CONNECTICUT LAW JOURNAL

Published in Accordance with General Statutes Section 51-216a

VOL. LXXXII No. 28 January 12, 2021 142 Pages

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CONNECTICUT LAW JOURNAL
(ISSN 87500973)

Published by the State of Connecticut in accordance with the provisions of General Statutes § 51-216a.

Commission on Official Legal Publications
Office of Production and Distribution
111 Phoenix Avenue, Enfield, Connecticut 06082-4453
Tel. (860) 741-3027, FAX (860) 745-2178
www.jud.ct.gov

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Published Weekly – Available at https://www.jud.ct.gov/lawjournal

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The deadline for material to be published in the Connecticut Law Journal is Wednesday at noon for publication on the Tuesday six days later. When a holiday falls within the six day period, the deadline will be noon on Tuesday.

CONNECTICUT APPELLATE REPORTS

Vol. 202

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

IN RE NOVEMBER H.*
(AC 44120)

Moll, Suarez and DiPentima, Js.

Syllabus

The respondent father appealed to this court from the judgment of the trial court terminating his parental rights with respect to his minor child, N, who had previously been adjudicated neglected. The father has been incarcerated for the entirety of N's life, and N was unaware that he was her father until after she was approximately seven years old and in the care of the petitioner, the Commissioner of Children and Families. The father claimed that the trial court made internally inconsistent statements regarding his parent-child relationship with N, there was insufficient evidence to support the court's determination that he failed to achieve the requisite degree of personal rehabilitation as would encourage the belief that within a reasonable time he could assume a responsible position in N's life as required by the applicable statute (§ 17a-112), the court improperly relied on its finding that additional time was necessary for him to develop a normal and healthy parent-child relationship with N when the petitioner and N's mother interfered with his ability to develop the relationship, and the court improperly compared him to N's foster parent in the adjudicatory portion of its decision. *Held*:

1. The respondent father could not prevail on his claim that the trial court's determination that the petitioner failed to sustain her burden to demonstrate that there was no parent-child relationship between him and N was internally inconsistent with its findings that he did not have a normal and healthy or meaningful parent-child relationship with N; although there was evidence in the record that N's feelings toward her father were continuing and positive, this did not preclude the court's conclusion that the father and N did not share a normal and healthy or meaningful relationship, as the court found that N's mother had prevented the father from maintaining a meaningful relationship with N and that the father's continued incarceration and N's fear of visiting prison formed a barrier to the development of a normal and healthy bond, and the time it would take to form such a bond was unclear.
2. The trial correct correctly determined that there was clear and convincing evidence in the record that the respondent father failed to sufficiently rehabilitate within a reasonable time pursuant to § 17a-112 (j) (3) (B) (i). a. The father's claim that the court's finding that additional time was necessary for him and N to develop a normal and healthy parent-child

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

relationship was clearly erroneous was unavailing: although there was evidence in the record that demonstrated that N wanted to visit her father but was afraid to do so in prison, requested photographs of him, wrote a letter to him asking him questions about himself and expressed feelings of missing him during supervised telephone calls, as well as evidence that the father made consistent efforts for visitation with N, sent N letters, birthday cards and photographs, and had multiple supervised telephone conversations with N during which he provided parental advice, it was undisputed that the father had been incarcerated for N's entire life, during the majority of which N did not know of his existence, N was fearful to visit him in prison, and, at the time of trial, N had not communicated with him in almost one year as it was not recommended by N's clinicians; moreover, it was undisputed that N had significant psychological and emotional needs created by the trauma N had experienced and the court did not err in finding that the father would not achieve a sufficient rehabilitative status within a reasonable time to meet those needs.

b. The father's claim that the court's finding that he would be responsible for providing housing and financial support to N within a reasonable time was clearly erroneous was unavailing; although the father claimed that there was no evidence in the record that N would not remain in the residential placement in which N was living at the time of trial following his release from incarceration, N's social worker provided testimony that N's placement team had a goal to stabilize and to release N from the placement within two months, which was approximately four years earlier than the respondent's maximum release date from incarceration.

3. The respondent father could not prevail on his claim that the conduct of the petitioner and N's mother constituted interference with his ability to establish a normal and healthy parent-child relationship with N and, thus, the trial court impermissibly terminated his parental rights on the ground of its finding that additional time was necessary for him to form such a relationship with N; there was undisputed evidence that N's mother, and not the petitioner, prevented the initial development of a normal and healthy parent-child relationship between the father and N, and thus, because the interference exception is applicable only when the petitioner has engaged in conduct that led to the lack of an ongoing parent-child relationship, the conduct of N's mother as a third party could not trigger the interference exception to § 17a-112 (j) (3) (D) as a matter of fact.

4. The trial court did not make an improper comparison between the respondent father and N's foster parent in determining that the father had failed to sufficiently rehabilitate; viewed in the context of its decision as a whole, the court's statements regarding the foster parent's ability to meet N's needs and the stability N had found in the foster home served to highlight N's particular needs and the father's inability to meet those needs within a reasonable time, and the court did not opine that

the foster parent was or should be the only person who could meet N's needs.

Argued November 12, 2020—officially released December 31, 2020**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of Hartford, Juvenile Matters, and tried to the court, *Hon. Robert G. Gilligan*, judge trial referee; judgment terminating the respondents' parental rights, from which the respondent father filed an appeal to this court. *Affirmed.*

Benjamin M. Wattenmaker, assigned counsel, with whom, on the brief, was *Amir Shaikh*, for the appellant (respondent father).

Krystal L. Ramos, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Stephen G. Vitelli*, *Jessica Gauvin* and *Evan O'Roark*, assistant attorneys general, for the appellee (petitioner).

Robert Johnson Moore, for the minor child.

Opinion

MOLL, J. The respondent father, Marcus H., appeals from the judgment of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families, terminating his parental rights as to his minor daughter, November H., on the ground that he failed to achieve a sufficient degree of personal rehabilitation pursuant to General Statutes § 17a-112 (j) (3) (B) (i).[1] On appeal, the respondent claims that (1) the court

** December 31, 2020, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] The trial court also rendered judgments terminating the parental rights of November's mother, Natachia G., as to November and another minor child of whom Marcus H. is not the biological father. Natachia G. has not appealed from the judgments terminating her parental rights as to either child, and, therefore, we refer in this opinion to Marcus H. as the respondent.

made internally inconsistent statements regarding his parent-child relationship with November, (2) there was insufficient evidence supporting the court's determination that he failed to sufficiently rehabilitate, (3) as a matter of law, the court, in terminating his parental rights, improperly relied on its finding that additional time was necessary for him and November to develop a "normal and healthy" parent-child relationship when the petitioner and November's mother, Natachia G., interfered with his ability to develop such a relationship, and (4) the court improperly compared him to November's foster parent in the adjudicatory part of its decision. We affirm the judgment of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to our resolution of this appeal. The respondent and Natachia G. began a relationship in 2010. November was born in 2011. The respondent has been incarcerated for the entirety of November's life, and he remains incarcerated with a maximum release date in March, 2024.[2] Although Natachia G. informed the respondent of November's birth, she refused to permit the respondent to have contact with November and declined to disclose the respondent's identity to November. November was unaware that the respondent was her father until May, 2018, when, in a therapeutic setting, the petitioner and a clinician informed November of the respondent's relationship to her. Prior to that disclosure, November believed that a man named Patrick G., whom Natachia G. had married in February, 2016, was her father.

On June 24, 2017, police officers responded to a call reporting that Natachia G., while intoxicated, had

[2] On February 14, 2011, the respondent was arrested and charged with manslaughter in the second degree in violation of General Statutes § 53a-56, evasion of responsibility in the operation of a motor vehicle in violation of General Statutes § 14-224 (a), and failure to register as a sex offender in violation of General Statutes § 54-251. On October 6, 2011, the respondent was convicted of all three counts.

stabbed Patrick G. in the presence of November and two of Natachia G.'s other children. Natachia G. was arrested and charged with several crimes in connection with the stabbing. On June 27, 2017, the petitioner invoked a ninety-six hour hold on November and removed her from her home. On June 29, 2017, the petitioner applied for an ex parte order of temporary custody and filed a neglect petition in the interest of November. The same day, the trial court, *Dannehy, J.*, issued an order of temporary custody, which was subsequently sustained by the court, *Burgdorff, J.*, on July 7, 2017. On October 10, 2017, November was adjudicated neglected by the court, *Dyer, J.*, and committed to the care and custody of the petitioner. The court also ordered specific steps for the respondent to take to facilitate his reunification with November. On November 22, 2017, November was placed in the custody of a foster mother, who is a cousin of Natachia G.

On March 5, 2019, the petitioner filed a motion to review and approve a permanency plan of termination of parental rights and adoption in the interest of November. On April 25, 2019, following a hearing, the court, *Hon. Robert G. Gilligan*, judge trial referee, granted the motion. On June 20, 2019, the petitioner filed a petition to terminate the parental rights of the respondent with respect to November (petition).[3] In support thereof, the petitioner alleged three grounds for termination: (1) under § 17a-112 (j) (3) (A), the respondent had abandoned November; (2) under § 17a-112 (j) (3) (B) (i), November had been found to be neglected, abused, or uncared for in a prior proceeding and the respondent

[3] In the petition, the petitioner also sought to terminate the parental rights of Natachia G. as to November. Additionally, in a separate petition, the petitioner sought to terminate Natachia G.'s parental rights as to another child of whom the respondent is not the biological father. The judgments terminating the parental rights of Natachia G. as to November and the other child are not at issue in this appeal. See footnote 1 of this opinion.

had failed to achieve such a degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of November, he could assume a responsible position in her life; and (3) under § 17a-112 (j) (3) (D), there was no ongoing parent-child relationship between the respondent and November.

A trial on the petition was conducted on February 4, 2020. The respondent appeared and was represented by appointed counsel. Numerous witnesses testified, including the respondent.

On April 9, 2020, the court issued a memorandum of decision terminating the parental rights of the respondent. The court determined that the petitioner failed to demonstrate, by clear and convincing evidence, abandonment under § 17a-112 (j) (3) (A) or a lack of an ongoing parent-child relationship under § 17a-112 (j) (3) (D), but that the petitioner met her burden of proof to establish that November had been adjudicated neglected on October 10, 2017, and that the respondent had failed to sufficiently rehabilitate under § 17a-112 (j) (3) (B) (i). The court also found that the petitioner had made reasonable efforts to locate the respondent and to reunify him with November.

In determining that the respondent had failed to sufficiently rehabilitate, the court relied on the following relevant findings concerning November. "[At the time of trial] November . . . [was] eight years old. November was removed by [the petitioner] on June 28, 2017, and was placed in a relative foster home with her sister . . . on November 22, 2017. . . . At the time of trial, November was placed at Eagle House where she was receiving care and services provided by the Village for Families and Children due to her recent emotional dysregulation. November receives weekend passes to her foster home.

"November has witnessed substance abuse, domestic violence, police involvement, parental incarceration and adult mental health problems while residing with [Natachia G.]. Until she was therapeutically told by her clinician and [the petitioner] in May, 2018 that [the respondent] is her father, November believed that Patrick G., with whom she lived, was her father. Following the death of Patrick G. in August, 2017, [the petitioner] referred November to mental health counseling to address her behavior issues resulting from her neglect and trauma from witnessing [Natachia G.] stab Patrick G. and to process her grief in connection with Patrick G.'s death.[4] . . .

"November has been diagnosed with anxiety, [attention deficit hyperactivity disorder], and [post-traumatic stress disorder] as a result of the multiple traumas she has experienced. November suffers from suicidal ideations.

"November began therapy with a therapist, Milagros Montalvo-Stewart, in September, 2017. November met with Montalvo-Stewart weekly to address her trauma and coping skills. November left therapy with Montalvo-Stewart when she began exhibiting unsafe behaviors including suicidal ideations by running into the street. November's behaviors at school and in her foster home escalated including getting physical with others, refusal to follow rules, screaming and running out of the school building. [The petitioner] made a referral to [Intensive In-Home Child and Adolescent Psychiatric Services (IICAPS)][5] in January, 2019, to address November's behaviors. IICAPS met with November two to three times per week in the home and at school, which was

[4] Patrick G.'s death was unrelated to the incident on June 24, 2017, when Natachia G. stabbed him.

[5] "Intensive In-Home Child and Adolescent Psychiatric Services, known also as IICAPS, provides home-based treatment to children, youth and families in their homes and communities." (Internal quotation marks omitted.) *In re Yolanda V.*, 195 Conn. App. 334, 339 n.7, 224 A.3d 182 (2020).

followed by November's entering the Institute of Living (IOL) intensive outpatient services in April, 2019, where she was scheduled to attend three day[s] per week. November's clinician at the IOL reported that November had a breakdown on April 26, 2019, started to cry and said she missed her mother. . . . On April 29, 2019, November had another breakdown, said she wanted to kill herself and had to be physically restrained from running into the street. She was taken from the IOL to [the Connecticut Children's Medical Center] on an emergency basis and later admitted inpatient to the IOL on May 3, 2019. On May 13, 2019, November's clinician reported that she continued to state that she wanted to kill herself and continued to believe that [Natachia G.] had killed Patrick G. November's foster mother testified that November said she wanted to go to heaven to 'get Daddy Patrick.' Social worker [Nadia] Pelaez testified that when asked if she could be granted three wishes, what she would wish for, November said she only needed one wish, which was to have 'Daddy Patrick' back. On May 15, 2019, the IOL recommended that November be placed at Eagle House at the Village for Families and Children, where she was receiving services at the time of trial. . . .

"[At the time of trial] November [was] in second grade. Educationally, November is described as 'solid average student but struggles behaviorally and emotionally.' " (Citations omitted; footnotes added.)

The court also made the following relevant findings regarding the respondent. "[At the time of trial, the respondent] . . . [was] thirty-eight years old. [The respondent] has been involved with [the petitioner] since 1983 as a result of his having been abandoned as a child. The parental rights of both [of] his parents were terminated in 1989 when he was seven years old. As a teenager, [the respondent] was placed by [the petitioner] seven different times from [March 26, 1996] to

[July 31, 1998], from which placements he disrupted due to his oppositional behavior. [The respondent] signed himself out of [the petitioner's] care in 2000.

"[The respondent] denies any mental health issues but according to the [petitioner's] social study, a review [of the petitioner's] records [reflected] a diagnosis of [a]ttachment [d]isorder and behavioral disorders. . . .

"[The respondent] is a convicted felon with a lengthy record of arrests dating back to 2002, including arrests for threatening, sexual assault, criminal mischief, violation of protective order, failure to appear and violation of probation. [The respondent] is currently incarcerated for [manslaughter in the second degree] and evading responsibility in connection with a motor vehicle incident.[6]" (Citation omitted; footnote added.)

Additionally, the court found that the respondent's specific steps "directed him to secure 'parenting and [domestic violence]' services, as available," through the Department of Correction, and that, while incarcerated, the respondent had completed domestic violence, anger management, and parenting programs. The court also noted that the respondent testified that he had received a certificate in business administration, enrolled in business and computer classes through a community college, and earned thirty-six hours toward an associate's degree. Although observing that the respondent "is to be commended for his conduct while incarcerated and his efforts at self-improvement, which auger well for his ability to successfully reenter society at some future point in time," the court stated that "[i]n assessing rehabilitation, the critical issue is not whether the parent has improved [his] ability to manage [his] own life, but rather whether [he] has gained the ability to care for the particular needs of the child at issue." (Internal

[6] The record reflects that the respondent's current incarceration also stems from a conviction for failure to register as a sex offender in violation of General Statutes § 54-251.

quotation marks omitted.) The court found that, notwithstanding evidence reflecting a possibility that the respondent could be released from prison in 2020, the respondent's maximum release date is in March, 2024, and, regardless of his final release date, the respondent acknowledged that he will be required to remain in a halfway house "for some period of time before he can fully reenter society." The court also found that November feared visiting the respondent in prison and that "November's fear of prison and reluctance to visit [the respondent] clearly is a barrier to the formation of [a] normal and healthy parent-child bond that develops from regular contact . . . rather than one based on correspondence." (Citation omitted.)

The court continued: "In view of the obstacles that [the respondent's] current incarceration present, the time required for [the respondent] to establish a normal and healthy parent-child relationship [with November] is unclear. Once he is released from prison, [the respondent] will need time to find housing and employment and time to devote to attending appointments with November and supporting the many services required to address her many needs. If [the respondent's] release date of 2024 remains the same, November will be an adolescent when he is released with the increased challenges that accompany adolescence. . . .

"The evidence shows that stability has been missing in November's life. November has found stability in her foster home where her foster mother has cared for her and [her sister] since November 22, 2017, except for November's periods of hospitalization. [The] [f]oster mother visits with November at Eagle House one day per week. November's foster mother testified that November's unsafe behaviors have continued in the foster home, including getting physical with [the] foster mother's nineteen year old daughter. Social worker [Amber] Orvis testified that November's foster mother redirects November and 'doesn't push her.' [Orvis]

described [the] foster mother as affectionate and bonded with November . . . . Having found a relative degree of stability, November now needs permanence. [The] [f]oster mother has expressed that she wants to be a long term adoptive resource for November . . . . November is in need of a safe and permanent home with a proven competent caretaker because neither biological parent is capable of providing such a home for her within a reasonable time." (Citations omitted.)

In light of the foregoing findings, the court determined that there was clear and convincing evidence that the respondent had failed to sufficiently rehabilitate under § 17a-112 (j) (3) (B) (i). The court proceeded to determine that terminating the respondent's parental rights was in November's best interest. Accordingly, the court rendered judgment terminating the parental rights of the respondent and appointing the petitioner as November's statutory parent. This appeal followed.[7] Additional facts and procedural history will be set forth as necessary.

