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Barbara Dahle, self-represented, in support of the petition.

Francis C. Vignati, Jr., assistant attorney general, in opposition.

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CONNECTICUT APPELLATE REPORTS

Vol. 186

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

U.S. EQUITIES CORP. *v.* PEGGY CERALDI
(AC 41648)

DiPentima, C. J., and Sheldon and Bear, Js.

Syllabus

The plaintiff brought an action against the defendant seeking to collect a credit card debt allegedly owed by the defendant. In May, 2011, following the defendant's default for failure to plead, the trial court granted the plaintiff's motion for judgment and awarded the plaintiff monetary damages, attorney's fees, costs and postjudgment interest pursuant to, inter alia, the statute (§ 37-3a) that allows the recovery of up to 10 percent interest in civil actions as damages for the detention of money after it becomes payable. The court did not set the rate of interest. In March, 2018, the plaintiff filed a motion for clarification, requesting that the court clarify its judgment to reflect that it had awarded postjudgment interest at a rate of 10 percent per year. In its order granting the plaintiff's motion, the trial court stated that it had intended that the postjudgment interest rate be set at the maximum allowable rate of 10 percent per year. On appeal, the defendant claimed that the trial court's order granting

the motion for clarification and setting, for the first time, the rate of postjudgment interest it had intended to award, constituted an improper substantive modification of the judgment. *Held* that the trial court lacked the authority to set the postjudgment interest rate at 10 percent approximately seven years after the judgment had been rendered, as that court's order constituted an improper substantive modification of the judgment, which did not set forth any interest rate, and the plaintiff did not move to open the judgment to determine the rate of interest within the four month postjudgment period as prescribed by the applicable statute (§ 52-212a); accordingly, the judgment was reversed and the case was remanded with direction to dismiss the plaintiff's untimely motion for clarification and to correct the judgment to reflect that no postjudgment interest was properly awarded.

Argued October 23—officially released December 18, 2018

Procedural History

Action to collect a debt, and for other relief, brought to the Superior Court in the judicial district of New Britain, where the defendant was defaulted for failure to plead; thereafter, the court, *Swienton*, *J.*, granted the plaintiff's motion for judgment and rendered judgment thereon; subsequently, the court granted the plaintiff's motion for clarification and issued a certain order, and the defendant appealed to this court. *Reversed; judgment directed.*

Joanne S. Faulkner, for the appellant (defendant).

Linda Strumpf, for the appellee (plaintiff).

Opinion

BEAR, J. The defendant, Peggy Ceraldi, appeals from the judgment of the trial court granting the postjudgment motion for clarification filed by the plaintiff, U.S. Equities Corp., regarding the postjudgment interest rate to be applied to the judgment rendered against the defendant in the underlying debt collection action.[1] The defendant claims that the court's clarification actually was an improper substantive modification of the judgment. We agree and, accordingly, reverse the judgment setting the rate of postjudgment interest.

[1] This is the defendant's second appeal in this case. The defendant's first appeal arose from the court's denial of her motion for a protective order

The following facts and procedural history are relevant to the disposition of this appeal. The plaintiff was assigned all rights to the defendant's Chase Bank credit card account from Turtle Creek Assets, Ltd. On December 18, 2010, the plaintiff commenced this action, seeking monetary damages of $17,886.99, prejudgment interest, attorney's fees of $2683.05, costs of the action, and "statutory postjudgment interest of 10 [percent] per annum." On May 31, 2011, the court granted the plaintiff's motion for judgment following the defendant's default for failure to plead. In its order granting the motion, the court awarded the plaintiff $30,895 in monetary damages, $2683.05 in attorney's fees, $343.20 in costs, and postjudgment interest pursuant to General Statutes §§ 37-3a[2] and 52-356d (e).[3] The court, however, did not set forth in its order the rate of postjudgment interest.[4]

On June 27, 2017, the defendant filed a motion for a protective order claiming that, after the defendant had paid the court-ordered weekly payments in an amount exceeding $10,000, the plaintiff incorrectly notified her that she still owed more than $43,000 on the judgment because of its unilateral application of a 10 percent

(AC 40917). We ordered, sua sponte, that both appeals be heard together. We found no error in the court's decision to deny the defendant's motion for a protective order and, therefore, affirmed the court's judgment in that appeal. See *U.S. Equities Corp.* v. *Ceraldi*, 186 Conn. App. 903, A.3d (2018).

[2] General Statutes § 37-3a provides in relevant part that "interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions . . . including actions to recover money loaned at a greater rate, as damages for the detention of money after it becomes payable. . . ."

[3] General Statutes § 52-356d (e) provides that "[i]nterest on a money judgment shall continue to accrue under any installment payment order on such portion of the judgment as remains unpaid."

[4] The court further ordered the defendant to make weekly payments of $35 commencing three weeks after the date notice of the order was sent. The parties do not dispute that the defendant has timely made payments to the plaintiff since 2011. The defendant claims that the total of those payments is in excess of $10,000.

annual postjudgment interest rate on the unpaid amount of the judgment. The defendant requested that the judgment be retroactively modified to the original amount claimed and that postjudgment interest be denied. On July 24, 2017, the court denied the defendant's motion for a protective order, stating that the proper motion for the relief requested by the defendant was a motion to open the judgment. On September 1, 2017, the defendant filed a motion to open the judgment, which the court denied on September 18, 2017.

On October 6, 2017, the defendant appealed the court's judgment denying her motion for a protective order. See footnote 1 of this opinion. On March 4, 2018, during the pendency of that appeal, the plaintiff filed a motion for clarification with the trial court requesting that the court's May 31, 2011 judgment be clarified to reflect that the rate at which it had awarded postjudgment interest was 10 percent per year. On April 30, 2018, the court granted the plaintiff's motion for clarification, stating that when it had rendered judgment on May 31, 2011, it had done so in accordance with the plaintiff's request for relief set forth in its complaint and had intended that the interest rate be set at the maximum allowable rate of 10 percent per year. This appeal followed.

The defendant's principal claim on appeal is that the court's order granting the motion for clarification and setting forth for the first time the rate at which it had intended postjudgment interest to be awarded, constituted an improper substantive modification of the judgment. The defendant argues that the court lacked authority to set a postjudgment interest rate approximately seven years after the judgment because the plaintiff did not seek to have the judgment opened to determine the rate of postjudgment interest within four months of the May 31, 2011 judgment. See General Statutes § 52-212a and Practice Book § 17-4.

The plaintiff counters that, because postjudgment interest already had been awarded in the judgment, the court's order granting the motion for clarification was not a substantive modification of the judgment.[5] The plaintiff asserts that the court had authority to specify the postjudgment interest rate through a motion for clarification, which is not time barred.[6] We disagree.

We first set forth the applicable standard of review. "Motions for interpretation or clarification, although not specifically described in the rules of practice, are commonly considered by trial courts and are procedurally proper. . . . A motion for clarification may be appropriate where there is an ambiguous term in a judgment . . . but, where the movant's request would cause a substantive modification of an existing judgment, a motion to open or set aside the judgment would normally be necessary." (Citations omitted; internal quotation marks omitted.) *Rome* v. *Album*, 73 Conn. App. 103, 109, 807 A.2d 1017 (2002).

When a party has filed a motion for clarification seeking a ruling on its entitlement to postjudgment interest, this court has looked to the substance of the claim

[5] The plaintiff also renews its claim, made in a motion to dismiss that was denied by this court, that the order granting the motion for clarification was not appealable because the motion did not give rise to a new appeal period pursuant to Practice Book § 63-1 (c) (1), which provides in relevant part: "If a motion is filed within the appeal period that, if granted, would render the judgment, decision, or acceptance of the verdict ineffective, either a new twenty day period or applicable statutory time period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion . . . . Motions that do not give rise to a new appeal period include those that seek: clarification or articulation, as opposed to alteration, of the terms of the judgment or decision . . . ."

Because we view the court's order granting the motion for clarification as one granting a motion to open and modify the judgment; see *Bower* v. *D'Onfro*, 45 Conn. App. 543, 547, 696 A.2d 1285 (1997); we accordingly reject the plaintiff's claim that its motion did not give rise to a new appeal period.

[6] "There is no time restriction imposed on the filing of a motion for clarification." (Internal quotation marks omitted.) *Bower* v. *D'Onfro*, 45 Conn. App. 543, 547 n.6, 696 A.2d 1285 (1997).

rather than the form of the motion. See *Bower* v. *D'Onfro*, 45 Conn. App. 543, 547, 696 A.2d 1285 (1997) ("[e]ven though the . . . motion was captioned motion for clarification, we look to the substance of the claim rather than the form" [internal quotation marks omitted]). Furthermore, this court has recognized that "rather than being bound by the caption of the motion, the [trial] court must examine the practical effect of the ruling." (Internal quotation marks omitted.) *Rome* v. *Album*, supra, 75 Conn. App. 111. In the present case, the defendant argues that the practical effect of the court's order granting the motion for clarification was a substantive modification of the judgment. We agree.

Assigning or adding, postjudgment, a rate of postjudgment interest on a debt collection judgment constitutes a substantive modification of that judgment. See *Cliff's Auto Body, Inc.* v. *Grenier*, 179 Conn. App. 820, 827, 181 A.3d 138 (2018). The plaintiff argues, however, that *Cliff's Auto Body, Inc.*, is not applicable to the present case because postjudgment interest was awarded by the court in the May 31, 2011 judgment. The court, however, did not set forth in the judgment the rate of postjudgment interest which, pursuant to § 37-3a, could have been 10 percent or some lower rate per year, and that omission precluded both the plaintiff and the defendant from knowing what postjudgment interest rate was to be applied.[7] The court, approximately seven

[7] General Statutes § 37-3c, in contrast to § 37-3a, "unambiguously dictates that, when the judgment of compensation does not include a rate of interest . . . the default rate applies." (Internal quotation marks omitted.) *Hartford* v. *CBV Parking Hartford, LLC*, 330 Conn. 200, 226, 192 A.3d 406 (2018). If, however, a trial court fails to include a specific rate of interest pursuant to § 37-3a, as in the present case, there is no default interest rate that automatically applies as a matter of law. See *Urich* v. *Fish*, 112 Conn. App. 837, 844, 965 A.2d 567 ("[a]s an award of postjudgment interest [pursuant to § 37-3a] is discretionary, the plaintiff's argument that he is entitled to postjudgment interest as a matter of law [pursuant to § 37-3a] is premised on a misreading of statutory authority"), cert. denied, 292 Conn. 909, 973 A.2d 109 (2009).

Moreover, our Supreme Court has held that § 37-3a establishes that a trial court has broad discretion to award a rate of postjudgment interest up to

years after the judgment was rendered, for the first time set forth the rate of postjudgment interest it had intended to award. The court's order granting the motion for clarification, therefore, constituted an improper substantive modification of the judgment.

"Our case law establishes that *any* substantive modification of a judgment constitutes an opening of the judgment. The issue of whether a particular action by the trial court opens the judgment typically arises when the court alters the judgment more than four months after the judgment was rendered and a party challenges the court action as an untimely opening of the judgment . . . . Both General Statutes § 52-212a[8] and Practice Book § 17-4[9] provide that the trial court lacks the power to open a judgment more than four months after the judgment is rendered." (Citations omitted; emphasis added; footnotes added; internal quotation marks omitted.) Id., 826–27.[10]

In seeking a substantive modification of the judgment, the plaintiff should have filed a motion to open the

ten percent per year, but that it need not award ten percent interest if in its discretion a lower rate of interest is more appropriate. See *Sears, Roebuck & Co.* v. *Board of Tax Review*, 241 Conn. 749, 765–66, 699 A.2d 81 (1997).

[8] General Statutes § 52-212a provides in relevant part that "a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed. . . ."

[9] Practice Book § 17-4 (a) provides in relevant part that "[u]nless otherwise provided by law . . . any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. . . ."

[10] The trial court has "the authority to treat the [plaintiff's] motion to clarify as a motion to open and to grant the [plaintiff's] requested relief where the [plaintiff's] motion (1) came within the four month period established by § 52–212a; (2) put the [defendant] on notice as to the effect of the relief requested despite the label affixed to the motion . . . and (3) sought to correct an error of omission, and (4) the findings contained in [the judgment] clearly expressed the court's intent as to that property." (Citation omitted; internal quotation marks omitted.) *Rome* v. *Album*, supra, 73 Conn. App. 111–12.

judgment within the four month postjudgment period specified in § 52-212a and Practice Book § 17-4. "Our rules of practice permit a party, within four months of a judgment, to move to open the judgment when there is a good and compelling reason for its modification or vacation. . . . Although the granting of a motion to open is within the discretion of the trial court . . . inadvertent failure to determine the reasonable rate of interest after this matter has properly been presented to the trial court might well qualify as a good and compelling reason to modify a judgment." (Citations omitted; internal quotation marks omitted.) *Hartford* v. *CBV Parking Hartford, LLC*, 330 Conn. 200, 229, 192 A.3d 406 (2018). In the present case, because the plaintiff did not seek to have the debt collection judgment opened to determine the rate of postjudgment interest within four months of May 31, 2011, when the judgment was rendered, the court lacked the power to determine the rate of postjudgment interest. See *Cliff's Auto Body, Inc.* v. *Grenier*, supra, 179 Conn. App. 827. On April 30, 2018, the court lacked authority to set the postjudgment interest rate at 10 percent because the original May 31, 2011 judgment did not set forth any interest rate and the plaintiff did not move to open the judgment within the four month postjudgment period as prescribed by § 52-212a.[11]

The judgment is reversed and the case is remanded with direction to dismiss the plaintiff's untimely motion for clarification and to correct the judgment to reflect that no postjudgment interest was properly awarded.

In this opinion the other judges concurred.

[11] Because we conclude that the court lacked authority to grant the motion for clarification, which in substance was a motion to open and modify the judgment to add postjudgment interest at an annual rate of ten percent, we need not reach the other equitable claims raised by the defendant.

PETER GAUGHAN ET AL. *v.* PETER HIGGINS
(AC 40556)

DiPentima, C. J., and Elgo and Bear, Js.

Syllabus

The plaintiffs, P and J, who owned property that abutted property of the defendant, sought, inter alia, to quiet title to a triangular strip of land contiguous to all parcels and to which all of the parties claimed title. The defendant filed counterclaims for quiet title and water damage. Following a trial to the court, the trial court found in favor of the plaintiffs on their claims for quiet title and trespass and on the defendant's counterclaims for quiet title and water damage. The court found in favor of the defendant on the plaintiffs' claim for slander of title and awarded nominal damages for the defendant's trespass but declined to award punitive damages or attorney's fees. From the judgment rendered thereon, the defendant appealed and the plaintiffs cross appealed to this court. *Held:*

1. The trial court properly credited the testimony of the plaintiffs' expert witness; it was clear on the basis of the record that the court credited the conclusions of the plaintiffs' expert witness regarding the plaintiffs' ownership of the disputed area over the conclusions of the defendant's expert witness, and such a credibility determination was the responsibility and exclusive province of the trial court as fact finder.
2. The trial court's factual findings were not clearly erroneous: that court properly found that the disputed area was located on the plaintiffs' property in light of the testimony of the plaintiffs' expert and the surveys admitted into evidence, its finding that the defendant showed P the boundaries of the plaintiffs' parcel, which included the disputed area, was supported by P's testimony that the court was free to credit, and its finding that iron pins referenced in a 1991 warranty deed were located on the property in the mid-1990s when a survey was performed was supported by the testimony of the plaintiffs' expert; moreover, although the trial court's finding that the iron pins were in the same location prior to trial as they were in the mid-1990s was clearly erroneous, as there was no support for that finding in the record, that isolated misstatement of fact did not undermine the rest of the court's findings, and because that error did not affect this court's conclusion that the trial court's finding as to the location of the plaintiffs' property was not clearly erroneous, it did not affect the outcome of this appeal.
3. The defendant could not prevail on his claim that the trial court's finding that he trespassed on the plaintiffs' property was improper because it was premised on the court's erroneous conclusion that the plaintiffs owned the disputed area; the trial court having properly determined that the plaintiffs owned the disputed area, and the defendant not having

contested the other elements of the trespass action, the defendant's claim was untenable.

4. The trial court improperly awarded the plaintiffs the fees of their expert witness as an element of their bill of costs; contrary to the plaintiffs' claim, the defendant did not waive his objection to the plaintiffs' bill of costs, and because a land surveyor is not a listed expert witness whose cost may be reimbursed pursuant to statute (§ 52-260 [f]), the trial court lacked authority to award costs to the plaintiffs for their expert witness fees.

5. The trial court properly denied the plaintiffs' request for common-law punitive damages and attorney's fees; that court specifically found that although the defendant trespassed on the plaintiffs' property, his actions in marking what he believed was the boundary line between his parcel and the plaintiffs' parcel stemmed from his mistaken belief that he owned the disputed property, and although a trial court may find reckless indifference without finding actual intention to do harm, that did not mean that the court's factual findings required it to conclude that the defendant acted with reckless indifference.

6. The trial court properly determined that the defendant did not slander the plaintiffs' title to their property; the plaintiffs failed to provide any legal authority indicating that the defendant's delivery of a notice of revocation concerning the disputed land through a state marshal constituted publication to a third party, the plaintiffs did not prove any pecuniary loss as a result of the marshal being provided the notice to deliver to the plaintiffs, and they did not demonstrate that the defendant acted with reckless disregard for the truth by sending the notice to the plaintiffs.

Argued September 13—officially released December 18, 2018

Procedural History

Action seeking, inter alia, to quiet title to certain real property, and for other relief, brought to the Superior Court in the judicial district of Tolland, where the defendant filed a counterclaim; thereafter, the matter was tried to the court, *Cobb*, *J.*; judgment for the plaintiffs on the complaint in part and on the counterclaim in part, from which the defendant appealed and the plaintiffs cross appealed to this court. *Reversed in part; further proceedings.*

Edward Muska, for the appellant-cross appellee (defendant).

Maria K. Tougas, for the appellees-cross appellants (plaintiffs).

Opinion

ELGO, J. This quiet title action concerns a triangular strip of land between the parties' properties. The defendant, Peter J. Higgins, appeals from the judgment of the trial court, rendered after a bench trial, in favor of the plaintiffs, Peter P. Gaughan and Jacqueline McGann. On appeal, the defendant claims that the court improperly (1) credited the testimony of the plaintiffs' expert witness, (2) found facts not supported by the record, (3) found that the defendant trespassed on the plaintiffs' property, and (4) awarded the plaintiffs the fees of their expert witness as an element of the bill of costs. The plaintiffs cross appeal, claiming that the court improperly (1) denied their request for punitive damages and (2) determined that the defendant did not slander the plaintiffs' title. We reverse the judgment of the trial court with respect to the defendant's fourth claim and affirm the judgment in all other respects.

The record reveals the following facts and procedural history. The plaintiffs are the owners of real property known as 8 White Road in Ellington. The defendant is the owner of real property known as 51 South Road in Ellington, an abutting property to the north.

In 1969, the defendant's parents owned both the plaintiffs' and the defendant's parcels and subdivided the land into two parcels in order to convey the property at 8 White Road to the defendant.[1] The defendant's mother later deeded the property at 51 South Road to the defendant. Prior to the subdivision of the property in 1969, the defendant witnessed his father and an unidentified gentleman walk the boundaries of what

[1] We note, as did the trial court in its memorandum of decision, that the description of the 8 White Road parcel in the warranty deed from the defendant's parents to the defendant is the same as the description in the 1991 warranty deed from the defendant to Peter Gaughan.

became the 8 White Road property and place iron pins in three of the property's four corners.

In 1991, Peter Gaughan and his father, David Gaughan, purchased the undeveloped 8 White Road property from the defendant.[2] Prior to purchasing the property, Peter Gaughan walked the property with the defendant, and the defendant pointed out the parcel's boundaries, including the three iron pins that were located in the southeast, northeast, and northwest corners of the parcel.[3]

The disputed triangular strip of land between the parties' properties is approximately thirty-three feet wide where it abuts South Road at the northwest boundary corner to the plaintiffs' property and decreases in width to roughly five feet at the northeast boundary corner of their property. The disputed strip includes a hedgerow that runs almost all the way across the boundary, which the defendant's father planted in the 1940s. The plaintiffs believed that they owned the land to the south of the hedgerow.

In 1997, after Peter Gaughan started clearing the 8 White Road property in order to construct a residence,

[2] Subsequently, David Gaughan transferred his interest in the property to Peter Gaughan, who later transferred the property in common to his wife, Jacqueline McGann. Those deeds are not at issue in this case.

[3] The 1991 warranty deed provided to Peter Gaughan describes the 8 White Road property as follows: "Beginning at an iron pin set in the northerly line of White Road, which point is the southeasterly corner of the premises herein described and which point is the southwesterly corner of land now or formerly of Tolisano; thence from said point and place of beginning in a general northerly direction along land now or formerly of Tolisano, One Hundred Sixty (160) feet more or less to an iron pin; thence in a general easterly direction along other land now or formerly of Steven H. Higgins and Mary B. Higgins, Four Hundred Fifteen (415) feet more or less to an iron pin set in the general easterly line of South Road; thence in a general southerly direction along the easterly side of South Road, Three Hundred Thirty (330) feet more or less to the intersection of White Road; thence in a general northeasterly direction along the northerly line of White Road, Four Hundred Fifty (450) feet more or less to the point and place of beginning."

the defendant began to experience surface water flowing onto his property. In response, the defendant constructed a drainage swale just south of the hedgerow, which alleviated the water issue. The plaintiffs did not object to the defendant's construction of the swale, which the defendant maintained.

Years later, the defendant began to dispute the plaintiff's ownership of the triangular strip of land that runs along the boundary of their properties to the south of the hedgerow. That dispute precipitated this quiet title action commenced by the plaintiffs in 2016. Their complaint contained four counts: quiet title, trespass, slander to title, and adverse possession. In response, the defendant asserted two counterclaims: quiet title and water damage.[4]

In its June 12, 2017 memorandum of decision, the court found in favor of the plaintiffs on their claims for quiet title and trespass and on the defendant's claims for quiet title and water damage. The court found in favor of the defendant on the plaintiffs' claim for slander of title. Specifically, the court found that the 1991 warranty deed from the defendant to Peter Gaughan, granting him the 8 White Road parcel, is clear and unambiguous, and includes the disputed area as defined by the iron pins referenced in the deed that demarcate three of the four corners of the property.[5] As for the plaintiffs' trespass claim, the court found that, although the defendant had trespassed on the plaintiffs' property, the plaintiffs did not provide the court with any evidence of costs associated with remedying the alleged injuries therefrom. The court therefore found that the plaintiffs were entitled to $100 in nominal damages for the defendant's trespass but declined to award them

[4] The defendant asserted a third claim for trespass in his answer, but he withdrew the claim on the record during trial.

[5] On appeal, both the plaintiffs and the defendant agree with the court that the 1991 warranty deed from the defendant to Peter Gaughan is clear and unambiguous.

any punitive damages or attorney's fees. From that judgment, the defendant now appeals and the plaintiffs cross appeal. Additional facts will be set forth as necessary.

I

THE DEFENDANT'S APPEAL

A

In his first claim on appeal, the defendant essentially challenges the court's credibility determination. He claims that the court improperly credited the testimony of the plaintiffs' surveyor expert witness in construing the language of the plaintiffs' deed. We do not agree.

"[W]here the testimony of witnesses as to the location of the land described in deeds is in conflict, it becomes a question of fact for the determination of the court which may rely upon the opinions of experts to resolve the problem and it is the court's duty to accept that testimony or evidence which appears more credible. . . . In determining credibility of the experts, the court as the trier of fact could believe all, some or none of the testimony. . . . Moreover, credibility determinations are beyond the reach of an appellate court." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Har* v. *Boreiko*, 118 Conn. App. 787, 796–97, 986 A.2d 1072 (2010). Nonetheless, the trial court cannot "arbitrarily disregard, disbelieve or reject an expert's testimony in the first instance. . . . Where the trial court rejects the testimony of [an] expert, there must be some basis in the record to support the conclusion that the evidence of the [expert witness] is unworthy of belief." (Citations omitted; internal quotation marks omitted.) *Builders Service Corp.* v. *Planning & Zoning Commission*, 208 Conn. 267, 294, 545 A.2d 530 (1988).

The court heard extensive testimony from the defendant's surveyor expert witness, Robert Saunders, who explained in detail the basis for his conclusion that the

plaintiffs' deed did not convey title of the disputed area to the plaintiffs. The defendant argues that although the court mentioned at closing arguments that Saunders' testimony was "good" and "thorough," it did not address Saunders' evidence and reasoning in its memorandum of decision.[6]

We conclude that the court did not arbitrarily disregard Saunders' testimony. It is clear on the basis of the record and the court's memorandum of decision that, after considering all of the evidence before it, the court chose to credit the conclusions of the plaintiffs' expert witness regarding the plaintiffs' ownership of the disputed area over that of Saunders. Making such a credibility determination is the responsibility and exclusive province of the trial court as the fact finder. Accordingly, we reject the defendant's claim.

B

The defendant next claims that certain factual findings were not supported by the evidence in the record and were clearly erroneous. We address each claim in turn.

[6] The defendant refers to the following colloquy that occurred during closing arguments:

"The Court: So in order for me to find for [the defendant], I have to choose your surveyor's interpretation, correct?

"[The Defendant's Counsel]: That is correct. Yes.

"The Court: Now, why would I do that? Because this is what I'm struggling with. I mean, your expert witness was very good, and he seemed very thorough and all of that. But my job is to interpret the deed, and the deed that I need to interpret is exhibit 3.

"[The Defendant's Counsel]: Correct.

"The Court: Correct?

"[The Defendant's Counsel]: Yes.

"The Court: And in order to look at this deed, the cases say I have to look at the language in the deed.

"[The Defendant's Counsel]: Um-hmm.

"The Court: And where's the case? I don't see any language in this deed that would require me to step out of the deed and look back to 1929, which is what your surveyor wants me to do."

The following additional facts are relevant to the defendant's claims. The plaintiffs presented the expert testimony of Russell Heintz, a licensed land surveyor. Heintz testified that he began working with the plaintiffs in 1997, when Peter Gaughan was constructing his home on the 8 White Road property. In order to create his own survey, Heintz utilized a 1996 survey certified by land surveyor Barry Clarke to locate the pins referenced in the 1991 warranty deed. Heintz testified that in 1997 he saw all three pins referenced in the 1991 warranty deed, though he could not say which pins he used to create his survey. Heintz also testified that in 1997 he saw the northwest corner pin, but that it was gone when he returned to the property in 2013. Additionally, Heintz testified as to the methodology he used in coming to the opinion that the disputed area was part of the land deeded to the plaintiffs. He explained that he determined the area of land included in the deed description by starting at the first pin called for in the deed and working his way around the measurements of the property from that point, following the deed description.

As part of his case, the defendant called Saunders, a licensed land surveyor, as his expert witness. Saunders testified as to his methodology, explaining that in order to confirm that the pins in the ground were the pins described in the deed, he had to establish the right of way on White Road as the basis for the survey and apply the deed distances from that point. On the basis of this method, Saunders first established the southerly line of the plaintiffs' property based on research indicating that there had been a stone wall south of White Road, across the street from the plaintiffs' property. From there, Saunders established that the southern property line was thirty-three feet north of where the stone wall had been, based on his research that White Road was thirty-three feet wide.

Our review of the trial court's factual findings is well established. "[W]here the factual basis of the court's decision is challenged we must determine whether the facts set out in the memorandum of decision are supported by the evidence or whether, in light of the evidence and the pleadings in the whole record, those facts are clearly erroneous. . . . The credibility of the witnesses and the weight to be accorded to their testimony is for the trier of fact. . . . [An appellate] court does not try issues of fact or pass upon the credibility of witnesses." (Citation omitted; internal quotation marks omitted.) *Har* v. *Boreiko*, supra, 118 Conn. App. 795. "A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Because it is the trial court's function to weigh the evidence and determine credibility, we give great deference to its findings." (Internal quotation marks omitted.) *Lacic* v. *Tomas*, 78 Conn. App. 406, 410–11, 829 A.2d 1, cert. denied, 266 Conn. 922, 835 A.2d 472 (2003).

1

The defendant first argues that the court's factual finding as to the location of the plaintiffs' property was not supported by the evidence in the record and was clearly erroneous. We disagree.

In its memorandum of decision, the court settled and quieted title "in favor of the plaintiffs and against the defendant [regarding] the property located at 8 White Road, which includes the area in dispute in this case, and is described in the 1991 warranty deed that is filed in the Ellington land records at Volume 186, page 124." Heintz' testimony and the surveys admitted into evidence as completed by Clarke and Heintz indicate that

the location of the plaintiffs' property correlates with the deed description and the pins described therein. The court's finding as to the location of the plaintiffs' property and the disputed area is therefore supported by the record and is not clearly erroneous.

2

The defendant next asserts that the court's specific finding that the defendant showed the plaintiff the boundaries of the 8 White Road parcel, which included the disputed area, was not supported by the defendant's testimony, and was therefore clearly erroneous. We disagree.

The defendant argues that his testimony "directly contradicted" the court's finding, as he testified that the area he showed the plaintiff did not include the disputed area. However, Peter Gaughan testified at trial that, prior to purchasing the property, he walked the property with the defendant from "[p]in to pin to pin," and that the disputed area was within the area that the defendant showed him. The court, as fact finder, was free to credit that testimony. Accordingly, the court's finding is supported by the record and is not clearly erroneous.

3

The defendant also claims that the court's finding that "the iron pins referenced in the 1991 warranty deed were located on the property in the mid-1990s when the plaintiff had a survey done" was not supported by Heintz' testimony. We disagree.

The defendant broadly asserts that "[t]he testimony of the [plaintiffs'] surveyor was clearly contradictory, not consistent, and not credible. To rely on this for the

basis of a finding was clearly erroneous."[7] The defendant contends that Heintz testified that he had no specific memory of having seen the pin in the northwesterly corner of the plaintiffs' property when he visited the property in 1996 or 1997, and that he did not take measurements to verify the location of all the pins. Heintz, however, also testified that he was certain that he saw all three of the pins referenced in the 1991 warranty deed when he visited the plaintiffs' property in 1996 or 1997. Accordingly, there is support within the record for the trial court's finding that Heintz saw the pins when he visited the property in 1996 or 1997. That finding, therefore, is not clearly erroneous.

4

The defendant also argues that the trial court's finding that the pins "were in the same location prior to trial" as they were in the mid-1990s was contradicted directly by the evidence. We agree.

Heintz testified that he saw the northwest corner pin referenced in the deed in 1997, but that it was gone when he went back to the property in 2013. As such, the court's finding that the pins were in the same location prior to trial as they were in the mid-1990s is clearly erroneous, as there is no support for the finding within the record. Nevertheless, this isolated misstatement of fact does not undermine the rest of the court's findings, and because it does not affect our conclusion that the court's finding as to the location of the plaintiffs' property was not clearly erroneous, it does not affect the outcome of this appeal.

[7] The defendant also argues that Heintz' testimony that he saw the pins on the property in 1996 or 1997 should not be credited because of what he wrote on certain maps he prepared and because of where he set a property pin in 2013. However, as we have discussed previously in this opinion, making credibility determinations is within the province of the trial court. See part I A of this opinion.

C

The defendant next claims that the court erred in finding that the defendant trespassed on the plaintiffs' property because its finding is premised on the court's erroneous conclusion that the plaintiffs owned the disputed area. We disagree.

"[T]he scope of our appellate review depends upon the proper characterization of the rulings made by the trial court. To the extent that the trial court has made findings of fact, our review is limited to deciding whether such findings were clearly erroneous. When, however, the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Bristol* v. *Tilcon Minerals, Inc.*, 284 Conn. 55, 87, 931 A.2d 237 (2007). Whether the trial court properly concluded that the defendant trespassed on the plaintiffs' property is a question of law subject to our plenary review. Id.

It is well established that "[t]he essentials of an action for trespass are: (1) ownership or possessory interest in land by the plaintiff; (2) invasion, intrusion or entry by the defendant affecting the plaintiff's exclusive possessory interest; (3) done intentionally; and (4) causing direct injury." (Internal quotation marks omitted.) Id. In its memorandum of decision, the court determined that the plaintiffs had an exclusive ownership interest in the disputed area, and that the defendant intentionally entered the plaintiffs' property and caused injury. The defendant argues that, on the basis of his first two claims on appeal, the court's finding that the plaintiffs owned the disputed area is erroneous and, therefore, the trial court's conclusion that the defendant trespassed on the plaintiffs' property is also erroneous. In his brief, the defendant does not contest the court's findings as to the other elements of the trespass action. Because we agree with the court's conclusion that the

plaintiffs owned the disputed area; see part I B 1 of this opinion; the defendant's claim is untenable.

