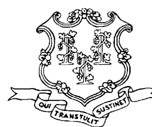
CONNECTICUT LAW JOURNAL



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CONNECTICUT REPORTS

Vol. 336

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF CONNECTICUT

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ERICA LAFFERTY ET AL. *v.* ALEX EMRIC JONES ET AL.

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WILLIAM SHERLACH ET AL. *v.* ALEX EMRIC JONES ET AL.

(SC 20327)

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

Syllabus

The plaintiffs, a first responder and family members of those killed in the mass shooting at Sandy Hook Elementary School, commenced separate actions, which the trial court consolidated, seeking to recover damages

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

This case originally was scheduled to be argued before a panel of this court consisting of Chief Justice Robinson and Justices Palmer, McDonald, D'Auria, Mullins, Kahn and Ecker. Although Justice Palmer was not present

from the defendants, J and several of his affiliated corporate entities, for, inter alia, invasion of privacy, arising out of statements made by J on his radio show advancing certain conspiracy theories about the shooting. The defendants filed special motions to dismiss the plaintiffs' complaints pursuant to the statute (§ 52-196a (b)) permitting the court to dismiss a complaint that is based on the opposing party's exercise of its constitutional right to free speech in connection with a matter of public concern. The plaintiffs moved for limited discovery pursuant to § 52-196a (d) in order to respond to the special motions to dismiss. The trial court found good cause for limited discovery and ordered the defendants to comply by a certain date, but they failed to meet that deadline. The defendants then filed motions for an extension of time within which to produce the discovery materials. The court granted the motions but warned that, if the defendants continued to ignore deadlines, they would be foreclosed from pursuing their special motions to dismiss. Two days before the new deadline, the defendants again moved for an extension of time, but the court denied the motions, explaining that the defendants had not substantially complied with its discovery orders. On that basis, the plaintiffs moved for sanctions. At the hearing on the sanctions motions, the defendants argued that, by that time, they had responded to almost every discovery request and were in substantial compliance. The court agreed and concluded that their production was sufficient to allow them to pursue their special motions to dismiss. Subsequently, in response to the plaintiffs' request, the trial court ordered the defendants to produce certain marketing data and a complete search of J's cell phone, again warning that it would consider appropriate sanctions if the defendants failed to comply. Shortly thereafter, J and his attorney appeared together on J's radio show to discuss the case, during which J explained that someone had embedded child pornography in e-mails he had turned over to the plaintiffs in discovery. J then went on a long tirade against those whom he believed had planted the child pornography, during which he implicated the plaintiffs' attorney, M, accused M of committing a felony, threatened M, declared war on M, and promoted a $1 million bounty. Shortly after the broadcast, the parties appeared before the court and argued whether the court should order sanctions as a result of the broadcast. After hearing arguments, the court imposed sanctions against the defendants and revoked their opportunity to pursue the merits of their special motions to dismiss, basing its decision on the facts that the defendants had not complied with its discovery orders and that J had harassed, intimidated, and threatened M. Following the court's imposition of sanctions, the defendants appealed pursuant to the statute (§ 52-265a) permitting the Chief Justice to certify an interlocutory appeal involving a matter of substantial public interest. *Held*:

when the case was argued before the court, he has read the briefs and appendices, and listened to a recording of the oral argument prior to participating in this decision.

1. The trial court did not violate the defendants' first amendment rights when it imposed sanctions on the basis of J's broadcast because, considering J's role as a party in the litigation and the threatening nature of his speech, J's broadcast presented an imminent and likely threat to the administration of justice: this court concluded that, if extrajudicial speech by a party to litigation poses an imminent and likely threat to the administration of judicial proceedings, a court may sanction a party for that speech, without violating the first amendment, to the extent necessary to protect the fairness of the litigation and taking into consideration the timing and the nature of the speech; J's status as a party to the litigation and the threatening and vituperative nature of his speech served to confirm the imminence and likelihood of the threatened harm, J, as a party commenting on his own litigation, had a greater opportunity and perceived incentive to affect the outcome of the cases than a nonparty criticizing a judicial action, and J's speech was threatening and intimidating, led to additional threats against the trial judge and the plaintiffs' counsel, and created a hostile atmosphere that could discourage individuals from participating in the litigation and pose a threat to the plaintiffs' ability to litigate their cases; moreover, the court penalized the defendants in a restrained manner in order to preserve the judicial process, and the sanctions imposed were narrowly tailored to achieving the government's substantial interest in ensuring the administration of justice, as the court refrained from imposing a more severe sanction, such as defaulting the defendants or holding them in contempt, and, instead, merely revoked a statutory benefit, namely, the opportunity to pursue their special motions to dismiss.
2. The trial court did not abuse its discretion by sanctioning the defendants, as it was undisputed that the court's discovery orders were reasonably clear and that the defendants violated four of them, and revoking the defendants' opportunity to pursue the special motions to dismiss was proportional to their discovery violations and in light of the nature of J's broadcast: the record supported the trial court's finding that the defendants wilfully disregarded the discovery orders and continued to challenge the underlying merits of the limited discovery despite the court's finding that it was supported by good cause, and the defendants' noncompliance was prejudicial to the plaintiffs because the undisclosed discovery material could have assisted the plaintiffs in proving probable cause that they would succeed on the merits of their complaints; moreover, the sanctions imposed were proportional in light of the defendant's wilful, repeated violations of deadlines, when considered in combination with J's harassment and intimidation of M during the broadcast, and measured insofar as the sanctions fell short of a judgment of default or dismissal and, instead, merely required the defendants to adjudicate the merits of the cases in the ordinary course of litigation rather than through their special motions to dismiss; furthermore, the defendants' claim that the sanctions were inappropriate because the limited discovery itself was overbroad did not excuse their failure to comply with the court's orders.

3. The defendants' claim that the trial court denied them their right to due process by imposing sanctions without adequate notice and a meaningful opportunity to be heard was unavailing: the plaintiffs had filed an earlier motion seeking sanctions for the defendants' discovery noncompliance, and the court repeatedly discussed the possibility of sanctioning the defendants, including warning that it would revoke their opportunity to pursue the special motions to dismiss, and issued an order stating that it would address J's broadcast at a hearing to be held the following day; moreover, the court heard thorough argument on the issue of sanctions at the hearing on the broadcast, and at no point did the defendants request additional time to prepare.

Argued September 26, 2019—officially released July 23, 2020**

Procedural History

Action, in the first case, to recover damages for, inter alia, invasion of privacy, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the defendant Alex Emric Jones et al. filed a special motion to dismiss, action, in the second case, to recover damages for, inter alia, invasion of privacy, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Bellis*, *J.*, granted the plaintiff William Sherlach's motion to add Robert Parker as a plaintiff, and the defendant Alex Jones et al. filed a special motion to dismiss, and action, in the third case, to recover damages for, inter alia, invasion of privacy, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the defendant Alex Emric Jones et al. filed a special motion to dismiss; thereafter, the cases were consolidated and transferred to the Complex Litigation Docket, judicial district of Waterbury; subsequently, the court, *Bellis*, *J.*, granted the motions for sanctions filed by the plaintiffs in each case, and the defendant Alex Emric Jones et al., upon certification by the Chief Justice pursuant to General Statutes § 52-265a that a matter of substantial public interest was at issue, appealed to this court. *Affirmed.*

** July 23, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Norman A. Pattis, with whom was *Kevin Smith*, for the appellants (named defendant et al.).

Joshua D. Koskoff, with whom was *Alinor C. Sterling*, for the appellees (plaintiffs).

Opinion

ROBINSON, C. J. This public interest appeal presents the opportunity to consider the scope of a trial court's inherent authority to sanction a party to litigation for his or her remarks about the case in light of that party's right to free speech under the first amendment to the United States constitution. The plaintiffs in these cases, a first responder and family members of those killed in the mass shooting at Sandy Hook Elementary School,[1] brought these actions against the defendants, Alex Emric Jones and several of his affiliated corporate entities,[2] claiming that statements made on Jones' radio show advancing certain conspiracy theories about the Sandy Hook shooting were tortious in nature. The defendants appeal[3] from the orders of the trial court sanctioning them by revoking their opportunity to pur-

[1] The plaintiffs are Erica Lafferty, David Wheeler, Francine Wheeler, Jacqueline Barden, Mark Barden, Nicole Hockley, Ian Hockley, Jennifer Hensel, Jeremy Richman, Donna Soto, Carlee Soto-Parisi, Carlos M. Soto, Jillian Soto, and William Aldenberg.

[2] The defendants participating in this appeal are Jones and several of his affiliated corporate entities, namely, Infowars, LLC, Free Speech Systems, LLC, Infowars Health, LLC, and Prison Planet TV, LLC. We refer to these parties collectively as the defendants and, when necessary, individually by name.

The additional defendants named in the complaint, Wolfgang Halbig, Cory T. Sklanka, Genesis Communications Network, Inc., and Midas Resources, Inc., are not parties to this appeal.

[3] The defendants appeal pursuant to the Chief Justice's grant of their petition to file an expedited public interest appeal pursuant to General Statutes § 52-265a. A sanctions order for discovery violations generally is considered interlocutory and is not appealable until a party is held in contempt for noncompliance. *Incardona* v. *Roer*, 309 Conn. 754, 760, 73 A.3d 686 (2013). We have appellate jurisdiction, however, because it is well established that "appeals from interlocutory orders may be taken pursuant to § 52-265a." *Foley* v. *State Elections Enforcement Commission*, 297 Conn. 764, 767 n.2, 2 A.3d 823 (2010).

sue the special motions to dismiss provided by Connecticut's anti-SLAPP[4] statute, General Statutes § 52-196a,[5] issued after the trial court found that the defendants

[4] SLAPP is an acronym for "strategic lawsuit against public participation," the "distinctive elements of [which] are (1) a civil complaint (2) filed against a nongovernment individual (3) because of their communications to government bodies (4) that involves a substantive issue of some public concern. . . . The purpose of a SLAPP suit is to punish and intimidate citizens who petition state agencies and have the ultimate effect of chilling any such action." (Citation omitted; internal quotation marks omitted.) *Field* v. *Kearns*, 43 Conn. App. 265, 275–76, 682 A.2d 148, cert. denied, 239 Conn. 942, 684 A.2d 711 (1996).

[5] General Statutes § 52-196a provides in relevant part: "(b) In any civil action in which a party files a complaint, counterclaim or cross claim against an opposing party that is based on the opposing party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, such opposing party may file a special motion to dismiss the complaint, counterclaim or cross claim.

"(c) Any party filing a special motion to dismiss shall file such motion not later than thirty days after the date of return of the complaint, or the filing of a counterclaim or cross claim described in subsection (b) of this section. The court, upon a showing of good cause by a party seeking to file a special motion to dismiss, may extend the time to file a special motion to dismiss.

"(d) The court shall stay all discovery upon the filing of a special motion to dismiss. The stay of discovery shall remain in effect until the court grants or denies the special motion to dismiss and any interlocutory appeal thereof. Notwithstanding the entry of an order to stay discovery, the court, upon motion of a party and a showing of good cause, or upon its own motion, may order specified and limited discovery relevant to the special motion to dismiss.

"(e) (1) The court shall conduct an expedited hearing on a special motion to dismiss. . . . (2) When ruling on a special motion to dismiss, the court shall consider pleadings and supporting and opposing affidavits of the parties attesting to the facts upon which liability or a defense, as the case may be, is based. (3) The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint, counterclaim or cross claim is based on the moving party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, unless the party that brought the complaint, counterclaim or cross claim sets forth with particularity the circumstances giving rise to the complaint, counterclaim or cross claim and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint, counterclaim or cross claim. (4) The court shall rule on a special motion to dismiss as soon as practicable.

had violated numerous discovery orders and that Jones personally had engaged in harassing and intimidating behavior directed at the plaintiffs' counsel, Attorney Christopher Mattei. On appeal, the defendants claim, inter alia, that the trial court (1) improperly sanctioned the defendants because Jones' speech was protected under the first amendment, and (2) abused its discretion in sanctioning the defendants because the trial court improperly permitted discovery that exceeded the limited scope contemplated by § 52-196a (d). The defendants also claim that the trial court violated their due process rights by failing to afford them sufficient notice and a meaningful opportunity to be heard before issuing the sanctions orders. We disagree and, accordingly, affirm the trial court's sanctions orders.

The record reveals the following relevant facts and procedural history. On December 14, 2012, Adam Lanza murdered twenty children and six staff members in a mass shooting at Sandy Hook Elementary School in Newtown. Some conspiracy theorists questioned the circumstances surrounding the shooting and called it a hoax. In response to statements made by Jones and other individuals featured on his radio show, the plaintiffs brought three separate civil actions against the defendants in 2018. The complaints alleged counts of invasion of privacy by false light, defamation and defamation per se, intentional infliction of emotional distress, and negligent infliction of emotional distress, all

"(f) (1) If the court grants a special motion to dismiss under this section, the court shall award the moving party costs and reasonable attorney's fees, including such costs and fees incurred in connection with the filing of the special motion to dismiss. (2) If the court denies a special motion to dismiss under this section and finds that such special motion to dismiss is frivolous and solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to the party opposing such special motion to dismiss.

"(g) The findings or determinations made pursuant to subsections (e) and (f) of this section shall not be admitted into evidence at any later stage of the proceeding or in any subsequent action. . . ."

of which were accompanied by counts of civil conspiracy. In addition, the complaints claimed violations of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq. The trial court consolidated all three cases.

In November, 2018, the defendants filed special motions to dismiss the plaintiffs' complaints pursuant to the anti-SLAPP statute. See General Statutes § 52-196a (b). In order to respond to the special motions to dismiss, the plaintiffs moved for limited discovery pursuant to § 52-196a (d). The plaintiffs argued that they had demonstrated good cause to entitle them to "specified and limited discovery relevant to the special motion[s] to dismiss" pursuant to § 52-196a (d) and asked the trial court to permit discovery on every issue raised by the defendants' special motions to dismiss to allow them to demonstrate probable cause of success on the merits of their complaints. See General Statutes § 52-196a (e) (3). The defendants opposed the plaintiffs' motion for limited discovery, claiming that the plaintiffs' broad discovery requests were contrary to the purpose of the anti-SLAPP statute and that the plaintiffs had failed to show good cause.

With respect to the specific discovery requests, the plaintiffs initially requested five special interrogatories and twenty-one requests for production from Jones.[6] At a hearing on December 17, 2018, the trial court found

[6] Similar interrogatories and requests for production, with small variations in number and language, were made to Cory T. Sklanka, Wolfgang Halbig, Free Speech Systems, LLC, Infowars Health, LLC, Infowars, LLC, Prison Planet TV, LLC, Midas Resources, Inc., and Genesis Communications Network, Inc. In addition, the plaintiffs noticed the individual depositions of Jones, Sklanka, Halbig, Kurt Nimmo, the former editor of Infowars, LLC, and Steve Pieczenik, a guest on Jones' radio show who had expressed that the Sandy Hook shooting was a hoax, as well as the corporate designees of Free Speech Systems, LLC, Genesis Communications Network, Inc., Infowars Health, LLC, Infowars, LLC, Midas Resources, Inc., and Prison Planet TV, LLC.

good cause and granted the plaintiffs' motion for limited discovery but indicated that it would not grant all of the plaintiffs' requests and would consider each of the defendants' objections individually. The trial court then allowed the parties numerous opportunities to mediate disputes and delineate their discovery obligations at discovery status conferences.

After narrowing the plaintiffs' requests, the trial court initially ordered the defendants to produce their discovery compliance by February 23, 2019. The defendants failed to meet that deadline.[7] The defendants then filed motions for an extension of time, which the trial court granted, allowing them until March 20, 2019, to produce their discovery materials. In granting the motions, the trial court "urge[d] the defendants to honor this court ordered deadline because the defendants are the ones [who] want their motion[s] to dismiss adjudicated, but if they're going to continue to ignore court deadlines, they're going to lose the ability . . . to pursue their [special] motion[s] to dismiss."

Two days before the March 20, 2019 discovery deadline, the defendants again moved for an extension of time. This time, the trial court denied the motions, indicating at a hearing with the parties that the defendants had not substantially complied with its discovery orders. The trial court explained that the "defendants, at this point, are coming from a position of weakness. They've blown past the court's deadlines. There hasn't been a single piece of paper [produced] or interrogatory answered." In light of the defendants' noncompliance, the plaintiffs moved for sanctions on March 20, 2019. Specifically, the plaintiffs argued that, under Practice Book § 13-14[8] and the trial court's inherent authority,

[7] The defendants filed motions for an extension of time on February 22, 2019, the day before production was due. It does not appear that the trial court decided those motions.

[8] Practice Book § 13-14 provides in relevant part: "(a) If any party has failed to answer interrogatories or to answer them fairly, or has intentionally

the court should impose sanctions for the defendants' violations of discovery deadlines.

At a hearing on April 3, 2019, the trial court began to address the plaintiffs' motions for sanctions but delayed ruling on them to allow the defendants' counsel time to resolve an unspecified ethical concern. Subsequently, on April 10, 2019, the court heard argument on the motions for sanctions. The defendants argued that they had responded by that time to almost every discovery request and that they were in substantial compliance with the court's discovery orders. The trial court agreed with the defendants, concluding that, although they had not complied with every discovery request, the production to that point was sufficient to allow them to pursue the merits of the special motions to dismiss.

Subsequently, in late May, 2019, the plaintiffs brought additional discovery issues to the trial court's attention. Specifically, the plaintiffs requested, inter alia, additional responsive marketing data from Google Analytics and a complete search of Jones' cell phone. After another hearing, the trial court ordered the defendants to produce marketing data responsive to the court approved production requests. The court warned that it would "consider appropriate sanctions for the defendants' failure to fully and fairly comply" with its latest orders.

answered them falsely or in a manner calculated to mislead, or has failed to respond to requests for production or for disclosure of the existence and contents of an insurance policy or the limits thereof, or has failed to submit to a physical or mental examination, or has failed to comply with a discovery order made pursuant to Section 13-13, or has failed to comply with the provisions of Section 13-15, or has failed to appear and testify at a deposition duly noticed pursuant to this chapter, or has failed otherwise substantially to comply with any other discovery order made pursuant to Sections 13-6 through 13-11, the judicial authority may, on motion, make such order as the ends of justice require.

"(b) Such orders may include the following: (1) The entry of a nonsuit or default against the party failing to comply . . . [and] (5) If the party failing to comply is the plaintiff, the entry of a judgment of dismissal. . . ."

On Friday, June 14, 2019, Jones and his attorney, Norman A. Pattis, appeared together on Jones' radio broadcast to discuss the pending case. Jones explained to the broadcast audience that someone had embedded child pornography in e-mails turned over to the plaintiffs in discovery. Jones then began a long invective against those whom he believed had planted the child pornography, which we quote in relevant part:[9]

"Jones: I'm here to tell the little pimps, the Senator Murphys and the prosecutor, the Obama appointed prosecutor [who's] doing all this, bitch, I don't need to talk about poor dead kids to have listeners.

* * *

"Jones: They say you're a pedophile. We knew it was coming. And when the Obama appointed [United States] attorney demanded, out of 9.6 million e-mails in the last seven years since Sandy Hook, metadata, which

[9] The defendants and the plaintiffs both included transcripts of the June 14, 2019 broadcast in their appendices filed with this court. Their transcripts do not differ materially with respect to the language quoted in this opinion except for one phrase. The defendants' transcript uses the phrase "white shoe boy," whereas the plaintiffs' transcript uses the phrase "white Jew boy . . . ." The trial court, in its oral decision ordering sanctions, relied on the plaintiffs' transcript containing the phrase "white Jew boy . . . ." The defendants subsequently filed a motion to correct the transcript, which the trial court did not decide.

In their appellate briefs, the defendants noted the inconsistencies between the two transcripts and that the trial court had not ruled on their motion to correct, but they do not specifically challenge the accuracy of this phrase on appeal. As the trial court did not decide the motion to correct, we omit the words "Jew" and "shoe" in the quoted transcript.

The transcripts of the broadcast each exceed thirty pages, so we have not reproduced them in their entirety. We include only those portions relied on by the trial court, supplemented when necessary for context. Specifically, we have omitted those portions in which Jones discusses the case's background and the details of the child pornography incident, Jones' introduction of Pattis, Jones' critique of the plaintiffs' case and the Google Analytics reports, discussion of the first amendment ramifications of questioning the veracity of the Sandy Hook shooting, most of Pattis' statements, and other duplicative or irrelevant portions of the broadcast.

meant tracking the e-mails and where they went, well, we fought it in court. The judge ordered for us to release a large number of those e-mails. That's Chris Mattei [who] got that done, a very interesting individual with the firm of Koskoff & Koskoff run by Senator Murphy and Senator Blumenthal that say, for America to survive, quote, I must be taken off the air. . . .

"It was hidden. In Sandy Hook e-mails threatening us, there was child porn. . . . And they get these e-mails a few weeks ago, and they go right to the [Federal Bureau of Investigation (FBI)] and say, '[w]e've got him with child porn.' The FBI says, '[h]e never opened it. He didn't send it.' And then they act like, oh, they're our friends. They're not going to do anything with this. . . .

"Now, I wonder who during discovery would send e-mails out of millions and then know what to search and look at. . . . One million dollars on conviction for who sent the child porn. . . . We're going to turn you loose, the [internet service providers], the law enforcement. You know who did it. . . .

"You think when you call up, oh, we'll protect you. We found the child porn. I like women with big giant tits and big asses. I don't like kids like you goddamn[ed] rapists, f-heads. In fact, you fucks are going to get it, you fucking child molesters. I'll fucking get you in the end, you fucks. . . . You're trying to set me up with child porn. I'm going to get your ass. One million dollars. One million dollars, you little gang members. One million dollars to put your head on a pike. One million dollars, bitch. I'm going to get your ass. You understand me now? You're not going to ever defeat Texas, you sacks of shit. So you get ready for that.

* * *

"Jones: Why does law enforcement say $5000, dead or alive? One million. 'Cause we all know who did it.

* * *

"Jones: What a nice group of Democrats. How surprising. What nice people. Chris Mattei, Chris Mattei. Let's zoom in on Chris Mattei. Oh, nice little Chris Mattei. What a good American. What a good boy. You think you'll put on me—anyways, I'm done. Total war. You want it? You got it. I'm not into kids like your Democratic party, you cocksuckers. So get ready. . . .

"Jones: The point is, I'm not putting up . . . with these guys anymore, man, and their behavior, 'cause I'm not an idiot. They literally went right in there and found this hidden stuff. Oh, my God. Oh, my God. And they're my friends. We want to protect you now, Alex. Oh, you're not going to get in trouble for what we found. F-U man, F-U to hell. I pray God, not anybody else, God visit[s] vengeance upon you in the name of Jesus Christ and all the saints. I pray for divine intervention against the powers of Satan. I literally would never have sex with children. I don't like having sex with children. I would never have sex with children. I am not a Democrat. I am not a liberal. I do not cut children's genitals off like the left does.

* * *

"Jones: I want them to. I want them to track it back to you know who. . . . I wonder who the person of interest is.

"Pattis: Look, are you showing Chris Mattei's photograph on here?[10]

"Jones: Oh, no. That was an accidental cut. He's a nice Obama boy. . . . He's a white . . . boy that thinks he owns America.

[10] The defendants' transcript provides: "Look. You're showing Chris Mattei's photograph on the air."

* * *

"Jones: That's why I said, one million. I'm not BS-ing. One million dollars when they are convicted. The bounty is out, bitches, and you know, you feds, they're going to know you did it. They're going to get your ass, you little dirt bag. One million, bitch. It's out on your ass. . . .

"Jones: One million—I pay all debts—one million is on the street for who sent me—and we're going to get the e-mails. We're going to publish them next week. And we're going to make a whole thing. We're not going to show the child porn, but we're going to put the e-mails out, and we're going to show you where they came from. One million on the street. . . .

"Jones: A million dollars is after them. So I bet you'll sleep real good tonight, little jerk. 'Cause your own buddies are going to turn you in, and you're going to go to prison, you little white . . . boy jerkoff. Son of a bitch. I mean, I can't handle them. They want war? They're going to get war. I am sick of these people, a bunch of chicken craps [who] have taken this country over [who] want to attack real Americans. . . .

"Jones: We're going to get them. One million. One million dollars is on the street against you. You didn't destroy America on time, bitch. I am pissed, man. I will give everything I have to stop living in this world with these people.

* * *

"Jones: I am sure that [the United States] attorneys appointed by Obama are sweet little cupcakes. Come on. . . .