Before turning to the respondent's claims, we set forth the following relevant legal principles. "Proceedings to terminate parental rights are governed by § 17a-112. . . . Under [that provision], a hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the adjudicatory phase, the trial court must determine whether one or more of the . . . grounds for termination of parental rights set forth in § 17a-112 [(j) (3)] exists by clear and convincing evidence. The [petitioner] . . . in petitioning to terminate those rights, must allege and prove one or more of the statutory grounds. . . . Subdivision (3) of § 17a-112 (j) carefully sets out . . . [the] situations that, in the judgment of

[7] The attorney for November has adopted the petitioner's appellate brief.

the legislature, constitute countervailing interests sufficiently powerful to justify the termination of parental rights in the absence of consent. . . . Because a respondent's fundamental right to parent his or her child is at stake, [t]he statutory criteria must be strictly complied with before termination can be accomplished and adoption proceedings begun." (Internal quotation marks omitted.) *In re Tresin J.*, 334 Conn. 314, 322–23, 222 A.3d 83 (2019).

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

I

The respondent first claims that the trial court, in its memorandum of decision, made internally inconsistent statements regarding his parent-child relationship with November, and, thus, reversal of the judgment terminating his parental rights is warranted. We are not persuaded.

Resolving the respondent's claim requires us to interpret the court's judgment. "The interpretation of a trial court's judgment presents a question of law over which our review is plenary. . . . As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole. . . . If there is ambiguity in a court's memorandum of decision, we look to the articulations [if any] that the court provides. . . . [W]e are mindful that an opinion must be read as a whole, without particular portions read in isolation, to discern the parameters of its holding. . . . Furthermore, [w]e read an ambiguous trial court record so as to support, rather than contradict, its judgment." (Citation omitted; internal quotation marks omitted.) *In re Xavier H.*, 201 Conn. App. 81, 95, 240 A.3d 1087, cert. denied, 335 Conn. 981, A.3d (2020), and cert. denied, 335 Conn. 982, A.3d (2020).

"Inconsistent statements can warrant reversal of a trial court's order. *In re Pedro J. C.*, 154 Conn. App. 517, 531, 105 A.3d 943 (2014) ('[t]here are instances in which the trial court's orders warrant reversal because they are logically inconsistent rulings'), overruled in part on other grounds by *In re Henrry P. B.-P.*, 327 Conn. 312, 335 n.17, 173 A.3d 928 (2017)." *In re Ava W.*, Conn. , , A.3d (2020); see also

In re Jacob W., 178 Conn. App. 195, 215–19, 172 A.3d 1274 (2017) (concluding that, even if trial court had applied proper legal test, reversal of judgment was warranted on basis of fundamentally inconsistent findings by court that grandparents' unreasonable conduct interfered with father's parent-child relationship with children and that there was no evidence of unreasonable interference by any person), aff'd, 330 Conn. 744, 200 A.3d 1091 (2019).

The following additional facts are relevant to our resolution of this claim. In the adjudicatory part of its decision, the court first determined that the petitioner failed to establish two of the three grounds for termination alleged in the petition, including that the respondent and November lacked an ongoing parent-child relationship under § 17a-112 (j) (3) (D). In making that determination, the court stated that "§ 17a-112 (j) (3) (D) requires the court to find that there is *no* parent-child relationship. . . . [T]here was ample evidence in [the petitioner's] own exhibits to prove that, at the time of the filing of the petition, November's feelings toward [the respondent] were continuing and positive. [The petitioner] has failed to prove, by clear and convincing evidence, the lack of an ongoing parent-child relationship between [the respondent] and November." (Citation omitted; emphasis in original.)

Thereafter, the court determined that the petitioner sustained her burden to prove that the respondent had failed to sufficiently rehabilitate under § 17a-112 (j) (3) (B) (i). In support of that determination, the court found, inter alia, that the respondent's incarceration presented obstacles such that "the time required for [the respondent] to establish a normal and healthy parent-child relationship [with November] is unclear." The court further found that "November's fear of prison and reluctance to visit [the respondent] clearly is a barrier to the formation of [a] normal and healthy parent-child

bond that develops from regular contact . . . rather than one based on correspondence." (Citation omitted.) Additionally, in the dispositional part of its decision, the court found that "[t]here was substantial evidence that [the respondent] was prevented by [Natachia G.] from maintaining a meaningful relationship with November . . . ."

The respondent contends that the court's determination that the petitioner failed to prove a lack of an ongoing parent-child relationship under § 17a-112 (j) (3) (D) is internally inconsistent with the court's subsequent findings that he did not have a "normal and healthy" or "meaningful" parent-child relationship with November. We disagree.

In seeking to terminate parental rights under § 17a-112 (j) (3) (D), the petitioner must demonstrate by clear and convincing evidence that "there is no ongoing parent-child relationship, which means the relationship that ordinarily develops as a result of a parent having met on a day-to-day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of such parent-child relationship would be detrimental to the best interest of the child . . . ." General Statutes § 17a-112 (j) (3) (D). Our Supreme Court has explained that "[i]n its interpretation of the language of [the lack of an ongoing parent-child relationship ground], th[e] court has been careful to avoid placing insurmountable burden[s] on noncustodial parents. . . . Because of that concern, we have explicitly rejected a literal interpretation of the statute, which defines the relationship as one that ordinarily develops as a result of a parent having met on a continuing, day-to-day basis the physical, emotional, moral and educational needs of the child. . . . [D]ay-to-day absence alone, we clarified, is insufficient to support a finding of no ongoing parent-child relationship. . . . We also have rejected the

notion that termination may be predicated on the lack of a *meaningful* relationship, explaining that the statute requires that there be *no* relationship." (Emphasis in original; internal quotation marks omitted.) *In re Tresin J.*, supra, 334 Conn. 326.

In the present case, the court found that November exhibited continuing and positive feelings for the respondent, and, therefore, the court determined that the petitioner failed to sustain her burden to demonstrate that there was *no* parent-child relationship between the respondent and November. The petitioner's failure to establish that *no* parent-child relationship existed between the respondent and November does not inevitably lead to the conclusion that the respondent and November shared a "normal and healthy" or "meaningful" parent-child relationship. Accordingly, we reject the respondent's claim that the court's decision was internally inconsistent.

II

The respondent next claims that there was insufficient evidence in the record to support the trial court's determination that he had failed to sufficiently rehabilitate under § 17a-112 (j) (3) (B) (i). We disagree.

We begin by setting forth the following legal principles and standard of review applicable to the respondent's claim. "Pursuant to § 17a-112, [t]he trial court is required . . . to analyze the [parent's] rehabilitative status as it relates to the needs of the particular child, and further . . . such rehabilitation must be foreseeable within a reasonable time. . . . Rehabilitate means to restore [a parent] to a useful and constructive place in society through social rehabilitation. . . . The statute does not require [a parent] to prove precisely when [he or she] will be able to assume a responsible position in [his or her] child's life. Nor does it require [him or her] to prove that [he or she] will be able to assume full

responsibility for [his or her] child, unaided by available support systems. It requires the court to find, by clear and convincing evidence, that the level of rehabilitation [he or she] has achieved, if any, falls short of that which would reasonably encourage a belief that at some future date [he or she] can assume a responsible position in [his or her] child's life. . . . In addition, [i]n determining whether a parent has achieved sufficient personal rehabilitation, a court may consider whether the parent has corrected the factors that led to the initial commitment, regardless of whether those factors were included in specific expectations ordered by the court or imposed by the [Department of Children and Families]. . . .

"When a child is taken into the [petitioner's] custody, a trial court must issue specific steps to a parent as to what should be done to facilitate reunification and prevent termination of parental rights. . . . Specific steps provide notice and guidance to a parent as to what should be done to facilitate reunification and prevent termination of [parental] rights. Their completion or noncompletion, however, does not guarantee any outcome. A parent may complete all of the specific steps and still be found to have failed to rehabilitate. . . . Conversely, a parent could fall somewhat short in completing the ordered steps, but still be found to have achieved sufficient progress so as to preclude a termination of his or her rights based on a failure to rehabilitate. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [his or her] ability to manage [his or her] own life, but rather whether [he or she] has gained the ability to care for the particular needs of the child at issue." (Internal quotation marks omitted.) *In re Omar I.*, 197 Conn. App. 499, 578–79, 231 A.3d 1196, cert. denied, 335 Conn. 924, 233 A.3d 1091 (2020).

As our Supreme Court has clarified, "[w]e have historically reviewed for clear error *both* the trial court's

subordinate factual findings and its determination that a parent has failed to rehabilitate. . . . While we remain convinced that clear error review is appropriate for the trial court's subordinate factual findings, we now recognize that the trial court's ultimate conclusion of whether a parent has failed to rehabilitate involves a different exercise by the trial court. A conclusion of failure to rehabilitate is drawn from *both* the trial court's factual findings and from its weighing of the facts in assessing whether those findings satisfy the failure to rehabilitate ground set forth in § 17a-112 (j) (3) (B). Accordingly, we now believe that the appropriate standard of review is one of evidentiary sufficiency, that is, whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court." (Citation omitted; emphasis in original; footnote omitted; internal quotation marks omitted.) *In re Shane M.*, 318 Conn. 569, 587–88, 122 A.3d 1247 (2015).

"A [subordinate factual] finding is clearly erroneous when either there is no evidence in the record to support it, or the reviewing court is left with the definite and firm conviction that a mistake has been made. . . . [G]reat weight is given to the judgment of the trial court because of [the trial court's] opportunity to observe the parties and the evidence. . . . [An appellate court does] not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached. . . . [Rather] every reasonable presumption is made in favor of the trial court's ruling." (Internal quotation marks omitted.) *In re Omar I.*, supra, 197 Conn. App. 579–80.

The respondent contends that the court improperly determined that there was clear and convincing evidence demonstrating that he had failed to sufficiently

rehabilitate. More specifically, the respondent asserts that the following subordinate findings made by the court were clearly erroneous: (1) additional time was necessary for the respondent to develop a "normal and healthy" parent-child relationship with November; and (2) the respondent would be responsible for providing financial support and housing to November upon his release from prison. We disagree with the respondent's claim.

A

The respondent first asserts that the court committed clear error in finding that additional time was necessary for him to develop a "normal and healthy" parent-child relationship with November, contending that the evidence in the record demonstrated that he had such a relationship with November.[8] In support of his claim, the respondent relies on the court's finding—in determining that the petitioner failed to demonstrate under § 17a-112 (j) (3) (D) that the respondent and November had no ongoing parent-child relationship—that November had "continuing and positive feelings" for him on the basis of evidence reflecting that (1) November wanted to visit him, but she was frightened of doing so in prison, (2) November requested photographs of him, (3) November wrote a letter to him asking him questions about himself, and (4) he and November had supervised telephone calls during which November expressed that she missed him. In addition, the respondent contends that he had positive feelings for November, citing evidence in the record reflecting that (1) he made consistent efforts to visit November, including filing a motion seeking monthly visitation, which was denied in January, 2019, and (2) he sent letters, birthday cards, and photographs of himself to November and had multiple supervised telephone calls with November. The respondent

[8] The respondent also argues that the court's finding was clearly erroneous in light of the court's purported inconsistent determination that the petitioner had failed to prove a lack of an ongoing parent-child relationship under

also asserts that his incarceration does not inhibit him from maintaining a "normal and healthy" parent-child relationship with November, relying on evidence in the record demonstrating that he previously provided parental advice to November during a supervised telephone call in April, 2019.[9]

In addressing the respondent's claim, we are mindful of the following legal principles. "[A]s to noncustodial parents, [t]he evidence regarding the nature of the [parent's] relationship with [his or her] child at the time of the termination hearing must be reviewed in the light of the circumstances under which visitation had been permitted." (Internal quotation marks omitted.) *In re Jacob W.*, 330 Conn. 744, 758, 200 A.3d 1091 (2019). Additionally, it is well established that "the fact of incarceration, in and of itself, cannot be the basis for a termination of parental rights. . . . At the same time, a court properly may take into consideration the inevitable effects of incarceration on an individual's ability to assume his or her role as a parent. . . . Extended incarceration severely hinders the [Department of Children and Families'] ability to offer services and the parent's ability to make and demonstrate the changes that would enable reunification of the family. . . . This is particularly the case when a parent has been incarcerated for much or all of his or her child's life and, as a result, the normal parent-child bond that develops from regular contact instead is weak or absent." (Citations omitted; internal quotation marks omitted.) Id., 756–57. We also emphasize that, in determining whether a par-

§ 17a-112 (j) (3) (D). As discussed in part I of this opinion, this argument is unavailing.

[9] As the court summarized, during the supervised telephone call at issue, "[the respondent] told November that she needed to behave and listen to the adults at [her] school. [The respondent] asked November what she wanted to be when she grows up and she said she wanted to be a teacher. [The respondent] told November she needed to know how to calm herself down if she wanted to be a teacher so she could help students if they are having difficulty." (Internal quotation marks omitted.)

ent has sufficiently rehabilitated under § 17a-112 (j) (3) (B) (i), the age and needs of the child are the critical considerations. See General Statutes § 17a-112 (j) (3) (B) (i); *In re Omar I.*, supra, 197 Conn. App. 579 ("[i]n assessing rehabilitation, the critical issue is not whether the parent has improved [his or her] ability to manage [his or her] own life, but rather whether [he or she] has gained the ability to care for the particular needs of the child at issue" (internal quotation marks omitted)).

Although the findings of the court and the evidence cited by the respondent tend to show that a parent-child relationship existed between the respondent and November, there was ample evidence supporting the court's finding that they did not share a "normal and healthy" parent-child relationship and that additional time would be required after the respondent's release from prison to establish one. It is undisputed that the respondent has been incarcerated for the entirety of November's life, that November did not discover that the respondent was her father until May, 2018, and that November was too fearful to visit the respondent in prison. In addition, the record contained the following uncontroverted evidence. According to the collective testimonies of Nadia Pelaez and Amber Orvis, who were assigned to November's case as social workers, and Emily Sybert, November's clinician at Eagle House, at the time of trial, November had not communicated with the respondent since April, 2019, as ongoing communication between them was not recommended by November's clinicians. Sybert also testified that since November's entry into Eagle House in July, 2019, November had not spoken about the respondent, but she had expressed that she missed Patrick G., whom she referred to as "Daddy Patrick."

Furthermore, it is undisputed that November, who was eight years old at the time of trial, has "many psychological and emotional needs created by the trauma she has experienced," which manifested in

physically aggressive and unsafe behaviors, as well as repeated suicidal ideations. Although the respondent may have dispensed general guidance and advice to November over the telephone, in light of November's significant mental health needs, the court did not err in finding that the respondent would not achieve a sufficient rehabilitative status within a reasonable time to meet those needs.

In sum, we conclude that the evidence in the record was sufficient to support the court's finding that the respondent and November did not share a "normal and healthy" parent-child relationship. Thus, we reject the respondent's claim that the court's finding that additional time was necessary for the respondent and November to develop such a relationship was clearly erroneous.

B

The respondent also contends that the court's finding that he "will need to find housing and gainful employment to be able to support November" after his release from prison was clearly erroneous. Specifically, the respondent asserts that there was no evidence in the record establishing that November would no longer be residing at Eagle House at the time of his release from prison, and, therefore, the court improperly speculated that he would need to provide November with housing and financial support following the end of his incarceration.[10] We disagree.

[10] In his principal appellate brief, the respondent limits his claim to the contention that the court committed clear error in finding that he would be required to provide housing and financial support to November following his term of incarceration when, he argues, there was no evidence in the record reflecting that November would no longer be residing at Eagle House at that time. His principal appellate brief contains only a cursory assertion that, assuming that he would be required to provide housing and financial support to November after his release from prison, the court also erred in finding that he would need time to secure housing and employment. In his reply brief, the respondent further propounds this claim, arguing that his future prospects for employment are contingent on a number of variable

The following additional facts are relevant to our resolution of this claim. During trial, Sybert testified that, in July, 2019, November began residing and attending school at Eagle House, which Sybert described as "a partial residential placement" that is a "step down from a hospital setting," although November has been permitted overnight visits with her foster mother. Sybert also testified that "Eagle House's goal is stabilization. So we're trying to get it so November is no longer going to the hospital with the end goal that she will go and discharge to [her foster mother]." Sybert further testified that she was "hoping" that November would be released from Eagle House and into her foster mother's care within "two months max" following trial.

Sybert's uncontroverted testimony that the goal of November's residency at Eagle House was to stabilize November and to prepare her to be discharged to her foster mother's care, which Sybert expected would occur within two months following trial, coupled with the undisputed evidence that the respondent's maximum release date from prison is March, 2024, constitutes sufficient evidence supporting the court's finding that the respondent would be responsible for providing housing and financial support to November within a reasonable time. Thus, we reject the respondent's claim that the court's finding was clearly erroneous.

III

The respondent next claims that the petitioner and Natachia G. hindered his ability to establish a "normal and healthy" parent-child relationship with November, and, therefore, as a matter of law, the trial court could

economic factors and that the evidence reflects that he made efforts to advance his education while incarcerated, which leads to a reasonable inference that he will be well positioned to obtain housing and employment once he leaves prison. We decline to address this claim, however, because "we consider an argument inadequately briefed when it is delineated only in the reply brief." *Hurley* v. *Heart Physicians, P.C.*, 298 Conn. 371, 378 n.6, 3 A.3d 892 (2010).

not terminate his parental rights under § 17a-112 (j) (3) (B) (i) on the basis of its finding that additional time was necessary for the respondent and November to form such a relationship. For the reasons that follow, this claim is unavailing.