D

The final claim in the defendant's appeal is that the court erroneously awarded expert witness fees to the plaintiffs as an element of the bill of costs.[8] Specifically, the defendant argues that the court should not have awarded the plaintiffs $2500 in costs for payment of expert witness fees because Heintz, a land surveyor who testified at trial on behalf of the plaintiffs, did not fall within the category of experts listed within General Statutes § 52-260 (f).[9] We agree.

The following facts and procedural history are relevant to our discussion of this issue on appeal. On February 17, 2017, the plaintiffs filed a bill of costs in the amount of $4256.33, which included reimbursement for costs associated with Heintz' expert fees in the amount of $2500.[10] After judgment was rendered in favor of the

[8] Although the trial court awarded costs in addition to those discussed in part I D of this opinion, the plaintiff does not challenge those costs on appeal, which we therefore do not disturb.

[9] General Statutes § 52-260 (f) provides: "When any practitioner of the healing arts, as defined in section 20-1, dentist, registered nurse, advanced practice registered nurse or licensed practical nurse, as defined in section 20-87a, psychologist or real estate appraiser gives expert testimony in any action or proceeding, including by means of a deposition, the court shall determine a reasonable fee to be paid to such practitioner of the healing arts, dentist, registered nurse, advanced practice registered nurse, licensed practical nurse, psychologist or real estate appraiser and taxed as part of the costs in lieu of all other witness fees payable to such practitioner of the healing arts, dentist, registered nurse, advanced practice registered nurse, licensed practical nurse, psychologist or real estate appraiser."

[10] In their bill of costs, the plaintiffs cited General Statutes § 52-257 (b) (1) for the proposition that the defendant may be taxed for the expense of Heintz' expert fees.

Section 52-257 (a) sets forth the costs available to the prevailing party in a civil action in which the matter in demand is not less than fifteen thousand dollars. Section 52-257 (b) provides in relevant part: "Parties shall also receive: (1) For each witness attending court, the witness' legal fee and mileage . . . ."

plaintiffs, and within fourteen days, the defendant filed an objection to the plaintiffs' bill of costs, arguing that Heintz' fees were not taxable under our statutes.[11] At its nonarguable calendar, the court granted the plaintiffs' bill of costs in the amount of $4256.33. The defendant thereafter amended his appeal to include an appeal of the "[o]rder of trial court judge taxing costs on August 11, 2017."

As a preliminary issue, the plaintiffs argue that the defendant waived[12] his right to contest the bill of costs by failing to file an objection to the bill of costs within the fourteen day period specified by Practice Book § 18-5 (a)[13] and failing to file a motion for review within the

[11] The defendant also objected to the plaintiffs' bill of costs entry for a "court discretionary fee," arguing that "there has been no finding that this civil action was a difficult or extraordinary case." The defendant, however, has not contested on appeal this aspect of the trial court's award.

[12] In their brief, the plaintiffs specifically argue that the defendant "waived his right" to contest the plaintiffs' bill of costs, but the plaintiffs do not cite to any authority to support their argument that the failure to follow Practice Book procedure amounts to a waiver.

[13] The defendant argues that he timely filed an objection to the plaintiffs' bill of costs within fourteen days of the trial court's judgment. Practice Book § 18-5 (a) provides in relevant part: "[C]osts may be taxed by the clerk in civil cases fourteen days after the filing of a written bill of costs provided that no objection is filed. If a written objection is filed within the fourteen day period, notice shall be given by the clerk to all appearing parties of record of the date and time of the clerk's taxation. The parties may appear at such taxation and have the right to be heard by the clerk."

The defendant essentially contends that because the plaintiffs became the prevailing party when the judgment was rendered in their favor, their bill of costs only became operative at that point, and his objection to the bill of costs was therefore timely. Practice Book § 1-8 provides for a liberal interpretation of the rules "where it shall be manifest that a strict adherence to them will work surprise or injustice." To conclude that parties must object to a bill of costs filed before judgment has been rendered would work surprise and injustice. "It is elementary that, whether fees and costs are a matter of right or discretion, they ordinarily are awarded to the party that prevails in the case and, until there is a prevailing party, they do not arise." *Danbury* v. *Dana Investment Corp.*, 249 Conn. 1, 18, 730 A.2d 1128 (1999). Accordingly, we decline to adopt the plaintiffs' view that the defendant failed to timely object to their bill of costs.

twenty day period provided by Practice Book § 18-5 (b).[14] The plaintiffs' reliance on the defendant's failure to file a motion for review to support their claim of waiver is misplaced. The requirement of a motion for review appears to apply to the procedure by which the clerk taxes costs, which are typically ministerial assessments. See *Traystman*, *Coric & Keramidas*, *P.C.* v. *Daigle*, 282 Conn. 418, 429–30, 922 A.2d 1056 (2007) ("the costs to be included in a bill of costs generally are of a type that may be granted automatically by the court clerk. . . . [I]t is implicit in our statutes governing recoverable costs, and our rules of practice expressly contemplate, that the costs requested in a bill of costs generally are intended to be of a type that the court clerk may grant automatically." [Citations omitted; footnote omitted.]); *Fengler* v. *Northwest Connecticut Homes*, *Inc.*, 215 Conn. 286, 291, 575 A.2d 696 (1990) ("[a]n examination of General Statutes § 52-257, entitled '[f]ees of parties in civil actions,' reveals that most of the awards are automatic assessments, not involving the discretion of the court"); W. Horton, et al., 1 Connecticut Practice Series: Superior Court Civil Rules (2017–2018 Ed.) § 18-5, author's comments, p. 872 ("[a]s the clerk's role is purely ministerial, discretionary questions are to be determined by the court"). Under Practice Book § 18-5 (a), a timely written objection triggers notice and the right to a hearing before the *clerk*. Accordingly, the motion for review provides for judicial review of the clerk's *ministerial* assessments. That process is not implicated here.

Expert witness fees are not subject to the clerk's ministerial assessments. "A review of the language of

[14] Practice Book § 18-5 (b) provides for judicial review of the clerk's assessment, stating: "Either party may move the judicial authority for a review of the taxation by the clerk by filing a motion for review of taxation of costs within twenty days of the issuance of the notice of taxation by the clerk."

General Statutes § 52-260 (f) indicates that the statute does not provide for an automatic assessment; rather . . . it states that the *court shall determine* a reasonable fee . . . .'' (Emphasis in original; internal quotation marks omitted.) *Boczer* v. *Sella*, 113 Conn. App. 339, 344 n.6, 966 A.2d 326 (2009). Here, the record reflects that the bill of costs and the objection were referred directly to the court for its nonarguable calendar. Because the court and not the clerk ruled on the taxation of expert witness fees, no motion for review was required. Accordingly, the defendant properly appealed from the trial court's ruling and did not waive his claim that the fees were awarded improperly.

Having determined there was no waiver by the defendant, we consider the defendant's claim. ''It is a settled principle of our common law that parties are required to bear their own litigation expenses, except as otherwise provided by statute. . . . Because [c]osts are the creature of statute . . . and unless the statute clearly provides for them courts cannot tax them. . . . Accordingly, the [plaintiffs] can prevail only if the statutory provisions on which [they rely] clearly empower the trial court to tax the cost of the [expert's] testimony.'' (Citations omitted; internal quotation marks omitted.) *Arnone* v. *Enfield*, 79 Conn. App. 501, 531–32, 831 A.2d 260, cert. denied, 266 Conn. 932, 837 A.2d 804 (2003). ''Thus, the [plaintiffs'] claim raises an issue of statutory construction over which our review is plenary.'' *Ludington* v. *Sayers*, 64 Conn. App. 768, 779–80, 778 A.2d 262 (2001).

A land surveyor is not a listed expert witness whose cost may be reimbursed pursuant to General Statutes § 52-260 (f). Consequently, Heintz' fees cannot be reimbursed. See *Arnone* v. *Enfield*, supra, 79 Conn. App. 534 (prevailing party only authorized to recover costs expressly authorized by statute, and ''[a]n economist is not a listed expert whose cost may be reimbursed under

§ 52-260 [f]''); *Lurie & Associates, Inc.* v. *Tomik Corp.*, 37 Conn. App. 865, 868–69, A.2d 146 (1995) (prevailing party only authorized to recover costs expressly authorized by statute, and "[n]owhere does § 52-260 provide for expert witness fees when a handwriting expert is called to testify as an expert witness"). Accordingly, we conclude that the trial court lacked authority to award costs to the plaintiffs for Heintz' expert fees.

II

THE PLAINTIFFS' CROSS APPEAL

A

The plaintiffs first claim that the trial court improperly failed to award them common-law punitive damages and attorney's fees.[15] We disagree.

The following additional facts are relevant to this claim on appeal. Prior to litigation, the defendant engaged in self-help remedies to mark what he believed was the boundary line between his parcel and the plaintiffs' parcel. On one occasion he sprayed bleach on the grass along his claimed boundary of the disputed area, killing the grass in that area. Thereafter, the defendant twice used vinegar to mark his claimed boundary line. The defendant also painted trees, fence poles, and other markers with permanent orange paint to mark the property that he claimed he owned within the disputed area.

[15] In their brief, after discussing punitive damages generally, the plaintiffs argue that the court "further erred because it held that attorney's fees could not be awarded in a judgment of trespass." While the plaintiffs mischaracterize the court's holding, we need not address their argument on attorney's fees separate from our discussion of punitive damages. The plaintiffs argue that the court "should have awarded $22,000 in attorney's fees as common-law punitive [damages] in this case as a result of [the] defendant's misconduct." Because we disagree with the plaintiffs' argument that the court erred in not awarding punitive damages, we need not address whether attorney's fees should have been awarded as a component of punitive damages.

Our Supreme Court consistently has "stated that [i]n order to award punitive or exemplary damages, evidence must reveal a reckless indifference to the rights of others or an intentional and wanton violation of those rights. . . . If the evidence discloses that a defendant was recklessly indifferent to the rights of a plaintiff, an actual intention to do harm to the plaintiff is not necessary." (Citations omitted; internal quotation marks omitted.) *Berry* v. *Loiseau*, 223 Conn. 786, 811, 614 A.2d 414 (1992). Further, "common-law punitive damages . . . are limited under Connecticut law to litigation expenses, such as attorney's fees less taxable costs." *Hylton* v. *Gunter*, 313 Conn. 472, 484, 97 A.3d 970 (2014). "Generally, attorney's fees may not be recovered, either as costs or damages, absent contractual or statutory authorization. . . . Attorney's fees may be awarded, however, as a component of punitive damages. . . . To furnish a basis for recovery of such damages, the pleadings must allege[16] and the evidence must

[16] In their second count claiming trespass, and as the sole basis for their claim of punitive damages, the plaintiffs allege that "[o]ver the past several years, the [d]efendant has unlawfully entered onto the disputed area without license, and caused extensive property damage, including spraying poison onto the grass, trees, and shrubs, and by defacing sheds and tampering with other personal property stored therein. . . . As a result of the aforesaid conduct by the [d]efendant, the [p]laintiffs have suffered damages." In their prayer for relief, the plaintiffs did not specifically request punitive damages. They did request, inter alia, money damages and an award of reasonable attorney's fees and costs.

To the extent that the defendant claims the plaintiffs failed to properly plead an award of attorney's fees as a component of punitive damages, this court recently stated that "[b]ecause punitive damages may include attorney's fees, we treat this claim for attorney's fees as a request for punitive damages. Although the plaintiff did not claim attorney's fees in the form of punitive damages but instead merely as 'attorney's fees,' the defendant necessarily [was] on notice that punitive damages were being claimed because of the type of conduct pleaded and the fact that attorney's fees, [for this claim], could be obtained only through the awarding of punitive damages." (Internal quotation marks omitted.) *Chioffi* v. *Martin*, 181 Conn. App. 111, 141–42 n.15, 186 A.3d 15 (2018); see also *Stohlts* v. *Gilkinson*, 87 Conn. App. 634, 647, 867 A.2d 860 ("the plaintiffs' amended complaint painted a clear picture of an abutting landowner going to extreme measures to

show wanton or wilful malicious misconduct, and the language contained in the pleadings must be sufficiently explicit to inform the court and opposing counsel that such damages are being sought." (Internal quotation marks omitted.) *Stohlts* v. *Gilkinson*, 87 Conn. App. 634, 646, 867 A.2d 860, cert. denied, 273 Conn. 930, 873 A.2d 1000 (2005).

Our standard of review is well settled. "[T]he trial court has broad discretion in determining whether damages are appropriate. . . . Its decision will not be disturbed on appeal absent a clear abuse of discretion." (Citation omitted; internal quotation marks omitted.) *Elm City Cheese Co.* v. *Federico*, 251 Conn. 59, 90, 752 A.2d 1037 (1999). Furthermore, "in order to award punitive damages, evidence must reveal a reckless indifference to the rights of others or an intentional and wanton violation of those rights. . . . Recklessness is a state of consciousness with reference to the consequences of one's acts. . . . It is more than negligence, more than gross negligence. . . . The state of mind amounting to recklessness may be inferred from conduct. But, in order to infer it, there must be something more than a failure to exercise a reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them. . . . Wanton misconduct is reckless misconduct. . . . It is such conduct as indicates a reckless disregard of the just rights or safety of others or of the consequences

harass his neighbor. The incidents recounted included but were not limited to blocking their driveway, filing a false survey on the land records, building an unsightly fence and digging with machinery from six in the morning until ten thirty at night. Although the claim alleged was negligent infliction of emotional distress, the underlying conduct was intentional harassment. The defendants necessarily were on notice that punitive damages were being claimed because of the type of conduct pleaded and the fact that attorney's fees, in this case, could be obtained only through the awarding of punitive damages." [Footnote omitted.]), cert. denied, 273 Conn. 930, 873 A.2d 1000 (2005).

of the action. . . . Whether the defendant acted recklessly is a question of fact subject to the clearly erroneous standard of review." (Citations omitted; internal quotation marks omitted.) *Franc* v. *Bethel Holding Co.*, 73 Conn. App. 114, 137–38, 807 A.2d 519, cert. granted, 262 Conn. 923, 812 A.2d 864 (2002) (appeal withdrawn October 21, 2003).

At its core, the plaintiffs' argument is that the court improperly determined that the defendant's conduct did not amount to reckless indifference. Accordingly, the plaintiffs attack the court's factual finding, which is subject to the clearly erroneous standard of review. Id., 138.

In its memorandum of decision, the court stated: "The court declines to award punitive damages. Although the defendant trespassed on the plaintiffs' property, the court finds that his actions stemmed from his belief that he owned the property and therefore he believed that he had the right to mark within his own property. That his belief has now been found to be incorrect does not establish reckless indifference and entitle the plaintiffs to punitive damages."

The plaintiffs argue that the court's reasoning was incorrect and clearly erroneous because "regardless of whether [the] defendant believed he was right or not, the conduct he engaged in demonstrated a wanton disregard of [the] plaintiffs' rights . . . ." The plaintiffs rely on our Supreme Court's decision in *Collens* v. *New Canaan Water Co.*, 155 Conn. 477, 234 A.2d 825 (1967). In *Collens*, the court stated: "Mere belief in the right of the defendant to act as the court found it did act *would not necessarily* prevent the award of such damages. The injuries to the plaintiffs were inflicted in a spirit of wanton disregard of their rights." (Emphasis added.) Id., 489.

The plaintiffs fail to establish how the reasoning in *Collens* makes the trial court's reasoning clearly erroneous. In *Collens*, the court concluded that "[t]he conduct of the defendant would appear to be at least in reckless disregard for the consequences it knew or should have known would result, and, if this element is present, an actual intention to do harm to the plaintiffs is not necessary." Id., 490. In the present case, the court specifically found, and the record supports its finding, that the defendant's actions stemmed from his mistaken belief that he owned the disputed property. While the plaintiffs are correct in pointing out that a trial court may find reckless indifference without finding actual intention to do harm, that does not mean that the court's factual findings required it to conclude that the defendant acted with reckless indifference. On the basis of our review of the record, we cannot conclude that the court's findings were clearly erroneous.

B

The plaintiffs' final claim on cross appeal is that the court improperly determined that the defendant did not slander the title to their property. We disagree.

The following additional facts are relevant to this claim on appeal. On August 10, 2014, the defendant had a state marshal serve on the plaintiffs a "notice of revocation" concerning the disputed area of land, indicating that he would no longer permit them to utilize that area.[17] The notice was signed by the defendant and served on Peter Gaughan by a marshal and a copy was

[17] The "notice of revocation" provided: "From the Estate of the former Mary B. Higgins and now Executor and Owner by deed of record of the said Estate, Peter J. Higgins. The permission and privilege given to Peter P. Gaughan to conduct activity on an area of the said estate is revoked. Any and all articles placed on the property with or without permission are to be removed. Any articles that are not removed will be claimed as abandoned and will be removed by the current owner and successors of the said property."

left for Jacqueline McGann at her usual place of abode at 8 White Road.

"[O]ur standard of review when the legal conclusions of the trial court are challenged is plenary, and requires us to determine whether the conclusions reached are legally and logically correct and whether they find support in the facts set forth in the memorandum of decision." *Elm Street Builders, Inc.* v. *Enterprise Park Condominium Assn., Inc.*, 63 Conn. App. 657, 669, 778 A.2d 237 (2001). "A cause of action for slander of title consists of the uttering or publication of a false statement derogatory to the plaintiff's title, with malice, causing special damages as a result of diminished value of the plaintiff's property in the eyes of third parties. The publication must be false, and the plaintiff must have an estate or interest in the property slandered. Pecuniary damages must be shown in order to prevail on such a claim." (Internal quotation marks omitted.) Id., 669–70. "[A]ctual malice requires a showing that a statement was made with knowledge that it was false or with reckless disregard for its truth. . . . A negligent misstatement of fact will not suffice; the evidence must demonstrate a purposeful avoidance of the truth. . . . Further, proof that a defamatory falsehood has been uttered with bad or corrupt motive or with an intent to inflict harm will not be sufficient to support a finding of actual malice . . . although such evidence may assist in drawing an inference of knowledge or reckless disregard of falsity." (Internal quotation marks omitted.) *Fountain Pointe, LLC* v. *Calpitano*, 144 Conn. App. 624, 655–56, 76 A.3d 636, cert. denied, 310 Conn. 928, 78 A.3d 147 (2013).

In its memorandum of decision, the court reasoned that "the plaintiffs have failed to prove their slander of title claim because they have failed to establish that notice was 'published' to anyone but the plaintiffs. It was not recorded on the land records or distributed to

any third party. Accordingly, without distribution of the notice to third parties there has not been, and could not be, any 'special damages as a result of diminished value of the plaintiffs' property in the eyes of third parties.' Also, the court finds that the plaintiffs have not proved that in sending the plaintiffs the notice that the defendant acted with reckless disregard for its truth."

The plaintiffs argue that the court's finding that the notice was not published to anyone but the plaintiffs was erroneous because the notice was distributed to a marshal, who is a third party. In response, the defendant argues that "[t]he notice was clearly intended to be communicated to the [plaintiffs] and not to third parties, and the state marshal was used as a means of delivery." We agree with the defendant. The plaintiffs fail to provide any legal authority, and we are aware of none, indicating that delivery through a state marshal constitutes publication to a third party. We do not find the plaintiffs' argument persuasive that the possibility of the marshal reading the notice is enough to constitute publication to a third party.

Further, we agree with the trial court that the plaintiffs have failed to prove that there have been "any 'special damages as a result of diminished value of the plaintiffs' property in the eyes of third parties.' " Looking beyond our conclusion that the statement was not published to a third party, there is no evidence in the record to establish that the plaintiffs suffered pecuniary loss *as a result of* the marshal being provided the notice to deliver to the plaintiffs. In their brief, the plaintiffs argue that they are entitled to pecuniary damages for various reasons, but none establishes how the delivery of the notice itself caused them damages.[18]

[18] Specifically, the plaintiffs argue that they are entitled to pecuniary damages for three reasons: (1) the plaintiffs lost the use of the disputed area because the defendant built the swale on the disputed area without the town's permission and the plaintiffs pay the property taxes on the property,

Finally, we agree with the trial court that the plaintiffs failed to prove that the defendant acted with reckless disregard for the truth by sending the notice to the plaintiffs. The plaintiffs address this element in their brief only by stating that malice was "demonstrated by [the] defendant's testimony that 'things started getting a little rough and there was no communication' . . . [and that the] [d]efendant's statements in the notice were false because the [e]state of Mary Higgins never owned the disputed property. It was deeded to [the] [p]laintiffs prior to her death in 1991." We find these arguments unconvincing and fail to see how either allegation, even if proved, amounts to a reckless disregard for the truth in the context of the alleged slander of the plaintiffs' title. We therefore conclude that the plaintiffs failed to establish that the court improperly determined that the defendant did not slander the title to their property.

The judgment is reversed only as to the award of costs and the case is remanded for a recalculation of the award of costs consistent with this opinion. The judgment is affirmed in all other respects.

In this opinion the other judges concurred.

CHERYL A. JENKINS *v.* MICHAEL A. JENKINS (AC 39231)

Keller, Bright and Pellegrino, Js.

Syllabus

The plaintiff appealed to this court from the judgment of the trial court dissolving her marriage to the defendant and denying her motions to

(2) Peter Gaughan testified that he does not believe he can sell the property until the cloud on the title is resolved, and (3) the plaintiffs paid Heintz to attempt to settle the dispute prior to litigation. We find those arguments unavailing. Indeed, they all seem to be related to the underlying dispute concerning the triangular strip of land and not as a result of the defendant's delivery of the notice to the plaintiffs through the marshal.

vacate an arbitration award related to the dissolution matter. During the dissolution proceedings, the parties had agreed to enter into arbitration for the resolution of various issues and further agreed that they would not have the arbitration proceedings recorded. During arbitration, the arbitrator precluded the testimony of the plaintiff's psychiatrist because the plaintiff failed to introduce a letter, on which the psychiatrist partially based his evaluation of the plaintiff's claims of abuse by the defendant, as an exhibit prior to the proceedings. Thereafter, the trial court accepted the arbitrator's award and rationale, and rendered judgment dissolving the marriage. On appeal, the plaintiff claimed, inter alia, that the arbitrator improperly precluded the testimony of her psychiatrist in violation of statute (§ 52-418 [a] [3]). *Held:*

1. The trial court did not err in denying the plaintiff's motion to vacate the arbitration award on the basis of the arbitrator's refusal to hear the testimony of the plaintiff's psychiatrist: that court properly concluded that the plaintiff failed to meet her burden to show that she was deprived of a full and fair hearing, as the arbitration agreement provided that the arbitrator controlled the admission of evidence and in the absence of any recordings of the arbitration proceedings, the trial court properly considered the length of the proceedings and the arbitrator's rulings, and determined that the plaintiff had a full and fair opportunity to present her case, the arbitration award and rationale revealed that the plaintiff testified at the proceedings regarding her claims of abuse, and the arbitrator referenced the contents of the letter in the arbitration rationale, which indicated that she considered it in structuring the award; moreover, the plaintiff failed to demonstrate that the psychiatrist's testimony would have impacted the outcome of the proceedings and how such testimony would have persuaded the arbitrator that the defendant was more at fault, as the testimony likely would have been duplicative of the evidence already before the arbitrator, and, thus, it was unlikely that the testimony would have negated evidence that indicated that the plaintiff contributed to the breakdown of the marriage.
2. The plaintiff could not prevail on her claim that the arbitration award should have been vacated because the arbitrator was biased against her in violation of § 52-418 (a) (2), the trial court having properly concluded that the plaintiff failed to meet her burden of demonstrating that the arbitrator was partial; because there was no record of the arbitration proceedings, the trial court relied on testimony at the hearing on the motions to confirm and to vacate the arbitration award in determining whether the arbitrator was biased in violation of § 52-418 (a) (2), and the only evidence the plaintiff produced at that hearing in support of her claim was her own testimony and that of her financial expert, whose testimony only partially corroborated the plaintiff's account of the arbitrator's statements and behavior toward the plaintiff.

Argued October 9—officially released December 18, 2018

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford, where the court, *Colin*, *J.*, approved the agreement of the parties to enter into binding arbitration as to certain disputed matters; thereafter, the arbitrator issued an award and entered certain orders; subsequently, the defendant filed a motion to confirm the arbitration award, and the plaintiff filed motions to vacate the award; thereafter, the matter was tried to the court, *Colin*, *J.*; judgment granting the defendant's motion to confirm, denying the plaintiff's motions to vacate, and dissolving the parties' marriage and granting certain other relief, from which the plaintiff appealed to this court. *Affirmed.*

Pamela M. Magnano, with whom, on the brief, was *Cheryl A. Jenkins*, for the appellant (plaintiff).

George J. Markley, for the appellee (defendant).

Opinion

PELLEGRINO, J. The plaintiff, Cheryl A. Jenkins, appeals from the trial court's judgment denying her motion to vacate an arbitration award in a dissolution of marriage matter which, in addition to dissolving the marriage, included orders of alimony and a division of the parties' assets and other financial orders.[1] On appeal, the plaintiff claims that the trial court erred when it refused to vacate the arbitrator's award because the arbitrator (1) precluded the testimony of an expert witness in violation of General Statutes § 52-418 (a) (3), and (2) treated one party more favorably than the other in violation of General Statutes § 52-418 (a) (2). We disagree and, accordingly, affirm the judgment of the trial court.

[1] The plaintiff does not specifically contest any of the orders of alimony or other financial orders awarded by the arbitrator.

The following facts and procedural history are relevant to the resolution of this appeal. The plaintiff and the defendant, Michael A. Jenkins, were married on August 31, 2008. In December, 2013, the plaintiff commenced the present dissolution action.

In November, 2015, the parties entered into an arbitration agreement (agreement) for the resolution of several issues relating to the dissolution of their marriage. Arbitration proceedings took place before Elaine Gordon (arbitrator) on December 1, 2, and 21, 2015. The parties attended the proceedings with counsel and agreed that they would not have the proceedings recorded.[2]

On February 3, 2016, the arbitrator issued an award and rationale for the award. The plaintiff subsequently filed motions in the Superior Court to vacate the award.[3] After holding a full evidentiary hearing on the plaintiff's two operative motions on March 28, 2016, the trial court, *Colin*, *J.*, denied the plaintiff's motions to vacate the arbitration award. This appeal followed. Additional facts and procedural history will be set forth as necessary.

The plaintiff's claims arise under "General Statutes § 52-418 (a), which sets forth the standard of review governing an application to vacate, correct or modify an arbitration award, [and] provides in relevant part: Upon the application of any party to an arbitration, the

[2] Specifically, the parties agreed to the following: "[The arbitrator] may tape record all or part of the arbitration for her own use, which recording shall not be deemed an official evidential record, nor used in any subsequent proceedings. Any such recording shall be the property of [the arbitrator] and shall be promptly destroyed after the final award and period for correction of the award. Neither party shall procure appropriate services to record the proceedings of the [arbitration] proceedings."

[3] The plaintiff filed three motions to vacate the award. The trial court marked off one of the motions as moot. The other two motions sought to vacate the award on the basis of the arbitrator's preclusion of an expert witness and arbitrator's bias, respectively. The trial court held a single hearing on both of the remaining motions on March 28, 2016.

superior court for the judicial district in which one of the parties resides . . . shall make an order vacating the award if it finds [that] . . . (2) . . . there has been evident partiality or corruption on the part of any arbitrator; [or] (3) if the arbitrators have been guilty of misconduct in refusing to . . . hear evidence pertinent and material to the controversy or of any other action by which the rights of any party have been prejudiced . . . .'' (Internal quotation marks omitted.) *Dept. of Transportation* v. *White Oak Corp.*, 319 Conn. 582, 598 n.3, 125 A.3d 988 (2015).

We begin by setting forth the relevant standard for reviewing a trial court's judgment affirming an arbitration award. ''This court has for many years wholeheartedly endorsed arbitration as an effective alternative method of settling disputes intended to avoid the formalities, delay, expense and vexation of ordinary litigation. . . . When arbitration is created by contract, we recognize that its autonomy can only be preserved by minimal judicial intervention. . . . Since the parties consent to arbitration, and have full control over the issues to be arbitrated, a court will make every reasonable presumption in favor of the arbitration award and the arbitrator's acts and proceedings. . . . The party challenging the award bears the burden of producing evidence sufficient to invalidate or avoid it . . . .'' (Internal quotation marks omitted.) *Bridgeport* v. *Kasper Group, Inc.*, 278 Conn. 466, 473–74, 899 A.2d 523 (2006).

Although a trial court's review of an arbitrator's decision is limited, our review of a trial court's decision to dismiss a motion to vacate an arbitration award under § 52-418 (a) (3) involves a question of law and, thus, is plenary. See id., 476. We review a trial court's decision to dismiss a motion to vacate an arbitration pursuant to § 52-418 (a) (2), which involves factual findings by the trial court, under the clearly erroneous standard.

See *Haynes Construction Co.* v. *Cascella & Son Construction, Inc.*, 36 Conn. App. 29, 32–33, 647 A.2d 1015, cert. denied, 231 Conn. 916, 648 A.2d 152 (1994) (applying clearly erroneous standard when reviewing trial court's decision vacating arbitration decision on basis of arbitrator's evident partiality). "Determining whether a trial court's decision is clearly erroneous involves a two part function: where the legal conclusions of the court are challenged we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision; where the factual basis of the court's decision is challenged we must determine whether the facts set out in the memorandum of decision are supported by the evidence or whether, in light of the evidence and the pleadings in the whole record, these facts are clearly erroneous." (Internal quotation marks omitted.) Id., 32.

I

The plaintiff first claims that the trial court erred in denying her motion to vacate the arbitration award on the basis of the arbitrator's refusal, in violation of § 52-418 (a) (3), to allow testimony from Carl Mueller, a psychiatrist called by the plaintiff to establish that she was physically and sexually abused by the defendant. Specifically, the plaintiff claims that the trial court erred in denying her motion because, by precluding Mueller from testifying, the arbitrator "prejudiced the plaintiff's ability to prove that the defendant . . . abused her and was primarily at fault for the breakdown of the marriage." We disagree.

The following additional facts and procedural history are relevant to the resolution of this claim. Prior to the arbitration proceedings, the plaintiff disclosed Mueller as a potential expert witness. When the defendant deposed Mueller on July 2, 2015, Mueller testified that he had reviewed a letter that the defendant sent to the

plaintiff requesting that she set up and record sexual encounters with other individuals, and that the letter was part of the basis of his expert opinion. Although Mueller was asked, in advance of the deposition, to bring "documents [he] obtained, created, reviewed or relied upon in connection with [the] matter," Mueller failed to produce the letter at the deposition because the original was in the plaintiff's possession and he did not have a copy of it. The plaintiff failed to produce the letter at any point prior to the arbitration proceedings, despite her obligation to do so by the terms of the agreement.[4]

On December 2, 2015, the plaintiff called Mueller to testify. When Mueller was called to testify, the plaintiff offered the letter as an exhibit. The defendant then objected to Mueller's testimony on the basis of the plaintiff's failure to disclose the letter prior to the beginning of the proceedings. The arbitrator precluded Mueller's testimony in its entirety because the defendant made numerous requests for the disclosure of the letter, prior to this point, which the plaintiff ignored.

On December 8, 2015, the plaintiff filed a motion with the arbitrator to have Mueller's testimony admitted. The arbitrator treated the motion as a request for reconsideration of the ruling that she had made, and, in a written ruling, denied the motion, stating: "The plaintiff had the ability to cure the problem of the letter's absence from the file for months. By not producing it and by not complying with the agreement to premark exhibits,

[4] The agreement provided: "[The parties and their counsel] will, within the bounds of advocacy, fully cooperate with each other. They will cooperate in . . . the exchange of exhibits and discovery. [The arbitrator] may access sanctions . . . and other relief to a litigant for the other party's failure to comply with the arbitration process or any of [the arbitrator's] rulings or directives." It further provided in relevant part: "By November 23, 2015, except by separate agreement of the parties, counsel shall exchange with each other copies of all exhibits they intend to submit at the arbitration . . . ."

the plaintiff consciously created the problem for which she now seeks consideration and relief."

