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CONNECTICUT APPELLATE REPORTS

Vol. 197

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

MERRITT MEDICAL CENTER OWNERS CORP., INC. *v.* CHARLES D. GIANETTI ET AL. (AC 41566)

DiPentima, C. J., and Bright and Devlin, Js.

Syllabus

The plaintiff sought to foreclose liens for unpaid common charges pursuant to statute (§ 47-258 (m)) against two medical office units owned by the defendant G in a common interest community. The trial court granted the plaintiff's motions for summary judgment as to liability and rendered judgments of foreclosure by sale, from which G appealed to this court. *Held* that the trial court erred in rendering summary judgment in favor of the plaintiff: although § 47-258 (m) (1) (C) required that the plaintiff's executive board either adopt a standard foreclosure policy or specifically vote to authorize foreclosure, the plaintiff had no standard foreclosure policy and the plaintiff's executive board merely authorized sending the matters to collection; moreover, because the foreclosure actions were not commenced in compliance with § 47-258 (m), the court lacked jurisdiction over the actions.

Argued January 23—officially released May 5, 2020

Procedural History

Action, in each case, to foreclose a statutory lien for unpaid common charges on a medical office unit owned by the named defendant, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Hon. Alfred J. Jennings, Jr.*, judge trial referee, granted the plaintiff's motions for summary judgment as to liability in each case; thereafter, the court, *Truglia, J.*, granted the plaintiff's motion for foreclosure by sale in each case and rendered judgments thereon; subsequently, the court, *Hon. Alfred J. Jennings, Jr.*, judge trial referee, denied the named defendant's motions for extension of time to file a motion to reargue, and the named defendant filed a joint appeal to this court. *Reversed; judgments directed.*

Charles D. Gianetti, self-represented, the appellant (named defendant), filed a brief.

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

Opinion

BRIGHT, J. In this joint appeal,[1] the defendant Charles D. Gianetti[2] appeals from two judgments of foreclosure by sale, each rendered in favor of the plaintiff, Merritt Medical Center Owners Corp., Inc., as to the defendant's two medical office units, which are located in a common interest community organized under the Common Interest Ownership Act (act), General Statutes § 47-200 et seq. The defendant claims in relevant part that the trial court improperly granted the plaintiff's motions for summary judgment as to liability after

[1] Practice Book § 61-7 (a) (1) provides in relevant part: "Separate cases heard together and involving at least one common party may as of right be appealed jointly, provided all the trial court docket numbers are shown on the appeal form (JD-SC-033)." On the defendant's appeal form, he specifically lists docket numbers CV-16-6059406-S and CV-16-6059407-S.

[2] Also named as defendants in the foreclosure actions were encumbrancers Foster Young, Esq., Glenn Siglinger and Laura Siglinger. Those defendants are not parties to this appeal. Accordingly, we refer to Gianetti as the defendant.

it erroneously concluded that the plaintiff was in compliance with the mandates of General Statutes § 47-258 (m) when it commenced these actions. We agree and, accordingly, reverse the judgments of the trial court.

The following procedural history is relevant to our consideration of the defendant's claim. The plaintiff commenced separate actions to foreclose liens pursuant to § 47-258 on the defendant's two office units as a result of outstanding common charges owed by the defendant. In docket number CV-16-6059407-S, the plaintiff sought to foreclose a statutory lien it had placed on the defendant's office unit 304 (unit 304 case). The plaintiff alleged in its complaint in the unit 304 case that it had a statutory lien for the following: "A yearly assessment for the year 2016 of $7878.24 with monthly common charges of $656.52, the first installment due January 1, 2016 and [the] defendant owes through August 19, 2016, the sum of $2564.16 together with interest, late fees, attorney fees and costs."

In docket number CV-16-6059406-S, the plaintiff sought to foreclose the lien it had placed on the defendant's office unit 305 (unit 305 case). The plaintiff alleged in its complaint in the unit 305 case that it had a statutory lien for the following: "A yearly assessment for the year 2016 of $7598.04 with monthly common charges of $633.17, the first installment due January 1, 2016, and [the] defendant owes through August 19, 2016 the sum of $2277.36 together with interest, late fees, attorney fees and costs."

In each case, the defendant pleaded the following special defense: "Payments made to [the] plaintiff, but checks from August, 2016, and October, 2016, not deposited. [The] [p]laintiff has not responded to multiple requests to . . . state status of account."[3]

[3] General Statutes § 47-258 (h) provides: "The association on request made in a record shall furnish to a unit owner a statement in recordable form setting forth the amount of unpaid assessments against the unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner."

The plaintiff filed a motion for summary judgment in each case, which the defendant opposed, arguing in part that the plaintiff's attempt to foreclose on his office units did not comply with § 47-258 (m). At the end of January, 2018, the court found that the plaintiff had complied with § 47-258 (m), and it rendered summary judgment as to liability in each case. On February 26, 2018, the court rendered judgments of foreclosure by sale, setting a May 26, 2018 sale date for both units. On March 5, 2018, the defendant filed a motion for an extension of time within which to file a motion to reargue the foreclosure judgments, which, on April 2, 2018, the court denied. Despite some procedural abnormalities, which are not relevant to the issue on appeal, the defendant, on April 17, 2018, timely filed the present appeal from the judgments of the trial court.

The defendant claims that, in each of the foreclosure cases, the court erred in determining that the plaintiff had established, for purposes of summary judgment, that it had complied with the mandates of § 47-258 (m) when it instituted these actions against him, and that, on this basis, the summary judgments must be reversed and the cases remanded for dismissal for lack of jurisdiction. We agree.

"The standard of review of a trial court's decision granting summary judgment is well established. Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary. . . . 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." (Citations omitted; internal quotation marks omitted.)

Lucenti v. *Laviero*, 327 Conn. 764, 772–73, 176 A.3d 1 (2018). Statutory interpretation also is a matter of law, requiring plenary review. See, e.g., *Linden Condominium Assn., Inc.* v. *McKenna*, 247 Conn. 575, 583, 726 A.2d 502 (1999).

Section 47-258 (m) provides in relevant part: "(1) An association may not commence an action to foreclose a lien on a unit under this section unless: (A) The unit owner, at the time the action is commenced, owes a sum equal to at least two months of common expense assessments based on the periodic budget last adopted by the association pursuant to subsection (a) of section 47-257; (B) the association has made a demand for payment in a record and has simultaneously provided a copy of such record to the holder of a security interest described in subdivision (2) of subsection (b) of this section; and (C) the executive board has either voted to commence a foreclosure action specifically against that unit or has adopted a standard policy that provides for foreclosure against that unit . . . ." The defendant claims that the plaintiff failed to comply with subdivision (1) (C) of § 47-258 (m) because its executive board neither voted to commence a foreclosure action as to unit 304 or unit 305, nor had it adopted a standard policy providing for foreclosure.

The following additional procedural history is relevant. In response to the defendant's objections to the plaintiff's motions for summary judgment in which the defendant raised the issue of noncompliance with § 47-258 (m) (1) (C), the plaintiff submitted in each case an additional affidavit from Frank C. Callahan, the property manager of the plaintiff. In the affidavit in the unit 304 case, Callahan attested in relevant part that the board of directors met on June 7, 2016, and that it "voted and passed a motion to send the property known as [unit 304] . . . to collection." In the unit 305 case, the plaintiff submitted a virtually identical affidavit regarding unit 305. A copy of the board minutes also was provided to the court.

At the October 16, 2017 hearing on the plaintiff's motions for summary judgment, the defendant argued that the foreclosure cases were not commenced in compliance with the mandates of § 47-258 (m) because the board did not vote to send these matters to foreclosure, but only voted to send them to collection. The plaintiff's attorney then represented to the court that "the board voted on June 7th [and that] a collection letter was sent from our office on July 18th," and counsel directed the court to exhibit C of the plaintiff's reply memorandum to the defendant's objection to the plaintiff's motion for summary judgment. Exhibit C is a letter from the plaintiff's counsel, Juda J. Epstein, advising the defendant that Attorney Epstein was representing the plaintiff and explaining that the letter was "an attempt to collect a debt" and that the defendant could avoid litigation by rendering payment through his office.

During oral argument before this court on January 23, 2020, the plaintiff's attorney conceded that the plaintiff has not adopted a standard policy that provides for foreclosure and agreed that the only question is whether the board's vote to send the matters to "collection" was sufficient to meet the procedure set forth in § 47-258 (m) (1) (C) that requires that the board "voted to commence a foreclosure action specifically against that unit."[4] We conclude that it was not sufficient and that the trial court, therefore, lacked jurisdiction over the foreclosure case.

"The statutory language [of § 47-258 (m)] indicates that the legislature intended the three conditions necessary for commencing an action to foreclose a common charges lien to be jurisdictional prerequisites. . . . [Section] 47-258 (m) provides that '[a]n association may not commence an action to foreclose a lien on a unit owner under this section unless' it satisfies certain prescribed conditions. . . . The legislature could have

[4] The defendant failed to appear for argument, and we permitted the plaintiff to argue his response to the defendant's appeal.

phrased the requirement that a board adopt a policy or vote to commence proceedings as a limitation on a court's ability to grant relief. . . . Instead, it phrased the requirement as a condition precedent to the commencement of the action itself. Thus, the adoption of a standard foreclosure policy is 'a condition precedent to any right of action. Until [a vote is taken or a procedure is adopted] no such right exists.' " (Citation omitted; emphasis omitted.) *Neighborhood Assn., Inc.* v. *Limberger*, 321 Conn. 29, 48–49, 136 A.3d 581 (2016).

"[T]he act's condition precedent to commencing a foreclosure action—that a board either votes to institute the particular action or to adopt a standard foreclosure policy—is jurisdictional. Liens for delinquent common expense assessments on individual units within an association are creatures of statute. . . . In addition to creating the lien and authorizing its foreclosure, § 47-258, contrary to the tenet that the priority of liens is governed by the common law rule that first in time is first in right . . . carves out an exception and grants a priority to the lien for common expense assessments. . . . Although strict foreclosure is a common-law process . . . we conclude that the right to foreclose the common charges lien is more properly characterized as a statutory right of action." (Citations omitted; internal quotation marks omitted.) Id., 48.

Clearly, subdivision (1) (C) of § 47-258 (m) requires that the executive board of an association, before invoking § 47-258 (m) to foreclose a lien on a unit, either vote to commence a foreclosure action specifically against that unit or that it have a standard policy that provides for foreclosure against that unit. See id., 46. In the present case, the plaintiff has conceded that it did not have a standard policy. A review of the record reveals that it also did not vote to commence a foreclosure action against the defendant's office units. Rather, it voted to send the matters to "collection."

The plaintiff contends that collection meant foreclosure, but it is quite clear from reading the letter sent by Attorney Epstein to the defendant that he was attempting to collect the debt when he sent a letter on behalf of the plaintiff, clearly demanding payment and telling the defendant how to avoid litigation that would expose the defendant to liability for "interest on the amount owed, together with court costs, sheriff fees and reasonable attorney's fees as provided by law." Attorney Epstein's letter mentions neither foreclosure nor the possibility that the defendant could lose ownership of his units. Additionally, and perhaps more importantly, the terms foreclosure and collection are readily distinguishable. A foreclosure is "[a] legal proceeding to terminate a mortgagor's interest in property . . . ." Black's Law Dictionary (11th Ed. 2019) p. 789. "The subject matter of a bill to foreclose, is the land mortgaged, not the debt." *Mix* v. *Hotchkiss*, 14 Conn. 31, 39 (1840). A collection matter, on the other hand, is one seeking to "receiv[e] payment of a debt, whether payment be voluntary or compelled by legal action or process." Ballentine's Law Dictionary (3rd Ed. 1969) p. 216.