In asserting this claim, the respondent urges this court to import, as a matter of law, the interference exception applicable when the proffered basis for termination of parental rights is no ongoing parent-child relationship. We begin our analysis, therefore, with a review of the legal test and exceptions applicable in that context. Our Supreme Court recently clarified "the proper legal test to apply when a petitioner seeks to terminate a parent's rights on the basis of no ongoing parent-child relationship . . . . [T]he inquiry is a two step process. In the first step, a petitioner must prove the lack of an ongoing parent-child relationship by clear and convincing evidence. In other words, the petitioner must prove by clear and convincing evidence that the child has no present memories or feelings for the natural parent that are positive in nature. If the petitioner is unable to prove a lack of an ongoing parent-child relationship by clear and convincing evidence, the petition [for termination of parental rights] must be denied, and there is no need to proceed to the second step of the inquiry. If, and only if, the petitioner has proven a lack of an ongoing parent-child relationship does the inquiry proceed to the second step, whereby the petitioner must prove by clear and convincing evidence that to allow further time for the establishment or reestablishment of the relationship would be contrary to the best interests of the child. Only then may the court proceed to the disposition phase.

"There are two exceptions to the general rule that the existence of an ongoing parent-child relationship is determined by looking to the present feelings and memories of the child toward the respondent parent. The first exception . . . applies when the child is an infant,

and that exception changes the focus of the first step of the inquiry. . . . [W]hen a child is virtually a newborn infant whose present feelings can hardly be discerned with any reasonable degree of confidence, it makes no sense to inquire as to the infant's feelings, and the proper inquiry focuses on whether the parent has positive feelings toward the child. . . . Under those circumstances, it is appropriate to consider the conduct of a respondent parent.

"The second exception . . . applies when the petitioner has engaged in conduct that inevitably has led to the lack of an ongoing parent-child relationship between the respondent parent and the child. This exception precludes the petitioner from relying on the lack of an ongoing parent-child relationship as a basis for termination. Under these circumstances, even if neither the respondent parent nor the child has present positive feelings for the other, and, even if the child lacks any present memories of the respondent parent, the petitioner is precluded from relying on [the lack of an ongoing parent-child relationship] as a basis for termination. . . . The interference inquiry properly focuses not on the petitioner's intent in engaging in the conduct at issue, but on the consequences of that conduct. In other words, the question is whether the petitioner engaged in conduct that inevitably led to a noncustodial parent's lack of an ongoing parent-child relationship. If the answer to that question is yes, the petitioner will be precluded from relying on the ground of no ongoing parent-child relationship as a basis for termination regardless of the petitioner's intent—or not—to interfere." (Citation omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.) *In re Tresin J.*, supra, 334 Conn. 326–28. It is this second exception that the respondent seeks to have this court adopt in the context of the failure to rehabilitate ground.[11]

[11] In the cases cited by the respondent in his appellate briefs, our appellate courts discussed the interference exception in the context of the no ongoing

The following additional background, which relates to the court's analysis of the no ongoing parent-child relationship ground, as well as the failure to rehabilitate ground, is relevant to our disposition of this claim. In addressing the petitioner's allegation that no ongoing parent-child relationship existed between the respondent and November under § 17a-112 (j) (3) (D), the court first set forth the applicable legal standard and acknowledged the interference exception, observing that the petitioner cannot rely on § 17a-112 (j) (3) (D) as a ground for termination "when the petitioner has engaged in conduct that inevitably led to the lack of an ongoing parent-child relationship between the respondent parent and the child." (Internal quotation marks omitted.) The court then rejected the applicability of the interference exception because it found that Natachia G., not the petitioner, had thwarted the respondent's efforts to visit and contact November. The court proceeded to consider, and reject, the merits of the petitioner's allegation that there was no ongoing parent-child relationship between the respondent and November. Subsequently, the court determined that the respondent had failed to sufficiently rehabilitate under § 17a-112 (j) (3) (B) (i), inter alia, on the basis of its finding that additional time was needed for the respondent and November to develop a "normal and healthy" parent-child relationship. The court did not discuss the interference exception in determining that the respondent had not sufficiently rehabilitated.

The respondent asserts that (1) the interference exception to § 17a-112 (j) (3) (D) (i.e., no ongoing parent-child relationship) should apply to the § 17a-112 (j) (3) (B) (i) (failure to rehabilitate) ground for termination alleged by the petitioner in the present case, and

parent-child relationship ground for termination of parental rights. See *In re Jacob W.*, supra, 330 Conn. 762–64; *In re Valerie D.*, 223 Conn. 492, 526–35, 613 A.2d 748 (1992); *In re Carla C.*, 167 Conn. App. 248, 272–80, 143 A.3d 677 (2016).

(2) as a matter of law, the interference exception precluded the court from predicating the termination of his parental rights on its finding that he did not have a "normal and healthy" parent-child relationship with November when the petitioner and Natachia G. interfered with his efforts to develop such a relationship. Even assuming arguendo that the interference exception were available as a matter of law to § 17a-112 (j) (3) (B) (i),[12] we conclude that the exception is otherwise inapplicable under the facts of this case.

The applicability of the interference exception under the facts of this case presents a question of law over which we exercise plenary review. See *Gershon* v. *Back*, 201 Conn. App. 225, 244, A.3d (2020) ("[t]he plenary standard of review applies to questions of law").

Recently, in *In re Tresin J.*, our Supreme Court expounded on the parameters of the interference exception. Of import, the court stated that "[o]ur case law makes clear that the interference exception is akin to the equitable doctrine of 'clean hands' and is triggered *only by the conduct of the petitioner rather than that of a third party or some other external factor that occasioned the separation.* . . . Compare *In re Jacob W.*, supra, 330 Conn. 766–67 (interference exception was inapplicable to grandparent petitioners who 'played no role in setting the protective order' that effectively precluded respondent father from contacting children during his incarceration), and *In re Alexander C.*, [67 Conn. App. 417, 424–25, 787 A.2d 608 (2001)] (interference exception was inapplicable because, although

[12] In his reply brief, the respondent clarifies that he is not "contend[ing] that the interference exception applies to all cases where the petitioner claims that a parent has failed to rehabilitate pursuant to . . . § 17a-112 (j). Rather, [he is] contend[ing] that the interference exception applies only in cases where the trial court finds that the [parent] has failed to rehabilitate because he has failed to maintain a 'normal and healthy parent-child relationship.' " (Emphasis omitted.) We decline to discuss whether the interference exception is applicable, in some or all circumstances, to § 17a-112 (j) (3) (B) (i) because, as we subsequently conclude in this opinion, the interference exception is otherwise inapplicable under the facts of this case.

child was placed in foster care within days of birth, 'the respondent, rather than the [petitioner], created the circumstances that caused and perpetuated the lack of an ongoing relationship' by committing physical and sexual abuse of minor child's sibling that resulted in his incarceration and entry of protective order) [aff'd, 262 Conn. 308, 813 A.2d 87 (2003)], with *In re Valerie D.*, [223 Conn. 492, 531–34, 613 A.2d 748 (1992)] ([Department of Children and Families] was precluded from relying on lack of ongoing parent-child relationship ground when it took temporary custody of child within days of her birth because of mother's continued cocaine use, with only few months having elapsed between department taking custody and termination hearing, because 'once the child had been placed in foster care . . . a finding of a lack of an ongoing parent-child relationship three and one-half months later was inevitable . . . because absent extraordinary and heroic efforts by the respondent, the petitioner was destined to have established the absence of such a relationship'), and *In re Carla C.*, [167 Conn. App. 248, 253–56, 262, 143 A.3d 677 (2016)] (interference exception was applicable when petitioner mother, who was custodial parent, obtained order from prison in which respondent father was incarcerated barring him from all oral or written communication with her and child, discarded cards and letters that he sent to child, and filed motion to suspend child's visitation with father on ground that it was 'unworkable')." (Emphasis added; footnote omitted.) *In re Tresin J.*, supra, 334 Conn. 332–33.

Additionally, our Supreme Court rejected a respondent parent's claim that the Department of Children and Families' purported interference with his attempts to reestablish contact with his child invoked the interference exception, stating that "the interference exception . . . applies when the actions of the petitioner rendered inevitable the *initial* lack of a relationship, which in [that] case had occurred several years before

the [Department of Children and Families] became involved with the respondent and his family. See *In re Jacob W.*, supra, 330 Conn. 766–67; *In re Valerie D.*, supra, 223 Conn. 533–34. Put differently, it was not the [Department of Children and Families'] opposition to visitation on the recommendation of [the child's] clinicians, who deemed it potentially disruptive to the progress that he was making with his foster mother, [that] resulted in the separation that led to the lack of a parent-child relationship." (Emphasis in original.) *In re Tresin J.*, supra, 334 Conn. 332 n.12.

Guided by the rationale of *In re Tresin J.*, we conclude that the respondent's reliance on the interference exception is misplaced. Although the court found that Natachia G. had interfered with the respondent's attempts to visit and contact November, Natachia G. is not the petitioner in the present action, and, thus, her conduct *as a third party* could not trigger the interference exception as a matter of *fact*. See id., 332–33. As to the petitioner, the lack of a "normal and healthy" parent-child relationship between the respondent and November began long before June, 2017, when the petitioner became involved in this matter. As the court found, Natachia G. prevented the respondent from having contact with November and hid the respondent's identity from November. It was not until May, 2018, following the petitioner's involvement in the case, that November learned that the respondent was her father. In his principal appellate brief, the respondent acknowledges Natachia G.'s role in preventing the initial development of any relationship between him and November, stating that "as a result of [Natachia G.'s] actions, [he] was unable to have any contact with November for approximately seven years, from 2011 until 2018," and that "[Natachia G.] . . . entirely prevented [him] from having any relationship with November for many years, despite his repeated efforts to develop such a relationship." In other words,

the petitioner did not cause the lack of a "normal and healthy" parent-child relationship between the respondent and November.[13] Accordingly, the petitioner's conduct does not constitute "interference" for purposes of the interference exception. See *In re Tresin J.*, supra, 332 n.12.

In sum, the respondent's claim predicated on the interference exception fails.[14]

IV

The respondent's final claim is that the trial court improperly compared him with November's foster mother in the adjudicatory part of its decision terminating his parental rights. We disagree.

We begin by setting forth the applicable standard of review and legal principles. To resolve the respondent's claim, we must construe the court's judgment. As set forth in part I of this opinion, this presents a question of law over which we exercise plenary review. See *In re Xavier H.*, supra, 201 Conn. App. 95.

[13] In its memorandum of decision, the court expressly found that Natachia G., not the petitioner, interfered with the respondent's attempts to visit and to contact November. The respondent claims that the court's finding that the petitioner's conduct did not constitute interference was clearly erroneous. Because we conclude that the petitioner's conduct cannot trigger the interference exception under the facts of this case, we need not address the respondent's claim further.

[14] Although we conclude that even if the interference exception were adopted for purposes of the failure to rehabilitate ground, the exception would not be satisfied as a matter of fact in this case, we note that § 17a-112 (k) requires a trial court, in determining whether termination of parental rights is in the child's best interest, to consider, among other factors, "the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent." General Statutes § 17a-112 (k) (7). In determining that terminating the respondent's parental rights was in November's best interest, the court found that there was substantial evidence that Natachia G. prevented the respondent from maintaining a meaningful relationship with November.

"[A] judicial termination of parental rights may not be premised on a determination that it would be in the child's best interests to terminate the parent's rights in order to substitute another, more suitable set of adoptive parents. Our statutes and [case law] make it crystal clear that the determination of the child's best interests comes into play only after statutory grounds for termination of parental rights have been established by clear and convincing evidence. . . . [A] parent cannot be displaced because someone else could do a better job raising the child. . . . The court, however, is statutorily required to determine whether the parent has achieved such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . ." (Emphasis omitted; footnote omitted; internal quotation marks omitted.) *In re Corey C.*, 198 Conn. App. 41, 80–81, 232 A.3d 1237, cert. denied, 335 Conn. 930, 236 A.3d 217 (2020).

In addressing the respondent's claim, both parties cite *In re James O.*, 322 Conn. 636, 142 A.3d 1147 (2016), in their respective briefs. As this court recently summarized, "[i]n *In re James O.*, in concluding that the respondent mother had failed to rehabilitate, [our Supreme] [C]ourt held that the trial court did not improperly compare the respondent parents with the foster parent of the children at issue. Id., 652–57. The trial court noted that the foster parent provided the children with 'an environment that is calm and understanding of the children's needs.' . . . Id., 653. Further, the court stated that, '[a]s both [children's] therapists have made clear, the children have needed a caregiver who is calm, patient, able to set appropriate limits, willing to participate intensively in the children's therapy, and able to help the children with coping skills to manage their anxiety.' . . . Id. The court went on to state that the foster mother

provided the children with such an environment and that she embodied the requisite characteristics of a parent who could meet the child's needs. 'In contrast,' the court continued, '[the respondent mother] is volatile and prone to violence, unable to set appropriate limits, unwilling to talk with the children's therapists and, therefore, unable to help them use coping skills to manage their anxiety and ultimately, unwilling to believe the children's statements regarding the trauma.' . . . Id., 653–54. In reviewing this language, the Supreme Court determined that the trial court's comparison to the foster mother was not improper because it was made 'in light of what the children's therapists have testified are the specific needs of the children. . . . The court is basing the level of care needed not on what [the foster mother] is providing to the children, but on what the children's therapists have testified the children need from a caregiver.' . . . Id., 655. Further, '[i]mportantly, the court never opined that [the foster mother] could meet the children's needs or that [the foster mother] ought to be the person to meet their needs.' . . . Id. Therefore, our Supreme Court held that the trial court did not improperly compare the respondent mother with the foster mother. Id., 657." *In re Corey C.*, supra, 198 Conn. App. 81–82.

In the present case, the respondent takes issue with the following statements, which the court made in considering whether he had failed to sufficiently rehabilitate: "The evidence shows that stability has been missing in November's life. November has found stability in her foster home where her foster mother has cared for her and [her sister] since November 22, 2017, except for November's periods of hospitalization. [The] [f]oster mother visits with November at Eagle House one day per week. . . . Social worker [Amber] Orvis testified that November's foster mother redirects November and 'doesn't push her.' [Orvis] described [the] foster mother

as affectionate and bonded with November . . . . Having found a relative degree of stability, November now needs permanence. [The] [f]oster mother has expressed that she wants to be a long term adoptive resource for November . . . .'' The court also found that ''November is in need of a safe and permanent home with a proven competent caretaker because neither biological parent is capable of providing such a home for her within a reasonable time.''

We conclude that the court did not improperly compare November's foster mother with the respondent in determining that the respondent had failed to sufficiently rehabilitate. Immediately before making the challenged statements, the court observed that ''[o]ur Supreme Court has repeatedly recognized that stability and permanence are necessary for a young child's healthy development. *In re Egypt E.*, 327 Conn. 506, 531, [175 A.3d 21, cert. denied sub nom. *Morsy E.* v. *Commissioner*, *Dept. of Children & Families*, U.S. , 139 S. Ct. 88, 202 L. Ed. 2d 27] (2018).'' (Internal quotation marks omitted.) Additionally, prior to making the challenged statements, the court reiterated that the respondent's rehabilitative status had to be viewed in relation to the age and needs of November and referenced ''November's many psychological and emotional needs created by the trauma she has experienced . . . .'' Viewed in context of the memorandum of decision as a whole, we construe the challenged statements as highlighting November's need for stability and permanence and the respondent's inability to provide the same to her within a reasonable time. Moreover, the court did not opine that only November's foster mother could meet November's needs or that the foster mother ought to be the person to meet those needs. Instead, the court expressly found that ''November is in need of a safe and permanent home *with a proven competent caretaker* because neither biological parent is capable of providing such a home for her within a reasonable time.'' (Emphasis added.) Accordingly, we

conclude that the court did not make an improper comparison between the respondent and November's foster mother in the adjudicatory part of its decision.

The judgment is affirmed.

In this opinion the other judges concurred.

