prosecute the suit for which attorney's fees were provided (applying the new fee rule to any case in which the lawyer was retained before the PLRA became effective would be giving it retroactive application); (3) the filing of the suit in which the fees are imposed (applying the new fee rule to any suit brought before the PLRA became effective would be giving it retroactive application); (4) the doing of the legal work for which the fees are payable (applying the new fee rule to any work done before the PLRA became effective would be giving it retroactive application); and (5) the actual award of fees in a prisoner case (applying the new fee rule to an award rendered before the PLRA became effective would be giving it retroactive application)." (Internal quotation marks omitted.) Id., 362–63 (Scalia, J., concurring in part and concurring in the judgment).

those debts and should be permitted only if the legislature demonstrated an intent for the amendment to apply retroactively.

The debtor disagrees. She contends that the only relevant consideration is when her bankruptcy proceeding was commenced, as the relevant reference point is the initiation of the bankruptcy proceeding, not the debts to which the homestead exemption would apply. If the expanded homestead exemption were applied to a *previously* commenced bankruptcy proceeding, then a retroactivity issue would arise. But, she contends, merely to apply the expanded exemption in a bankruptcy proceeding that was commenced after the effective date of P.A. 21-161, § 1, does not raise any retroactivity concerns, regardless of when the debts accrued, and, so, § 55-3 simply does not apply here.

For secondary retroactivity claims of this sort, courts, including this court, have struggled to identify the proper reference point or points and to define exactly when a new law so alters the future legal consequences of prior conduct that it can be said to operate retroactively with respect to that conduct. The seminal case in which the United States Supreme Court attempted to resolve these issues was *Landgraf* v. *USI Film Products*, 511 U.S. 244, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994). In *Landgraf*, a five justice majority recognized that the high court had used various formulations to articulate when a substantive change in the law is being applied retroactively, including that a statute or law is retroactive if it "changes the legal consequences of acts completed before its effective date"; (internal quotation marks omitted) id., 269 n.23; "gives a quality or effect to acts or conduct [that] they did not have or did not contemplate when they were performed"; (internal quotation marks omitted) id.; or "takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new

disability, in respect to transactions or considerations already past . . . .'' (Internal quotation marks omitted.) Id., 269. Ultimately, the *Landgraf* majority settled on the following formulation: ''[T]he court must ask whether the new provision attaches new legal consequences to events completed before its enactment. The conclusion that a particular rule operates retroactively comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event.'' (Internal quotation marks omitted.) Id., 269–70. Put differently, ''[a] new statute would have retroactive effect . . . [if] it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.'' Id., 280; see also *Martin* v. *Hadix*, supra, 527 U.S. 358 (retroactivity assessment ''should be informed and guided by familiar considerations of fair notice, reasonable reliance, and settled expectations'' (internal quotation marks omitted)).

The *Landgraf* majority's formulation certainly covers the full ambit of primary retroactivity. With respect to secondary retroactivity, however, the guidance is less instructive. As we discussed, virtually every substantive change in the law has the potential to upset someone's expectations or impose new consequences on some prior actions and decisions. Under the majority approach in *Landgraf*, the more settled and reasonable those expectations, the more likely we are to deem the change retroactive. But the majority readily admits that this analysis is a subjective one, recognizing that its formulation ''will leave room for disagreement in hard cases, and is unlikely to classify the enormous variety of legal changes with perfect philosophical clarity.'' *Landgraf* v. *USI Film Products*, supra, 511 U.S. 270.

In a concurring opinion, Justice Scalia, joined by two other members of the court, proposed a different approach to retroactivity questions. See *Landgraf* v. *USI Film Products*, 511 U.S. 244, 290, 114 S. Ct. 1522, 128 L. Ed. 2d 229 (1994) (Scalia, J., concurring in the judgments). The concurrence argued that "[t]he critical issue . . . is not whether the rule affects vested rights . . . but rather what is the relevant activity that the rule regulates. [In the absence of a] clear statement otherwise, only such relevant activity [that] occurs after the effective date of the statute is covered. Most statutes are meant to regulate primary conduct, and hence will not be applied in trials involving conduct that occurred before their effective date. But other statutes have a different purpose and therefore a different relevant retroactivity event." (Emphasis omitted; internal quotation marks omitted.) Id., 291 (Scalia, J., concurring in the judgments). By way of example, the concurrence explained, "[a] new ban on gambling applies to existing casinos and casinos under construction . . . even though it attaches a new disability to those past investments. The relevant retroactivity event is the primary activity of gambling, not the primary activity of constructing casinos." (Citation omitted; internal quotation marks omitted.) Id., 293–94 n.3 (Scalia, J., concurring in the judgments).