The plaintiff also contends that the association clearly meant foreclosure because the "only means for collecting a statutory condominium [assessment] is through the foreclosure process." We disagree. Pursuant to § 47-258 (f), "[t]his section does not prohibit actions against unit owners to recover sums for which subsection (a) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure." Additionally, § 47-258 (k) specifically provides that "[i]n any action by the association to collect assessments *or* to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit owner pursuant to section 52-504 to collect all sums alleged to be due from that unit owner prior to or during the pendency of the action. . . ." (Emphasis added.) The statute clearly contemplates alternative remedies of collecting the

unpaid amounts owed by a unit owner or foreclosing on the owner's unit. Because § 47-258 (m) (1) (C) requires that the executive board specifically authorize *foreclosure*, an authorization to send the defendant "to collection on units 304 and 305" is inadequate to comply with the statute.

On the basis of the foregoing, we conclude that the court erred in rendering summary judgment in favor of the plaintiff. We further conclude that the court did not have jurisdiction over these foreclosure actions because they were not commenced in compliance with § 47-258 (m).

The judgments are reversed and the cases are remanded with direction to render judgments of dismissal.

In this opinion the other judges concurred.

AMERICAN TAX FUNDING, LLC *v.* WILLIAM T. GORE, JR., ET AL.
(AC 41541)

Lavine, Bright and Flynn, Js.

Syllabus

The substitute plaintiff, T Co., sought to foreclose municipal tax liens on certain real property owned by the defendant G. Following G's failure to pay his property taxes for a number of years, the town of Stratford imposed liens on his property and recorded them on the town land records. Thereafter, the tax liens were assigned to A Co., which recorded the assignment on the land records. After A Co. had commenced this action, it assigned the tax liens to T Co., which was substituted as the plaintiff. The trial court rendered judgment of strict foreclosure and, thereafter, denied G's motion to open the judgment and extend the law days, and G appealed to this court, claiming that, because he had equity in the property the judgment had been improper when it was rendered. *Held* that the trial court did not abuse its discretion in denying G's motion to open the judgment of strict foreclosure, as the trial court had considered arguments similar to those that he raised in his motion to open before it rendered judgment, but he failed to provide the requested documentation to the court; moreover, G failed to allege that he was prevented by mistake, accident or other reasonable cause from raising

his claims at the hearing held before the trial court rendered judgment and failed to appeal from the judgment of strict foreclosure.

(*One judge dissenting*)

Argued November 20, 2019—officially released May 5, 2020

Procedural History

Action to foreclose municipal tax liens on certain real property owned by the named defendant, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Hartmere, J.*, granted the plaintiff's motion for summary judgment as to liability; thereafter, the court granted the motion to substitute ATFH Real Property, LLC, as the plaintiff; subsequently, the court, *Truglia, J.*, rendered judgment of strict foreclosure; thereafter, the court, *Hon. William B. Rush*, judge trial referee, denied the named defendant's motion to open the judgment and extend the law days, and the named defendant appealed to this court. *Affirmed.*

William T. Gore, Jr., self-represented, the appellant (named defendant).

Opinion

BRIGHT, J. In this municipal tax foreclosure case, the defendant William T. Gore, Jr.,[1] appeals from the judgment of the trial court denying his motion to open the judgment of strict foreclosure rendered in favor of the substitute plaintiff, ATFH Real Property, LLC.[2] On appeal, the defendant claims that the court abused its discretion in denying his motion to open the judgment because he had equity in the home and, therefore, the

[1] Bank of American, N.A., also is named as a defendant but is not involved in this appeal. For convenience, we refer to Gore as the defendant throughout this opinion.

[2] The original complaint was brought by American Tax Funding, LLC. On March 14, 2011, ATFH Real Property, LLC, was substituted by the trial court as the plaintiff in this matter. We refer in this opinion to American Tax Funding, LLC, as the plaintiff, and to ATFH Real Property, LLC, as the substitute plaintiff.

judgment of strict foreclosure had been improper when it was rendered. We affirm the judgment of the trial court.

The following facts, revealed by the record, and relevant procedural history inform our review of the defendant's claim. On August 13, 2010, the plaintiff commenced, by service of process, a foreclosure case against the defendant, seeking to foreclose on property located at 15 Grove Street in Stratford (property) on the basis of the defendant's alleged failure to pay property taxes on the property beginning on October 1, 2006. The complaint alleged that the town of Stratford had filed certificates of lien on the land records, that it subsequently assigned its certificates of lien to the plaintiff, that the plaintiff had filed its assignment on the land records, and that the plaintiff had recorded a notice of lis pendens, a copy of which was attached to the complaint.

On November 2, 2010, the court granted the plaintiff's motion for summary judgment as to liability. On February 22, 2011, the plaintiff filed a motion for a judgment of strict foreclosure, to which the defendant objected, specifically on the ground that the plaintiff allegedly "failed to honor a previously made payment agreement by refusing to accept the agreed down payment." The court granted the motion for judgment of strict foreclosure on March 14, 2011. Following various motions and bankruptcy stays over the years, the court, *Truglia*, *J.*, on November 20, 2017, rendered a judgment of strict foreclosure, with law days commencing on March 20, 2018.[3] No appeal was taken from that judgment.

[3] The record reveals that the defendant, also on November 20, 2017, filed an objection to the November 16, 2017 affidavit of debt signed by Dana Marini, the vice president of the substitute plaintiff, and requested that Marini be required to appear because the amount of the debt to which Marini averred was different from the defendant's calculation by approximately $4529. During oral argument at the November 20, 2017 hearing, the defendant's attorney then told Judge Truglia that there was approximately $33,000 in equity on the property because a subsequent $192,000 Bank of America lien had been released. The substitute plaintiff's attorney stated

On March 14, 2018, the defendant, acting as a self-represented party, filed a motion to open the judgment and extend the law days. In his accompanying memorandum, the defendant stated that his motion was filed pursuant to General Statutes § 52-212, and he contended that there were significant discrepancies in the amount he owed to the defendant. The court held a hearing on March 20, 2018, at which the defendant was asked why he failed to raise these issues before Judge Truglia rendered the judgment of strict foreclosure. The defendant stated that he had been "in court on November 22 . . . requesting an opportunity to resolve discrepancies . . . [but] [u]nfortunately Judge Truglia didn't give [him] the opportunity to express that. In fact, he gave the appearance that there was bias in favor of the plaintiff at that hearing." The court, *Hon. William B. Rush*, judge trial referee, thereafter denied the motion to open. The defendant then filed the present appeal.

Following oral argument in this appeal, which only the defendant attended,[4] we ordered the court to articulate the basis for its denial of the defendant's motion to open. Judge Rush issued the following articulation: "The issues raised by the defendant . . . were apparently presented to and ruled upon by Judge Truglia and would require the court to review the record existing at the time Judge Truglia made the rulings and then decide whether this court agreed or disagreed with those determinations. It is not the function of this court . . . to pass judgment on rulings made by a coequal trial judge."

The defendant claims that the court abused its discretion in denying his motion to open the judgment of strict foreclosure because he had equity in the property

that if counsel could provide paperwork to support that contention, he would look at it. Apparently, the defendant's attorney had no such paperwork. Accordingly, Judge Truglia reentered judgment and reset the law days.

[4] The substitute plaintiff also elected not to file an appellee's brief. Consequently, we are deciding this case on the basis of the appellant's brief, his oral argument, and the record. See Practice Book § 70-3 (b).

and, therefore, the judgment of strict foreclosure had been improper when it was rendered. We are not persuaded.

"Our review of a trial court's denial of a motion to open a judgment of strict foreclosure, which was filed more than twenty days after notice of the underlying judgment, is narrow. Generally, an appeal must be filed within twenty days of the date notice of the judgment or decision is given. . . . In the context of an appeal from the denial of a motion to open judgment, [i]t is well established in our jurisprudence that [w]here an appeal has been taken from the denial of a motion to open, but the appeal period has run with respect to the underlying judgment, [this court] ha[s] refused to entertain issues relating to the merits of the underlying case and ha[s] limited our consideration to whether the denial of the motion to open was proper. . . . When a motion to open is filed more than twenty days after the judgment, the appeal from the denial of that motion can test only whether the trial court abused its discretion in failing to open the judgment and not the propriety of the merits of the underlying judgment." (Footnote omitted; internal quotation marks omitted.) *Bank of America, N.A.* v. *Grogins*, 189 Conn. App. 477, 483–84, 208 A.3d 662, cert. denied, 332 Conn. 902, 208 A.3d 659 (2019). A motion to open the judgment, filed pursuant to § 52-212, can be granted by the trial court provided that the "defendant [can] show that he had a good defense that he was prevented from making by mistake, accident or other reasonable cause . . . ." (Internal quotation marks omitted.) Id., 484.

In the present case, the defendant moved to open the judgment of strict foreclosure on the ground that there were discrepancies in the amount of the debt. He contended that the plaintiff's history of payments differed from other histories, including that of the bankruptcy trustee and his own computations. He also again

contended in his motion that an encumbrance on the property had been released, leaving him with additional equity in the property. Judge Rush denied the motion to open on the ground that Judge Truglia already had considered similar arguments before he rendered judgment. On appeal, the defendant has failed to demonstrate how Judge Rush abused his discretion in denying the motion to open. The defendant raised an issue regarding equity in the property before Judge Truglia but failed to provide the requested documentation to support his contention. See footnote 3 of this opinion. Along with his memorandum in support of his motion to open, the defendant submitted some documentation to support his claim that the computation of debt may be inaccurate, but he again did not submit the specific release that had been argued before Judge Truglia. See id.

Furthermore, the defendant's motion to open does not allege that he was prevented from raising either of his claims before Judge Truglia by mistake, accident or other reasonable cause. Instead, when asked by Judge Rush why he did not raise these issues before Judge Truglia, the defendant stated that he tried, but Judge Truglia did not give him an opportunity to do so. To the extent that the defendant takes issue with how Judge Truglia handled the case before rendering the judgment of strict foreclosure, the defendant's proper remedy was to appeal from the judgment rendered by Judge Truglia, not to seek a second bite of the apple before Judge Rush. Consequently, we conclude that the trial court did not abuse its discretion when it denied the defendant's motion to open.

The judgment is affirmed.

In this opinion LAVINE, J., concurred.

FLYNN, J., dissenting. I dissent.

LANCE LAMBERTON ET AL. *v.* REARDEN LAMBERTON ET AL.
(AC 42587)

Elgo, Bright and Flynn, Js.

Syllabus

The plaintiffs appealed to this court from the judgment of the Superior Court, which affirmed the order of the Probate Court awarding the defendant L, the nominated executor of the estate of the decedent, A, legal fees incurred in the defense of A's will, pursuant to statute (§ 45a-294). The plaintiffs, who are the son and grandson, respectively, of A, objected to L's petition to admit A's will to probate. On appeal to this court, the plaintiffs claimed that the Superior Court erred in finding that a nominated executor in a will not yet admitted to probate has standing to seek reimbursement of legal fees prior to being appointed executor by the Probate Court and abused its discretion in awarding legal fees prior to a hearing on the merits of an objection to the will submitted to probate. *Held*:

1. The Superior Court properly found that L had standing as the nominated executor to request legal fees prior to the admission to probate of A's will: pursuant to § 45a-294, the Probate Court had jurisdiction to award an executor expenses incurred in defending a will, even if that will was not admitted to probate; moreover, the plaintiffs failed to identify precedential authority supporting their contention that an executor must be appointed by the Probate Court in order to have standing to seek reimbursement of legal fees, and the plaintiffs' suggestion that a nonappointment would strip the nominated executor of the right to seek reimbursement of fees would render the critical language of § 45a-294 meaningless; furthermore, L had fiduciary duties both to file the will with the Probate Court and to endeavor to procure its admission and, thus, L's duties were not inferior to those of an executor appointed by the Probate Court.
2. The Superior Court did not abuse its discretion in awarding legal expenses to L in the amount awarded by the Probate Court; the plaintiffs failed to provide notice to the Superior Court, either in their stipulated facts or their reasons for the appeal, that they were challenging the amount of fees the Probate Court had issued, nor was the Superior Court apprised that the plaintiffs sought a de novo hearing on the reasonableness of such fees.

Argued January 8—officially released May 5, 2020

Procedural History

Appeal from an order of the Probate Court for the district of Stamford awarding legal fees to the named defendant, brought to the Superior Court in the judicial

district of Stamford-Norwalk and tried to the court, *Hon. Kenneth Povodator*, judge trial referee; judgment affirming the Probate Court's order, from which the plaintiffs appealed to this court. *Affirmed.*

Terence J. Gallagher, with whom, on the brief, was *Patrick L. Poeschl*, for the appellants (plaintiffs).