"Jones: I don't even think errand boy did this. I'm actually not saying that.[11] . . . And so, if they want war—you know, it's not a threat. It's like an AC/DC

[11] The defendants' transcript provides: "No, I'm sure—you don't think errand boy did this. I'm actually not saying that."

song. If you want blood, you've got it. Blood on the streets, man. . . .

"Jones: And I'm just asking the Pentagon and the patriots that are left, and 4chan and 8chan, and Anonymous, anybody [who's] a patriot, I am under attack, and if they bring me down, they'll bring you down. I just have faith in you. I'm under attack. And I summon the mean war. I summon all of it against the enemy. . . .

"Jones: . . . How would you like an Obama appointed [United States] attorney, man, [who] literally found a needle in a field of haystacks and tried to go to the feds and get me indicted? . . . And now I ask my listeners and everyone, you claimed I sent people. I never sent anybody. And I want legal and lawful action. But I pray to God that America awaken[s]. Will Texas be defeated? You will now decide. This is war." (Footnotes added.)

The very next Monday, June 17, 2019, the plaintiffs filed motions asking the trial court to review the broadcast. The plaintiffs also asked for "an expedited briefing schedule concerning what orders must issue in connection with [Jones'] on-air statements . . . ." In those motions, the plaintiffs explained that a data firm they had retained located child pornography in the defendants' metadata and that they "immediately contacted the FBI." That same day, the trial court issued an order that "[c]ounsel should be prepared to address the matter at tomorrow's hearing . . . ."

The next day, June 18, 2019, the parties appeared and argued whether the trial court should order sanctions as a result of the broadcast. After hearing argument, the trial court imposed sanctions against the defendants and revoked their opportunity to pursue the merits of their special motions to dismiss pursuant to § 52-196a

(b).[12] This expedited public interest appeal followed. See footnote 3 of this opinion.

On appeal, the defendants claim that the trial court (1) improperly sanctioned them in violation of their first amendment rights, (2) abused its discretion in fashioning sanctions for discovery noncompliance, and (3) denied them due process by failing to afford them notice and a meaningful opportunity to be heard.

I

We begin with the defendants' challenge to the merits of the sanctions orders, which the trial court based on two grounds. First, the trial court found that the defendants were noncompliant with discovery, with their failure to comply with additional production deadlines viewed in light of their previous noncompliance. Second, the trial court found that, on the June 14, 2019 broadcast, Jones accused Mattei of committing a felony and then harassed, intimidated, and threatened him.[13] Because the trial court provided these two bases for its sanctions orders, we must assess the court's orders both for their propriety as sanctions and their constitutionality. We first conclude that the sanctions did not run afoul of the first amendment because they addressed speech that was an imminent and likely threat to the administration of justice. We also conclude that these two rationales, when considered together, provided sufficient grounds for sanctioning the defendants. Accordingly, it was not an abuse of the trial court's discretion

[12] The trial court also indicated that it would award attorney's fees related to the child pornography issue at a later date, "upon further hearing and the filing of affidavits . . . ."

[13] The trial court also stated: "Now, the transcript doesn't reflect this, but, when I listened to the broadcast, I heard, I'm going to kill. Now, that's not in the transcript, but that is my read and understanding, and what I heard [o]n the broadcast." Because the word "kill" is not mentioned in the transcripts, we do not consider it in our analysis of the trial court's sanctions orders.

to sanction the defendants for their discovery violations and Jones' vituperative speech.

A

We first consider whether the trial court's sanctions were permissible under the first amendment's free speech protections. The defendants argue that the trial court's ruling is "bereft of any analysis of the first amendment" and that the court's inherent authority is not an adequate ground to sanction them on the basis of Jones' speech. The defendants further contend that, because Jones' broadcast was not a true threat, did not incite violence, and did not constitute fighting words, the trial court's sanction was impermissible under the first amendment. In response, the plaintiffs first submit that the sanctions were a constitutionally permissible exercise of the trial court's authority to sanction bad faith litigation misconduct, which includes the harassment and intimidation of opposing counsel. Second, the plaintiffs argue that the broadcast was not protected speech because it was a true threat. Although we agree with the defendants that a trial court's inherent authority is subject to constitutional limitations, we nevertheless conclude that Jones' speech during his June 14, 2019 broadcast was not protected by the first amendment because it posed an imminent and likely threat to the administration of justice.

It is well settled that a trial court "has the inherent authority to impose sanctions against an attorney and his client for a course of claimed dilatory, bad faith and harassing litigation conduct . . . ." (Internal quotation marks omitted.) *CFM of Connecticut, Inc.* v. *Chowdhury*, 239 Conn. 375, 393, 685 A.2d 1108 (1996), overruled in part on other grounds by *State* v. *Salmon*, 250 Conn. 147, 735 A.2d 333 (1999); see also R. Pushaw, "The Inherent Powers of Federal Courts and the Structural Constitution," 86 Iowa L. Rev. 735, 764–65 (2001) ("The inherent authority to administer judicial proceed-

ings carries with it a corollary power to control those involved in court business—parties, witnesses, jurors, spectators, and lawyers—to maintain order, decorum, and respect. Sanctions have long been deemed imperative to protect against the disruption or abuse of judicial processes and to ensure obedience to a court's orders, thereby preserving its authority and dignity." (Footnote omitted.)).

A long line of decisions makes clear that this inherent authority to sanction a party extends to sanctioning participants to litigation for engaging in threatening and harassing behavior. See *Maurice* v. *Chester Housing Associates Ltd. Partnership*, 188 Conn. App. 21, 22–23, 204 A.3d 71 (dismissing writ of error stemming from sanctions order, issued under court's inherent authority, against nonparty partner in defendant partnership for sending "an inappropriate e-mail" to opposing counsel and telling her to "sit on his fucking head" (internal quotation marks omitted)), cert. denied, 331 Conn. 923, 206 A.3d 765 (2019);[14] see also *Waivio* v. *Board of Trustees of the University of Illinois*, 290 Fed. Appx. 935, 936–37 (7th Cir. 2008) (affirming judgment of dismissal when plaintiff engaged in "delaying and threatening conduct in the course of the litigation," including threatening to kill opposing counsel), cert. denied, 557 U.S. 926, 129 S. Ct. 2842, 174 L. Ed. 2d 563 (2009); *Thomas* v. *Tenneco Packaging Co.*, 293 F.3d 1306, 1308 (11th Cir. 2002) (upholding sanctions against lawyer for filings "directed at opposing counsel" that trial court "deemed abusive and offensive"); *Carroll* v. *Jaques Admiralty Law Firm, P.C.*, 110 F.3d 290, 291–93 (5th Cir. 1997) (upholding sanction of defendant attorney who engaged in "abusive conduct at his deposition");

[14] The defendants incorrectly state that the sanctioned party in *Maurice* v. *Chester Housing Associates Ltd. Partnership*, supra, 188 Conn. App. 21, did not challenge the sanction on first amendment grounds. Instead, the Appellate Court declined to reach the issue, deeming the courthouse a nonpublic forum. Id., 33 n.11.

Michael v. *Boutwell*, 138 F. Supp. 3d 761, 785–87 (N.D. Miss. 2015) (concluding that defendant's threatening of witness warranted sanction of attorney's fees, expenses and $1000 fine but not dispositive sanction of default judgment); *Kalwasinski* v. *Ryan*, Docket No. 96-CV-6475, 2007 WL 2743434, *3 (W.D.N.Y. September 17, 2007) (dismissing self-represented inmate's federal civil rights action because he "deliberately and intentionally participat[ed] in making threats of physical harm against parties and witnesses in his case"); *Fidelity National Title Ins. Co. of New York* v. *Intercounty National Title Ins. Co.*, Docket No. 00 C 5658, 2002 WL 1433717, *12–13 (N.D. Ill. July 2, 2002) (dismissing defendant's counterclaims "[p]ursuant to [the court's] inherent authority to sanction bad faith conduct in litigation" on basis of his "abusive and threatening" letter to opposing counsel).

When acting under its inherent powers, a court should proceed with caution; "[b]ecause of their very potency, inherent powers must be exercised with restraint and discretion." *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 44, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). This cautionary approach requires that any exercise of the inherent power to sanction be limited by constitutional concerns, such as the requirements of due process. See, e.g., *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752, 767, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980) ("[l]ike other sanctions, attorney's fees certainly should not be assessed lightly or without fair notice and an opportunity for a hearing on the record"); R. Pushaw, supra, 86 Iowa L. Rev. 784 ("[t]o be sure, the [c]ourt has recognized that the [c]onstitution limits federal judges' inherent powers"). As a result, a trial court's exercise of its inherent authority to sanction a party for harassing or threatening speech in the context of litigation is limited by the protections of the first amendment.[15] "The [f]irst [a]mendment

[15] These first amendment implications, however, often are not raised or deeply considered. For example, in *Carroll* v. *Jaques Admiralty Law Firm*,

requires courts to tread warily when restricting litigants' speech. They may do so only when necessary to protect the fairness or integrity of the particular litigation before them." *Bank of Hope* v. *Chon*, 938 F.3d 389, 397 (3d Cir. 2019); see also *Economy Carpets Manufacturers & Distributors, Inc.* v. *Better Business Bureau of Baton Rouge Area, Inc.*, 330 So. 2d 301, 304 (La. 1976) ("the judicial authority, as all powers of government, is not without limit, and [when] it is asserted an individual's right of free speech has been abridged by the exercise of that power, the burden is [on] us to define its limitations"). Speech that might otherwise be protected may be restricted under certain circumstances because of pending judicial proceedings. See, e.g., *In re Brianna B.*, 66 Conn. App. 695, 701, 785 A.2d 1189 (2001) ("[t]he [United States Supreme Court] has . . . emphasized the vitality of individual rights to free speech during legal proceedings, such as discovery, but that the right to free speech is not without limit").

Fundamental first amendment principles guide our analysis of the defendants' claims in this appeal. "The [f]irst [a]mendment, applicable to the [s]tates through the [due process clause of the] [f]ourteenth [a]mendment, provides that Congress shall make no law . . . abridging the freedom of speech. The hallmark of the protection of free speech is to allow free trade in ideas—even ideas that the overwhelming majority of people might find distasteful or discomforting. . . . Thus, the [f]irst [a]mendment ordinarily denies [the government] the power to prohibit dissemination of social, economic and political doctrine [that] a vast majority of its citizens

P.C., supra, 110 F.3d 294, the court succinctly concluded, without substantive discussion, that the sanction imposed did not violate the affected party's first amendment rights. But see *In re White*, Docket No. 2:07CV342, 2013 WL 5295652, *38 (E.D. Va. September 13, 2013) ("[w]here government action, such as an award of sanctions, is directed toward presumptively protected expression, our system of justice places 'the duty . . . on this [c]ourt to say where the individual's freedom ends and the [s]tate's power begins' ").

believes to be false and fraught with evil consequence. . . . The [f]irst [a]mendment affords protection to symbolic or expressive conduct as well as to actual speech. . . . The protections afforded by the [f]irst [a]mendment, however, are not absolute, and we have long recognized that the government may regulate certain categories of expression consistent with the [c]onstitution." (Internal quotation marks omitted.) *State* v. *Moulton*, 310 Conn. 337, 348–49, 78 A.3d 55 (2013), quoting *Virginia* v. *Black*, 538 U.S. 343, 358, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003).

Whether the trial court's sanctions constitute an impermissible restriction on the defendants' speech presents a question of law, over which our review is plenary. "In certain first amendment contexts . . . appellate courts are bound to apply a de novo standard of review. . . . [In such cases], the inquiry into the protected status of . . . speech is one of law, not fact. . . . As such, an appellate court is compelled to examine for [itself] the . . . statements [at] issue and the circumstances under which they [were] made to [determine] whether . . . they . . . are of a character [that] the principles of the [f]irst [a]mendment . . . protect. . . . [I]n cases raising [f]irst [a]mendment issues [the United States Supreme Court has] repeatedly held that an appellate court has an obligation to make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion [in] the field of free expression. *New York Times Co*. v. *Sullivan*, [376 U.S. 254, 284–86, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964)]. . . . This rule of independent review was forged in recognition that a [reviewing] [c]ourt's duty is not limited to the elaboration of constitutional principles . . . . [Rather, an appellate court] must also in proper cases review the evidence to make certain that those principles have been constitutionally applied. . . . Therefore, even though, ordinarily . . . [f]indings of fact . . . shall not be set aside unless

clearly erroneous, [appellate courts] are obliged to [perform] a fresh examination of crucial facts under the rule of independent review." (Internal quotation marks omitted.) *State* v. *Krijger*, 313 Conn. 434, 446–47, 97 A.3d 946 (2014). However, "the heightened scrutiny that this court applies in first amendment cases does not authorize us to make credibility determinations regarding disputed issues of fact." Id., 447.

Whether judicial sanctions imposed for extrajudicial statements made by a party to pending litigation run afoul of the first amendment presents a question of first impression in Connecticut. We find instructive the test that the United States Supreme Court has adopted for considering the constitutionality of contempt as a sanction for out-of-court statements commenting on judicial proceedings.[16] The leading case is *Bridges* v. *California*, 314 U.S. 252, 275–77, 62 S. Ct. 190, 86 L. Ed. 192 (1941), in which the Supreme Court considered whether a union leader could be held in contempt when a newspaper published statements that he had made threatening a strike. The court considered whether the speech presented a "clear and present danger" to the administration of justice. Id., 261–262, 273. Specifically, the court analyzed "the particular utterances . . . in question and the circumstances of their publication to determine to what extent the substantive evil of unfair administration of justice was a likely consequence, and whether the degree of likelihood was sufficient to justify summary punishment." Id., 271. The court reversed the contempt finding because it concluded that a threat to call an impending strike, which the court observed was a *legal* course of action,[17] had not interfered with the administration of justice. Id., 277–78.

[16] Contempt cases are instructive because the power to sanction and the power to hold an individual in contempt both stem from the court's inherent authority. See, e.g., *Jaconski* v. *AMF, Inc.*, 208 Conn. 230, 232–33, 543 A.2d 728 (1988); 17 Am. Jur. 2d 399, Contempt § 1 (2004).

[17] The importance of the legality of the action at issue is demonstrated by the fact that the United States Supreme Court mentioned it twice. See

Subsequently, in *Craig* v. *Harney*, 331 U.S. 367, 368, 375–78, 67 S. Ct. 1249, 91 L. Ed. 1546 (1947), the court applied *Bridges* to a contempt finding imposed for news articles that criticized a judge's ruling and discussed the community's response. Illuminating further clear and present danger, the court explained: "The vehemence of the language used is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute *an imminent, not merely a likely*, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil." (Emphasis added.) Id., 376. In *Craig*, the court deemed speech critical of an elected judge "appropriate, if not necessary." Id., 377. Because "there was . . . no threat or menace to the integrity of the trial"; id.; the court held that the speech was protected. Id., 378.

The Supreme Court again considered the applicability of *Bridges* in *Wood* v. *Georgia*, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569 (1962). In *Wood*, a state court judge convened a grand jury to investigate election law violations, and a local sheriff published a written statement outside of court criticizing the judge and the investigation, which was made available to the grand jury. Id., 376–80, 393. As a result, the state judge held the sheriff in contempt. Id., 380. The Supreme Court concluded that, "in the absence of some other showing of a substantive evil actually designed to impede the course of justice in justification of the exercise of the contempt power to silence the [sheriff], his utterances are entitled to be protected." Id., 389. The court emphasized that *Wood* did not involve a trial or a "judicial proceeding pending" in which such speech could result in prejudice

Bridges v. *California*, supra, 314 U.S. 277 ("[o]n no construction, therefore, can the telegram be taken as a threat either by [the defendant] or the union to follow an illegal course of action"); id., 278 ("[l]et us assume that the telegram could be construed as an announcement of [the defendant's] intention to call a strike, something which, it is admitted, neither the general law of California nor the court's decree prohibited").

to the other side. (Internal quotation marks omitted.) Id. The court reversed the state court's order of contempt because the sheriff's speech did not pose a clear and present danger to the administration of justice in the absence of evidence of "actual interference"[18] with the grand jury investigation. Id., 393, 395.

But, as first amendment case law has progressed, the clear and present danger standard articulated in *Bridges* has been subject to criticism. For example, Justice William O. Douglas excoriated the use of clear and present danger in his concurrence in *Brandenburg* v. *Ohio*, 395 U.S. 444, 452–54, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969). See also, e.g., T. Emerson, "Toward a General Theory of the First Amendment," 72 Yale L.J. 877, 912 (1963) ("There is still some blood remaining in the doctrine, and it has continued to be used in certain types of situations. But, as a general test of the limits of the first amendment, [clear and present danger] must be regarded as unacceptable." (Footnote omitted.)). One major criticism is the ease with which the test may be manipulated to include protected speech. See *Brandenburg* v. *Ohio*, supra, 454 (Douglas, J., concurring)

[18] Actual interference might be construed as an additional factor under the clear and present danger test. See *Wood* v. *Georgia*, supra, 370 U.S. 399 (Harlan, J., dissenting). Read in context, however, *Wood* suggests that the court's search for actual interference likely stems from the facts of *Wood* rather than a substantive alteration to the *Bridges* standard, as the court stated: "[I]n the absence of any showing of an actual interference with the undertakings of the grand jury, *this record lacks persuasion in illustrating the serious degree of harm to the administration of law* . . . ." (Emphasis added.) Id., 393. Indeed, the court specifically observed that the harm that speech could cause to a grand jury investigation is different from that of a trial. See id., 390 ("the limitations on free speech assume a different proportion when expression is directed toward a trial as compared to a grand jury investigation"). Also, earlier cases construing this test required an analysis of imminence and likelihood, which is inconsistent with an actual interference requirement. See *Craig* v. *Harney*, supra, 331 U.S. 373, 376; *Pennekamp* v. *Florida*, 328 U.S. 331, 334, 350, 66 S. Ct. 1029, 90 L. Ed. 1295 (1946); *Bridges* v. *California*, supra, 314 U.S. 263. As a result, we interpret *Wood* in harmony with those cases that came before it and conclude that a showing of actual interference is but one factor in the clear and present danger analysis.

("When one reads the opinions closely and sees when and how the 'clear and present danger' test has been applied, great misgivings are aroused. . . . [T]he threats were often loud but always puny and made serious only by judges so wedded to the status quo that critical analysis made them nervous."); L. Kendrick, "On 'Clear and Present Danger,' " 94 Notre Dame L. Rev. 1653, 1660 (2019) (explaining that clear and present danger test "has been criticized time and again for depending too much on circumstances and thereby giving judges too much discretion and failing to give speakers proper notice of the legality of their activities" (footnotes omitted)).

Although the United States Supreme Court has not directly rejected clear and present danger, the court has alluded to its evolution as a first amendment doctrine. For example, Justice David Souter, in his concurrence in *Denver Area Educational Telecommunications Consortium, Inc.* v. *Federal Communications Commission*, 518 U.S. 727, 778, 116 S. Ct. 2374, 135 L. Ed. 2d 888 (1996), argued that clear and present danger has evolved into the incitement test from *Brandenburg*, under which "constitutional guarantees of free speech and free press do not permit a [s]tate to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg* v. *Ohio*, supra, 395 U.S. 447. The United States Supreme Court also alluded to this divergence in *Landmark Communications, Inc.* v. *Virginia*, 435 U.S. 829, 98 S. Ct. 1535, 56 L. Ed. 2d 1 (1978), stating: "The Supreme Court of Virginia relied on the [clear and present danger] test . . . . We question the relevance of that standard here; moreover we cannot accept the mechanical application of the test which led that court to its conclusion. [The] test was never intended 'to express a technical legal doctrine or

to convey a formula for adjudicating cases.' " Id., 842. Nevertheless, the court went on to apply the test and hold that a newspaper article that disclosed confidential information did not meet the test. Id., 844–45.

More recently, the United States Supreme Court considered a similar issue to that presented in this case in the context of attorney speech. See generally *Gentile* v. *State Bar of Nevada*, 501 U.S. 1030, 111 S. Ct. 2720, 115 L. Ed. 2d 888 (1991). In *Gentile*, the court concluded that a "substantial likelihood of material prejudice" standard was a constitutionally permissible standard to limit extrajudicial attorney speech. (Internal quotation marks omitted.) Id., 1075. In the absence of an express indication from the Supreme Court that a lower standard is permissible, we decline to extend the court's holding in *Gentile* to nonattorneys. This is because the court supported its reasoning by relying on the special status of attorneys, demonstrated through the government's role in attorney regulation and rules already in existence restricting attorney speech. See id., 1066–74. The court specifically declined to state which standard would apply to the speech of nonattorneys. See id., 1072–73 n.5 (noting that rule being interpreted did not apply to nonattorneys or attorneys outside of pending case).

Courts after *Gentile* have continued to apply clear and present danger to extrajudicial speech in certain circumstances. See, e.g., *In re Kendall*, 712 F.3d 814, 826 (3d Cir. 2013) (applying clear and present danger when analyzing whether judge was improperly held in criminal contempt for speech contained in judicial opinion); *Standing Committee on Discipline* v. *Yagman*, 55 F.3d 1430, 1443 (9th Cir. 1995) (applying clear and present danger to attorney speech outside of pending judicial proceeding); *United States* v. *Bingham*, 769 F. Supp. 1039, 1045 (N.D. Ill. 1991) (concluding that defense counsel's speech in televised interview on eve

of jury selection constituted clear and present danger). For example, the court in *In re White*, Docket No. 2:07CV342, 2013 WL 5295652, *24–26, *68 (E.D. Va. September 13, 2013), considered whether sanctions for attorney's fees should enter as a result of a nonparty's allegedly threatening speech. The court analyzed this request for sanctions in light of different first amendment tests, including clear and present danger.[19] See id., *70 ("[a]lthough there is some indication that *Brandenburg*'s more stringent standard—incitement to imminent lawlessness—has displaced the 'clear and present danger' test articulated in . . . earlier cases, the [c]ourt observes that some post-*Brandenburg* cases continue to apply the 'clear and present danger' test to court restrictions of speech threatening the due and orderly administration of justice" (footnote omitted)). The court determined that there was "no indication" that White's online statements had "disrupted or interfered with a [c]ourt proceeding, [or] that his commentary was imminently likely to so interfere," and, as such, his speech did not pose "a serious and imminent threat to the administration of justice." (Emphasis omitted; internal quotation marks omitted.) Id. This lack of clarity surrounding clear and present danger, as noted in *In re White*, similarly leaves open the question of what standard applies to the speech of *parties to the litigation*. See *Wilson* v. *Moore*, 193 F. Supp. 2d 1290, 1293 (S.D. Fla. 2002) (applying clear and present danger test to speech of criminal defendant made during appeal process).

"The [United States] Supreme Court has held that speech otherwise entitled to full constitutional protection may nonetheless be sanctioned if it obstructs or prejudices the administration of justice." *Standing Committee on Discipline* v. *Yagman*, supra, 55 F.3d

[19] The District Court also analyzed whether sanctions should enter under a strict scrutiny analysis. *In re White*, supra, 2013 WL 5295652, *71.

1442, citing *Gentile* v. *State Bar of Nevada*, supra, 501 U.S. 1074–75, and *Sheppard* v. *Maxwell*, 384 U.S. 333, 363, 86 S. Ct. 1507, 16 L. Ed. 2d 600 (1966). Importantly, "[a] rule governing speech, even speech entitled to full constitutional protection, need not use the words 'clear and present danger' in order to pass constitutional muster." *Gentile* v. *State Bar of Nevada*, supra, 1036 (Kennedy, J.). Because the Supreme Court has not yet clearly supplanted clear and present danger in the area of extrajudicial speech, we will use it as a guideline in our analysis. Even still, it is necessary to refine the standard to our present circumstances to incorporate the requirements of *Brandenburg* and the inquiries outlined in *Gentile*. "Properly applied, the test requires a court to make its own inquiry into the imminence and magnitude of the danger said to flow from the particular utterance and then to balance the character of the evil, as well as its likelihood, against the need for free and unfettered expression." *Landmark Communications, Inc.* v. *Virginia*, supra, 435 U.S. 842–43; see also *Turney* v. *Pugh*, 400 F.3d 1197, 1202 (9th Cir. 2005). We conclude that, if extrajudicial speech by a party to litigation poses an imminent and likely threat to the administration of judicial proceedings at issue, a court may sanction a party for that speech.

It is necessary to outline certain factors that affect whether extrajudicial speech threatens the administration of justice. "The [United States Supreme] Court gave two principal reasons for adopting this lower threshold [in *Gentile*], one concerned with the identity of the speaker, the other with the timing of the speech." *Standing Committee on Discipline* v. *Yagman*, supra, 55 F.3d 1442; see *In re Hinds*, 90 N.J. 604, 609, 449 A.2d 483 (1982) (in using reasonable likelihood standard, "the determination of whether a particular statement is likely to interfere with a fair trial involves a careful balancing of factors, including consideration of the status of the

attorney, the nature and timing of the statement, as well as the context in which it was uttered''); see also *In re Hinds*, supra, 622–23. As a result, we, too, will consider such factors.