The plaintiff claims that the trial court erred in denying her motion to vacate on the basis of the arbitrator's preclusion of Mueller's testimony because it was integral in "ruling on the crucial issue of the causes of the breakdown of the marriage, and in structuring awards . . . in the matter." Additionally, the plaintiff claims that, even if she wrongfully failed to produce the letter, the preclusion of Mueller's testimony was not an appropriate sanction. The defendant argues that the trial court did not err in denying the plaintiff's motion to vacate the arbitration award because, under the circumstances, precluding Mueller's testimony was squarely within the arbitrator's authority. We agree with the defendant.

"[A]rbitrators are accorded substantial discretion in determining the admissibility of evidence. . . . Indeed, it is within the broad discretion of the arbitrators to decide whether additional evidence is required or would merely prolong the proceeding unnecessarily. . . . This relaxation of strict evidentiary rules is both necessary and desirable because arbitration is an informal proceeding designed, in part, to avoid the complexities of litigation." (Internal quotation marks omitted.) *McCann* v. *Dept. of Environmental Protection*, 288 Conn. 203, 214, 952 A.2d 43 (2008).

An arbitrator's broad discretion with regard to the admission of evidence, however, is limited by § 52-418 (a) (3).[5] "[T]his court has stated that § 52-418 (a) (3)

[5] General Statutes § 52-418 (a) (3) provides in relevant part: "Upon the application of any party to an arbitration, the superior court for the judicial district in which one of the parties resides . . . shall make an order vacating the award if it finds [that] . . . the arbitrators have been guilty of misconduct in refusing to . . . hear evidence pertinent and material to the controversy or of any other action by which the rights of any party have been prejudiced."

does not mandate that every failure or refusal to receive evidence, even relevant evidence, constitutes misconduct. . . . To establish that an evidentiary ruling, or lack thereof, rises to the level of misconduct prohibited by § 52-418 (a) (3) requires more than a showing that an arbitrator committed an error of law. . . . Rather, a party challenging an arbitration award on the ground that the arbitrator refused to receive material evidence must prove that, by virtue of an evidentiary ruling, [she] was in fact deprived of a full and fair hearing before the [arbitrator]. . . . [A]n arbitration hearing is fair if the arbitrator gives each of the parties to the dispute an adequate opportunity to present its evidence and argument. . . . If the evidence at issue is merely cumulative or irrelevant, the arbitrator's refusal to consider it does not deprive the proffering party of a full and fair hearing." (Internal quotation marks omitted.) Id., 215. "Additionally, to vacate an arbitrator's award on the ground of misconduct under § 52-418 (a) (3), the moving party must establish that it was substantially prejudiced by the improper ruling." *Bridgeport* v. *Kasper Group*, supra, 278 Conn. 476.

In the present case, the trial court concluded that the plaintiff failed to meet her burden to show that she was deprived of a full and fair hearing because the arbitrator refused to hear Mueller's testimony. The trial court first noted that paragraph 17 of the arbitration agreement provided that the arbitrator "shall control the admission of evidence." Furthermore, because the parties agreed not to record the arbitration proceedings, no record of the proceedings was provided to the trial court. In the absence of a record, the trial court considered the length of the arbitration proceedings and the arbitrator's rulings, and determined that the plaintiff had a full and fair opportunity to present her case. We agree with the trial court.

Mueller's opinion regarding the plaintiff's claims of abuse was based, in large part, on interviews Mueller conducted with the plaintiff,[6] and the letter the defendant had written to the plaintiff. Although Mueller was not permitted to testify, the arbitration award and rationale reveal that the plaintiff testified at the arbitration proceedings regarding her claims of abuse. The arbitrator also referenced the contents of the letter in her arbitration rationale, indicating that she considered it in structuring the award.

Moreover, the plaintiff failed to show that Mueller's testimony would have impacted the outcome of the proceedings. The arbitrator stated: "[I]t is impossible to be persuaded that either party is more at fault for the breakdown of the marriage." The plaintiff did not demonstrate how Mueller's testimony would have persuaded the arbitrator that the defendant was more at fault. Indeed, it is unlikely that Mueller's testimony, which likely would have been duplicative of evidence already before the arbitrator, would have negated evidence that indicated the plaintiff contributed to the breakdown of the marriage. On the basis of the foregoing, we conclude that the trial court did not err in denying the plaintiff's motion to vacate on the basis of the arbitrator's refusal to hear Mueller's testimony.

II

The plaintiff next claims that the trial court erred in failing to vacate the arbitration award on the basis of

[6] Mueller was not the plaintiff's treating psychiatrist; rather, the plaintiff's counsel hired Mueller to interview the plaintiff in connection with providing expert testimony in the dissolution proceedings. Mueller interviewed the plaintiff three times for a total of three and one-half hours. During these interviews, Mueller did not administer any kind of formal test to assess the veracity of the plaintiff's claims of abuse. Mueller reviewed the plaintiff's medical records, but failed to speak to the plaintiff's physicians or therapists. The medical records that Mueller reviewed in forming his opinion were introduced during the arbitration proceedings and were available to the arbitrator in crafting the arbitration award.

the arbitrator's alleged partiality in violation of § 52-418 (a) (2).[7] The plaintiff argues that the trial court should have vacated the award because, "[t]hroughout the arbitration hearings, the [a]rbitrator's behavior directed at the plaintiff was belligerent and aggressive." Specifically, the plaintiff alleges that the arbitrator "warned [the plaintiff] that repeated trips [to the bathroom] would not be tolerated," "screamed at the plaintiff," and slammed the door to the room where the plaintiff was meeting with her attorney and financial expert, causing ceiling tile debris to fall down from the ceiling onto the plaintiff's head, called the plaintiff a "fallen Catholic," and addressed the defendant's attorney in Hebrew. We conclude that the plaintiff's claim is without merit.

The following additional facts and procedural history are relevant to the resolution of this claim. On March 2, 2016, following the arbitrator's entry of an award, the plaintiff filed a motion to vacate the award, in which she argued that the arbitrator was not impartial. On March 28, 2016, the trial court heard testimony on the plaintiff's motion.

The plaintiff testified that during the arbitration proceedings, the arbitrator, without knocking, came into a room where she, her financial expert, Cheri Mazza, and her counsel, were meeting privately. Upon entering the room, the arbitrator screamed, and "slammed the door so hard that she knocked loose a ceiling tile" that fell on the plaintiff's head. The plaintiff also testified that during the arbitration hearing on December 21, 2015, the arbitrator held a conversation in Hebrew with the defendant's counsel, Eric Broder, and then said to

[7] General Statutes § 52-418 (a) (2) provides in relevant part: "Upon the application of any party to an arbitration, the superior court for the judicial district in which one of the parties resides . . . shall make an order vacating the award if it finds [that] . . . there has been evident partiality or corruption on the part of any arbitrator."

the plaintiff, "oh, you fallen Catholics, you wouldn't get that."

Broder testified that, contrary to the plaintiff's claims that the arbitrator warned her that she would not be permitted to take frequent bathroom breaks, the plaintiff "constantly needed to take breaks, which were granted by [the arbitrator] throughout whether it was for the bathroom, for lunch or whatever . . . ." Broder also testified that he did not speak Hebrew to the arbitrator and that he did not hear the arbitrator address the plaintiff as a "fallen Catholic."

Finally, Mazza testified regarding the arbitrator's alleged outburst. Mazza said that she witnessed the arbitrator "burst into the room" without knocking and "slam the door" on the way out. Mazza also was present when the abitrator returned to the room and "apologize[d] for the outburst." Mazza did not, however, see a ceiling tile fall when the arbitrator slammed the door. Mazza stated: "I don't believe the entire ceiling tile fell. There was just some debris that she claimed had fallen into her hair." After the hearing, and considering the testimony of the plaintiff, Broder, and Mazza, the trial court determined that the plaintiff failed to present sufficient evidence for it to conclude that the arbitrator was not impartial.

"A party seeking to vacate an arbitration award on the ground of evident partiality has the burden of producing sufficient evidence in support of the claim. An allegation that an arbitrator was biased, if supported by sufficient evidence, may warrant the vacation of the arbitration award. . . . The burden of proving bias or evident partiality pursuant to § 52-418 (a) (2) rests on the party making such a claim, and requires more than a showing of an appearance of bias. . . . In construing § 52-418 (a) (2), [our Supreme Court] concluded that evident partiality will be found where a reasonable person

would have to conclude that an arbitrator was partial to one party to the arbitration. To put it in the vernacular, evident partiality exists where it reasonably looks as though a given arbitrator would tend to favor one of the parties." (Internal quotation marks omitted.) *Toland* v. *Toland*, 179 Conn. App. 800, 814, 182 A.3d 651, cert. denied, 328 Conn. 935, 183 A.3d 1174 (2018).

In the present case, because there was no record of the arbitration proceedings, the trial court relied on the testimony presented at the March 28 hearing in determining whether the arbitrator was biased in violation of § 52-418 (a) (2). The only evidence that the plaintiff produced in support of her claim was her own testimony and that of Mazza. Mazza's testimony, however, only partially corroborated the plaintiff's account of the arbitrator's so-called outburst. The plaintiff failed to present any evidence beyond her own testimony in support of her claims that the arbitrator warned her against taking bathroom breaks, spoke to the defendant's counsel in Hebrew, and called the plaintiff a "fallen Catholic." In *Toland*, this court concluded that a plaintiff failed to meet her burden to show partiality under § 52-418 (a) (2) when the plaintiff presented evidence from the transcript of the arbitration proceedings that demonstrated that the arbitrator "expressed some frustration and impatience" with the plaintiff. Id., 815. In the present case, the plaintiff provided the trial court with even less credible evidence of bias. Accordingly, we conclude that the trial court did not err in concluding that the plaintiff failed to meet her burden of demonstrating that the arbitrator was partial under § 52-418 (a) (2).

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* OMAR MILLER (AC 40217)

Alvord, Prescott and Moll, Js.

Syllabus

The defendant, who previously had been convicted of the crime of murder, appealed to this court from the judgment of the trial court denying his motion to correct an illegal sentence. In his motion to correct an illegal sentence, the defendant claimed that his sentence of thirty-five years of incarceration violated, inter alia, the prohibition in the state constitution against cruel and unusual punishment. Specifically, the defendant claimed that, despite the fact that he was nineteen years old at the time he committed the offense, the court unconstitutionally failed to consider mitigating factors related to his young age, which it would have been constitutionally required to consider had he committed the offense when he was less than eighteen years old. The trial court sua sponte denied the defendant's motion to correct an illegal sentence, without a hearing, and the defendant appealed to this court. After the defendant filed a motion requesting that the trial court comply with the applicable rule of practice (§ 64-1) by either filing a written memorandum of decision or by stating its decision orally in open court and then providing a signed copy of the transcript, the court ordered the parties to appear for the purpose of orally stating its decision on the record and, subsequently, signed a transcript of its oral decision and filed it with this court. *Held* that the trial court improperly denied the defendant's motion to correct an illegal sentence without first providing him with a meaningful opportunity to be heard on the motion: because that court was not authorized to dispose summarily of the motion pursuant to the applicable rule of practice (§ 43-22), or any other relevant legal authorities, an opportunity for a hearing was necessary prior to disposing of the entire proceeding on the defendant's motion, and the proceeding that took place after the court already had denied the motion to correct an illegal sentence did not constitute a sufficient opportunity for the defendant to be heard, as a careful review of the entire proceeding, including the statements of the court, demonstrated that the court had already decided to deny the motion and that the purpose of the subsequent proceeding was limited to the court's compliance with § 64-1 by orally stating the decision that it had reached months before; moreover, given that the defendant had attempted to raise an issue of first impression under our state constitution, namely, whether the increased understanding of psychology and brain science justifies interpreting our state constitutional guarantees protecting against cruel and unusual punishment to apply to individuals who were nineteen years old when they committed the underlying offense, he was entitled to make an evidentiary record of any facts

that would be relevant to that novel claim, including evidence of the underlying brain science that would justify treating a nineteen year old like a seventeen year old, and the court frustrated the defendant's right to assert fully his claim by sua sponte adjudicating his motion without the benefit of an opportunity to be heard.

Argued September 24—officially released December 18, 2018

Procedural History

Substitute information charging the defendant with the crime of murder, brought to the Superior Court in the judicial district of New London, where the defendant was presented to the court, *Stanley*, *J.*, on a plea of guilty; judgment of guilty in accordance with the plea; thereafter, the court, *Strackbein*, *J.*, denied the defendant's motion to correct an illegal sentence, and the defendant appealed to this court; subsequently, the matter was transferred to our Supreme Court, which transferred the matter back to this court. *Reversed*; *further proceedings*.

Kevin W. Munn, with whom, on the brief, was *Michael W. Brown*, for the appellant (defendant).

Lawrence J. Tytla, supervisory assistant state's attorney, with whom, on the brief, was *Michael L. Regan*, state's attorney, for the appellee (state).

Opinion

PRESCOTT, J. The defendant, Omar Miller, appeals from the trial court's denial of his motion to correct an illegal sentence. The defendant claims on appeal that the court improperly denied his motion to correct an illegal sentence without first conducting a hearing on the merits of the motion. We agree and, accordingly, reverse the judgment of the trial court and remand the case for further proceedings in accordance with this opinion.[1]

[1] The defendant also claims that the trial court improperly (1) failed to adequately protect his right to counsel under *State* v. *Casiano*, 282 Conn. 614, 922 A.2d 1065 (2007), and (2) denied his motion to correct an illegal sentence on the merits. Because we conclude that the trial court improperly denied the motion to correct an illegal sentence without first conducting a hearing, we

The record reveals the following undisputed facts and procedural history, which are relevant to our resolution of this appeal. On September 27, 1991, the defendant pleaded guilty to murder, in violation of General Statutes (Rev. to 1991) § 53a-54a. The defendant was nineteen years of age when he committed the offense. After he entered his plea, but before he was sentenced, he escaped from the custody of the Commissioner of Correction. On November 6, 1991, the trial court, *Stanley*, *J.*, sentenced the defendant, in absentia, to a thirty-five year term of incarceration. He remained at large until 1997, when he was apprehended in New York City and ultimately returned to Connecticut to begin serving his sentence.

On June 2, 2016, the defendant filed a pro se motion to correct an illegal sentence pursuant to Practice Book § 43-22.[2] The essence of the claim raised in the defendant's motion is that the thirty-five year sentence imposed on him by Judge Stanley violated article first, §§ 8 and 9, of our state constitution's prohibition against cruel and unusual punishment.[3] Specifically, the defendant asserted that, despite the fact that he was nineteen years old at the time he committed the offense, the court unconstitutionally failed to consider mitigating factors related to his young age, as it would be constitutionally required to had he committed the offense when he was less than eighteen years old.

On June 30, 2016, the trial court, *Strackbein*, *J.*, sua sponte denied the defendant's motion. Notice of the

do not reach the merits of these claims. Additionally, on remand the defendant will have an opportunity to obtain counsel from the trial court in accordance with *Casiano*.

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

[3] The defendant also argues that his sentence violated his constitutional right to be free from cruel and unusual punishment, as protected by the eighth and fourteenth amendments to the United States constitution.

denial was sent to the defendant on July 5, 2016. On August 18, 2016, the defendant appealed from the denial of his motion to correct an illegal sentence.[4]

On September 1, 2016, in order to perfect his appeal, the defendant filed a motion requesting that the trial court comply with Practice Book § 64-1 by either filing a written memorandum of decision setting forth the factual and legal basis for denying his motion to correct an illegal sentence or by stating its decision orally in open court and then providing a signed copy of the transcript.[5] Upon receipt of the defendant's § 64-1 notice from the appellate clerk's office, the trial court ordered the parties to appear on September 29, 2016, for the purpose of orally stating its decision on the record.

[4] The defendant initially appealed to this court (AC 39539). The defendant's appeal was transferred to our Supreme Court (SC 19766), but later was transferred back to this court (AC 40217).

[5] Practice Book § 64-1 is titled "Statement of Decision by Trial Court; When Required; How Stated; Contents" and provides in relevant part: "(a) The trial court shall state its decision either orally or in writing, in all of the following: (1) in rendering judgments in trials to the court in civil and criminal matters, including rulings regarding motions for stay of executions, (2) in ruling on aggravating and mitigating factors in capital penalty hearings conducted to the court, (3) in ruling on motions to dismiss under Section 41-8, (4) in ruling on motions to suppress under Section 41-12, (5) in granting a motion to set aside a verdict under Section 16-35, and (6) in making any other rulings that constitute a final judgment for purposes of appeal under Section 61-1, including those that do not terminate the proceedings. The court's decision shall encompass its conclusion as to each claim of law raised by the parties and the factual basis therefor. If oral, the decision shall be recorded by a court reporter, and, if there is an appeal, the trial court shall create a memorandum of decision for use in the appeal by ordering a transcript of the portion of the proceedings in which it stated its oral decision. The transcript of the decision shall be signed by the trial judge and filed with the clerk of the trial court. . . .

"(b) If the trial judge fails to file a memorandum of decision or sign a transcript of the oral decision in any case covered by subsection (a), the appellant may file with the appellate clerk a notice that the decision has not been filed in compliance with subsection (a). The notice shall specify the trial judge involved and the date of the ruling for which no memorandum of decision was filed. The appellate clerk shall promptly notify the trial judge of the filing of the appeal and the notice. The trial court shall thereafter comply with subsection (a)."

After doing so, the court signed a transcript of its oral decision and filed it with this court. Additional facts and procedural history will be set forth as necessary.

The defendant claims that the trial court improperly denied his motion to correct an illegal sentence without first providing him an opportunity to be heard on the motion. The state claims that the court provided the defendant an adequate hearing on his motion at the September 29, 2016 proceeding. We agree with the defendant.

We begin by setting forth our standard of review. Whether the court is required to hold a hearing prior to disposing of a motion to correct an illegal sentence presents a question of law subject to plenary review. See *Green* v. *Commissioner of Correction*, 184 Conn. App. 76, 82, 194 A.3d 857, cert. denied, 330 Conn. 933, 195 A.3d 383 (2018); *State* v. *LaVoie*, 158 Conn. App. 256, 268, 118 A.3d 708, cert. denied, 319 Conn. 929, 125 A.3d 203 (2015), cert. denied, U.S. , 136 S. Ct. 1519, 194 L. Ed. 2d 604 (2016). Furthermore, to the extent that we are called upon to construe our rules of practice, that process is "governed by the same principles as those regulating statutory interpretation. . . . The interpretation and application of a statute, and thus a Practice Book provision, involves a question of law over which our review is plenary." (Internal quotation marks omitted.) *Meadowbrook Center, Inc.* v. *Buchman*, 328 Conn. 586, 594, 181 A.3d 550 (2018).

We first address whether a hearing is required before disposing of a motion to correct an illegal sentence. Practice Book § 43-22 does not contain any language that explicitly or implicitly permits the court to dispose of a motion to correct an illegal sentence without first providing an opportunity for a hearing. Additionally, we are not aware of, nor have the parties directed our attention to, any statutes or case law expressly or

implicitly authorizing a court to dispose of a motion to correct an illegal sentence without a hearing.

Although we have construed other provisions of our rules of practice to allow the court to dispose of a petition or motion without a hearing; see, e.g., Practice Book § 23-24; *Green* v. *Commissioner of Correction*, supra, 184 Conn. App. 81–84;[6] no language in Practice Book § 43-22 can be construed to permit such action. Because the court is not authorized to dispose summarily of a motion to correct an illegal sentence pursuant to Practice Book § 43-22, or any other relevant legal authorities, we conclude that an opportunity for a hearing was necessary before disposing of the entire proceeding on the defendant's motion.

Next, we reject the state's argument that the "hearing" that took place on September 29, 2016, during which the court sought to comply with Practice Book § 64-1, constituted a sufficient opportunity for the defendant to be heard. By the time the defendant appeared in court on September 29, 2016, the court already had denied the motion to correct an illegal sentence. Specifically, the court, *Strackbein*, *J.*, sua sponte denied the motion in chambers, without a hearing,and sent notice of this decision to the defendant. The purpose of the September 29, 2016 proceeding was to memorialize the court's decision to deny the motion to correct an illegal sentence and to set forth the factual and legal basis for that ruling. By September 29, 2016, the defendant already had appealed from the denial of his motion and sought the trial court's compliance with § 64-1.[7]

[6] In *Green* v. *Commissioner of Correction*, supra, 184 Conn. App. 81–84, this court interpreted the language of Practice Book § 23-24 to permit a habeas court to dispose of a petition for habeas corpus without a hearing by "declining to issue the writ" if the court concluded, among other things, that the court lacked jurisdiction over the writ.

[7] Neither party filed a motion for reconsideration or to vacate the prior judgment. The judgment denying the defendant's motion rendered on June 30, 2016, was not set aside or opened prior to the proceeding on September 29, 2016.

We recognize that aspects of the proceeding arguably could be construed as constituting a hearing on the motion. For example, during the proceeding, the defendant was given a brief opportunity to discuss the merits of his motion to correct an illegal sentence. The defendant stated that he was "trying to make a case of first impression based upon the brain science . . . that an individual's brain does not fully develop until the age of twenty-five."

Additionally, at one point the court stated that: "[O]n the motion to correct [an] illegal sentence that's in front of me today, I have to deny [the motion] . . . ." This statement, read in isolation, might suggest that the merits of the motion to correct an illegal sentence were considered anew at the proceeding. It was also, however, stated on multiple occasions throughout the proceeding that the court already had made its decision and that the hearing was solely for the purpose of putting that decision on the record. Therefore, we conclude that the purpose of this proceeding was limited to the court's compliance with Practice Book § 64-1 by orally stating the decision that it had reached months before.

Our conclusion is fully supported by a careful review of the entire proceeding. For example, the court explained: "The motion that's in front of us really today [is] a motion for the court to render a memorandum of decision, but we need to back up on that to go over what [the] motion to correct [an] illegal sentence actually was and what the state's position is on that." Accordingly, it is apparent that any discussion of the merits was strictly for the purpose of explaining the court's prior ruling. The court also stated to the defendant: "Because you wanted a memorandum of decision, this transcript will serve as that." The court again stated: "For today's purposes, the issue was you said, I was nineteen years old and I was a juvenile. *That's why I declined to go forward*, because that's legally insufficient. So, you're

having a hearing now. You requested for the court to have a memorandum of decision regarding that . . . and *that's why we're here today*." (Emphasis added.) The court's statements demonstrate that it had already decided to deny the motion to correct an illegal sentence and that the purpose of the hearing simply was to comply with Practice Book § 64-1.

Furthermore, during the September 29, 2016 proceeding, the state argued: "There's a pro se motion to correct [an] illegal sentence . . . filed with the court [on] July 18, 2016. . . . It's my understanding that Your Honor reviewed the allegation in the motion, and determined on the face of it that there was no cause for it, and summarily denied the motion to correct [an] illegal sentence. [The defendant], apparently, has chosen to pursue an appeal, and my understanding is that—I don't know the mechanism by which it was returned to the court for Your Honor to make a record and provide a basis for the ruling that Your Honor made. . . . As such, [the defendant is] entitled to a hearing to determine if he should have been afforded relief." Therefore, the state acknowledged at the hearing that the court already had summarily denied the motion to correct an illegal sentence, and that the purpose of the hearing was for the judge to provide a basis for the ruling that the court had already made. Although the supervisory assistant state's attorney concluded by stating that the defendant is entitled to a hearing to determine whether he should be afforded relief, the decision already had been made by the court summarily.[8] We, therefore, conclude that the proceeding held on September 29, 2016,

[8] Additionally, we note that the judgment file is consistent with our conclusion that the court's decision to deny the motion was made prior to the hearing. The judgment file provides: "On June 30, 2016, the [c]ourt, having reviewed the motion in chambers, denied the defendant's motion to correct [an] illegal sentence. On September 29, 2016, having heard the parties, the [c]ourt reiterated its June 30 decision and stated reasons on the record, denying the defendant's motion to correct [an] illegal sentence."

did not constitute an adequate hearing on the merits of the defendant's motion.

A more fulsome discussion of the contours of the defendant's claim is helpful to explain why the trial court's failure to provide the defendant with a hearing was improper. "Although the unique aspects of adolescence had long been recognized in the [United States] Supreme Court's jurisprudence, it was not until [more recent cases] that the court held that youth and its attendant characteristics have constitutional significance for purposes of assessing proportionate punishment under the eighth amendment [to the United States constitution]." (Footnote omitted.) *State* v. *Riley*, 315 Conn. 637, 644–45, 110 A.3d 1205 (2015), cert. denied, U.S. , 136 S. Ct. 1361, 194 L. Ed. 2d 376 (2016). In *Miller* v. *Alabama*, 567 U.S. 460, 465, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the United States Supreme Court held that the imposition of a mandatory life sentence without the possibility of parole on an individual who was less than eighteen years old when the offense was committed violates the eighth amendment prohibition on cruel and unusual punishment. This court, in discussing these recent cases, recognized that "[e]ighth amendment jurisprudence relating to the sentencing of juvenile offenders unequivocally recognizes a juvenile offender as an individual who has not attained the age of eighteen." *Haughey* v. *Commissioner of Correction*, 173 Conn. App. 559, 571, 164 A.3d 849, cert. denied, 327 Conn. 906, 170 A.3d 1 (2017).

In his motion, the defendant has attempted to raise an issue of first impression under *our state* constitution. Specifically, he contends that the constitutional protections that prevent the imposition of a life sentence on a person less than eighteen years old without adequate consideration by the sentencing court of the defendant's youth and immaturity should be extended under our state constitution to all individuals who are less than

twenty years old when they commit the offense. Although this court has declined to afford such protections to individuals who are eighteen years or older pursuant to our federal constitution; see id.; we have not yet had occasion to decide whether our state constitution provides greater rights in this context. In the defendant's view, the increased understanding of psychology and brain science that underlies our eighth amendment jurisprudence; see *State* v. *Riley*, supra, 315 Conn. 645; justifies interpreting our state constitutional guarantees protecting against cruel and unusual punishment to apply to individuals who were nineteen years old when they committed the underlying offense.

We express no opinion regarding the merits of this novel claim. We do note, however, that at least one other state has entertained a similar claim under its respective state constitution. See, e.g., *People* v. *House*, 72 N.E.3d 357, 388–89 (Ill. App. 2015) (defendant who was nineteen years old when offense was committed entitled under state constitution to consideration of his youth and immaturity before imposition of mandatory life sentence), appeal denied and vacated, Docket No. 122134, 2018 WL 6242309 (Ill. November 28, 2018), and appeal denied, Docket No. 122140, 2018 WL 6242310 (Ill. November 28, 2018); see also *State* v. *O'Dell*, 183 Wn. 2d 680, 696, 358 P.3d 359 (2015) (pursuant to statutory sentencing scheme, defendant who was eighteen years old at time of commission of offense entitled to have his youth considered as mitigating factor). In order to pursue this novel claim, including any subsequent appellate review thereof, the defendant in the present case was entitled to make an evidentiary record of any facts that would be relevant to it, including evidence of the underlying brain science that would justify treating a nineteen year old like a seventeen year old.

In the defendant's motion to correct an illegal sentence, the defendant requested that "the court [give] him a reasonable opportunity . . . to present a complete biographical, sociological, and psychological pro-

file of himself; expert testimony explaining the relationship between adolescent brain development and behavioral development, including impulsivity, decision-making judgment, understanding of consequences, and the effects of peer influences; and expert witness [testimony] applying these concepts of adolescent brain and brain behavioral development to the defendant's biological, sociological, and psychological profile." (Footnote omitted.) By sua sponte adjudicating his motion without the benefit of an opportunity to be heard, the trial court frustrated the defendant's right to assert fully his claim, including making any evidentiary presentation that he believed necessary. Prior to the denial of the motion, the defendant was not advised regarding his right to counsel,[9] allowed to call witnesses, or given an opportunity to present expert testimony. Accordingly, we conclude that the court improperly denied his motion without first providing him a meaningful opportunity to be heard.

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

In this opinion the other judges concurred.

[9] At the September 29, 2016 proceeding, the defendant requested counsel to help him develop this claim. The defendant stated: "Your Honor, I'm asking for standby counsel to be able to assist me so I can . . . obtain the case law and actually refile this as an amended [Practice Book §] 43-22, setting forth my claims." The defendant had standby counsel at the proceeding; however, he was not canvassed by the judge on his request for counsel. Although the defendant used the term "standby counsel," this was not consistent with his request for assistance developing case law, as legal research is beyond the scope of the responsibilities of standby counsel. See *State* v. *Fernandez*, 254 Conn. 637, 658, 758 A.2d 842 (2000) ("[T]he role of standby counsel is essentially to be present with the defendant in court and to supply the limited assistance provided for in Practice Book § 44-5, the provision governing the function of standby counsel. We further clarify that standby counsel does not, however, have any obligation to perform legal research for the defendant." [Footnote omitted.]), cert. denied, 532 U.S. 913, 121 S. Ct. 1247, 149 L. Ed. 2d 153 (2001).

GAIL REINKE *v.* WALTER SING
(AC 36210)

Keller, Bright and Beach, Js.

Syllabus

The plaintiff, whose marriage to the defendant previously had been dissolved, appealed to this court from the judgment of the trial court opening the dissolution judgment and issuing certain financial orders. After this court reversed the trial court's judgment opening and modifying the dissolution judgment, the plaintiff, on the granting of certification, appealed to our Supreme Court, which reversed this court's judgment and remanded the case to this court with direction to consider the merits of the plaintiff's claims on appeal. On remand, *held*:

1. The plaintiff could not prevail on her claim that the trial court erred by failing to find that the defendant committed fraud when he submitted inaccurate financial affidavits to the court at the time of the original dissolution judgment: although parties in a dissolution action have a fiduciary-like duty to fully and frankly disclose their financial information, the plaintiff's claim that once an underreporting of income and assets was proven, the burden shifted to the defendant to prove fair dealing by clear and convincing evidence was unavailing, as the plaintiff did not ask the court to require the defendant to prove fair dealing by clear and convincing evidence, nor did she allege or argue that the defendant was in a fiduciary relationship with her or that he owed her the duties that are owed to a beneficiary of a fiduciary relationship, she failed to provide any authority to support her burden shifting analysis, and our Supreme Court previously has rejected such a burden shifting argument; moreover, the trial court's finding that the plaintiff failed to prove fraud was not clearly erroneous and was supported by sufficient evidence in the record, including extensive testimony by the defendant about the information he had provided on his financial affidavits in which he attempted to demonstrate that his disclosures were made in good faith, even if some of them were incorrect, which supported a finding that the underreporting of income and assets that occurred was not necessarily the result of fraud.
2. The trial court's alimony award did not reflect an abuse of discretion: nothing in the record suggested that the court, which had found that an underreporting of income by the defendant in fact had occurred but did not find that the defendant's failure to fully disclose his assets and income amounted to fraud, acted arbitrarily in rendering its new financial orders, as the court stated that it considered the evidence and relevant statutes, including the child support guidelines, it provided a remedy to the plaintiff by altering the financial orders of the original dissolution judgment in a variety of ways, including setting a new alimony award that

increased the plaintiff's award by 11 percent and created a significant arrearage in her favor, and it endeavored to craft new financial orders that were consistent with the principles that governed the original decree; moreover, the trial court, having found no wrongdoing by the defendant and having expressly found that the plaintiff did not sustain her burden of proving that the defendant acted fraudulently, was not obligated to penalize the defendant by awarding the plaintiff greater alimony or asset awards.

3. The plaintiff's claim that the trial court erred with respect to its distribution of five marital assets that came to light after the court opened the judgment was unavailing; that court's division of the assets at issue did not appear to have been arbitrarily made or the product of mistake, and was expressly based on the parties' intent to divide martial assets evenly, as reflected in their original stipulation, and in light of the court's finding that the plaintiff did not prove that the defendant acted in a fraudulent manner, her claim that the court unfairly rewarded the defendant for wrongful conduct with respect to his financial affidavit necessarily failed.