Paul Greenan, for the appellee (named defendant).

Opinion

FLYNN, J. The plaintiffs, Lance Lamberton and Roark Lamberton-Davies, appeal from the Superior Court's judgment in a de novo appeal from an order of the Probate Court for the district of Stamford awarding the defendant Rearden Lamberton,[1] the nominated executor,[2] legal fees incurred in the defense of a will in Probate Court, pursuant to General Statutes § 45a-294. The plaintiffs claim that the Superior Court (1) erroneously found that a nominated executor in a will not yet admitted to probate has standing to seek reimbursement of fees prior to being appointed as an executor by the Probate Court while a will contest is pending and (2) abused its discretion in awarding the fees prior to the conclusion of a hearing on the merits of an objection to the writing submitted to probate.

The Superior Court concluded that, "to the extent that the parties effectively were seeking a declaratory ruling as to the ability or standing of a [nominated] executor to seek interim reimbursement of expenses incurred in defending a will submitted to probate, prior to its admission to probate, and the ability of the [nominated] executor to seek an allowance against future

[1] Lance Lamberton, Roark Lamberton-Davies, Paul Greenan, and Sarah Ripegno also were named as defendants in the Superior Court. Rearden Lamberton, however, is the only defendant involved in this appeal. Accordingly, we refer to Rearden Lamberton as the defendant in this opinion.

[2] Although the Superior Court used the term "designated" to refer to the nomination of the executor, for consistency, we use the term "nominated" throughout this opinion.

expenses for that same purpose, all under the provisions of . . . § 45a-294, the court has determined that notwithstanding the ongoing nature of the proceeding, the [nominated] executor has standing and a right to seek such reimbursement on an interim basis." The court further found that "the [nominated] executor also has a right to seek an allowance against future expenses for that same purpose." The court also decided that "the plaintiffs either can be perceived to have conceded (not challenged) the issue of reasonableness, or can be deemed to have waived any claim of unreasonableness" of the legal fees awarded.

We conclude that the court properly decided that § 45a-294 permits the award of legal fees as a reasonable expense incurred by a nominated executor to defend a will prior to admission of the will to probate. We further conclude that, in light of the reasons for appeal to the Superior Court and the paucity of the stipulation of facts, the court properly decided that the plaintiffs waived or conceded the issue of their reasonableness.

The parties agreed to the following stipulation of undisputed facts for the purposes of appeal to the Superior Court from the decree of the Probate Court: "Adelle Lincoln Alessandroni died on December 23, 2016, and was domiciled in the [judicial] district of [Stamford-Norwalk] . . . at the time of her death. . . . [The defendant] is Adelle Alessandroni's grandson, and is the executor named in her will. . . . On or about January 6, 2017, The Greenan Law Firm, LLC, on behalf of [the defendant], filed a petition with the Stamford Probate Court to admit Adelle Alessandroni's will to probate. . . . Lance Lamberton, who is the son of Adelle Alessandroni, objected to the will on various grounds. . . . Roark Lamberton-Davies, who is the son of Lance Lamberton and grandson of Adelle Alessandroni, also joined in making objections to the will. . . .

Due to these objections, [Adelle] Alessandroni's will has not yet been admitted, and litigation remains ongoing. . . . No other wills have been submitted to the Probate Court. . . . On August 14, 2017, [the defendant], through counsel, filed a motion for payment of attorney's fees and costs associated with defending the will in the Probate Court. That motion was subsequently amended on September 12, 2017, to seek approval of $18,058 for all attorney's fees and costs to date. . . . On or about August 15, 2017, [the defendant], through counsel, also filed a motion for a trial retainer, seeking $35,000 to defend the will in the pending will contest. . . . On or about November 14, 2017, after a hearing that was not on the record, the Stamford Probate Court, *Fox*, *J.*, ordered the payment of $18,058 in attorney's fees and a $12,000 trial retainer to be paid to The Greenan Law Firm, LLC, from assets of the estate."

The following procedural history also is relevant to our analysis of this matter. On December 13, 2017, the plaintiffs appealed to the Superior Court from the probate order granting the fees. Because the Probate Court proceedings were not conducted on the record, the appeal to the Superior Court was held de novo.[3] On January 23, 2019, the court, *Hon. Kenneth Povodator*, judge trial referee, affirmed the Probate Court's order, awarding the defendant "$18,058 as reimbursement for legal expenses incurred between January 3, 2017 and September 12, 2017," and "$12,000 to be used as a retainer against future legal expenses to be incurred in pursuing admission of the will to probate, such sums to be paid out of the assets of the estate." The plaintiffs then filed this appeal to this court on February 11, 2019. We note that, at the time of this decision, the underlying

[3] When an appeal is taken from a judgment of the Probate Court to the Superior Court, where there was no stenographic record in the Probate Court, it is heard de novo. See *Silverstein* v. *Laschever*, 113 Conn. App. 404, 409, 970 A.2d 123 (2009).

will contest in the Probate Court is still ongoing.[4] A temporary administrator has been appointed by the Probate Court, for limited purposes, pending the outcome of some of these issues.

I

We first address the plaintiffs' claim that the court erred in holding that the defendant had standing to seek reimbursement of legal fees. They argue that, because the defendant had not yet been appointed as executor by the Probate Court, he did not have the right to seek payment of his legal fees pursuant to § 45a-294. We disagree.

A trial court's determination of whether a party has standing "is a conclusion of law that is subject to plenary review on appeal." (Internal quotation marks omitted.) *Heinonen* v. *Gupton*, 173 Conn. App. 54, 59, 162 A.3d 70, cert. denied, 327 Conn. 902, 169 A.3d 794 (2017). "We conduct that plenary review, however, in light of the trial court's findings of fact, which we will not overturn unless they are clearly erroneous." (Internal quotation marks omitted.) Id. Additionally, the issues raised in this appeal necessarily involve statutory interpretation, for which our review also is plenary. See, e.g., *Ugrin* v. *Cheshire*, 307 Conn. 364, 379, 54 A.3d 532 (2012).

Resolution of the standing issue rests on the interpretation of § 45a-294, the statutory provision that provides for reimbursement of just and reasonable expenses in a will contest. Section 45a-294 (a) provides: The court of probate having jurisdiction of the testate estate of any person shall allow to the executor his just

[4] In November, 2019, the defendant filed a motion with the Probate Court seeking additional legal fees incurred between September 12, 2017 and July 25, 2019; the Probate Court granted the defendant an additional $35,000. The plaintiffs, again, on December 11, 2019, appealed from the probate decree to the Superior Court. See *Lamberton* v. *Lamberton*, Superior Court, judicial district of Stamford-Norwalk, Docket No. FST-CV-20-6044866-S.

and reasonable expenses in defending the will of such person in the probate court, whether or not the will is admitted to probate." The parties disagree on how the term "executor" should be interpreted, as no statutory definition is provided either in subsection (a) of § 45a-294 or in any other surrounding, relevant statutory provision. The plaintiffs argue that a nominated executor of a contested will does not constitute an executor for purposes of the statute. The defendant, on the other hand, argues that the distinction between a nominated and a court-appointed executor is immaterial for purposes of the expense reimbursement statute. For the reasons that follow, we agree with the defendant.

Our Supreme Court has explained that "[t]he process of statutory interpretation involves a reasoned search for the intention of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Internal quotation marks omitted.) *Fleet National Bank's Appeal from Probate*, 267 Conn. 229, 237–38, 837 A.2d 785 (2004). "A fundamental tenet of statutory construction is that statutes are to be construed to give effect to the apparent intention of the lawmaking body. . . . Where the words of a statute are clear, the task of a reviewing court is merely to apply the directive of the legislature since where the wording is plain, courts will not speculate as to any supposed intention because the question before a court then is not what the legislature actually intended but what intention it expressed by the words that it used.

. . . When two constructions [of a term] are possible, courts will adopt the one which makes the statute effective and workable . . . . [Further, a] statute should be construed so that no word, phrase or clause will be rendered meaningless." (Citations omitted; internal quotation marks omitted.) *Verrastro* v. *Sivertsen*, 188 Conn. 213, 220–21, 448 A.2d 1344 (1982). General Statutes § 1-2z instructs: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

The plaintiffs argue that the text of § 45a-294 creates a plain and unambiguous meaning of the term "executor" that requires that the individual officially be appointed by the Probate Court, and, when there is an objection to the will, such appointment can be made by the Probate Court only after fully considering that objection. Because the objection in this case had not yet been resolved, the plaintiffs argue that the defendant cannot be deemed an executor with standing to seek legal fees for purposes of § 45a-294. The plaintiffs fail to cite to any precedential authority, and we are unaware of any, that directly supports their contention that an executor must be appointed by the Probate Court in order to have standing to recover expenses. Because the term "executor" is not defined by the text of the statute itself, the plaintiffs urge us to ascertain the meaning of the term "executor" in light of related statutes, namely, those that invoke the role of a fiduciary.[5]

[5] Relying on § 39.1 of the Probate Court Rules, which states in relevant part that, "[o]n [a] motion [by] a fiduciary, the court may approve . . . a proposed fee for services already rendered by the fiduciary or attorney," the plaintiffs argued in their appeal to the Superior Court that the Probate Court had disregarded the explicit requirement that only a fiduciary has standing to make a motion for reimbursement of attorney's fees or for a

The plaintiffs rely on the definition of "fiduciary" set forth in other sections of title 45a of the General Statutes governing probate courts and procedure, including General Statutes §§ 45a-315 and 45a-340.[6] We do not presume that the plaintiffs are arguing that these statutes are invoked or are controlling here; instead, we interpret their argument to be that they should aid in the interpretation of the term "executor" in the context at issue in the present matter. The plaintiffs focus on the nature of the roles that are included within the definitions of a "fiduciary" for purposes of the other statutes—i.e., administrator of an estate, conservators, trustees—and suggest that, as compared to those other roles, that of a nominated executor falls short in the type of responsibilities involved. The plaintiffs, referring to those other fiduciaries, argue: "These people have all been authorized to protect a person or a fund. In turn, they are responsible to the Probate Court in an accounting or report. Here the nominated executor does not have that level of responsibility or accountability." The

retainer, and the defendant was not a fiduciary for purposes of this rule. As the court properly noted, however, the Probate Court Rules are not binding on the Superior Court. See Probate Court Rules § 2.2 (b) ("[t]he rules do not apply to appeals from probate in the Superior Court, matters transferred from a Probate Court to the Superior COurt or any other probate matter in the Superior Court"). On appeal, it is unclear whether the plaintiffs are arguing that § 39.1 of the Probate Court rules was implicated at the Superior Court level and/or whether interpretation of the rule is relevant to our decision in this matter. To the extent that the plaintiffs are arguing that the rule is authoritative on the issue of standing, we disagree and decline to address any arguments directed to the substantive application of the rule (e.g., the court's ejusdem generis analysis). We do recognize, however, a potential argument that the rule, in concert with various statutes that define the role of a fiduciary, is suggestive of, or aids in, the proper interpretation of the term "executor" as used in § 45a-294.

[6] General Statutes § 45a-315 provides in relevant part: "As used in sections 45a-129, 45a-205, 45a-242 to 45a-244, inclusive, 45a-273 to 45a-276, inclusive, 45a-315 to 45a-318, inclusive, and 45a-320 to 45a-334, inclusive . . . 'fiduciary' includes the executor or administrator of a decedent's estate."

General Statutes § 45a-340 provides: "As used in sections 45a-340 to 45a-347, inclusive, 'fiduciary' includes the executor or administrator of a decedent's estate."

plaintiffs also look outside of the probate statutes and, citing General Statutes § 52-555, assert that "in other contexts, the definition of who may act on behalf of an estate has been very narrow and strictly applied." Essentially, the plaintiffs attempt to assert a policy argument that the defendant was not the type of individual whom § 45a-294 intended to protect. During oral argument before this court, the plaintiffs made clear their position that, as a nominated executor, the defendant did not have the same fiduciary responsibilities as an appointed executor. We are not persuaded.