If the speaker is a party to litigation, the government's interest in ensuring the fair administration of justice is heightened, especially if the trial involves a criminal defendant. See *Chicago Council of Lawyers* v. *Bauer*, 522 F.2d 242, 248 (7th Cir. 1975) (''[t]hat courts have the duty to ensure fair trials—'the most fundamental of all freedoms'—is beyond question'' (footnote omitted)), cert. denied sub nom. *Cunningham* v. *Chicago Council of Lawyers*, 427 U.S. 912, 96 S. Ct. 3201, 49 L. Ed. 2d 1204 (1976); id., 257–58 (''we require even a greater insularity against the possibility of interference with fairness in criminal cases''). Judicial restrictions on a litigant's speech are more permissible than judicial restrictions on comments made by an outsider to the litigation, such as the press. See *In re Application of Dow Jones & Co.*, 842 F.2d 603, 608 (2d Cir.) (''there is a substantial difference between a restraining order directed against the press—a form of censorship which the [f]irst [a]mendment sought to abolish from these shores—and the order here directed solely against trial participants''), cert. denied sub nom. *Dow Jones & Co.* v. *Simon*, 488 U.S. 946, 109 S. Ct. 377, 102 L. Ed. 2d 365 (1988); see also *Standing Committee on Discipline* v. *Yagman*, supra, 55 F.3d 1443 (''[w]hen lawyers speak out on *matters unconnected to a pending case*, there is no direct and immediate impact on the fair trial rights of litigants'' (emphasis added)).

Relying in part on the distinction made in *Gentile* between trial participants and those outside the litigation, the Fifth Circuit declined to apply the stringent clear and present danger standard to a trial participant gag order. *United States* v. *Brown*, 218 F.3d 415, 426–27 (5th Cir. 2000), cert. denied, 531 U.S. 1111, 121 S. Ct. 854, 148 L. Ed. 2d 769 (2001). In *Brown*, the court decided

that the lower standard in *Gentile* may be extended to nonattorney litigation participants, as there was "no reason . . . to distinguish between [attorneys and parties] for the purpose of evaluating a gag order directed at them both." Id., 428; see also *State* v. *Carruthers*, 35 S.W.3d 516, 562–63 (Tenn. 2000) (declining to apply clear and present danger test to trial participants), cert. denied, 533 U.S. 953, 121 S. Ct. 2600, 150 L. Ed. 2d 757 (2001). We decline to completely extend the reasoning in *Brown* to this case and instead invoke a higher standard reminiscent of clear and present danger that takes into account the speaker's identity. See *Commission for Lawyer Discipline* v. *Benton*, 980 S.W.2d 425, 431 (Tex. 1998) (describing "the *Gentile* standard [as] a constitutional minimum"), cert. denied, 526 U.S. 1146, 119 S. Ct. 2021, 143 L. Ed. 2d 1033 (1999). We recognize that Jones' position, as a civil defendant, presents a different situation than a plaintiff, who affirmatively requests a court's jurisdiction over her case. See *United States* v. *Carmichael*, 326 F. Supp. 2d 1267, 1294 (M.D. Ala. 2004) (declining to apply lower standard in *Gentile* to criminal defendant). Accordingly, we afford Jones the benefit of the doubt and engage in the most rigorous and searching review of any infringement of his first amendment rights.

Courts must have the ability to restrict the rights of participants to the extent necessary to protect the fairness of the litigation. "Although litigants do not surrender their [f]irst [a]mendment rights at the courthouse door . . . those rights may be subordinated to other interests that arise in this setting. For instance, on several occasions [the] [c]ourt has approved restriction on the communications of trial participants where necessary to ensure a fair trial for a criminal defendant. . . . In the conduct of a case, a court often finds it necessary to restrict the free expression of participants, including counsel, witnesses, and jurors." (Citations omitted; internal quotation marks omitted.) *Seattle Times Co.* v.

Rhinehart, 467 U.S. 20, 32–33 n.18, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984). "Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function." (Internal quotation marks omitted.) *Gentile* v. *State Bar of Nevada*, supra, 501 U.S. 1072. "[The United States Supreme Court] expressly contemplated that the speech of those participating before the courts could be limited. This distinction between participants in the litigation and strangers to it is brought into sharp relief by [the] holding in *Seattle Times Co.* v. *Rhinehart*, [supra, 20]." (Emphasis omitted; footnote omitted.) *Gentile* v. *State Bar of Nevada*, supra, 1072–73. "The primary danger of extrajudicial speech to the administration of justice must be that the outcome of a judicial proceeding, or the ability of the court to do its work, might be improperly influenced by people who have no legitimate part in the courts' resolution of that matter. Of course, the person making an extrajudicial statement might actually be a party in an ongoing proceeding. Or, an out-of-court statement might not affect any pending matter, but might influence the course of some future proceeding. The point is that an attempt to interfere with the outcome of a case is properly punishable because justice is being affected through means other than those established for the proper disposition of a controversy." L. Raveson, "Advocacy and Contempt: Constitutional Limitations on the Judicial Contempt Power; Part One: The Conflict Between Advocacy and Contempt," 65 Wash. L. Rev. 477, 499–500 (1990).

A related, but necessary inquiry, considers the timing and the nature of the speech. Speech is more likely to interfere with the administration of justice if it is calculated to intimidate or threaten other participants in the litigation. "It is without question that courts may sanction parties and their attorneys who engage in harassment of their opponents. . . . The [f]irst [a]mend-

ment does not shield improper tactics used by litigants to advance their interests, even if those tactics involve communication of a message." (Citation omitted.) *B. Willis, C.P.A., Inc.* v. *Goodpaster*, 183 F.3d 1231, 1234 (10th Cir.), cert. denied sub nom. *Willis* v. *Goodpaster*, 528 U.S. 1046, 120 S. Ct. 581, 145 L. Ed. 2d 483 (1999); see *D'Agostino* v. *Lynch*, 382 Ill. App. 3d 960, 970, 887 N.E.2d 590 ("harassing the court and the litigants appearing before it" was "calculated to disrupt court proceedings and bring the administration of law into disrepute"), appeal denied, 229 Ill. 2d 619, 897 N.E.2d 250 (2008); *Fidelity National Title Ins. Co. of New York* v. *Intercounty National Title Ins. Co.*, supra, 2002 WL 1433717, *11 ("A party's use of anonymous letters to opposing counsel to sabotage the litigation is an abuse of the judicial process. Anonymous, threatening letters prevent a speedy, open, and just resolution of the dispute on its merits.").

Additionally, "[t]he possibility that other measures will serve the [s]tate's interests should also be weighed." *Landmark Communications, Inc.* v. *Virginia*, supra, 435 U.S. 843. We also consider whether the sanction is narrowly tailored to achieve the government's substantial interest in ensuring the administration of justice. *Gentile* v. *State Bar of Nevada*, supra, 501 U.S. 1075.

Our analysis also is informed by several cases from our sister states' appellate courts applying the clear and present danger standard to uphold contempt findings arising from statements by litigants.[20] In one recent decision, the Georgia Court of Appeals upheld the contempt

[20] Additionally, courts have applied *Bridges* to extrajudicial speech restrictions beyond contempt. For example, it was discussed recently by the Colorado Supreme Court in examining a jury tampering conviction. See *People* v. *Iannicelli*, 449 P.3d 387, 392–93 (Colo. 2019). Although the case ultimately was decided on grounds of statutory construction; see id., 394–97; the court recognized that "[s]peech concerning judicial proceedings is not without limits . . . because like free speech, a fair trial is one 'of the most cherished policies of our civilization' and must also be protected." Id., 392; see id., 396 n.3 ("[W]e acknowledge that defining the precise scope of [Colorado's

conviction of a witness who, while at the courthouse as a character witness in his son's criminal trial, insulted the minor victim's mother in the hallway outside the courtroom and "exclaim[ed] that he hoped God would make the children and grandchildren of those who lied about his son suffer in the same way his son was currently suffering." *Moton* v. *State*, 332 Ga. App. 300, 300, 772 S.E.2d 393 (2015). An Illinois appeals court upheld a contempt conviction after the contemnor filed a motion alleging, inter alia, that the opposing parties and their attorney were part of the Mafia and had bribed the presiding judge. See *D'Agostino* v. *Lynch*, supra, 382 Ill. App. 3d 961. In that case, the court stated that "[c]omments that are systematically designed to thwart the judicial process constitute a 'clear and present danger' to the administration of justice" and concluded that the "unsubstantiated accusations" against the judge qualified. Id., 970–72; see also *People* v. *Goss*, 10 Ill. 2d 533, 536–37, 141 N.E.2d 385 (1957) (upholding contempt order under clear and present danger test when nonparty appeared on television show and accused party to court proceeding of being from "a family with [court admitted] hoodlum connections" and called witness "professional sneak and liar" (internal quotation marks omitted)).

In establishing the constitutional bounds of the court's authority, we also find instructive those cases concluding that the litigant's conduct did not present a clear and present danger to the administration of jus-

jury tampering statute] presents complex questions as to both [f]irst [a]mendment rights and the [s]tate's interest in ensuring the fair and orderly administration of justice. The facts of this case, however, do not require us to attempt to craft an all-encompassing rule applicable in every factual scenario. Accordingly, we leave that difficult task for another day."); see also *United States* v. *Heicklen*, 858 F. Supp. 2d 256, 274 (S.D.N.Y. 2012) ("[t]he relevant cases establish that the [f]irst [a]mendment squarely protects speech concerning judicial proceedings and public debate regarding the functioning of the judicial system, so long as that speech does not interfere with the fair and impartial administration of justice").

tice. See *Pennekamp* v. *Florida*, 328 U.S. 331, 336–39, 348, 66 S. Ct. 1029, 90 L. Ed. 1295 (1946) (publishers of editorials and cartoon critical of judges did not pose clear and present danger); *Garland* v. *State*, 253 Ga. 789, 789, 791, 325 S.E.2d 131 (1985) (reversing contempt conviction of attorney whose remarks criticizing judge for violating judicial ethics and conducting "sham proceeding" were published in newspaper (internal quotation marks omitted)); *Worcester Telegram & Gazette, Inc.* v. *Commonwealth*, 354 Mass. 578, 579–83, 238 N.E.2d 861 (1968) (reversing contempt convictions of publisher and reporter, whose newspaper article inferred that defendant in pending criminal proceeding previously had been "convicted of a serious crime" leading to mistrial, because they did not purposefully try to affect trial's outcome); *In re Contempt of Dudzinski*, 257 Mich. App. 96, 106–107, 667 N.W.2d 68 (reversing contempt conviction of appellant who had worn "Kourts Kops Krooks" shirt in courtroom while quietly observing proceedings (internal quotation marks omitted)), appeal denied, 469 Mich. 988, 673 N.W.2d 756 (2003); *Smith* v. *Pace*, 313 S.W.3d 124, 126–27, 137 (Mo. 2010) (concluding that there was no interference or imminent threat of interference with administration of justice when lawyer defendant used "strong words . . . in petitioning the court . . . for a writ seeking to quash a subpoena" and therein accused judge and prosecutor of "misconduct" and "impropriety" (internal quotation marks omitted)). These cases demonstrate the types of speech that are protected and stand in stark contrast to Jones' speech in this case.

In applying this precedent to the speech at issue in the present case, we first observe that the trial court did not expressly consider whether the speech posed an imminent and likely threat to the administration of justice in ruling on the motions for sanctions.[21] The trial

[21] In their argument before the trial court, the defendants contended that the broadcast "did not disrupt the administration of justice."

court instead found its authority to sanction under the court's inherent authority "to address out-of-court, bad faith litigation misconduct where there is a claim that a party harassed or threatened or sought to intimidate counsel on the other side" and noted its "obligation to ensure the integrity of the judicial process and [the] functioning of the court." Nevertheless, the findings that led the trial court to sanction the defendants are consistent with our aforementioned standard. Specifically, the trial court found that, on the June 14, 2019 broadcast, Jones (1) accused opposing counsel of a felony ("planting child pornography"), (2) used threatening language toward opposing counsel through violent rhetoric, and (3) harassed and intimidated opposing counsel, calling him "a bitch, a sweet little cupcake, a sack of filth," and declaring war on him. It is obvious that the central reason why Jones' speech was censured and why it ultimately could pose a threat to the administration of justice is its genuine potential to influence the fairness of the proceedings. Specifically, Jones' broadcast produced additional threats to those involved in the case and created a hostile atmosphere that could discourage individuals from participating in the litigation.

Balancing the risk of fairness to the proceedings with "the need for free and unfettered expression," as required by *Landmark Communications, Inc.* v. *Virginia*, supra, 435 U.S. 843, does not render Jones' speech immune to sanctions under the first amendment, and we reject the defendants' assertion that "there is no barrier to a litigant, especially a litigant who is a broadcaster, speaking freely about pending litigation. [Jones'] decision to air his grievances over the airwaves and online is hardly remarkable. These media constitute the new public square." Although we recognize and reaffirm the importance of robust public comment about the court system and the judicial process, and acknowledge that, out-

side of litigation, Jones' speech may be protected,[22] the trial court's duty to ensure a fair trial for those appearing before it permits some restrictions on harassing and threatening speech toward participants in the litigation. Without the ability to place such restrictions, trial courts will be left defenseless to stop both actual interference and perceived threats to just adjudications. " 'Freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice.' *Pennekamp* v. *Florida*, [supra, 328 U.S. 347]. But it must not be allowed to divert the trial from the 'very purpose of a court system . . . to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures.' " *Sheppard* v. *Maxwell*, supra, 384 U.S. 350–51.

Regardless of whether enforcement comes in the form of civil or criminal penalties, speech that interferes with the administration of justice cannot be tolerated. In *State* v. *Taupier*, 330 Conn. 149, 193 A.3d 1 (2018), cert. denied, U.S. , 139 S. Ct. 1188, 203 L. Ed. 2d 202 (2019), this court considered a first amendment challenge to a defendant's conviction of threatening in the first degree for an e-mail communication concerning a Superior Court judge. Id., 153–54. In that case, the defendant had "made it clear that he was extremely angry at the 'court,' over which [the judge] had presided, that he had discovered where [the judge] lived, that he had surveilled [the judge's] residence, that he had thought through a very detailed and specific way to kill [the judge] at that location, and that he had anticipated being punished for his conduct." Id., 191. The court

[22] "Men are entitled to speak as they please on matters vital to them; errors in judgment or unsubstantiated opinions may be exposed, of course, but not through punishment for contempt for the expression. Under our system of government, counterargument and education are the weapons available to expose these matters, not abridgment of the rights of free speech and assembly." *Wood* v. *Georgia*, supra, 370 U.S. 389.

concluded that the speech was a true threat and, therefore, was unprotected. Id., 199. This conclusion was, in part, implicitly supported by the effect such speech had on the administration of justice, i.e., threatening violence against the judge presiding over the defendant's family court proceedings. See id., 184 (pointing to judge's reaction, defendant's history with family court system, and defendant and judge's past history as evidence supporting conviction). Such a threat, at the very least, could require the judge to recuse herself from the defendant's cases and, as such, interferes with a fair adjudication.

There are two important distinctions between *Bridges* and its progeny, on the one hand, and the present case, on the other, that lead us to conclude that Jones' broadcast posed an imminent and likely threat to the administration of justice. The first is Jones' role as a party in the litigation and the second is the unmistakably threatening and vituperative nature of the speech at issue. Both of these factors influence the imminence and likelihood of the threatened harm. In both *Wood* and *Bridges*, the statements were made by nonparties criticizing judicial action. In the present case, Jones is a party commenting on his own litigation and, therefore, has a greater opportunity and perceived incentive to affect the outcome of the case.[23] As a party to a judicial

[23] The defendants disagree and cite to *In re Sawyer*, 360 U.S. 622, 636, 79 S. Ct. 1376, 3 L. Ed. 2d 1473 (1959), for the proposition that the parties' speech cannot be "more censurable" than that of nonparties during the pendency of a court case. We disagree. *In re Sawyer* concerns an attorney, not a party, and supports the opposite view when quoted in context: "We can conceive no ground whereby the pendency of litigation might be thought to make an attorney's out-of-court remarks more censurable, *other than that they might tend to obstruct the administration of justice. Remarks made during the course of a trial might tend to such obstruction where remarks made afterwards would not*. But this distinction is foreign to this case, because the charges and findings in no way turn on an allegation of obstruction of justice, or of an attempt to obstruct justice, in a pending case." (Emphasis added.) Id.

proceeding, Jones is participating in a government function and therefore is under the court's jurisdiction. For this reason, the trial court may sanction him for speech that, when made by a stranger to the litigation, may be acceptable.[24]

The second difference between the present case and *Bridges* and *Woods* is the nature of the intimidating and threatening speech, which demonstrates the coercive influence that might reasonably be expected as a result of Jones' broadcast. "Since we are committed to a government of laws and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly. [The United States Supreme Court] has recognized that the unhindered and untrammeled functioning of our courts is part of the very foundation of our constitutional democracy." *Cox* v. *Louisiana*, 379 U.S. 559, 562, 85 S. Ct. 476, 13 L. Ed. 2d 487 (1965). "Courts must have [the] power to protect the interests of . . . litigants before them from unseemly efforts to pervert judicial action." *Pennekamp* v. *Florida*, supra, 328 U.S. 347. The record in this case reflects additional threats targeting those involved in the case in connection with Jones' speech.[25] In an order dated

[24] It is important to note that, although Jones is a defendant and therefore has not been willingly brought into the litigation, that status does not diminish the need for a fair trial, does not grant him license to harass and intimidate opposing counsel, and does not lessen the potential impact of his statements on the trial. However, not all speech by Jones regarding the case is sanctionable—only harassing and threatening speech that presents a likely and imminent threat to the administration of justice. See, e.g., M. Swartz, Note, "Trial Participant Speech Restrictions: Gagging First Amendment Rights," 90 Colum. L. Rev. 1411, 1421–22 (1990) (noting special concerns for criminal and civil defendants). This fact, along with the nature of civil proceedings as a whole, supports our use of the most stringent standard to analyze Jones' speech. See *Chicago Council of Lawyers* v. *Bauer*, supra, 522 F.2d 257–58 (noting how fair trial concerns are lessened in civil litigation).

[25] It is important to note that a judge may still sanction for threatening or intimidating speech in the absence of actual interference with the administration of justice, yet we consider these direct threats as aggravating circumstances in this particular case.

June 21, 2019, the trial court stated: "In the interest of full disclosure to all parties, the court was contacted by the Connecticut State Police, [which was] reportedly contacted by the FBI regarding threats against the undersigned [judge] made by individuals on the . . . Infowars website."[26] In addition, the plaintiffs' counsel also represented to the trial court that, as a result of the broadcast, they had "since received threats from the outside" and even obtained police protection when attending the court hearing after the broadcast. We take seriously these statements on the record because "[i]t long has been the practice that a trial court may rely [on] certain representations made to it by attorneys, who are officers of the court and bound to make truthful statements of fact or law to the court." (Internal quotation marks omitted.) *State* v. *Chambers*, 296 Conn. 397, 419, 994 A.2d 1248 (2010).

Jones' speech further was calculated to interfere with the fairness of the proceedings as it directly targeted opposing counsel, accusing him of felonious behavior and threatening him, and reasonably can be expected to influence how the plaintiffs litigate their case.[27] On the broadcast, Jones declared war on those who planted the child pornography, implicated the plaintiffs' counsel, and promoted a million dollar bounty. Jones stated: "You're trying to set me up with child porn. I'm going to get your ass. One million dollars. One million dollars, you little gang members. One million dollars to put your head on a pike. One million dollars, bitch. I'm going to get your ass." A party who places a one million dollar bounty on the head of opposing counsel, whether literally or figuratively in the form of his conviction, undeniably interferes with the proceedings. This speech

[26] It is unclear whether these threats against the trial judge stemmed from the original broadcast or a subsequent broadcast by Jones discussing the sanctions orders.

[27] The trial court specifically considered this when it questioned defense counsel about how Jones' speech affects the "integrity of the process here and the functioning of the court and the judicial process . . . ."

clearly " 'is directed to inciting or producing' a threat to the administration of justice that is both 'imminent' and 'likely' to materialize." *Turney* v. *Pugh*, supra, 400 F.3d 1202. Harassing and intimidating counsel so that they withdraw from litigating a case is beyond cavil; it is an unfair and inappropriate litigation strategy that strikes at the core of our system.[28] See *Harry* v. *Lagomarsine*, Docket No. 18-CV-1822 (BMC) (LB), 2019 WL 1177718, *3 (E.D.N.Y. March 13, 2019) (explaining how threats to opposing counsel "effected a permanent change in [the] defendants' representation"); *Kalwasinski* v. *Ryan*, supra, 2007 WL 2743434, *3 ("[b]y deliberately and intentionally participating in making threats of physical harm against parties and witnesses in his case, he has engaged in conduct that he should have known would threaten a fair decision in this matter"). We recognize that there is a place for strong advocacy in litigation, but language evoking threats of physical harm is not tolerable. In light of these reasons, we conclude that Jones' speech could pose a threat to the plaintiffs' ability to litigate their case, rendering it an imminent and likely threat to the administration of justice.

Finally, we consider whether the state's interests may be served in another manner and whether the sanctions imposed are narrowly tailored to the state's interest in ensuring fair judicial proceedings. See, e.g., *Gentile* v.

[28] In fact, the defendants implicitly recognized this interference, as they argued to the trial court that Attorney Mattei should not participate in the case if he feels threatened, stating: "[I]f you've got a former federal prosecutor in here who's saying, as a result of this, he can't do his job, then maybe you should get him off the case because he's not prepared to serve his clients." The defendants renewed this argument in their brief to this court, arguing: "If [Mattei] feels sufficiently chilled or impaired, he can, of course, seek to withdraw as counsel."

The defendants also argue that Jones, in a subsequent broadcast, "made clear he did not intend to threaten [Mattei]." The trial court interpreted this later broadcast as a classic nonapology, stating: "[W]hen I watched the broadcast several times, I wasn't able to see an apology in there. . . . It doesn't sound like an apology."

State Bar of Nevada, supra, 501 U.S. 1076; *Landmark Communications, Inc.* v. *Virginia*, supra, 435 U.S. 843. The trial court penalized the defendants in a restrained manner in order to preserve the judicial process. In this case, the trial court might have issued a gag order, but such a measure could improperly penalize future speech in the form of a prior restraint. See, e.g., *Kemner* v. *Monsanto Co.*, 112 Ill. 2d 223, 249–50, 492 N.E.2d 1327 (1986) (noting that there are less restrictive means than a gag order "to preserve the integrity of the proceedings before it," such as contempt). Instead, the court appropriately dealt with two issues in a proportional sanction that was more measured than the individual punishments of civil or criminal contempt that have been upheld as a consequence for similar conduct. Indeed, the court refrained from imposing the more severe sanction requested by the plaintiffs, specifically, defaulting the defendant. The court selected a lower penalty, namely, the revocation of special statutory benefit, because the defendants abused the process set out in the statute through their discovery practices. Accordingly, we conclude that the trial court did not violate the first amendment when it imposed sanctions on the basis of Jones' broadcast, which presented an imminent and likely threat to the administration of justice.[29]

[29] The plaintiffs also argue that Jones' speech qualifies as a true threat unprotected by the first amendment. The defendants disagree with this assertion, arguing that the broadcast "was not unequivocal, unconditional, immediate and specific [so] as to convey a gravity of purpose and imminent prospect of execution." Additionally, the defendants argue that the trial court did not allow Jones the opportunity to present evidence to counter a true threat finding, distinguishing this case from *Haughwout* v. *Tordenti*, 332 Conn. 559, 211 A.3d 1 (2019). We initially note that, as the case currently stands, the record is not adequately developed to determine whether Jones' statements qualify as a true threat. But cf. id., 562 n.4 (trial court's decision was supported by facts from disciplinary proceeding and plaintiff's testimony). Because we have determined that Jones' speech constituted an imminent and likely threat to the administration of justice, we need not reach the issue of whether Jones' speech also qualifies under a different category of unprotected speech as a matter of law.