Although the majority's approach in *Landgraf* is, of course, the law of the land, at least as far as federal law is concerned, the United States Supreme Court has, at times, also relied on the *Landgraf* concurrence. See, e.g., *Hughes Aircraft Co.* v. *United States ex rel. Schumer*, 520 U.S. 939, 947, 117 S. Ct. 1871, 138 L. Ed. 2d 135 (1997) (majority approach in *Landgraf* is not "the exclusive definition of presumptively impermissible retroactive legislation"); id., 951 (citing concurrence's approach); see also, e.g., *Vartelas* v. *Holder*, 566 U.S. 257, 269–70, 132 S. Ct. 1479, 182 L. Ed. 2d 473

(2012) (part of what court considers in assessing whether application of statute would be retroactive is what primary activity Congress sought to regulate). Accordingly, the lower federal courts have found both approaches instructive when faced with thorny questions regarding secondary retroactivity. See, e.g., *Covino* v. *Reopel*, 89 F.3d 105, 106–108 (2d Cir. 1996). Insofar as our prior retroactivity cases have not provided adequate guidance in this respect, we take this opportunity to clarify that both approaches are part of a proper retroactivity analysis under Connecticut law.

In this case, both the majority's and the concurrence's approaches in *Landgraf* point to the same result: application of P.A. 21-161, § 1, to preexisting debts would not constitute a retroactive application. Under the majority's approach, we look to factors such as whether allowing the debtor to avail herself of the higher homestead exemption would impair established rights of the creditors or the trustee, impose new duties or obligations that they could not reasonably have anticipated, or disturb other reasonable, settled expectations. See *Landgraf* v. *USI Film Products*, supra, 511 U.S. 270, 280. There is no claim here that P.A. 21-161, § 1, imposed any new duties or obligations on the parties.

With respect to the rights and expectations of the parties regarding the unsecured debts at issue in this case, we are persuaded by the following analysis: "The reality of modern commercial transactions is that a lender who reasonably expects specific property to be available to satisfy an obligation . . . takes a secured position in the property. A lender's expectation of later realization of payment from unsecured property in existence at the time of contract is, [in the absence of] unusual circumstances, an expectation founded on pure speculation. Realization of payment from such property is necessarily dependent [on] circumstances and rights that do not exist at the time of [the] unsecured contract

and that are not created by it. It is dependent [on] continued retention of ownership and equity in the property by a debtor as well as the subsequent creation of a lien by judgment and/or levy.

"A creditor's right to enforcement of the contract through remedy of judgment and levy against specific unsecured property of a debtor is an implied contract right. But the contractual relationship of parties is not substantially impaired by later legislation compromising or eliminating that right unless the right otherwise has substantial value to the contractual relationship at the time of the legislation complained of. [When] an unsecured claim has not been reduced to judgment prior to such legislation, the abstract right of potential enforcement out of specific unsecured property, standing alone, ordinarily has no substantial value to the contractual relationship in light of modern commercial transactions. This is particularly so [when] the legislation compromising or eliminating the right is in an area of established, long-standing legislative control and regulation, such as homestead exemption laws. The abstract right is simply one without reasonable expectation of fulfillment." (Footnote omitted.) *In re Johnson*, 69 B.R. 988, 993 (Bankr. D. Minn. 1987); see also *Central Bank* v. *Hickey*, 238 Conn. 778, 784, 680 A.2d 298 (1996) ("the very nature of an unsecured debt is that the creditor has no current legal interest in the assets of its debtor"); *Massa* v. *Nastri*, 125 Conn. 144, 147, 3 A.2d 839 (1939) (established rights that are presumptively secure from retroactive civil legislation "must be something more than such a mere expectation as may be based [on] an anticipated continuance of the present general laws" (internal quotation marks omitted)).

For this reason, we reject the trustee's argument that applying the increased homestead exemption to preexisting debts would be fundamentally unfair because it would frustrate the settled expectations of unsecured

lenders who extended credit while the lower, $75,000 exemption was in place. There is no evidence in the record that the debtor's creditors ever considered the equity in her house, much less that they relied to their detriment on the size of the Connecticut homestead exemption when they decided to extend her credit. Rather, the unsecured creditors are presumed to have been aware that the legislature could increase the size of the homestead exemption at any time and that their rights might otherwise be adversely impacted by changes in federal or state law. See, e.g., *CFCU Community Credit Union* v. *Hayward*, supra, 552 F.3d 268; see also, e.g., *In re Van Hove*, 78 B.R. 917, 920 (N.D. Iowa 1987) (lenders' reasonable contract expectations were not impaired by application of increased exemption, in light of state's "clearly established . . . rule that the extent of the debtor's exemption rights [is] determined by reference to the exemption statutes in effect on the date the bankruptcy petition was filed, *regardless of when the debts arose*" (emphasis in original)). Indeed, the debtor could have simply shielded additional assets by selling her Connecticut home and relocating to one of the many states with larger (in some cases, unlimited) homestead exemptions. See, e.g., T. Tarvin, "Bankruptcy, Relocation, and the Debtor's Dilemma: Preserving Your Homestead Exemption Versus Accepting the New Job Out of State," 43 Loy. U. Chi. L.J. 141, 145 (2011). Any expectation that the debtor would be perpetually limited to a $75,000 exemption was, in short, unreasonable.