The plaintiffs highlight the possibility that, due to the objections pending in the Probate Court, the defendant may never be appointed as the executor of the estate. The plaintiffs fail to explain how this would deprive the defendant of the opportunity to invoke § 45a-294. The suggestion that a potential nonappointment would strip the nominated executor of his right to seek reimbursement of legal fees would render the critical portion of the statute—"whether or not the will is admitted to probate"—meaningless. The language of the statute explicitly provides that, even if the defense of the will is unsuccessful and the will is not admitted to probate, the nominated executor who defended the will, nonetheless, is entitled to reimbursement of legal fees. As the court succinctly wrote, "[t]he contingency [the plaintiffs] identify, then, is one specifically anticipated and addressed by the statutory language." We agree with the Superior Court's well reasoned analysis regarding this particular issue. "An executor can be appointed by the Probate Court only after the will designating that individual/entity as executor has been admitted to probate. Therefore, admission of the will is effectively a condition precedent to appointment of the executor. If there is a successful challenge to the will being admitted to probate, there never will be an executor appointed under the will. How then, can [t]he court of probate having jurisdiction of the testate estate of any

person . . . allow to the executor his just and reasonable expenses in defending the will of such person in the Probate Court if the will is not (has never been) admitted to probate? Under the plaintiffs' analysis, such an 'executor' would never have standing because such individual would never have been appointed 'executor.' "

The plaintiffs' proposition also ignores the fact that, during the pendency of the proceedings, the defendant actively had been defending the will and expending the necessary legal fees in order to do so. The defendant argues that, as a nominated executor, he had a fiduciary duty to offer and to defend the decedent's will in the admissions process even though he was not yet officially appointed by the Probate Court. During questioning from the appellate panel, the plaintiffs presented an unpersuasive argument for why and how the defendant's role as a nominated executor differed from that of an individual who may have been appointed by the Probate Court as executor.[7] The plaintiffs made a gen-

[7] The following colloquy took place during oral argument before this court:

"[The Plaintiffs' Counsel]: So, in terms of going forward with the fiduciary duties of a nominee, the nominee doesn't have the same sort of requirement to gather and manage an account . . . to the Probate Court like other trustees, like an administrator, an executor, trustee, a guardian, [or] a conservator.

"Judge Bright: Would you acknowledge, though, that the nominee does have some fiduciary duties?

"[The Plaintiffs' Counsel]: I would say that the nominee's duty is to propound the will, to take the writing to the Probate Court for probate.

"Judge Bright: What about the handling of the assets until the will is admitted to probate?

"[The Plaintiffs' Counsel]: They have no role. In fact, as Judge Povodator found there is a temporary administrator in this case.

"Judge Bright: Yes, but the temporary administrator had to be appointed. So until the temporary administrator is appointed, from the death of the decedent until the appointment of the temporary administrator, are you saying the nominee has no fiduciary duty?

"[The Plaintiffs' Counsel]: If there is an objection, then they have no role in the management of the assets.

"Judge Bright: Before an objection is made. Before an objection is made, from the time [of] death until anything happens in the Probate Court, is it your position that that nominee has no fiduciary duty?

"[The Plaintiffs' Counsel]: Yes.

"Judge Elgo: Do they have no duty to secure an attorney at all?

eral contention that a nominated executor may choose to decline the nomination and, therefore, not have any fiduciary responsibilities, but they failed to explain how—in circumstances like those before us, where the nominated individual has accepted the nomination and taken on the corresponding responsibilities of defending the will—the nominated executor's responsibilities are inferior to those of an executor appointed by the Probate Court.

It is "the duty of the executor named in a will to present it for probate and endeavor to procure its admission, and this includes a right of appeal from a decision of the [c]ourt of [p]robate refusing to admit it; however, it is in no part of his duty to attack or take ground against its validity." *Avery's Appeal*, 117 Conn. 201, 203–204, 167 A. 544 (1933), citing *Belfield* v. *Booth*, 63 Conn. 299, 309, 27 A. 585 (1893). A person cannot be forced to "act as executor on the will of another against his desire or by mere force of the circumstance that the testator has nominated him to such office." *Kravitz* v. *McCarthy*, 14 Conn. Supp. 368, 372 (1946). If, however, he has possession of the will, a nominated executor must deliver it to the proper official of the court of probate within thirty days, even if he impliedly or expressly declines to serve as executor. See General Statutes §§ 45a-282 and 45a-283 (a).[8] If the nominated

"[The Plaintiffs' Counsel]: To secure an attorney? No, they do not have a duty to secure an attorney. In fact, many nominees decline to serve. It's not unheard of.

"Judge Flynn: So, what do you see as the function of someone named in the will as executor, can they simply walk away from any obligation to support the admission of the will?

"[The Plaintiffs' Counsel]: They can and in some cases they do. The nominee is someone who is set forth in a writing. There may be a successor nominee, the court could ultimately determine that there is no written will, and, despite whatever writing is propounded by a nominee, and appoint an administrator. There are innumerable ways that this can turn out."

[8] General Statutes § 45a-282 makes it a crime for any person to fail to deliver a will or codicil in his possession "forthwith, after he has knowledge of the death of the testator, . . . either to the person designated to be the executor or one of the persons designated to be an executor thereof, or to the judge, clerk or assistant clerk of the court of probate which by law has jurisdiction of the estate of such deceased person."

individual *is* willing to serve as the executor of the will in which he is named, he has a duty to "endeavor to procure its admission." *Avery's Appeal*, supra, 203; see also *Sokar's Appeal from Probate*, 7 Conn. Supp. 196, 197 (1939). Here, the defendant was named executor of the will by the decedent. He did not decline to act; he offered the will's admission to probate and has been actively pursuing its admission. We, therefore, reject the premise of the plaintiffs' argument that the defendant had no fiduciary duties and would have no such duties until and unless the will is admitted and the Probate Court specifically appoints him as executor. The defendant had duties imposed by statute and case law both to file the will with the Probate Court and to endeavor to procure its admission.

The plaintiffs also argue against the danger of prematurely awarding legal fees, because "[s]hould a nominated executor ultimately not become the executor due to the sustaining of an objection, there is no mechanism to recover any inadvisably advanced fees. The lack of such a mechanism is a further indication that the statutes contemplate the awarding of fees after the Probate Court hearing on the objection has been held." (Footnote omitted.) We are not convinced.

Section 45a-294 (a) expressly provides for reimbursement of expenses whether or not the will is admitted to probate. The statute reflects practical concerns. The alternative—to require the nominated individual to advance, out of his own funds, money for legal counsel for proceedings that could last months or years, as is

Additionally, General Statutes § 45a-283 (a) provides that "[e]very person having knowledge of his designation in a will as an executor of a testator's estate shall, within thirty days next after the death of the testator, apply for probate of the will to the court of probate of the district where the testator was domiciled at his death." Subsection (b) also provides that a fine of not more than $200 shall be imposed for failure to do so. General Statutes § 45a-283 (b).

the situation in the present case—is impractical. Section 45a-294 (a) provides that the court shall allow to the *executor* his just and reasonable expenses in defending the will in Probate Court. As the court stated: "Indeed, the very use of the term 'executor' in the statutory language, applicable in the event of a successful challenge to the will under which that individual was [nominated] executor, necessarily means that the term 'executor' as used in this statute cannot mean only an individual duly appointed by the Probate Court as executor." This proposition is bolstered by the public policy concerns that are addressed by the statute.

A statute adopted by our legislature must be given effect according to its terms unless it yields absurd or unworkable results. See General Statutes § 1-2z. Because a nominated executor who is willing to accept appointment has certain fiduciary responsibilities to offer the will for probate and to defend the will in the probate process, we conclude that no absurdity results from a court order, pursuant to § 45a-294, granting reimbursement of necessary and reasonable expenses in defending the will in the admissions process. Nor is the statute unworkable because a temporary administrator has been appointed by the Probate Court who, upon receipt of the court order, could have authority to pay the sums authorized by the court. Therefore, we conclude that the court properly found that the defendant had standing as the nominated executor to request legal fees prior to admission to probate of the will nominating him.

II

We next address the plaintiffs' claim that the court improperly ordered the defendant's claim for legal fees paid in an amount found reasonable by the Probate Court. "It is well established that we review the trial court's decision to award attorney's fees for abuse of

discretion. . . . Likewise, when we review a trial court's decision to award fees to an executor, administrator or trustee, [t]he test is, has the court exercised a reasonable discretion, or, in other words, is its exercise so unreasonable as to constitute an abuse of discretion. . . . This standard applies to the amount of fees awarded . . . and also to the trial court's determination of the factual predicate justifying the award. . . . 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. . . . When determining whether the trial court used the appropriate legal standard, our review is plenary." (Citations omitted; internal quotation marks omitted.) *McGrath* v. *Gallant*, 143 Conn. App. 129, 135, 69 A.3d 968 (2013).

Certain additional facts are necessary for a proper understanding of this claim. The stipulation of facts before the court stated that, on August 14, 2017, the defendant, through counsel, filed a motion for payment of legal fees and costs associated with defending the will in the Probate Court. That motion subsequently was amended to seek approval of $18,058 for all legal fees and costs incurred to date. On August 15, 2017, the defendant also filed a motion for a trial retainer seeking $35,000 to defend the will in the pending will contest. On or about November 14, 2017, after a hearing that was not conducted on the record, the Stamford Probate Court, *Fox*, *J.*, ordered the payment of $18,058 in legal fees already incurred and a $12,000 trial retainer to be paid to The Greenan Law Firm, LLC, from assets of the estate. The reasons for appeal filed pursuant to

General Statutes § 45a-186[9] and Practice Book § 10-76[10] stated, in relevant part, that the Probate Court had disregarded the explicit requirement that only a fiduciary has standing to file a motion for reimbursement of attorney's fees or for a retainer. The appeal to the Superior Court then stated that the defendant was not a fiduciary and, as such, did not have standing to file a motion for legal fees. Further, it stated that "[i]t is very possible that, due to the objections pending in the Probate Court, [the defendant] may never be appointed as the executor of the estate" and, because he had not been named executor, he could not invoke § 45a-294 to seek reimbursement of fees. Nowhere in the reasons for appeal of the probate decree to the Superior Court is there any mention that the plaintiff sought to challenge the amount of the fees awarded by Judge Fox if the court were to decide that an award of fees before the will had been admitted to probate was proper.

The lack of reference to any challenge to the amount of the fees awarded by the Probate Court resulted in no notice to Judge Povodator that the amount of fees was at issue if he were to decide that an allowance of reasonable expenses in defending the will, including legal fees, could be issued to the nominated executor prior to the will having been admitted to probate and the nominated executor being appointed by the Probate Court. The concise stipulation of facts on which the probate appeal was heard de novo before the court mentioned only that the parties stipulated to the amount that Judge Fox had awarded in the probate proceeding.

[9] General Statutes § 45a-186 (a) provides in relevant part that "any person aggrieved by any order, denial or decree of a Probate Court in any matter . . . may . . . appeal therefrom to the Superior Court. Such an appeal shall be commenced by filing a complaint . . . . The complaint shall state the reasons for the appeal. . . ."

[10] Practice Book § 10-76 (a) provides in relevant part: "Unless otherwise ordered, in all appeals from probate the appellant shall file reasons of appeal . . . ."

The reasons for appeal questioned only the defendant's standing to file a motion for legal fees, invoking § 45a-294. Judge Povodator stated in his memorandum of decision that "the reasons only relate to the legal issues identified, focusing on the propriety of addressing the issues and not how they were decided." The court went on to observe that it was "going to decide the case based on the manner [in which] it was presented, whereby the plaintiffs either can be perceived to have conceded (not challenged) the issue of reasonableness, or can be deemed to have waived any claim of unreasonableness."