INDOOR BILLBOARD NORTHWEST, INC., ET AL. *v.* M2 SYSTEMS CORPORATION (AC 39890) (AC 40558)

Keller, Elgo and Bright, Js.*

Syllabus

The plaintiff investors sought to recover damages from the defendant software developer for the wrongful transfer by J, their investment manager, of funds from their custodial accounts at a bank that were used to pay the defendant's loan obligation to S, who also held a custodial investment account at the bank. The plaintiffs and S had entered into investment-management agreements with T Co., which was managed by J. In 2006, J used funds from S's account as a source of the $2,050,000 loan that J had negotiated with M, the defendant's chief executive officer. The defendant obtained the loan to assist another company, I Co., of which M was president, in obtaining computer equipment. M, on behalf of the defendant, issued a promissory note to J that named S as the payee. The promissory note was secured by shares of stock in I Co. In 2007, the defendant ceased the services offered by I Co., which resulted in a decline in the defendant's business. M then negotiated with J an extension of the promissory note to 2010. The amendment to the promissory note was not signed. M testified at his deposition that he had never seen the document that amended the promissory note and was unaware that it had been amended. J thereafter directed the bank to wire funds from the plaintiffs' accounts to an escrow account that was maintained by T Co.'s attorney as payment for the defendant's assignment of subnotes that J created and the bank recorded in the plaintiffs' accounts in amounts equal to the funds taken from those accounts. The plaintiffs paid $1,848,000 for the subnotes. The defendant did not thereafter pay the plaintiffs. J was later convicted of various federal charges, including investor advisement fraud, in connection with certain accounts at the bank but not as to the defendant's subnotes. The plaintiffs thereafter

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

brought this action in which they sought to recover, as assignees of the promissory note or under a theory of unjust enrichment, the amount that was removed from their accounts. The trial court rendered judgment for the plaintiffs on their unjust enrichment claim. The court credited deposition testimony by J that his use of the plaintiffs' funds had satisfied the defendant's obligation to S. The court rejected the plaintiffs' assignment theory of liability, reasoning that the documents at issue had been created for and signed solely by J, and that the assignment claim was based on J's veracity and the reliability of records he kept while he was committing financial fraud. The court also rendered judgment for L, who was not a plaintiff but who had a custody account agreement with a different bank and held a subnote in his favor that J had executed on behalf of T Co. The court thereafter denied the plaintiffs' motion for attorney's fees and expenses, and the defendant and the plaintiffs filed separate appeals with this court. *Held*:

1. The trial court improperly rendered judgment for L, as the plaintiffs' complaint did not allege that L had assigned to a plaintiff his interest in the subnote that J executed in his favor: the court denied the plaintiffs' pretrial motion to amend their complaint to reflect L's assignment and precluded evidence at trial of any claims related to L on the ground that he was not a party, which the defendant did not dispute, and, although there was some evidence concerning L before the court, such evidence did not confer jurisdiction on the court to render an enforceable judgment for L; accordingly, the portion of the court's judgment rendered in L's favor was vacated.
2. The defendant could not prevail on its claim that the trial court improperly rejected its special defense that it was entitled to a setoff for funds the plaintiffs received from collateral sources; although the defendant's claim for a setoff was intertwined with a motion for sanctions it had filed concerning its attempt to determine from the plaintiffs' tax returns if they had written off losses or received funds in connection with the subnotes at issue, the defendant did not challenge the court's decision not to award it sanctions or its ruling that it could apply postjudgment for review of the tax returns of plaintiffs who received a monetary award; moreover, the defendant's assertion, which was not raised at trial, that the court could not properly consider the setoff issue without first permitting the defendant to review the tax returns, was unavailing, as the court was not persuaded that the defendant was entitled to unfettered access to the tax returns, the defendant failed to present evidence in support of its defense of setoff, none of the plaintiffs who testified at trial stated that they had recovered from a collateral source, and the defendant did not demonstrate that application to examine the plaintiffs' tax returns postjudgment was inadequate or that it pursued that potential relief.
3. The trial court did not abuse its discretion in rejecting the defendant's special defense of unclean hands, which was based on the defendant's assertions that the plaintiffs were tainted by J's fraud and had taken a

different position in prior lawsuits they brought against the bank by challenging the validity of the assignments and subnotes: the claim that the plaintiffs took an inconsistent position with respect to the assignments and subnotes logically and legally pertained to their assignee cause of action, which the court rejected, and the defendant did not suggest, and the court did not find, that the defendant was a party in the prior lawsuits, in which the plaintiffs did not state claims against the defendant.

4. The trial court's factual finding that the promissory note had been amended was not clearly erroneous, there having been no basis to presume that the court improperly relied on an exhibit from M's deposition that had been precluded from evidence when the amendment to the note had been admitted into evidence as an exhibit from J's deposition; J's testimony that M both negotiated the amendment with him and at some point executed it provided an evidentiary basis for the court's finding, and, even if the finding was improper, the defendant could not demonstrate that it was harmful, as it was not integral to the court's analysis under a theory of unjust enrichment; moreover, to the extent that the defendant's payment obligations were relevant to a determination that it was aware of the note's existence and the defendant's obligations thereunder, there was evidence before the court that M was aware of the note and had written in an e-mail to J that the defendant would not default.

5. The defendant failed to demonstrate that the evidence did not support the trial court's finding that the plaintiffs were entitled to recover under a theory of unjust enrichment: contrary to the defendant's assertion that it was not benefited by the disbursement of the plaintiffs' funds because the plaintiffs lacked knowledge of how the funds were used and produced no evidence that S received payments from the plaintiffs, J testified that S had been repaid in full, and M testified that the defendant benefited when it used the loan proceeds to purchase hardware for I Co.; moreover, despite the defendant's claim that the plaintiffs failed to prove that it unjustly did not pay them for the benefit it received, which was based on its assertion that the plaintiffs did not justly obtain an interest in the promissory note and that the subnotes were mere IOU's from T Co. that obligated the defendant to pay T Co. rather than the plaintiffs, the court did not award the plaintiffs a remedy as legal assignees and subrogees but under the unjust enrichment doctrine; furthermore, the defendant's claim that the plaintiffs did not prove that the failure of payment to them was to their detriment was undermined by J's testimony that the proceeds of the promissory note plus interest were repaid to S in part by virtue of the funds that were deducted from the plaintiffs' accounts, over which T Co. exercised control.

6. This court declined to reach the merits of the defendant's inadequately briefed claim that the trial court erred in finding that the defendant was unjustly enriched as a result of J's cross-trading of subnotes in and among the plaintiffs' accounts; the defendant did not demonstrate that

the cross-trading undermined the court's finding that funds removed from the plaintiffs' accounts were used to repay the defendant's debt to S, as the defendant's one sentence conclusory statement of its claim in its brief was unsupported by analysis or citation to authority.

7. The trial court's finding that the defendant's loan obligation to S was satisfied in part with the use of the plaintiffs' funds was not clearly erroneous: despite the defendant's claims of technical defects in the manner in which J's telephonic deposition occurred, J's deposition testimony, which supported the court's finding, was admitted into evidence without limitation, and the defendant did not demonstrate that the court misconstrued or drew improper inferences from it, as the court's finding was not inconsistent with its decision not to credit J's version of the events at issue and to reject the defendant's claim that the plaintiffs were assignees of the subnotes; moreover, the court was free to reject the portions of J's testimony that would have supported the defendant's assignee claim while relying on J's testimony that supported the plaintiffs' claim for equitable relief, as the plaintiffs, to be entitled to equitable relief, did not need to prove the legal validity of the instruments at issue but, rather, that their funds had been used to partially satisfy the defendant's debt to S.

8. The defendant could not prevail on its claim that the trial court erred in finding that the plaintiffs satisfied the defendant's debt to S despite their failure to produce evidence of a written discharge of the promissory note; the defendant did not cite authority to show that the plaintiffs had the burden of proving that their repayment of the debt thereafter caused S to discharge the note in writing, the evidence supported the court's finding that the plaintiffs funds were used to pay the defendant's debt to S, and the plaintiffs' lack of satisfaction of the note's technical requirements was of no consequence as to whether funds removed from their accounts benefited the defendant.

9. The trial court properly denied the plaintiffs' postjudgment motion for attorney's fees and expenses, the plaintiffs having failed to demonstrate that, as a matter of law, they had a right to attorney's fees because they prevailed under the equitable theory of unjust enrichment and stood in the shoes of S as equitable subrogees with respect to S's right to recover attorney's fees under the promissory note: although the plaintiffs could have sought to enforce the note's provision for attorney's fees had the court found that they were assignees of the note, the court did not find that they obtained contractual or quasi-contractual rights to enforce the note against the defendant and properly distinguished between finding that the elements of unjust enrichment had been proven and that the plaintiffs had stepped into S's shoes as a result of their partial payment of the defendant's debt to S; moreover, the plaintiffs provided no binding authority in support of their claim that attorney's fees are a necessary component of an award in which a party has unjustly enriched another by payment of a debt.

Argued December 9, 2019—officially released January 12, 2021

Procedural History

Action to recover on a promissory note, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Bellis*, *J.*, denied the plaintiffs' motion to add a plaintiff and to amend the complaint; thereafter, the matter was tried to the court, *Hon. George N. Thim*, judge trial referee; subsequently, the court, *Hon. George N. Thim*, judge trial referee, denied the defendant's motion for sanctions; judgment in part for the plaintiffs, from which the defendant appealed to this court; thereafter, the court, *Hon. George N. Thim*, judge trial referee, denied the plaintiffs' motion for attorney's fees, and the plaintiffs appealed to this court. *Affirmed in part; reversed in part; judgment directed.*

Bradley A. Bell, pro hac vice, with whom were *Scott M. Harrington* and, on the brief, *Philip A. Beach*, pro hac vice, for the appellant in Docket No. AC 39890 and the appellee in Docket No. AC 40558 (defendant).

Arden E. Shenker, pro hac vice, with whom was *John Robacynski*, for the appellees in Docket No. AC 39890 and the appellants in Docket No. AC 40558 (plaintiffs).

Opinion

KELLER, J. The action underlying these appeals was brought by twenty-three plaintiffs who are the victims of a fraudulent loan scheme that was created and carried out by the former manager of their custodial investment accounts.[1] The plaintiffs sought to recover from the defendant, M2 Systems Corporation, the funds wrongfully transferred from their accounts by the manager

[1] The plaintiffs are Indoor Billboard Northwest, Inc.; Catherine E. Cox; Daniel D. Gestwick IRA R/O; Paige C. Gist; Bernice Goldin IRA by Rochelle Goldin for Bernice Goldin Estate; Bernice Goldin IRA by Steve Goldin for Bernice Goldin Estate; Donald J. Handal Revocable Trust U/O; Donald J.Handal IRA R/O; Margot S. Handal TR U/A; Edward J. Harnett; Geoffrey M. Holmes; Geoffrey W. Holmes; Lee M. Holzman; Becky Holzman; Marital Trust U/W William Katz; Peggy W. Kaufmann IRA; Richard J. Kauffmann Decedent's Trust; Kay M. Kazmaier; Stanley A. Star; James Shulevitz; Alan Wolff; Nadine Wolff; and Michael Wolff.

of the accounts. They sought to recover either by virtue of their rights as partial assignees of a promissory note that had been executed by the defendant in favor of a third party or under a theory of unjust enrichment. Following a trial to the court that lasted five days, the court rejected the plaintiffs' attempt to recover damages as assignees of the note at issue but agreed with the plaintiffs that they were entitled to recover damages under a theory of unjust enrichment. The court awarded the plaintiffs $2,494,800, which included the amount wrongfully transferred from each plaintiff's investment account, as well as prejudgment interest.[2]

In Docket No. AC 39890, the defendant appeals from the judgment of the trial court with respect to the unjust enrichment cause of action brought by the plaintiffs. The defendant claims that the court erred in the following ways: (1) by awarding damages to a person who was neither a plaintiff in the underlying action nor a nonparty who had assigned his interest to a plaintiff in the underlying action; (2) by determining that the defendant was not entitled to a setoff; (3) by rejecting its special defense of judicial estoppel; (4) by finding that the note executed by the defendant in favor of a third party had been amended; (5) by finding that the defendant had been unjustly enriched as a result of the plaintiffs' funds; (6) by finding that cross-traded subnotes, which had been exchanged between some of the plaintiffs' accounts, had unjustly enriched the defendant; (7) by finding that the defendant's loan obligation to a third party was satisfied in part with the use of the plaintiffs' funds; and (8) by finding that the plaintiffs had satisfied in part the defendant's debt obligation to a third party despite the fact that the debt was not discharged pursuant to the terms of the note at issue.

[2] This amount includes damages awarded to Douglas Lamm, who was neither a plaintiff in the underlying action nor a nonparty who had assigned his interest to a plaintiff in the underlying action. In part I A of this opinion, we will consider the merits of a claim brought by the defendant with respect to this portion of the judgment.

Docket No. AC 40558 is the plaintiffs' appeal from the court's decision denying their postverdict motion for attorney's fees. In their appeal, the plaintiffs claim that the court erred by denying their motion for attorney's fees and expenses after rendering judgment in their favor with respect to their unjust enrichment cause of action. We agree with the first claim raised by the defendant in Docket No. AC 39890 and, consequently, reverse the portion of the judgment that is the subject of that claim. With respect to the remainder of the claims raised by the defendant in Docket No. AC 39890 and the claim raised by the plaintiffs in Docket No. AC 40558, we affirm the judgment and the decision of the trial court.

In its memorandum of decision filed November 23, 2016, the court aptly summarized the relevant procedural history of the case, including the nature of the plaintiffs' causes of action and the defendant's defenses, and set forth the facts and legal bases of its decision. The court began its decision as follows: "The plaintiffs contend [that] they are partial assignees of a promissory note issued by [the] defendant . . . and seek to recover $3,848,000 from [the defendant] under the terms of the note. In the alternative, should the plaintiffs' claims as assignees fail, the plaintiffs seek to recover from [the defendant] on an unjust enrichment theory. They claim [that] their funds were used to pay [the defendant's] loan obligation. The defendant . . . contends [that] the plaintiffs have failed to prove their claims. [The defendant] posits [that] the plaintiffs are victims of their financial advisor's fraudulent conduct. [The defendant] raises various special defenses. For the reasons stated [in this memorandum of decision], this court [renders] judgment for the plaintiffs."

The court next set forth the following findings: "There are twenty-three plaintiffs in this lawsuit. Each held investments in custodial accounts that were maintained with the wealth and services division of [the] State

Street Bank and Trust Company [bank].[3] Each plaintiff entered into an account agreement with the bank that stated [that] Tauris Advisory Group, LLC (TAG), was the account owner's agent and authorized investment manager. Each plaintiff also entered into investment-management agreements with TAG. The TAG agreements stated that TAG was the plaintiffs' agent and authorized investment manager.

"TAG, as well as its successor, TAG Virgin Islands, Inc., was managed by James Tagliaferri, who was a principal in the two financial service companies. TAG at one time maintained offices in Stamford . . . . The effect of the plaintiffs' agreements with [the bank] and TAG was to give Tagliaferri carte blanche authority over the plaintiffs' investment accounts at [the bank].

"Tagliaferri had other clients who are not parties to this lawsuit. One of those clients was Matthew J. Szulik. Szulik maintained a custodial account with [the bank]. His agreement with the bank, like the plaintiffs' agreements, provided that Tagliaferri was his agent. Szulik's investment-management agreement with TAG, like the plaintiffs' agreements, provided that TAG was his authorized investment agent.

"In July of 2006, Tagliaferri arranged for Szulik's investment account with [the bank] to be used as a source of a loan to [the] defendant . . . . Tagliaferri negotiated the loan over the telephone with the chief executive officer of [the defendant], Michael Muscato. Szulik did not participate in the telephonic negotiations.

"[The defendant] develops and sells software that integrates computer systems. At the time of the loan to [the defendant] . . . Muscato, in addition to his position as chief executive officer of [the defendant], was president of another company, IQ-Ludorum, Plc (IQL).

[3] The evidence reflects that the bank is headquartered in Quincy, Massachusetts.

[The defendant] obtained the loan so that it could assist IQL in obtaining computer equipment. IQL was pursuing a business venture that involved providing 'offshore' services to gamblers. [The defendant] designed IQL's computer system and provided maintenance and support services at IQL's data center in Antigua. IQL's stock was traded on a stock exchange in London, England.

"The loan to [the defendant] was evidenced by a promissory note for $2,050,000 signed on behalf of [the defendant] by . . . Muscato. The note is dated July 25, 2006. In the document, [the defendant] promises to pay . . . Szulik, payee, on April 24, 2007, the principal amount of $2,050,000. The note provides for the prepayment of interest at a rate of 12 percent per annum. The interest prepayment amounted to $184,500 and was deducted from the loan amount. Thus, $1,865,500 was advanced from Szulik's account. The note was secured by shares of IQL stock and an equipment lease with J.P. Morgan Electronic Financial Services, Inc. At [the defendant's] direction, the loan proceeds ($1,865,500) were forwarded to an escrow account and thereafter distributed in accordance with the terms of the note and a security agreement.

"The records for Szulik's custodial account with [the bank] indicate that in 2006, Szulik held a note designated as 'Prom NTM2 Sys Corp 12% 4/27/07 valued at $2,050,000 USD.' The bank's records further indicate that, on February 26, 2009, the note, using the bank's term, was 'distributed' from Szulik's account.

"In 2007, according to Muscato, Congress passed a law banning United States citizens from using the gambling services that IQL was offering. [The defendant] decided to stop its gambling venture, which decision put [the defendant's] business 'on the skids.' Muscato negotiated with Tagliaferri for an extension of the note. In August of 2007, the note was extended to February 23, 2010. [The defendant] paid an extension fee of $205,000

and, in addition, paid $45,000 for interest that had accrued between the original due date, April 24, 2007, and the date of the fee payment.

"According to Tagliaferri, the [defendant's] note was amended by a document dated April 24, 2007. The purported amendment changed the section . . . [of the original note that pertained to] interest and repayment of principal. The purported amendment requires [the defendant] to 'pay [i]nterest on the [p]rincipal accruing on and after April 24, 2007, on the first full day of each month commencing on July 1, 2007 until the [o]bligations are paid in full.' The typed document has lines for the signatures for . . . Muscato on behalf of [the defendant] and . . . Tagliaferri on behalf of TAG as agent for Szulik. The copy in evidence is not signed. . . . Muscato, as of the date of his deposition on August 14, 2015, had never seen the document amending the note and was not aware the note had been amended.

"Tagliaferri, in 2009 and 2010, directed [the bank] to wire funds from the plaintiffs' . . . accounts [at the bank] to an escrow account maintained by TAG's attorney. TAG advised the bank that the funds were being used as payment for . . . corporate notes or subnotes [of the defendant]. These transactions were described by [the bank] in the plaintiffs' statements as 'cash disbursement . . . for assignment of M-2 Note' or 'cash disbursement . . . wire for M2 Note.' The bank's statements further recorded assets received in exchange for these funds as 'M2 Systems Corp Notes 12% 2/23/10' or 'M2 Systems Corp 12% Sub Nt.' The bank recorded asset values in each account for [the defendant's] notes or subnotes in an amount equal to the amount transferred from the accounts at Tagliaferri's direction. Some accounts had more than one transaction with respect to the [defendant's] notes. A review of the transactions also indicates that there was some cross-trading of the 'subnotes' between the plaintiffs' accounts.

"In February of 2011, one of the plaintiffs asked Tagliaferri by way of e-mail, 'Can you explain what is going on with the M2 System notes I hold in my personal portfolio . . . ?' Tagliaferri replied, 'Expect to get paid.'