B

We next consider whether the trial court abused its discretion by sanctioning the defendants for their discovery abuses and Jones' broadcast. A trial court's power to sanction a litigant or counsel stems from two different sources of authority, its inherent powers and the rules of practice. *Millbrook Owners Assn., Inc.* v. *Hamilton Standard*, 257 Conn. 1, 9–10, 776 A.2d 1115 (2001) ("One source of the trial court's authority to impose sanctions is the court's inherent power. . . . In addition, our rules of practice, adopted by the judges of the Superior Court in the exercise of their inherent rule-making authority . . . also [provide] for specific instances in which a trial court may impose sanctions." (Citations omitted; footnote omitted.)); see *Chambers* v. *NASCO, Inc.*, supra, 501 U.S. 50–51 (discussing relationship between sanctions under Federal Rules of Civil Procedure and court's inherent power). As discussed previously, this inherent authority permits sanctions for "dilatory, bad faith and harassing litigation conduct . . . ." (Internal quotation marks omitted.) *CFM of Connecticut, Inc.* v. *Chowdhury*, supra, 239 Conn. 393. Additionally, under Practice Book § 13-14, a court may sanction a party for noncompliance with the court's discovery orders. Among the permissible sanctions is foreclosing judgment on the merits for a party, such as by rendering a default judgment against a defendant or by dismissing a plaintiff's case. See Practice Book § 13-14 (b). The anti-SLAPP statute does not limit the court's authority to impose sanctions. See General Statutes § 52-196a (h) (2).

In reviewing the portion of the sanctions based on the violation of discovery orders, we consider three factors. "First, the order to be complied with must be reasonably clear. In this connection, however, we also state that even an order that does not meet this standard may form the basis of a sanction if the record estab-

lishes that, notwithstanding the lack of such clarity, the party sanctioned in fact understood the trial court's intended meaning. This requirement poses a legal question that we will review de novo. Second, the record must establish that the order was in fact violated. This requirement poses a question of fact that we will review using a clearly erroneous standard of review. Third, the sanction imposed must be proportional to the violation. This requirement poses a question of the discretion of the trial court that we will review for abuse of that discretion." *Millbrook Owners Assn., Inc.* v. *Hamilton Standard*, supra, 257 Conn. 17–18. "The determinative question for an appellate court is not whether it would have imposed a similar sanction but whether the trial court could reasonably conclude as it did given the facts presented. Never will the case on appeal look as it does to a [trial court] . . . faced with the need to impose reasonable bounds and order on discovery." (Internal quotation marks omitted.) *Usowski* v. *Jacobson*, 267 Conn. 73, 85, 836 A.2d 1167 (2003). "Trial court judges face great difficulties in controlling discovery procedures which all too often are abused by one side or the other and this court should support the trial judges' reasonable use of sanctions to control discovery." (Internal quotation marks omitted.) *Mulrooney* v. *Wambolt*, 215 Conn. 211, 223, 575 A.2d 996 (1990).

In its oral decision granting the motions for sanctions, the trial court observed that "the discovery in this case has been marked with obfuscation and delay on the part of the defendants . . . ." The court cited two specific examples of discovery noncompliance: (1) the defendants failed to produce adequate Google Analytics information with respect to marketing data and to conduct a complete search of Jones' cell phone, and (2) the defendants "disregarded" discovery deadlines on multiple occasions, "continue[d] to object to . . . discovery, and failed to produce that which is within their knowledge, possession, or power to obtain."

It is undisputed that the trial court's discovery orders were reasonably clear and that the defendants violated four of them.[30] The defendants do not raise distinct arguments under the first two prongs of *Millbrook Owner's Assn., Inc.*, but, instead, largely challenge the "harshness" of the sanctions imposed. In considering whether the sanction revoking the defendants' opportunity to pursue the special motions to dismiss was proportional to the defendants' discovery violations, we are guided by "the factors we previously have employed when reviewing the reasonableness of a trial court's imposition of sanctions: (1) the cause of the [party's] failure to respond to the posed questions, that is, whether it is due to inability rather than the [wilfulness], bad faith or fault of the [party] . . . (2) the degree of prejudice suffered by the opposing party, which in turn may depend on the importance of the information requested to that party's case; and (3) which of the available sanctions would, under the particular circumstances, be an appropriate response to the disobedient party's conduct." (Internal quotation marks omitted.) *Yeager* v. *Alvarez*, 302 Conn. 772, 787, 31 A.3d 794 (2011). We also consider how Jones' broad-

[30] The defendants purport to dispute these issues in their brief by stating, in a heading, that "[t]he court sanctioned [them] for violating the discovery process . . . despite the lack of sufficiently clear orders or actual violations." Despite mentioning this in the heading, there is no clear argument in the brief to support this argument. Instead, the defendants' discovery argument basically contests the merits and breadth of the discovery permitted by the trial court. As a result, we construe the first two prongs of *Millbrook Owners' Assn., Inc.* v. *Hamilton Standard*, supra, 257 Conn. 17–18, as undisputed. "We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited." (Citation omitted; internal quotation marks omitted.) *State* v. *Buhl*, 321 Conn. 688, 724, 138 A.3d 868 (2016).

cast impacted the trial court's decision sanctioning the defendants for bad faith litigation practices. See *MacCalla* v. *American Medical Response of Connecticut, Inc.*, 188 Conn. App. 228, 230, 239, 204 A.3d 753 (2019) (upholding sanction of dismissal on basis of plaintiffs' noncompliance with discovery orders and "the unprofessional and dilatory conduct of the plaintiffs' counsel," who called "a party's corporate representative [who was] attending a deposition a trespasser," and holding that this conduct "evinces a disregard for the provisions of the Practice Book and the authority of the court").

The plaintiffs argue that the sanctions are proportional because the defendants' violations were "deliberate," "wilful," and in "bad faith . . . ." The defendants counter that their actions were not taken in bad faith. "[I]n assessing proportionality, a trial court must consider the totality of the circumstances, including, most importantly, the nature of the conduct itself." *Ridgaway* v. *Mount Vernon Fire Ins. Co.*, 328 Conn. 60, 76, 176 A.3d 1167 (2018); see also *Millbrook Owners Assn., Inc.* v. *Hamilton Standard*, supra, 257 Conn. 16 ("dismissal of an action is not an abuse of discretion where a party shows a deliberate, contumacious or unwarranted disregard for the court's authority" (internal quotation marks omitted)). In the present case, the trial court did not expressly find that the defendants' discovery abuses were performed in bad faith but, in its oral decision, pointedly characterized their actions as being marked by a pattern of "obfuscation and delay . . . ." Additionally, the record supports the trial court's finding that the defendants repeatedly ignored court deadlines and continued to challenge the underlying merits of discovery, even after the court found the requisite good cause to allow discovery under § 52-196a (d).[31] See, e.g., *National Hockey League* v. *Metropolitan Hockey Club*,

[31] For example, even after the trial court ordered the defendants to produce the Google Analytics materials on June 10, 2019, the defendants continued to contest whether they should be ordered to produce the data.

Inc., 427 U.S. 639, 643, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976) (upholding dismissal of action in light of "[the] respondents' 'flagrant bad faith' and their counsel's 'callous disregard' of their responsibilities" when respondents failed to answer written interrogatories by deadline). Accordingly, we conclude that the record supports the trial court's finding that the defendants wilfully disregarded the court's discovery orders.

This wilful disregard was exacerbated by Jones' conduct during the June 14, 2019 broadcast. The trial court found that Jones' actions were "indefensible, unconscionable, despicable, and possibly criminal," and that the "deliberate tirade and harassment and intimidation against Attorney Mattei and his firm [were] unacceptable and sanctionable." Because Jones' statements were one part of a whole picture of bad faith litigation misconduct, we conclude that the trial court's reliance on Jones' speech as part of the rationale for the sanctions orders was appropriate in this context.

With respect to the defendants' ability to comply with discovery, one mitigating factor that potentially could have explained the defendants' noncompliance with the discovery deadlines was their change in counsel midway through the discovery process. Although the parties disagree as to whether this change in counsel was a "strategic" tactic, the record indicates that, even under the defendants' original counsel, the documents were still far from ready for production.[32] Moreover, the record supports the trial court's determination that the change in counsel did not by itself affect the defendants' ability to produce the discovery on time.[33]

[32] At a March 22, 2019 hearing, Attorney Pattis stated: "I was given those documents on or about March 6. I was also given some interrogatory responses on March 6. Those interrogatory responses were not satisfactory to my way of thinking."

[33] At the March 22, 2019 hearing, the court explained: "I think part of the problem is that your clients are maybe tying their own lawyers' hands by getting other lawyers involved so that nobody knows what anyone else is doing. That would be the most favorable light. . . . The least favorable light would be manipulation."

Turning to the prejudice factor, we consider the importance of the undisclosed discovery material, the effect the information would have on the party requesting it, and whether the information was available through other means. *Yeager* v. *Alvarez*, supra, 302 Conn. 787–88; see id., 789–90 (defendants were not prejudiced by noncompliance when materials that they sought had been indirectly included in plaintiffs' production). In the present case, the record supports the trial court's implicit finding that the defendants' noncompliance was prejudicial to the plaintiffs[34] because, each time the defendants did not comply with the court ordered discovery, the plaintiffs were unable to access information that could assist them in proving probable cause that they would succeed on the merits of their complaints. For example, access to the defendants' marketing data would be relevant to proving a financial connection between the defendants' actions and the statements made during the broadcast.[35] See *Krahel* v. *Czoch*, 186 Conn. App. 22, 35–36, 198 A.3d 103 (considering importance of unproduced discovery and its effect on plaintiff's case when analyzing prejudice), cert. denied, 330 Conn. 958, 198 A.3d 584 (2018).

Finally, we consider the proportionality of the specific sanction employed to the violations at issue. Here, the trial court was not just considering one violation of a court deadline but several, and, therefore, the defendants' noncompliance warranted an appropriate sanction by that court. See *Emerick* v. *Glastonbury*,

[34] At an April 3, 2019 hearing, the plaintiffs' counsel cited "delay after delay after delay by a party [who] . . . invoked the statute but [who] wasn't prepared to comply with its provisions, [which] is prejudicing my clients."

[35] The plaintiffs' counsel argued that the Google Analytics would show "[s]ales, pricing, web traffic, that is, hits on the website and hits on the Infowars store website." He further argued that "Infowars [LLC] and Free Speech Systems [LLC] [generate] millions and millions and millions of dollars of revenue each year. The content that they broadcast, including the content about Sandy Hook, they use to drive traffic to their website. That's why we're entitled to this stuff."

177 Conn. App. 701, 736–37, 173 A.3d 701 (2017) ("The plaintiff's conduct, considered in its entirety, satisfied this standard. . . . The court's repeated warnings, suggestions and fines had no impact on the plaintiff, as he ignored the court's admonitions and continued to delay the trial." (Citation omitted.)), cert. denied, 327 Conn. 994, 175 A.3d 1245 (2018). These violations, when considered together, reasonably could be found to make up a pattern of wilfulness on the part of the defendants. But cf. *D'Ascanio* v. *Toyota Industries Corp.*, 309 Conn. 663, 681, 72 A.3d 1019 (2013) (reversing sanction of dismissal because "the objectionable conduct at issue was an isolated event and was not one in a series of actions in disregard of the court's authority"); *Usowski* v. *Jacobson*, supra, 267 Conn. 93 (trial court abused its discretion in sanctioning party by dismissing action on ground that "the record does not establish that the failure to comply with the discovery orders constituted a continuing pattern of violations" because "other factors of a mitigating nature also were present"). The trial court considered this wilfulness along with the defendants' harassing and intimidating speech toward the plaintiffs' counsel, which together created a whole spectrum of bad faith litigation misconduct. "As is often the case in life . . . the whole of abusive action is greater than the sum of the parts of which it is made. Were we to view judicial abuses piecemeal, each one might not be worthy of sanctions, or even comment. But these incremental abuses chip away at the fair administration of justice . . . ." *Fuery* v. *Chicago*, 900 F.3d 450, 454 (7th Cir. 2018). "[I]t is the [trial] court [that] can evaluate the whole ball of wax and determine whether the small incremental blows to the integrity of the trial add up to something that requires sanctioning. Death by a thousand cuts is no less severe than death by a single powerful blow." Id., 464.

Although the sanctions imposed by the trial court are not the sanctions enumerated within the rules of

practice, this does not mean they were disproportionate or impermissible as a matter of law. For example, in *Yeager* v. *Alvarez*, supra, 302 Conn. 772, we concluded that a trial court had the authority to "strike an otherwise valid offer of compromise" as a sanction for a discovery violation; id., 778; because it "falls well within the ambit of judicial power contemplated by both the court's inherent authority and the rules of practice. Significantly, [Practice Book § 13-14 (a)] authorizes a trial court to penalize discovery violations by entering orders 'as the ends of justice require.' In fact, § 13-14 (b) contains sanctions even more severe than those imposed in this matter. These severe sanctions, which may strip a party of all prospect of prevailing, logically encompass a host of lesser penalties. Such milder sanctions may include orders that reduce a party's likelihood of success at trial . . . ." Id., 781.

The sanctions imposed by the trial court in the present case revoked a statutory benefit, namely, the opportunity to pursue the special motions to dismiss under § 52-196a (d), which further penalized the defendants by rescinding a stay of the full discovery process. Nonetheless, as the trial court found, this was a measured sanction for the defendants' noncompliance with limited discovery, which was an abuse of the very benefit they sought to utilize. Moreover, the sanctions imposed were well short of a default or dismissal, insofar as they do not preclude the defendants from having the merits of their cases adjudicated in a conventional manner, such as by summary judgment or trial. See *Millbrook Owners Assn., Inc.* v. *Hamilton Standard*, supra, 257 Conn. 16 ("the court's discretion should be exercised mindful of the 'policy preference to bring about a trial on the merits of a dispute whenever possible and to secure for the litigant his day in court' "); cf. *Emerick* v. *Glastonbury*, supra, 177 Conn. App. 737 (upholding sanction of dismissal when plaintiff engaged in "continuing and deliberate misconduct . . . [that] demon-

strated . . . deliberate disregard for the court's orders").

In assessing the proportionality of the sanctions, we next turn to the defendants' central argument for excusing their noncompliance, namely, that the discovery in this case was overbroad and that the sanctions, therefore, were not appropriate. According to the defendants,"[w]hen discovery is allowed under § 52-196a, it is allowed as an exception to the statutory rule that discovery is to be stayed pending a decision on the special motion to dismiss, and—when allowed—it must be specific and limited. But, without any clarity from the court as to how the specific and limited discovery should proceed, the plaintiffs exploited the untended frontiers of the judge's order until the specific and limited discovery ordered by the court was indistinguishable from the broad contours of general discovery in all civil cases . . . ." (Emphasis omitted; footnote omitted.)

First, notwithstanding the merits of the defendants' breadth argument, the plaintiffs correctly point out that, despite the defendants' grievances with the scope of discovery, the defendants are still required to comply with the court's orders. "[A] party has a duty to obey a court order even if the order is later held to have been unwarranted." *Tomasso Bros., Inc.* v. *October Twenty-Four, Inc.*, 230 Conn. 641, 658 n.20, 646 A.2d 133 (1994); see also *Mulholland* v. *Mulholland*, 229 Conn. 643, 649, 643 A.2d 246 (1994). "An order of the court must be obeyed until it has been modified or successfully challenged, and the consequences for noncompliance may be severe indeed." *Fox* v. *First Bank*, 198 Conn. 34, 40 n.3, 501 A.2d 747 (1985).

Second, nothing in the anti-SLAPP statute limits the trial court's discretion to order "specified and limited discovery relevant to the special motion to dismiss" beyond the "good cause" standard set forth in § 52-196a

(d).[36] We will not fill this legislative silence by imposing broad restrictions on the trial court's discretion to determine good cause, insofar as each case will present different claims and defenses bearing on whether limited discovery should be granted. Cf. *Standard Tallow Corp.* v. *Jowdy*, 190 Conn. 48, 57, 459 A.2d 503 (1983) ("[t]he granting or denial of a discovery request rests in the sound discretion of the court"); *Coss* v. *Steward*, 126 Conn. App. 30, 46–47, 10 A.3d 539 (2011) (discussing good cause requirement for protective orders and trial court's discretion in granting them). We conclude, therefore, that the defendants' claims that discovery was improvidently granted under the anti-SLAPP statute does not excuse their failure to comply with the trial court's orders. Accordingly, the trial court did not abuse its discretion in sanctioning the defendants for discovery violations and Jones' June 14, 2019 broadcast.

II

The final issue in this appeal is whether the defendants were afforded adequate notice and a meaningful opportunity to respond before the trial court imposed sanctions. The defendants argue that the court ordered sanctions in an overly summary process because, on

[36] Although the legislative history of the anti-SLAPP statute does not further illuminate the meaning of the phrase "good cause," as used in § 52-196a (d), we find the purpose of the statute instructive. Speaking in support of the bill later enacted as § 52-196a, then Representative William Tong explained that it was intended to address "situations in which people have spoken out on matters of public concern including the press and we've seen situations where people file litigation. There appears to be no basis to that litigation but it's designed to chill free speech and the expression of constitutional rights, and so this provides for a special motion to dismiss so that early in the process somebody who's speaking and exercised their constitutional rights can try to dismiss a frivolous or abusive claim that has no merit and short circuit a litigation where it might otherwise cost a great deal of money to continue to prosecute. We think it's an important measure . . . to promote free speech and reporting by our news organizations as well." 60 H.R. Proc., Pt. 16, 2017 Sess., pp. 6879–80; see also footnote 4 of this opinion.

Monday, June 17, 2019, the plaintiffs filed their motion requesting court review of the broadcast, along with expedited briefing on "what orders must issue in connection with [Jones'] on-air statements," and indicated they would move for "specific relief on an expedited basis," and, the very next day, the court ruled on the merits of the plaintiffs' motion for sanctions without any briefing by the defendants. Additionally, the defendants argue that the court handed their attorney a copy of a recent judicial decision the court considered instructive; see *Maurice* v. *Chester Housing Associates Ltd. Partnership*, supra, 188 Conn. App. 21; and gave the defendants' counsel only the lunch hour to prepare for argument on whether the trial court should order sanctions. The plaintiffs counter that the defendants were afforded sufficient due process because the trial court repeatedly had warned them that it would revoke the opportunity to pursue the special motions to dismiss. They also point out that a June 17, 2019 court order notified counsel that they should be prepared to discuss the broadcast at the hearing scheduled for the following day. Finally, the plaintiffs argue that the defendants did not at any point indicate to the court that they needed additional time to prepare. We agree with the plaintiffs and conclude that the trial court's sanctions did not violate the defendants' due process rights.

"At their core, the due process clauses of the state and federal constitutions require that one subject to a significant deprivation of liberty or property must be accorded adequate notice and a meaningful opportunity to be heard." *Council on Probate Judicial Conduct re James H. Kinsella*, 193 Conn. 180, 207, 476 A.2d 1041 (1984); see *CFM of Connecticut, Inc.* v. *Chowdhury*, supra, 239 Conn. 393 ("As a procedural matter, before imposing . . . sanctions, the court must afford the sanctioned party or attorney a proper hearing on the . . . motion for sanctions. . . . There must be fair

notice and an opportunity for a hearing on the record." (Citation omitted; internal quotation marks omitted.)). "Whether the defendant was deprived of his due process rights is a question of law, to which we grant plenary review." (Internal quotation marks omitted.) *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 489, 500, 970 A.2d 570 (2009).

Having reviewed the record, we conclude that the defendants received adequate notice so as to be apprised of the possibility of sanctions entering as a result of their conduct.[37] Specifically, the plaintiffs filed a motion seeking sanctions several months earlier because of the defendants' discovery noncompliance. The trial court discussed the possibility of sanctioning the defendants on several occasions and had reissued this warning in its order on June 10, 2019, regarding the outstanding Google Analytics material. The day before the hearing, the plaintiffs indicated that they would seek interim relief, and the court issued an order stating that it would address the broadcast at the hearing. Because of the

[37] The defendants rely on *New Hartford* v. *Connecticut Resources Recovery Authority*, supra, 291 Conn. 489, to support their claim of a due process violation. In that case, we held that the defendants were not afforded sufficient due process after a trial court found them in contempt. Id., 491. The present case, however, is distinguishable because, in *New Hartford*, the defendants indicated at the hearing that they were unprepared to address the violation of the gag order. Id., 494–95. In addition, "[t]he defendant was given less than one day to consider a motion for contempt," and "[t]he defendant's attorney stated that he had not read the full text of the posting, that he had not been able to speak to the persons responsible for the website posting or anyone else and that he would like to speak to them about why they had posted the article." Id., 501. In contrast, unlike the attorney in *New Hartford*, Attorney Pattis was present on the broadcast, witnessed Jones' allegedly sanctionable conduct, and made representations to the court on the basis of his observations during the broadcast. Additionally, although the plaintiffs had filed motions requesting a review of the broadcast the day before the hearing, the plaintiffs had pending motions for sanctions left unanswered for several months. Also, the defendants were well aware of the court's warnings that it might sanction them if discovery noncompliance continued. As a result, we are not persuaded that *New Hartford* controls the present case.

trial court's countless warnings that it would sanction the defendants in this specific manner, the defendants cannot reasonably contest that they were not adequately notified of the possibility of such sanctions. Cf. *Fattibene* v. *Kealey*, 18 Conn. App. 344, 350, 353–54, 558 A.2d 677 (1989) (reversing sanctions order when trial court ruled on motion for sanctions without first considering plaintiff's objection). In addition, the trial court held a hearing, at which it heard thorough argument on the issue, and at no point during the argument did the defendants request additional time.[38] This satisfies the due process requirement for a meaningful opportunity to be heard. See, e.g., *Thalheim* v. *Greenwich*, 256 Conn. 628, 650–51, 775 A.2d 947 (2001) (concluding that sanctioned attorney had been afforded "adequate notice and a meaningful opportunity to be heard" when trial court issued order requesting that he "show cause why [he] should not be sanctioned" and attorney received hearing (internal quotation marks omitted)).

The sanctions orders are affirmed.

In this opinion the other justices concurred.

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[38] The defendants did file a motion for a stay the day before the hearing so that Attorney Pattis could address a conflict of interest concern that had arisen. The trial court denied this motion. The defendants do not challenge this ruling on appeal.

ORDERS

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DOVENMUEHLE MORTGAGE, INC. *v.* FRANK J. JANNIELLO ET AL.

The named defendant's petition for certification to appeal from the Appellate Court, 201 Conn. App. 907 (AC 41071), is denied.

Frank J. Janniello, self-represented, in support of the petition.

Geoffrey K. Milne, in opposition.

Decided March 9, 2021

PETER FEATHERSTON *v.* KATCHKO & SON CONSTRUCTION SERVICES, INC., ET AL.

The plaintiff's petition for certification to appeal from the Appellate Court, 201 Conn. App. 774 (AC 42280), is denied.

McDONALD, J., did not participate in the consideration of or decision on this petition.

Brenden P. Leydon, in support of the petition.

David W. Rubin and *Jonathan D. Jacobson*, in opposition.

Decided March 9, 2021

SERAMONTE ASSOCIATES, LLC *v.* TOWN OF HAMDEN

The plaintiff's petition for certification to appeal from the Appellate Court, 202 Conn. App. 467 (AC 42770), is granted, limited to the following issue:

"Did the Appellate Court properly construe the phrase 'who fails to submit such information,' as it is used in General Statutes § 12-63c (d)?"

Brenden P. Leydon, in support of the petition.

Adam J. Blank, in opposition.

Decided March 9, 2021

IN RE MARCQUAN C.

The petition by the respondent mother for certification to appeal from the Appellate Court, 202 Conn. App. 520 (AC 43892), is denied.

Albert J. Oneto IV, assigned counsel, in support of the petition.

Seon Bagot and *Evan O'Roark*, assistant attorneys general, in opposition.

Decided March 9, 2021

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CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

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STATE OF CONNECTICUT *v.* DEREK GEANURACOS (AC 43565)

Bright, C. J., and Cradle and Suarez, Js.

Syllabus

Convicted, after a jury trial, of the crimes of burglary in the third degree and larceny in the third degree, the defendant appealed to this court, challenging the sufficiency of the evidence to support the charge of burglary. The defendant was involved in a relationship with V, whom he visited frequently at her home. After the defendant drove V home

from a medical appointment, he was in her bedroom with her while she was removing jewelry that she had been wearing. Shortly thereafter, V discovered that some of her jewelry was missing and she filed a police report. When V confronted the defendant, he admitted to stealing her jewelry. *Held* that the evidence adduced at trial was insufficient to support the defendant's conviction of burglary in the third degree: the state conceded that it failed to prove that the defendant entered or remained unlawfully in V's home; V testified to the contrary that the defendant was allowed in her home only when she or her children were present or with her permission, V did not contend that the defendant had ever entered her home without her permission, and the state did not present any evidence that the defendant had entered her home at any time without her permission; moreover, although the prosecutor argued that the defendant's permission to be in V's home was implicitly revoked when he stole her jewelry, the state did not present any evidence surrounding the actual circumstances of the theft of the jewelry, V did not know exactly when her jewelry was stolen, only that it had been stolen within a few days prior to her discovery that it was missing, and, because the defendant stole V's jewelry without her knowledge, the jury could not reasonably have concluded that he did so in a manner likely to terrorize her.