On appeal to this court, for the first time, the plaintiffs, citing *McGrath* v. *Gallant*, supra, 143 Conn. App. 131, claim that, where there is no record made before the Probate Court, the Superior Court must apply factors set forth in *Hayward* v. *Plant*, 98 Conn. 374, 385, 119 A. 341 (1923), and make an independent reasonableness determination with regard to the result reached by the Probate Court. The plaintiffs claim that the Superior Court erred in awarding legal fees before conducting an evidentiary hearing on the merits upon an objection to the validity of the will. The plaintiffs argue that the Superior Court was required to make a determination that the fees were just and reasonable, which could not have occurred before the conclusion of such an evidentiary hearing.

This might be so, had the plaintiffs alerted the court *that the issue of the reasonableness of the award was a basis for the appeal*, but neither the stipulation of facts nor the reasons for appeal fairly alerted the court that the amounts awarded by the Probate Court were at issue. In response to a question from the appellate panel at oral argument, the plaintiffs' counsel stated, "we didn't object to the dollar amounts, and we still don't object to the dollar amounts." He then added that the basis of their objection was that the awarding of

fees was made without an evidentiary basis from which the Superior Court could have concluded that they were just and reasonable.[11] After review of the stipulation and reasons for appeal filed with the Superior Court, we conclude that the court was not apprised that the reasonableness of the fees was at issue in the plaintiffs' appeal to the Superior Court or that a de novo hearing on the reasonableness of such fees was sought by the plaintiffs.

The court, therefore, did not abuse its discretion in awarding legal expenses in the amount awarded by the Probate Court, once it had determined that § 45a-294 permitted such an award to a nominated executor prior to a will being admitted to probate and the executor's formal appointment by the Probate Court.

The judgment is affirmed.

In this opinion the other judges concurred.

[11] We recognize that this claim also could be interpreted as, effectively, an extension of the plaintiffs' first claim, challenging both the timing of and the award of legal fees. The plaintiffs' first claim was premised on the notion that the court prematurely awarded the fees to the defendant, who had not yet been named an executor. Here, the plaintiffs effectively are arguing another ground upon which the court's award was premature, namely, that, without the evidentiary hearing on the objection, the executor's legitimacy cannot be determined. In their brief, the plaintiffs contend that "[t]he existence of an objection . . . should weigh heavily in the decision as to the appropriateness and the 'just and reasonable' fees of an unsuccessful nominated executor. Here, the Probate Court and the objectant are not yet in a position to determine if the position of one of the parties is frivolous or not." The plaintiffs seem to suggest through their line of reasoning that, if the defendant ultimately is not appointed as executor, his efforts in defending the will throughout the probate process could not be deemed just and reasonable, or, at the very least, should be greatly reduced. Accordingly, the plaintiffs argue, legal fees should not be awarded until after the objection is heard and a determination is made as to whether the appointment of the executor is valid.

This argument implicates the same concerns addressed in part I of this opinion and warrants the same analysis. Therefore, to the extent that the plaintiffs merely are challenging the timing of the award, we conclude that the court did not abuse its discretion in granting the defendant's motion for legal fees before the conclusion of the evidentiary hearing.

STATE OF CONNECTICUT *v.* JOSE LUIS HERNANDEZ (AC 41856)

Keller, Elgo and Pellegrino, Js.

Syllabus

The defendant, who had been convicted of assault in the first degree, appealed to this court. Following the defendant's conviction, the trial court scheduled sentencing and granted a motion filed by the state to increase the defendant's bond, reasoning that the defendant faced a substantial prison sentence and had a strong incentive not to appear at sentencing. Thereafter, the defendant posted his bond and the court granted his request for a thirty day continuance of his sentencing. The defendant subsequently failed to appear for sentencing on the date that he had requested, and the court sentenced the defendant in his absence. *Held* that the defendant could not prevail on his unpreserved claim that the trial court violated his constitutional right to be present at all critical stages of the prosecution when it sentenced him in abstentia: the defendant was unable to demonstrate that a constitutional violation existed because he waived his constitutional right to be present at sentencing by deliberately absenting himself from the proceedings, and, while the defendant's failure to appear for sentencing alone satisfied waiver, additional evidence demonstrated that the defendant knew that he was required to be present at sentencing and knowingly and voluntarily relinquished his right to be present; the defendant specifically requested a continuance of sentencing, and at no point asserted that he was unaware that he needed to be present for sentencing or that he did not know when sentencing was scheduled, and, as the court articulated, the defendant demonstrated a cavalier attitude toward the sentencing process, leaving the court unclear as to whether the defendant would appear, and, accordingly, the court did not abuse its discretion in denying the defendant's later request, made on the day of sentencing through defense counsel, to move sentencing back to later that day; moreover, the court did not improperly fail to make an express finding that the defendant had waived his right to be present, as the defendant did not cite to any case law requiring the court to make an express finding of waiver, and the court's statement that the defendant demonstrated a cavalier attitude was the functional equivalent of a finding of an implied waiver; furthermore, the defendant did not cite any case law that demonstrated that the court was constitutionally required to advise him, prior to sentencing, that sentencing would proceed in his absence if he did not appear, the court was not required to notify the defendant preemptively that his case would proceed in his absence without any indication that the defendant would not appear in court at some later time, as such a requirement would give the defendant the power to control the court by unilaterally preventing his case from proceeding.

Argued January 6—officially released May 5, 2020

Procedural History

Substitute information charging the defendant with the crime of assault in the first degree, brought to the Superior Court in the judicial district of New Haven and tried to the jury before *Blue*, *J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *Affirmed.*

Emily Graner Sexton, assigned counsel, with whom were *Megan Wade*, assigned counsel, and, on the brief, *Matthew C. Eagan*, assigned counsel, for the appellant (defendant).

Melissa Patterson, assistant state's attorney, with whom, on the brief, were *Patrick Griffin*, state's attorney, and *Stacey Haupt Miranda*, senior assistant state's attorney, for the appellee (state).

Opinion

PELLEGRINO, J. The defendant, Jose Luis Hernandez, appeals from the judgment of conviction, following a jury trial, of assault in the first degree in violation of General Statutes § 53a-59 (a) (1). On appeal, the defendant claims that the trial court violated his constitutional right to be present at all critical stages of his prosecution when it sentenced him in absentia. Specifically, the defendant claims that the trial court violated his constitutional right to be present at all critical stages of his prosecution because it failed (1) to make an express finding that the defendant waived his right to be present, and (2) to notify the defendant, prior to sentencing him, that sentencing would proceed in his absence if he did not appear. We disagree and affirm the judgment of the trial court.

The jury reasonably could have found the following facts. On September 27, 2014, the defendant and Julio Rodriguez engaged in a physical altercation outside of Chico's Market (market) on Ferry Street in New Haven, which resulted in serious injuries to Rodriguez. Rodriguez was an employee of the market and the defendant

was a friend and frequent customer. On the day that the altercation occurred, the defendant arrived at the market at approximately 8 p.m. and stayed until the market closed at 10 p.m. While at the market, the defendant drank beer and ate dinner with Rodriguez, Ferrer (an employee), and Jose Gabin and Amparo Nicola, the market's owners.

The defendant and Rodriguez disagree about the events that led to the physical altercation between them. There is no dispute, however, that the defendant brandished a knife during the altercation and, ultimately, stabbed Rodriguez twice: once in the abdomen and once in the face.

It was not until April 18, 2015, that the defendant was arrested for assaulting Rodriguez. After his arrest, the defendant was released from custody on bond. A jury found the defendant guilty of assault in the first degree in violation of § 53a-59 (a) (1). The court accepted the jury's guilty verdict, ordered a presentence investigation report, and scheduled sentencing for January 26, 2018. On the basis of the guilty verdict and his prior criminal history, which included multiple assault convictions, the state asked the court to increase the defendant's bond. The court granted the state's motion to increase the bond and justified the $150,000 increase by noting that a guilty verdict had been entered against the defendant, that he faced a substantial prison sentence, and had a strong incentive not to appear at sentencing. Thereafter, the defendant posted the $300,000 bond.

On January 26, 2018, the defendant asked that his sentencing be continued for one month so he that "could get his affairs in order." The court granted the defendant's request and sentencing was scheduled for February 22, 2018, at 10 a.m. On February 22, however, the defendant failed to appear. Ultimately, the court sentenced the defendant in his absence.

The court, in support of its decision to sentence the defendant in absentia, provided a summary of the case's procedural history. It explained that, on November 3, 2017, the defendant was convicted of assault in the first degree and the case was scheduled for sentencing on January 26, 2018. The defendant, however, asked the court to put off sentencing for approximately one month so he "could get his affairs in order." Next, in reviewing the presentence investigation report, the court noted that the probation officer responsible for preparing the report on the defendant made "several attempts to contact the [defendant] via mail, telephone, and fielded visits to two of his last known addresses—places of residence in West Haven and Hamden" to no avail. The court explained that the probation officer noted in the presentence investigation report that he reached out to the defendant's attorney in an effort to obtain updated contact information for the defendant and "[t]o date, [neither] the offender, nor his attorney [has] responded to any of [his] efforts." The court further stated, "[d]uring the home visit conducted at a West Haven address on file, an [identified] Hispanic male reported that the [defendant] did not reside at that address."

A few minutes later, the court then noted that the parties had discussed at side bar the defendant's failure to appear and asked defense counsel to state for the record the defendant's whereabouts and reason for his absence. Defense counsel stated that, ten minutes earlier, he had contacted the defendant on the telephone and the defendant "indicated that he was running late, that he still had a few items to take care of, and he implored me to ask this court to move the sentencing back to later today. I told him that pursuant to the court's hearing on the 26th of January that he had an obligation to be here at 10 a.m. and he needs to be here. He said he would do his best; however, there were things that he had to do, and with that he just implored me to ask the court to move it back to later today."

Thereafter, the court called the bond and ordered the defendant's rearrest, setting a bond on the rearrest warrant in the amount of $2,000,000. The court stated that, "under these circumstances," it was inclined to proceed with sentencing. Before sentencing the defendant, the court stated that "[t]his is an extremely serious case"; that the defendant "brought a knife to a fist fight"; that "this was an assault that could very easily have ended in a death"; and that the defendant has a "somewhat old, but very substantial history of assaults." Lastly, the court stated, "I would not necessarily have given him the maximum term, although I would have given him a very substantial term under these circumstances for [the] reasons stated. But, here, he's—by not showing this morning he has demonstrated an extremely cavalier attitude to the entire process, which worries the court to no end. And, in fact, I don't know if it's at all clear that he would appear this afternoon or at any other time. And under these circumstances, the court cannot regard him as anything other than a dangerous menace to society. So, under all these circumstances, the court imposes a sentence of twenty years to serve." This appeal followed. Additional facts and procedural history will be set forth as necessary.

On appeal, the defendant claims that the trial court violated his right to be present at all critical stages of trial when it sentenced him in absentia because the trial court failed to make an express finding that the defendant waived his right to be present and to notify the defendant that sentencing would proceed in his absence if he did not appear. Consequently, the defendant argues that the sentence should be vacated and the case remanded for resentencing. The defendant concedes that he failed to preserve this claim for appeal, but argues that this claim is entitled to review under *State* v. *Golding*, 213 Conn. 233, 567 A.2d 823 (1989).

In response, the state claims that the trial court did not violate the defendant's right to be present by sentencing him in absentia, and, therefore, the defendant

fails to satisfy the third prong of the *Golding* analysis. Specifically, the state argues that the trial court is not required to make an express finding that the defendant waived his right to be present at sentencing and that the trial court is not required to adequately inform the defendant, prior to imposing his sentence, that the sentencing would proceed in his absence if he failed to appear. We agree with the state.

We begin with the standard of review. A trial court's finding that a defendant has voluntarily absented himself from the proceedings is reviewed for an abuse of discretion. See *State* v. *Simino*, 200 Conn. 113, 130, 509 A.2d 1039 (1986); *State* v. *Edwards*, 158 Conn. App. 119, 140, 118 A.3d 615, cert. denied, 318 Conn. 906, 122 A.3d 634 (2015).

"It has long been settled that an accused enjoys a right both at common law and pursuant to the sixth amendment's confrontation clause to be present at all stages of trial. . . . It is also well settled that under the due process clauses of the fifth and fourteenth amendments a defendant must be allowed to be present at his trial to the extent that a fair and just hearing would be thwarted by his absence. . . . Nevertheless, the defendant's presence is not required when the right is waived. Waiver in this context is addressed both in our rules of practice and in our case law." (Citation omitted; internal quotation marks omitted.) *State* v. *Vines*, 71 Conn. App. 751, 767, 804 A.2d 877 (2002), aff'd, 268 Conn. 239, 842 A.2d 1086 (2004).