"In June of 2012, [the bank], in response to requests made by individual plaintiffs, mailed to the plaintiffs documents that purported to represent their ownership interests in the [defendant's] note. These documents are titled 'M2 SYSTEMS CORPORATION 12% SECURED SUBNOTE.' In the body of each document, TAG promises to pay a specified amount 'upon payment by M2 . . . of the note . . . .' Many of the documents do not name the person or entity TAG promises to pay but contain a space where a name has been redacted. [The bank], in its June letters to individual plaintiffs, provided a copy of a 'subnote' and specified the respective plaintiff's 'portion' of the subnote. For example, exhibit 14 is a letter to [the] plaintiff Geoffrey W. Holmes. Attached to the letter is a 'subnote' for $725,000. The name of the payee is redacted. In its letter, the bank reports that [Geoffrey W. Holmes'] 'portion' of the note is $125,000. The subnotes were drafted by TAG or TAG's attorney. They are signed by Tagliaferri as agent for TAG. No one else's signature appears on the documents.

"The plaintiffs as a group paid TAG $1,848,000 for what was represented by Tagliaferri to be for [the defendant's] 'subnotes.' The plaintiffs seek to recover from [the defendant] the amount removed from their bank accounts together with interest, computed at 12 percent from November 6, 2009, to August 19, 2016, for a grand total of $3,335,968. [The defendant] acknowledges that it has not made any payments on the note since April of 2007." (Citation omitted; footnote added.)

The court then summarized what it deemed to be relevant prior litigation related to the conduct at issue in the plaintiffs' causes of action. The court stated: "Many

of the plaintiffs, starting in 2012, sued [the bank] and . . . Tagliaferri in connection with the subnotes issued by Tagliaferri. . . .

"On May 1, 2012, Donald J. Handal, a plaintiff in the present lawsuit, filed a consolidated class action complaint in the United States District Court, District of Massachusetts, against [the bank]. Handal alleges, inter alia, [that] '[t]he subordinated notes for TAG are fake on their face. The subordinated notes are no more than IOUs issued by TAG to plaintiffs and class members. They are fake and entirely unsubstantiated representations of an investment in notes of the company. In short, they were created out of whole cloth . . . . Copies of several of these fake subordinated notes are attached hereto as exhibit A.' Attached to the complaint as part of exhibit A is a copy of the subnote that . . . Handal is attempting to enforce in the present litigation. It is representative of the notes that the other plaintiffs are attempting to enforce. . . .

"On October 24, 2012, Alan [Wolff] and Nadine Wolff, plaintiffs in the present lawsuit, filed an action for fraud against [the bank] and . . . Tagliaferri in the United States District Court, District of Massachusetts. They allege in paragraph 40 of their complaint, inter alia, [that] '[i]n December, 2009, Tagliaferri instructed [the bank] to wire $100,000 out of [the] plaintiffs' account . . . for the purchase of an "M2 Sys Corp Note 12% 2/23/10." The account entry . . . led the plaintiffs to believe that . . . [the note] was issued by [the defendant] . . . as the obligor . . . . [The defendant] wasn't the obligor on the note. Tagliaferri as the president of TAG, was the sole obligor, and he promised to pay the $100,000 in question to his own customer as soon as Tagliaferri was paid back the amount by [the defendant].' The plaintiffs allege in paragraph 117 of the complaint that TAG 'was engaging in extensive cross-trading in the same securities in the accounts of [bank] customers, which necessarily sacrificed one [bank] cus-

tomer's interest in favor of another [bank] customer . . . .'

"On October 24, 2012, Michael Wolff, a plaintiff in the present lawsuit, filed an action for fraud against [the bank] and . . . Tagliaferri. Michael Wolff made similar allegations to those quoted in the [previous] paragraph. . . .

"On November 9, 2012, Catherine E. Cox, a plaintiff in the present lawsuit, filed a complaint against [the bank] and . . . Tagliaferri alleging fraud and other misconduct. She, like Alan [Wolff] and Nadine Wolff, alleged a misrepresentation as to the obligor on a note listed in her account as 'M2 Sys Corp Notes 12% 2/23/10.' She further alleged, in paragraph 125 of her complaint, that '[the] [p]laintiff's reliance upon Tagliaferri's fraudulent representations and conduct permitted Tagliaferri and/or TAG to continue with their activities and to carry out their frauds resulting in most of the securities held in [the] [p]laintiff's [bank] account to become totally worthless.' . . .

"On June 5, 2013, Kay M. Kazmaier, a plaintiff in the present lawsuit, filed a complaint against [the bank] and . . . Tagliaferri in the United States District Court, District of Massachusetts. Kazmaier, like the [previously mentioned] plaintiffs, alleged that Tagliaferri, as the president of TAG, was the sole obligor on a note labeled 'M2 Sys Corp Notes 12% 2/23/10' and that he promises to pay the sum in question to his own customer as soon as Tagliaferri was paid back by [the defendant]. She also alleged that Tagliaferri engaged in extensive cross-trading in the same stocks in customer accounts. . . .

"On August 15, 2013, the Handal lawsuit was settled. The settlement agreement encompassed the owners of fifty-one custodial accounts. The account owners included some of the plaintiffs in the present lawsuit.

On December 6, 2013, the A. Wolff lawsuit, M. Wolff lawsuit, Kazmaier lawsuit and Cox lawsuit were settled. The settlement agreement encompassed lawsuits and claims made by the owners of forty-seven custodial accounts. The participants included some plaintiffs involved in the present lawsuit.

"[Steven Goldin and Rochelle Goldin, who are] plaintiffs in the present lawsuit, filed a complaint in the Supreme Court of the state of New York, county of New York, alleging investor fraud and other misconduct against TAG Virgin Islands, Inc. . . . Tagliaferri, his wife, Patricia Cornell, and others. In an amended complaint filed on October 22, 2014, the Goldins allege in paragraph 69 [that], '[i]n mid-2007, Cornell and Tagliaferri, through TAG, began defrauding [the] plaintiffs by liquidating their conservative investments and transferring [the] plaintiffs' funds to TAG-affiliated companies under the pretense of convertible note instruments. These notes were an illusory fiction designed by Cornell and Tagliaferri to defraud the plaintiffs, and other customers.' In paragraph 70 of their amended complaint, they refer to the notes as 'sham notes.' . . .

"On July 24, 2012, the plaintiffs in the present lawsuit filed a lawsuit against [the defendant] in the United States District Court, District of Oregon, Portland Division. The case was dismissed on the ground that it was brought in the wrong venue. The [defendant's] note provides that suit must be brought in Connecticut. The plaintiffs in 2013 initiated the lawsuit that is presently before this court.

"[Szulik], who is not a party in the present lawsuit, sued Tagliaferri for $60 million in damages. There is no evidence that Szulik's lawsuit against Tagliaferri involved the [defendant's] note. The suit was settled without any payment by Tagliaferri to Szulik or payment by Szulik to Tagliaferri on the latter's counterclaim."

The court also described an earlier federal criminal prosecution that had been brought against Tagliaferri. The court stated: "On February 19, 2013 . . . Tagliaferri was indicted in the United States District Court, Southern District of New York. The federal criminal trial concerned, in part, Tagliaferri's misconduct with his clients' . . . accounts [at the bank]. While the federal indictment did not contain allegations concerning the [defendant's] 'subnotes,' a plaintiff in the present lawsuit . . . Handal, testified at the criminal trial about the M2 'subnotes.' A jury found Tagliaferri guilty on twelve counts involving allegations of investment advisor fraud, securities fraud, wire fraud, and violation of the Travel Act, 18 U.S.C. 1952 (2012). On February 13, 2015, Tagliaferri was sentenced to imprisonment for a term of seventy-two months."

The court began its analysis of the plaintiffs' two causes of action as follows: "The plaintiffs' claims are dependent on documents prepared by TAG's attorney and signed by Tagliaferri. These documents are the 'subnotes,' discussed [previously], two 'assignment' documents, and Tagliaferri's account records. One of the 'assignment' documents is dated February 24, 2009, and is titled 'Assignment of Note.' The other is dated November 6, 2009, and is titled 'Note Assignment Agreement.' Tagliaferri is the only person who signed these documents. He signed in two capacities: as agent on behalf of the assignor, Szulik, and as agent on behalf of unnamed assignees. . . .

"In the present lawsuit, the plaintiffs, after setting forth background allegations of fact in part A of their complaint, set forth in parts B and C [of their complaint] their theories of recovery. Part B is titled 'Collection Allegations.' Part C is titled 'Unjust Enrichment Allegations.' To the extent [that] the plaintiffs rely on the contention [that] they are assignees of the [promissory note that the defendant executed in favor of Szulik], this court finds the issues in favor of [the] defendant

. . . . The assignment claims are dependent on the veracity of Tagliaferri and the reliability of records kept by him while he was committing financial fraud. The 'assignment' documents were created for and signed solely by Tagliaferri. Tagliaferri, as discussed [previously], was recently convicted of felonies involving such a degree of turpitude in their commission that one cannot readily accept his version of events. Indeed, some of the plaintiffs, in recent lawsuits, attacked his veracity and described the transactions in their accounts as fake and created out of whole cloth.

"To the extent [that] the plaintiffs rely on an unjust enrichment claim, this court finds the issues in favor of the plaintiffs. The evidence, including a part of Tagliaferri's deposition testimony that this court credits, is that [the defendant's] obligation to Szulik was satisfied with Tagliaferri's use of the plaintiffs' funds. The plaintiffs, as a group, paid $1,848,000 on [the defendant's] obligation to Szulik.[4] Each plaintiff's contribution or payment is set forth . . . [in detail] in this memorandum [of decision]. Despite demand, as evidenced by the plaintiffs' lawsuit filed in Oregon on July 24, 2012, [the] defendant . . . has failed to pay the plaintiffs, to their detriment."[5] (Footnote added.)

[4] We emphasize that the court's findings reflect that Tagliaferri did not use the funds of the plaintiffs, as a group, to pay the entire debt that the defendant owed Szulik. The court found that, after the prepayment of interest in the amount of $184,500 was deducted from the $2,050,000 loan, $1,865,500 was advanced to the defendant from Szulik's account in 2006. In 2007, the defendant paid an extension fee of $205,000 and an interest payment of $45,000, but the defendant did not make any payment on the $1,865,500 principal of the loan. The court found that the funds of the plaintiffs and Lamm were used to pay only $1,848,000 of the unpaid debt.

[5] In a subsequent articulation filed May 14, 2019, the court provided additional justification for its decision in relevant part: "The court's award to the plaintiffs was based on an unjust enrichment theory. As this court noted in its memorandum of decision, '[the defendant's] obligation to Szulik was satisfied with Tagliaferri's use of the plaintiffs' funds.' The court did not accept the plaintiffs' assignment theory. [The] plaintiffs did not obtain a legal or equitable right to enforce the contractual provisions of the note or other documents. The court, on this issue, chose not to rely [on] the deposi-

Having determined that the plaintiffs were entitled to relief with respect to their unjust enrichment cause of action, the court addressed the defendant's special defenses: "[The defendant] filed special defenses on August 20, 2014 . . . . On May 24, 2016, [the defendant] moved to amend its special defenses . . . . [The defendant's] motion to amend was denied after the plaintiffs objected. The governing document . . . contains sixteen special defenses. [The defendant] now relies on the third, sixth, tenth, fourteenth, and fifteenth special defenses. It has abandoned the other special defenses.

"In the third special defense, [the defendant] alleges [that] the note may not be enforced because the original payee and his assigns, and the escrow agent, breached the escrow agreement. In a posttrial brief, [the defendant] argues that the IQL shares were not retained. The evidence does not support this claim. Moreover . . . Muscato, chief executive officer of [the defendant], testified by way of deposition that the shares had become worthless. He had no knowledge of facts that would support this defense.

"In the sixth special defense, [the defendant] alleges [that] the original payee of the note, and his agents and assigns, failed to maximize the collateral. Muscato testified that IQL went out of business and [that] the computer equipment soon became out-of-date and worthless. The evidence does not support this claim.

tion testimony of . . . Tagliaferri, a convicted felon who, at the time of the trial in the present case, was serving a prison sentence for his having committed financial crimes. When this court referred in its memorandum [of decision] to the plaintiffs' assignment claim as 'purported' assignment, the court meant to convey to the reader that the court had concluded that all the assignment claims were unproven allegations.

"The court did not find that the exhibits bearing the dates February 24, 2009, and November 26, 2009, are, in fact, assignments. All of the plaintiffs' assignment claims are based on Tagliaferri's testimony and/or documents created and kept by Tagliaferri while he was committing financial fraud. As the court noted, some of the plaintiffs in this case described Tagliaferri's transactions as fake and created out of whole cloth."

"In the tenth special defense, [the defendant] alleges [that] the plaintiffs' claims must be barred on the theory [that] the plaintiffs are tainted by Tagliaferri's fraud. [The defendant] further argues that the plaintiffs must be barred because they asserted in other lawsuits that the 'subnotes' were invalid. Neither Tagliaferri's fraud nor the plaintiffs' claims in other lawsuits invalidates or bars the plaintiffs' present claims.

"In the fourteenth special defense, [the defendant] alleges [that] 'the attempted assignment of the subject note . . . does not comply with the requirements of a valid assignment.' In the fifteenth special defense, [the defendant] alleges [that] 'the attempted assignment . . . is unenforceable, as the purported assignor had no authority to assign the subject note at the time of the assignment.' These defenses are inapplicable since the court is awarding damages on an unjust enrichment theory, not on a contract theory."[6] (Citations omitted.)

[6] In response to a motion for articulation brought by the defendant, the court discussed four additional special defenses (seventeen, eighteen, nineteen, and twenty) that were expressly applied to all counts of the operative complaint and which were set forth in an amended answer and special defenses filed by the defendant on October 15, 2015, to which there was no reply. The seventeenth special defense stated: "[The] plaintiffs' claims of assignment of the subject note are barred by lack of bargained for consideration." The eighteenth special defense stated: "[The] plaintiffs' claims are barred by the [fact] that no plaintiff is currently in possession of the original subject note, and the original subject note is lost." The nineteenth special defense stated: "[The] defendant is entitled to a setoff to the extent of all [moneys] received by or on behalf of [the] plaintiffs from any collateral source, including but not limited to, any settlement or court-ordered criminal restitution." The twentieth special defense stated: "[The] plaintiffs' claims are barred to the extent [that] the subnotes upon which they rely to support their claims are not unconditional promises to pay, are not signed by the original payee or [the defendant] and are mere promises to pay made by [the] plaintiffs' purported assignor . . . Tagliaferri, on behalf of [TAG]."

In its articulation, the court set forth its rationale for rejecting these additional four special defenses that it did not expressly address in its November 23, 2016 memorandum of decision. The court stated in relevant part: "The defendant did not discuss or rely upon the seventeenth and eighteenth special defenses in its posttrial briefs. In light of the facts set forth in the court's memorandum of decision, the seventeenth and eighteenth

Having rejected the special defenses on which the defendant relied, the court turned to its award of damages. The court stated: "Based on the foregoing, the court concludes that the plaintiffs should be awarded, collectively, $1,848,000. The court further concludes that an award of prejudgment interest at the annual rate of 8 percent per year is fair and equitable. Since [the] defendant . . . was clearly put on notice of the plaintiffs' claims at the time [that] the plaintiffs filed their Oregon lawsuit on July 24, 2012, this court concludes [that] this date is appropriate for the commencement of the period for computing prejudgment interest. Interest is computed from that date to the date of judgment, November 23, 2016. The court finds that each plaintiff contributed toward the payment of [the defendant's] obligation to Szulik . . . . Each plaintiff is awarded that amount together with prejudgment interest." The total award, consisting of principal and interest, was $2,494,800.[7] From this judgment, the defendant brought the appeal in Docket No. AC 39890. Thereafter, the plaintiffs filed a motion for attorney's fees and expenses, which the

special defenses are without merit. In the nineteenth special defense, the defendant claims it has a right to setoff from collateral sources. There was, however, no evidence that any settlement funds received in connection with other lawsuits were allocated to the [defendant's] subnotes. In the twentieth special defense, the defendant asserts [that] the subnotes were not signed by the original payee or [the defendant]. In light of the fact [that] this court found the issues in favor of the plaintiffs on the unjust enrichment claim, rather than the assignment claim, this defense is inapplicable."

[7] The court awarded Catherine E. Cox $33,750; Daniel D. Gestwick IRA R/O $33,750; Paige C. Gist $33,750; Bernice Goldin IRA $20,250, Donald J. Handal Rev Trust U/O, Donald J. Handal IRA, R/O & Margot S. Handal Tr U/A $182,250; Edward J. Hartnett $87,750; Geoffrey M. Holmes $33,750; Geoffrey W. Holmes $168,750; Lee M. Holzman and Becky Holzman $67,500; Indoor Billboard Northwest, Inc., $189,000; Assigned Claims of Joy S. Kertes and Ronald Kertes $33,750, Gail N. Kuhn $101,250, and Douglas Lamm $135,000; Marital Trust U/W William Katz $506,250; Peggy W. Kaufmann IRA and Richard J. Kaufmann Decedent's Trust $170,100; Kay M. Kazmaier $27,000; James Shulevitz $135,000; Stanley A. Star $232,200; Alan Wolff and Nadine Wolff $135,000; and Michael Wolff $168,750.

court denied.[8] From the judgment denying their motion for attorney's fees and expenses, the plaintiffs brought the appeal in Docket No. AC 40558. Additional facts and procedural history will be set forth as necessary.

I

THE DEFENDANT'S APPEAL

A

The defendant's first claim is that the court erred by awarding damages to a person who was neither a plaintiff in the underlying action nor a nonparty who had assigned his interest to a plaintiff in the underlying action. We agree.