Submitted on briefs January 11—officially released March 23, 2021

Procedural History

Substitute information charging the defendant with the crimes of larceny in the second degree and burglary in the third degree, brought to the Superior Court in the judicial district of Danbury and tried to the jury before *D'Andrea, J.*; verdict and judgment of guilty of burglary in the third degree and of the lesser included offense of larceny in the third degree, from which the defendant appealed to this court. *Reversed in part; judgment directed.*

Joseph G. Bruckman, public defender, for the appellant (defendant).

Alexandra Arroyo, special deputy assistant state's attorney, with whom, on the brief, were *Stephen J. Sedensky III*, state's attorney, *Melissa Patterson*, senior assistant state's attorney, and *Warren C. Murry*, former supervisory assistant state's attorney, for the appellee (state).

Opinion

PER CURIAM. The defendant, Derek Geanuracos, appeals from the judgment of conviction, rendered after a jury trial, of burglary in the third degree in violation of General Statutes § 53a-103 (a).[1] On appeal, the defendant argues that the evidence adduced at trial was insufficient to support his conviction. We agree, and reverse in part the judgment of the trial court.

The jury reasonably could have found the following facts. In May, 2016, the defendant was involved in an intimate relationship with Marisa Vivaldi, whom he visited frequently at her home in Danbury. The defendant was not permitted to be in Vivaldi's home unless she or her children were present. On May 4, 2016, after the defendant drove Vivaldi home from a medical appointment, he was in her bedroom with her while she was removing jewelry that she had been wearing and putting it in her dresser. The defendant asked Vivaldi if all of her jewelry was made of gold. Vivaldi told the defendant that it was, and explained that it had either been gifted to her when she was a child, or she had inherited it from her mother.

On May 8, 2016, Vivaldi discovered that some of her jewelry was missing and she filed a police report. The investigating officers learned that the defendant had sold several pieces of Vivaldi's jewelry to CT Gold & Silver Brokers in New Milford for $724.75. When Vivaldi confronted the defendant, he admitted to stealing her jewelry, which Vivaldi valued at approximately $14,000, and apologized. He offered to reimburse her for a portion of the cost of the jewelry in exchange for her dropping the charges, but she declined.

Following a jury trial, the defendant was found guilty of larceny in the third degree in violation of General

[1] The defendant also was found guilty of larceny in the third degree in violation of General Statutes § 53a-124 (a) (2). He has not challenged that conviction.

Statutes § 53a-124 (a) (2) and burglary in the third degree in violation of § 53a-103 (a). The trial court sentenced him to identical, concurrent sentences on each conviction, resulting in a total effective sentence of five years of incarceration, execution suspended, followed by four years of probation. This appeal followed.

On appeal, the defendant challenges the sufficiency of the evidence underlying his burglary conviction. "In reviewing a sufficiency of the evidence claim, we apply a two part test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [jury] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt . . . . This court cannot substitute its own judgment for that of the jury if there is sufficient evidence to support the jury's verdict. . . .

"We note that the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . .

"Review of any claim of insufficiency of the evidence introduced to prove a violation of a criminal statute must necessarily begin with the skeletal requirements of what necessary elements the charged statute requires to be proved. . . . Once analysis is complete as to what the particular statute requires to be proved, we then review the evidence in light of those statutory requirements."

(Citations omitted; internal quotation marks omitted.) *State* v. *Marsan*, 192 Conn. App. 49, 61–62, 216 A.3d 818, cert. denied, 333 Conn. 939, 218 A.3d 1049 (2019).

Section 53a-103 (a) provides: "A person is guilty of burglary in the third degree when he enters or remains unlawfully in a building with intent to commit a crime therein." The defendant contends that the evidence adduced at trial was insufficient to prove that he "enter[ed] or remain[ed] unlawfully" in Vivaldi's home. On appeal, the state concedes that it did, in fact, fail to prove that requisite element of the defendant's burglary charge, and we agree.

"A person 'enters or remains unlawfully' in or upon premises when the premises, at the time of such entry or remaining, are not open to the public and when the actor is not otherwise licensed or privileged to do so." General Statutes § 53a-100 (b). "[T]o remain unlawfully means that the initial entering of the building . . . was lawful but the presence therein became unlawful because the right, privilege or license to remain was extinguished." (Internal quotation marks omitted.) *State* v. *Stagnitta*, 74 Conn. App. 607, 612, 813 A.2d 1033, cert. denied, 263 Conn. 902, 819 A.2d 838 (2003). This court has held that, "even if one is lawfully admitted into a premises, the consent of the occupant may be implicitly withdrawn if the entrant terrorizes the occupants." *State* v. *Henry*, 90 Conn. App. 714, 726, 881 A.2d 442, cert. denied, 276 Conn. 914, 888 A.2d 86 (2005). In other words, for his "license to have been implicitly revoked in order to have remained unlawfully for purposes of burglary, the defendant must have committed larceny in a manner likely to terrorize occupants of the victim's home." (Internal quotation marks omitted.) *State* v. *Marsan*, supra, 192 Conn. App. 63.

Here, the state did not present any evidence that the defendant entered or remained in Vivaldi's home unlawfully. To the contrary, Vivaldi testified that the defendant was allowed in her home only when either she or

her children were present, and that he had otherwise been in her home on only one occasion, when she gave him a key and asked him to retrieve something for her. She did not contend at trial that the defendant had ever entered her home without her permission, and the state did not present any evidence that the defendant had entered her home at any time without her permission. To support the burglary conviction, the state was required to prove that the defendant remained in her home unlawfully. The prosecutor argued to the jury that the defendant "remained in the building unlawfully with the intent to commit a crime and the underlying crime had been larceny." In other words, the prosecutor argued that the defendant's permission or license to be in Vivaldi's home was implicitly revoked when he stole her jewelry. The state did not, however, present any evidence surrounding the actual circumstances of the theft of the jewelry. Vivaldi did not know exactly when her jewelry was stolen, only that it had been within the few days prior to her discovery that it was missing. Because the defendant stole Vivaldi's jewelry without her knowledge, the jury could not reasonably have concluded that he did so in a manner likely to terrorize her.[2] Accordingly, we conclude that there was insufficient evidence to sustain the defendant's conviction of burglary in the third degree.

The judgment is reversed as to the conviction of burglary in the third degree and the case is remanded with direction to render a judgment of acquittal on that charge; the judgment is affirmed in all other respects.

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[2] The prosecutor did not argue to the jury that the defendant committed the larceny in a manner likely to terrorize Vivaldi, nor did the court instruct the jury that it needed to find that he did so to find him guilty of burglary.

DAISY G. BATISTA *v.* ANGEL L. CORTES (AC 43244)

Bright, C. J., and Lavine and Alexander, Js.*

Syllabus

The defendant filed a motion to modify custody of the parties' minor child. After a hearing, the court denied the motion, determining that it was in the best interests of the child for her primary residence to remain with the plaintiff. On appeal, the defendant claimed that the trial court erred in denying his motion to modify custody and in failing to examine his alleged overpayment of child support. *Held*:

1. The trial court did not err in denying the motion to modify custody of the parties' minor child because it determined that it was in the child's best interests for her primary residence to remain with the plaintiff: the court properly responded to allegations of the plaintiff's use of corporal punishment against the child by referring the matter to the Department of Children and Families and appointing a guardian ad litem, who participated in the hearing on the motion, and there was nothing in the record to support the defendant's allegation that the court failed to consider the plaintiff's admission to the use of physical discipline in making its best interests determination; moreover, the defendant's remaining arguments in support of his assertion were unreviewable, as he waived his claim of judicial bias, did not preserve for appeal his claim of failure to appoint proper representation for the child, and this court declined to disturb the trial court's determination of the credibility of one of the plaintiff's witnesses, as such a determination was for the trial court as trier of fact.
2. This court declined to review the defendant's challenge to the accuracy of the child support payment audits: the issue of past child support payments was not before the trial court, which analyzed his allegations of overpayment only in the context of its determination of the best interests of the child, did not issue any orders regarding the audits, and issued an order only concerning the defendant's future child support obligations; accordingly, there was no claim for this court to review on appeal.

Argued November 18, 2020—officially released March 23, 2021

Procedural History

Motion for modification of custody as to the parties' minor child, brought to the Superior Court in the judicial district of Hartford, where the court, *Prestley*, *J.*, denied

* The listing of judges reflects their seniority status on this court as of the date of oral argument.

the motion; thereafter, the court, *Olear, J.*, denied the defendant's motion for reconsideration, and the defendant appealed to this court. *Affirmed.*

Angel L. Cortes, self-represented, the appellant (defendant).

Opinion

LAVINE, J. The self-represented defendant, Angel L. Cortes (father), appeals from the judgment of the trial court denying his motion to modify his child's primary residence to his residence from that of the plaintiff, Daisy G. Batista (mother).[1] On appeal, the father (1) claims, in essence, that the court abused its discretion by concluding that it was in the child's best interests that she continue to reside primarily with her mother and (2) challenges the results of several payment audits showing that he owes an arrearage in child support. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. The parties, who have never married one another, are the parents of a child born in 2004. The mother lives in Florida and the father lives in Connecticut. On December 7, 2006, the parties entered into a court-approved parenting plan agreement that provided that they share joint legal custody of the child, who lives primarily with the mother. An August 20, 2008 court order set forth a child support obligation of $71 per week for the father.

On May 7, 2018, the father filed a motion for contempt, seeking to revise the parenting plan agreement, which he alleged that the mother had violated by keeping the child from him. In that motion, the father also requested that the child reside primarily with him and that the mother repay him for what he alleged was his overpayment of child support over the years due to misrepresentations made by the mother. Following a hearing on

[1] The mother did not file a brief in this court. We therefore decide the appeal on the basis of the record and the father's brief and oral argument. See *Rosario* v. *Rosario*, 198 Conn. App. 83, 84 n.1, 232 A.3d 1105 (2020).

August 7, 2018, the court, *Prestley*, *J.*, ordered visitation for the father during the holidays. At that hearing, the father accused the mother of using corporal punishment against the child.[2] The court immediately indicated that it was referring the matter to the Department of Children and Families (department) and appointed a guardian ad litem to interview the child regarding the father's allegations.

On September 7, 2018, the father filed a motion to modify custody, which is the subject of the present appeal. In his motion, the father sought to modify the primary residence of the child, alleging that the guardian ad litem believed that it was in the child's best interests for her to live with him, that he had new employment that would permit him to spend time with the child, and that he had concerns about the child's physical safety while residing with her mother.[3] The father did not request a modification of child support in that motion.

The court held a hearing on the father's motion to modify custody, extending across two days on April 11, 2019, and June 3, 2019. During the course of the proceeding, further facts came to light concerning the father's previous allegation that he has been overpaying child support.[4] The court told the father that it could not rule on the issue of whether his arrearage was correct and that he needed to request that the child support enforcement office conduct audits of his past payments. The court, however, took the matter into consideration insofar as it related to the motion to modify custody before it. In doing so, the court heard evidence from child support enforcement officers regarding the accuracy of new audits the father had requested pursuant to the court's

[2] The father asserted that the mother had struck the child, which the mother acknowledged having done.

[3] The mother did not file a written response but participated in the hearing on the motion.

[4] The father contended that he had requested various child support audits over the years, all of which incorrectly failed to credit him for his payments.

direction. At the conclusion of the hearing, the court commended both parents for their devotion to the child but emphasized that it would need to make a difficult decision focused on the child's best interests. On June 12, 2019, the court issued a memorandum of decision denying the father's motion to modify custody.

In its decision, the court analyzed the child's situation with respect to both parents. The court found that the child wanted to live with her father to get to know him better. She reported feeling more "stressed" with her mother, who "has high expectations of [the child], wants her to go to college and they argue a lot." The mother worked two jobs to support her family, which reduced her availability to her children and resulted in frequent moves for the family and school changes for her children. She had received a promotion, however, which would allow her to work only one job and move to a larger apartment. The court found that the father's child support payments were then $6533.11 in arrears and that the mother's financial difficulties over the years were largely attributable to the father's failure to pay child support.

The court described the mother's belief that a move would cause upheaval in the child's life and that the child would not be college bound or realize her potential in the father's care. The court found that the guardian ad litem had "testified to her difficulty in making a recommendation on this motion because of the fact that the child is doing well academically in the [mother's] care, is a very good kid raised for the most part by the [mother] and that there are high expectations for her in her mother's care. At the same time, the child is a lot like her father, desires to come to Connecticut to live with him and her relationship with the [mother] can be difficult." The court found that the father had claimed that "on one occasion, the [mother] had struck the child in the face" and that the father's girlfriend had

expressed concerns that the child had "reported an instance when the [mother] pulled [the child's] hair and grabbed the back of her neck." The court, however, did not make further findings regarding these allegations.

The court applied the factors set forth in General Statutes § 46b-56 (c)[5] to determine the best interests of the child, emphasizing its consideration of "the child's past and present interactions with each parent and sibling, the importance of maintaining continuity in her home, school and community environment, the child and parent's preferences and the length of time that the child has lived in a stable and satisfactory environment." It found that the child has lived in the sole care of the mother for most of her life, is doing well in school, and has a younger brother with whom she could lose contact if she lived with the father. The child has spent time with her father in the summer when he had been unemployed, but he currently works a full-time job. The father has been supported by his significant other when he is not working and has paid little to no child support to the mother, resulting in her struggles to provide for the child. The court recognized the child's desire to spend more time with her father but pointed out that the early teenage years can be difficult for a child and that the beginning of high school is not the best time for a child to undertake a drastic change in living and family situations. The court thus denied the motion and ordered that the parties continue to share joint legal custody of the child, whose primary residence will continue to be in Florida with the mother and who will con-

[5] General Statutes § 46b-56 (c) sets forth sixteen factors for the court to consider in making orders concerning the custody, care, education, visitation and support of children and provides in relevant part that "[i]n making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors . . . . The court is not required to assign any weight to any of the factors that it considers, but shall articulate the basis for its decision."

tinue to visit the father.[6] The court also increased the father's weekly child support obligation to $95 per week, plus arrearage payments. On June 21, 2019, the father filed a motion for reconsideration, which was denied by the court, *Olear, J.*[7] This appeal followed.

On appeal, the father claims that the court erred in denying his motion to modify the child's primary residence and in failing to examine his alleged overpayment of child support. We do not agree.

The standard of review in family matters is well settled. "An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action." (Internal quotation marks omitted.) *LeSueur* v. *LeSueur*, 186 Conn. App. 431, 437–38, 199 A.3d 1082 (2018). "[Section] 46b-56 provides trial courts with the statutory authority to modify an order of custody . . . . Before a court may modify a custody order, it must find that there has been a material change in circumstances since the prior order of the court, but the ultimate test is the best interests of the child." (Citations omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.) *Clougherty* v. *Clougherty*, 162 Conn. App. 857, 868–70, 133 A.3d 886, cert. denied, 320 Conn. 932, 134 A.3d 621 (2016), and cert. denied, 320 Conn. 932, 136 A.3d 642 (2016).

[6] The court also issued orders concerning transportation costs, sibling contact, counseling, tax exemptions, insurance, and jurisdiction over postmajority educational support. None of those orders is at issue in this appeal.

[7] In his motion for reconsideration, the father disputed various factual findings made by Judge Prestley in her custody determination and insisted that he could provide further evidence with which he could prove the inaccuracy of the audits reviewed by the court showing his child support arrearage.

I

The father challenges the court's conclusion that it was in the child's best interests to remain with her mother in Florida. He raises four arguments in support, namely, that the court (1) failed to act properly in response to allegations that the mother engaged in corporal punishment, (2) exhibited bias against him and in favor of the mother, (3) failed to appoint proper representation for the child, and (4) improperly credited the testimony of the mother's witness.

The father first argues that the court "did not properly act" on learning that the mother had used corporal punishment, "because proper investigations were not completed; and the expected urgency was not in place." He asserts, without providing any evidence whatsoever, that no investigation resulted from the court's decision to refer the matter to the department in August, 2018, which he claims "goes against [General Statutes §] 46b-6."[8]

Our review of this matter discloses that the father has neither pointed to anything in the record to demonstrate that the department failed to act on the court's referral nor asked the trial court for an articulation concerning this referral. The trial court did not make any specific findings concerning the results of its referral to the department. The record demonstrates, however, that the court referred the matter to the department and that it appointed a guardian ad litem for the child, who testified extensively at the hearing on the motion to modify custody. Although the father relies on the fact that

[8] General Statutes § 46b-6 provides in relevant part: "In any pending family relations matter the court or any judge may cause an investigation to be made with respect to any circumstance of the matter which may be helpful or material or relevant to a proper disposition of the case. Such investigation may include an examination of the parentage and surroundings of any child, his age, habits and history, inquiry into the home conditions, habits and character of his parents or guardians and evaluation of his mental or physical condition. . . ."

the court's memorandum of decision does not address the department referral or discuss the mother's concession to having struck the child,[9] we are unable to assess what impact either the referral or the concession had on the court's decision.

This court cannot find facts. "As a reviewing court, [w]e cannot act as a [fact finder] or draw conclusions of facts from the primary facts found, but can only review such findings to determine whether they could legally, logically and reasonably be found, thereby establishing that the trial court could reasonably conclude as it did." (Internal quotation marks omitted.) *Osborn* v. *Waterbury*, 197 Conn. App. 476, 482, 232 A.3d 134 (2020), cert. denied, 336 Conn. 903, 242 A.3d 1010 (2021). The record clearly demonstrates that the court made the referral and that it appointed a guardian ad litem. The record also is clear that the father did not ask the court to articulate whether, or to what degree, it took into account in its best interests analysis the mother's admission and the results of the department referral. "It is the responsibility of the appellant to provide an adequate record for review." Practice Book § 61-10 (a); see also Practice Book § 60-5. "Absent evidence to the contrary, we assume that the trial court acted properly." *LeSueur* v. *LeSueur*, 172 Conn. App. 767, 785–86, 162 A.3d 32 (2017). The court's custody determination rests on multiple unchallenged factual findings, such as the child's academic performance, her relationship with her sibling, the parents' financial circumstances, and the history of the child's relationship with her mother. See General Statutes § 46b-56 (c). On the basis of the record provided, there is every indication that the court properly assessed the relevant factors, and there is nothing in the record to support the father's allegation that the court failed to consider in rendering its decision the

[9] Although the court's memorandum of decision did not mention the mother's admission of corporal punishment, we note that the court acknowledged in its decision the allegations of corporal punishment against the mother made by the father and his girlfriend.

referral it had made to the department or the mother's concession. Accordingly, we will not second-guess the court's conclusion, which is fully supported by the court's factual findings.

The father's second, third, and fourth arguments in support of his first claim, set forth previously, are unreviewable for the following reasons.

First, the father waived his argument that the court was "overly critical" of him and "did not give the same treatment" to the mother. He contends that, despite his multiple complaints concerning the mother, including that she had admitted to physically disciplining the child, the court demonstrated "presumptuous judgment" against him by ruling in favor of the mother. We construe this hard-to-interpret claim as one of judicial bias. At the outset, we note that "[a]dverse rulings do not themselves constitute evidence of bias." (Internal quotation marks omitted.) *In re Omar I.*, 197 Conn. App. 499, 571, 231 A.3d 1196, cert. denied, 335 Conn. 924, 233 A.3d 1091, cert. denied sub nom. *Ammar I.* v. *Connecticut*, U.S. , 141 S. Ct. 549, 208 L. Ed. 2d 173 (2020). "It is well settled that [c]laims alleging judicial bias should be raised at trial by a motion for disqualification or the claim will be deemed to be waived." (Internal quotation marks omitted.) *DeMattio* v. *Plunkett*, 199 Conn. App. 693, 724, 238 A.3d 24 (2020). At no time during the proceeding did the father ask the judge to recuse herself or move to disqualify the judge. He, therefore, has waived this complaint.

The father also contends that the court failed to appoint proper representation for the child pursuant to General Statutes § 46b-54.[10] We decline to address this claim because it was not preserved for appeal. Our review

[10] General Statutes § 46b-54 provides in relevant part: "(a) The court may appoint counsel or a guardian ad litem for any minor child . . . if the court deems it to be in the best interests of the child . . . . (b) Counsel or a guardian ad litem for the minor child or children may also be appointed . . . when the court finds that the custody, care, education, visitation or support of a minor child is in actual controversy . . . ."

of the record reveals that the parties consented to the guardian ad litem's appointment, the appointment was extended several times, and the guardian ad litem participated extensively in the proceedings. At no point during the proceedings did the father contest the appointment of the guardian ad litem or request that counsel be appointed for the child. "[A]n appellate court is under no obligation to consider a claim that is not distinctly raised at the trial level. . . . [B]ecause our review is limited to matters in the record, we [also] will not address issues not decided by the trial court." (Internal quotation marks omitted.) *Silver Hill Hospital, Inc.* v. *Kessler*, 200 Conn. App. 742, 753, 240 A.3d 740 (2020); see also Practice Book § 60-5 ("[t]he court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial").

The father also challenges the credibility of Rachel Cortes, the child's aunt, whom the mother called as a witness. In its memorandum of decision, the court questioned the father's credibility, in part on the basis of Cortes' testimony. The father now argues that the court could not have credited the witness because she has had very little contact with the child during the previous three years. It is well settled that "[w]e must defer to the finder of fact's evaluation of the credibility of the witnesses that is based on its invaluable firsthand observation of their conduct, demeanor and attitude. . . . Because it is the sole province of the trier of fact to assess the credibility of witnesses, it is not our role to second-guess such credibility determinations." (Citation omitted; internal quotation marks omitted.) *State* v. *Shin*, 193 Conn. App. 348, 359, 219 A.3d 432, cert. denied, 333 Conn. 943, 219 A.3d 374 (2019). This court will not disturb the credibility determinations of the trier of fact.

II

The father's second claim on appeal is that the court did not properly consider his claim of child support

overpayment. In response to the mother's accusation that he was behind on child support payments, the father asserted that Florida and Connecticut had insufficiently credited him for payments he made and that the mother was receiving extra money and not reporting it. We construe the father's claim as a challenge to the accuracy of the child support payment audits he has received. Because the issue of past child support payments was not before the trial court and it did not rule on the audits, we decline to review the claim.

The following additional facts are relevant to our decision regarding the reviewability of this claim. The father insisted throughout the proceedings that he had requested new audits from the support enforcement office in accordance with the court's direction but that the audits continued to show an incorrect arrearage. The court, after directing the father on December 13, 2018, to consult child support enforcement, called representatives from the support enforcement office into the hearing on April 11 and June 3, 2019, to review the father's child support records.[11] Both support enforcement officers confirmed the accuracy of the father's arrearage, and the court credited their testimony, twice stating that the father would need to resolve any further disagreements on the matter with support enforcement. The court also reviewed the relevant documents on the record and heard testimony from the parties.

In its memorandum of decision, the court discussed the father's child support situation. Despite being ordered to pay child support of $71 a week—an obligation that the court noted was an amount "well below

[11] The court asked, at the start of the April 11, 2019 hearing, if the father had requested an accounting from support enforcement, to which the father replied in the affirmative. The court informed the father that his child support arrearage was an issue he would have to resolve with the state separately, rather than with the court during the motion to modify custody orders. At the resumption of the hearing on June 3, 2019, the father stated that he had consulted with support enforcement again.

a minimum wage child support order"—the father had an arrearage of $6533.11 in his support obligation as of May 15, 2019. The court found that "the [mother] has been unable to provide material things and optimal housing such as a separate room for the child, things provided by the [father] in Connecticut, because the [mother] has struggled financially as the sole supporter of this child for most of the child's life." The court questioned the father's credibility, finding that the father had "repeatedly claimed . . . that he has overpaid support for the child with *no evidence to support such a claim*." (Emphasis added.) Two separate audits of the father's payments in Connecticut and in Florida had supported the court's finding that an arrearage existed, but the father did not accept the audits' conclusion. The court modified the father's child support obligation in its order.