4. The plaintiff failed to demonstrate that the trial court's award of attorney's fees reflected an abuse of discretion; even if that court, in making its original award of attorney's fees, overlooked a certain affidavit of the plaintiff's attorney, the plaintiff failed to demonstrate that reversible error existed, as the court never stated that it would not consider the subject affidavit, nor did it improperly refuse to consider awarding fees allegedly incurred during a substantial portion of the litigation, the court's decision showed that it considered the reasonableness of the fees generally but focused on the fact that the affidavits submitted by the plaintiff's attorneys set forth an amount of fees that was disproportionately high when compared to the results achieved, and the plaintiff failed to provide any authority for her claim that, in light of the court's finding that the defendant had failed to disclose fully his income and assets at the time of the original dissolution judgment, it was obligated to award the plaintiff all of the fees she had incurred.

5. The plaintiff could not prevail on her claim that the trial court abused its discretion by failing in its financial orders to promote full and frank disclosure in financial affidavits and by failing to address adequately the defendant's omission of substantial income and assets from his financial affidavits; that court, having found discrepancies in the defendant's reporting of his income and assets, provided the plaintiff with a proper remedy for the defendant's failure to disclose assets and income fully by altering the financial orders of the original dissolution judgment in a variety of ways, and given that the court expressly found that the plaintiff had not proven fraud, it was not obligated to provide the plaintiff with any more favorable financial orders.

Argued September 11—officially released December 18, 2018

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the court, *Hon. Dennis F. Harrigan*, judge trial referee; judgment dissolving the marriage and granting certain other relief in accordance with the parties' stipulation; thereafter, the court, *Shay, J.*, granted the plaintiff's motion to open the judgment and issued certain orders; subsequently, the court, *Shay, J.*, issued a corrected memorandum of decision, and the plaintiff appealed to this court; thereafter, the court, *Shay, J.*, issued an articulation of its decision; subsequently, this court reversed the trial court's judgment and remanded the case with direction to deny the plaintiff's motion to open; thereafter, the plaintiff filed a petition for certification to appeal with our Supreme Court, which granted the petition and remanded the matter to this court to consider the plaintiff's claims. *Affirmed.*

Eric M. Higgins, for the appellant (plaintiff).

Reine C. Boyer, for the appellee (defendant).

Opinion

KELLER, J. This appeal returns to the Appellate Court on remand from our Supreme Court for resolution of the claims raised by the plaintiff, Gail Reinke. *Reinke* v. *Sing*, 328 Conn. 376, 179 A.3d 769 (2018).[1] The plaintiff

[1] In 2007, the parties' marriage was dissolved, and the court entered financial orders. In 2010, the plaintiff brought a motion to open the judgment so that the court could reconsider its financial orders. The plaintiff's motion to open was based on her allegation that, at the time that the court rendered the original dissolution judgment, the defendant, Walter Sing, fraudulently submitted inaccurate financial affidavits on which the court relied. In 2010, the parties stipulated that the judgment could be opened so that the court could reconsider the court's financial orders, but that the opening would not affect the actual dissolution of their marriage. The trial court, *Shay, J.*, opened the original dissolution judgment for the purpose of reconsidering its financial orders. In 2013, the plaintiff brought the present appeal from the judgment rendered by the trial court after it reissued financial orders.

During the pendency of the present appeal, this court asked the parties to submit supplemental briefs addressing the issue of whether, in the absence

appeals from the judgment of the trial court after it reissued several financial orders that were part of an original judgment that dissolved her marriage to the defendant, Walter Sing. The plaintiff claims that the court erred (1) by failing to find that the defendant committed fraud when he submitted inaccurate financial affidavits to the court at the time of the original dissolution judgment, (2) with respect to its alimony award, (3) with respect to its distribution of property, (4) with respect to its award of attorney's fees, and (5) by failing in its financial orders to promote full and frank disclosure in financial affidavits and by failing to address adequately the defendant's omission of substantial income and assets from the financial affidavits that he filed at the time of the original dissolution judgment. We affirm the judgment of the trial court.

Several facts are not in dispute. The parties were married in 1989. On October, 2, 2007, their marriage was dissolved by the trial court, *Hon. Dennis F. Harrigan*, judge trial referee. At the time of this original dissolution judgment in 2007, the plaintiff was forty-seven years of age and the defendant was fifty-six years of age. The plaintiff, who holds a bachelor's degree, was a homemaker during the marriage, but occasionally worked in a part-time capacity. The defendant, who holds a degree in mathematics, worked steadily

of a finding of fraud on the part of the defendant, the trial court had subject matter jurisdiction to open the original judgment of dissolution for the purpose of revisiting its financial orders. The parties complied with this order. In 2016, this court, having concluded that the trial court lacked subject matter jurisdiction to grant the plaintiff's motion to open the judgment of dissolution, did not reach the merits of the claims raised by the plaintiff, both in her principal and supplemental appellate briefs, but reversed the judgment of the trial court and remanded the case to the trial court with direction to dismiss the motion to open. *Reinke* v. *Sing*, 162 Conn. App. 674, 133 A.3d 510 (2016). In 2018, following a grant of certification to appeal, our Supreme Court, concluding that the trial court properly exercised its authority in opening the judgment, reversed this court's judgment and remanded the case to this court for consideration of the merits of the plaintiff's claims. *Reinke* v. *Sing*, supra, 328 Conn. 393.

throughout the marriage and, at the time of the dissolution proceedings, was a self-employed information technology consultant. There were two children of the marriage. At the time of the original dissolution, the parties' son was seventeen years of age and their daughter was fourteen years of age. At the time of the subsequent judgment at issue in the present appeal, both children had reached the age of majority.

The parties' written "Stipulation for Judgment" was incorporated by reference into the original judgment of dissolution. Among the financial provisions in the original decree, the defendant was ordered to pay the plaintiff $3,333.33 in unallocated alimony and child support each month, beginning on October 1, 2007, subject to de novo review at the request of either party beginning on October 1, 2016. Generally, the stipulation incorporated in the judgment reflected the parties' intent to divide their marital assets equally.

On May 4, 2010, the plaintiff filed a motion to open the judgment of dissolution on the ground that the defendant engaged in fraud during the original dissolution proceedings by failing to disclose in his financial affidavit information concerning the extent of his assets. According to the plaintiff, this resulted in an undervaluation of the defendant's assets by approximately $160,000. The plaintiff asked for the case to be opened "for the purpose of complete discovery and an equitable distribution of the parties' entire marital estate."

On September 28, 2010, by agreement of the parties, the court, *Shay*, *J.*, opened the original judgment of dissolution for purposes of reassessing the financial orders. In opening the judgment, the court did not make any finding with respect to fraud, nor did the parties stipulate that fraud had occurred. Thereafter, the parties engaged in extensive discovery for over two and one half years.

On August 23, 2013, following a six day trial, the court found that, at the time of the original dissolution judgment in 2007, the defendant had underreported his assets. In light of the underreporting that had occurred, the court entered numerous financial orders that, in several material ways, differed from those in the original judgment. In its memorandum of decision, the court stated in relevant part: "[T]he evidence supports a finding that there are substantial discrepancies between the [defendant's] income as first reported at the time of the original hearing and what actually should have been reported. In fact, the stipulation of the parties was based upon the assumption that the [defendant] had gross income of $100,000, when, in fact, he was earning twice that. . . . The [defendant] has filed multiple financial affidavits over the course of the case, thus presenting the court with the proverbial 'moving target.' In calculating the [defendant's] net income, the court has not factored in business expenses, since the [defendant] offered no credible evidence as to the amount of [the] same. The court has, however, taken into consideration state and federal taxes, and his health insurance premiums. Accordingly, the court calculates his net weekly income as $2061. . . .

"As to the marital estate, while the differences are not as dramatic, nevertheless, they exist. A comparison to investment accounts shows an underreporting of $16,574 . . . or an 8.5 percent difference. The same comparison with regard to retirement accounts yields a more dramatic difference of $63,655 . . . or 62 percent. In addition, no life insurance was shown on the corrected financial affidavit, where $250,000 term insurance insuring the [defendant's] life was disclosed on the original financial affidavit, and less debt is reported on the corrected affidavit than on the original. Finally, the [defendant] failed to disclose to the [plaintiff] that he anticipated approximately $100,000 in income tax

refunds, which he ultimately did receive and put to his own use.

"The [plaintiff] testified at length about abusive behavior by the [defendant], physical and mental, throughout the course of the marriage. There is some evidence to support her claims, however, much of it is anecdotal. The family was further stressed by problems concerning their son . . . .

"A substantial number of the terms of the stipulation for judgment have already been satisfied in part or in full, including investment accounts, retirement accounts, automobiles, and other personal property. On the other hand, in addition to the omission of certain assets, the evidence supports a finding that the [plaintiff's] one-third interest in the condominium in Jersey City, New Jersey, that is shared with the [defendant's] brother, and which was to be transferred to the [defendant] in the settlement in return for a $22,000 payment to the [plaintiff], was undervalued. The evidence supports a valuation of her interest as $58,833. The [defendant] gave the [plaintiff] a check for $22,000, but, to date, she has failed to deliver a deed of her interest to him.

"The principal remaining undivided marital asset is the family home . . . currently occupied by the [defendant], which the parties have stipulated [has] a fair market value of $1,565,000, against which there is combined mortgage debt of approximately $650,000. The house is currently listed for sale."

In light of all of the circumstances, the court found that the parties' 2007 stipulation, which had been incorporated by reference in the original decree, was fair and equitable and that, apart from the areas in which it would be modified by the court, it was incorporated into the new decree. The court stated that, in crafting the final decree, it would take into account the partial

division of the marital estate that already had occurred pursuant to the parties' stipulation. The court found that there were no exceptional intervening circumstances and, thus, it was appropriate to base its division of the estate on its value as of the date of the original judgment of dissolution.

Among the most significant ways in which the court modified the original decree,[2] it altered the defendant's alimony obligation by ordering him to pay the plaintiff $4425 in alimony monthly beginning on October 1, 2007, until May 31, 2010; $4000 in alimony monthly beginning on June 1, 2010, until May 31, 2011; and $3500 in alimony monthly beginning on June 1, 2011, until May 31, 2016. The court specified that its award was nonmodifiable with respect to its term and that the arrearage created by its new order was to be paid to the plaintiff at the rate of $500 per month until paid in full. The court did not modify the defendant's child support obligation. As the parties agree, the court equally divided between them those assets that it found had been undervalued or not disclosed previously by the defendant. As an award of attorney's fees in connection with this case, the court ordered the defendant to pay the plaintiff herself $20,000, her current counsel $10,000, and her former counsel $10,000. This resulted in an award of attorney's fees totaling $40,000.

Thereafter, the plaintiff appealed. In 2015, when this appeal was previously before this court, the trial court was ordered, in relevant part, to articulate "whether it found that there was no fraud or whether it simply was not making an express finding regarding fraud. If the latter, the court is ordered further to articulate whether

[2] The court, *Shay, J.*, issued an initial decision in this matter on August 23, 2013, and, in response to a motion to reargue filed by the plaintiff, issued a corrected decision on September 27, 2013, in which it modified some of the findings and orders set forth in its initial decision.

it found that there had been fraud as to the first judgment of dissolution."[3] In its articulation of July 29, 2015, the trial court stated in relevant part that it had granted the plaintiff's motion to open the judgment of dissolution "by agreement of the parties" and "[a]t that time, [it] made no express finding of fraud. Although the [defendant] did not voluntarily concede any fraudulent dealings on his part, by agreeing to open the judgment, he impliedly conceded the fact that the [plaintiff's] allegations would, *if proven*, be a sufficient basis for opening the judgment of dissolution. . . . Moreover, the [plaintiff] was never precluded from raising the issue of fault at the time of the new hearing, which is, in fact, just what she did. . . .

"While the court found that the [defendant] had originally failed to fully disclose some of his assets and understated his income, it made neither an express finding that his failure to do so amounted to fraud, nor, for that matter, that his behavior did not amount to fraud. In short, under all the circumstances, the [plaintiff] failed to meet her burden to establish fraud to the satisfaction of the court by clear and convincing evidence. . . . Moreover, the court believes that a finding that fraud was not proven could be fairly implied from a reading of the decision as a whole, in particular, relative to its other specific findings and as to the relief granted." (Citations omitted; emphasis in original; internal quotation marks omitted.)[4]

[3] In relevant part, this court's order stated: "In the memorandum of decision dated August 23, 2013, the trial court stated that it granted the [plaintiff's] motion to open the judgment by agreement of the parties and 'without a finding of fraud.' . . . [T]he court, *Shay*, *J.*, is ordered to articulate, for the purpose of determining the court's subject matter jurisdiction, whether it found that there was no fraud or whether it simply was not making an express finding regarding fraud. If the latter, the court is ordered further to articulate whether it found that there had been fraud as to the first judgment of dissolution."

[4] On August 13, 2015, following the trial court's articulation, the plaintiff filed an amended appeal that encompassed the articulation. Thereafter, the plaintiff moved for permission to file a supplemental brief for the purpose

This appeal followed. Additional facts will be set forth as necessary in our analysis of the plaintiff's claims.

I

First, we address the plaintiff's claim that the court erroneously failed to find that the defendant committed fraud when he submitted inaccurate financial affidavits to the court at the time of the original dissolution judgment.[5] We disagree.

A

In the first subpart of the present claim, the plaintiff asserts that the court improperly required her to bear the burden of proving that the defendant had engaged in fraud. She argues that, in light of the defendant's fiduciary-like obligation to make full and frank disclosures on his financial affidavits, the court should have required the defendant to prove fair dealing by clear and convincing evidence.

"When a party contests the burden of proof applied by the court, the standard of review is de novo because the matter is a question of law." (Internal quotation

of claiming that, in its articulation, the trial court abused its discretion by finding that she failed to prove by clear and convincing evidence that the defendant committed fraud at the time of the original dissolution judgment. This court granted the plaintiff's motion. After the plaintiff filed her supplemental brief, the court granted the defendant permission to file a supplemental reply brief responding to the newly-raised claim of the plaintiff related to the court's finding that she had failed to sustain her burden of proving that fraud had occurred. Thus, the claim and related arguments concerning the plaintiff's first claim in the present appeal are set forth in the parties supplemental briefs.

[5] Although the parties stipulated to open the original judgment of dissolution for the purpose of permitting the court to reconsider its financial orders, and the court did not base its decision to open the judgment on the plaintiff's allegation that the defendant had acted in a fraudulent manner, we address the plaintiff's claim related to fraud because the parties litigated the issue before the trial court, the parties have briefed the issue before this court, and the issue of fraud is integral to the plaintiff's remaining appellate claims, which challenge the court's financial orders and its award of attorney's fees.

marks omitted.) *Rollar Construction & Demolition, Inc.* v. *Granite Rock Associates, LLC*, 94 Conn. App. 125, 133, 891 A.2d 133 (2006).

To provide necessary context for the plaintiff's argument, we set forth some basic legal principles concerning breach of fiduciary duty actions. "Once a [fiduciary] relationship is found to exist, the burden of proving fair dealing properly shifts to the fiduciary. . . . Furthermore, the standard of proof for establishing fair dealing is not the ordinary standard of fair preponderance of the evidence, but requires proof either by clear and convincing evidence, clear and satisfactory evidence or clear, convincing and unequivocal evidence. . . . Proof of a fiduciary relationship, therefore, generally imposes a twofold burden on the fiduciary. First, the burden of proof shifts to the fiduciary; and second, the standard of proof is clear and convincing evidence." (Internal quotation marks omitted.) *Papallo* v. *Lefebvre*, 172 Conn. App. 746, 754, 161 A.3d 603 (2017); see also *Chioffi* v. *Martin*, 181 Conn. App. 111, 137, 186 A.3d 15 (2018); *Iacurci* v. *Sax*, 139 Conn. App. 386, 394 n.2, 57 A.3d 736 (2012) ("in cases involving claims of fraud, self-dealing or conflict of interest, a fiduciary bears the burden of proving fair dealing by clear and convincing evidence"), aff'd, 313 Conn. 786, 99 A.3d 1145 (2014).

The plaintiff does not direct our attention to any portion of the record in which she explicitly asked the court to require the defendant to prove fair dealing by clear and convincing evidence or objected on the ground that the court incorrectly had allocated the burden of proof to her. Nor does the plaintiff draw our attention to any portion of the record in which she explicitly argued before the court that the defendant, consistently identified throughout the proceedings as her spouse, was in a fiduciary relationship with her. Our careful review of the relevant pleadings reflects that the plaintiff did not plead that the defendant was

a fiduciary or that he owed her the duties that are owed to a beneficiary of a fiduciary relationship.

At trial, the plaintiff, relying on *Billington* v. *Billington*, 220 Conn. 212, 595 A.2d 1377 (1991), stressed that the defendant had an obligation to disclose fully his income and assets in the financial affidavits that he submitted to the court at the time of the original dissolution judgment in 2007, that he failed to do so, and that the plaintiff was entitled to recourse for his failure in this regard. At the conclusion of the trial, the plaintiff's counsel argued that the marital relationship was "quasi fiduciary in nature."

In parts II, III, IV, and V of this opinion, we address the plaintiff's claims that some of the court's financial orders reflected an abuse of discretion. Consistent with the arguments advanced at trial, in those claims, the plaintiff relies on *Billington*, in which our Supreme Court abandoned the requirement that a party seeking to open a dissolution judgment on the basis of fraud must demonstrate that it exercised diligence in the original dissolution action in order to discover and expose the fraud. *Billington* v. *Billington*, supra, 220 Conn. 218. The court's discussion in *Billington* illuminates the obligation borne by both parties in dissolution actions to provide the court with an accurate financial affidavit as required by Practice Book § 25-30. The court explained in relevant part: "Our cases have uniformly emphasized the need for full and frank disclosure in that affidavit. A court is entitled to rely upon the truth and accuracy of sworn statements required by [Practice Book § 25-30 (formerly Practice Book § 463)], and a misrepresentation of assets and income is a serious and intolerable dereliction on the part of the affiant which goes to the very heart of the judicial proceeding. . . . These sworn statements have great significance in domestic disputes in that they serve to facilitate the process and avoid the necessity of testimony in public

by persons still married to each other regarding the circumstances of their formerly private existence. . . . Thus, the requirement of diligence in discovering fraud is inconsistent with the requirement of full disclosure because it imposes on the innocent injured party the duty to discover that which the wrongdoer already is legally obligated to disclose. . . .

"This principle of complete disclosure is consistent with the notion that the settlement of a marital dissolution case is not like the settlement of an accident case. It stamps with finality the end of a marriage. . . . Courts simply should not countenance either party to such a unique human relationship dealing with each other at arms' length. Whatever honesty there may, or should, have been during the marriage should at least be required by the court at its end. . . .

"We have recognized, furthermore, in the context of an action based upon fraud, that the special relationship between fiduciary and beneficiary compels full disclosure by the fiduciary. . . . Although marital parties are not necessarily in the relationship of fiduciary to beneficiary, we believe that no less disclosure is required of such parties when they come to court seeking to terminate their marriage.

"Finally, the principle of full and frank disclosure, with which the diligence limitation is inconsistent, is essential to our strong policy that the private settlement of the financial affairs of estranged marital partners is a goal that courts should support rather than undermine. . . . That goal requires, in turn, that reasonable settlements have been knowingly agreed upon. . . . Our support of that goal will be effective only if we instill confidence in marital litigants that we require, as a concomitant of the settlement process, such full and frank disclosure from both sides, for then they will be more willing to forego their combat and to settle

their dispute privately, secure in the knowledge that they have all the essential information. . . . This principle will, in turn, decrease the need for extensive discovery, and will thereby help to preserve a greater measure of the often sorely tried marital assets for the support of all of the family members." (Citations omitted; internal quotation marks omitted.) Id., 219–22.

In arguing before this court that the trial court's financial orders reflected an abuse of discretion, the plaintiff does not rely solely on the foregoing rationale from *Billington*, but she relies on other appellate decisions that have followed *Billington* and, as the plaintiff correctly observes, unambiguously reaffirm our Supreme Court's "insistence on full and complete disclosure in financial affidavits." Specifically, as it relates to our Supreme Court's broad pronouncement that parties have a duty to fully and completely disclose financial information, the plaintiff refers to *Reville* v. *Reville*, 312 Conn. 428, 451–52, 93 A.3d 1076 (2014) (parties in dissolution cases have duty to disclose assets even if it is unclear whether such assets are subject to distribution), *Ramin* v. *Ramin*, 281 Conn. 324, 915 A.2d 790 (2007) (reversible error for trial court not to consider motion for contempt brought against consistently noncompliant party in dissolution action), and *Weinstein* v. *Weinstein*, 275 Conn. 671, 882 A.2d 53 (2005) (clearly erroneous for trial court to have found that defendant in dissolution action had not committed fraud by undervaluing business asset on financial affidavit).

The plaintiff relies on *Billington* for the proposition that, once an underreporting of income and assets was proven, the defendant bore the burden of proving fair dealing by clear and convincing evidence. In *Billington*, however, our Supreme Court did not state that parties in a marital relationship are in a fiduciary relationship or that a party in a marital dissolution proceeding bore

the burden of proving fair dealing by clear and convincing evidence. As set forth previously, the court in *Billington*, referring to the *duty to disclose* and not the duty of proving fair dealing, stated that although parties in a dissolution action are "not necessarily in the relationship of fiduciary to beneficiary . . . no less disclosure is required of such parties when they come to court seeking to terminate their marriage." *Billington* v. *Billington*, supra, 220 Conn. 221.[6]

In arguing that a fiduciary relationship existed, the plaintiff also relies on *Ramin* v. *Ramin*, supra, 281 Conn. 324, in which our Supreme Court once again addressed the duty of disclosure between parties in dissolution actions. In *Ramin*, our Supreme Court addressed a claim that is distinguishable from the claim presently before us. Specifically, the plaintiff in *Ramin* claimed that the trial court had abused its discretion by declining to rule on her motions for contempt and for sanctions, which were based on the defendant's repeated failure to comply with the court's discovery orders. Id., 330. Thus, our Supreme Court in *Ramin* did not have occasion to address the burden shifting argument at issue here. Although, in the context of its analysis, our Supreme Court reiterated that parties in a dissolution action have a *fiduciary-like obligation to fully disclose financial information*, it did not state that such parties were in a fiduciary relationship or that a party in a dissolution proceeding had a burden of proving fair dealing by clear and convincing evidence. Instead, as relevant, the court in *Ramin* stated that a defendant who had "breached his fiduciary-like obligations of discovery to the plaintiff as ordered by the

[6] "Moreover . . . [l]awyers who represent clients in matrimonial dissolutions have a special responsibility for full and fair disclosure, for a searching dialogue, about all of the facts that materially affect the client's rights and interests." (Citation omitted; internal quotation marks omitted.) *Weinstein* v. *Weinstein*, supra, 275 Conn. 686–87.

court . . . should bear the burden of establishing that his breach of that obligation did not harm the beneficiary of that obligation." Id., 349–50.

The plaintiff also draws our attention to *Dietter* v. *Dietter*, 54 Conn. App. 481, 737 A.2d 926, cert. denied, 252 Conn. 906, 743 A.2d 617 (1999), for the broad proposition that courts have shifted the burden of proving fair dealing in "dissolution of marriage cases." The plaintiff's reliance on *Dietter* is undermined by the fact that it was not merely an appeal from a judgment in a dissolution action. In *Dietter*, the plaintiff husband brought a dissolution action against the defendant wife. Id., 482. The defendant wife, however, brought a cross complaint against the plaintiff, the plaintiff's mother, and the plaintiff's brothers, wherein she alleged that they fraudulently had transferred assets from a corporation in which she was a shareholder, thereby dissipating the marital estate. Id., 482–83. On appeal, despite obtaining a favorable judgment with respect to part of her cross complaint, the defendant argued with respect to the other part of her cross complaint that the trial court improperly had allocated to her the burden of proving that the transactions on which she relied amounted to fraudulent transfers from the marital estate. Id., 488.

It is important that the defendant in *Dietter* did not claim that the plaintiff, in his capacity *as her spouse*, owed her a fiduciary duty. Instead, she claimed that the plaintiff, *as an officer of a corporation of which she was a shareholder*, "owed her a fiduciary duty as a shareholder" and that the court "should have allocated the burden of proof to the plaintiff to establish fair and equitable dealing by clear and convincing evidence." Id.

In rejecting the defendant's burden shifting claim, this court in *Dietter* reasoned in relevant part: "The

second count of the defendant's amended cross complaint alleged neither that the plaintiff owed her a fiduciary duty nor that the plaintiff breached a fiduciary duty. Practice Book § 10-4 provides, however, that '[i]t is unnecessary to allege any promise or duty which the law implies from the facts pleaded.' In the present case, a fiduciary duty cannot be implied from the facts pleaded because the second count of the amended cross complaint identified the plaintiff neither as a fiduciary nor as an officer or director of [the corporation at issue], and *did not set forth any facts from which a fiduciary duty might be implied*. . . . Because the second count of the amended cross complaint is most accurately described as claiming that the plaintiff, *acting in his capacity as a spouse and not as a fiduciary*, fraudulently transferred assets from the marital estate, we conclude that the trial court properly allocated the burden of proof on the second count of the amended cross complaint to the defendant." (Citation omitted; emphasis added.) Id., 489–90.

In light of the foregoing analysis, *Dietter* cannot reasonably be interpreted to support the proposition that a party in a marital dissolution action who has been found to have underreported income or assets is a fiduciary or that such party, by virtue of their party status in a dissolution action, bears the burden of proving fair dealing by clear and convincing evidence. To the contrary, this court in *Dietter* reasoned that, in the absence of additional facts from which a fiduciary relationship reasonably may be inferred, an action brought against a spouse is not the legal equivalent of an action brought against a fiduciary.

The plaintiff does not draw our attention to any authority that directly supports her burden shifting argument, and we are not aware of any. To the contrary, our Supreme Court, in *Reville* v. *Reville*, supra, 312 Conn. 467–71, rejected such a burden shifting argument.

In *Reville*, a plaintiff in a dissolution action claimed under the plain error doctrine that "once it is established that a party to a dissolution action has failed to list a substantial asset either on his or her financial affidavit or in open court, the burden should shift to that party to prove, by clear and convincing evidence, either the absence of fraud or that the nondisclosure was harmless." Id., 467. Our Supreme Court rejected this argument, noting that, under well settled appellate precedent, the party asserting fraud as a basis of setting aside financial orders in a dissolution judgment bears the burden of proving fraud by clear and convincing evidence. Id., 469.

As we have observed, our case law reflects that parties in a dissolution action are "[u]nlike civil litigants who stand at arm's length from one another . . . ." *Duart* v. *Dept. of Correction*, 303 Conn. 479, 501, 34 A.3d 343 (2012). For this reason, and because parties in a dissolution action need information about each other's income and assets to pursue their cause of action, our case law imposes a duty on parties in a dissolution action to fully and frankly disclose their financial information. Our decisional law, however, has limited this fiduciary-like duty to disclosure and, in light of that disclosure obligation, to proving the absence of harm once proper disclosure has not occurred; our courts have not expressly extended such an obligation to prove with clear and convincing evidence that fair dealing has occurred. Moreover, we are not persuaded that *Billington* and its progeny should be interpreted to suggest that it is necessary or appropriate to extend this rationale so as to require a party in a dissolution action who has been found to have underreported income or assets to prove fair dealing with clear and convincing evidence. In light of the foregoing, we reject the plaintiff's burden shifting argument.

B

In the second subpart of this claim, the plaintiff claims that the court's finding that she failed to prove fraud was clearly erroneous. We disagree.

In support of this claim, the plaintiff argues in relevant part: "There was no evidence whatsoever that the defendant's numerous omissions of substantial income and assets on his financial affidavit were the product of fair dealing, and any conclusion that the defendant engaged in fair dealing would be clearly erroneous in light of the evidence at trial." The plaintiff describes the evidence of fraud to be "overwhelming" and relies on the fact that the court's findings reflect that it found "a clear pattern of nondisclosure of substantial income and numerous valuable assets on three financial affidavits." Moreover, the plaintiff argues, "[t]his pattern of nondisclosure was accompanied by a sustained pattern of affirmative efforts by the defendant to prevent the plaintiff from discovering the true extent of the defendant's income and his assets through discovery." The plaintiff analogizes the facts of the present case with those in *Weinstein* v. *Weinstein*, supra, 275 Conn. 688–95, in which our Supreme Court found error in a trial court's finding that fraud in a dissolution action had not been proven.

As our Supreme Court in *Billington* observed, "[t]he elements of a fraud action are: (1) a false representation was made as a statement of fact; (2) the statement was untrue and known to be so by its maker; (3) the statement was made with the intent of inducing reliance thereon; and (4) the other party relied on the statement to his detriment." *Billington* v. *Billington*, supra, 220 Conn. 217. As the plaintiff correctly acknowledges, "[t]he determination of the question of fraudulent intent is clearly an issue of fact which must often be inferred from surrounding circumstances. . . . Such a fact is, then, not ordinarily proven by direct evidence, but rather, by inference from other facts proven—the indi-

cia or badges of fraud." (Internal quotation marks omitted.) *Dietter* v. *Dietter*, supra, 54 Conn. App. 487. Issues of mental state generally, and issues of intent in particular, are inherently fact bound. Resolution of such issues depends on the trier of fact's assessment of relevant facts, as well as any relevant testimony concerning the events at issue. In a case such as the present case, in which the party alleged to have acted fraudulently has testified at length about his conduct, we would expect the trier of fact's firsthand observations of his testimony to shed additional light on an assessment of his intent.

"Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Milazzo-Panico* v. *Panico*, 103 Conn. App. 464, 467–68, 929 A.2d 351 (2007).

The plaintiff seemingly argues that, in light of the court's finding that an underreporting of income and assets occurred to the extent that it did, as well as the fact that the parties engaged in discovery disputes concerning the defendant's finances, the court was obligated as a matter of law to find that fraud had occurred. The plaintiff relies on *Weinstein*, yet does not draw our attention to unmistakable evidence that suggests that the defendant acted with a fraudulent intent, let alone the type of "clear and convincing evidence" that compelled our Supreme Court to find that fraud had occurred in that case. *Weinstein* v. *Weinstein*, supra, 275 Conn. 692–93 (determining that *defendant's own testimony* concerning valuation of asset at issue was clear and convincing evidence that he knowingly misrepresented his worth in his financial affidavit).

At trial, following the granting of the motion to open the judgment, the defendant testified extensively in an attempt to refute the plaintiff's argument that the evidence reflected wrongdoing on his part with respect to the disclosure of financial information. The defendant testified that he was self-represented at the time of the original dissolution trial and, in great detail, testified about the information that he provided on his financial affidavits in 2007 and why he set forth some of the inaccurate information about his income and assets. It suffices to observe that, with respect to the contested issue of fraud,[7] the defendant attempted to demonstrate that his disclosures were made in good faith, even if some of them were incorrect because, for example, they were made in haste or upon incomplete information. Thereafter, at the conclusion of the trial, defense counsel argued that, contrary to the plaintiff's arguments, the defendant had not attempted "to hide, mislead, or provide false information to the plaintiff with respect to his financial situation in order to avoid financial liability in the dissolution proceedings [in] 2007." The plaintiff makes no effort to refute the defendant's highly relevant testimony. Instead, she broadly relies on the court's finding that a significant underreporting of assets and income had occurred and that the parties' litigation was marked by discovery disputes concerning the defendant's finances.

The court, having had a firsthand opportunity to observe the defendant and to evaluate his testimony, found that an underreporting of income and assets had occurred, but did not make findings that were consistent with the plaintiff's argument that underreporting was accompanied by a fraudulent intent. Far from there being "no evidence whatsoever" that the defendant did not intend to defraud, as the plaintiff argues, the record

[7] The plaintiff observes that her claims of fraudulent nondisclosure "remained at the center of her case throughout the proceedings."

contains evidence to support a finding that the underreporting of income and assets that occurred was not necessarily the result of fraud. The defendant's testimony, and the inferences that the court reasonably could have drawn therefrom, support the court's finding and, absent the type of compelling evidence of fraud that was presented in *Weinstein*, we are not persuaded that a factual mistake was made by the trial court.

II

Second, the plaintiff claims that the court erred with respect to its alimony award. The plaintiff argues that the court's award was improper because, in comparison with the original award, it decreased the alimony term and eliminated her right to seek an extension of the alimony term. Also, the plaintiff argues that the amount of the court's alimony award undermined the requirement that parties in dissolution actions fully and frankly disclose their income by way of financial affidavits. We disagree.