Pursuant to Practice Book § 44-8: "The defendant must be present at the trial and at the sentencing hearing, but, if the defendant will be represented by counsel at the trial or sentencing hearing, the judicial authority may: (1) Excuse the defendant from being present at the trial or a part thereof or the sentencing hearing if the defendant waives the right to be present; (2) Direct that the trial or a part thereof or the sentencing hearing

be conducted in the defendant's absence if the judicial authority determines that the defendant waived the right to be present; or (3) Direct that the trial or a part thereof be conducted in the absence of the defendant if the judicial authority has justifiably excluded the defendant from the courtroom because of his or her disruptive conduct . . . ." Consequently, the "trial court is authorized to direct the trial or a part thereof to be conducted in the absence of the defendant who is represented by counsel if the court determines that he has waived his right to be present." *State* v. *Simino*, supra, 200 Conn. 130.

"Waiver is the intentional relinquishment of a known right. Waiver does not have to be express, but may consist of acts or conduct from which waiver may be implied." (Internal quotation marks omitted.) *Talton* v. *Warden*, 171 Conn. 378, 385–86, 370 A.2d 965 (1976). Moreover, "whether there has been an intelligent and competent waiver of the right to presence must depend, in each case, upon the particular facts and circumstances surrounding that case." (Internal quotation marks omitted.) Id., 385.

The United States Supreme Court has stated that, where "the accused is not in custody, the prevailing rule has been, that if, after the trial has begun in his presence, he voluntarily absents himself, this does not nullify what has been done or prevent the completion of the trial, but, on the contrary, operates as a waiver of his right to be present and leaves the court free to proceed with the trial in like manner and with like effect as if he were present." (Internal quotation marks omitted.) *Taylor* v. *United States*, 414 U.S. 17, 19, 94 S. Ct. 194, 38 L. Ed. 2d 174 (1973).

Turning to the reviewability of an unpreserved constitutional claim under *Golding*, "a defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the

record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. In the absence of any one of these conditions, the defendant's claim will fail. The appellate tribunal is free, therefore, to respond to the defendant's claim by focusing on whichever condition is most relevant in the particular circumstances." (Emphasis in original; footnote omitted.) *State* v. *Golding*, supra, 213 Conn. 239–40, as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015).

"The first two [prongs of *Golding*] involve a determination of whether the claim is reviewable; the second two . . . involve a determination of whether the defendant may prevail" on the merits. (Internal quotation marks omitted.) *State* v. *Brown*, 279 Conn. 493, 500, 903 A.2d 169 (2006). Thus, *Golding* review of an unpreserved constitutional claim is available provided that the defendant can "present a record that is [adequate] for review and affirmatively [demonstrate] that his claim is indeed a violation of a fundamental constitutional right." (Internal quotation marks omitted.) *State* v. *Elson*, 311 Conn. 726, 755, 91 A.3d 862 (2014).

The defendant's claim is reviewable under *Golding* because the record before us is adequate to review it and the claim is of constitutional magnitude. We conclude, however, that the defendant cannot prevail on the merits because he is unable to demonstrate that a constitutional violation exists and that it deprived him of a fair trial. Specifically, the defendant cannot prevail because we conclude that he waived his constitutional right to be present by deliberately absenting himself from the sentencing proceedings, and, therefore, the trial court did not violate the defendant's constitutional right to be present at sentencing.

The record in this case is sufficient to support the conclusion that the defendant waived his right to be present at sentencing. As articulated in *Simino*, a defendant may waive his right to be present "by simply failing to show up for the trial through no fault of the state." *State* v. *Simino*, supra, 200 Conn. 128. While the defendant's failure to appear for sentencing alone satisfies waiver in this case, there is additional evidence in the record that shows that the defendant knew that he was required to be present at sentencing and knowingly and voluntarily relinquished his right to be present.

On November 3, 2017, when the defendant was convicted, the court, in granting the prosecutor's request to increase the defendant's bond, specifically stated that the defendant, "almost inevitably facing a . . . substantial prison sentence . . . [had] *some incentive not to show up*" at sentencing. (Emphasis added.) Here, it would be disingenuous to suggest that the defendant, who was at liberty on bail after the jury returned a guilty verdict, did not know he had a duty to appear at sentencing or that he did not know of the possibility that the sentencing would continue in his absence. "The right to release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty. . . . Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused." (Citation omitted.) *Stack* v. *Boyle*, 342 U.S. 1, 4–5, 72 S. Ct. 1, 96 L. Ed. 3 (1951).

Moreover, the record on February 22, 2018, clearly indicates that the defendant was aware that sentencing was scheduled for that day, yet he elected not to attend. In fact, the record indicates that the defendant specifically asked for a continuance from January 26, 2018 to

February 22, 2018, because there were things he had to "take care of." At no point did the defendant assert that he was unaware that he needed to be present for sentencing or that he did not know when sentencing was scheduled. See, e.g., *State* v. *Simino*, supra, 200 Conn. 130 ("[t]he defendant thus had sufficient notice of the time and location of the instructions to the jury and that his presence was requested"). Rather, the record indicates that the defendant was aware that sentencing was scheduled for February 22, 2018, at 10 a.m. but that he elected not to attend because there were "things he had to do," which, notably, was the same excuse he had used when asking for the January 26, 2018 continuance. Specifically, defense counsel stated on the record that the defendant "indicated that he was running late, that he still had a few items to take care of and he implored me to ask this court to move the sentencing back to later today. I told him that pursuant to the court's hearing on the 26th of January that he had an obligation to be here at 10 a.m. and he needs to be here. *He said he would do his best; however, there were things that he had to do, and with that he just implored me to ask the court to move it back to later today.*" (Emphasis added.) As the court articulated, the defendant "demonstrated an extremely cavalier attitude" toward the sentencing process and left the court unclear as to whether "he would appear [that] afternoon or at any other time." In this scenario, the trial court did not abuse its discretion by denying the defendant's request to move sentencing back to later that day. "Permitting a defendant unilaterally to prevent his case from going forward would give him the license to defy the law with impunity, and in the process, to paralyze the proceedings of courts and juries." *State* v. *Drakeford*, 202 Conn. 75, 81, 519 A.2d 1194 (1987). We conclude that the defendant's failure to appear constituted a waiver of his right to be present at sentencing.

In support of his argument that the trial court violated his right to be present at all critical stages of trial by sentencing him in absentia, the defendant asserts that the trial court is required to make an express finding that the defendant waived his right to be present at sentencing. The defendant, however, has not cited to any case law that requires the trial court judge to expressly make a finding of waiver. See *State* v. *Drakeford*, supra, 202 Conn. 81 ("[w]aiver does not have to be express, but may consist of acts or conduct from which waiver may be implied"); see also *State* v. *Durkin*, 219 Conn. 629, 636, 595 A.2d 826 (1991) ("[w]aiver need not be express, but rather, may be implied from the totality of the circumstances, including the [individual's] conduct"). Moreover, even though the court did not use the word waiver, the trial court's statement—"by not showing this morning he has demonstrated an extremely cavalier attitude to the entire process"—was the functional equivalent of finding an implied waiver. While we conclude that an express finding of waiver is not required to sentence a defendant in absentia, the court's statement regarding the defendant's "cavalier attitude" was the functional equivalent of a finding of an implied waiver.

The defendant also argues that the trial court was required to adequately inform the defendant, prior to imposing his sentence, that the sentencing would proceed in his absence. The defendant, however, has failed to provide case law that demonstrates that the purportedly necessary advisement is constitutionally required. The cases cited by the defendant are factually distinguishable from the present scenario. In his brief, the defendant relies on *State* v. *Gonzalez*, 205 Conn. 673, 689, 535 A.2d 345 (1987), *State* v. *Drakeford*, supra, 202 Conn. 81, *State* v. *Edwards*, supra, 158 Conn. App. 142–43, and *State* v. *Crawley*, 138 Conn. App. 124, 133–34, 50 A.3d 349 (2012), to support his argument that a

trial court has a duty to inform a defendant, prior to sentencing him, that sentencing would proceed in his absence. In those cases, however, the defendants were removed from the courtroom due to disruptive behavior or pursuant to their own request. Additionally, the defendants in those cases were either in police custody or present at trial and then elected to leave. Here, the defendant was out on bond and unable to be found by the probation officer who was preparing the presentence investigation report. The defendant knew he needed to appear in court that day for sentencing, but he elected not to appear because there were "things he had to do." The trial court is not required to preemptively notify a defendant that his case will proceed in his absence without any indication that he would be absent at some later time. This requirement would give the defendant the power to control the court by unilaterally "prevent[ing] his case from going forward," allowing him to "defy the law with impunity, and in the process, to paralyze the [criminal] proceedings." *State* v. *Drakeford*, supra, 202 Conn. 81. Under the circumstances of this case, the trial court was not required to notify the defendant that sentencing would proceed in his absence. Because the defendant was aware of the scheduled date and time for sentencing, had already been granted a thirty day extension for sentencing, and had spoken to his attorney ten minutes before the court sentenced him and offered no legitimate excuse for his absence, he waived his right to be present for sentencing, and, therefore, the court properly exercised its discretion in sentencing him in absentia. Accordingly, the claim fails under *Golding*.

The judgment is affirmed.

In this opinion the other judges concurred.

WORLD BUSINESS LENDERS, LLC *v.* 526-528 NORTH MAIN STREET, LLC, ET AL.
(AC 42010)

Prescott, Moll and Eveleigh, Js.

Syllabus

The plaintiff sought to foreclose a mortgage on certain real property owned by the named defendant and to collect payment of the debt from the defendant S, who had executed a continuing guarantee for payment and performance obligations due under the note. Following the trial court's granting of the plaintiff's motion to substitute W Co. as the plaintiff, the court rendered judgment of strict foreclosure in favor of W Co., from which S appealed to this court. *Held*:

1. S lacked standing to challenge the foreclosure judgment on appeal: as a guarantor, she was not a party to the mortgage or the note and she had neither a legal interest in the property securing the note nor an equitable or statutory right of redemption in the property and, thus, this court lacked subject matter jurisdiction to determine her appeal.
2. The trial court did not render final judgment with respect to the count of the complaint seeking to enforce the guarantee against S and, thus, the appeal was dismissed with regard to that count for lack of a final judgment.

Argued February 4—officially released May 5, 2020

Procedural History

Action to foreclose a mortgage on certain of the named defendant's real property, and for other relief, brought to the Superior Court in the judicial district of New London, where the defendants were defaulted for failure to plead; thereafter, the court, *Cosgrove*, *J.*, granted the plaintiff's motion for a judgment of strict foreclosure and rendered judgment thereon; subsequently, the court granted the plaintiff's motion to substitute WBL SPE II, LLC, as the plaintiff; thereafter, the this court dismissed an appeal filed by the defendant Elissa E. Speer; subsequently, the court, *Cosgrove*, *J.*, granted the substitute plaintiff's motion to open the judgment and to reset the law days and rendered judgment thereon; thereafter, this court dismissed an appeal filed by the defendant Elissa E. Speer; subsequently,

the court, *Cosgrove*, *J.*, granted the substitute plaintiff's motion to open the judgment and to reset the law days and rendered judgment of strict foreclosure, from which the defendant Elissa E. Speer appealed to this court. *Appeal dismissed.*

Elissa E. Speer, self-represented, the appellant (defendant) filed a brief.

Adam D. Lewis, for the appellee (substitute plaintiff).

Opinion

EVELEIGH, J. The defendant Elissa E. Speer appeals from the judgment of strict foreclosure rendered by the trial court in favor of the substitute plaintiff, WBL SPE II, LLC (substitute plaintiff).[1] On appeal, Speer claims that the court improperly rendered the judgment of strict foreclosure because (1) the note and mortgage charged more than 120 percent interest and were unconscionable, (2) the amended complaint did not describe the property being foreclosed, and (3) the substitute plaintiff lacked standing as of the date of the amended complaint. For the reasons that follow, we dismiss the appeal.