Our review of the record discloses that the trial court did not issue any orders regarding the audits of previous child support payment history, although it did issue an order directed to future payments. The present case came before the trial court on a motion to modify the allocation of physical custody.[12] The trial court thus analyzed the father's allegations of overpayment solely in the context of its best interests determination. The court's findings concerning child support were made in support of its determination that it was in the child's best interests to remain with her mother. All of its orders, save the order increasing the amount of future child support payments, deal with custody and parenting arrangements. The father's claim, in contrast, solely concerns the accuracy of child support audits of his previous payments.[13] Because the trial court issued no

[12] The father did not file a motion to address his alleged overpayment of child support. He previously challenged it in his May 7, 2018 postjudgment motion for contempt, but the trial court issued an order resolving that motion on August 7, 2018, and the father has not challenged that disposition.

[13] In his statement of the issues, the father specifically defines the issue as follows: "Did the trial court properly examine [his] claim of his *overpay-*

orders concerning audits of previous payments, only an order concerning the father's future child support payment obligations, there is nothing for this court to review on appeal.

The judgment is affirmed.

In this opinion the other judges concurred.

M. S. *v.* P. S.*
(AC 41790)

Bright, C. J., and Alvord and Alexander, Js.

Syllabus

The defendant appealed to this court from the judgment of the trial court dissolving his marriage to the plaintiff and from the order of that court awarding the plaintiff pendente lite attorney's fees. In the judgment dissolving the marriage, the court, inter alia, ordered the defendant to pay alimony to the plaintiff for a maximum term of six years and modified a relocation provision in the parties' agreed on pendente lite custody and parenting access plan to permit the plaintiff to relocate across state lines but within thirty-five miles of her current residence. *Held*:

1. The trial court did not abuse its discretion in fashioning its support orders; although the support orders account for approximately 90 percent of the defendant's net weekly income, the orders were not excessive in light of an essentially even distribution of the marital property, leaving the defendant valuable assets that he would be able to use to comply with the support orders and sustain his basic welfare, and the six year term for alimony, which was appropriate in light of the facts and circumstances of the case, and which could not be extended.
2. The trial court did not abuse its discretion or deprive the defendant of due process when it permitted the plaintiff to relocate across state

ment of child support?" (Emphasis added.) In the main portion of his brief, he sets forth the issue as: "The trial court did not properly consider the [father's] claim of overpayment of child support." He questions if the "numerous audits on his case . . . are done properly" and asks that "a proper audit be [conducted] of his child support payments with both the state of Connecticut and the state of Florida's histories." We thus construe his claim, as briefed, to challenge only the audits of *past* payments. He has not set forth a claim regarding the court's modification of his child support amount.

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018); we decline to identify any party protected or sought to be protected under a protective order or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

lines to within thirty-five miles of her then current residence: the court determined that it was in the children's best interests to allow the plaintiff to relocate in order to establish residency in the state of New York so that she could afford and attend a doctorate program, which would provide her a necessary opportunity for meaningful employment and income, and the court reasonably tethered the distance for the relocation to the plaintiff's home as she was the party seeking permission to relocate; moreover, the court's order did not deviate from the parties' expressed belief and agreement that it was in the children's best interests that the parties live within thirty-five miles of each other unless otherwise agreed in writing.

3. The trial court did not abuse its discretion in the amount of attorney's fees pendente lite that it awarded to the plaintiff: in assessing the reasonableness of the fee request, the court appropriately considered the services rendered by the plaintiff's counsel as well as her skill level and experience and corresponding billing rate, which were testified to by the plaintiff's counsel and reflected in fee affidavits with attached billing records; moreover, the court determined that certain billing entries were excessive and identified on the record examples of entries it reduced.

Argued December 3, 2020—officially released March 23, 2021

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Danbury, where the court, *Eschuk, J.*, granted in part the plaintiff's motion for pendente lite attorney's fees, and the defendant appealed to this court; thereafter, the court, *Hon. Sydney Axelrod*, judge trial referee, rendered judgment dissolving the marriage and granting certain other relief, from which the defendant filed an amended appeal; subsequently, the court, *Hon. Sydney Axelrod*, judge trial referee, issued articulations of its decision. *Affirmed.*

Logan A. Carducci, for the appellant (defendant).

Danielle J. B. Edwards, for the appellee (plaintiff).

Opinion

ALVORD, J. The defendant, P. S., appeals from the judgment of dissolution and the pendente lite order of the court awarding the plaintiff, M. S., attorney's fees.[1]

[1] The defendant appealed from the court's pendente lite attorney's fee order on June 20, 2018. Following the court's November 30, 2018 judgment

On appeal, the defendant claims that the court abused its discretion in (1) entering an excessive support order that consumes approximately 90 percent of the defendant's income and leaves him with insufficient income to pay for his basic needs, (2) entering an order permitting the plaintiff to relocate thirty-five miles from her current residence rather than the mutually agreed upon thirty-five miles from the other party's residence, and (3) awarding the plaintiff attorney's fees when the amounts billed were excessive and unreasonable. We affirm the judgment of the court.

The record reveals the following relevant facts and procedural history. The parties were married on March 1, 2008, and are the parents of two minor children. The plaintiff initiated this dissolution action in September, 2017. The plaintiff also filed, pursuant to General Statutes § 46b-15, an application for relief from abuse seeking a temporary restraining order against the defendant. After a three day hearing, the court, *Hon. Sydney Axelrod*, judge trial referee, issued a restraining order on September 29, 2017.

On October 13, 2017, the plaintiff filed a motion for attorney's fees pendente lite, and the court, *Eschuk, J.*, held a hearing on February 5 and May 31, 2018. On May 31, 2018, the court ordered the defendant to pay $75,000 in attorney's fees to counsel for the plaintiff. On June 20, 2018, the defendant appealed from the attorney's fees order. Also on June 20, 2018, the plaintiff filed another motion for attorney's fees pendente lite. On November 30, 2018, following an eight day trial in the dissolution action, the court, *Hon. Sidney Axelrod*, judge trial referee, ordered the defendant to pay an additional $15,000 in attorney's fees to counsel for the plaintiff.

dissolving the parties' marriage, the defendant filed a second appeal, which was treated as an amended appeal by this court.

Also on November 30, 2018, the court issued its memorandum of decision, in which it dissolved the parties' marriage and entered various financial and custody orders. In its memorandum of decision, the court found that the plaintiff had obtained associate's and bachelor's degrees in fashion in 2000. Although she had worked in fashion prior to the marriage, she did not work in that industry during the marriage and did not intend to return to that industry. The plaintiff intended to pursue master's and doctorate degrees in clinical psychology at the University of Albany, and she had been notified that her application to that school had been approved. She could afford the program, which would take six years to obtain both degrees, if she were able to establish New York residency. The degrees obtained through the program would provide the plaintiff with a greater opportunity for employment and income.

At the time of the dissolution, the plaintiff's only source of income was the pendente lite support received from the defendant. Her financial affidavit reflected liabilities of $167,200, including $165,360 in fees owed to her counsel, $75,000 of which the defendant had been ordered to pay pendente lite. At the time of the dissolution, the defendant had paid $10,000 of the pendente lite fees to the plaintiff's attorney. The plaintiff held bank accounts totaling $1360 and an IRA with a balance of $7448. She previously had taken a distribution of $37,000 from her IRA to pay legal fees.

The parties owned a marital home located in Newtown. The title was held in both parties' names. The home was purchased in 2009 for $685,000. The defendant had paid 20 percent of the purchase price in cash, and the balance was paid by the defendant's father as a gift. At the time of dissolution, the home had a fair market value of $575,000 and the equity was $575,000. The parties also owned three vehicles. The plaintiff owned, in her name alone, a 2007 Honda with equity of $4000. The defendant owned, in his name alone, a 2016 Mazda CX9 with

a value of $25,273 and a loan balance of $25,273, and a 2016 Mazda CX5 with equity of $16,860.[2]

The defendant had obtained a bachelor's degree in engineering and mechanical industrial engineering in Rio de Janeiro in 2003, and a master's of business administration degree from the University of Chicago Booth School of Business in 2013. From January, 2007 through February, 2009, the defendant was employed by JP Morgan Securities, Inc., as an analyst. From February, 2009 through August, 2011, the defendant was employed by Syllogistic Management, LLC, which he founded and managed. From July, 2013 through February, 2014, the defendant worked as a research associate for Consumer Edge Research, LLC. From March, 2014 through June, 2016, the defendant worked as a research associate for CRT Capital Group (CRT), earning an annual base salary of $100,000 together with a discretionary bonus. In 2015, the defendant's income from CRT was a salary of $100,000 plus a $15,000 bonus. CRT ceased operations in June, 2016, and the defendant's total 2016 gross pay from CRT through that date was $80,063.83.

From November, 2016 through the time of dissolution, the defendant worked for Accordion Partners (Accordion) as a consultant. The defendant was first employed by Accordion as an associate, and "his compensation was at the rate of $4000 per week or $80 per hour for his performance of services for the company. On November 23, 2016, an addendum was entered into with an employment contract to change $4000 per week to $5000 and change his title from associate to vice president to be effective as of November 30, 2017." In calendar year 2017, the defendant earned from Accordion gross income of

[2] Although the defendant previously had included the 2016 Mazda CX5 on his financial affidavits, the defendant's September 18, 2018 financial affidavit did not include that vehicle. The court rejected as not credible the defendant's claim that the vehicle, although titled in his name, was owned by his father.

$133,934.20, which amounts to a gross weekly income of $2575.

Beginning January 1, 2018 through September 15, 2018, the defendant had earned from Accordion $30,604. The court rejected as not credible the defendant's claim that he earned less in 2018 because Accordion afforded him less opportunity to work. The court found that other than various trips he took,[3] the defendant had offered no valid reason why he had not worked more for Accordion in 2018. The court found that the defendant had an annual earning capacity of $110,000. The court also found that the income earned by the defendant was never enough to pay all of the household expenses and that the parties relied on the defendant's assets as well as gifts from the defendant's father to cover the shortfall. The court stated that the defendant received dividend income and interest income from Brazil that was not shown on many of his financial affidavits.

The court found that the defendant had total liabilities of $128,655, including tax liabilities for the years 2016 and 2017, reflecting years where he had not yet filed

[3] The defendant took five trips in 2018. The trial court found: "On April 10, 2018, the defendant flew from JFK to Sao Paulo to attend a wedding of a friend. The total airfare was $975.08. On June 5, 2018, the defendant flew from JFK to Panama City and on to Rio de Janeiro returning on June 12, 2018. The total cost of the airfare was $979.49. The reason for the trip was to spend his fortieth birthday in Brazil with friends. On June 23, 2018, the defendant flew from Newark Liberty International Airport to Frankfurt and on to Budapest. He returned from Budapest on July 5, 2018. The total fare was $2114.31. The reason for the trip was to take a vacation.

"On August 13, 2018, the defendant flew from Newark Airport to Berlin, Germany and returned on August 21, 2018. The purpose of the flight was to attend his brother's wedding. The cost of the flight was $2614.28 for two people since he took his daughter . . . with him. He also spent $300 to $400 for a wedding present for his brother. On August 31, 2018, the defendant flew from Hartford, Connecticut to San Francisco returning on September 3, 2018. The cost of the airfare was $320 plus the hotel expense of $706.02. The purpose of the flight was to attend a wedding of a friend. During the period of time that the defendant went on various vacations, he was not able to do any work for his employer."

his income tax return, and the plaintiff's counsel fees in the pendente lite amount of $75,000, which he had been ordered to pay. The court found that the defendant held bank accounts totaling $6285 and assets consisting of stocks, bonds and mutual funds with a value of $116,725. The defendant also held $112,907 in retirement accounts.

The court found that, at the time the parties married, the defendant held assets in Brazil with a fair market value of $913,260. At the time of the dissolution, the defendant retained certain of those premarital assets. Specifically, he held $117,375 in Brazilian stocks, mutual funds, and checking accounts. The defendant also owned in Brazil an apartment with a value of $96,691 and land with a value of $8190, both properties he had inherited from his mother in 1990. The court also found that the defendant owned a 25 percent interest in an apartment in the Top Life Housing Complex in Brazil, which proportional interest was valued at $26,522. Although the defendant did not consider this asset to be his own and he did not include it on his financial affidavit, the court found that he did own such an interest, citing evidence introduced at trial in the form of the defendant's 2007 Brazilian tax return affidavit listing the interest.

The court issued the following support orders. It ordered the defendant to pay $390 weekly in child support and 70 percent of unreimbursed medical and qualified daycare costs.[4] The court also ordered the defendant to provide medical and dental insurance for the parties' children. With respect to alimony, the court ordered the defendant to pay the plaintiff $600 weekly

[4] The court found that, under the child support guidelines, the presumptive support amount based on the defendant's financial affidavit of September 18, 2018, would be $9 per week and 89 percent of unreimbursed medical and qualified daycare costs. The court found that application of the guidelines would be inappropriate and inequitable and invoked the defendant's earning capacity as a deviation criterion.

until the death of either party, the remarriage of the plaintiff, or six years from the date of the court's memorandum of decision, whichever shall sooner occur.[5] The court stated that the provisions of General Statutes § 46b-86 (a) and (b) are applicable. The court further provided that the term of alimony could not be extended. The court found that the amount of alimony it ordered was not sufficient to maintain permanently the standard of living of the plaintiff at the level she enjoyed during the marriage and stated that an increase in income of the defendant will justify modification of the alimony order.

With respect to property division, the court assigned to the plaintiff all of the rights, title and interest of the defendant in the marital home, which the court ordered the plaintiff to sell. The court ordered $200,000 from the net proceeds of the sale to be distributed to the defendant and the remainder of the net proceeds to be distributed to the plaintiff. With respect to the parties' vehicles, the court awarded the plaintiff the 2016 Mazda CX9, and ordered the defendant to make the monthly loan payments with respect to that vehicle. The plaintiff was to pay the insurance, property tax, maintenance and repairs on the 2016 Mazda CX9. The court awarded the 2007 Honda to the plaintiff and the 2016 Mazda CX5 to the defendant.

The court awarded the defendant all bank accounts shown on his financial affidavit under category C and all stocks, bonds, mutual funds and bond funds shown on his financial affidavit under category D. The court

[5] The court noted the following gifts from the defendant's father: $548,000 for the purchase of the marital home, $35,200 on October 23, 2015, to purchase the 2016 Mazda CX5, $50,000 on May 3, 2017, for the defendant's birthday, $700 on October 16, 2015, $22,824 on April 27, 2016, and payment of the defendant's cost to attend the University of Chicago Booth School of Business in 2013, and the living expenses of the parties while he attended that school between 2011 and 2013. The court determined that such gifts were not received on a regular basis during the marriage and, therefore, it did not include the gifts in determining alimony.

awarded the plaintiff all bank accounts shown on her financial affidavit and the IRA shown on her financial affidavit. The court ordered all retirement plans shown on the defendant's financial affidavit under category F to be divided equally between the parties. The court also ordered: "All of the defendant's inheritances shown on his financial affidavit in Brazil are awarded to the defendant including his 25 percent interest in the Top Life Housing complex that is not shown on his financial affidavit."[6] The court ordered that each party be responsible for the liabilities listed on his or her financial affidavit.

With respect to custody, the court found that the parties' pendente lite July 19, 2018 custody and parenting access plan was in the best interests of the children with one exception. The court modified the relocation provision of the plan to permit the plaintiff to "relocate with the minor children to the state of New York provided it is not more than thirty-five . . . miles from her current residence." The defendant filed an appeal from the court's judgment, which was treated as an amended appeal by this court.

On March 20, 2019, the defendant filed a motion for articulation, in which he requested that the court articulate, inter alia, the factual basis for its support and alimony orders. On April 29, 2019, the court issued an

[6] In her appellate brief, the plaintiff argues that the court's award to the defendant of "all of the defendant's inheritances shown on his financial affidavit in Brazil," is an award of "the myriad Brazilian assets" identified in the defendant's 2007 Brazilian tax return affidavit, a document introduced into evidence at trial. The defendant responds that "the plaintiff seemingly misinterprets the phrase 'financial affidavit' in the property order to mean the defendant's 2007 Brazilian tax return affidavit . . . rather than the defendant's September 18, 2018 financial affidavit." We agree with the defendant that the plaintiff misconstrues the court's language, and we reject the plaintiff's argument that the court awarded the defendant additional unspecified Brazilian assets included in the defendant's 2007 Brazilian tax return affidavit but not reflected in his financial affidavit.

articulation, stating: "The court found that the defendant has [an] earning capacity of $110,000 per year. Under the child support guidelines, that amounts to a net weekly income of $1286 after deducting all of the guideline amounts including medical/hospital/dental insurance premiums of $491. That results in a basic child support obligation of $390 per week and a division for unreimbursed medical [costs] with the defendant paying 70 percent and the plaintiff paying 30 percent. The support order was entered based on the defendant's earning capacity as found by the court and the child support guidelines. The alimony order was entered considering the provisions of . . . § 46b-82."[7] Additional facts and procedural history will be set forth as necessary.

Before turning to the claims on appeal, we note the applicable standard of review. "The well settled standard of review in domestic relations cases is that this court will not disturb trial court orders unless the trial court has abused its legal discretion or its findings have no reasonable basis in the facts. . . . As has often been explained, the foundation for this standard is that the trial court is in a clearly advantageous position to assess the personal factors significant to a domestic relations case, such as demeanor and attitude of the parties at the hearing. . . . The test is whether the court could

[7] The defendant also requested, inter alia, that the court articulate its decision to divide the parties' marital assets approximately equally, despite the defendant's premarital contribution of his Brazilian assets and his father's contribution to the purchase of the marital home. With respect to the division of assets, the court stated: "In dividing the parties' marital assets, the court considered the defendant's Brazilian assets and his father's contribution to the purchase of the marital property. The court considered all of the provisions of General Statutes § 46b-81 (c) regarding the issue of property division. The defendant's premarital contribution of his Brazilian assets and his father's contribution to the purchase of the marital property were provisions that the court considered in dividing the marital property."

By motion dated May 20, 2019, the plaintiff sought articulation regarding the attorney's fees orders, and the court issued its articulation on June 4, 2019.

reasonably conclude as it did . . . indulging every presumption in its favor. . . . A trial court's conclusions are not erroneous unless they violate law, logic, or reason or are inconsistent with the subordinate facts in the finding. . . .

"Review of a trial court's exercise of its broad discretion in domestic relations cases is limited to whether that court correctly applied the law and whether it could reasonably conclude as it did. . . . The trial court must consider all relevant statutory criteria in a marital dissolution action but it does not have to make express findings as to the applicability of each criteria. . . . The trial court may place varying degrees of importance on each criterion according to the factual circumstances of each case." (Citation omitted; internal quotation marks omitted.) *Bevilacqua* v. *Bevilacqua*, 201 Conn. App. 261, 265, 242 A.3d 542 (2020).

I

The defendant's first claim on appeal is that the court's support orders are excessive in that they leave the defendant with only approximately 10 percent of his net income to pay for his basic needs. We disagree that the court's support orders constituted an abuse of discretion.

The following additional procedural history and facts are relevant to this claim on appeal. In its memorandum of decision, the court found that the defendant had an earning capacity of $110,000 annually,[8] which, after subtraction of the child support guideline deductions including but not limited to medical, hospital, and dental insurance premiums of $491, amounts to a net weekly income of $1286. The court ordered the defendant to

[8] At trial, the plaintiff requested that the court assign an earning capacity to the defendant of $140,000, and the defendant submitted that his earning capacity was $80,000. Neither party challenges on appeal the court's assignment of an earning capacity of $110,000.

pay the plaintiff $390 weekly in child support and $600 weekly in alimony. It also held the defendant responsible for the monthly loan payments on the 2016 Mazda CX9 that it had awarded to the plaintiff, which payment amounted to approximately $162 weekly.[9] After subtracting the support payments and vehicle loan payment from his net weekly income, $134 remains, which amounts to approximately 10 percent of his net weekly income.

Although the defendant does not challenge on appeal the court's orders regarding distribution of marital property, such orders are relevant. The court awarded the defendant $200,000 in proceeds from the sale of the marital home; $6285 in bank accounts; stocks, bonds, and mutual funds in the amount of $116,725; real estate and property in Brazil worth $131,409; $56,454 from his retirement accounts; and the 2016 Mazda CX5 valued at $16,860. The defendant was ordered to pay $90,000 in attorney's fees to the plaintiff's counsel. The court awarded the plaintiff $345,000 in equity in the marital home, $8808 in banking and IRA accounts, $56,454 from the defendant's retirement accounts, the 2007 Honda with equity of $4000, and the 2016 Mazda CX9 with a value of $25,273. Taking all of the above into account, the court ordered an essentially even distribution of the marital property, with each party receiving assets worth approximately $440,000.

[9] In his September 18, 2018 financial affidavit, the defendant stated that the loan payment on the 2016 Mazda CX9 was $182 weekly, while the plaintiff stated on her financial affidavit that the loan payment was $162 weekly. The trial court did not make a finding regarding the weekly loan payment on the vehicle. Although the defendant represented in his principal brief on appeal that the loan payment constituted $182 weekly, he stated in his reply brief that "[t]his discrepancy is not crucial to the defendant's argument on appeal and, therefore, the defendant will use the plaintiff's calculations of $162 for purposes of this reply brief." At oral argument before this court, the defendant's counsel stated that the defendant was willing to accept the $162 amount listed on the plaintiff's financial affidavit.

We next set forth relevant principles of law. Section 46b-82 (a) provides in relevant part: "At the time of entering the decree, the Superior Court may order either of the parties to pay alimony to the other, in addition to or in lieu of an award pursuant to section 46b-81. . . . In determining whether alimony shall be awarded, and the duration and amount of the award, the court shall consider the evidence presented by each party and shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate and needs of each of the parties and the award, if any, which the court may make pursuant to section 46b-81, and, in the case of a parent to whom the custody of minor children has been awarded, the desirability and feasibility of such parent's securing employment." "Trial courts . . . are afforded wide discretion in awarding alimony, provided that they consider all of the criteria enumerated in . . . § 46b-82." *Greco* v. *Greco*, 275 Conn. 348, 360, 880 A.2d 872 (2005). A party's "ability to pay is a material consideration in formulating financial awards." Id., 361.

In support of his claim that the trial court's support orders are excessive, the defendant relies on *Valentine* v. *Valentine*, 149 Conn. App. 799, 800, 90 A.3d 300 (2014). In *Valentine*, the trial court found the defendant's net weekly income to be $957.52 and ordered the defendant to pay $300 weekly in child support and $300 weekly in periodic alimony for fourteen years. Id., 805–806. It also ordered him to transfer his rights, title, and interest in the marital home to the plaintiff, and further ordered that he assume all future mortgage payments, costs, and fees associated with the property. Id., 806. It also ordered the defendant to make several other payments to satisfy prior outstanding court orders, including $928 for child support, $16,200 for discovery

noncompliance, $10,800 for parenting education noncompliance, $3250 for attorney's fees, $31,992 for mortgage arrearage, and $2400 for outstanding utilities, for total payments due in the amount of $65,570. Id. It also ordered the defendant to pay $10,000 toward the plaintiff's attorney's fees. Id. The court required the defendant to maintain a $500,000 life insurance policy, to provide health insurance for the plaintiff, to cover 62 percent of any uninsured medical expenses for the parties' two minor children, and to cover 50 percent of costs associated with the minor children's extracurricular activities. Id., 806–807. Significantly, the "court did not identify any valuable assets that the defendant could use to comply with its financial orders." Id., 807. This court determined that the court's financial orders were excessive, leaving the defendant with "little to no income to sustain his basic welfare." Id., 808.

The defendant also relies on *Greco* v. *Greco*, supra, 275 Conn. 362–63. In *Greco*, the trial court awarded the plaintiff 98.5 percent of the marital estate and ordered the defendant to pay the plaintiff $710 weekly in alimony and to maintain for the plaintiff's benefit two substantial insurance policies, which orders left the defendant with an annual net income deficit. Id., 360–61. Our Supreme Court held that the trial court's financial orders constituted an abuse of discretion because, "[u]nder the trial court's order, the defendant was forced to the brink of abject poverty by his obligations to pay the required alimony and insurance premiums, and then stripped of any means with which to pay them by the disproportionate division of the marital assets." Id., 363; see also *Pellow* v. *Pellow*, 113 Conn. App. 122, 124, 129, 964 A.2d 1252 (2009) (periodic alimony award of $4500 per month, which totaled more than $70,000 per year, was abuse of discretion where it would consume more than 90 percent of obligor's *gross* income, which trial court found to be $78,796).

We conclude that the facts of this case differ significantly from the facts in *Greco* and *Valentine*. In the present case, although the support and vehicle loan payment orders leave the defendant with net income of $134 weekly, which amounts to approximately 10 percent of his net weekly income, the support orders are not excessive in light of the duration of such orders and the assets awarded to the defendant in the dissolution. First, we note that the court ordered time limited alimony and found that, in light of the facts and circumstances of the case, a six year period of alimony was appropriate.[10] The court further ordered that the term of alimony could not be extended.