The plaintiff argues that, although the court correctly determined that there were substantial discrepancies between what the defendant reported to be his self-employment income at the time of the original dissolution judgment in 2007 and what his actual self-employment income was proven to be, the court failed to assess accurately the extent of these discrepancies. As we stated previously in this opinion, the court found that, at the time of the original decree, the defendant failed to disclose accurately his self-employment income on his financial affidavit. The court observed that, in a financial affidavit dated September 12, 2007, the defendant disclosed his weekly gross self-employment income to be $2319. In a financial affidavit dated April 26, 2013, however, he disclosed his gross self-employment income (as of the time of the original dissolution in 2007) to have been $3506. The court calculated the

defendant's weekly gross income to have been $3506 and his weekly net income to have been $2061.[8] The court stated that the difference between what the defendant had reported in the September 12, 2007 affidavit and what he reported in the April 26, 2013 affidavit was $1187 "or 51 percent."

In discussing the extent to which the defendant underreported his weekly gross self-employment income at the time of the original decree, the plaintiff argues that the court should have relied not on the September 12, 2007 affidavit, but on the undisputed evidence that, in his October 2, 2007 financial affidavit, the defendant represented that such income was $1958, and that he had led the court to believe that his income from all sources was only $100,000 per year. The plaintiff argues that when the defendant's actual self-employment gross income is compared with the self-employment gross income that the defendant reported on October 2, 2007, the date on which the court rendered its original judgment of dissolution, "the differential is 79 percent, not 51 percent."[9]

The plaintiff also draws our attention to evidence that, even during the proceedings after the court granted the plaintiff's motion to open the judgment which had been brought on the basis of fraud but was

[8] The court found that, as of October 2, 2007, the net income of the plaintiff was zero.

[9] Although the plaintiff correctly observes that the court did not refer to the October 2, 2007 affidavit in its decision, the plaintiff has not demonstrated that the court's reliance on the September 12, 2007 affidavit likely affected its judgment. Plainly, the court found that "substantial discrepancies" existed between what the defendant reported at the time of the original judgment and what it found to be the defendant's income at the time of trial. The plaintiff does not contest the ultimate findings made by the court concerning the defendant's income and assets in 2007, upon which it based its financial orders. In light of the court's finding with respect to fraud, we are not persuaded that, had the court relied on the October 2, 2007 affidavit, such reliance would have led to a different alimony award.

granted in accordance with the parties' stipulation, the defendant continued to fail to disclose the extent of his income in the years leading up to the dissolution in 2007. The plaintiff, referring to evidence presented to the court as well as the defendant's replies to interrogatories, argues that the defendant exhibited "a pervasive pattern of misrepresenting his income on his financial affidavits and sworn interrogatory responses, which came to light only after the plaintiff obtained a commission to subpoena [an out-of-state employer of the defendant] over the defendant's objection that [such discovery] was a fishing expedition . . . ."

The plaintiff argues that, in light of this factual background which, she asserts, reflected the defendant's malfeasance, the court's orders concerning alimony reflected an abuse of discretion. In relevant part, the plaintiff argues: "Rather than promote and enforce the obligation of full and frank disclosure in financial affidavits . . . [the] trial court's judgment had the opposite effect. . . . It rewarded, rather than redressed, the defendant's repeated and serious omissions of income on his financial affidavit and his subsequent affirmative attempts to prevent the plaintiff from discovering his real income by obtaining the information directly from [the defendant's out-of-state employer]." The plaintiff, relies heavily on *Billington* v. *Billington*, supra, 220 Conn. 212, and argues that the court's "reduction of the alimony term and elimination of the plaintiff's right to seek an extension of the alimony term cannot be reconciled with [our] Supreme Court's jurisprudence concerning the misrepresentation of substantial assets and income in a financial affidavit." Furthermore, the plaintiff argues that, in light of the evidence concerning the defendant's pattern of concealing his income, the court abused its discretion in the amount of alimony that it awarded her.[10] The plaintiff argues: "Here, an 11

[10] The plaintiff observes: "Under the original judgment, the total unallocated alimony and support throughout the base alimony term, exclusive of

percent increase in alimony in the face of an approximately 80 percent underreporting of income simply cannot withstand scrutiny under [*Billington* v. *Billington*, supra, 212,] and its progeny." The plaintiff urges us to conclude that the amount of the alimony award failed "adequately to redress the defendant's fraudulent and material misrepresentations on his financial affidavit, which resulted in a substantial injustice to the plaintiff."

The plaintiff, challenging the propriety of the court's new alimony orders, expressly invokes our abuse of discretion standard of review. "We review financial awards in dissolution actions under an abuse of discretion standard. . . . In order to conclude that the trial court abused its discretion, we must find that the court either incorrectly applied the law or could not reasonably conclude as it did. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. . . .

"The generally accepted purpose of . . . alimony is to enable a spouse who is disadvantaged through divorce to enjoy a standard of living commensurate with the standard of living during marriage. . . . In addition to the marital standard of living, the trial court must also consider the factors in [General Statutes] § 46b-82 when awarding alimony. . . .

"General Statutes § 46b-82 (a) provides in relevant part that [i]n determining whether alimony shall be awarded, and the duration and amount of the award, the court shall consider the evidence presented by each party and shall consider the length of the marriage, the causes for the . . . dissolution of the marriage . . . the age, health, station, occupation, amount and sources

any extension that the plaintiff might obtain, was $359,999.64. The total awarded by the trial court [after opening the judgment] over the alimony term was $399,600, an increase of just 11 percent."

of income, earning capacity, vocational skills, education, employability, estate and needs of each of the parties and the [division of property made] pursuant to [General Statutes §] 46b-81 . . . . The court is to consider these factors in making an award of alimony, but it need not give each factor equal weight. . . . We note also that [t]he trial court may place varying degrees of importance on each criterion according to the factual circumstances of each case. . . . There is no additional requirement that the court specifically state how it weighed the statutory criteria or explain in detail the importance assigned to each statutory factor. . . . [T]he record must indicate the basis for the trial court's award. . . . There must be sufficient evidence to support the trial court's finding that the spouse should receive time limited alimony for the particular duration established. If the time period for the periodic alimony is logically inconsistent with the facts found or the evidence, it cannot stand." (Citations omitted; internal quotation marks omitted.) *Horey* v. *Horey*, 172 Conn. App. 735, 740–41, 161 A.3d 579 (2017); see also *Hammel* v. *Hammel*, 158 Conn. App. 827, 835–36, 120 A.3d 1259 (2015) (financial orders in dissolution cases are entitled to presumption of correctness when based on facts and relevant statutory criteria but nonetheless warrant reversal if they are shown to be logically inconsistent or product of mistake).

In part I, we discussed the rationale set forth by our Supreme Court in *Billington*. As discussed previously, *Billington* highlights the obligation of dissolution litigants to fully and frankly disclose their assets in financial affidavits. *Billington* and its progeny make clear that courts must insist on full and complete disclosure and must not hesitate to take appropriate action in the face of material misrepresentations on a party's financial affidavit.

In the present case, the court did not hesitate to act. Acting on the agreement of the parties, the court opened the original dissolution judgment. On the basis of the new financial information brought before it, the court entered new financial orders concerning, among other things, alimony, property, and attorney's fees. Although the plaintiff introduced evidence that, in her view, reflected that any underreporting of income or assets by the defendant was the product of an attempt to defraud her, the court did not make such a finding. During the trial, the court made clear that it was not ruling on a motion for contempt, but was evaluating the defendant's income and the marital estate after the parties had *agreed* to open the judgment of dissolution to permit the court to reconsider the financial orders that were entered at the time of the original judgment of dissolution. Nevertheless, the plaintiff submitted evidence and argued her claim that the defendant had acted in a fraudulent manner at the time of the original dissolution by submitting inaccurate financial affidavits, which the defendant contested.

After affording the parties an ample opportunity to present relevant evidence, the court found that an underreporting of income by the defendant, in fact, had occurred. In an articulation of its decision, the court stated "that the [defendant] had originally failed to fully disclose some of his assets and [had] understated his income, [but] it made neither an express finding that his failure to do so amounted to fraud, nor, for that matter, that his behavior did not amount to fraud." The court stated: "In short, under all the circumstances, the [plaintiff] failed to meet her burden to establish fraud to the satisfaction of the court by clear and convincing evidence." (Internal quotation marks omitted.)

Nothing in the record suggests that the court acted arbitrarily in rendering its new financial orders. To the

contrary, the court stated that it considered the evidence and "General Statutes §§ 46b-56, 46b-56a, 46b-56c, 46b-81, 46b-82, 46b-84, and 46b-215a, including the Child Support and Arrearage Guidelines Regulations . . . ." As we discussed previously in this opinion, the court provided a remedy to the plaintiff for the defendant's failure to disclose assets and income fully. It altered the financial orders of the original dissolution judgment in a variety of ways. It is undisputed that the court set a new alimony award as of the date of the original dissolution judgment in 2013, thereby increasing her award by 11 percent and creating a significant arrearage in her favor. The court explained the manner in which it calculated its new alimony award, and the plaintiff does not claim error in the court's methodology.

The plaintiff argues that the court was obligated to increase the amount of alimony to a greater extent, and she focuses on the fact that the court shortened the alimony term by several months and made the award's term nonmodifiable. The plaintiff inherently suggests in her arguments that the court was obligated to *penalize* the defendant for wrongdoing in his disclosure of income and assets. Contrary to her characterization of the defendant's conduct as being part of a "pervasive pattern of misrepresenting income," the court did not find any wrongdoing on the defendant's part, and expressly found that the plaintiff had failed to prove fraud. The court did not couch its decision in terms of wrongdoing by the defendant, but merely stated that the defendant had not disclosed accurately his income and assets at the time of the original judgment of dissolution. Although the plaintiff claims that the court should have found that the defendant acted fraudulently, we rejected that claim in part I of this opinion. The court unmistakably endeavored to craft new financial orders that were consistent with the principles that

governed the original decree, not to penalize the defendant.

The case law on which the plaintiff relies requires the court to take action when presented with an inaccurate disclosure by a party in a dissolution action, yet the plaintiff does not present this court with any authority in support of her argument that in circumstances such as those before us, in which fraud has not been proven, the court is obligated to act in a *punitive* manner against a party who has not accurately disclosed income or assets. Stated otherwise, there is no precise mathematical formula that the court must follow in setting new financial orders in such circumstances. Rather, its award is subject to review for an abuse of discretion. In the present case, in which the plaintiff argues that the defendant should be penalized but has not succeeded in demonstrating that fraud occurred, the plaintiff has failed to demonstrate that the court's alimony award reflected an abuse of discretion.

III

Third, the plaintiff claims that the court erred with respect to its distribution of five marital assets that came to light after the court opened the judgment. We disagree.

Among its many financial orders, the court ordered the defendant to pay the plaintiff $106,042 within sixty days. This amount included, among other things, the plaintiff's share of some of the marital assets that the defendant either failed to disclose or undervalued at the time of the original dissolution judgment. Additionally, the court ordered that qualified domestic relations orders be prepared to equally distribute two retirement accounts held by the defendant through his employer or former employer. The court found that at the time of the original dissolution judgment, the defendant had not reported these accounts on his financial affidavit.

In the present claim, the plaintiff does not challenge the court's factual findings with respect to the parties' marital assets, but claims that the court abused its discretion in its distribution of five specific marital assets. Specifically, the plaintiff draws our attention to the court's orders concerning an "E-Trade account," tax refunds, a "UBM 401k" account, a "Fidelity 401k" account, and a "Morgan Stanley" account.

With respect to these five specific assets, the court found in relevant part, as follows: "That the original financial affidavit of the [defendant] as filed with the court omitted two retirement accounts, to wit: a UBM [401k] plan having a value of approximately $49,000 and a Fidelity [401k] plan having a value of approximately $16,000; that it is equitable and appropriate that the [plaintiff] receive one half thereof, together with all interest and gains accrued to the date of actual distribution by means of a Qualified Domestic Relations Order . . . consistent with the intent of the parties to divide the marital assets equally." Additionally, the court found: "That the evidence supports a finding that the [defendant] has received state and federal income tax refunds for the years 2004 through 2007 in the amount of $104,163; that he failed to disclose this fact at the time of the entry of the dissolution and the execution of the stipulation for judgment; that he has applied said sum to his own use; that there is no credible evidence that he has filed amended returns for said years; and that it is equitable and appropriate that the [plaintiff] share equally in said sum." In a written correction to its memorandum of decision, the court awarded the plaintiff $34,877, which it found was half of the value of an E-Trade account held by the defendant that, the plaintiff argued, had not been disclosed at the time of the original dissolution judgment. The court expressly declined to enter any orders distributing a Morgan Stanley account that the defendant did not disclose at the

time of the original dissolution judgment because, in the court's view, it was a "custodial account" and the court "lacks jurisdiction" to enter orders to distribute it.[11]

The plaintiff, referring to some of the evidence that she presented at trial after the court opened the judgment, argues that the court's decision to divide the assets at issue equally between the parties reflected an abuse of discretion. The plaintiff argues: "In short, despite the clear evidence that the defendant had engaged in a pattern and practice of failing to disclose substantial assets, in addition to substantial income, on his financial affidavit [at the time of the original dissolution judgment], the trial court simply divided the undisclosed assets—including [the] E-Trade [account] and the large tax refunds—between the parties 50/50, the same percentage split set forth in the original judgment for the accounts that the defendant disclosed. Here again, the trial court's judgment was an abuse of discretion because it cannot reasonably be harmonized with *Billington* and its progeny. If, after a retrial, the percentage division of disclosed assets and undisclosed assets is the same, why would a rational self-interested actor engage in full and frank disclosure? He wouldn't. The rational course of action would [be] to conceal assets, or at least some of them. One might not be caught, and even if caught, the result will be no worse than it would have been had full disclosure been made." The plaintiff urges this court to conclude that, in light of evidence that the defendant engaged in a "campaign"

[11] The plaintiff does not dispute that this account "was established for the benefit of [the defendant's] children as well as the children of his sister . . . ." Although the plaintiff lists this custodial account among the marital assets on which she focuses in the present claim, she does not provide any further analysis with respect to the account, let alone a challenge to the jurisdictional ground on which the court expressly declined to enter any orders with respect to the account. Because the plaintiff leaves unchallenged the basis on which the court ruled, we will not disturb its ruling.

to prevent the plaintiff from obtaining information about at least some of the marital assets at issue, the court lacked the discretion to divide the assets in the same proportion as those assets that had been fully disclosed at the time of the original dissolution judgment.

Similar to the claim presented in part II of this opinion, the plaintiff's arguments in the present claim rest on a factual premise that does not exist. The plaintiff interprets the evidence presented at trial as clear and unequivocal proof that the defendant's failure to disclose income and assets was the product of fraud, and that he attempted to conceal the assets from her up and through the time of trial. Such a characterization of the evidence was contested at trial. The plaintiff attempted to persuade the court that the defendant had concealed assets, misled the plaintiff, or knowingly provided false information to defraud the plaintiff. The court, however, did not find that such conduct had occurred. Instead, the court found that the defendant "had originally failed to fully disclose some of his assets and [had] understated his income" and the court "made neither an express finding that his failure to do so amounted to fraud, nor, for that matter, that his behavior did not amount to fraud." In part I of this opinion, we rejected the plaintiff's claim that the court's finding that fraud had not been proven was clearly erroneous.

In part II of this opinion, we set forth the discretionary standard of review that applies to a court's financial orders in a dissolution case. "That standard of review reflects the sound policy that the trial court has the unique opportunity to view the parties and their testimony, and is therefore in the best position to assess all of the circumstances surrounding a dissolution action, including such factors as the demeanor and the attitude of the parties." *Casey* v. *Casey*, 82 Conn. App. 378, 383, 844 A.2d 250 (2004). The court's division of the assets

at issue does not appear to have been arbitrarily made or the product of mistake, but was expressly based on the parties' intent to divide marital assets evenly, as was reflected in their original stipulation. In light of the court's finding that the plaintiff did not prove that the defendant acted in a fraudulent manner, the plaintiff's argument that the court unfairly rewarded the defendant for wrongful conduct with respect to his financial affidavit is unpersuasive. We do not interpret the precedent on which the plaintiff relies, including *Billington*, *Weinstein*, *Ramin*, or *Reville*, to have required the court to divide the assets at issue differently, nor are we persuaded that the court's decision reasonably could be interpreted as rewarding the defendant for his failure to fully disclose one or more assets in a forthcoming manner.

IV

Fourth, the plaintiff argues that the court erred with respect to its award of attorney's fees. We disagree.

In its memorandum of decision, the court stated that it had reviewed an affidavit of counsel fees submitted by the plaintiff's previous attorney, Joseph T. O'Connor. This affidavit for fees and disbursements totaling $16,640.87 was dated September 29, 2011, and it covered the period of November 11, 2009 through March 3, 2011. The court also stated that it had reviewed an affidavit of counsel fees submitted by the plaintiff's attorney, Eric Higgins. This affidavit for fees and disbursements totaling $40,040.09 was dated May 10, 2012, and it covered the period of August 11, 2010 through May 9, 2012. The court stated that it had found "said fees to be reasonable under all the circumstances; and that it is equitable and appropriate that the [defendant] pay a portion thereof." The court ordered the defendant to pay $40,000 in attorney's fees; $20,000 to be paid directly

to the plaintiff, $10,000 to be paid to O'Connor, and $10,000 to be paid to Higgins.

In a motion to reargue filed by the plaintiff following the court's decision, she argued that it appeared that the court had overlooked an affidavit of attorney's fees that the plaintiff's attorney, Higgins, had submitted to the court, absent objection, on the last day of the trial on July 10, 2013.[12] In its original decision, the court expressly referred to Higgins' prior affidavit, which covered Higgins' services from August 11, 2010 through May 9, 2012. In its corrected decision of September 27, 2013, the court expressly referred to Higgins' affidavit dated July 10, 2013, which covered the period of August 11, 2010 through July 10, 2013. The July 10, 2013 affidavit set forth fees and disbursements in the amount of $159,657.82.

In its corrected decision, the court modified its original decision in relevant part by stating that it had reviewed the attorney's fees affidavit submitted by O'Connor and the attorney's fees affidavit submitted by Higgins, which covered the period of August 11, 2010 through July 10, 2013. The court stated: "[W]hile the court finds said fees to be reasonable in light of the services rendered . . . it further finds said fees to be disproportionately high when compared to the results achieved; and that it is equitable and appropriate that the [defendant] pay a portion thereof." The court "decline[d] to amend the relief already granted, which it believe[d] to be fair under all the circumstances."[13]

[12] The transcript of the proceedings on July 10, 2013, reflects that, absent objection, Higgins presented Judge Shay with an affidavit of attorney's fees on that date. When presented with the affidavit, Judge Shay replied: "[T]hat's fine. I'll make sure we get that logged in." The affidavit does not appear to have been made part of the case file in its own right. Nonetheless, it appears in the trial court file as an exhibit attached to the plaintiff's motion to reargue dated September 11, 2013.

[13] Additionally, we note that, in January, 2012, after the court opened the judgment, the plaintiff brought a motion for contempt and to compel discovery against the defendant. The court granted this motion in part and

The plaintiff argues that the court's award reflected an abuse of discretion because "the trial court did [not] award a single dollar for fourteen months' worth of work" between May 10, 2012, and July 10, 2013. As the plaintiff observes, this fourteen month period of time encompassed discovery, trial preparation, and the trial itself, which took place over six days. Moreover, the plaintiff argues that a greater award of attorney's fees was required because the defendant engaged in "egregious litigation misconduct" and, under *Ramin* v. *Ramin*, supra, 281 Conn. 354, it is appropriate that the defendant bear the burden of increased fees that were occasioned by his misconduct. The plaintiff observes that, in *Ramin*, our Supreme Court stated: "Allowing recovery for attorney's fees incurred due to litigation misconduct will discourage the recalcitrant marital litigant from evading his obligations of full and frank disclosure, and will encourage compliance with those obligations. When a marital litigant who does play by the rules has to expend her own funds to pay her attorneys significant amounts of money to enforce discovery orders against, and uncover assets hidden or transferred by, the other marital litigant who is flouting those rules, and when other orders of the court have not adequately addressed that wrongdoing by one party and harm to the other, it is only fair that the wrongdoer compensate the innocent injured party [for having] to discover that which the wrongdoer already [was] legally obligated to disclose." (Internal quotation marks omitted.) Id., 354–55.

The plaintiff also argues that the court did not address adequately the defendant's misconduct by means of its other orders and that "the trial court's failure to award

ordered the defendant to pay $1000 to the plaintiff for attorney's fees incurred by her in connection with the motion. In its original and corrected decisions, the court ordered the defendant to pay this outstanding arrearage to the plaintiff for attorney's fees.

any attorneys' fees whatsoever for the fourteen month period of time leading up to and including a six day trial was unreasonable, an abuse of the trial court's discretion, and an abdication of the trial court's responsibility under *Billington* and its progeny to both redress the defendant's misconduct, deter others similarly situated from engaging in similar misconduct, and insure that the consequences of the defendant's misconduct be borne by the defendant, not the innocent plaintiff."

Initially, we observe that the parties disagree with respect to whether, when the court awarded attorney's fees in its original decision, it overlooked Higgins' July 10, 2013 affidavit. The plaintiff draws our attention to the fact that, in the court's original decision, it did not refer to Higgins' July 10, 2013 affidavit, but it referred to his May 10, 2012 affidavit. Also, the plaintiff draws our attention to the fact that, in its corrected decision, the court stated that it had reviewed the later affidavit but "[d]eclined to amend the relief already granted." From these facts, the plaintiff urges us to infer that the court failed to consider Higgins' later affidavit in awarding attorney's fees and, consequently, its $40,000 attorney's fee award was based on only a portion of the attorney's fees incurred by the plaintiff in this matter.

It is a fundamental principle of appellate review that "our appellate courts do not presume error on the part of the trial court. . . . Rather, we presume that the trial court, in rendering its judgment . . . undertook the proper analysis of the law and the facts." (Citations omitted; internal quotation marks omitted.) *Brett Stone Painting & Maintenance, LLC* v. *New England Bank*, 143 Conn. App. 671, 681, 72 A.3d 1121 (2013). "[T]he trial court's ruling is entitled to the reasonable presumption that it is correct unless the party challenging the ruling has satisfied its burden demonstrating the contrary." (Internal quotation marks omitted.) *Kaczynski* v. *Kaczynski*, 294 Conn. 121, 129, 981 A.2d 1068 (2009).

The record is ambiguous with respect to whether, at the time of the court's original decision, it considered Higgins' July 10, 2013 affidavit of attorney's fees. The court's explicit reference, in its original decision, to its having reviewed O'Connor's affidavit and Higgins' affidavit of May 10, 2012, certainly suggests that, at that time, the court improperly failed to consider Higgins' affidavit of July 10, 2013. Yet, we recognize that, in setting forth its award, the court was not obligated to refer to all of the matters in the record on which it relied, and its failure to refer to the later filed affidavit in its original decision does not necessarily reflect that, at that time, it overlooked it. We disagree with the plaintiff that in the court's corrected decision it shed any light on whether it previously had overlooked the July 10, 2013 affidavit. The corrected decision, however, dispels any ambiguity with respect to whether the court considered the July 10, 2013 affidavit in arriving at its final judgment. There, the court unambiguously stated that it had, in fact, considered the affidavit.

Even if we were to presume that the court overlooked the July 10, 2013 affidavit in its initial decision, the plaintiff must demonstrate that reversible error exists in light of the court's final decision. Our review of the trial court's judgment encompasses both its original and corrected decisions. In neither its original nor corrected decisions did the court state that it would not consider the later affidavit or that it would not award fees for Higgins' representation up until July 10, 2013. Rather, in its corrected decision, the court, relying on the later affidavit, explained that it was "equitable and appropriate" under the circumstances for the defendant to pay $40,000, which represented a portion of the fees incurred by the plaintiff in this case because, in its view, the remainder of the fees at issue, although "reasonable in light of the services rendered" were "disproportionately high when compared with the results achieved."

Thus, we are not faced with a situation, as the plaintiff suggests, in which the court improperly refused to consider awarding fees allegedly incurred during a substantial portion of the litigation.

The plaintiff does not draw our attention to any authority in support of the proposition that, in light of the court's finding that the defendant had failed to disclose fully his income and assets at the time of the original dissolution judgment, it was obligated to award the plaintiff all of the fees incurred by her. "The abuse of discretion standard of review applies when reviewing a trial court's decision to [grant or] deny an award of attorney's fees. . . . Under the abuse of discretion standard of review, [w]e will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion. . . . [Thus, our] review of such rulings is limited to the questions of whether the trial court correctly applied the law and reasonably could have reached the conclusion that it did." (Citations omitted; internal quotation marks omitted.) *Munro* v. *Munoz*, 146 Conn. App. 853, 858, 81 A.3d 252 (2013).

"Our Supreme Court consistently has noted that [trial] courts have a general knowledge of what would be reasonable compensation for services which are fairly stated and described. . . . Because of this general knowledge, [t]he court [is] in a position to evaluate the complexity of the issues presented and the skill with which counsel had dealt with these issues." (Citation omitted; internal quotation marks omitted.) *Rubenstein* v. *Rubenstein*, 107 Conn. App. 488, 503, 945 A.2d 1043, cert. denied, 289 Conn. 948, 960 A.2d 1037 (2008). The wide range of factors that a court properly may consider in determining reasonable compensation to an attorney are summarized in Rule 1.5 of the Rules of Professional Conduct. *O'Brien* v. *Seyer*, 183 Conn. 199, 206, 439 A.2d 292 (1981); *Esposito* v. *Esposito*, 71 Conn. App. 744,

749–50, 804 A.2d 846 (2002). These factors include: "(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) The likelihood, if made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) The fee customarily charged in the locality for similar legal services; (4) *The amount involved and the results obtained*; (5) The time limitations imposed by the client or by the circumstances; (6) The nature and length of the professional relationship with the client; (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) Whether the fee is fixed or contingent." (Emphasis added.) Rules of Professional Conduct 1.5 (a); see also *Glastonbury* v. *Sakon*, 184 Conn. App. 385, 393–94, A.3d (2018) (setting forth factors).

Here, the court's decision reflects that it considered the reasonableness of the fees generally, but it focused specifically on the fact that the plaintiff's attorneys submitted affidavits for fees totaling $176,298.69, an amount it found to be "disproportionately high when compared to the results achieved . . . ." In light of the precedent set forth previously, the court's consideration of the results obtained by the plaintiff legally was appropriate. The plaintiff does not challenge the court's determination that the fees were disproportionately high when compared to the results actually obtained by her but, once more, relies on her belief that the defendant engaged in fraudulent conduct. She argues that the court's award reflected an abuse of discretion because the defendant defrauded the plaintiff by failing to disclose income and assets at the time of the original judgment and up and until the time of trial engaged in "determined, concerted efforts to prevent the plaintiff from learning the truth" about his assets.

Similar to the claims that we rejected in parts II and III of this opinion, the defendant's challenge to the court's award of attorney's fees is flawed because it is based on a factual premise that does not exist, namely, that the defendant acted in a fraudulent manner with respect to his disclosure of income and assets. Relying on our previous analysis in this opinion, we observe that, although the court agreed with the plaintiff that the defendant underreported income and assets at the time of the original dissolution judgment, the court expressly found that the plaintiff did not sustain her burden of proving that the defendant acted fraudulently with respect to his financial affidavit. Although the plaintiff attempts to analogize the facts of the present case to those in *Ramin*, the court in the present case did not find that the defendant engaged in egregious litigation misconduct. The issue of whether the defendant acted fraudulently in his financial disclosure and in connection with discovery in the present trial was hotly contested, but the court did not find that the plaintiff had sustained her burden of proving fraud. The court found that the defendant failed to fulfill his obligation to disclose fully his income and his assets, but did not attribute this failure to fraud. As a result of the failures in disclosure, however, the court not only modified several of its financial orders, but awarded the plaintiff $40,000 in attorney's fees. The plaintiff challenges the court's exercise of its discretion in awarding attorney's fees but has failed to demonstrate that the court's factual finding concerning fraud was clearly erroneous.

We are not persuaded by the argument rejected by the trial court that the defendant sought to defraud and that the court erroneously failed to penalize the defendant by awarding the plaintiff greater alimony and asset awards. In light of the foregoing, we conclude that the plaintiff has failed to demonstrate that the court's award of attorney's fees reflects an abuse of discretion.

V

Lastly, the plaintiff claims that the court erred by failing in its financial orders to promote full and frank disclosure in financial affidavits and by failing to address adequately the defendant's omission of substantial income and assets from his financial affidavits. We disagree.

The plaintiff argues that even if the court's individual financial orders did not reflect an abuse of discretion, the complete mosaic of the court's orders "surely did." According to the plaintiff, "the trial court's inadequate awards of alimony, property and attorney's fees compounded to produce a result that was disproportionate to the magnitude of the defendant's numerous, substantial nondisclosures on the financial affidavit that he submitted at the time of the original judgment, [and] his recalcitrance in the discovery process . . . . In their aggregate, the trial court's orders constituted an abuse of discretion because they plainly failed adequately to enforce the defendant's duty to fully and fairly disclose his assets on his financial affidavit." The plaintiff urges us to conclude that, under the circumstances, the court was obligated "adequately to redress the defendant's fraudulent and material misrepresentations in his financial affidavit" by providing her with more favorable financial orders, but that it did not do so.

The present claim requires little discussion because, similar to the claims addressed in parts II, III, and IV of this opinion, it is based on the plaintiff's characterization of the defendant's conduct as fraudulent in nature. The court found that discrepancies existed with respect to the defendant's assets and income, and it unambiguously provided the plaintiff with a remedy. As we have stated previously, however, the court expressly found that the plaintiff had not proven fraud, and the plaintiff

has failed to demonstrate that this critical factual finding was clearly erroneous. Having rejected the plaintiff's claims that the court's alimony, property, and attorney's fees orders were improper when viewed in light of alleged but not proven fraudulent conduct by the defendant, we likewise conclude that the plaintiff has failed to prove that the court's orders, when viewed in their entirety, reflected an abuse of discretion on this ground.

The judgment is affirmed.

In this opinion the other judges concurred.

MICHAEL KONOVER ET AL. *v.* MICHAEL KOLAKOWSKI ET AL.

(AC 40173)
(AC 40434)

Lavine, Sheldon and Bishop, Js.

Syllabus

The plaintiffs sought to recover damages from the defendants for, inter alia, breach of contract. The plaintiffs, K and four companies, had entered into an agreement with the defendants, a group of individuals and companies, including B Co., to purchase K's stock in B Co., of which K was the sole director and shareholder. At the time of the agreement, B Co. was a defendant in two groups of pending lawsuits, which led the parties to include indemnification provisions in the purchase agreement regarding the existing litigation involving B Co. Specifically, K promised to indemnify B Co. and the defendants for damages resulting from any judgment rendered against B Co. and the defendants in the existing litigation. In return, K was given the exclusive right to manage the existing litigation, and the defendants were required to cooperate with K in the defense of the existing litigation and in any counterclaims or new actions brought by K in connection with the existing litigation. Thereafter, K demanded reimbursement from the defendants for legal fees incurred during the course of defending the existing litigation. Subsequently, the plaintiffs brought this action, alleging, inter alia, breach of contract for B Co.'s refusal to reimburse K for legal fees incurred during the existing litigation. Thereafter, the defendants filed a counterclaim, alleging, inter alia, that K's mismanagement of the existing litigation constituted a breach of contract and a breach of fiduciary duty owed to them, and that they were not obligated, pursuant to the

agreement, to reimburse K for expenses incurred in conjunction with the existing litigation. Subsequently, the trial court granted, in part, the defendants' motion for summary judgment as to all claims pertaining to breach of contract for the defendants' failure to pay attorney's fees in the existing litigation, ruling that the agreement clearly and unambiguously did not require B. Co. to reimburse K for legal fees incurred during the course of the existing litigation. From the judgment rendered in part thereon, the plaintiffs appealed to this court. *Held:*

1. The trial court properly rendered summary judgment in the defendants' favor, as the language of the agreement clearly and unambiguously did not obligate the defendants to reimburse K for legal fees incurred during the existing litigation; the plain language of the agreement required K to pay for legal fees incurred during the existing litigation and the defendants to pay for their own legal fees should further claims be brought against B Co., and it was devoid of any language that imposed an affirmative obligation on the defendants to indemnify K for any legal fees and, instead, placed an affirmative obligation on K to indemnify the defendants for any judgment rendered for the named plaintiffs in the existing litigation, and in the absence of any express language in the agreement, this court would not impose such an obligation on the defendants.
2. The plaintiffs could not prevail on their claim that even if the agreement was clear and unambiguous, this court should look beyond the four corners of the agreement to consider the meaning that the parties ascribed to the indemnification provisions of the agreement by their course of conduct, which was based on their claim that the defendants should have been bound by certain judicial admissions in their pleadings and prevented from now making a contrary argument: where, as here, the contract language is clear and unambiguous, the intent of the parties is a question of law, subject to plenary review, the contract is to be given effect according to its terms and courts must look only to the four corners of the contract to discern the parties' intent, and because judicial admissions are knowing concessions of fact, which inform a trier of fact but in no way bind the court in its independent, plenary and judicial determination of applicable law, and the contract language here was clear and unambiguous, the intent of the parties in utilizing the language in question was not binding on the court's legal determination of the import of the contract language, and this court declined to give deference to the erroneous construction of the agreement initially advanced by the defendants in their pleadings; moreover, even if there may be a circumstance in which extrinsic evidence may be referenced to glean the intent of the parties in their utilization of plain language, under the facts of this case, this court declined to stray from well reasoned jurisprudence that plain language should be accorded its plain meaning.