We first set forth the following relevant facts and procedural history. The original plaintiff, World Business Lenders, LLC (World Business), commenced this action by way of a two count complaint against two defendants, 526-528 North Main Street, LLC (North Main, LLC), and Speer. The amended complaint alleged that JEM Contracting Co., LLC (JEM Contracting), had executed a note in the amount of $20,000 in favor of Bank of Lake Mills. As security for the note, North Main, LLC, executed a mortgage in favor of Bank of Lake

[1] This action was originally brought by World Business Lenders, LLC, which assigned the mortgage that is the subject of this action to WBL SPE II, LLC, by assignment dated June 16, 2017. Thereafter, on February 26, 2018, the court granted the motion filed by World Business Lenders, LLC, to substitute WBL SPE II, LLC, as the plaintiff in this matter.

Mills encumbering certain real property located at 526-528 North Main Street in Norwich. To further secure the obligations of JEM Contracting under the note, Speer executed a continuing guarantee in favor of Bank of Lake Mills. Thereafter, the note, mortgage, and guarantee were assigned to World Business, which, in turn, assigned them to the substitute plaintiff.

In count one of the amended complaint, the substitute plaintiff, as the holder of the mortgage and note, sought to foreclose the mortgage, and in count two, it sought to enforce the guarantee against Speer. Specifically, count two of the amended complaint alleged that "Speer . . . is liable to the substitute plaintiff for payment of the debt due under the note, pursuant to the guarant[ee]" and that "Speer has refused to pay the debt due to the substitute plaintiff."

After the defendants were defaulted for failure to plead, the court, on March 12, 2018, rendered a judgment of strict foreclosure. Speer filed an untimely appeal from that judgment, which was dismissed. Thereafter, the substitute plaintiff filed a motion to open the judgment to reset the law days, which the court granted, resetting the law days to commence on July 3, 2018. Speer filed a second appeal, which, again, was dismissed by this court. Following that dismissal, the substitute plaintiff again requested that the trial court render an updated judgment. On August 6, 2018, the court rendered an updated judgment of strict foreclosure with law days to commence on September 4, 2018.[2]

[2] At oral argument before this court, counsel for the substitute plaintiff explained that, during the pendency of this appeal, the city of Norwich brought a tax lien foreclosure action concerning the subject property naming the substitute plaintiff and North Main, LLC, as defendants. See *Norwich* v. *526-528 North Main Street, LLC*, Superior Court, judicial district of New London, Docket No. CV-19-6039936-S. In that action, the court, *Calmar, J.*, rendered a judgment of strict foreclosure on August 12, 2019. Thereafter, on September 18, 2019, a satisfaction of judgment was filed certifying that the judgment was fully paid and satisfied by the substitute plaintiff on September 18, 2019, its assigned law day. Therefore, title passed to the

Speer has timely appealed from the August 6, 2018 judgment.[3]

I

Speer first claims that "[i]t was plain error for the trial court to order foreclosure on a note and mortgage charging over 120 [percent] interest and with an affidavit of debt asserting prepayment." In connection with that claim, she raises a number of claims relating to the note and mortgage, and to the foreclosure. Specifically, she claims that the note and mortgage are unconscionable and violate public policy, that the court improperly rendered the judgment of foreclosure on an amended complaint that does not describe the property being foreclosed, and that the substitute plaintiff had no standing as of the date of the amended complaint. Because these claims relate to the judgment of strict foreclosure rendered by the court with respect to count one, which sought to foreclose the mortgage executed by North Main, LLC, Speer, as a guarantor who was not

substitute plaintiff after it redeemed on its law day in that foreclosure action. Because we are dismissing the appeal as to count one, the foreclosure count, for lack of subject matter jurisdiction on the ground that Speer, as the guarantor, lacks standing to challenge the foreclosure judgment, we need not address the issue of whether the appeal as to count one is moot because title to the subject property has passed to the substitute plaintiff. See *Citigroup Global Markets Realty Corp.* v. *Christiansen*, 163 Conn. App. 635, 640, 137 A.3d 76 (2016) (because title to property had vested in plaintiff mortgagee after defendant failed to exercise right of redemption on law day, appeal was moot, as there was no longer any practical relief that could be afforded to defendant from denial of third motion to open judgment); see also *Carraway* v. *Commissioner of Correction*, 317 Conn. 594, 602 n.10, 119 A.3d 1153 (2015) ("We recognize that the mootness doctrine is implicated in this appeal and likely provides an independent basis for our subject matter jurisdiction determination. Because we decide the case on the basis of aggrievement, however, we need not reach the mootness issue."); *Hunt* v. *Guimond*, 69 Conn. App. 711, 716–17, 796 A.2d 588 (2002) (in light of conclusion that defendant was not aggrieved and this court lacked subject matter jurisdiction to hear appeal, there was no need to address claim regarding mootness).

[3] North Main, LLC, did not appeal from the judgment of strict foreclosure.

a party to the note or mortgage, lacks standing to raise them on appeal. Therefore, the appeal as to count one is dismissed for lack of subject matter jurisdiction.

We begin our analysis by setting forth the standard of review and applicable legal principles. "Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . . [T]his court has often stated that the question of subject matter jurisdiction, because it addresses the basic competency of the court, can be raised by any of the parties, or by the court sua sponte, at any time. . . . A court does not have subject matter jurisdiction to hear a matter unless the plaintiff has standing to bring the action." (Citation omitted; internal quotation marks omitted.) *Deutsche Bank National Trust Co.* v. *Thompson*, 163 Conn. App. 827, 831, 136 A.3d 1277 (2016). Because the issue of standing implicates a court's subject matter jurisdiction, it "presents a threshold issue for our determination." (Internal quotation marks omitted.) *Jenzack Partners, LLC* v. *Stoneridge Associates, LLC*, 183 Conn. App. 128, 134, 192 A.3d 455 (2018), rev'd in part on other grounds, 334 Conn. 374, 222 A.3d 950 (2020); see also *U.S. Bank, National Assn.* v. *Fitzpatrick*, 190 Conn. App. 773, 783, 212 A.3d 732, cert. denied, 333 Conn. 916, 217 A.3d 1 (2019). "[I]n determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Wilcox* v. *Webster Ins., Inc.*, 294 Conn. 206, 214, 982 A.2d 1053 (2009). A determination regarding standing concerns a question of law over which we exercise plenary review. See, e.g., *One Country, LLC* v. *Johnson*, 314 Conn. 288, 298, 101 A.3d 933 (2014); *In re Probate Appeal of Christopher Kusmit*, 188 Conn. App. 196, 200–201, 204 A.3d 776 (2019); *Deutsche Bank National Trust Co.* v. *Thompson*, supra, 832.

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . [T]he court has a duty to dismiss, even on its own initiative, any appeal that it lacks jurisdiction to hear. . . . Moreover, [t]he parties cannot confer subject matter jurisdiction on the court, either by waiver or by consent. . . . Standing . . . is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather, it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented." (Citations omitted; internal quotation marks omitted.) *Webster Bank* v. *Zak*, 259 Conn. 766, 774, 792 A.2d 66 (2002). "When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue . . . . Standing requires no more than a colorable claim of injury; a [party] ordinarily establishes . . . standing by allegations of injury. Similarly, standing exists to attempt to vindicate arguably protected interests. . . . Standing is established by showing that the party claiming it is authorized . . . to bring an action . . . ." (Internal quotation marks omitted.) *Handsome, Inc.* v. *Planning & Zoning Commission*, 317 Conn. 515, 525, 119 A.3d 541 (2015); see also *Dow & Condon, Inc.* v. *Brookfield Development Corp.*, 266 Conn. 572, 579, 833 A.2d 908 (2003) (in determining standing, "[i]t is well settled that one who [is] neither a party to a contract nor a contemplated beneficiary thereof cannot sue to enforce the promises of the contract" (internal quotation marks omitted)); *Ganim* v. *Smith & Wesson Corp.*, 258 Conn. 313, 347,

780 A.2d 98 (2001) ("for a plaintiff to have standing, it must be a proper party to request adjudication of the issues" (internal quotation marks omitted)).

In the present case, Speer is a guarantor of the note. "A guarantee, similar to a suretyship, is a contract, in which a party, sometimes referred to as a secondary obligor, contracts to fulfill an obligation upon the default of the principal obligor. . . . Our Supreme Court has recognized the general principle that a guarantee agreement is a separate and distinct obligation from that of the note or other obligation. . . . [A] guarantor's liability does not arise from the debt or other obligation secured by the mortgage; rather, it flows from the separate and distinct obligation incurred under the guarantee contract. . . . [The] guarantor [is not] liable for the debt secured by the mortgage; rather, the guarantor is liable for what he or she agreed to in the [guarantee]." (Citations omitted; internal quotation marks omitted.) *Jenzack Partners, LLC* v. *Stoneridge Associates, LLC*, supra, 183 Conn. App. 135; see also *JSA Financial Corp.* v. *Quality Kitchen Corp. of Delaware*, 113 Conn. App. 52, 57, 964 A.2d 584 (2009) ("[t]he contract of guarantee is no doubt an agreement separate and distinct from the contract between the lender and the borrower" (internal quotation marks omitted)). "[Guarantees] are . . . distinct and essentially different contracts; they are between different parties, they may be executed at different times and by separate instruments, and the nature of the promises and the liability of the promisors differ substantially . . . . The contract of the guarantor is his own separate undertaking in which the principal does not join." (Internal quotation marks omitted.) *1916 Post Road Associates, LLC* v. *Mrs. Green's of Fairfield, Inc.*, 191 Conn. App. 16, 23, 212 A.3d 744 (2019).

"When payment of a promissory note secured by a mortgage is further protected by a separate guarantee

. . . the mortgagee may pursue a claim against the guarantors to recover any of the unpaid debt of the mortgagor. . . . A guarantee is a promise to answer for another's debt, default or failure to perform a contractual obligation. . . . As a contractual obligation separate from the contractual agreement between the lender and borrower, a guarantee imports the existence of two different obligations: the obligation of the borrower and the obligation of the guarantor. . . . [C]ourts generally have recognized that, in the absence of a statute expressly pertaining to guarantors, such secondary obligors are not proper parties to a claim seeking the foreclosure of a mortgage and their obligations are not limited by the extinguishment of the mortgagor's rights and obligations." (Citations omitted; internal quotation marks omitted.) *JP Morgan Chase Bank, N.A.* v. *Winthrop Properties, LLC*, 312 Conn. 662, 675–77, 94 A.3d 622 (2014) (*Winthrop Properties, LLC*).