As explained previously in this opinion, the court awarded Douglas Lamm $100,000 in damages as well as $35,000 in prejudgment interest. See footnotes 2 and 7 of this opinion. The court noted that this was an "Assigned Claim" of the named plaintiff, Indoor Billboard Northwest, Inc. Id. In its November 23, 2016 memorandum of decision, the court did not address separately the basis of its award in favor of Lamm. The defendant, however, subsequently sought articulation with respect to the legal and factual basis of the award. Although the court denied the motion for articulation, this court later granted the defendant's motion for review of the trial court's denial and ordered the trial court to articulate with respect to the award in Lamm's favor. In its articulation, the court summarily stated the basis for its award as follows: "Exhibit 8—Tabs 97, 105–106, 111; Exhibit 9, Tab 113."

Our review of the record reflects that exhibit 8, at tab 97, reflects a "Custody Account Agreement," dated January 30, 2001, that was entered into between Lamm

[8] We will discuss the procedural history related to the plaintiffs' motion as well as the court's ruling denying the motion in part II of this opinion.

and Chase Manhattan Bank. Exhibit 8, at tabs 105–106, reflects bank account statements for Lamm from the bank in November and December, 2009. The court referred, as well, to exhibit 9, which was an exhibit marked for identification and, thus, not part of the evidence. Exhibit 9, at tab 113, reflects a subnote executed by Tagliaferri on behalf of TAG in favor of Lamm in the amount of $100,000. The record reflects that the defendant objected to the admission of exhibit 9 on relevancy grounds, specifically, by arguing that Lamm was not a plaintiff in this case and [that] the court previously had not permitted the plaintiffs to amend their complaint for the purpose of alleging that Lamm had assigned his claim to Indoor Billboard Northwest, Inc. The court sustained the defendant's objection.

The record reflects that Lamm was not a party to the underlying action. By motion filed February 3, 2016, the plaintiffs sought to add an additional plaintiff, Karen Taragano, to the action, and sought permission for leave to amend the substituted complaint, pursuant to Practice Book § 10-60 (a) (3), so as to add "an assignment by Douglas Lamm to plaintiff Indoor Billboard Northwest, Inc., of his interest in a subnote. His subnote is similar to the ones purchased by the existing plaintiffs. The issues involved in regard to his subnote are the same as exist in regard to the subnotes of the existing plaintiffs." The defendant objected to the motion. The court, *Bellis*, *J.*, denied the plaintiffs' motion to amend their substituted complaint to reflect that Indoor Billboard Northwest, Inc., had been assigned Lamm's interest in one of the subnotes at issue in the underlying action.

Also, the record reflects that, during the trial, the court generally precluded evidence related to any claims related to Lamm. During the plaintiffs' examination of Mel Shulevitz, the president of Indoor Billboard Northwest, Inc., the plaintiffs' attorney inquired about payments that were made to Lamm. The defendant

objected, in part, on the ground that Lamm was not a plaintiff. After the court sustained the defendant's objection, the plaintiffs elicited testimony that Lamm had assigned his claim to Indoor Billboard Northwest, Inc., and that he had not received any payment related to the subnotes at issue in this case. The defendant's attorney once more objected to the inquiry on the ground that Lamm was not a plaintiff. The plaintiffs' attorney responded that, although Lamm was not a plaintiff, he was "an assignor of the claim." After the defendant's attorney advised the court that such facts were not alleged in the substituted complaint, the operative pleading, the court sustained the objection, and the plaintiffs' attorney ended the inquiry.

Although the defendant frames the claim as warranting review under the clearly erroneous standard of review, the claim implicates the jurisdiction of the trial court and presents a question of law. "A challenge to the jurisdiction of the trial court presents a question of law over which our review is plenary. . . . The jurisdiction of the trial court is limited to those parties *expressly named in the action coming before it*." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Selby* v. *Building Group, Inc.*, 129 Conn. App. 599, 603, 19 A.3d 1289 (2011). "[A] court has no jurisdiction over persons who have not been made parties to the action before it." (Internal quotation marks omitted.) *Windels* v. *Environmental Protection Commission*, 284 Conn. 268, 280, 933 A.2d 256 (2007).

The record reflects, and the parties do not dispute, that Lamm was not expressly named in the action before it. The plaintiffs argue that because, without objection, they introduced *some* evidence pertaining to Lamm, the court properly rendered judgment in his favor. Simply put, such evidence did not confer jurisdiction on the trial court to render an enforceable judgment in favor of a nonparty, Lamm, against the defendant. Because

the judgment is not enforceable, the remedy to which the defendant is entitled is that we vacate that portion of the judgment.

The plaintiffs argue, as well, that the court properly rendered judgment in favor of Lamm because he had assigned his claim to a party, Indoor Billboard Northwest, Inc., which presented the claim at trial. The plaintiffs, however, were limited to the allegations set forth in their substituted complaint, which is devoid of any reference to Lamm's claim or to an assignment related thereto. "Pleadings have an essential purpose in the judicial process. . . . For instance, [t]he purpose of the complaint is to put the defendants on notice of the claims made, to limit the issues to be decided, and to prevent surprise. . . . [T]he concept of notice concerns notions of fundamental fairness, affording parties the opportunity to be apprised when their interests are implicated in a given matter. . . . Whether a complaint gives sufficient notice is determined in each case with reference to the character of the wrong complained of and the underlying purpose of the rule which is to prevent surprise upon the defendant. . . .

"[I]t is imperative that the court and opposing counsel be able to rely on the statement of issues as set forth in the pleadings. . . . [A]ny judgment should conform to the pleadings, the issues and the prayers for relief. . . . [A] plaintiff may not allege one cause of action and recover upon another. . . . The requirement that claims be raised timely and distinctly . . . recognizes that counsel should not have the opportunity to surprise an opponent by interjecting a claim when opposing counsel is no longer in a position to present evidence against such a claim. . . .

"[G]enerally . . . the allegations of the complaint provide the measure of recovery, and . . . the judgment cannot exceed the claims pleaded, including the prayer for relief. . . . These requirements . . . are based on the

principle that a pleading must provide adequate notice of the facts claimed and the issues to be tried. . . . The fundamental purpose of these pleading requirements is to prevent surprise of the defendant. . . . The purpose of these general pleading requirements is consistent with the notion that the purpose of specific pleading requirements . . . is to promote the identification, narrowing and resolution of issues before the court. . . .

"[A]n equitable proceeding does not provide a trial court with unfettered discretion. The court cannot ignore the issues as framed in the pleadings." (Citations omitted; internal quotation marks omitted.) *Lynn* v. *Bosco*, 182 Conn. App. 200, 214–16, 189 A.3d 601 (2018); see also *Watson Real Estate, LLC* v. *Woodland Ridge, LLC*, 187 Conn. App. 282, 298, 202 A.3d 1033 (2019). Here, the pleadings, on which the defendant had a right to rely, did not set forth a claim or an assigned claim related to Lamm. As we have observed, the court, *Bellis, J.*, expressly disallowed an amendment to the complaint to raise such a claim.

Moreover, as we have explained previously, the court expressly sustained the defendant's objections to certain evidence concerning Lamm on the ground that Lamm was not a party. As the defendant argues, to the extent that there was some evidence or testimony concerning Lamm before the court, it did not challenge such evidence because it did not have notice of the claim or information concerning the claim during the discovery process.

In light of the foregoing, it was improper for the court to have rendered judgment in favor of Lamm. Moreover, the plaintiffs have not demonstrated that the court properly considered the claim to have been pursued on Lamm's behalf by Indoor Billboard Northwest, Inc. Accordingly, the defendant is entitled to a remedy, and the portion of the judgment rendered in Lamm's favor is ordered vacated.

B

The defendant's next claim is that the court erred in determining that it was not entitled to a setoff. We disagree.

The following additional facts are relevant to this claim. As the court observed in its articulation dated September 27, 2017, the defendant, by way of its nineteenth special defense, claimed a right to a setoff for funds received from any collateral source. The defendant alleged: "[The] defendant is entitled to a setoff to the extent [of] all moneys received by or on behalf of [the] plaintiffs from any collateral source, including but not limited to, any settlement or court-ordered criminal restitution." The court rejected the defense on the ground that there was "no evidence that any settlement funds received in connection with other lawsuits were allocated to the [defendant's] subnotes."

On appeal, the defendant does not argue that the court's finding with respect to settlement funds is clearly erroneous. Indeed, our review of the evidence supports the court's finding that none of the plaintiffs received any funds from any collateral source in connection with the moneys withdrawn from their accounts related to the notes or subnotes at issue in this case.

The basis of the defendant's claim is that, under the circumstances of the present case, it would be unjust for this court "not to remand this issue for further proceedings to allow [the defendant] to properly prove its affirmative defense of setoff." At the heart of this claim of error is a discovery dispute. In its analysis of the claim, the defendant correctly observes that, on the first day of trial, the defendant's attorney informed the court that there was an outstanding motion for sanctions related to a discovery issue that had not been resolved between the parties. The defendant's attorney stated that, pursuant to settlement agreements, the bank had already paid the plaintiffs "in the neighborhood of four and a half million dollars." The defendant's

attorney stated that the defendant attempted through discovery to obtain information concerning the plaintiffs' tax returns, specifically, whether the plaintiffs had written off losses in connection with the notes or subnotes at issue in the present case as bad investments and whether they had received any settlement funds from the bank related to such notes or subnotes. The defendant's attorney observed that the issue concerning tax returns had been raised before the court, *Hon. William B. Rush*, judge trial referee, several weeks earlier. On May 13, 2016, Judge Rush stated: "As far as the tax returns . . . [the defendant is] not entitled, and I don't think [it claims] to be entitled to . . . get the whole tax returns and see what's in them. [It is] entitled to receive any information about funds received in settlement from [the bank]. [The defendant is] also entitled to any line items that relate to fraudulent deductions or credit for fraudulent investments or schedules relating to that. So, they are entitled to that."

The plaintiffs' attorney acknowledged before the trial court that Judge Rush had asked him to "obtain and review the tax returns [of the plaintiffs] to determine if the tax returns show the amount of income received from [the bank] and any other fraud or theft losses taken [in connection with claims raised against the defendant]. I did that, as an officer of the court, which was what Judge Rush intended. I responded that the tax returns which I reviewed have no income attributable to [the bank]. . . .

"[I]t is quite clear from looking at the tax returns, as I did, it's easy to look for the losses for theft or fraud and see what was taken. Not only was there none taken as to [the defendant], which was the request made of me, there was simply none taken at all, and I so reported."[9]

[9] We note that, although the defendant relies on what transpired before Judge Rush on May 13, 2016, including the court's ruling, it did not provide this court with the transcript of the proceeding of that date. Instead, in the appendix to its brief, the defendant has submitted a single page from the

The plaintiffs' attorney stated that, although the plaintiffs had received funds in settlement from the bank, such funds were not related to the claims that they were bringing against the defendant in the present action. The plaintiffs' attorney informed the court that he had agreed to provide a list of such settlement funds to the defendant and that he would make such list available to the court, as well. The record is silent with respect to whether the list was produced.

The defendant's attorney asked the court to continue the trial so as to permit the plaintiffs' tax returns to be reviewed by an independent third-party accountant.[10] The court stated that it would not enter any order at that time, but that, during the examination of the plaintiffs at trial, if a relevant inquiry was made concerning his or her tax return, such witness could review their tax return to reply to the inquiry. The court stated, "I'm not ordering that [the tax returns] be disclosed at this time, but that does not mean that they will or will not be disclosed." The court noted, as well, that the case was scheduled for trial and that this matter could have been resolved at an earlier time.

The parties revisited the issue again on the penultimate day of the trial when the defendant's attorney renewed his motion for sanctions related to the plaintiffs' failure to disclose tax returns. The defendant's attorney reminded the court that the plaintiffs' attorney had represented that he had reviewed the plaintiffs' tax returns and that the court had indicated that, the

transcript of the proceeding on May 13, 2016, the accuracy of which is not disputed by the plaintiffs. To the extent that the parties disagree about the specific manner in which Judge Rush resolved the tax return issue, we are unable, on the basis of the record before us, to verify the substance of that ruling beyond relying on what is set forth on the single page of the transcript that is in the record.

[10] The plaintiffs' attorney informed the court that he had "some" of the plaintiffs' tax returns nearby.

plaintiffs, during their testimony, would have access to their tax returns. The defendant's attorney observed that, during their testimony, many of the plaintiffs testified that they had not provided their tax returns to the plaintiffs' attorney. The defendant's attorney once again stated that the defendant was prejudiced by the fact that it was unable to submit the tax returns to an accountant for review.

The plaintiffs' attorney argued that the court already had considered the issue concerning tax returns and that the defendant's attempt to revisit this discovery issue was untimely. The plaintiffs' attorney observed that none of the plaintiffs testified at trial that he or she had obtained a "fraud or theft" tax loss related to the defendant and that no plaintiff had testified at trial that he or she had reported any income from the bank on his or her tax return. The plaintiffs' attorney also argued that, even if a tax write-off due to theft or fraud had been taken, a later payment would necessitate a repayment for the write-off.

On the last day of trial, the court ruled on the issue of the tax returns, stating: "Should a plaintiff receive a monetary award in this case, the defendant may apply for an examination of the plaintiff's tax returns in order to see if the returns shed light on the person's having received a recovery in another lawsuit on the so-called [notes relating to the defendant].

"And I want to note that this ruling is made in the context of the earlier discovery in this case. There were three hearings before Judge Rush. At the time this [discovery] issue was first presented to me, which is June 29, [2016], the case had been assigned for trial by the presiding judge, and the presiding judge is rather firm on the trial assignment dates. This system falls apart if the trial dates are not met. And on [June 29, 2016] I realized that there were many witnesses in this case and [that] the witnesses had come from various parts

of the country—the West Coast, Florida and . . . the New York and Connecticut area.

"And at that time I concluded [that] continuing the case was not a practical resolution. So . . . that's why I've come to the resolution that I have. So, that's the ruling on the motion for sanctions." The court did not sanction the plaintiffs.

In its analysis of the present claim, the defendant refers to the testimony of Mel Shulevitz and the plaintiffs Geoffrey M. Holmes, Lee M. Holzman, Daniel D. Gestwick, Paige Gist, and Geoffrey W. Holmes that they either had not provided their tax returns to the plaintiffs' attorney in the weeks prior to the trial or that they did not recall ever having provided their returns to him. The defendant then asserts in relevant part: "The trial court ruled that [the defendant] was entitled to the tax return information so [it] could establish and prove its affirmative defense of setoff. [The] plaintiffs' attorney intentionally did not provide the information and misled the court regarding the actions taken regarding this defense. It is clearly unjust, based upon these circumstances, not to remand this issue for further proceedings to allow [the defendant] to properly prove its affirmative defense of setoff."

As we have stated previously, there is no factual challenge to the court's finding that the defendant failed to present evidence in support of its defense of setoff. Although the defendant's claim is intertwined with its motion for sanctions against the plaintiffs, it does not challenge the court's failure to award sanctions or the court's ruling to permit the defendant to apply for review of the tax returns following the judgment in the plaintiffs' favor. Instead, the defendant appears to raise a claim that was not raised at trial, namely, that the court could not properly consider the issue of setoff without first permitting *the defendant* to undertake a

review of the plaintiffs' tax returns. And, presuming facts that were not found by the court, the defendant asks this court to remand the case for further proceedings. Specifically, the defendant urges this court to conclude that the plaintiffs' attorney intentionally misled the court with respect to his review of the tax returns pursuant to Judge Rush's ruling.

The record presented to this court, however, reflects that neither Judge Rush nor the trial court, *Hon. George N. Thim*, judge trial referee, were persuaded that the defendant was entitled to unfettered access to the tax returns. At no time did Judge Thim determine that anything improper had occurred with respect to the tax returns. Instead, the court deemed it sufficient to permit the defendant to "apply" for an examination of the tax returns following a judgment in favor or one or more plaintiffs. The defendant does not attempt to demonstrate that this relief is not adequate or that it pursued this potential relief made available to it. Moreover, the record reflects that the defendant had an ample opportunity to examine each of the plaintiffs who testified at trial concerning the issue of whether they had received any recovery related to the notes and subnotes at issue in this claim. Upon careful examination, however, no plaintiff testified that he had recovered from a collateral source. Under the circumstances, we are not persuaded that the court adjudicated the issue, which was presented to it on the eve of trial, in an unfair manner or that the defendant is entitled to the relief sought with respect to this claim.

C

Next, the defendant claims that the court erred by rejecting its special defense of judicial estoppel, which was based on the doctrine of unclean hands.[11] We disagree.

[11] In its brief, the defendant couches the present claim in terms of the court's having failed "to consider" its special defense. Because, as the defendant acknowledges in its analysis of the claim, the court, in its memorandum

In its tenth special defense as to all counts, the defendant alleged: "The original payee of the note and/or his agents and/or assignees and/or the plaintiffs have unclean hands and, therefore, may not enforce the subject note." In its posttrial brief, the defendant argued in relevant part: "Assuming arguendo that any of the alleged assignments are valid, [the] plaintiffs are tainted with the fraud and misconduct of their predecessor in interest . . . who is currently incarcerated for his fraudulent behavior. Such behavior specifically relates to the transactions that form the subject of this lawsuit." Additionally, the defendant argued that the plaintiffs who testified at trial that they had been involved in the settlement of prior lawsuits that were brought against the bank should be precluded from seeking to rely on the subnotes as being valid because, in the previous lawsuits, they had challenged the validity of the subnotes.

As we stated previously, the court rejected the special defense at issue, stating: "In the tenth special defense, [the defendant] alleges [that] the plaintiffs' claims must be barred on the theory [that] the plaintiffs are tainted by Tagliaferri's fraud. [The defendant] further argues that the plaintiffs must be barred because they asserted in other lawsuits that the 'subnotes' were invalid. Neither Tagliaferri's fraud nor the plaintiffs' claims in other lawsuits invalidates or bars the plaintiffs' present claims."