Argued September 25—officially released December 18, 2018

Procedural History

Action to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the named defendant et al. filed a counterclaim; thereafter, the trial court, *Moukawsher*, *J.*, granted in part the motion for summary judgment filed by the named defendant et al. and rendered judgment in part thereon for the named defendant et al., from which the plaintiff Konover Development Corporation et al., appealed to this court; subsequently, following the granting of permission by this court, the named plaintiff filed a separate appeal with this court, which consolidated the appeals. *Affirmed.*

Frank J. Silvestri, *Jr.*, with whom were *Kristen G. Rossetti* and *Jeffrey R. Babbin*, for the appellants (plaintiffs).

Richard J. Buturla, with whom was *Ryan P. Driscoll*, for the appellees (defendants).

Opinion

BISHOP, J. This action arises from the indemnification provisions in a stock purchase and sales agreement (agreement) between the plaintiff Michael Konover[1] and the defendants Michael Kolakowski, Simon Etzel, and Eric Brown (the buyers)[2] for the buyers' purchase of Konover's stock in the KBE Building Corporation

[1] Additional plaintiffs in this appeal include Konover Development Corporation, Konover & Associates, Inc., Blackboard, LLC, and Ripple, LLC. For clarity, we refer to Michael Konover individually as Konover, and the parties associated with him collectively as the plaintiffs.

[2] Additional defendants in this appeal include KBE Building Corporation, KBE Holdings, Inc., Konover Construction Corporation South, Sturdy Fence Corp., Elite Construction Rentals, LLC, and Conn-struction, LLC. For clarity, we refer to the defendants individually by name and collectively as the defendants.

(KBE).[3] The plaintiffs appeal from the trial court's rendering of partial summary judgment in favor of the defendants. On appeal, the plaintiffs claim that the trial court erroneously ruled that the parties' agreement does not obligate the defendants to reimburse Konover for legal fees incurred while litigating certain legal actions that had been pending against Konover and KBE at the time the agreement was executed. In the alternative, the plaintiffs claim that, even if the language of the agreement does not require the defendants to reimburse Konover for any legal fees, the trial court should have considered admissions in the defendants' pleadings and other extrinsic evidence, which evinced an understanding between the parties that the defendants were responsible for paying their own legal fees incurred in conjunction with the referenced litigation. We affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to the resolution of this appeal. Konover was the sole director and shareholder of KBE. The buyers formed KBE Holdings, Inc., to acquire all of Konover's KBE stock. On March 30, 2007, the buyers and Konover executed the agreement at issue, which set forth the terms for the stock purchase and sale of all of Konover's stock.

At the time the agreement was executed, KBE was a defendant in two separate groups of civil actions, which the agreement referred to as the "Existing Litigation."[4] One group of actions, denominated the *Archambault* litigation, arose from personal injuries suffered

[3] The company was named Konover Construction Company before its sale to the buyers. For simplicity, we refer to the entity as KBE even when the events described occurred prior to KBE's renaming.

[4] For clarity, we also refer to these lawsuits collectively as the existing litigation.

by several construction workers, employed by a subcontractor of KBE, while building a BJ's Wholesale Club in Willimantic.[5] The second group of actions, referred to as the *Wells Fargo* litigation, stemmed from a foreclosure action in Maryland, in which Wells Fargo had obtained a judgment of foreclosure relating to a failed shopping center. In the *Wells Fargo* litigation, both Konover individually, and other entities related to him, had been named as defendants. KBE, however, had not been named as a defendant. After a final judgment was rendered in Maryland against both Konover in his individual capacity, as well as several other entities, the prevailing plaintiffs commenced an action against Konover and several entities owned by him, including KBE, seeking enforcement of the Maryland judgment in the United States District Court for the District of Connecticut.

Recognizing the possibility that KBE would need to satisfy potential judgments and would incur substantial legal fees as a result of the existing litigation, Konover and the buyers included indemnification provisions in the stock purchase and sales agreement. Pursuant to § 4.3 (b) (i) and (ii) of the agreement, Konover promised to indemnify KBE and the buyers for "Damages" resulting from "any judgment" rendered against KBE or the buyers in the existing litigation. In exchange, Konover was given the exclusive right to manage the existing litigation, and the defendants were required to cooperate with Konover in the defense of the existing litigation. The defendants were obligated, as well, to cooperate with Konover in any counterclaims or new actions brought by Konover against any parties to the existing litigation. These potential actions were referred

[5] The *Archambault* litigation also included issues relating to insurance coverage.

to as "Successor Actions" in the parties' agreement.[6] Section 4.4 further provided, however, that Konover was responsible for the cost of any successor actions.

During the course of the existing litigation, the defendants became discontent with Konover's management of the litigation. Also, Konover demanded reimbursement from the defendants for legal fees incurred during the course of defending these matters.[7] Unable to resolve these disagreements, Konover and the plaintiffs filed a twelve count complaint against the defendants, alleging, inter alia, breach of contract for KBE's refusal to reimburse Konover for legal fees he incurred during the existing litigation. In turn, the defendants filed a counterclaim, alleging, inter alia, that Konover's mismanagement of the litigation constituted a breach of contract and a breach of fiduciary duty owed to them. The defendants also claimed, in response to the complaint, that they were not obligated pursuant to the agreement to reimburse Konover for expenses he

[6] Section 4.4 of the agreement states, in relevant part: "As to the indemnifications set forth in [§] 4.3 [of the agreement] with respect to the Existing Litigation and the Successor Actions (as hereinafter defined) . . . [Konover] shall have and retain the sole right to manage the litigation, including without limitation, the settlement thereof or the right to prosecute appeals with respect to any judgment arising thereunder . . . . [The defendants] shall, at no cost to [Konover], cooperate in good faith with reasonable diligence to assist [Konover] in connection with the defense of the Existing Litigation and the prosecution, as the case may be, upon request of [Konover] in the name of any of the Companies, of counter-claims and/or new litigation against any party . . . . [Konover] will pay the cost of any such Successor Actions (including reasonable legal fees of the Companies) . . . ."

[7] Specifically, in the *Archambault* litigation, the defendants objected to Konover's decision to retain Attorney Wesley Horton to supplement KBE's existing appellate defense counsel, alleging that they were unaware that Horton had been retained until after Konover sought reimbursement. Moreover, in the *Wells Fargo* litigation, the defendants claimed that Konover failed to settle claims involving KBE so that funds from a director and officer insurance policy could instead be used for his personal defense. The plaintiff sought to compel KBE to pay its fair share of legal fees, which he calculated by evenly apportioning legal fees incurred by all defendants in the litigation.

incurred in conjunction with the existing litigation. The defendants subsequently filed a motion for summary judgment on the same basis.

After briefing and argument, the trial court granted the motion for summary judgment on all claims pertaining to breach of contract for failure to pay attorney's fees in the existing litigation, ruling that the agreement clearly and unambiguously did not require KBE to reimburse Konover for legal fees incurred during the course of the existing litigation, and only required the defendants to pay legal fees for any future claims brought by the *Archambault* or *Wells Fargo* plaintiffs. Specifically, the court ordered: "Summary judgment is granted on all claims premised on breach of a contract to pay attorneys' fees in the existing litigation in favor of the defendants that moved for summary judgment. . . . Because all counts of the current complaint are through incorporation by reference premised on the existence of the contract obligation rejected in this opinion, the plaintiffs may have [thirty] days leave to file a new complaint if they believe they can state causes of action without the contract based premise that KBE promised to pay fees in existing litigation." The trial court's ruling disposed of all claims made by Konover Development Corporation, Konover and Associates, Inc., Blackboard, LLC, and Ripple, LLC. These entities subsequently filed an appeal as a matter of right. The trial court's ruling did not, however, dispose of all claims made by Konover in the complaint. As a result, Konover sought and was granted permission from the trial court, *Moukasher*, *J.*, and this court to appeal, pursuant to Practice Book § 61-4. In a separate motion, this court consolidated the appeals. Additional facts will be set forth as necessary.

At the outset, we note the applicable standard of review and legal principles relating to motions for summary judgment. "Summary judgment shall be granted if the pleadings, affidavits and any other proof submitted

show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Practice Book § 17-49. A fact is material when it will make a difference in the outcome of a case." (Internal quotations omitted.) *McFarline* v. *Mickens*, 177 Conn. App. 83, 90, 173 A.3d 417 (2017), cert. denied, 327 Conn. 997, 176 A.3d 557 (2018). "Appellate review of the trial court's decision to grant summary judgment is plenary." Id. "On appeal, we must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court." *Lopes* v. *Farmer*, 286 Conn. 384, 388, 944 A.2d 921 (2008).

I

We begin with the plaintiffs' claim that the trial court erroneously determined that the agreement clearly and unambiguously did not obligate the defendants to reimburse Konover for any legal fees incurred during the existing litigation. The plaintiffs assert that the provisions of the agreement, read in the context of the entire agreement, unambiguously require the defendants to pay for their own legal fees in the existing litigation. As a result, the defendants must reimburse Konover for legal fees that he advanced during the course of the existing litigation. In support of this argument, the plaintiffs urge this court to read § 4.3 (b) (i) and (ii) of the agreement to exclude KBE's attorney's fees in the existing litigation from Konover's indemnification obligation. We are not persuaded.

We first set forth the standard of review and legal principles that guide our analysis. "The court's determination as to whether a contract is ambiguous is a question of law; our standard of review, therefore, is de novo." (Internal quotation marks omitted.) *Meridian Partners, LLC* v. *Dragone Classic Motorcars, Inc.*, 171

Conn. App. 355, 364, 157 A.3d 87 (2017). "A contract is unambiguous when its language is clear and conveys a definite and precise intent. . . . The court will not torture words to impart ambiguity where ordinary meaning leaves no room for ambiguity. . . . Moreover, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous. . . .

"In contrast, a contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . [A]ny ambiguity in a contract must emanate from the language used by the parties. . . . The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous." (Internal quotation marks omitted.) *Hirschfeld* v. *Machinist*, 181 Conn. App. 309, 323–24, 186 A.3d 771, cert. denied, 329 Conn. 913, 186 A.3d 1170 (2018).

Section 4.3 (b) (i) and (ii) are provisions that detail Konover's indemnification obligations to the defendants regarding both the existing litigation and any further actions. These sections state, in relevant part: "The indemnification for Damages by [Konover] as it relates to the [existing litigation], inclusive, shall be limited to [Konover's] obligation to satisfy any judgment in favor of the named plaintiff against [the defendants] pursuant to such actions, and specifically excludes the cost of [the defendants'] legal fees as well as the costs or expenses incurred by the [defendants] as a result of any further claims brought by the plaintiffs in such actions against [the defendants] . . . ." The term "judgment" is defined in § 4.3 (b) (iii) to include "actual Damages assessed against [the defendants] . . . and in every instance, shall expressly exclude and be limited

by those matters otherwise specifically set forth above in [§ 4.3 (b) (i) and (ii)] . . . .'' Additionally, the term ''Damages'' is defined in § 4.6 to include ''fees and reasonable expenses of attorneys.''

The plaintiffs assert that this language clearly and unambiguously requires the defendants to reimburse Konover for legal fees incurred in conjunction with the existing litigation. It does not. The plaintiffs' construction of § 4.3 (b) (i) and (ii) requires the use of the language ''as well as'' to serve as a buffer between ''cost of [the defendants'] legal fees'' and ''further claims.'' Put differently, the plaintiffs argue that the phrase ''as well as'' must be construed to exclude the ''cost of [the defendants'] legal fees'' from ''further claims,'' and must instead be attributed to the cost of legal fees for the existing litigation. This interpretation tortures the words of the agreement to conform to the will of the plaintiffs. The words ''as well as'' are commonly used as an inclusive, connecting phrase, rather than a dividing one.[8] Here, ''as well as'' plainly includes the cost of the defendants' legal fees in the category of expenses specifically excluded from Konover's indemnification obligations for *further claims*. In other words, the plain language of the contract requires Konover to pay for legal fees incurred during the existing litigation, but the defendants must pay for their own legal fees should further claims be brought against KBE.[9] This reading of § 4.3 (b) (i) and (ii) is supported when construing the language of the agreement as a whole.

[8] ''As well as'' is commonly understood to mean ''and in addition [to]'' or ''and also.'' See Merriam-Webster Collegiate Dictionary (11th Ed. 2003); Ballentine's Law Dictionary (3rd Ed. 1969).

[9] In the alternative, the plaintiffs argue that the reading of the connecting phrase is, at a minimum, ambiguous, ''creating a factual issue of interpretation that precludes summary judgment for the defendants.'' An ambiguity, however, ''must emanate from the language used in the contract rather than from one party's subjective perception of the terms.'' (Internal quotation marks omitted.) *Bassford* v. *Bassford*, 180 Conn. App. 331, 348, 183 A.3d 680 (2018).

Under § 4.4 of the agreement, Konover had the exclusive authority to manage the existing litigation. Further, he was obligated to satisfy any judgment against the defendants in the existing litigation under § 4.3 (b) (i) and (ii). If this court were to accept the plaintiffs' reading of the agreement, and §§ 4.3 and 4.4 in particular, Konover could effectively use his managerial authority to incur an open ended amount of legal expenses, at the defendants' expense, to defend against a judgment that he alone would be obligated to satisfy. As the trial court aptly observed in rendering summary judgment in favor of the defendants: "There is no way to convert any language limiting what Konover must do into language requiring KBE to do something that would be extraordinary and was not mentioned in the contract: assume an affirmative obligation to pay an unlimited amount of attorneys' fees to defend against claims that ultimately Konover alone might have to pay. Indeed, such an interpretation is not only disconnected from any language in the contract but is made absurd by the contract provision that gives Konover the sole right to manage the litigation—including how much is spent defending it and for how long. With someone else's millions for defense, Konover would have precious little incentive to pay even a penny for tribute regardless [of] whether it would make the cases go away entirely."

Our courts refuse to "construe a contract's language in such a way that it would lead to an absurd result." *Welch* v. *Stonybrook Gardens Cooperative, Inc.*, 158 Conn. App. 185, 198, 118 A.3d 675, cert. denied, 318 Conn. 905, 122 A.3d 634 (2015).

The plaintiffs also argue that the trial court's reading of § 4.3 (b) (i) and (ii) renders the word "costs" superfluous because the manner in which the court interpreted the agreement would exclude both the *cost* of KBE's legal fees and the *costs* incurred by the buyers as a result of further claims. In other words, the plaintiffs

argue that the words "cost" and "costs" are synonymous and, thus, cannot both be understood to apply to "future claims" without being duplicative. We disagree.

The plaintiffs would have the court interchange the term "cost" and "costs" in its construction. These words, however, commonly have different meanings. "We often consult dictionaries in interpreting contracts . . . to determine whether the ordinary meanings of the words used therein are plain and unambiguous, or conversely, have varying definitions in common parlance." (Internal quotation marks omitted.) *NPC Offices, LLC* v. *Kowaleski*, 320 Conn. 519, 528, 131 A.3d 1144 (2016). The word "cost" is often defined as the "amount paid or charged for something." Black's Law Dictionary (9th Ed. 2009). Conversely, the word "costs" commonly refers to "charges or fees taxed by a court" or "expenses of litigation, prosecution, or other legal transaction, [especially] those allowed in favor of one party against the other." Id., 398. "[T]he term costs is a term of art having a limited, well-defined legal meaning as statutory allowances to a prevailing party in a judicial action in order to reimburse him or her for expenses incurred in prosecuting or defending the proceeding." (Internal quotation marks omitted.) *Yeager* v. *Alvarez*, 134 Conn. App. 112, 121, 38 A.3d 1224 (2012). Consequently, the ordinary reading of § 4.3 (b) (i) and (ii) would exclude from Konover's indemnification obligation the cost (sum or amount charged) of KBE's attorney's fees and the costs (statutory allowances of the prevailing party) or expense incurred by KBE as a result of future claims, but not the existing litigation.

As noted by the trial court, the stock purchase agreement is devoid of any language that imposes an affirmative obligation on the defendants to indemnify Konover for any legal fees incurred during the existing litigation. Rather, the agreement squarely places an affirmative obligation on Konover to indemnify the

defendants for any judgment rendered for the named plaintiffs in the existing litigation. We decline to impose such an obligation on the defendants in the absence of any express language in the agreement. "[A] court cannot import into the agreement a different provision nor can the construction of the agreement be changed to vary the express limitations of its terms." *Deming* v. *Nationwide Mutual Ins. Co.*, 279 Conn. 745, 781–82, 905 A.2d 623 (2006).

We conclude that the language of the agreement is clear and unambiguous; the defendants are not obligated to reimburse Konover for legal fees incurred during the existing litigation. Accordingly, we conclude that the court properly rendered summary judgment in the defendants' favor.

II

The plaintiffs next claim that even if the agreement is clear and unambiguous, we should look beyond the four corners of the agreement to consider the meaning the parties ascribed to the indemnification provisions of the agreement by their course of conduct. We reject this invitation to error.

The following additional facts are pertinent to the plaintiffs' claim. The defendants initially took the position in their counterclaim and memorandum in support of their motion for summary judgment that KBE was required to pay for its own legal fees in the existing litigation. At oral argument on the defendants' motion for summary judgment, the trial court opined that the agreement was clear and unambiguous, and did not obligate the defendants to indemnify Konover for legal fees incurred during the existing litigation. Consequently, after oral argument, the defendants adopted the trial court's interpretation of the agreement in their supplemental memorandum of law in support of their

motion for summary judgment. Conversely, the plaintiffs argued that the trial court's reading of the contract was inconsistent with the intent of the parties.

As a preliminary matter, the plaintiffs urge the court to look to the admissions in the defendants' pleadings to discern the parties' understanding of the contract language. In essence, Konover asserts that the defendants should be bound by their judicial admissions and, therefore, they should be prevented from now making a contrary argument. "Judicial admissions are voluntary and knowing concessions of fact by a party or a party's attorney occurring during judicial proceedings. . . ." *Kopacz* v. *Day Kimball Hospital of Windham County, Inc.*, 64 Conn App. 263, 272, 779 A.2d 862 (2001). "Admissions, whether judicial or evidentiary, are concessions of fact, not concessions of law." *Borrelli* v. *Zoning Board of Appeals*, 106 Conn. App. 266, 271, 941 A.2d 966 (2008). "[C]oncessions of fact inform the trier of the fact, court or jury, but they in no way bind the court in its independent, plenary, and judicial determination of the applicable law." C. Tait & E. Prescott, Connecticut Evidence (5th Ed. 2014) § 8.16.3 (a), p. 529. The issue at hand is a question of law and not fact. Because we hold that the language of the contract is clear and unambiguous, the intent of the parties in utilizing the language in question is not binding on the court's legal determination of the import of the contract language. Accordingly, the trial court and we, on review, decline to give deference to the erroneous construction of the agreement initially advanced by the defendants in their pleadings.

"If the language of a contract is clear and unambiguous, the intent of the parties is a question of law, subject to plenary review." *Schimenti* v. *Schimenti*, 181 Conn. App. 385, 396, 186 A.3d 739 (2018). "Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms." *Awdziewicz*

v. *Meriden*, 317 Conn. 122, 129–30, 115 A.3d 1084 (2015). "When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract." (Internal quotation marks omitted.) *Isham* v. *Isham*, 292 Conn. 170, 180, 972 A.2d 228 (2009); accord *Dejana* v. *Dejana*, 176 Conn. App. 104, 115, 168 A.3d 595, cert. denied, 327 Conn. 977, 174 A.3d 195 (2017). "[E]xtrinsic evidence may be considered in determining contractual intent only if a contract is ambiguous." (Internal quotation marks omitted.) *Orange Palladium, LLC* v. *Readey*, 144 Conn. App. 283, 297, 72 A.3d 1191 (2013). "When the intention conveyed by the terms of an agreement is clear and unambiguous, there is no room for construction." (Internal quotation marks omitted.) *Levine* v. *Massey*, 232 Conn. 272, 278, 654 A.2d 737 (1995). "The circumstances surrounding the making of the contract, the purposes which the parties sought to accomplish and their motives cannot prove an intent contrary to the plain meaning of the language used." (Internal quotation marks omitted.) Id., 279. In sum, decisional law holds that if the language of the contract is clear and unambiguous, our courts must look only to the four corners of the contract to discern the parties' intent.

The plaintiffs rely on *Sims* v. *Honda Motor Co., Ltd.*, 225 Conn. 401, 623 A.2d 995 (1993), to support the proposition that our courts do not strictly adhere to the four corners rule in all circumstances. We find *Sims*, however, to be inapplicable to the current case. In *Sims*, our Supreme Court recognized that its holding, which enabled the court to look beyond the four corners of a contract, even if the language was clear and unambiguous, was limited to the application of General Statutes §52-572e, which relates to general releases.[10] For additional support, Konover cites to numerous treatises and

[10] In *Sims*, our Supreme Court stated: "We recognize that our conclusion is a departure from the general rule of contract construction that unambiguous contract provisions are to be given their plain meaning without reference

Justice Berdon's dissenting opinion in *Levine* v. *Massey*, supra, 232 Conn. 284, for the proposition that, under the appropriate circumstances, a court may look beyond the plain language of a contract to glean the intention of the parties to the agreement. We do not find these authorities determinative of the issue we confront.

In *Levine*, supra, 232 Conn. 280–83, our Supreme Court strictly adhered to the four corners approach to contract interpretation, holding that the plain language of the contract was clear and unambiguous and did not entitle the defendant to royalty payments for a new medical device invented by one of the plaintiffs. In his dissent, Justice Berdon rejected the four corners approach as a constant limitation to analysis and instead advocated for the use of extrinsic evidence in all instances to determine the parties' intent. Id., 286–87 (*Berdon*, *J.*, dissenting). Similarly, Justice Berdon relied on numerous treatises to support the proposition that language is inherently ambiguous and that a court must not ascribe a meaning to a contract outside the contemplation of the parties.[11] Id., 287.

to evidence outside the four corners of the agreement. . . . Rigid application of that general rule would, however, frustrate the purposes of [General Statutes] § 52-572e, which counsels against uncritical enforcement of boilerplate general release language and, therefore, justifies treating such language differently from how we treat other contractual provisions. Accordingly, we hold that, in light of the purposes of § 52-572e, general releases like that executed by Sims are not subject to that traditional rule of contract construction." Id., 415.

[11] Specifically, Justice Berdon stated, in relevant part: "[W]hile it is true that under the 'four corners' doctrine, a court may not consider any extrinsic evidence unless a contract is ambiguous, the more modern view, propounded by Professors Corbin and Farnsworth, recognizes that 'the meaning of language may vary greatly according to the circumstances' and that 'all language is infected with ambiguity and vagueness and that even language that seems on its face to have only one possible meaning may take on a different meaning when all the circumstances are disclosed . . . .' 2 E. Farnsworth, Contracts (1990) § 7.12, pp. 277–78. Under this theory, extrinsic evidence is always available to be used for interpreting the intent of the parties. Id., p. 272. After all, as Professor Corbin observed, '[n]o contract should ever

Even if there may be a circumstance in which extrinsic evidence may be referenced to glean the intent of the parties in their utilization of plain language, we are unwilling, in this instance, to stray from our well reasoned jurisprudence that plain language should be accorded its plain meaning.

Accordingly, we reject the plaintiffs' argument that this court should embrace a more modern theory of contract interpretation that looks outside the four corners of the contract to discern the intention of the parties irrespective of whether the contract is ambiguous.

The judgment is affirmed.

In this opinion the other judges concurred.

DAVID RAVALESE *v.* JOANNE M. LERTORA
(AC 40044)

DiPentima, C. J., and Alvord and Lavery, Js.

Syllabus

The plaintiff sought to recover damages for, inter alia, defamation, claiming that that the defendant, who is a psychologist, authored a report that unfairly characterized him as a child abuser and a sociopath. The plaintiff and R were involved in protracted and contentious postdissolution custody and visitation proceedings. During the course of those proceedings, R's attorney forwarded R an e-mail requesting that she ask the defendant, who had provided psychotherapy to the minor child of the plaintiff and R, to draft a report summarizing the defendant's insights regarding the appropriate custody and visitation arrangements for the child. R asked the defendant to compose the requested report, and the defendant subsequently authored a report and provided a copy of that report to R. Thereafter, the plaintiff commenced the present action, and the defendant filed a motion for summary judgment on the plaintiff's defamation claim, which the trial court granted. From the judgment rendered thereon, the plaintiff appealed to this court, claiming, inter alia, that the

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be interpreted and enforced with a meaning that neither party gave it.' 3 A. Corbin, Contracts (Sup.1994) § 572B, p. 443 . . . . " *Levine* v. *Massey*, supra, 232 Conn. 286–87 (*Berdon, J.*, dissenting).

trial court erred in holding that the defendant's report was prepared for the purpose of litigation and, thus, that the defendant's statements therein were protected by absolute immunity. *Held* that the trial court properly rendered summary judgment in favor of the defendant and determined that the defendant's publication of her report for the anticipated purpose of serving as an aid to the court and the guardian ad litem in the postdissolution custody proceedings was protected by absolute immunity; a postdissolution proceeding, such as the one in the present case, is judicial in nature, and the defendant's report was sufficiently relevant to the issues involved in the present proceeding so as to qualify for the litigation privilege, as the report was made at the request of R's attorney, who sought to use the report to assist the trial court and the guardian ad litem in the custody proceedings, the plaintiff and R signed an agreement to make the report available to their attorneys and to the guardian ad litem, the report pertained to factors relevant to the court's consideration of the child's best interests, and although the report was not admitted as an exhibit during the postdissolution proceedings, there was no genuine dispute of a material fact that the defendant prepared it for the purpose of resolving the continuing postdissolution litigation between the plaintiff and R.

Argued September 12—officially released December 18, 2018

Procedural History

Action to recover damages for, inter alia, defamation, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Elgo*, *J.*, granted the defendant's motion for summary judgment and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

Keith Yagaloff, for the appellant (plaintiff).

Michael R. McPherson, for the appellee (defendant).

Opinion

LAVERY, J. The plaintiff, David Ravalese, appeals from the summary judgment rendered by the trial court in favor of the defendant, Joanne M. Lertora, on his complaint sounding in defamation. On appeal, the plaintiff sets forth two main claims: (1) the court improperly held that a report authored by the defendant was made for the purpose of litigation and, therefore, that the

plaintiff's action for defamation was barred by the doctrine of absolute immunity; and (2) the court improperly held that the statute of limitations barred the action.[1] We affirm the judgment of the court.

The following facts and procedural history are relevant to our decision. In 2000, the court dissolved the marriage of the plaintiff and Kimberly Ravalese, whom we refer to jointly as the Ravaleses. Following the dissolution of their marriage, the Ravaleses were involved in protracted and contentious postjudgment custody and visitation proceedings. In February, 2004, the court appointed a guardian ad litem for their minor child. Between 2004 and 2012, the Ravaleses were involved in numerous court proceedings, including, inter alia, various motions for contempt that had been filed by the plaintiff, a court-ordered appointment of a new guardian ad litem for the minor child, and a court-ordered study for parental alienation. The defendant is a psychologist, who provided individual psychotherapy to the minor child on or about September, 2004 through December, 2010.

During the course of these proceedings, in early 2010, Kimberly Ravalese's attorney, Fatima Lobo, forwarded to Kimberly Ravalese an e-mail, requesting that she ask the defendant to draft a report summarizing the defendant's insights regarding the appropriate custody and visitation arrangements for the child. Kimberly Ravalese then gave the defendant a hard copy of this

[1] The primary focus of the plaintiff's brief is on his claim that the court improperly determined that the defendant was entitled to absolute immunity for the statements set forth in her report. The plaintiff also briefly addresses his claim that the court improperly held that the statute of limitations barred the action, which was an alternative basis for the court's rendering summary judgment. Any other issues mentioned in the plaintiff's brief are not briefed adequately and, therefore, do not merit our review. *Estate of Rock* v. *University of Connecticut*, 323 Conn. 26, 33, 144 A.3d 420 (2016) ("[c]laims are inadequately briefed when they are merely mentioned and not briefed beyond a bare assertion" [internal quotation marks omitted]).

e-mail and asked the defendant to compose the requested report.

In response, the defendant composed a report summarizing her assessment. Both the plaintiff and Kimberly Ravalese signed an agreement authorizing the defendant to make the report available to their respective attorneys and to the child's guardian ad litem, Emily Moskowitz. The defendant attests that she provided a copy of her report only to Lobo and to Kimberly Ravalese.[2]

In the report, the defendant discussed, among other things, the child's reports of the plaintiff's engaging in abusive behavior, the defendant's opinion that the plaintiff's behavior warranted a personality disorder diagnosis, and the defendant's recommendations regarding visitation between the plaintiff and his minor child. Lobo attempted to introduce the report into evidence at a July 8, 2010 postdissolution court hearing, but was unsuccessful because the child's guardian ad litem, Moskowitz, asserted the psychologist-patient privilege, and the court, thereafter, declined to admit the report.[3] In August, 2011, Kimberly Ravalese filed a grievance against Moskowitz with the Statewide Grievance Committee (grievance committee). The plaintiff

[2] In his complaint, the plaintiff alleges that the defendant provided the report to the attorneys, the guardian ad litem, and Kimberly Ravalese. This discrepancy between the defendant's affidavit and the allegation in the plaintiff's complaint is not crucial to our decision. The plaintiff argues that the releases signed by him and Kimberly Ravalese did not authorize delivery of the report to either himself or to Kimberly Ravalese, and that Kimberly Ravalese should not have received or read the report.

[3] Nonetheless, in 2012, the Ravaleses entered into a formal agreement, which became a court order, in which they agreed that the defendant's report, among other reports, "shall be made available to the Family Treatment Coordinator and to any other mental health professionals working with the Ravalese family, at the discretion of said Family Treatment Coordinator and the Guardian Ad Litem."

alleges in his operative complaint that during the grievance proceedings, Kimberly Ravalese provided the defendant's report to the grievance committee.

The plaintiff filed a complaint, dated May 28, 2013, in the Superior Court against the defendant, sounding in defamation and several other theories of liability.[4] The plaintiff alleged in relevant part that the defendant, in the report she had authored, unfairly characterized him as a child abuser and a sociopath. In the operative complaint, the plaintiff describes two separate instances that he alleges constitute defamation: (1) when the defendant provided the report to Kimberly Ravalese in June, 2010; and (2) when Kimberly Ravalese allegedly submitted the report to "the grievance committee, and to attorneys representing the parties in that matter, to various individuals involved in the hearing, including mental health professionals."

In response to the plaintiff's operative complaint, the defendant pleaded several special defenses, namely, that the statements in the report are truthful, that they are statements of opinion, that they are absolutely privileged because they were published in connection with judicial or quasi-judicial proceedings, that they were published in good faith, with the health and welfare of a child in mind, and, therefore, that they are protected by a qualified privilege, that the plaintiff's defamation count is barred by the statute of limitations contained

[4] On May 30, 2013, the plaintiff filed his initial complaint in the Superior Court sounding in defamation and several other theories of liability. After the plaintiff filed a revised complaint, the defendant filed a motion to strike all the counts, with the exception of the defamation count. The court granted this motion to strike. The plaintiff subsequently filed a revised substitute complaint to which the defendant again moved to strike each theory of liability except defamation. The court again granted the defendant's motion to strike, and the plaintiff elected not to replead. Accordingly, the operative complaint is the plaintiff's revised substitute complaint, and the only remaining count in that complaint is the count sounding in defamation.

in General Statutes § 52-597, and that the plaintiff failed to mitigate any potential harm.