Our Supreme Court addressed the issue of whether guarantors can be parties to a foreclosure claim in *Winthrop Properties, LLC*. That case involved circumstances similar to the present case. The plaintiff bank had brought an action via a two count complaint, with the first count seeking a foreclosure of a mortgage and the second count seeking to enforce a guarantee of a promissory note executed with the mortgage. Id., 666. In concluding that the guarantors were not parties to the foreclosure claim,[4] the court stated: "A mortgagee

[4] On June 3, 2014, this court issued its decision in *Federal National Mortgage Assn.* v. *Bridgeport Portfolio, LLC*, 150 Conn. App. 610, 92 A.3d 966, cert. denied, 312 Conn. 926, 95 A.3d 523 (2014) (*Bridgeport Portfolio, LLC*). In that case, similar to the present case, the revised amended complaint sought a judgment of strict foreclosure in count one and a money judgment against the defendant guarantor in count two. Id., 612–13. On appeal, the plaintiff claimed that the defendant guarantor was not aggrieved by the judgment of strict foreclosure because no judgment had been rendered against the guarantor individually with respect to the second count of the complaint. Id., 617. This court determined that the guarantor had a real interest in the judgment of strict foreclosure given the trial court's determination that both default interest and a prepayment premium were to be included

cannot enforce a mortgage obligation in a foreclosure proceeding against a guarantor because a guarantor is not a party to such an obligation. In the present case, although the guarantors are parties to the guarantee, they are not parties to the mortgage or the note—both documents were signed on behalf of the defendant. The guarantors have no legal interest in the property securing the note and have no equitable or statutory right of redemption in the property. Accordingly, the plaintiff could not properly make the guarantors parties to the foreclosure claim because it could not seek to extinguish the guarantors' right of redemption, which is the purpose of foreclosure, nor in the alternative seek to enforce the note against them. The plaintiff only could seek that relief from the defendant, who had pledged its property as security for the contract between it and the plaintiff. Although the guarantors have a general interest in the foreclosure due to their separate and distinct obligation under the guarantee to pay any remaining amount due on the underlying debt, that interest does not render them parties to the foreclosure. Therefore, the guarantors could not be parties to the foreclosure . . . ."[5] (Footnotes omitted; internal quotation marks omitted.) Id., 682–83.

as part of the outstanding debt, and given the plaintiff's position that the guarantor would be conclusively bound by the trial court's determination of the mortgage debt. Id., 618. On July 29, 2014, our Supreme Court issued its decision in *Winthrop Properties, LLC*, supra, 312 Conn. 662. In that case, in contrast, our Supreme Court held that "[a]lthough . . . guarantors have a general interest in the foreclosure due to their separate and distinct obligation under the guarantee to pay any remaining amount due on the underlying debt, that interest does not render them parties to the foreclosure." (Footnote omitted.) Id., 683. In reaching that determination, the court did not reference this court's decision in *Bridgeport Portfolio, LLC*, supra, 610, decided just the previous month. Nevertheless, it appears that *Bridgeport Portfolio, LLC*, effectively has been overruled sub silentio by *Winthrop Properties, LLC*, to the extent that it holds that a guarantor has a sufficient interest to have standing to challenge a foreclosure judgment.

[5] Our Supreme Court further noted that "it is immaterial that, in the present case, the plaintiff advanced claims to foreclose the mortgage and to enforce the guarantee in a single proceeding. It is important to recognize the distinc-

It is well established that, "[a]s an intermediate appellate court, we are bound by Supreme Court precedent and are unable to modify it. . . . [W]e are not at liberty to overrule or discard the decisions of our Supreme Court but are bound by them. . . . [I]t is not within our province to reevaluate or replace those decisions." (Internal quotation marks omitted.) *State* v. *Vasquez*, 194 Conn. App. 831, 839–40, 222 A.3d 1018 (2019), cert. denied, 334 Conn. 922, 223 A.3d 61 (2020). Accordingly, we are bound by our Supreme Court's determination in *Winthrop Properties, LLC*, supra, 312 Conn. 665, that guarantors cannot be parties to a foreclosure claim. It follows that, in the present case, Speer, as a guarantor, was not a party to the mortgage or the note, and has neither a legal interest in the property securing the note, nor an equitable or statutory right of redemption in the property. As such, the substitute plaintiff could not properly make Speer a party to the foreclosure claim or seek to enforce the note against Speer. Therefore, because Speer was not and could not be a party to the foreclosure claim, she has no standing to challenge the foreclosure judgment on appeal. See *State* v. *Salmon*, 250 Conn. 147, 153, 735 A.2d 333 (1999) (to establish subject matter jurisdiction for appellate review, appellant must be party and be aggrieved, and appeal must

tion between a claim and a cause of action, terms that oftentimes are confused and even used interchangeably. . . . [A] plaintiff's cause of action constitutes a single group of facts which are claimed to have brought about an unlawful injury to the plaintiff for which one or more of the defendants are liable, without regard to the character of the legal rights of the plaintiff which have been violated. . . . In order for the facts to constitute a single group, the liability of each defendant must, in some aspect of the proof permissible under the allegations of the complaint, relate to and depend upon a single primary breach of duty. . . . Therefore, when a plaintiff asserts multiple claims, which are legal theories that arise out of and depend upon the group of facts that brought about a single primary breach of duty, there is but one cause of action. . . . Despite there being one cause of action, the plaintiff can maintain separate claims against individual defendants, who need not be jointly liable for each claim." (Citations omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.) *Winthrop Properties, LLC*, supra, 312 Conn. 684–85.

be taken from final judgment); *M.U.N. Capital, LLC* v. *National Hall Properties, LLC*, 163 Conn. App. 372, 376, 136 A.3d 665 (former defendant who was not party to underlying foreclosure judgment lacked standing to appeal from judgment of trial court dismissing its motion to open and vacate judgment of strict foreclosure), cert. denied, 321 Conn. 902, 136 A.3d 1272 (2016); see also Practice Book § 61-1 (only aggrieved party may appeal from final judgment). We therefore dismiss the appeal as to count one for lack of subject matter jurisdiction.

II

We must next examine whether the appeal is valid with respect to count two of the amended complaint. To the extent that the appeal relates to the plaintiff's claim against Speer in count two pursuant to the guarantee, we conclude that no final judgment exists with respect to count two and, thus, dismiss the appeal as to that count as well.

We first set forth our standard of review. "The lack of a final judgment implicates the subject matter jurisdiction of an appellate court to hear an appeal. A determination regarding . . . subject matter jurisdiction is a question of law . . . [and, therefore] our review is plenary." (Internal quotation marks omitted.) *Hylton* v. *Gunter*, 313 Conn. 472, 478, 97 A.3d 970 (2014); see also *Heyward* v. *Judicial Dept.*, 159 Conn. App. 794, 799, 124 A.3d 920 (2015) ("[t]he lack of final judgment is a threshold question that implicates the subject matter jurisdiction of this court [and] [i]f there is no final judgment, we cannot reach the merits of the appeal" (internal quotation marks omitted)). "[O]nce the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented . . . and the court must fully resolve it before proceeding further with the case. . . . If it becomes apparent to

the court that such jurisdiction is lacking, the appeal must be dismissed." (Internal quotation marks omitted.) *M.U.N. Capital, LLC* v. *National Hall Properties, LLC*, supra, 163 Conn. App. 374. "The policy concerns underlying the final judgment rule are to discourage piecemeal appeals and to facilitate the speedy and orderly disposition of cases at the trial court level. . . . The appellate courts have a duty to dismiss, even on [their] own initiative, any appeal that [they lack] jurisdiction to hear." (Internal quotation marks omitted.) *Krausman* v. *Liberty Mutual Ins. Co.*, 195 Conn. App. 682, 687, A.3d (2020).

In the present case, the record does not reveal any judgment by the trial court with respect to count two of the amended complaint. Instead, it appears that the court rendered judgment only with respect to count one. At oral argument before this court, the attorney for the substitute plaintiff represented that the action with respect to count two is still pending before the trial court. Speer did not appear for oral argument before this court and, thus, has not contested that representation, nor did she address this issue in her appellate brief. Accordingly, because the court did not render a judgment with respect to the claim against Speer under the guarantee in count two and the matter concerning count two is still pending before the court, the appeal must be dismissed with respect to that count for lack of a final judgment.[6] See *Krausman* v. *Liberty Mutual Ins. Co.*, supra, 195 Conn. App. 687 ("[u]nless otherwise provided by law, the jurisdiction of our appellate courts is restricted to appeals from final judgments").

The appeal is dismissed.

In this opinion the other judges concurred.

[6] We note that, as a result of our decision today and as acknowledged by counsel for the substitute plaintiff at oral argument before this court, Speer will be free to pursue her claims raised in this appeal during any proceedings before the trial court regarding count two.

MEMORANDUM DECISIONS

CONNECTICUT APPELLATE REPORTS

VOL. 197

MEMORANDUM DECISIONS

ROBERT V. PENTLAND III *v.* COMMISSIONER OF CORRECTION (AC 42760)

DiPentima, C. J., and Lavine and Moll, Js.

Submitted on briefs April 15—officially released May 5, 2020

Petitioner's appeal from the Superior Court in the judicial district of Tolland, *Newson*, *J.*

Per Curiam. The judgment is affirmed.

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SUPREME COURT PENDING CASES

The following appeal is assigned for argument in the Supreme Court on May 4, 2020

IN RE AVA W., SC 20465
Judicial District of Hartford

Child Protection; Termination of Parental Rights; Whether Trial Court had Authority Under General Statutes § 17-112 to Order Posttermination Visitation; Whether Mother Whose Parental Rights Were Terminated has Standing to Challenge Ruling Concerning Posttermination Visitation. The Department of Children and Families filed a petition to terminate the parental rights of the respondent mother to the minor child, Ava W. During closing argument at trial, the attorney for the minor child argued that the trial court should terminate the respondent's parental rights, but requested that the court also order that the department and Ava's preadoptive foster parent facilitate visitation between Ava and the respondent. The trial court rendered judgment terminating the respondent's parental rights and, at the same time, issued a separate decision in which it found that it lacked authority under General Statutes § 17-112 to order posttermination visitation. Section 17-112 provides that birth parents and adoptive parents may enter into cooperative postadoption agreements regarding communication or contact between the birth parents and the adopted child. The statute further provides that if the trial court "determines that the child's best interests will be served by postadoption communication or contact with either or both birth parents, the court shall so order" and that the trial court "may grant postadoption communication or contact privileges if . . . the intended adoptive parent and either or both birth parents execute a cooperative agreement" that is approved by the court. The trial court found that it was not authorized by the statute to order posttermination visitation between Ava and the respondent because there was no agreement between the respondent and the adoptive parent concerning posttermination visitation. The respondent appeals from the trial court's ruling on the request for posttermination visitation. She argues that the trial court had authority to order posttermination visitation pursuant to the broad equitable powers afforded by General Statutes § 46b-121, which gives the trial court in juvenile matters the "authority to make and enforce such orders directed to parents . . . as the court deems necessary or appropriate to secure the welfare, protection, proper care and suitable support of a child subject to the court's jurisdiction or otherwise committed to or in the custody of the [department]." The

department argues that this appeal should be dismissed because the respondent lacks standing to challenge the ruling on posttermination visitation, as she no longer has a right to visitation with Ava because the trial court terminated her parental rights and she did not appeal from that ruling. The department also argues that, even if the trial court had authority to order posttrial visitation, such an order is not warranted here because it would not be in Ava's best interests.

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

The summary appearing here is not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. This summary is prepared by the Staff Attorneys' Office for the convenience of the bar. It in no way indicates 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 on a request for declaratory ruling filed by the American Academy of Dental Sleep Medicine pursuant to Conn. Gen. Stat. § 4-176 on the following issue:

1. Is it within a dentist's scope of practice to dispense unattended cardiorespiratory portable monitors (hereinafter ''portable monitors'') when ordered by physicians for patients at risk for sleep apnea and the test results are provided to a physician for interpretation and diagnosis?
2. Is it within a dentist's scope of practice to order portable monitors for patients identified by the dentist as being at risk for sleep apnea and the test results are provided to a physician for interpretation and diagnosis?
3. Is it within a dentist's scope of practice to use a portable monitor to help determine the optimal effective position of a patient's oral appliance?
4. If a dentist does not use a portable monitor to determine the optimal effective position of a patient's oral appliance, is it within a dentist's scope of practice to order a portable monitor to verify the effectiveness of the oral appliance and the test results are provided to a physician for interpretation and a determination of therapeutic effectivness?

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

All persons seeking status to participate must petition the Commission by June 1, 2020. All requests seeking status to participate in this matter shall be submitted in writing in accordance with § 4-176(d) of the Connecticut General Statutes and § 19a-9-26 through § 19a-9-28 of the Regulations of Connecticut State Agencies. All filings to be submitted to the Commission shall be sent to the Jeffrey Kardys, Administrative Hearings Specialist, Department of Public Health, Public Health Hearing Office, 410 Capitol Avenue MS#13PHO, P.O. Box 340308, Hartford, Connecticut, 06134-0308 or by email to jeffrey.kardys@ct.gov. It is anticipated that the Commission will rule on petitions for status by June 10, 2020. A date for hearing will thereafter be scheduled by the Commission.

By law, a declaratory ruling constitutes a statement of agency law which is binding upon those who participate in the hearing, and may also be utilized by the Connecticut State Dental Commission, on a case by case basis, in future proceedings before it.

Peter Katz, DMD, Chairperson
Connecticut State Dental Commission
April 22, 2020