Second, the defendant received substantial assets in the dissolution, including $200,000 in proceeds from the sale of the marital home; $6285 in bank accounts; stocks, bonds, and mutual funds in the amount of $116,725; real estate and property in Brazil worth $131,409; $56,454 from his retirement accounts; and the 2016 Mazda CX5 valued at $16,860. Accordingly, the present situation is unlike that in *Greco* and *Valentine* because, here, the court awarded valuable assets from the marital estate to the defendant, which assets he could use to comply with the court's support orders and to sustain his basic welfare. The court expressly recognized the parties' history of using assets to meet their expenses, stating that "[t]he income earned by the defendant was never enough to pay all of the household expenses." Furthermore, unlike in *Greco* and *Valentine*, the distribution of assets was essentially even, with both parties receiving approximately 50 percent of the marital property. On

[10] The court has the discretion to structure its alimony award such that the recipient of the support has the opportunity to obtain the skills needed to achieve a standard of living outside the marriage that was enjoyed during the marriage. "[R]ehabilitative alimony, or time limited alimony, is alimony that is awarded primarily for the purpose of allowing the spouse who receives it to obtain further education, training, or other skills necessary to attain self-sufficiency." *Bornemann* v. *Bornemann*, 245 Conn. 508, 539, 752 A.2d 978 (1998).

the basis of the foregoing, we conclude that the support orders did not constitute an abuse of discretion.

II

We next address the defendant's claim that the court abused its discretion in entering a relocation order that the parties did not request. Specifically, he contends that the trial court improperly "unilaterally modified" language in the parties' pendente lite parenting plan to permit the plaintiff to relocate thirty-five miles from her current residence, where the parenting plan permitted relocation thirty-five miles from the other parent's residence. We disagree that the court abused its discretion.

The following additional facts and procedural history are relevant to this claim on appeal. The parties had entered into a pendente lite custody and parenting access plan dated July 19, 2018. The pendente lite plan provided joint legal and shared physical custody of the parties' children and designated the plaintiff as the primary residential parent. Article eleven of the plan discussed relocation and provided: "Neither party shall relocate with the minor children outside the state of Connecticut or more than thirty-five . . . miles from the other parent's residence, unless the parties agree otherwise in writing. Each party shall provide the other party with at least ninety . . . days advance notice of their intention to relocate providing the proposed relocation and the reason for said relocation. In the event the parties do not reach an agreement, in writing, either party may petition the court for a determination of same; however, in no event shall either party relocate until further order of the court."

At trial, the plaintiff testified regarding her educational plans related to ensuring her long-term financial stability. Specifically, she testified that she had been accepted into a doctorate program in clinical psychology at the University of Albany. In order to receive a discounted tuition rate, the plaintiff maintained that she

would need to be a resident of the state of New York. The plaintiff estimated that it would take her six years to complete the doctorate program. On the basis of her acceptance into the University of Albany program, the plaintiff requested a modification to the relocation provision of the pendente lite parenting plan.

In opening statements, the plaintiff's counsel stated that the plaintiff was requesting "that she be allowed to reside within the radius allowed . . . within [the] parenting plan; however, with one caveat. The radius right now is thirty-five miles *from . . . the parties' residence in Newtown, Connecticut*. She asks that it be also within the state of New York . . . ." During her testimony, the following exchange occurred between the plaintiff's counsel and the plaintiff:

"Q. Are you asking the court to slightly modify this plan?

"A. Yes, I am.

"Q. How so?

"A. I would just like to keep the parenting plan as is because I know that is important to the court and I would—I live on the border of New York so I would only ask that I would have an opportunity to relocate within those thirty-five miles on the border so that I can receive the tuition that this school offers and therefore I would be the one driving to school and taking the, you know, I would be taking the—I don't know what the word would be—the difficult driving time and not . . . make any—alter anybody else's schedule, basically.

"Q. So you mentioned thirty-five miles. Is there a relocation provision in this plan?

"A. It says that there's a *radius of thirty-five miles from our residence on this date*.

"Q. And it limits you from going outside of the state of Connecticut; is that correct?

"A. That's correct.

* * *

"Q. [D]o you know where the defendant wants to move?

"A. Yes, I do.

"Q. And where is that?

"A. Old Greenwich, Connecticut.

"Q. And giving his pending move to Greenwich does—do you think New York makes sense for you?

"A. Yes. Absolutely. It's on the border.

"Q. Might it be easier if the defendant was in Greenwich and you were just across the border?

"A. Yes, it would be." (Emphasis added.)

At trial, the defendant testified that he was "liv[ing] at [his] father's house temporarily" in Newtown. The plaintiff entered into evidence an August 29, 2018 letter from the defendant's counsel to the plaintiff's counsel stating that the defendant intended to relocate within thirty-five miles of the marital residence to Old Greenwich. The letter cited greater employment opportunities in the lower Fairfield County/New York City area than the greater Danbury area and indicated that an exact address would be provided to the plaintiff once a lease agreement was finalized.

While the plaintiff was testifying on cross-examination, the court clarified her request, stating: "But if I understand your request, which I have not said I agree or disagree with, as I understand your request was to be able to move within the thirty-five miles called for in the separation agreement, but you may have to cross the state line in New York but within that thirty-five mile

radius. Is that correct?" The plaintiff confirmed that the court's understanding was correct.

In its memorandum of decision, the court found that the parties' pendente lite July 19, 2018 custody and parenting access plan was in the best interests of the children with one exception. The court eliminated the reference to "outside the state of Connecticut" and ordered that "[t]he plaintiff has the right to relocate with the minor children to the state of New York provided it is not more than thirty-five . . . miles from her current residence."[11]

On appeal, the defendant argues that "the record did not support the trial court's conclusion that permitting the plaintiff to relocate thirty-five miles from her current residence, rather than the mutually agreed upon thirty-five miles from the other parent's residence, is in the minor children's best interests." (Emphasis omitted.) The defendant maintains that both parties made "pointed requests"—with the plaintiff requesting that the court remove the language prohibiting her from relocating outside Connecticut and the defendant requesting that the court retain that language. The defendant states that the court "made no mention or reference to the defendant's residence or the ample evidence in the record that he intends to relocate to Old Greenwich." (Emphasis omitted.) Thus, the defendant contends that the court abused its discretion in deciding a matter that was not put in issue by either party. He further argues that the court's order violated his right to due process, "as it denied him any notice of the issue and the opportunity to be heard on it."

[11] The court ordered restrictively "as long as the defendant is a resident of Connecticut that the plaintiff not file any motion in the state of New York having to do with custody and visitation. This includes a motion for protective order and restraining order. She is not to allow anyone to file any motions on behalf of the children." The court stated that this order was "not stayed in the event of an appeal."

We first set forth applicable legal principles and our standard of review. The authority of a trial court to render custody, visitation and relocation orders is set forth in General Statutes § 46b-56 (a), which provides in relevant part that "[i]n any controversy before the Superior Court as to the custody or care of minor children . . . the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children . . . ."[12] "[Section] 46b-56

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

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

(c) directs the court, when making any order regarding the custody, care, education, visitation and support of children, to 'consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of [sixteen enumerated] factors. . . . The court is not required to assign any weight to any of the factors that it considers.' " *Noonan* v. *Noonan*, 122 Conn. App. 184, 189, 998 A.2d 231, cert. denied, 298 Conn. 928, 5 A.3d 490 (2010).

"Our standard of review of a trial court's decision regarding custody, visitation and relocation orders is one of abuse of discretion. . . . [I]n a dissolution proceeding the trial court's decision on the matter of custody is committed to the exercise of its sound discretion and its decision cannot be overridden unless an abuse of that discretion is clear. . . . The controlling principle in a determination respecting custody is that the court shall be guided by the best interests of the child. . . . In determining what is in the best interests of the child, the court is vested with a broad discretion. . . . [T]he authority to exercise the judicial discretion under the circumstances revealed by the finding is not conferred upon this court, but upon the trial court, and

environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child's cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers, but shall articulate the basis for its decision." General Statutes § 46b-56 (c).

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

"The trial court has the opportunity to view the parties [firsthand] and is therefore in the best position to assess the circumstances surrounding a dissolution action, in which such personal factors as the demeanor and attitude of the parties are so significant. . . . [E]very reasonable presumption should be given in favor of the correctness of [the trial court's] action. . . . We are limited in our review to determining whether the trial court abused its broad discretion to award custody based upon the best interests of the child as reasonably supported by the evidence." (Citations omitted; internal quotation marks omitted.) *Ford* v. *Ford*, 68 Conn. App. 173, 187–88, 789 A.2d 1104, cert. denied, 260 Conn. 910, 796 A.2d 556 (2002).

In the present case, the court determined that it was in the best interests of the parties' children for the plaintiff to be permitted to relocate just over the New York border, where she could establish residency and thus afford to pursue the doctorate program to which she had applied and been accepted. The court expressly found that this professional degree, which would take six years to complete, would provide the plaintiff a necessary opportunity for meaningful employment and income. Relatedly, as the court's alimony award was time limited, terminating after six years, there was a need for the court to craft an order reasonably assuring a plan for self-sufficiency at the expiration of those six years. The court retained the parents' acknowledgement, expressed in their pendente lite agreement, that a maximum of thirty-five miles between their homes was in the best interest of their children. The court

reasonably and logically tethered that distance limit to the plaintiff's current home in Newtown, as she was the party, during the dissolution hearing, seeking the court's permission to relocate. Accordingly, we are not persuaded that the court abused its discretion or deprived the defendant of due process.[13] Moreover, with respect to potential future residential relocations, we do not read the court's order as deviating from the parties' expressed belief and agreement that it is in the best interest of their children that the parties live within thirty-five miles of each other unless agreed otherwise in writing.

III

Lastly, we address the defendant's claim that the amount of the attorney's fees awarded reflected an abuse of the court's discretion. We disagree.

The following additional procedural history is relevant to this claim on appeal. On October 13, 2017, the plaintiff filed a motion for attorney's fees pendente lite. The court, *Eschuk, J.*, held a hearing on this motion on February 5 and May 31, 2018. Both parties filed financial affidavits and testified. The plaintiff's counsel, Attorney

[13] The defendant relies on the proposition that, "[i]n exercising its statutory authority to inquire into the best interests of the child, the court cannot sua sponte decide a matter that has not been put in issue, either by the parties or by the court itself. Rather, it must . . . exercise that authority in a manner consistent with the due process requirements of fair notice and reasonable opportunity to be heard." (Internal quotation marks omitted.) *Petrov* v. *Gueorguieva*, 167 Conn. App. 505, 515, 146 A.3d 26 (2016); see id., 518 (trial court's finding that start of school, which was not pleaded specifically in plaintiff's motion to modify custody, constituted material change in circumstances technically was improper). The defendant cites *Strohmeyer* v. *Strohmeyer*, 183 Conn. 353, 354–56, 439 A.2d 367 (1981), in which our Supreme Court concluded that the trial court erred in awarding the parties joint custody of the minor child, where the defendant did not contest in his pleadings or at trial the plaintiff's request for sole custody and the court stated at the end of trial that it would give sole custody to the plaintiff.

We conclude that the concerns in *Strohmeyer*, where the court awarded joint custody without a hearing on that issue, are not implicated here.

Danielle Edwards, submitted two affidavits of attorney's fees, one dated December 12, 2017, and another dated January 3, 2018. At the hearing on May 31, 2018, Attorney Edwards was cross-examined by the defendant's counsel as to her representation of the plaintiff. Attorney Edwards testified that the matter was originated by Attorney Paul Tusch, who was the supervising attorney. Attorney Edwards testified regarding her representation of the plaintiff in the temporary restraining order proceeding in September, 2017, for which the plaintiff was billed a total of $22,886.25. Attorney Edwards, who previously had not conducted a restraining order hearing, worked 68.5 hours on the matter, for which the client was billed $20,550, and Attorney Tusch spent four hours, for which the client was billed $2300.[14] With respect to the dissolution, Edwards testified, in response to questions from the defendant's counsel, regarding billing entries for conferences with other attorneys at her firm.

The defendant entered into evidence billing records of his attorney, Jill H. O'Connor, from September, 2017 through April, 2018. The total amount billed was $60,521.10, which included representation for the restraining order proceeding and dissolution proceedings. In closing argument on the fee request, the defendant's counsel argued, inter alia, that the fees requested were excessive and unreasonable because Attorney Edwards was inexperienced in family law and "a lot of the time" was spent being mentored by other attorneys in the firm. The defendant's counsel also argued that

[14] When questioned as to whether Attorney Tusch was training or advising her on the restraining order matter, Attorney Edwards testified that Attorney Tusch "wrote off time that might have fallen in the training category," however, she later testified that she did not know how much time he wrote off. With respect to advising, Attorney Edwards testified that "all of the time I spent with him was relevant to making sure that our case strategy was on point and being carried out at all times the way that was best for the client."

the fees should be equalized. Specifically, she contended that because the defendant had paid approximately $60,000 in attorney's fees, any award of attorney's fees to the plaintiff's counsel should be limited to the difference between the $60,000 the defendant had paid his attorney and the amount the plaintiff already had paid her attorney.

On May 31, 2018, the court issued an order in which it found no "egregious misconduct by either party, notwithstanding the lengthy temporary restraining order hearing." It found that the plaintiff had a right to have an attorney represent her in this case, and that she "does not have enormous assets with which to pay her attorney." It found that the plaintiff had selected Attorney Edwards, who, at the time, had one of the lowest hourly billing rates at the Cacace, Tusch, & Santagata law firm. The court found that it was "not unusual" for more experienced attorneys at the law firm to mentor Attorney Edwards "given her experience as a practicing attorney at the time." As to the requested fees of $82,151.09, the court found that some of the fees charged by more senior partners at the law firm were excessive. It further found that although the plaintiff's attorney's fees "are not easy to pay," the defendant has the assets to do so.

On the basis of these findings, the court adjusted the fees charged by more senior attorneys at the law firm and reduced the requested sum of $82,151.09 to $75,000.[15] It then ordered the defendant to pay the $75,000 by June 30, 2018.

[15] The court also explained its reduction during the hearing, stating: "[W]hile it might be that [the plaintiff] could have gotten a cheaper firm of attorneys, it is a good firm, and she's entitled within reason to select a competent firm that she feels comfortable with. She selected or had selected for her probably the lowest fee earner amongst those qualified as attorneys. That being the case, it is not inappropriate for the firm to have mentored Attorney Edwards to some extent. The extent, however, to which the mentorship took place should be something that is taken into consideration by the court. So, in going through the requested fees, I have reduced some of the

On appeal, the defendant claims that the fees ordered were unreasonable because Attorney Edwards was inexperienced in restraining order applications, and her inexperience was "reflected in the significant disparity between the hours billed by [the] plaintiff's counsel versus the hours billed by defense counsel." Acknowledging that the court "reduced a handful of the billing entries from other partners who had assisted" Attorney Edwards, the defendant contends that the court should have reduced Edwards' own entries, which he maintains were excessive and unreasonable. We disagree that the court abused its discretion.

"When making an order for the payment of attorney's fees, the court must consider factors that are essentially the same as those that must be considered when awarding alimony. . . . [General Statutes §] 46b-62 governs the award of attorney's fees in dissolution proceedings and provides that the court may order either spouse . . . to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the criteria set forth in [§] 46b-82. . . . This reasonableness requirement balances the needs of the obligee spouse with the obligor spouse's right to be protected from excessive fee awards. . . .

"Courts ordinarily award counsel fees in divorce cases so that a party . . . may not be deprived of [his

fees charged by Attorney Tusch. Attorney Tusch is the—a senior partner, I believe, in the firm of Cacace, Tusch, and Santagata. His billing rate is specified to be $575 an hour. Attorney Malone, also a partner, was charging at $375 an hour. . . . I'm going to pick a couple of—of examples rather than going through this bill one by one. But for example on November 1st, 2017, I have reduced the amount charged by Attorney Tusch on October 2nd for . . . preparation for attending a hearing short calendar regarding temporary financial support, outside conference with counsel, meeting with Attorney Edwards, and the like from $4082 to $2130. I have made similar adjustments. For example, on October 13th there was a telephone conference followed up by office conferences with Attorney Tusch and Ms. Malone concerning [a] proposed visitation psychologist. Now while it might be entirely appropriate for the partners to mentor Attorney Edwards, the amount of $690 seems to the court to be a little excessive."

or] her rights because of lack of funds. . . . Where, because of other orders, both parties are financially able to pay their own counsel fees they should be permitted to do so. . . . An exception to the rule . . . is that an award of attorney's fees is justified even where both parties are financially able to pay their own fees if the failure to make an award would undermine its prior financial orders . . . . Whether to allow counsel fees [under §§ 46b-62 and 46b-82], and if so in what amount, calls for the exercise of judicial discretion. . . . An abuse of discretion in granting counsel fees will be found only if [an appellate court] determines that the trial court could not reasonably have concluded as it did." (Citations omitted; internal quotation marks omitted.) *Lynch* v. *Lynch*, 153 Conn. App. 208, 246–47, 100 A.3d 968 (2014), cert. denied, 315 Conn. 923, 108 A.3d 1124, cert. denied, 577 U.S. 839, 136 S. Ct. 68, 193 L. Ed. 2d 66 (2015).

"Courts have a general knowledge of what would be a reasonable attorney's fee for services which are fairly stated and described. . . . [C]ourts may rely on their general knowledge of what has occurred at the proceedings before them to supply evidence in support of an award of attorney's fees. . . . The court [is] in a position to evaluate the complexity of the issues presented and the skill with which counsel had dealt with these issues. . . . While the decision as to the liability for payment of such fees can be made in the absence of any evidence of the cost of the work performed . . . the dollar amount of such an award must be determined to be reasonable after an appropriate evidentiary showing." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Panganiban* v. *Panganiban*, 54 Conn. App. 634, 644, 736 A.2d 190, cert. denied, 251 Conn. 920, 742 A.2d 359 (1999).[16]

[16] Rule 1.5 (a) of the Rules of Professional Conduct provides: "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in

In the present case, the court had before it robust evidence from which to determine the reasonableness of the fees. Specifically, during the hearing on the plaintiff's motion for attorney's fees, Attorney Edwards testified as to the services she rendered, her level of experience, and her consultation with other attorneys at her firm. Moreover, the plaintiff's attorney submitted two fee affidavits with attached billing records.

The defendant's central challenge to the attorney's fees award is that the court should have reduced Attorney Edwards' billing entries on the basis that her alleged inexperience resulted in excessive billing. In making its award, the court justifiably considered the services rendered by the plaintiff's counsel and her skill level and corresponding billing rate. In fact, the court remarked during the hearing that, although a more experienced attorney would take less time to perform a task, the hourly rate of such attorney would be higher. The court further remarked that "while it might be that [the plaintiff] could have gotten a cheaper firm of attorneys, it is a good firm, and she's entitled within reason to select a competent firm that she feels comfortable with. She selected or had selected for her probably the lowest fee earner amongst those qualified as attorneys. That being the case, it is not inappropriate for the firm to have mentored Attorney Edwards to some extent." The court then determined that certain billing entries by partners

determining the reasonableness of a fee include the following: (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) The likelihood, if made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) The fee customarily charged in the locality for similar legal services; (4) The amount involved and the results obtained; (5) The time limitations imposed by the client or by the circumstances; (6) The nature and length of the professional relationship with the client; (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) Whether the fee is fixed or contingent."

of the firm were excessive, and identified on the record examples of entries it was reducing. Overall, the court reduced the fees requested by approximately $7000. Considering the foregoing, we conclude that the court appropriately considered Attorney Edwards' experience in assessing the reasonableness of the fee request and that its resulting award was not an abuse of its discretion.

The judgment is affirmed.

In this opinion the other judges concurred.

LISA R. JOHNSON *v.* PETER A. JOHNSON (AC 42984)

Alvord, Cradle and Suarez, Js.

Syllabus

The defendant, whose marriage to the plaintiff had been dissolved, appealed to this court following the decisions of the trial court granting the plaintiff's motions for contempt and issuing certain other orders. After the trial court granted the plaintiff's motions for postsecondary educational support for the parties' son and for modification of the defendant's child support and alimony obligations, the court denied the defendant's motions for reargument, and he appealed to this court, which dismissed as untimely that portion of the appeal that pertained to the educational support and alimony and child support orders. The defendant then filed an amended appeal challenging the trial court's order that he reimburse the plaintiff for interest on funds she had to borrow as a result of his wilful noncompliance with the educational support order. The trial court then issued a correction to that order, and granted the plaintiff's motions for contempt as a result of the defendant's failure to comply with the educational support order or the child support and alimony orders. The defendant then filed a second amended appeal after which this court issued an order limiting the issues he could raise in this appeal as a result of his having listed the trial court's initial support orders on his amended appeal forms despite the previous dismissal of his appeal as to those orders. On appeal, the defendant claimed, inter alia, that the trial court misinterpreted the parties' separation agreement, which had been incorporated into the dissolution judgment, and, thus, erred in entering the associated support orders. *Held*:

1. The defendant could not prevail on his claim that the trial court committed plain error by imposing its own findings and interpretation of the separation agreement and acting in a manner that gave rise to the appearance of a lack of impartiality: the defendant's assertion as to the separation agreement and the associated support orders was based on a flawed interpretation of the law and was not properly before this court, the defendant having ignored this court's order limiting his appellate brief to the trial court's orders that were issued subsequent to the dismissal of that portion of his appeal that challenged the initial orders modifying his child support and alimony obligations and requiring him to pay educational support; moreover, the defendant did not raise a claim in his motion to reargue as to the trial court's interpretation of the separation agreement, and he failed to argue how that interpretation resulted in a manifest injustice or affected the fairness and integrity of and public confidence in the proceedings; furthermore, the defendant's claim of judicial bias arose solely from the adverse rulings against him, which may not form the basis for such a claim.
2. This court declined to review the defendant's inadequately briefed claims that the trial court abused its discretion when it issued contradictory findings without changing its modified orders and issued orders that were beyond a statutory time frame that he did not identify in his brief; furthermore, the defendant's claim that the court abused its discretion in finding him in contempt was unavailing, as he did not identify which contempt finding he was challenging and failed to provide legal or factual analysis in support of his claims, and, even if it were assumed that the defendant was challenging the contempt finding relative to the educational support order, his claim was belied by the record, which reflected that he was ordered to pay those expenses on the same day that the court modified his child support and alimony obligations, and the court's finding of wilful noncompliance with those unambiguous orders was amply supported by the record of the numerous hearings he was afforded on that issue.

Argued January 5—officially released March 23, 2021

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the court, *Hon. Stanley Novack*, judge trial referee; judgment dissolving the marriage and granting certain other relief; thereafter, the court, *Sommer*, *J.*, granted the plaintiff's motions for postsecondary educational support and modification of child support and alimony; subsequently, the court, *Sommer*, *J.*, denied the defendant's

motion for reargument; thereafter, the court, *Sommer*, *J.*, issued a supplement to its denial of the motion to reargue, and the defendant appealed to this court, which dismissed the appeal in part; subsequently, the court, *Sommer*, *J.*, issued certain orders as to its educational support and child support and alimony orders, and the defendant filed an amended appeal; thereafter, the court, *Sommer*, *J.*, issued an order of correction, and the defendant filed an amended appeal; subsequently, the court, *Sommer*, *J.*, granted the plaintiff's motions for contempt, and the defendant filed an amended appeal. *Affirmed.*

Maryam Afif, with whom, on the brief, was *Seth J. Arnowitz*, for the appellant (defendant).

Lisa R. Johnson, self-represented, the appellee (plaintiff).

Opinion

CRADLE, J. In this matter stemming from the dissolution of his marriage to the plaintiff, Lisa R. Johnson, the defendant, Peter A. Johnson, appeals from the trial court's postjudgment modification of child support and alimony, and entry of an educational support order. The defendant also appeals from the court's judgment finding him in contempt for failing to comply with those orders. On appeal, the defendant claims that the trial court (1) committed plain error "when it imposed its own findings and interpretation" of the parties' separation agreement, and "failed to act in a manner that projected impartiality," and (2) abused its discretion when it "issued numerous contradictory findings without changing its modified orders," entered orders "beyond the statutory time frame" and "found [him] in contempt without making [the] requisite findings." We affirm the judgment of the trial court.