Following a lengthy series of pretrial motions, on May 31, 2016, the defendant filed a motion for summary judgment on the remaining count in the operative complaint, the defamation count, which was argued before the court on September 6, 2016.

On January 4, 2017, the court issued a memorandum of decision in which it granted the defendant's motion for summary judgment, and rendered judgment in favor of the defendant. The court analyzed both the defendant's statute of limitations and absolute immunity defenses. As to the defendant's statute of limitations defense, the court considered the plaintiff's claim that the defendant was liable for the publication of the report when it was presented to the grievance committee. The court reasoned that the defendant could not be held responsible for the alleged publication of the report to the grievance committee because there was no dispute that the defendant, herself, had not published the report to that committee.[5] Moreover, the court determined that the only publication by the defendant had occurred long before the grievance committee proceeding. Accordingly, the court held that the plaintiff's May, 2013 action was barred by the applicable statute of limitations; see General Statutes § 52-597 ("[n]o action for libel or slander shall be brought but within two years from the date of the act complained of"); because the only potentially actionable instance of publication was when the defendant delivered her report to Kimberly Ravalese in June, 2010, which occurred outside the applicable two year statute of limitations.

[5] Specifically, the court stated: "There is no dispute that [the defendant] did not know of, nor did she authorize, the 'publication' of the [report] in the grievance proceedings."

Additionally, the court determined that the statements made by the defendant in her report were protected by absolute immunity. Reasoning that "there is compelling public policy to ensure that those who are witnesses in dissolution actions, especially those in highly contentious proceedings where children are involved, must be able to speak freely without the chilling effect of the threat of litigation," the court held, alternatively, that the defamation action also was barred by the doctrine of absolute immunity. This appeal followed.

On appeal, the plaintiff claims, in relevant part, that the court erred in holding that the defendant's report was prepared for the purpose of litigation and that the defendant's statements therein are cloaked with absolute immunity. Although the plaintiff agrees that Connecticut has long recognized the doctrine of absolute immunity, which also is referred to as the litigation privilege; see *Simms* v. *Seaman*, 308 Conn. 523, 531–40, 69 A.3d 880 (2013); the plaintiff contends that the defendant was not court appointed and her report was not prepared for the purpose of litigation and, thus, should not have been considered privileged. We disagree.

"[S]ummary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing . . . that the party is . . . entitled to judgment as a matter of law. . . . Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary." (Internal quotation marks omitted.) *Hopkins* v. *O'Connor*, 282 Conn. 821,

829, 925 A.2d 1030 (2007). Additionally, whether absolute immunity applies is a question of law over which our review is plenary. See *Simms* v. *Seaman*, supra, 308 Conn. 530.

We next set forth the relevant law applicable to defamation and the litigation privilege. "A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him . . . . To establish a prima facie case of defamation, the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement." (Internal quotation marks omitted.) *Hopkins* v. *O'Connor*, supra, 282 Conn. 838. As our Supreme Court has stated on several occasions, and as the court in this matter recognized, "if, however, the communications are uttered or published in the course of judicial proceedings, even if they are published falsely and maliciously, they nevertheless are absolutely privileged provided they are pertinent to the subject of the controversy." Id.

Connecticut has long recognized the litigation privilege. See *Simms* v. *Seaman*, supra, 308 Conn. 536–40 (discussing history of litigation privilege in Connecticut). "[T]he purpose of affording absolute immunity to those who provide information in connection with judicial and quasi-judicial proceedings is that in certain situations the public interest in having people speak freely outweighs the risk that individuals will occasionally abuse the privilege by making false and malicious statements. . . . Put simply, absolute immunity furthers the public policy of encouraging participation and candor in judicial and quasi-judicial proceedings. This

objective would be thwarted if those persons whom the common-law doctrine [of absolute immunity] was intended to protect nevertheless faced the threat of suit. In this regard, the purpose of the absolute immunity afforded participants in judicial and quasi-judicial proceedings is the same as the purpose of the sovereign immunity enjoyed by the state. . . . As a result, courts have recognized absolute immunity as a defense in certain retaliatory civil actions . . . .'' (Internal quotation marks omitted.) *MacDermid, Inc.* v. *Leonetti*, 310 Conn. 616, 627–28, 79 A.3d 60 (2013).

''The rationale underlying the privilege is grounded upon the proper and efficient administration of justice. . . . Participants in a judicial process must be able to testify or otherwise take part without being hampered by fear of defamation suits. . . . Therefore, in determining whether a statement is made in the course of a judicial proceeding, it is important to consider whether there is a sound public policy reason for permitting the complete freedom of expression that a grant of absolute immunity provides. . . . In making that determination, the court must decide as a matter of law whether the allegedly defamatory statements are sufficiently relevant to the issues involved in a proposed or ongoing judicial proceeding, so as to qualify for the [litigation] privilege. The test for relevancy is generous, and judicial proceeding has been defined liberally to encompass much more than civil litigation or criminal trials.'' (Citations omitted; internal quotation marks omitted.) *Hopkins* v. *O'Connor*, supra, 282 Conn. 839.

Accordingly, we must determine whether the proceedings at issue in this case were judicial or quasi-judicial in nature and, if so, we then must consider whether the report is sufficiently relevant to the issues involved in those proceedings. See *Kelley* v. *Bonney*, 221 Conn. 549, 566, 571, 606 A.2d 693 (1992). ''The judicial proceeding to which [absolute] immunity attaches

has not been defined very exactly. It includes any hearing before a tribunal which performs a judicial function, ex parte or otherwise, and whether the hearing is public or not. It includes for example, lunacy, bankruptcy, or naturalization proceedings, and an election contest. It extends also to the proceedings of many administrative officers, such as boards and commissions, so far as they have powers of discretion in applying the law to the facts which are regarded as judicial or quasi-judicial, in character." (Internal quotation marks omitted.) Id., 566.

A postdissolution proceeding, such as the one in the present case, is judicial in nature. Neither party disputes that fact. The plaintiff's central argument is that the defendant was not performing a judicial function because she was not requested by the court to author the report in question, the report never was admitted as an exhibit during the postdissolution proceedings, and the defendant published the report to Kimberly Ravalese in addition to the attorneys and the guardian ad litem, which was beyond the scope of the agreement between the plaintiff and Kimberly Ravalese.[6]

[6] The plaintiff also contends that the fact that the defendant published the report to Kimberly Ravalese is problematic because Kimberly Ravalese then published the report to the grievance committee. He argues that had the defendant adhered to the Ravaleses' agreement that the report could be disseminated to the attorneys and the guardian ad litem, there would have been no publication to that committee.

Attached to her motion for summary judgment, the defendant submitted an affidavit in which she attested: "I had no knowledge that Kimberly Ravalese intended to file a grievance complaint against Attorney Emily Moskowitz with the Statewide Grievance Committee," and that "I did not assist Kimberly Ravalese in preparing or filing her grievance complaint against Attorney Moskowitz, nor did I approve or authorize her to include my May 25, 2010 report with it." The plaintiff provided no evidence to challenge the defendant's sworn statements. Moreover, as stated by the court in this case, there is "no dispute that [the defendant] did not know of, nor did she authorize, the 'publication' of the [report] in the grievance proceedings."

As part of the plaintiff's argument that a genuine issue of material fact exists as to whether the defendant may have provided Kimberly Ravalese with *a second copy* of the report for purposes of sharing it with the grievance

First, although we agree that the court did not request the report, it is clear from the facts set forth in the defendant's affidavit that the purpose of her report was to aid the guardian ad litem and the court in the Ravaleses' continuing custody matter, upon the request of Lobo. Second, although the report was not admitted as an exhibit, it, nonetheless, remains clear that the defendant prepared the report to *further the purpose* of resolving the Ravaleses' continuing postdissolution litigation.

Under the doctrine of absolute immunity, "[t]he scope of privileged communication extends not merely to those made directly to a tribunal, but also to those preparatory communications that may be directed to the goal of the proceeding. . . . The right of private parties to combine and make presentations to an official

committee, the plaintiff also argues that the defendant owed him a continuing duty to either retract her statements or to prevent others from republishing it. The court rejected this argument.

As specifically stated by the court: "[T]he plaintiff does not dispute that the defendant herself did not publish the [report] in the instances subsequent to when she gave the [report] to Lobo and Kimberly Ravalese . . . ." Although the actions of Kimberly Ravalese may have resulted in the defendant's report being presented to the grievance committee, the plaintiff offers no evidence to challenge the defendant's sworn statement that she did not know that Kimberly Ravalese was going to file a grievance against the guardian ad litem and that she neither encouraged, assisted, nor authorized Kimberly Ravalese to provide a copy of the report to the grievance committee.

In this case, the record reveals that the plaintiff and Kimberly Ravalese signed a release authorizing the defendant to disclose the contents of her report to the attorneys representing each party to the dissolution and to the minor child's guardian ad litem. The defendant provided the report to Lobo and to Kimberly Ravalese to assist the guardian ad litem and the court in the custody proceedings. There is no evidence that the defendant had any way of knowing that Kimberly Ravalese would use the report in any manner inconsistent with its purpose, and, in fact, the evidence demonstrates that she did not know that Kimberly Ravalese would use the report in a manner inconsistent with the purpose for which it was written.

Therefore, we agree with the court's conclusion that the defendant is not liable for Kimberly Ravalese's publication of the defendant's report to the grievance committee.

meeting and, as a necessary incident thereto, to prepare materials to be presented is a fundamental adjunct to the right of access to judicial and quasi-judicial proceedings. To make such preparations and presentations effective, there must be an open channel of communication between the persons interested and the forum, unchilled by the thought of subsequent judicial action against such participants; provided always, of course, that such preliminary meetings, conduct and activities are directed toward the achievement of the objects of the litigation or other proceedings." (Internal quotation marks omitted.) *Hopkins* v. *O'Connor*, supra, 282 Conn. 832. To this end, our Supreme Court has held that allegedly defamatory written statements drafted for submission to the state board of education incident to a complaint that had been filed with that board and communication with a potential witness for the purpose of marshaling evidence for use in the state board of education proceedings were absolutely privileged. *Kelley* v. *Bonney*, supra, 221 Conn. 572–74.

It is well established that a statement made as a preliminary step in litigation does not disqualify it from being absolutely privileged. See *Hopkins* v. *O'Connor*, supra, 282 Conn. 832. In determining whether a communication is protected by absolute immunity, "the court must decide as a matter of law whether the allegedly defamatory statements are sufficiently relevant to the issues involved in a proposed or ongoing judicial proceeding . . . ." Id., 839.

A court in a postdissolution proceeding has the authority to "make or modify any proper order regarding the custody, care, education, visitation and support" of any minor children. General Statutes § 46b-56 (a). Pursuant to § 46b-56 (c), "the court shall consider the best interests of the child," and in doing so, may consider the following relevant factors: "(1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to under-

stand and meet the needs of the child . . . (5) the past and current interaction and relationship of the child with each parent . . . (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (8) the ability of each parent to be actively involved in the life of the child . . . (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved . . . (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; [and] (15) whether the child or a sibling of the child has been abused or neglected . . . ."

The defendant's report was made at the request of Lobo, who sought to use the report to assist the court and the guardian ad litem in the custody proceedings. Both parties to the dissolution signed an agreement to make the report available to their attorneys and to the child's guardian ad litem. Thus, even though the defendant's report ultimately was not admitted as an exhibit, it is clear that there is no genuine dispute of material fact that the defendant prepared it for that purpose. It is also clear that the report pertained to factors relevant to the court's consideration of the child's best interests. Therefore, we agree with the court's conclusion that the defendant's publication of her report for the anticipated purpose of serving as an aid to the court and the guardian ad litem in the postdissolution custody proceedings was protected by absolute immunity. Accordingly, the court properly rendered summary judgment in favor of the defendant.[7]

[7] Furthermore, although our conclusion that the court properly rendered summary judgment on the basis of absolute immunity is dispositive of this case, because the court addressed the merits of the defendant's statute of limitations defense, and the parties have briefed this issue, we also conclude that even if summary judgment was not proper on the basis of absolute immunity, the action nonetheless would be barred under the applicable statute of limitations.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* JAYSON MOTA-ROYACELI
(AC 39187)

Lavine, Sheldon and Bishop, Js.

Syllabus

Convicted of the crime of manslaughter in the first degree, the defendant appealed to this court. On appeal, he claimed that the trial court erred in limiting his voir dire of the venire panel and improperly gave the jury a Chip Smith instruction at an impermissibly coercive time. *Held*:

1. The defendant's claim that the trial court erred in limiting defense counsel's line of questioning of prospective jurors regarding the finality of the verdict was unavailing; that court properly determined that the questioning regarding finality was improper, as it concerned the understanding of legal concepts and awareness of legal proceedings, rather than the probing of potential bias, and the defendant did not demonstrate that he was prejudiced by the court's ruling.
2. The defendant could not prevail on his claim that the Chip Smith charge given by the trial court on a Friday afternoon was impermissibly coercive; the evidence did not suggest that the jury was misled or coerced by the court's giving of the Chip Smith charge on a Friday afternoon, the charge was given in accordance with the language previously approved by our Supreme Court, the verdict was not reached until after the weekend on the following Monday, and the mere fact that one of the jurors had asked about scheduling was not enough to suggest that there was coercion.

Argued September 25—officially released December 18, 2018

As we discussed in footnote 6, we agree with the court's determination that the evidence demonstrated that the only actionable instance presented in the plaintiff's complaint is the defendant's delivery of her May 25, 2010 report to Kimberly Ravalese and Lobo. As to that event, the defendant's affidavit provides that the defendant both mailed a copy of this report to Lobo and gave a copy of this report to Kimberly Ravalese "sometime before the Ravaleses' family court hearing on June 2, 2010." Accordingly, the statute of limitations expired at the latest on June 2, 2012. Therefore, the May 28, 2013 date of service of process on the plaintiff's initial complaint was outside the time within which the plaintiff properly could bring suit. See General Statutes § 52-597 ("[n]o action for libel or slander shall be brought but within two years from the date of the act complained of").

Procedural History

Substitute information charging the defendant with the crimes of manslaughter in the first degree and tampering with evidence, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Kwak*, *J.*; verdict and judgment of guilty of manslaughter in the first degree, from which the defendant appealed to this court. *Affirmed.*

Lisa J. Steele, assigned counsel, with whom, on the brief, was *Stephen A. Lebedevitch*, assigned counsel, for the appellant (defendant).

Denise B. Smoker, senior assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, state's attorney, and *Anthony Bochicchio*, senior assistant state's attorney, for the appellee (state).

Opinion

LAVINE, J. The defendant, Jayson Mota-Royaceli, appeals from the judgment of conviction rendered after a trial to the jury, on the charge of manslaughter in the first degree in violation of General Statutes § 53a-55 (a) (1). The defendant claims that the trial court improperly (1) limited his voir dire of the venire panel and (2) gave the jury a Chip Smith instruction at an impermissibly coercive time. We affirm the judgment of the trial court.

The jury was presented with evidence of the following facts. The defendant and the victim worked together and attended the wedding reception of one of their coworkers. During the course of the night, the victim touched the defendant's buttocks, causing the defendant to get angry. The victim tried to fight the defendant, but the defendant did not want to fight. After they separately left the reception, there was phone communication between the two, and they ultimately drove to and met in a parking lot. After a discussion, the defendant returned to his car, and after getting in, he thought that

he saw the victim with a firearm, and drove the car into the victim, killing him. No gun was found on the scene. Following the trial, the defendant was convicted of one count of manslaughter in the first degree in violation of § 53a-55 (a) (1) and acquitted of two counts of tampering with evidence in violation of § 53a-155 (a) (1).[1] This appeal followed.

I

The defendant claims that the court erred in limiting defense counsel's line of questioning of prospective jurors regarding the finality of their verdict. Specifically, the defendant argues that without being allowed to pursue this line of questioning, "there [was] an impermissible risk that one or more jurors entertained a belief that the ultimate task of determining whether the defendant is guilty or not could be corrected in a higher court." We are unpersuaded.

Jury selection for the defendant's trial began on October 22, 2015. During voir dire, defense counsel's line of questioning included inquiries regarding the finality of a jury's verdict.[2] After the state objected, the court allowed the line of questioning but ordered defense

[1] The tampering charges arose from the defendant's conduct in moving the vehicles after hitting the victim with his car and the fact that his cell phone was never recovered.

[2] Defense counsel questioned the venireperson who was chosen as the first juror as follows:

"Q. Do you think that a jury's decision in a criminal case is a final decision?

"A. Please repeat that.

"Q. Do you think that the jury's verdict, I should say, their verdict is a final decision? Meaning that it's not going to change the judge having just the responsibility of punishment in the event of conviction, he doesn't sit as a seventh juror. It's up to the jury.

"A. Correct.

"Q. Do you agree that the jury's verdict is final?

"A. Well, as I understand, I mean, I'm not a lawyer, as I understand it, the—if someone is convicted, they would have a right to appeal if something, they didn't think something was right, maybe it was something that the jury didn't get to hear and they want to bring that to the attention of the judge or the court and say, wait, wait, I think this should have been allowed in and it wasn't.

counsel to reword the questions. The next day, however, upon reconsidering the state's objection, the court precluded defense counsel from asking venirepersons whether they believed that their verdict as jurors would be final. The defendant argues that the court erred in precluding this line of questioning, and that in doing so, the court deprived the defendant of his right to inquire into potential bias. We disagree.

"Voir dire plays a critical function in assuring the criminal defendant that his [or her] [s]ixth [a]mendment right to an impartial jury will be honored. . . . Part of the guarantee of a defendant's right to an impartial jury is an adequate voir dire to identify unqualified jurors. . . . Our constitutional and statutory law permit each party, typically through his or her attorney, to question each prospective juror individually, outside the presence of other prospective jurors, to determine [his or her] fitness to serve on the jury. . . . Because the purpose of voir dire is to discover if there is any likelihood that some prejudice is in the [prospective] juror's mind [that] will even subconsciously affect his

"Q. Here's what I'm getting at: Do you think your decision, ultimately if you get it wrong, as the jury, whichever way it is, that somehow that'll be corrected so you don't have to worry about it. Or do you think, no, it's going to be given weight and effect, your decision is final?

***

"Q. If the jury—you know that there's an appeal process and in that.

"A. Right.

"Q. That's not something that you can concern yourself with.

"A. Right.

"Q. What I'm really getting at is the jury's decision is given weight and effect by this judge and any other.

"A. Correct.

"Q. And it's not going to be changed because someone disagrees with the jury.

"A. Correct.

***

"Q. Because if the jury thinks, hey, look, if we get it wrong, someone will—

"A. Let's just do this now and someone else will fix it later?

"Q. Right.

"A. No, no, no, no. It's the jury's—otherwise, it's a waste of our time."

[or her] decision of the case, the party who may be adversely affected should be permitted [to ask] questions designed to uncover that prejudice. This is particularly true with reference to the defendant in a criminal case. . . . The purpose of voir dire is to facilitate [the] intelligent exercise of peremptory challenges and to help uncover factors that would dictate disqualification for cause." (Citations omitted; internal quotation marks omitted.) *State* v. *Edwards*, 314 Conn. 465, 483, 102 A.3d 52 (2014).

It is well settled that "[t]he court has wide discretion in conducting the voir dire . . . and the exercise of that discretion will not constitute reversible error unless it has clearly been abused or harmful prejudice appears to have resulted." (Citations omitted.) *State* v. *Dahlgren*, 200 Conn. 586, 601, 512 A.2d 906 (2009).

"A defendant will not prevail on appeal just because he might be correct in asserting that a prohibited line of questioning would have exposed potential bias." *State* v. *Thornton*, 112 Conn. App. 694, 705, 963 A.2d 1099, cert. denied, 291 Conn. 914, 970 A.2d 727 (2009). "We have repeatedly stated that a juror's knowledge or ignorance concerning questions of law is not a proper subject of inquiry on voir dire." *State* v. *Dahlgren*, supra, 200 Conn. 601.

As an initial matter, we reject the defendant's characterization of the prohibited inquiry as relating to "bias." The term "bias," as commonly used, refers to a predisposition or tendency to view a person or circumstance in an unfair way. The trial court determined that the questioning regarding finality was improper, as it concerned the understanding of legal concepts. We agree with this determination, as the line of questioning by defense counsel improperly inquired into legal knowledge. Although the defendant argues that the questions were not improper questions of law, he emphasizes the

importance of gauging a venireperson's "aware[ness] of the possibility of post-conviction proceedings." We fail to see the distinction between improper questions regarding a venireperson's knowledge of law, and the questions that the defendant sought to ask. These questions did not probe potential bias but, rather, inquired into a venireperson's awareness of legal proceedings.

Additionally, the defendant has failed to demonstrate that he was prejudiced by the court's ruling. The defendant argues that prejudice arose from the risk that a juror might have believed that a higher court could correct an improper verdict. This argument is speculative as there is no evidence in the record to support it. We therefore reject the defendant's claim.

II

The defendant's second claim is that the Chip Smith[3] charge, given at 4 p.m. on the Friday before Thanksgiving, was impermissibly coercive.[4] Additionally, the

[3] "A Chip Smith instruction reminds the jurors that they must act unanimously, while also encouraging a deadlocked jury to reach unanimity." (Internal quotation marks omitted.) *State* v. *O'Neil*, 261 Conn. 49, 51 n.2, 801 A.2d 730 (2002). We note that the instruction given in the present case followed the language as set forth and approved in *O'Neil*. Id., 74–75. The defendant does not challenge the wording of the charge.

[4] The defendant argues that this alleged impermissibly coercive timing of the Chip Smith charge bolsters the alleged risk discussed in part I of this opinion that a juror might have believed that a higher court could correct an improper verdict. This argument is undermined by the fact that defense counsel was able to freely question each member of the venire panel about the pressure of holding a minority position in deliberations:

"Q. Let's suppose you're chosen for the case. You go back into the deliberation room. You discuss the case, take a vote and ultimately whichever way it is, you are in the minority. It's five to one. How do you think you'd handle that situation?

"A. Yeah, I can only imagine how much pressure that would be, but if it was truly five to one, I guess it would be five to one.

***

"Q. And you mentioned the pressure. You know, let's suppose it's five o' clock on a Friday afternoon and if you don't return a verdict, you've got to come back on Monday. Are you someone who thinks you might cave in and change your mind simply to—

"A. Not at all, no.

defendant argues that the charge was coercive as the jury had questioned the schedule for the following week and one of the jurors had a doctor's appointment on Monday. We are unpersuaded.

After the close of evidence and final arguments, the court charged the jury on Tuesday, November 17, 2015. On Friday, November 20, 2015, prior to lunch, the jury sent a note to the court indicating that it was unable to come to an agreement and requested instruction from the court about the state's burden of proof. The state then requested that the Chip Smith charge be given at once, providing the jurors the opportunity to think about it over lunch, rather than giving them the charge late on a Friday. Defense counsel, however, stated that giving the Chip Smith charge at that time would be "putting the cart before the horse . . . ." After explaining to the jury that the court would not give further instruction, the court sent the jury back to deliberate further without giving them the Chip Smith charge.

Later in the day, the jury sent out another note indicating it had reached a verdict on count two but was deadlocked on the other two counts. Defense counsel objected to giving the Chip Smith charge, noting that it was 4 p.m. on a Friday, and asked that the court accept the jury's verdict on count two and declare a mistrial on the other two counts or alternatively modify the language in the Chip Smith charge. The court denied the request and gave the standard Chip Smith charge. Shortly after the charge was given, one of the jurors spoke to the court's clerk expressing concern about a doctor's appointment the juror had scheduled for 12:30 p.m. on Monday. The juror was told that "they [the jury] would have to be [there in court] regardless." On Monday, November 23, 2015, at 11:07 a.m., the jury sent out a note indicating that it had reached a verdict on all three charges.

"A jury that is coerced in its deliberations deprives the defendant of his right to a fair trial under the sixth and fourteenth amendments to the federal constitution, and article first, § 8, of the state constitution. Whether a jury [was] coerced by statements of the trial judge is to be determined by an examination of the record. . . . The question is whether in the context and under the circumstances in which the statements were made, the jury [was], actually, or even probably, misled or coerced. . . . The court must consider [the jury instructions] from the standpoint of their effect upon the jury in the context and under the circumstances in which they were given." (Citation omitted; internal quotation marks omitted.) *State* v. *Daley*, 161 Conn. App. 861, 866, 129 A.3d 190 (2015), cert. denied, 320 Conn. 919, 132 A.3d 1093 (2016).

Upon review of the record, the evidence does not suggest that the jury was misled or coerced by the court's giving of the Chip Smith charge on Friday afternoon. The charge was given in accordance with the language approved by our Supreme Court. See *State* v. *O'Neil*, 261 Conn. 49, 51, 801 A.2d 730 (2002). Furthermore, although the charge was given at 4 p.m. on a Friday,[5] the verdict was not reached until after the weekend, at 11:07 a.m. on Monday. The mere fact that a juror asked about scheduling is not enough to suggest that there was coercion. We cannot conclude that, in the context and under the circumstances in which the charge was given, the jury was, actually or even probably, misled or coerced. We therefore reject the defendant's claim and affirm the judgment of the trial court.

The judgment is affirmed.

In this opinion the other judges concurred.

[5] Notably, defense counsel objected to the state's proposal to give the Chip Smith charge after the jury sent its first note to avoid the charge being given late on a Friday.

MEMORANDUM DECISIONS

CONNECTICUT APPELLATE REPORTS

VOL. 186

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
v. SHERI A. SPEER
(AC 38843)

Sheldon, Bright and Harper, Js.

Argued November 28—officially released December 18, 2018

Defendant's appeal from the Superior Court in the judicial district of New London, *Vacchelli*, *J.*

Per Curiam. The judgment is affirmed and the case is remanded for the purpose of setting new law days.

CITY OF NORWICH *v.* IRINA LOSKOUTOVA ET AL.
(AC 40821)

DiPentima, C. J., and Alvord and Eveleigh, Js.

Submitted on briefs November 28—officially released December 18, 2018

Named defendant's appeal from the Superior Court in the judicial district of New London, *Nazzaro*, *J.*

Per Curiam. The judgment is affirmed and the case is remanded for the purpose of setting a new sale date.

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Murder; violation of standing criminal protective order; whether prosecutor misstated or exaggerated significance of DNA evidence from plastic bag, checkbook and cell phone charger; whether prosecutor implied to jury that he had knowledge outside record with respect to bloody foot impressions; whether trial court abused its discretion when it admitted testimony about bloodstain on tissue; whether trial court abused its discretion when it denied motion to strike expert's testimony about how blood was transferred to tissue; claim that trial court committed plain error when it permitted certain testimony by expert regarding blood spatter analysis when expert had not previously been disclosed or qualified as an expert in that area.

State *v.* Davis. 385

Violation of probation; motion to dismiss; motion for continuance; claim that trial court improperly denied motion to dismiss for lack of jurisdiction due to allegedly improper transfer of case to Superior Court in Bridgeport; whether claim that Bridgeport Superior Court lacked jurisdiction over probation revocation proceeding was essentially objection to venue rather than to jurisdiction; whether claim of improper venue is procedural in nature; whether trial court abused its discretion in granting public defender's transfer request; claim that trial court violated defendant's constitutional right to be present at critical stage of probation revocation proceeding; whether state demonstrated harmlessness of any claimed error beyond reasonable doubt; claim that trial court improperly denied request for continuance of dispositional phase of probation revocation proceeding until all pending criminal matters were resolved to protect defendant's right of allocution; State *v.* Blake *(289 Conn. 586) discussed.*

State *v.* Farrar 220

Motion to correct illegal sentence; claim that trial court improperly denied motion to correct illegal sentence; whether defendant's sentence of seven years incarceration followed by eight years of special parole was prohibited by statute (§ 53a-35a) that requires that defendant be sentenced to definite term of imprisonment; whether applicable statutes (§§ 53a-28 [b] [9] and 54-128 [c]) explicitly authorized defendant to be sentenced to term of imprisonment followed by period of special parole.

State *v.* Greene. 534

Manslaughter in first degree; whether trial court improperly denied motion to dismiss; claim that trial court's finding of lack of probable cause on murder charge

deprived it of jurisdiction over defendant on charge of manslaughter in first degree in amended information; claim that evidence was insufficient to support finding of probable cause for manslaughter in first degree; claim that evidence presented at probable cause hearing could only establish intent to kill, and not intent to cause serious physical injury required for manslaughter charge; whether trial court properly denied defendant's motions for judgment of acquittal; claim that evidence was insufficient to sustain conviction of manslaughter in first degree; claim that trial court abused its discretion by denying motion for new trial.

State *v.* Hooks (Memorandum Decision) 901

State *v.* Manuel T. 51

Sexual assault in first degree; risk of injury to child; sexual assault in second degree; sexual assault in fourth degree; whether trial court properly determined that minor victim's statements made during diagnostic interview fell within medical diagnosis or treatment exception to hearsay rule; whether trial court abused its discretion in admitting video recording of diagnostic interview into evidence; whether trial court abused its discretion by excluding from evidence cell phone screenshots of certain text messages; whether defendant failed to satisfy his burden of authenticating screenshots at issue; whether defendant failed to present sufficient evidence to make prima facie showing that minor victim was author of text messages.

State *v.* Mark T. 285

Risk of injury to child; claim that trial court improperly precluded defendant from questioning minor victim's teacher about whether victim had been violent with others at school; whether trial court acted within its discretion to limit defendant's questioning of teacher, which did not relate to subject of state's redirect examination of teacher; whether trial court abused its discretion when it sustained state's objections to testimony about victim's misbehavior at home and how desperate defendant was to obtain treatment for her; claim that trial court's preclusion of defendant's testimony rendered his defense of parental justification toothless.

State *v.* Marsala 1

Criminal trespass in first degree; simple trespass; jury instructions; whether trial court properly declined to instruct jury on infraction of simple trespass as lesser offense included within crime of criminal trespass in the first degree; whether jury could have found that defendant committed simple trespass but not criminal trespass in first degree.

State *v.* Miller 654

Motion to correct illegal sentence; whether trial court improperly denied motion to correct illegal sentence without first providing defendant with meaningful opportunity to be heard; whether trial court was not authorized to dispose summarily of motion to correct pursuant to applicable rule of practice (§ 43-22) or any other relevant legal authorities; whether trial court's failure to provide defendant with hearing was improper because defendant had attempted to raise issue of first impression under our state constitution.

State *v.* Mota-Royaceli 735

Manslaughter in first degree; claim that trial court erred in limiting defense counsel's questioning of prospective jurors regarding finality of verdict; whether defendant was prejudiced by fact that trial court limited defense counsel's questioning; claim that trial court impermissibly coerced jury in giving Chip Smith charge on Friday afternoon.

State *v.* Ortega (Memorandum Decision) 901

State *v.* Spring 197

Strangulation in second degree; assault in third degree; whether trial court erred in granting motion to admit defendant's written statement into evidence; request for this court to invoke its supervisory authority to order new trial and require judges of Superior Court to instruct juries in particular manner when faced with statements or confessions obtained during unrecorded custodial interrogations in violation of statute [§ 54-1o]; claim that violation of § 54-1o had constitutional implications; claim that written statement should not have been admitted into evidence pursuant to exception in subsection (h) of § 54-1o; whether trial court properly determined that defendant's written statement was voluntary and reliable under totality of the circumstances; whether state was required to present independent corroborating evidence of contents of written statement that violated § 54-1o; reviewability of claim that trial court abused its discretion in overruling

objection to alleged misstatement of prosecutor during closing rebuttal argument; failure to brief claim adequately.

