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604, 612, 65 A.3d 503 (2013); see also A.B.A., Standards for Criminal Justice: Prosecution Function (4th Ed. 2015) standard 3-1.2 (b) (“The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and *by exercising discretion to not pursue criminal charges in appropriate circumstances*. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.” [Emphasis added.]), available at https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition.

Our decision today should not be read to suggest that trial courts should function as “rubber stamps” for a prosecutor’s decision to enter a nolle. Abuse of discretion review is precisely what it sounds like—upon a defendant’s objection, § 54-56b requires a court to *review* the prosecutor’s decision to enter a nolle for abuse of discretion, on the basis of the prosecutor’s representations at the hearing. The mere fact that the court’s review is a deferential one does not mean that, in every instance, a court must accept the nolle. A recent decision of the Appellate Court provides a helpful illustration. In *State v. Richard P.*, 179 Conn. App. 676, 678, 680, 181 A.3d 107, cert. denied, 328 Conn. 924, 181 A.3d 567 (2018), the Appellate Court affirmed the judgment of dismissal rendered by the trial court after the state entered a nolle and the defendant objected. In that case, the defendant had been charged “with various offenses arising from his alleged physical and sexual abuse of his children.” *Id.*, 678. When the state entered a nolle,

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it represented to the court that the children and their mother were “ ‘unavailable’ ” because they had moved to London, England. *Id.*, 680. In response, the defendant moved to dismiss the charges, and, in support, submitted a letter from the mother, which the court reviewed, in which the mother expressed dissatisfaction with the manner in which the state had conducted its investigation and handled the case. *Id.* The mother closed the letter by requesting: “ ‘Please do not contact me again.’ ” *Id.*, 680 n.3. The trial court granted the motion to dismiss on the basis that the prosecutor had not “sufficiently represented that a material witness had died, disappeared, or become disabled within the meaning of § 54-56b and Practice Book § 39-30” *Id.*, 681. On appeal, the state contended, inter alia, that the two children “ ‘had become disabled’ ” within the meaning of § 54-56b. *Id.* The state argued that the children had become “disabled” when their mother relocated them to England because, due to their age and location, they lacked the legal ability to return to Connecticut to testify. *Id.*, 685. The Appellate Court rejected that argument and also rejected the state’s expansion of the term “disabled” to extend beyond situations that involve a “ ‘[g]ood faith disagreement about what constitutes disability’ ” pursuant to *Lloyd*. *Id.*, 683 n.6, quoting *State v. Lloyd*, supra, 185 Conn. 205.

In the present case, in contrast to *State v. Richard P.*, supra, 179 Conn. App. 676, the prosecutor’s representations fell within the range of a good faith disagreement regarding the meaning of “disabled” pursuant to § 54-56b. Accordingly, the trial court properly relied on those representations to find that the prosecutor was not abusing her discretion in a manner clearly contrary to manifest public interest. Contrary to the defendant’s interpretation of the record, the prosecutor did not

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rely solely on J's stated fear of testifying in asserting that J had "become disabled" for purposes of § 54-56b. Instead, as we explained in this opinion, the prosecutor made various representations consistent with the position that J suffered from a disability that prevented her from being able to testify.⁸ Those representations included that J stated that she suffered from bouts of depression and crying, needed counseling, was afraid and could not stop thinking about the incident. Nothing in the record suggests that the prosecutor was acting with an intent to harass the defendant or otherwise acting in abuse of her discretion. Given the prosecutor's representations, the trial court properly deferred to the prosecutor's exercise of discretion and allowed the nolle to enter.

The decision of the trial court is affirmed.

In this opinion the other justices concurred.

⁸ The defendant's argument that the prosecutor abused her discretion by failing to attempt to overcome J's alleged disability by serving her with a material witness subpoena is unpersuasive. At the hearing, the prosecutor represented that she had concluded that, as of the time of trial, J was *unable* to testify due to her disability. Although a material witness subpoena is an appropriate measure for a prosecutor to take to overcome a witness' *unwillingness* to testify, a subpoena cannot overcome an *inability* to testify. The defendant's argument is implicitly premised on the primary argument that he advances on appeal—the defendant contends that J was not unable, but unwilling, to testify. As we explained in this opinion, however, it was not the task of the trial court—and it is certainly not the task of this court—to second guess the prosecutor's judgment that J was disabled.

For similar reasons, the defendant's argument that, as a matter of statutory interpretation, the prosecutor's representations were insufficient to support a finding by the trial court that J was disabled have no bearing on the resolution of this appeal. First, as we explained in this opinion, the defendant's argument incorrectly interprets the record. The prosecutor did not rely solely on J's fear in representing that J suffered from a disability that prevented her from being able to testify. Second, the trial court properly made no finding as to whether J was actually disabled. It properly considered only whether the prosecutor had abused her discretion in entering the nolle.

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Brennan v. Waterbury

JANET BRENNAN, EXECUTRIX (ESTATE OF
THOMAS BRENNAN) v. CITY
OF WATERBURY
(SC 19937)

Robinson, C. J., and Palmer, McDonald, D'Auria,
Mullins, Kahn and Ecker, Js.*

Syllabus

The substitute plaintiff, J, the executrix of the estate of T, her husband, appealed from the decision of the Compensation Review Board, which concluded, inter alia, that she was improperly substituted as the claimant because a claimant's estate cannot receive the claimant's vested but unpaid statutory (§ 7-433c) heart and hypertension benefits. T, who had been the fire chief for the defendant city of Waterbury, suffered a heart attack in 1991 during the course of his employment and filed a claim for heart and hypertension benefits. In 1993, the workers' compensation commissioner, having accepted the parties' stipulation that T had been diagnosed with hypertension and heart disease after his heart attack and that no evidence of such disease had been present prior to T's employment, issued a finding and award, in which the city was ordered to pay T all of the benefits to which he "is or may become entitled." The city and T thereafter negotiated in an attempt to reach an agreement on the payment of benefits, during which time T elected to take disability retirement. The city made certain payments to T pursuant to § 7-433c, but the city and T never entered into a full and final settlement of his claim for heart and hypertension benefits, and T died in 2006. In 2013, T's attorney sought to finalize T's permanent partial disability claim under § 7-433c and moved to substitute J, both in her capacity as executrix of T's estate and in her individual capacity, as claimants. The commissioner granted the motion insofar as J sought to be substituted as a claimant in her capacity as executrix of T's estate but denied the motion to substitute J in her individual capacity. The city appealed to the board from that decision, claiming, inter alia, that, pursuant to *Morgan v. East Haven* (208 Conn. 576), the estate was not a legally qualified recipient of heart and hypertension benefits. Subsequently, in 2015, the commissioner issued a finding and decision, in which it ordered the city to pay J, in her capacity as executrix of T's estate, benefits for 80 percent

* This case was originally scheduled to be argued before a panel of this court consisting of Chief Justice Robinson and Justices Palmer, McDonald, D'Auria, Mullins, Kahn and Ecker. Although Justice Kahn was not present when the case was argued before the court, she has read the briefs and appendices and listened to a recording of the oral argument prior to participating in this decision.