Next, we set forth some relevant principles of law. "[A]pplication of the doctrine of unclean hands rests within the sound discretion of the trial court. . . . The exercise of [such] equitable authority . . . is subject only to limited review on appeal. . . . The only issue on appeal is whether the trial court has acted unreasonably

of decision, plainly discussed the special defense, we consider the claim to be whether the court properly rejected the special defense.

and in clear abuse of its discretion. . . . In determining whether the trial court abused its discretion, this court must make every reasonable presumption in favor of [the trial court's] action. . . . Whether the trial court properly interpreted the doctrine of unclean hands, however, is a legal question distinct from the trial court's discretionary decision whether to apply it. . . . Similarly, we have stated that [t]he question of whether the clean hands doctrine may be applied to the facts found by the court is a question of law. . . . We must therefore engage in a plenary review to determine whether the court's conclusions were legally and logically correct and whether they are supported by the facts appearing in the record. . . . The court's factual findings underlying the special defense of unclean hands, however, are reviewed pursuant to the clearly erroneous standard." (Citations omitted; internal quotation marks omitted.) *Monetary Funding Group, Inc.* v. *Pluchino*, 87 Conn. App. 401, 406, 867 A.2d 841 (2005).

"It is a fundamental principle of equity jurisprudence that for a complainant to show that he is entitled to the benefit of equity he must establish that he comes into court with clean hands. . . . The clean hands doctrine is applied not for the protection of the parties but for the protection of the court. . . . It is applied not by way of punishment but on considerations that make for the advancement of right and justice. . . . The doctrine of unclean hands expresses the principle that where a plaintiff seeks equitable relief, he must show that his conduct has been fair, equitable and honest as to the particular controversy in issue. . . . Unless the plaintiff's conduct is of such a character as to be condemned and pronounced wrongful by honest and fair-minded people, the doctrine of unclean hands does not apply. . . . The party seeking to invoke the clean hands doctrine to bar equitable relief must show that his opponent engaged in wilful misconduct with regard to the matter in litigation. . . . The trial court enjoys broad

discretion in determining whether the promotion of public policy and the preservation of the courts' integrity dictate that the clean hands doctrine be invoked. . . . Wilful misconduct has been defined as intentional conduct designed to injure for which there is no just cause or excuse. . . . [Its] characteristic element is the design to injure either actually entertained or to be implied from the conduct and circumstances. . . . Not only the action producing the injury but the resulting injury also must be intentional." (Citations omitted; internal quotation marks omitted.) *U.S. Bank National Assn.* v. *Eichten*, 184 Conn. App. 727, 747, 196 A.3d 328 (2018).

The defendant relies heavily on *Dougan* v. *Dougan*, 301 Conn. 361, 21 A.3d 791 (2011), for the proposition that judicial estoppel bars the plaintiffs who participated in the prior lawsuits from obtaining equitable relief. Thus, a brief discussion of *Dougan* is necessary. The plaintiff in *Dougan* testified at the trial for the dissolution of his marriage to the defendant that he considered fair and equitable the terms of a stipulation for judgment that the parties had presented to the court. Id., 364. The trial court found that the stipulation for judgment was fair and equitable, and it incorporated the stipulation for judgment by reference into its judgment dissolving the parties' marriage. Id., 365.

After the judgment was rendered, however, the plaintiff failed to comply with the judgment in that he failed to pay the defendant interest in accordance with the terms of the judgment. Id. At a hearing on a motion for enforcement that had been brought by the defendant, the plaintiff, contrary to the position he advanced at the time of the trial, argued that the interest provisions of the stipulated judgment were invalid and unenforceable as against public policy. Id., 371–72. The trial court agreed with the plaintiff, and it did not enforce the interest provisions. Id., 365–66. Following an appeal by

the defendant, the Appellate Court reversed the judgment of the trial court and remanded the case to the trial court for further proceedings. Id., 366–67.

Following a grant of certification to appeal from the judgment of the Appellate Court, our Supreme Court in *Dougan* affirmed the judgment of the Appellate Court after determining that an alternative ground for affirmance sounding in judicial estoppel supported the enforcement of the interest provisions at issue. Id., 374. In relevant part, the court explained, "[t]ypically, judicial estoppel will apply if: [1] a party's later position is clearly inconsistent with its earlier position; [2] the party's former position has been adopted in some way by the court in the earlier proceeding; and [3] the party asserting the two positions would derive an unfair advantage against the party seeking estoppel. . . . We further limit judicial estoppel to situations where the risk of inconsistent results with its impact on judicial integrity is certain. . . . Thus, courts generally will not apply the doctrine if the first statement or omission was the result of a good faith mistake . . . or an unintentional error." (Internal quotation marks omitted.) Id., 372–73. Our Supreme Court explained that, in light of the evidence that, at the time of trial, the plaintiff understood the interest provisions, the stipulation for judgment was the product of lengthy negotiations between the parties, the parties had been represented by experienced attorneys, the parties testified that they were familiar with and agreed with the terms in the stipulation for judgment, and the plaintiff was " 'a highly educated and financially sophisticated party' "; id., 374; the facts of the case satisfied the conditions for the application of the doctrine of the judicial estoppel to preclude the plaintiff from seeking to render the interest provisions unenforceable. Id., 373–74.

In light of its reliance on *Dougan*, we interpret the defendant's claim as a challenge to the plaintiffs' right

to recover damages against it because, in prior lawsuits, the plaintiffs challenged the validity of the assignments and subnotes generated by Tagliaferri during his fraudulent course of conduct. As is reflected in the court's findings, which are unchallenged and set forth previously in this opinion, the court found that Tagliaferri engaged in fraud in connection with the assignment of the promissory note that had been executed in favor of Szulik and with respect to the subnotes involving the defendant that were recorded in the plaintiffs' accounts at the bank. The court also made findings, which are likewise unchallenged, concerning the nature of the claims that the plaintiffs advanced in the prior lawsuits on which the defendant relies in the present claim.

It is important to emphasize that the court did not find, and the defendant does not suggest, that the defendant was a party in the prior lawsuits. Moreover, we emphasize that the court expressly rejected the plaintiffs' claim in the present action that they were entitled to damages as *assignees* of the notes or subnotes at issue in the present litigation. Instead, the court provided a remedy to the plaintiffs under the equitable theory of unjust enrichment, a cause of action that did not depend on the existence of valid assignments to the plaintiffs. To the extent that the defendant argues that the plaintiffs should not recover under the claims raised in the present action because they took inconsistent legal positions in the prior lawsuits (by arguing that the notes and subnotes were invalid) and in the present action (by arguing that they were entitled to recover as assignees under the notes and subnotes), such an unclean hands defense logically and legally pertains to the assignee cause of action that the court expressly rejected.

On this record, the defendant is unable to demonstrate that, with respect to the unjust enrichment claim under which the plaintiffs recovered damages, which

is necessarily based on the theory that the defendant unjustly benefited from the funds fraudulently taken from them, the plaintiffs took an inconsistent legal position in the prior lawsuits that was adopted by a court in an earlier proceeding to the detriment of the defendant. The defendant does not draw our attention to any evidence, let alone a finding, that it was the subject of a prior lawsuit or that the issue of its having benefited from the plaintiffs' funds was a subject of a prior lawsuit. Instead, as the court found, in the prior lawsuits the plaintiffs claimed that Tagliaferri had engaged in fraud in connection with the assignments and the subnotes and stated claims against the bank, not the defendant, for what they claimed was misconduct on the part of the bank. The defendant has not demonstrated that claims of this nature either explicitly or implicitly suggested that the defendant had not been unjustly enriched by means of Tagliaferri's fraudulent conduct or the bank's misconduct. Stated otherwise, the defendant has failed to point to any inconsistency in the plaintiffs' positions in prior lawsuits and the present action that affected the equitable claim on which they prevailed.

In light of the foregoing, we conclude that the defendant has failed to demonstrate that the court abused its discretion in rejecting the unclean hands special defense.

D

Next, the defendant claims that the court erred by finding that the note executed by the defendant in favor of Szulik had been amended. We disagree.

As we stated previously in this opinion, the court found that in July, 2006, Tagliaferri negotiated a loan for the defendant, the source of which was Szulik's investment account with the bank. Tagliaferri negotiated the loan with the defendant's chief executive officer, Muscato. Thereafter, Muscato signed a promissory note

dated July 25, 2006, the terms of which obligated the defendant to pay Szulik the principal amount of $2,050,000 on April 24, 2007. The note also provided for prepayment of interest. In accordance with the terms of the note, $1,865,500 was advanced from Szulik's account with the bank. At the defendant's direction, the loan proceeds were forwarded to an escrow account.

The court also found in relevant part: "In August of 2007, the note was extended to February 23, 2010. [The defendant] paid an extension fee of $205,000 and, in addition, paid $45,000 for interest that had accrued between the original due date, April 24, 2007, and the date of the fee payment.

"According to Tagliaferri, the [defendant's] note was amended by a document dated April 24, 2007. The purported amendment changed the section on interest and repayment of principal. The purported amendment requires [the defendant] to 'pay [i]nterest on the [p]rincipal accruing on and after April 24, 2007, on the first day of each month commencing on July 1, 2007 until the [o]bligations are paid in full.' The typed document has lines for the signatures for . . . Muscato on behalf of [the defendant] and . . . Tagliaferri on behalf of TAG as agent for Szulik. The copy in evidence is not signed. . . . Muscato, as of the date of his deposition on August 14, 2015, had never seen the document amending the note and was not aware the note had been amended." (Citation omitted.) In its decision, the court referred to the copy of the amendment in evidence as part of trial exhibit 3, which is a transcript of Tagliaferri's deposition testimony as well as several exhibits marked during the deposition. The court admitted some, but not all, of the deposition exhibits that are part of the exhibit. In this instance, the court referred to deposition exhibit 8, which is attached to trial exhibit 3.

As the defendant correctly observes, the court's reference to exhibit 8 from *Tagliaferri*'s deposition was in error because that exhibit 8 is not the amendment at

issue. Rather, the amendment at issue was marked as exhibit 8 during *Muscato*'s deposition. A transcript of Muscato's deposition testimony as well as several exhibits marked during the deposition later were admitted into evidence as trial exhibit 1. The court admitted some, but not all, of the deposition exhibits that are part of the exhibit. The defendant accurately argues that, if the court relied on exhibit 8 from Muscato's deposition, however, such reliance was improper because, although the court admitted Muscato's deposition, it excluded some of the exhibits attached to Muscato's deposition, including exhibit 8. In the absence of the court's reliance on this document, which was not part of the evidence, the defendant asserts, there was no basis in the evidence to support the court's finding that the note had been amended.

"[W]e will upset a factual determination of the trial court only if it is clearly erroneous. The trial court's findings are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . We cannot retry the facts or pass on the credibility of the witnesses. A finding is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Surrells* v. *Belinkie*, 95 Conn. App. 764, 767, 898 A.2d 232 (2006).

The defendant's claim is not persuasive for two reasons. First, although the court erroneously referred to the written amendment as being deposition exhibit 8 from Tagliaferri's deposition, the written amendment at issue, in fact, was part of the evidence because it was marked as deposition exhibit 5 from Tagliaferri's deposition. There is no basis to presume that the court relied on deposition exhibit 8 from Muscato's deposition, as the defendant suggests. Moreover, during his

deposition, Tagliaferri testified that Muscato had negotiated the terms of the amendment with him and that he believed that, at some point, it was executed by Muscato, on behalf of the defendant, and himself, as president of TAG Virgin Islands, Inc. Thus, there was an evidentiary basis for the court's factual finding concerning the written amendment, and the defendant has not demonstrated that it was clearly erroneous.

Second, even if there was no evidence to support the court's finding, the defendant, as the appellant, is unable to obtain relief unless it can demonstrate that the improper finding was harmful. "An appellant bears the burden of demonstrating that a court's erroneous finding was harmful because it likely affected the result." *Bueno* v. *Firgeleski*, 180 Conn. App. 384, 404, 183 A.3d 1176 (2018). The plaintiffs argue, and we agree, that the court's finding with respect to the assignment was not integral to its analysis under a theory of unjust enrichment. To the extent that the defendant's attempts to extend its payment obligations were relevant to a determination that the defendant was aware of the existence of the note and its obligations thereunder, there was evidence before the court that, in 2010, Muscato was aware of the note and wrote in an e-mail to Tagliaferri that the defendant would not default. Accordingly, we reject the defendant's claim.

E

Next, the defendant claims that the court erred by finding that the defendant had been unjustly enriched as a result of Tagliaferri's use of the plaintiffs' funds. We disagree.

The court made many subordinate findings of fact relevant to the funds removed from the plaintiffs' custodial investment accounts at the bank in exchange for purported ownership interests in the promissory note that the defendant executed in favor of Szulik in 2006.

The court also found that the defendant obtained the loan from Szulik so that it could assist IQL in obtaining computer equipment.[12] The defendant borrowed $2,050,000 from Szulik and, after the prepayment of interest in accordance with the July 25, 2006 promissory note, $1,865,500 was advanced from Szulik's bank account. After the defendant experienced business difficulties, the note was extended to February 23, 2010. The defendant paid an extension fee as well as accrued interest for this extension of the note.

The court also found that, in 2009 and 2010, Tagliaferri directed the bank to wire funds from the plaintiffs' accounts at the bank to an escrow account maintained by TAG's attorney as payment for the defendant's notes or the subnotes created by Tagliaferri. Consistent with this purpose, the bank recorded asset values in each of the accounts at issue for notes or subnotes in an amount equal to the funds taken from the accounts at Tagliaferri's direction. As a group, the plaintiffs paid TAG $1,848,000 for the defendant's subnotes. The defendant, however, acknowledges that it has not made any payment on the original note since April, 2007.

As we stated previously, the court found: "To the extent [that] the plaintiffs rely on an unjust enrichment claim, this court finds the issues in favor of the plaintiffs. The evidence, including a portion of Tagliaferri's deposition testimony that this court credits, is that [the defendant's] obligation to Szulik was satisfied with Tagliaferri's use of the plaintiffs' funds. The plaintiffs, as a group, paid $1,848,000 on [the defendant's] obligation to Szulik. . . . Despite demand, as evidenced by the plaintiffs' lawsuit filed in Oregon on July 24, 2012, [the] defendant . . . has failed to pay the plaintiffs, to their detriment."

[12] The evidence was not in dispute, and the court found, that, as of the date of the loan, Muscato, the chief executive officer of the defendant, was the president of IQL.

In the present claim, the defendant argues that the court erred in its finding that it was unjustly enriched by the plaintiffs for several reasons. The defendant argues that there was no evidence that the defendant "benefited by the disbursement of money from [the plaintiffs'] accounts." Also, the defendant argues that it was not unjust for the defendant not to pay the plaintiffs for any benefit. According to the defendant, any assignment of the note entered into between Szulik and the defendant after July, 2009, was the product of Tagliaferri's fraud and, thus, the subject transactions (assignment of subnotes to the plaintiffs by Tagliaferri) were invalid. The defendant also argues that, on their face, the subnotes required the defendant to repay funds to TAG, not to the plaintiffs. Finally, the defendant argues that the plaintiffs did not prove that the defendant's failure to pay on the note was to the detriment of the plaintiffs. According to the defendant, the plaintiffs merely proved that Tagliaferri stole the funds at issue from their accounts but failed to prove where the funds were directed after they were deposited in TAG's trust account.

Before addressing the merits of this claim, we set forth some relevant legal principles related to unjust enrichment. "A right of recovery under the doctrine of unjust enrichment is essentially equitable, its basis being that in a given situation it is contrary to equity and good conscience for one to retain a benefit which has come to him at the expense of another. . . . With no other test than what, under a given set of circumstances, is just or unjust, equitable or inequitable, conscionable or unconscionable, it becomes necessary in any case where the benefit of the doctrine is claimed, to examine the circumstances and the conduct of the parties and apply this standard. . . . Unjust enrichment is, consistent with the principles of equity, a broad and flexible remedy. . . . Plaintiffs seeking recovery for unjust enrichment must prove (1) that the defendants were benefited, (2) that the defendants unjustly

did not pay the plaintiffs for the benefits, and (3) that the failure of payment was to the plaintiffs' detriment. . . .

"This doctrine is based upon the principle that one should not be permitted unjustly to enrich himself at the expense of another but should be required to make restitution of or for property received, retained or appropriated. . . . The question is: Did [the party liable], to the detriment of someone else, obtain something of value to which [the party liable] was not entitled? . . .

"Although we ordinarily engage in a deferential review of the trial court's conclusion that the defendant was unjustly enriched . . . a claim that the equitable remedy of unjust enrichment is unavailable as a matter of law raises a question of law subject to plenary review." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Horner* v. *Bagnell*, 324 Conn. 695, 707–708, 154 A.3d 975 (2017).

"Unjust enrichment is a common-law doctrine that provides restitution, or the payment of money, when justice so requires. . . . Recovery is proper if the defendant was [benefited], the defendant did not pay for the benefit and the failure of payment operated to the detriment of the plaintiff. . . . In the absence of a benefit to the defendant, there can be no liability in restitution; nor can the measure of liability in restitution exceed the measure of the defendant's enrichment. . . . These requirements for recovery of restitution are purely factual. . . .

"Unjust enrichment is a doctrine allowing damages for restitution, that is, the restoration to a party of money, services or goods of which he or she was deprived that benefited another." (Citations omitted; internal quotation marks omitted.) *Piccolo* v. *American Auto Sales, LLC*, 195 Conn. App. 486, 494, 225 A.3d 961 (2020).