State *v.* Washington 176

Conspiracy to commit home invasion; attempt to commit home invasion; attempt to commit robbery in first degree; conspiracy to commit robbery in first degree; attempt to commit assault in first degree; claim that evidence was insufficient to support conviction of conspiracy to commit home invasion and attempt to commit home invasion; whether jury reasonably could have found that defendant had agreed with coconspirators to engage in conduct constituting home invasion; whether jury was entitled to credit and rely on coconspirator's testimony as basis for conviction, even if it was only evidence offered to establish one or more essential elements of charged offense; whether jury reasonably could have found that defendant intentionally took substantial step in course of conduct planned to culminate in crime of home invasion; unpreserved claim that trial court improperly instructed jury on common essential element of conspiracy to commit home invasion and attempt to commit home invasion by substituting term "dwelling" with word "building" in its oral jury instructions; whether defendant failed to demonstrate existence of constitutional violation that deprived him of fair trial pursuant to third prong of test set forth in State *v.* Golding *(231 Conn. 233); whether defendant was entitled to reversal of judgment pursuant to plain error doctrine.*

U.S. Bank National Assn. *v.* Wolf (Memorandum Decision) 902

U.S. Equities Corp. *v.* Ceraldi (Memorandum Decision) 903

U.S. Equities Corp. *v.* Ceraldi 610

Debt collection; postjudgment interest; motion for clarification; claim that trial court's order granting motion for clarification and setting forth 10 percent rate of postjudgment interest pursuant to statute (§ 37-3a), constituted improper substantive modification of judgment; failure of plaintiff to move to open judgment to determine rate of interest within four month postjudgment period as prescribed by applicable statute (§ 52-212a).

SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

STATE *v.* ELMER G., SC 20031
Judicial District of Danbury

Criminal; Whether Appellate Court Properly Concluded That Defendant's Convictions of Violation of a Restraining Order Were Supported by Sufficient Evidence; Whether Appellate Court Properly Concluded That Defendant Was Not Deprived of His Right to a Fair Trial by Prosecutorial Impropriety. The defendant was convicted of two counts each of the crimes of sexual assault in the second degree and risk of injury to a child and of three counts of criminal violation of a restraining order in connection with his alleged sexual abuse of the victim, his daughter. The defendant appealed, claiming that the evidence was insufficient to support his convictions of violation of a restraining order and that prosecutorial impropriety deprived him of a fair trial. The Appellate Court (176 Conn. App. 343) affirmed the defendant's conviction. In affirming the conviction of three counts of criminal violation of a restraining order, the Appellate Court rejected the defendant's claim that the evidence was insufficient to support the conviction because the state failed to prove that the ex parte and temporary restraining orders that were issued applied to the victim or that the defendant, who spoke Spanish, knew the terms of those orders. The Appellate Court noted that, although the restraining orders identified the victim's mother as the "protected person," they also stated that they protected the minor children of the protected person, namely, the victim and her siblings, and furthermore that, at the temporary restraining order hearing, the judge, through a Spanish interpreter, had advised the defendant that his contact with his children was limited to weekly supervised visits. The court added that, even if there was an inadequate evidentiary basis for determining that the defendant knew the terms of the ex parte restraining order, the conviction on the third count would nevertheless stand because there was sufficient evidence to prove that the defendant sent the victim a letter during the effective period of the temporary restraining order. The Appellate Court rejected the defendant's claim that the prosecutor engaged in impropriety by improperly bolstered the credibility of two state's witnesses, deeming that claim an unpreserved evidentiary claim rather than a constitutional claim of prosecutorial impropriety, and refusing to review it under the framework applied to true claims of prosecutorial impropriety. Finally, the Appellate Court rejected the defendant's claim that the prosecutor improperly vouched

for the credibility of the victim during closing argument, opining that, when the disputed remarks were viewed in the context of the entire closing argument, it was clear that the prosecutor was appealing to the jurors' common sense and inviting them to draw a conclusion on the basis of a rational appraisal of the evidence. The Supreme Court granted the defendant certification to appeal, and it will decide whether the Appellate Court properly concluded that there was sufficient evidence to support the defendant's conviction of three counts of criminal violation of a restraining order and properly concluded that the defendant was not deprived of his right to a fair trial by prosecutorial impropriety.

The Practice Book Section 70-9 (a) presumption in favor of coverage by cameras and electronic media does not apply to the case above.

JERMAINE LITTLE *v.* COMMISSIONER OF CORRECTION, SC 20051
Judicial District of Tolland

Habeas; Whether Appellate Court Correctly Concluded That *State* v. *Salamon* Does Not Apply Retroactively to Collateral Attack on Kidnapping Conviction Where Petitioner Pleaded Guilty to That Charge. The petitioner was charged with kidnapping in the first degree, burglary and robbery after he and three other men abducted a man at gunpoint, forced the victim into his own car, drove to the victim's house, and took cash, checks and jewelry from a safe in the victim's bedroom. In 2004, the petitioner, pursuant to a plea agreement, pleaded guilty to the kidnapping charge, and the state entered a nolle prosequi on the burglary and robbery charges. Subsequently, in *State* v. *Salamon*, 287 Conn. 509 (2008), the Supreme Court held that, in order to convict a defendant of kidnapping in the first degree in conjunction with another crime, the state must prove that the defendant intended to prevent the victim's liberation for a longer period of time or to a greater degree than that which was necessary to commit the other crime. The petitioner then brought this habeas action in 2013, claiming that his guilty plea was invalid because, at the time he entered it, he was not aware of the additional element of intent that was enunciated by the Supreme Court in *Salamon* four years after his conviction. The habeas court denied the petitioner's *Salamon* claim, and the petitioner appealed, claiming that *Salamon* should be applied retroactively to his case because there is no differentiation between a conviction obtained after a trial or by way of a guilty plea, and because there was a risk that, in light of *Salamon*, his conviction did not comport with the due process requirements for

guilty pleas. The Appellate Court (177 Conn. App. 337) disagreed and affirmed the habeas court's judgment. The Appellate Court noted that there was no binding precedent as to whether *Salamon* should be applied retroactively to collateral attacks on a kidnapping conviction when the defendant pleaded guilty to only that charge pursuant to a plea agreement, but, in deciding the issue, the Appellate Court adopted the rule and reasoning of the plurality opinion in *Luurtsema* v. *Commissioner of Correction* (299 Conn. 740). That opinion adopted a general presumption that *Salamon* applies retroactively in habeas proceedings, but left open the possibility that there could be situations in which the traditional rationales underlying the writ of habeas corpus did not favor retroactive application. The Appellate Court ruled that the traditional rationales underlying the writ of habeas corpus did not favor applying *Salamon* retroactively here. The court noted that: (1) there was no risk that the petitioner stood convicted of an act that the law did not make criminal; (2) there was no risk that the petitioner faced a punishment that the law could not impose on him; and (3) the state relied sufficiently to its detriment on the Supreme Court's pre-*Salamon* kidnapping precedent when constructing the terms of the petitioner's plea agreement such that applying *Salamon* retroactively in the present case would be inappropriate. The Supreme Court granted the petitioner certification to appeal, and it will decide whether the Appellate Court correctly declined to apply *Salamon* retroactively to allow a collateral attack on a kidnapping conviction when the defendant pleaded guilty to the kidnapping charge, and, if not, whether the petitioner is entitled to relief on his *Salamon* claim.

STATE *v.* DAVID G. LIEBENGUTH, SC 20145
Judicial District of Stamford

Criminal; Free Speech; Whether Appellate Court Properly Concluded that, Under the Circumstances in Which They Were Uttered, Racial Slurs Directed at an African-American Parking Officer Were not Fighting Words. The defendant was convicted, following a bench trial, of breach of the peace in the second degree in violation of General Statutes § 53a-181 (a) (5), which prohibits the use, in a public place, of abusive or obscene language that is intended to cause annoyance or alarm. The defendant's conviction stemmed from an incident in which he twice directed racial slurs at an African-American parking authority officer (parking officer) who had just issued him a $15 ticket. The defendant made several vulgar and racially-charged remarks during the incident, culminating in the defendant angrily shouting a racial slur at the parking officer while driving past

him. The trial court found that the defendant's speech, taken in context, amounted to "fighting words"—those words that are not constitutionally protected and that, by their very utterance, are likely to provoke the person to whom they are addressed to retaliate with immediate violence. The defendant appealed, claiming that the evidence was insufficient to support his conviction because his words were protected speech under the first amendment to the United States constitution and thus did not violate § 53a-181 (a) (5). The Appellate Court (181 Conn. App. 37) agreed and reversed the defendant's conviction, relying in part on the decision in *State* v. *Baccala*, 326 Conn. 232, cert. denied, 138 S. Ct. 510 (2017). In *Baccala*, the defendant was convicted of breach of peace in the second degree after she directed vulgar and offensive language at the manager of a supermarket. The Supreme Court reversed the conviction, finding that the defendant's speech did not constitute "fighting words" in that the state did not prove that, under the circumstances, an average store manager was likely to have responded with violence to the defendant's provocations. The Appellate Court observed that here, as in *Baccala*, the defendant used extremely vulgar and offensive language that was intended to personally demean the person to whom it was addressed, but it held that, under the circumstances, that language was not likely to tend to provoke a reasonable person in the parking officer's position immediately to respond with violence. The Appellate Court noted that the defendant was in his car both times that he directed racial slurs toward the parking officer, and it reasoned that a parking officer would expect some level of hostility from a person receiving a ticket and therefore that a reasonable person acting in the capacity of a parking official would not be likely to retaliate with immediate violence under the circumstances. The state appeals, and the Supreme Court will decide whether the Appellate Court properly reversed the defendant's conviction on concluding that his words directed at the parking officer were constitutionally protected free speech and did not constitute "fighting words."

TYREESE BOWENS *v.* COMMISSIONER OF CORRECTION, SC 20204
Judicial District of Tolland

Habeas Corpus; Actual Innocence; Ineffective Assistance of Counsel; Whether Newly Discovered Evidence Required to Support Actual Innocence Claim; Whether Change in Law Allowing Expert Testimony as to Fallibility of Eyewitness Identification Constitutes Newly Discovered Evidence; Whether Habeas Court Properly Rejected Claim of Actual Innocence. The

petitioner was convicted of murder in connection with the death of a man who was shot while he sat in the front seat of a parked car. A witness who was sitting next to the victim at the time of the shooting identified the petitioner as the shooter. The petitioner brought this habeas action claiming that he was actually innocent and that the attorney who represented him in connection with a previous habeas petition rendered ineffective assistance of counsel. In support of his actual innocence claim, the petitioner presented (1) witnesses who testified that a third party had confessed to the murder, and (2) expert testimony regarding the fallibility of eyewitness identification. The petitioner argued that the expert testimony constituted newly discovered evidence because, at the time of his criminal trial in 1998, expert testimony regarding the fallibility of eyewitness identification was inadmissible. Subsequently, in *State* v. *Guilbert*, 306 Conn. 218 (2012), the Supreme Court overruled prior law and determined that testimony from a qualified expert on the fallibility of eyewitness identification is admissible at trial. The habeas court, following Appellate Court precedent holding that newly discovered evidence is required to support a claim of actual innocence, determined that expert testimony regarding the fallibility of eyewitness identification did not amount to newly discovered evidence and that, even if it did, the expert testimony merely cast doubt on the reliability of the state's witness and did not amount to affirmative proof of actual innocence. The habeas court also rejected the petitioner's actual innocence claim insofar as it was based on the third-party confession, finding that the claim was barred by res judicata because it had been raised and adjudicated in a previous habeas petition brought by the petitioner. In the alternative, the habeas court concluded that evidence of the alleged third-party confession did not establish by clear and convincing evidence that the petitioner was factually innocent of the murder and that, in light of that evidence, no reasonable fact finder could find him guilty of that crime. Finally, the habeas court rejected the petitioner's claims that his prior habeas counsel had rendered ineffective assistance in failing to adequately present a claim of actual innocence and in failing to adequately present a claim of ineffective assistance of trial counsel. The petitioner appeals, claiming that the habeas court erred in rejecting his actual innocence claim and urging the Supreme Court to overrule Appellate Court precedent that requires that a claim of actual innocence be supported by newly discovered evidence. The petitioner also claims that the habeas court erred in concluding that a conviction based on an eyewitness identification that is admitted without the benefit of expert testimony as to the fallibility of eyewitness identification does not violate due

process. Finally, the petitioner argues that the habeas court erred in rejecting his claims that his prior habeas counsel rendered ineffective assistance.

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.

John DeMeo
Chief Staff Attorney

NOTICES OF CONNECTICUT STATE AGENCIES

State of Connecticut
Connecticut State Dental Commission

Notice of Declaratory Ruling Proceeding

The Connecticut State Dental Commission hereby gives notice of its intention to issue a declaratory ruling, without further proceedings, at its January 30, 2019 meeting regarding the following issue.

What are the minimum requirements to be accepted for the written and practical examinations by approved regional testing agencies under Conn. Gen. Stat. § 20-108(a)?

The meeting will be held at the Department of Public Health, 410 Capitol Avenue, Hartford, Connecticut, commencing at 1:00 p.m., in the third floor Hearing Room.

The Connecticut State Dental Commission has prepared this notice in accordance with the Uniform Administrative Procedure Act (''UAPA''), Conn. Gen. Stat. § 4-166 *et seq.*, and specifically Conn. Gen. Stat. § 4-176.

December 5, 2018

Jeanne P. Strathearn, DDS
Chairperson
Connecticut State Dental Commission
410 Capitol Avenue, MS# 13PHO
PO Box 340308
Hartford, CT 06134-0308

NOTICES

CONNECTICUT BAR EXAMINING COMMITTEE

The following 180 persons have applied for admission to the Connecticut bar by examination to be held on February 26 & 27, 2019. Written objections or comments regarding any candidate should be addressed to the Connecticut Bar Examining Committee, 100 Washington Street, 1st Floor, Hartford, CT 06106 as soon as possible.

Jessica F. Kallipolites
Administrative Director

Aguilar, Antonio Ambrose of West Hartford, CT
Amin, Dawud W. of New Haven, CT
Ammirati, Andrew Mark of Hartford, CT
Anderson, Lutherene A. of Miramar, FL
Andrews, Benjamin Zheevar of Wilton, CT
Antunes, Nicole Marie Carolino of Newington, CT
Apanovitch, Austin James of Glastonbury, CT
Armas, Mirella E. of Niantic, CT
Ayuso, Josalyn Ivette of Hartford, CT
Azzarito III, Richard J. of Shelton, CT
Baptiste-Perez, Christine Marie of Bridgeport, CT
Barasch, James Matthew of Easton, CT
Bardoo, Sean Lincoln of Lowell, MA
Bates, Bruce Christopher of New Britain, CT
Beauvais, Kelly Anne of Hartford, CT
Beckford-Anderson, Rauchell A. of Windsor, CT
Beckoff, Jay C. of Westport, CT
Bejleri, Silvina of Wolcott, CT
Belter, Roxanne Theresa of Lakeville, CT
Berriault, Robert Wendell of New Britain, CT
Bixby, David Walter of Middletown, CT
Blazosek, Christopher John of East Haven, CT
Boet Repeta, Susan of Londonderry, NH
Bonito, Angela Marie of North Branford, CT
Boyadzhyan, Antranik A. of Harrington Park, NJ
Boyle, Anna Cristina of New Haven, CT
Brody, Rachel E. of Stamford, CT
Brooks, Josh Albert of Collegeville, PA
Brown, Kathleen Rose of Hamden, CT
Bruno, Darren W. of New Canaan, CT
Buckingham, Amanda M. of Manchester, CT
Caine, Martin Leonard of Woodbury, CT
Cale, Jose Carlos Cordeiro of Newington, CT
Candon, Rylee Elizabeth of Barrington, RI
Carbray, Ashley Patrice of Bloomfield, CT
Carpenter Woods, Martina R. of Bowie, MD
Channer, Sherna Cavell of Shelton, CT
Cheeks, Sharon M. of Windsor, CT
Condon, Michael Thomas of Boston, MA
Coppola II, Joseph Theodore of Madison, CT
Crapo, Shawn R. of Rye Beach, NH
Cruz, Carlos of Meriden, CT
Da Silva, Maria Do Ceu of New Haven, CT
Daly, Thomas Joseph of Morristown, NJ
Dassatt, Natasia Marie of Groton, CT
Dean, Lauren Frederica of Waterbury, CT
Devine, Joseph of Darien, CT
D'Onofrio, Francesca of New Canaan, CT
Doster, Shawna Hamilton of Greenwich, CT
Dressler, Tavi J. of West Hartford, CT
Dubin, Elliot Asher of Orange, CT
Eisen, Mary-Jane of Avon, CT
Estes, Krystle Lynne of West Hempstead, NY
Eze, Paulette Nneka of West Hartford, CT
Faillace, Adam Christopher of Westport, CT
Falcon, Bernardo Martin of New Haven, CT
Fernandez, Jonathan Peter of Bloomfield, CT
Flanagan, Sean P. of Milford, CT
Foye, Bryan Paul of Warwick, RI
Francini, Anthony of Coventry, CT
Gaebler, Emilee Song of New Haven, CT
Gaeta, Mary L. of New Haven, CT
Gahr, Deneen Toman of Enfield, CT
Gerosa, Nicole Marie of Branford, CT
Ghanbari, Maryam of Pittsford, NY
Giuliano, Jake Joseph of Wallingford, CT
Glogovsky, Laura Michelle of Kempton, PA
Glynn, Corey Francis of Hamden, CT
Grabowski, Michael Anthony of Norwalk, CT
Grasta, Mary Katherine of Vernon, CT
Griffin III, William Thomas of Brighton, MA
Halasa, Lena Nadine of West Hartford, CT
Hamid, Rabia Sarosh of Plantsville, CT
Heffernan, Amanda Therese of Bridgeport, CT
Hegde, Siya Upendra of Avon, CT
Higgins, Lauren Elizabeth of North Branford, CT
Hodges, Ashley Elizabeth of Oxford, CT
Holman Jr., Thomas Wyandotte of Middletown, CT
Hutchinson, Jessica Lauren of South Hadley, MA
Hyde, Charles Zachary of West Hartford, CT
Iheagwara, Kelechi Emmett of Hamden, CT
Inzitari, Leonard F. of East Haven, CT
Jackson, Patricia M. of Brookfield, CT
Kapadia, Ankur of Cambridge, MA
Kapur, Rohan Sandip of East Hampton, CT
Kearns, Tara Elizabeth of West Hollywood, CA
Kennedy III, Bernard Thomas of Blackshear, GA
Khanna, Rachna of South Glastonbury, CT
Kulaga, Nicole Maria of Baltimore, MD
LaFrance, Maxwell Colby of Meriden, CT
Landes, Steven Ross of Norfolk, CT
LaRue Zitzkat, Sage of New Hartford, CT
Lazaroff, Jeffrey Marc of North Haven, CT
Lebov, Harrison L. of Boston, MA
Lee, Kristin Toretta of Old Greenwich, CT
Lee, Youngdo of New Britain, CT

Lenehan, Jr., Kevin Michael of New York, NY
Levitt, David Bernard of West Hartford, CT
Locklin, Susan Byrum of West Springfield, MA
Lomazzo, Caitlin Jane of Madison, CT
Long, Mackenzie L. of Stamford, CT
Louis, Alaina M. of Hamden, CT
Lounsbury, Jeffrey David of Hartford, CT
Lydon, Robert Manuel of Milton, MA
Macias Flores, Miriam Araceli of Bridgeport, CT
MacSweeney, Maureen of Winter Park, FL
Madho, Brent of Meriden, CT
Mansfield-Marcoux, Danielle of West Hartford, CT
Marti, Justin Thomas of Somers, CT
Mason, Susan Whitney of Sandy Hook, CT
Matrevi, Komla Godwill of Hartford, CT
McFarlane, Alexandria Jeona of Hartford, CT
McLaughlin, Conor Joseph of Fairfield, CT
McLaughlin, Karen of Meriden, CT
Menon, Lakshmi of Darien, CT
Min, Yuri Park of Southington, CT
Minicucci, Gabriella Marie of Watertown, CT
Mitchell, Karen Alison Fray of Bridgeport, CT
Moran, Christopher Michael of Webster, MA
Mortelliti, Joseph Paul of Farmington, CT
Mrohs, Caroline Patricia of Washington, DC
Murphy, Heather Elizabeth of Columbia, CT
Musani, Mohamed Riaz of West Hartford, CT
Nails, Tonisa Daphne of Vernon, CT
Narozniak, Magdalena Anna of Middletown, CT
Nichols, Stephanie L. of Southington, CT
Nixon, Melissa of Milford, CT
Nogueira, Maria Rosenice of Milford, CT
O'Donnell, Chris William of Thorndike, MA
Olumide, Kunle M. of Windsor, CT
O'Mahony, Samuel Pike of Stamford, CT
Orlowski, Lauren Michelle of Manchester, CT
Ortiz, Colin Joseph of Mahwah, NJ
Owens, Erin Veronica of Chesapeake, VA
Paholski, Ashley Rose of Ivoryton, CT
Palmatier, Steven Curtis of Cromwell, CT
Panagoulias, Angeline Nicole of Monroe, CT
Pariano, Claire of Avon, CT
Patel, Rinal R. of New Milford, CT
Pella, John Thomas of Warwick, RI
Perez, Yolanda of Miami, FL
Pervez, Sahar of Danbury, CT
Phanngavong, Samantha of Stratford, CT
Powell, Ryan Vance of Hartford, CT
Raggi, Robert of Granada Hills, CA
Ragno, Lucas Peter of Waterbury, CT
Regan, April Elizabeth of Hartford, CT
Rhi, Rachael H. of Centreville, VA
Riccio, JoAnn Lynn of Bristol, CT
Richert, Cori Monique of Vernon, CT
Riesco, Ignacio M. of New Haven, CT
Rimetz, Brendan Neil of Manchester, CT
Rolón-Nieves, Verónica of Aibonito, PR
Rothwell, Susan Poliak of Fairfield, CT
Rummel, Damon Norton of Stafford Springs, CT
Russell, Tashika Tashani of Bridgeport, CT
Ryan, Michael Thomas of East Hartford, CT
Sanidad, Kevin G. of South Windsor, CT
Santiago, Karen Tiroletto of Ellington, CT
Sarno, Shauna Christine of Darien, CT
Semataska, Kevin Lawrence of Plantsville, CT
Semonelli, Breegan Catherine of Newport, RI
Shvets, Maria of Middletown, CT
Smith, Martin Joseph of Milford, CT
Sousa, Chelsea Rose of Wallingford, CT
Thenor, Wilnick of Fall River, MA
Tice, Brody E. of Old Greenwich, CT
Tonda, Farida of Hartford, CT
Vakili, Sayyedeh Parastoo of Ashland, MA
Valenzano, Anthony Vito of Fairfield, CT
Vanaman Jr., Mark Joseph of Wallingford, CT
Vizcaino, Andrea Liliana of Stamford, CT
Vogel-Short, Maria Lisa of Lake Hopatcong, NJ
Voyer, Jordan A. of Avon, CT
Wallace, Kelsey F. of Ansonia, CT
Whitehead, Ulysses Maxwell of Milldale, CT
Williams Jr., LaMarte of Detroit, MI
Wingard, Dylan Hall of Glastonbury, CT
Winters, Laurence Howard of Stamford, CT
Zappala, Alexander Nicholas of Lincoln, NE

OFFICE OF THE CHIEF PUBLIC DEFENDER

OFFICE OF CHIEF PUBLIC DEFENDER IS ACCEPTING APPLICATIONS FOR 2019/20 ANNUAL AGREEMENTS FOR HANDLING CASE ASSIGNMENTS IN THE FOLLOWING LOCATIONS ONLY:

CRIMINAL JUDICIAL DISTRICT COURTS
Litchfield Judicial District Court
CRIMINAL GEOGRAPHICAL AREA PART B COURTS:
GA 01 — Stamford
GA 03 — Danbury
GA 04 — Waterbury
GA 10 — New London
GA 11 — Danielson
GA 18 — Torrington (formerly Bantam)
CHILD PROTECTION COURTS
Statewide
Please note: By advertising statewide we are not indicating there are openings in general, or in any particular court. Applicants should submit their top 3 choices of court locations.
STATE-RATE ATTORNEY FOR MINOR CHILD / GUARDIAN AD LITEM
Statewide

Annual agreements will cover the period of July 1, 2019 through June 30, 2020. Compensation will be as follows:

FLAT RATE COMPENSATION

JUDICIAL DISTRICT CASES	$1000 per case
CRIMINAL GEOGRAPHICAL AREA CASES	$350 per case
CHILD PROTECTION CASES	$500 per case
ATTORNEY FOR MINOR CHILD / GUARDIAN AD LITEM	$500 per case

HOURLY COMPENSATION

$75 per hour for Felony cases
$50 per hour for Misdemeanor cases
$50 per hour for Child Protection
$50 per hour for AMC/GAL cases

QUALIFICATIONS FOR PRACTICE AREAS

JUDICIAL DISTRICT APPLICANTS

Attorneys approved to represent clients in JD courts must have at least 2 years of criminal litigation experience and at least 2 felony trials to verdict as lead or sole counsel.

GEOGRAPHICAL AREA APPLICANTS

Attorneys approved as Assigned Counsel for assignments in Geographical Area courts will represent criminal defendants in misdemeanor cases and felony cases (C and below). Applicants should possess a working knowledge of the criminal statutes, practice book, diversionary programs, and alternatives to incarceration.

CHILD PROTECTION APPLICANTS

Attorneys approved as Assigned Counsel for assignments in child protection matters will represent children and indigent parents in juvenile court matters dealing with abuse, neglect and termination of parental rights. Attorneys may also be appointed as guardian ad litem. The cases may also involve matters transferred from Probate Court and adoptions. Applicants will be required to participate in pre-service training and should possess general knowledge of the child protection statues, the administration and policies of the Department of Children and Families.

STATE-RATE ATTORNEY FOR MINOR CHILD / GUARDIAN AD LITEM

Attorneys approved as Assigned Counsel in state-rate attorney for minor child / guardian ad litem cases in family court will represent children from indigent families in family matters as appointed by the court.

Attorneys interested in such agreements should download the application form from the public defender web site:

http://www.ct.gov/ocpd/site/default.asp

Send the application, cover letter and resume only via email to the address below:

OCPD.AC.APPLICATIONS@JUD.CT.GOV

Do not attempt to submit applications via US mail or fax, they will not be accepted. All applications must be received no later than **Tuesday, January 8, 2019 by 5:00 PM.**

Notice of Interim Suspension and Appointment of Trustee

DOCKET NO. NNH-CV18-6083632-S. CHIEF DISCIPLINARY COUNSEL VS. MICHAEL STRATON. SUPERIOR COURT, JUDIICIAL DISTRICT OF NEW HAVEN, DECEMBER 5, 2018.

ORDER: The foregoing matter having been heard, the Court hereby finds that the respondent, Michael Stratton, Juris No. 402807, has committed misconduct in that he has failed and/or refused to cooperate with an audit of his Wells Fargo IOLTA account ending in #8332, as ordered by the Statewide Grievance Committee, in violation of Practice Book 2-37 (c).

Accordingly, the Court imposes the following interim Orders:

1. The Respondent, Michael Stratton, Juris No. 402807, is placed on interim suspension from the practice of law, effective immediately, until further order of the Court.

2. Attorney Frederick L. Murolo, Juris No. 305992, of 288 Highland Ave., Cheshire, CT 06410, is hereby appointed as Trustee to take such steps as are necessary to protect the interests of Respondent's clients, to inventory Respondent's files, and to take control of the Respondent's clients' funds accounts. The Respondent shall cooperate with the Trustee in this regard.

3. The Respondent shall not deposit to, or disburse any funds from, his clients' funds accounts until further order of the Court.

4. The Respondent shall comply with Practice Book 2-47B (Restrictions on the Activities of Deactivated Attorneys).

5. The Respondent shall hire a bookkeeper and shall cooperate with an audit of his Wells Fargo IOLTA account ending in #8332, as well as his Key Bank IOLTA account ending in #0132, to be conducted by the Statewide Grievance Committee to cover an initial period beginning May 1, 2017 through the present date.

6. The Respondent shall comply with Practice Book 2-53 if the Respondent remains suspended for one (1) year or more.

7. The Court shall review this matter on December 19, 2018 at 2:00p.m.

8. At such time as the audit is completed, a hearing shall be held to determine a final disposition and appropriate discipline in this matter.

By the Court,
Abrams, J

Notice of Reinstatement of Attorney

In accordance with § 2-54 of the Connecticut Practice Book, notice is hereby given that on docket number HHD-CV-17-6080746, Guarika Anand has been reinstated to the Connecticut Bar effective December 10, 2018.

David Sheridan
Presiding Judge

Notice of Online Dispute Resolution Pilot Program for Contract Collection (C40) cases – Hartford and New Haven Judicial Districts of Superior Court

Notice is hereby given that the Judicial Branch has developed an online dispute resolution (ODR) pilot program in the Hartford and New Haven Judicial Districts for the adjudication of Contract Collection (C40) cases filed on or after January 2, 2019. ODR is a form of alternative dispute resolution which allows for the effective and efficient resolution of cases through the option of remote participation in a simplified court process. The court will refer a case in which both parties agree to participate in ODR for a period of 90 days, during which all pleading deadlines are stayed. Participation in the ODR program is optional.

The goal of the program is to create greater accessibility, affordability and efficiency through a process that will encourage early resolution of cases through mediation with a court mediator, reduce court events and eliminate a physical hearing in a specific location at a specific time with everyone in attendance, allow the completion of necessary tasks remotely to resolve a dispute at any time and from any location, and increase the likelihood of defendants appearing in collections cases.

For further information, go to www.jud.ct.gov/ODR or contact Alexandra Gillett by email at ODR@jud.ct.gov or by telephone at (860) 263-2734.

Hon. Patrick L. Carroll III
Chief Court Administrator

Revised Law Journal Deadlines for Issues Published January 2019 through December 2019

To submit material to the Connecticut Law Journal please send a Word file to: COLPLJ@JUD.CT.GOV

The deadline for submitting material is Wednesday at noon for publication in the Law Journal on the Tuesday six days later.

If one or more holidays fall within the 6 day time period, the deadline will change as noted in bold type in the following deadline listing:

Law Journal Publication Date (every Tuesday)	Deadline Date (at 12:00 Noon)
January 1, 2019	**Monday, December 24, 2018**
January 8, 2019	Wednesday, January 2, 2019
January 15, 2019	Wednesday, January 9, 2019
January 22, 2019	**Tuesday, January 15, 2019**
January 29, 2019	Wednesday, January 23, 2019
February 5, 2019	Wednesday, January 30, 2019
February 12, 2019	**Tuesday, February 5, 2019**
February 19, 2019	**Monday, February 11, 2019**
February 26, 2019	Wednesday, February 20, 2019
March 5, 2019	Wednesday, February 27, 2019
March 12, 2019	Wednesday, March 6, 2019
March 19, 2019	Wednesday, March 13, 2019
March 26, 2019	Wednesday, March 20, 2019
April 2, 2019	Wednesday, March 27, 2019
April 9, 2019	Wednesday, April 3, 2019
April 16, 2019	Wednesday, April 10, 2019
April 23, 2019	**Tuesday, April 16, 2019**
April 30, 2019	Wednesday, April 24, 2019
May 7, 2019	Wednesday, May 1, 2019
May 14, 2019	Wednesday, May 8, 2019
May 21, 2019	Wednesday, May 15, 2019
May 28, 2019	**Tuesday, May 21, 2019**
June 4, 2019	Wednesday, May 29, 2019
June 11, 2019	Wednesday, June 5, 2019
June 18, 2019	Wednesday, June 12, 2019
June 25, 2019	Wednesday, June 19, 2019

July 2, 2019	Wednesday, June 26, 2019
July 9, 2019	**Tuesday, July 2, 2019**
July 16, 2019	Wednesday, July 10, 2019
July 23, 2019	Wednesday, July 17, 2019
July 30, 2019	Wednesday, July 24, 2019
August 6, 2019	Wednesday, July 31, 2019
August 13, 2019	Wednesday, August 7,2019
August 20, 2019	Wednesday, August 14, 2019
August 27, 2019	Wednesday, August 21, 2019
September 3, 2019	**Tuesday, August 27, 2019**
September 10, 2019	Wednesday, September 4, 2019
September 17, 2019	Wednesday, September 11, 2019
September 24, 2019	Wednesday, September 18, 2019
October 1, 2019	Wednesday, September 25, 2019
October 8, 2019	Wednesday, October 2, 2019
October 15, 2019	**Tuesday, October 8, 2019**
October 22, 2019	Wednesday, October 16, 2019
October 29, 2019	Wednesday, October 23, 2019
November 5, 2019	Wednesday, October 30, 2019
November 12, 2019	**Tuesday, November 5, 2019**
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December 17, 2019	Wednesday, December 11, 2019
December 24, 2019	Wednesday, December 18, 2019
December 31, 2019	**Tuesday, December 24, 2019**