The result is the same under the concurrence's approach in *Landgraf*. See *Landgraf* v. *USI Film Products*, supra, 511 U.S. 291 (Scalia, J., concurring in the judgments). Applying P.A. 21-161, § 1, to preexisting debts would not qualify as a retroactive application of the law because the *accrual* of those debts is not the principal activity that the law seeks to regulate. See id.

As we discussed; see footnote 6 of this opinion; § 52-352b is part of chapter 906, which deals with postjudgment procedures, and the title of P.A. 21-161 is "An Act Concerning Property That Is Exempt from a Judgment Creditor." Neither the original homestead act nor the 2021 amendment makes any reference whatsoever to the source or nature of the underlying debts involved. The focus, rather, is entirely on the enforcement process—what exemptions are available to the debtor *during the bankruptcy or postjudgment proceeding*.[11] Public Act 21-161, § 1, provides that the homestead exemption "shall be determined as the fair market value of the real property less the amount of any statutory or consensual lien which encumbers it" at the time of the proceeding, not when the debt or debts accrued. It is clear that the purpose of the act is to specify the exemptions that are *presently* available to a debtor. Indeed, counsel for the trustee conceded at oral argument before this court that the primary purpose of the statute is to allow debtors to shield from creditors a portion of the equity in their home. For this reason, applying the expanded homestead exemption to a bankruptcy proceeding that was initiated on or after the effective date of the act does not constitute a retroactive application, any more than a new law governing divorces would be retroactive with respect to already married couples. That result is consistent with this court's prior secondary retroactivity cases.[12]

[11] Although the 2021 amendment maintained the $75,000 cap on the homestead exemption for debts arising from certain categories of legal claims, it did so only with respect to *money judgments* arising out of those claims. See General Statutes § 52-352b (21) (maintaining prior homestead exemption "in the case of a *money judgment* arising out of a claim of sexual abuse or exploitation of a minor, sexual assault or other wilful, wanton, or reckless misconduct committed by a natural person" (emphasis added)).

[12] See, e.g., *Commissioner of Correction* v. *Freedom of Information Commission*, 307 Conn. 53, 69–70, 52 A.3d 636 (2012) (application of nondisclosure rule to previously detained individuals would not be retroactive); *Contractor's Supply of Waterbury, LLC* v. *Commissioner of Environmental Protection*, 283 Conn. 86, 88–89, 109–10, 925 A.2d 1071 (2007) (law barring

We thus conclude that P.A. 21-161, § 1, is not retroactive as applied to the debtor's bankruptcy petition. Accordingly, § 55-3 is not applicable, and we need not resolve the dispute between the parties as to whether the 2021 amendment effected a substantive or procedural change in the law. See *State* v. *Faraday*, 268 Conn. 174, 197 and n.11, 842 A.2d 567 (2004). Because the legislature did not direct otherwise, the expanded homestead exemption contained in P.A. 21-161, § 1, applies in all bankruptcy and postjudgment proceedings initiated on or after the effective date of the act, regardless of when the underlying debts accrued.

The answer to the certified question, as reformulated, that is, does the expanded homestead exemption contained in P.A. 21-161, § 1, apply in bankruptcy proceedings filed on or after the effective date of the act to debts that accrued prior to that date, is "yes."

In this opinion the other justices concurred.

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location of asphalt plants in proximity to watercourses was not retroactive as applied to prior permit application); *Schieffelin & Co.* v. *Dept. of Liquor Control*, 194 Conn. 165, 172–76, 479 A.2d 1191 (1984) (statute that prohibited termination of wholesale liquor distributorships except for cause applied prospectively to all terminations regardless of whether distributorships predated or postdated statute); *Nagle* v. *Wood*, 178 Conn. 180, 187, 423 A.2d 875 (1979) (statute expanding inheritance rights of "illegitimate children" operated prospectively as to future deaths but, apparently, encompassed children born before enactment); *Hartford* v. *Suffield*, 137 Conn. 341, 343–45, 77 A.2d 760 (1950) (in action to recover cost of supporting "paupers," statute providing that " '[a]ny person, having a settlement in any town in this state, who shall have resided outside of said town for a period of four consecutive years, shall be deemed to have lost his settlement therein' " was prospective in effect because it governed actions brought after its operative date, even though it altered legal status of persons who relocated prior to that date).