The parties' eighteen year marriage was dissolved on March 15, 2016. At the time of dissolution, the court incorporated into its judgment a separation agreement signed by the parties and their respective counsel. The separation agreement provided that the defendant would pay child support and alimony to the plaintiff, in the amounts of $1451 per month and $2166.67 per month, respectively. The agreement further provided: "This amount does not take into account any of the [defendant's] income from the rental of real properties owned partially or wholly by him. In the interest of resolving the parties' dispute, the [plaintiff] is not pursuing her right to further discovery about the [defendant's] rental income at this time. In the event that it is determined that the [defendant] derives a benefit from rental income, the same shall be deemed a substantial change in circumstance[s] and this child support order shall be modified retroactive to the date such benefit was derived, but no earlier than the date of dissolution of the parties' marriage." The identical language was applied to the provision of the agreement pertaining to the defendant's alimony obligation.

The separation agreement also provided that the court would retain jurisdiction to enter educational support orders for the parties' children pursuant to General Statutes § 46b-56c.

On January 16, 2018, the plaintiff filed a motion for educational support to pay for the college expenses of the parties' son. On February 8, 2018, she filed a motion to modify child support and alimony on the ground that she had discovered that the defendant was receiving a benefit from rental income.[1] The court, *Sommer, J.*, held evidentiary hearings on the motions over the course of three days.[2]

[1] The defendant jointly owns with his sister three rental properties in Ossining, New York.

[2] Those hearings also addressed a motion for contempt filed by the plaintiff, which was denied, and a motion for modification of child support and

On December 21, 2018, the court issued a memorandum of decision granting the plaintiff's motions for postsecondary educational support and for modification of child support and alimony. The court found that the defendant receives a benefit from his rental properties and had received that benefit commencing prior to the date of dissolution. Specifically, the court found that the defendant's income was $938 per week higher than the income that he had disclosed at the time of dissolution. The court therefore concluded that the plaintiff had established a substantial change in circumstances in accordance with the parties' separation agreement, and modified the child support and alimony orders accordingly, retroactive to the date of dissolution. The court further ordered the defendant to pay 80 percent of the college expenses for the parties' son up to the statutory cap of the cost of in-state tuition and fees for a full-time student at the University of Connecticut pursuant to § 46b-56c (f).

On January 2, 2019, the defendant filed a motion to reargue, which the court heard on February 25, 2019. The court denied the motion orally from the bench and reiterated, also orally from the bench, its denial of that motion on February 27, 2019. The defendant and his attorney were present in court on both dates.

The defendant filed an amended motion to reargue on April 15, 2019, asking the court to address two issues, which he captioned "date of change in circumstances" and "imputed income." (Emphasis omitted.) On May 17, 2019, the court summarily denied the defendant's motion. On May 24, 2019, the court issued a "supplement" to its order denying the motion to reargue, explaining the bases for its rejection of the arguments raised in the defendant's motion.

alimony filed by the defendant, which also was denied. Those orders have no bearing on the issues presented in this appeal.

On May 24, 2019, the defendant filed an appeal from the orders issued on December 21, 2018, and May 17 and 24, 2019. On July 18, 2019, this court dismissed, as untimely, the portion of the defendant's appeal challenging the court's December 21, 2018 decision.

On July 12, 2019, the trial court found that the defendant had failed to pay the educational support order and that his noncompliance with the order was wilful. The court further found that, as a result of the defendant's violation of the court order, the plaintiff was required to borrow funds at an interest rate of 6 percent to pay for the education of the parties' son. The court ordered the defendant to reimburse the plaintiff for that interest. On July 23, 2019, in response to a motion for clarification filed by the plaintiff on the same day, the court issued an order clarifying the amounts of the child support and alimony arrearages due to the plaintiff, in addition to the amount of the defendant's portion of the educational support order. On July 24, 2019, the defendant filed an amended appeal to include a challenge to the court's July 12 and 23, 2019 orders. On August 1, 2019, the court issued a correction to its July 12, 2019 orders, in which it simply corrected various dollar amounts and calculations. On August 9, 2019, the defendant amended his appeal to include this order.

On July 25 and August 2, 2019, the plaintiff filed motions for contempt, alleging that the defendant had failed to comply with the educational support order or the modified child support and alimony orders. On December 20, 2019, the court granted both of the plaintiff's motions for contempt. On January 3, 2020, the defendant amended his appeal to include the court's December 20, 2019 rulings.

Despite this court's dismissal of the defendant's appeal from the trial court's December 21, 2018 orders, the defendant continued to list those orders on his amended appeal forms. On February 5, 2020, this court

issued an order limiting the issues to be raised in this appeal to the orders of the trial court issued on May 17, May 24, July 12, July 23, August 1 and December 20, 2019.

I

We begin with the defendant's claims of plain error. "[The plain error] doctrine, codified at Practice Book § 60-5, is an extraordinary remedy used by appellate courts to rectify errors committed at trial that, although unpreserved, are of such monumental proportion that they threaten to erode our system of justice and work a serious and manifest injustice on the aggrieved party. [T]he plain error doctrine . . . is not . . . a rule of reviewability. It is a rule of reversibility. That is, it is a doctrine that this court invokes in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment, for reasons of policy. . . . In addition, the plain error doctrine is reserved for truly extraordinary situations [in which] the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . Plain error is a doctrine that should be invoked sparingly. . . . Implicit in this very demanding standard is the notion . . . that invocation of the plain error doctrine is reserved for occasions requiring the reversal of the judgment under review. . . .

"An appellate court addressing a claim of plain error first must determine if the error is indeed plain in the sense that it is patent [or] readily discernable on the face of a factually adequate record, [and] also . . . obvious in the sense of not debatable. . . . This determination clearly requires a review of the plain error claim presented in light of the record.

"Although a complete record and an obvious error are prerequisites for plain error review, they are not,

of themselves, sufficient for its application. . . . [I]n addition to examining the patent nature of the error, the reviewing court must examine that error for the grievousness of its consequences in order to determine whether reversal under the plain error doctrine is appropriate. A party cannot prevail under plain error unless it has demonstrated that the failure to grant relief will result in manifest injustice. . . . In *State* v. *Fagan*, [280 Conn. 69, 87, 905 A.2d 1101 (2006), cert. denied, 549 U.S. 1269, 127 S. Ct. 1491, 167 L. Ed. 2d 236 (2007)], we described the two-pronged nature of the plain error doctrine: [An appellant] cannot prevail under [the plain error doctrine] . . . unless he demonstrates that the claimed error is *both* so clear *and* so harmful that a failure to reverse the judgment would result in manifest injustice." (Emphasis in original; internal quotation marks omitted.) *Reville* v. *Reville*, 312 Conn. 428, 467–69, 93 A.3d 1076 (2014).

A

The defendant first contends that the trial court committed plain error "when it imposed its own findings and interpretation" of the parties' separation agreement in that it "impermissibly rewrote the agreement and imposed nonexistent or impossible conditions on the defendant." This argument clearly stems from the court's December 21, 2018 orders modifying the defendant's child support and alimony obligations and ordering him to contribute to the postsecondary educational expenses of the parties' son. The defendant's appeal from those orders was dismissed as untimely. He contends, nevertheless, that, because those orders are referenced in subsequent orders from which he did timely appeal, his claims that the court committed plain error in misinterpreting the parties' separation agreement and entering the associated support orders are properly before this court. This argument is not persuasive for two reasons. First, the defendant ignores this court's

order dismissing his appeal from the December 21, 2018 orders in addition to this court's order that his appellate brief should be limited to the court's subsequent orders. And, second, the argument is based on a flawed interpretation of the law.

It is well settled that "[w]hen 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. . . . This is so because otherwise the same issues that could have been resolved if timely raised would nevertheless be resolved, which would, in effect, extend the time to appeal." (Internal quotation marks omitted.) *JPMorgan Chase Bank, N.A.* v. *Eldon*, 144 Conn. App. 260, 272, 73 A.3d 757, cert. denied, 310 Conn. 935, 79 A.3d 889 (2013). Thus, the defendant's claims are limited to the issues raised by the defendant in his motion to reargue and the issues addressed by the court in response to it.

In his April 15, 2019 motion to reargue, the defendant argued that he had moved into the property at issue prior to the date of dissolution, and, therefore, the fact that he lived there "rent free" could not form the basis for a finding of a substantial change of circumstances. He also argued that the court improperly considered his assets as imputed income. The court rejected those arguments, and the defendant has not argued that the court committed plain error in doing so. Rather, the defendant argues that the court committed plain error in failing to recognize and properly interpret allegedly ambiguous language in the parties' separation agreement referring to his "benefit from rental income . . . ." That claim was not raised in the defendant's April 15, 2019 motion to reargue.

Moreover, aside from setting forth the legal principles that govern plain error review, the defendant has failed

to argue how the trial court's interpretation of the separation agreement resulted in a manifest injustice or constituted an error so obvious that it affected the fairness and integrity of and public confidence in the judicial proceedings. Accordingly, the defendant's claim fails.

B

The defendant also contends that the trial court committed plain error by acting in a manner that gave rise to the appearance of a lack of impartiality.[3] We disagree.

"In assessing a claim of judicial bias, we are mindful that adverse rulings, alone, provide an insufficient basis for finding bias even when those rulings may be erroneous. . . . [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Schimenti* v. *Schimenti*, 181 Conn. App. 385, 395–96, 186 A.3d 739 (2018).

[3] Although the defendant conceded at oral argument before this court that his claim of judicial bias was "not preserved in any way" before the trial court; see *Gillis* v. *Gillis*, 214 Conn. 336, 343, 572 A.2d 323 (1990) ("[i]t is a well settled general rule that courts will not review a claim of judicial bias on appeal unless that claim was properly presented to the trial court via a motion for disqualification or a motion for [a] mistrial"); we review his claim for plain error. See, e.g., *DeMattio* v. *Plunkett*, 199 Conn. App. 693, 724, 238 A.3d 24 (2020) (unpreserved claim of judicial bias reviewable under plain error doctrine).

Here, the defendant claims that the "statements and actions of the court imposing nonexistent obligations on [him], castigating [him] for failing to meet them, not considering the plaintiff's income, ordering [him] to pay more than he could afford, [and] supporting the plaintiff in making false representations to another state, all" reflected the court's bias. He further argues that the court "made numerous unfounded accusations that [he] was not forthcoming or truthful with the court . . . ." He contends that the court's granting of the plaintiff's motion for contempt without applying the correct standards also conveyed a lack of impartiality. It is clear that the defendant's claim of judicial bias arises solely from the adverse rulings entered against him, which may not form the basis for a claim of judicial bias. See, e.g., *Tracey* v. *Tracey*, 97 Conn. App. 278, 284–85, 903 A.2d 679 (2006) ("it is clear that adverse rulings by the judge do not amount to evidence of bias sufficient to support a claim of judicial disqualification"). Because the defendant has failed to demonstrate a deep-seated favoritism by the court, or an antagonism that would make a fair judgment impossible, his claim is unavailing.

II

The defendant also claims that the court abused its discretion when it "issued numerous contradictory findings without changing its modified orders," issued orders "beyond the statutory time frame," and found him in contempt without making the necessary findings. We disagree.

"In general, [an] abuse of discretion exists when a court could have chosen different alternatives but has decided the matter so arbitrarily as to vitiate logic, or has decided it based on improper or irrelevant factors . . . . Therefore, [i]n those cases in which an abuse of discretion is manifest or where injustice appears to have been done, reversal is required. . . . When reviewing claims under an abuse of discretion standard,

the unquestioned rule is that great weight is due to the action of the trial court and every reasonable presumption should be given in favor of its correctness . . . . Furthermore, we have stated in other contexts in which an abuse of discretion standard has been employed that this court will rarely overturn the decision of the trial court." (Citation omitted; internal quotation marks omitted.) *Stilkey* v. *Zembko*, 200 Conn. App. 165, 172, 238 A.3d 78 (2020).

A

The defendant first claims that the court abused its discretion when it "issued numerous contradictory findings without changing its modified orders," and "failed to correct support orders." The defendant appears to argue that the court abused its discretion in failing to correct an alleged inconsistency between its May 24, 2019 denial of his motion to reargue and the December 21, 2018 orders. In response to the defendant's motion to reargue, the court responded, inter alia: "[The] defendant's attempt to construe the court's finding regarding the defendant's assets as imputed income is wholly improper. The court did not impute income but instead relied on the defendant's sworn financial affidavits and such information as could be discerned from the limited self-serving materials submitted by the defendant to determine the defendant's living expenses and financial assets and expenses." The defendant now argues: "Accepting this as true, the court abused its discretion by not correcting the December 21, 2018 order."[4] The preceding statement represents the entirety of any challenge to the May 24, 2019 order, to the extent that it may be construed as a challenge. The defendant has provided no specific references to the May 24, 2019 order or to the

[4] The defendant also states: "Furthermore, the court fails to explain why an incorrect increase in salary constitutes a 'benefit from rental income.' " It is unclear how this statement is related to this claim. Rather, it appears to be a separate challenge to the court's December 21, 2018 orders, the appeal of which has been dismissed as untimely.

December 21, 2018 order from which any inconsistency may be ascertained, nor has he presented any factual or legal analysis in support of this claim. The defendant's claim is therefore inadequately briefed and we decline to review it. See *Starboard Fairfield Development, LLC* v. *Gremp*, 195 Conn. App. 21, 31, 223 A.3d 75 (2019) ("We are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than [mere] abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . We do not reverse the judgment of a trial court on the basis of challenges to its rulings that have not been adequately briefed." (Internal quotation marks omitted.)).

B

The defendant also claims that the court abused its discretion "when it entered incorrect orders beyond the statutory time frame."[5] The defendant has failed to cite any such time frame in his brief to this court.[6] Consequently, this claim also is inadequately briefed, and we decline to review it.[7]

C

Last, the defendant claims that the court "abused its discretion when it found [him] in contempt without making requisite findings." Although the defendant sets

[5] Within this claim, the defendant also argues that the court abused its discretion "when it entered the July 12, 2019 order with no predicate motion and no factual or evidentiary support." This statement is belied by the record, which reveals that the July 12, 2019 order was in response to the plaintiff's January 8, 2019 motion for clarification, and the court held an evidentiary hearing on that motion on January 22, 2019, at which both the defendant and his attorney were present.

[6] We note that the defendant also failed to allege a violation of any statutory time limits before the trial court.

[7] We note that the defendant's claim in this regard consists of two sentences that are devoid of any legal authority or analysis.

Although there are two additional paragraphs contained under the heading of this claim, they are seemingly unrelated to the first two sentences and cannot be construed, even liberally, as constituting an intelligible argument.

forth approximately two pages of legal principles pertaining to contempt, he fails to connect that legal authority to his argument or to specify which findings were lacking from the court's contempt judgment. His argument in this regard consists only of the following: "In this case, the court granted the plaintiff's motions for contempt of orders that are far from clear and have yet to be updated. Moreover, given the length of time in granting the motion and the effect of the plaintiff's collection orders in New York, the plaintiff has not met her evidentiary burden to show wilful noncompliance." Not only does the defendant fail to identify which contempt judgment he is addressing, he also fails to provide any legal or factual analysis in support of his claims. He also neglects to quantify the time lapse that he refers to or explain how that alleged delay, or efforts made by the plaintiff to collect from him in New York, had any bearing on the court's contempt judgment.

Moreover, if we were to assume that the subject of the present claim is the contempt finding related to the defendant's noncompliance with the educational support order to pay 80 percent of the college expenses of the parties' son, the defendant's claim is also belied by the record, which clearly reflects that the defendant was ordered on December 21, 2018, to pay 80 percent of such expenses. On that same date, the court modified child support and alimony, retroactive to the date of dissolution. The court found that the defendant failed to comply with its unambiguous orders and that the defendant's noncompliance was wilful. Those are the only findings necessary to a contempt determination; see *Puff* v. *Puff*, 334 Conn. 341, 365, 222 A.3d 493 (2020); and the court's findings in this case are amply supported by the record of the numerous hearings afforded to the defendant on this issue.

The judgment is affirmed.

In this opinion the other judges concurred.

MEMORANDUM DECISIONS

CONNECTICUT APPELLATE REPORTS

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KARL PAUL VOSSBRINCK *v.* ACCREDITED HOME LENDERS, INC., ET AL.
(AC 43089)

Bright, C. J., and Moll and Bishop, Js.

Argued March 3—officially released March 23, 2021

Plaintiff's appeal from the Superior Court in the judicial district of Waterbury, *M. Taylor*, *J.*

Per Curiam. The judgment is affirmed.

BAYVIEW LOAN SERVICING, LLC *v.* JEANNE M. MACRAE-GRAY ET AL. (AC 43805)

Bright C. J., and Moll and Bear, Js.

Argued March 9—officially released March 23, 2021

Appeal by defendant Glenn S. MacCrae-Gray from the Superior Court in the judicial district of Litchfield at Torrington, *J. Moore*, *J.*

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

NEMIAH ALLAN *v.* COMMISSIONER OF CORRECTION (AC 42781)

Bright, C. J., and Alvord and Alexander, Js.

Argued March 11—officially released March 23, 2021

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

Per Curiam. The appeal is dismissed.

WELLS FARGO BANK, N.A., TRUSTEE *v.* TINA ROBERTSON ET AL. (AC 42480)

Cradle, Alexander and Suarez, Js.

Argued March 15—officially released March 23, 2021

Appeal by the named defendant et al. from the Superior Court in the judicial district of Tolland, *Hon. Samuel S. Sferrazza*, judge trial referee.

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

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SUPREME COURT PENDING CASES

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

STEPHEN W. SCHOLZ *v.* JUDA J. EPSTEIN, SC 20492
Judicial District of Fairfield

Attorneys; Immunity; Whether Defendant Attorney Had Absolute Immunity from Statutory Theft Claim Arising from Conduct during Judicial Proceedings. The plaintiff brought this action seeking to recover damages from the defendant attorney for alleged statutory theft arising from his conduct during a prior action involving the foreclosure of the plaintiff's property. The plaintiff alleged that the defendant, who brought the foreclosure action on behalf of Benchmark Municipal Tax Services, Ltd. (Benchmark), made false representations to the court in the course of the proceedings with the intent to deprive him of his property and to appropriate the property to Benchmark. The trial court granted the defendant's motion to dismiss the action for lack of subject matter jurisdiction on the ground that the absolute immunity afforded by the litigation privilege applied to shield the defendant from the plaintiff's claim of statutory theft. The plaintiff appealed, and the Appellate Court (198 Conn. App. 197) affirmed the judgment. The Appellate Court found that the plaintiff's statutory theft claim was more akin to a claim of fraud or defamation, to which the litigation privilege applies, than to a claim of vexatious litigation or abuse of process, to which it does not, because the statutory theft claim does not challenge the underlying purpose of the litigation but, rather, concerns the defendant's role as an advocate for his client. The Appellate Court noted that, like a claim of fraud, a claim of statutory theft does not contain the inherent safeguards against inappropriate retaliatory litigation that are contained in claims of vexatious litigation and abuse of process and that a claim of statutory theft does not contain the same type of stringent elements found in the claim of vexatious litigation that provide adequate protection against unwarranted litigation. The Appellate Court also noted that its holding furthers the public policy underlying absolute immunity of encouraging participation and candor in judicial proceedings, while at the same time limiting the exposure of attorneys to harassing and expensive litigation that would likely inhibit their freedom in making good faith decisions and have a negative effect on their ability to advocate zealously for their clients. The Appellate Court also noted that an array of alternatives to civil liability exists to deter an attorney from engaging in misconduct or to provide relief to a dissatisfied litigant in connection

with an attorney's alleged misconduct. The plaintiff filed a petition for certification to appeal, which the Supreme Court granted as to the question of whether, under the circumstances of this case, the Appellate Court correctly concluded that the defendant attorney enjoyed absolute immunity from the plaintiff's claim of statutory theft arising from the defendant's conduct during prior judicial proceedings.

WILLIAM MALDONADO et al. *v.* KELLY C. FLANNERY et al., SC 20522
Judicial District of Hartford

Damages; Whether Appellate Court Correctly Concluded That Trial Court Abused its Discretion in Ordering Additurs in Favor of Plaintiffs. The plaintiffs, William Maldonado and Geovanni Hernandez, brought this action seeking damages for injuries sustained in an automobile accident. The jury returned a verdict in favor of the plaintiffs and awarded economic damages of $19,028.38 to Maldonado and $11,864.94 to Hernandez. The jury did not award the plaintiffs noneconomic damages. The trial court granted the plaintiffs' motion for additur on the grounds that the verdict awarding economic damages but no noneconomic damages was internally inconsistent and that the jury could not have properly found that the plaintiffs were not entitled to awards for pain and suffering caused by the accident. The trial court ordered an additur for noneconomic damages of $8,000 to Maldonado and $6,500 to Hernandez. The defendants appealed from the ruling. The Appellate Court (200 Conn. App. 1) reversed, holding that the trial court abused its discretion in granting the plaintiffs' motion for additur. The Appellate Court found that although the trial court's memorandum of decision on the motion for additur describes the facts that the parties offered during trial, it lacks the necessary identification of the specific facts that led to its decision to order the additurs. The Appellate Court also noted that there is appellate precedent rejecting the notion that a jury that awards a plaintiff economic damages for medical treatment must also conclude that the plaintiff experienced compensable pain and suffering. The Appellate Court further found that, even if the trial court sufficiently identified facts in the record to support its order of additurs, it must conclude after conducting its own fact intensive analysis in the light most favorable to sustaining the verdict that the jury reasonably could have found that the plaintiffs' economic damages were compensable and that they failed to prove that they suffered noneconomic damages. The Appellate Court noted that conflicting and inconsistent evidence was presented during trial and that the jury was not required to believe the plaintiffs' testimony but, rather, could have determined that the plaintiffs lacked credibility.

The plaintiffs filed a petition for certification to appeal, which the Supreme Court granted as to the issue of whether the Appellate Court correctly concluded that the trial court had abused its discretion in ordering additurs in favor of both of the plaintiffs.

TAMARA DORFMAN *v.* JOSCELYN M. SMITH et al., SC 20556
Judicial District of Hartford

Absolute Immunity; Whether Trial Court Properly Concluded That Plaintiff's Claims Against Defendant Insurer Were Barred by Absolute Immunity Because They Arose Out of Communications Made in Course of Judicial Proceedings. The plaintiff brought this negligence action against the named defendant, Joscelyn Smith, seeking damages for injuries she sustained in a motor vehicle accident. Subsequently, she cited in her insurer, Liberty Mutual Fire Insurance Company (Liberty Mutual), as a defendant, alleging breach of contract for its violations of the underinsured motorist coverage provisions of her automobile insurance policy (''UIM claim''). The plaintiff later withdrew the action against Smith after settling her claims against him. The plaintiff then amended her complaint to add claims against Liberty Mutual sounding in breach of the implied covenant of good faith and fair dealing, negligent infliction of emotional distress, and violations of the Connecticut Unfair Trade Practices Act based upon unfair insurance practices (''extra-contractual claims''). In support thereof, the plaintiff alleged that, although Liberty Mutual's independent investigation established that Smith was 100 percent at fault for the accident, it filed an answer that asserted a special defense of comparative negligence and failed to either admit liability or certain facts that it knew to be true. The plaintiff argued that these portions of the answer violated General Statutes § 52-99 because they were ''made without reasonable cause'' and ultimately found to be ''untrue.'' The claims were bifurcated, and the UIM claim was tried to a jury that returned a verdict in the plaintiff's favor. Liberty Mutual then moved to dismiss the plaintiff's extra-contractual claims as jurisdictionally barred by the doctrine of absolute immunity because they were premised on communications made in the course of judicial proceedings that were covered by the litigation privilege. The trial court agreed and granted the motion to dismiss. The plaintiff appeals, claiming that the trial court erred in concluding that her extra-contractual claims were barred by the doctrine of absolute immunity. She argues that immunizing Liberty Mutual for conduct that violates § 52-99 is contrary to the public policy embodied by the statute and inconsistent with case law holding that courts have the power to sanction parties for

violating § 52-99. The plaintiff also argues that, contrary to the trial court's determination, her extra-contractual claims are the functional equivalent of vexatious litigation claims and therefore not barred by absolute immunity. Additionally, the plaintiff argues that the doctrine of absolute immunity is not applicable to her extra-contractual claims because they seek to impose liability upon Liberty Mutual for its improper use of the judicial system.

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

Jessie Opinion
Chief Staff Attorney

NOTICE

NOTICE OF SUSPENSION OF ATTORNEY

Pursuant to Practice Book § 2-54, notice is hereby given that on March 16, 2021 Attorney Jose Luis Altamirano, was ordered suspended from the practice of law by the Hon. Robin Pavia for a period as specified in the Order dated March 16, 2021.

The full order of the court can be found in DBD-CV19-6033307-S Office of Chief Disciplinary Counsel v. Altamirano, Jose Luis.