The evidence reflects, and it is not in dispute, that the defendant, through Muscato, executed the promissory

note for $2,050,000 in Szulik's favor. During his deposition testimony, which was admitted into evidence, Muscato testified that he signed the promissory note at issue as the chief executive officer of the defendant. Muscato testified that the defendant planned to use the proceeds of the note to further its business, specifically, to purchase "hardware" for a data center in Antigua. He testified that the hardware was purchased, paid for, and used by the defendant. Muscato testified that he assumed that, under the terms of the note, Szulik had paid the defendant $1,865,500, but the defendant did not make any payments on the loan.

Muscato testified that, when he became aware that the note was due in 2007, he knew that the defendant was unable to pay Szulik. At that time, however, he attempted to extend the note under terms that "made sense" for the defendant. Muscato testified that, after the defendant defaulted on the loan in 2010, he did not dispute this fact with Tagliaferri.

Tagliaferri's deposition testimony, which was admitted into evidence, shed light on the nature of the transactions at issue. Tagliaferri testified with respect to his role and the role of TAG in the note and subnotes at issue. He testified that neither the assignments nor the subnotes were "fictitious securities . . . ." Importantly, Tagliaferri testified that the loan proceeds that had been paid to the defendant were repaid to Szulik by a number of TAG clients, including the plaintiffs. Tagliaferri testified that Muscato was aware of the fact that Szulik had been repaid, in large part, by means of the plaintiffs' funds.[13] Tagliaferri testified that each of his clients, the plaintiffs, to whom he assigned portions

[13] Tagliaferri testified that, in July, 2009, Szulik began the process of terminating his relationship with TAG. TAG continued to manage some of Szulik's assets until early 2010. Szulik's interest in the defendant's note was one of the assets that Szulik asked TAG to continue to manage until Szulik fully terminated his relationship with TAG.

of the original note, had a custody account agreement with the bank, and that the creation of the subnotes and the transmission of the corresponding funds to Szulik were done pursuant to each plaintiff's investment account agreement with TAG and their custody account agreements with the bank. After Tagliaferro reviewed information concerning the subnotes at issue, the plaintiffs' attorney examined him as follows:

"Q. . . . [D]id you have conversations with [Muscato] regarding the payment of these individual subnotes by the various individuals who were your clients? . . .

"A. Yes, not each of them individually, but certainly we discussed the repayment of the principal and the interest on the subnotes, yes. I didn't specifically go over the $40,000 for this client or $100,000 for that client. We were talking about the payment of the note, the total amount of the note, which, I think, was $2,050,000, and the interest due on that note, yes.

"Q. Now, in your conversations with [Muscato], did you refer . . . him to the fact that there were assignments made of the original note to [Szulik]?

"A. Yes. . . .

"Q. And did you discuss with him whether [Szulik's] original obligation had been paid? . . .

"A. Yes. . . .

"Q. . . . In what manner was [Szulik] paid?

"A. Well . . . [Muscato] was aware that . . . [Szulik] had been paid in full, and all the accrued interest had been paid [by] the assignees of the note and that the assignees of the note were entitled to the interest from a certain date plus the principal. . . . I told him by telephone.

"Q. Was there ever an occasion when [Muscato], on behalf of [the defendant], denied that there was any

further obligation on [the defendant's] part for the payment of the sums owing to the assignees? . . .

"A. No, there was not."

Also, Tagliaferri testified: "The specific conversations I had with [Muscato] took place in the first half of 2010, including, I think, by mid-2010, and during those conversations he acknowledged that the note was due, was outstanding, and he was going to make payment shortly . . . . [T]o the best of my recollection, he has not made payment."

Describing the effect of the assignment of the original note and the language in the subnotes that required the defendant to repay TAG, Tagliaferri explained: "[T]he subnote speaks for itself. The obligation on the part of [the defendant], the $2,050,000 note, plus it accrues interest, is the note that [the defendant] executed in 2007. It was assigned to [the plaintiffs], and the instrument that was given to all the [plaintiffs] was the subnote. The fact is very clear [that the defendant] owes $2,050,000 plus accrued interest to all the assignees of the note, whoever they might be, subnote or no subnote."

Tagliaferri also testified: "I can . . . tell you with certainty that the [loan] funds were disbursed from the Szulik account, that is, the $1,865,500 [was] disbursed from the Szulik account, and the Szulik account received in its custody account at [the bank] a [note executed by the defendant] with a principal amount of $2,050,000. And, of course, we know that there was payment subsequent to that made. I mean, clearly, [the defendant] made a forbearance payment or a note extension payment of $205,000. It also made an additional interest payment of $45,000. . . .

"How do I know that the funds were disbursed and that the note was received in the account? Because I looked at it over and over again, and I also know that

the $205,000 note extension agreement or forbearance payment was made. It shows up right in the schedule there. There was an additional $45,000 in interest paid . . . and [the defendant], by making those payments, clearly . . . knew that it had to make these payments. It was no question that the $1,865,500 got to [the defendant]. It got there. What wasn't paid was the $2,050,000, and the interest wasn't paid, and that is why they paid the forbearance payment, and that is why they paid the interest. That is clear."

It suffices to observe that, in addition to the deposition testimony of Muscato and Tagliaferri, evidence reflecting the subnotes acquired by the plaintiffs consisted of business records related to the plaintiffs' accounts at the bank. These records, admitted as exhibits 4 and 8, reflect that funds left the plaintiffs' accounts in 2009 and 2010, as described by Tagliaferri, and that their accounts thereafter stated their interest in the subnotes at issue in this action.

The defendant argues that it was not benefited. In this argument, the defendant focuses on the trial testimony of several of the plaintiffs that reflected that they lacked personal knowledge of how the funds deducted from their accounts at the bank, at Tagliaferri's direction, ultimately were used. According to the defendant, "no evidence was produced by [the plaintiffs] establishing that Szulik received any payments from [the plaintiffs] whatsoever." The problem with this aspect of the defendant's claim, however, is that it seemingly overlooks Tagliaferri's testimony that, at the time of the purchase of the subnotes by the plaintiffs and others, Szulik was repaid in full. Tagliaferri testified that this was made clear to Muscato as well. Muscato testified that the defendant benefited from the loan that it obtained from Szulik in that the defendant purchased hardware with those loan proceeds. It hardly requires explanation that the repayment of the defendant's loan obligation

to Szulik with the plaintiffs' funds constituted a benefit to the defendant.

Another argument raised by the defendant is that the plaintiffs failed to prove that the defendant *unjustly* did not pay the plaintiffs for the benefit that it received. In this aspect of the claim, the defendant challenges the legal validity of the assignment by which TAG obtained an interest in the original note. The defendant argues: "[The plaintiffs'] claims are all based on the foundation that Tagliaferri 'justly' obtained an interest in the note. The undeniable evidence is that Tagliaferri committed fraud, the subject transactions were not valid, and Tagliaferri is in prison for a pattern of similar fraudulent conduct." Moreover, the defendant points to the evidence that, in prior lawsuits brought by the plaintiffs against the bank and/or Tagliaferri, the plaintiffs argued that the subnotes were fraudulent. The defendant argues that the plaintiffs did not justly obtain an interest in the original note, the subnotes did not obligate the defendant to make direct payment to the plaintiffs but to TAG, and that the plaintiffs cannot rely on the subnotes, which are "nothing more than IOU's from TAG," to enforce the note. The defendant's argument in this regard is not persuasive because the court did not award the plaintiffs a remedy in this action as legal assignees and subrogees, but under the equitable doctrine of unjust enrichment. If we were to follow the defendant's logic, the result would be untenable, for it would lead to the conclusion that an equitable remedy is unavailable to a plaintiff who lacks a legal remedy.

The defendant also argues that the plaintiffs failed to prove that the failure of payment was to their detriment. According to the defendant, "[the plaintiffs] produced no evidence whatsoever as to where any of the funds removed from their various accounts went after either being wired to [TAG attorney] Barry Feiner's trust account or being wired to other parties' accounts. Further, the [bank] statements of Szulik showed no funds

transferred into his account, let alone any funds in amounts and dates alleged by Tagliaferri. In short, [the plaintiffs] failed to show [that] their funds were anything other than stolen by Tagliaferri . . . .'' We observe that Szulik was not called as a witness in the present action, nor was deposition testimony from Szulik offered into evidence. Nonetheless, in making this argument, the defendant seemingly overlooks Tagliaferri's testimony, set forth previously in this opinion, that the proceeds of the original note, plus interest, were repaid to Szulik, in part, by virtue of the funds deducted from the plaintiffs' accounts, over which TAG exercised control.[14]

In light of the foregoing, we conclude that the defendant has failed to demonstrate that the evidence did not support the court's finding that the plaintiffs were entitled to recover under a theory of unjust enrichment.

[14] In this portion of its claim, the defendant also suggests that the equitable remedy of subrogation is available only if a party bringing an action can demonstrate that an implied contract or quasi-contractual relationship exists between itself and the party against whom the equitable remedy is sought. The defendant argues: ''There were no contractual or quasi-contractual relationships at all between [the defendant] and the plaintiffs which could support a valid claim for recovery under an unjust enrichment theory.'' The defendant has not cited any authority that limits the equitable remedy in this manner, and our review of relevant precedent does not burden a plaintiff seeking recovery under a theory of unjust enrichment to demonstrate that something akin to a contractual relationship exists between itself and a defendant. As our Supreme Court has stated: ''A right of recovery under the doctrine of unjust enrichment is essentially equitable, its basis being that in a given situation it is contrary to equity and good conscience for one to retain a benefit which has come to him at the expense of another. . . . With no other test than what, under a given set of circumstances, is just or unjust, equitable or inequitable, conscionable or unconscionable, it becomes necessary in any case where the benefit of the doctrine is claimed, to examine the circumstances and the conduct of the parties and apply this standard. . . . Unjust enrichment is, consistent with the principles of equity, a broad and flexible remedy. . . . Plaintiffs seeking recovery for unjust enrichment must prove (1) that the defendants were benefited, (2) that the defendants unjustly did not pay the plaintiffs for the benefits, and (3) that the failure of payment was to the plaintiffs' detriment.'' (Citations omitted; internal quotation marks omitted.) *Hartford Whalers Hockey Club* v. *Uniroyal Goodrich Tire Co.*, 231 Conn. 276, 282–83, 649 A.2d 518 (1994).

F

Next, the defendant claims that the court erred by finding that cross-traded subnotes, which had been exchanged between some of the plaintiffs' accounts, had unjustly enriched the defendant. We decline to reach the merits of this claim, as it is inadequately briefed.

As set forth previously in this opinion, the court found that, at Tagliaferri's direction, the bank wired funds from the plaintiffs' accounts to an escrow account maintained by TAG. Bank records reflect the funds that were removed from the plaintiffs' accounts as well as the fact that the funds were disbursed for subnotes of the defendant. The court stated in relevant part: "The bank recorded asset values in each account for [the defendant's] notes or subnotes in an amount equal to the amount transferred from the accounts at Tagliaferri's direction. Some accounts had more than one transaction with respect to the [defendant's] notes. A review of the transactions also indicates that there was some cross-trading of the 'subnotes' between the plaintiffs' accounts."

In the present claim, the defendant focuses on evidence of Tagliaferri's cross-trading of subnotes. The defendant refers to bank records showing that, in December, 2009, Tagliaferri sold $640,000 of a $725,000 subnote that was held by one of the plaintiffs, the Katz Marital Trust, to ten other plaintiffs in this action.

The defendant states in its brief that such cross-trading is illegal and that "[t]here is nothing legitimate about . . . any of these subnotes." After discussing this evidence, the defendant baldly states: "Accordingly, the trial court was clearly erroneous in finding that [the plaintiffs to whom the cross-traded subnotes were assigned] paid any portion of [the defendant's] obligation to Szulik." In its brief, the defendant has provided this court with a one sentence conclusory statement of this claim that is unsupported by any analysis, let alone any citation to authority. Insofar as the reasoning that

underlies the defendant's claim is not readily apparent, we observe that this court is not an advocate and will not formulate a rationale on the defendant's behalf. See, e.g., *LaBow* v. *LaBow*, 85 Conn. App. 746, 751–52, 858 A.2d 882 (2004) ("[a]s we have stated on occasions too numerous to recite, mere abstract assertions, unaccompanied by reasoned analysis, will not suffice to apprise a court adequately of the precise nature of a claim"), cert. denied, 273 Conn. 906, 868 A.2d 747 (2005). Accordingly, the defendant has not demonstrated that the fact that cross-trading occurred undermined the court's finding that funds removed from the plaintiffs' accounts at issue had been used to repay the defendant's debt to Szulik, as Tagliaferri so clearly testified during his deposition. See part I E of this opinion.

G

Next, the defendant claims that the court erred by finding that the defendant's loan obligation to Szulik was satisfied in part with the use of the plaintiffs' funds. We disagree.

The following additional facts are relevant to the present claim. In the portion of the court's memorandum of decision rejecting the plaintiffs' claim that they were entitled to legal relief *as assignees*, the court found in relevant part: "To the extent [that] the plaintiffs rely on the contention that they are assignees of the [defendant's] note, this court finds the issues in favor of the defendant . . . . The assignment claims are dependent on the veracity of Tagliaferri and the reliability of records kept by him while he was committing financial fraud. The 'assignment' documents were created for and signed solely by Tagliaferri. Tagliaferri, as discussed [previously], was recently convicted of felonies involving such a degree of turpitude in their commission that one cannot readily accept his version of events. Indeed, some of the plaintiffs, in recent lawsuits, attacked his veracity and described the transactions in their accounts

as fake and created out of whole cloth." As we have discussed previously in this opinion, the court, however, awarded the plaintiffs relief with respect to their *equitable* claim for relief.

The present claim of error is the defendant's attempt to challenge the court's reliance on *any* portion of Tagliaferri's deposition testimony. As we have discussed in detail in part I E of this opinion, the testimony was admitted into evidence and, among other things, it demonstrated that Tagliaferri used the plaintiffs' funds to satisfy the debt that the defendant owed Szulik pursuant to the 2006 note that the defendant executed in Szulik's favor. The defendant, acknowledging that Tagliaferri's deposition testimony was, in fact, evidence that the plaintiffs' funds were used to satisfy its debt to Szulik, nonetheless urges this court to conclude that the trial court could not rely on the testimony to reach that finding. The defendant argues that, "after acknowledging that one cannot readily accept Tagliaferri's version of events, the trial court astonishingly relied on his implausible deposition testimony to establish that [the defendant's] obligation to Szulik was satisfied with Tagliaferri's use of the [plaintiffs'] funds."

We note that, in the context of this factual claim, the defendant raises what it deems to be "technical" defects in the manner in which Tagliaferri's deposition occurred. For instance, the defendant argues that Tagliaferri, who was deposed by telephone while he was incarcerated, was not properly put under oath prior to the start of the deposition and that nobody was present to verify what documents he reviewed during his testimony. Moreover, the defendant, drawing our attention to excerpts from the deposition, which is 107 pages in length, describes his testimony as "vague," "inexact," and "hazy," thereby appearing to suggest that the testimony *in its entirety* had no evidentiary value whatsoever. Despite these arguments, in this appeal, the defendant has not set forth

a claim of evidentiary error with respect to the admission of Tagliaferri's deposition and does not analyze the claim as one of evidentiary error.[15] Instead, the defendant couches its claim in terms of factual error and, specifically, a challenge to the court's reliance on the evidence at issue, which, we note, was admitted without limitation.[16] At the heart of the defendant's claim is its argument that "Tagliaferri's testimony was simply not credible."

"Appellate review under the clearly erroneous standard is a two-pronged inquiry: [W]e first determine whether there is evidence to support the finding. If not, the finding is clearly erroneous. Even if there is evidence to support it, however, a finding is clearly erroneous if in view of the evidence and pleadings in the whole record [this court] is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *T & M Building Co.* v. *Hastings*, 194 Conn. App. 532, 539, 221 A.3d 857 (2019), cert. denied, 334 Conn. 926, 224 A.3d 162 (2020).

Tagliaferri's testimony supports the challenged finding. Moreover, we are not persuaded, in view of the evidence and pleadings in the whole record, that a mistake has been committed. "In a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony. . . . It is within the province of the trial court, as the fact finder, to weigh the evidence presented and determine the credibility and effect to be given the evidence." (Internal quotation marks omitted.) *Schaeppi* v. *Unifund CCR Partners*, 161 Conn. App. 33,

[15] Accordingly, we need not address the plaintiffs' argument that, if the claim is viewed as one of evidentiary error, it is unreviewable on appeal because it is unpreserved.

[16] The defendant framed this claim as follows: "Did the trial court *err in finding* [that] [t]he evidence, including a part of Tagliaferri's deposition testimony that this court credits, is that [the defendant's] obligation to Szulik was satisfied with Tagliaferri's use of [the] plaintiffs' funds?" (Emphasis added; internal quotation marks omitted.)

43, 127 A.3d 304, cert. denied, 320 Conn. 909, 128 A.3d 953 (2015). "It is the quintessential function of the fact finder to reject or accept certain evidence . . . . As the trier of fact, the trial court may properly accept or reject, in whole or in part, certain testimony offered by a party." (Citation omitted; internal quotation marks omitted.) *In re Antonio M.*, 56 Conn. App. 534, 540, 744 A.2d 915 (2000). The court was entitled to rely on Tagliaferri's deposition testimony in whole or in part. The defendant has not demonstrated that the court drew improper inferences from or misconstrued that testimony.

The defendant also suggests that the court's finding was clearly erroneous because the court, in rejecting the claim that the plaintiffs were assignees, stated that it would not credit Tagliaferri's "version of events," yet it relied on his testimony in support of the plaintiffs' claim for relief under a theory of unjust enrichment. We are not persuaded that any inconsistency exists. To prove that they are legal assignees of the subnotes at issue, the plaintiffs were bound to demonstrate the legal validity of those instruments, which, as the court found, were the product of Tagliaferri's fraud. To prove that they were entitled to equitable relief, however, the plaintiffs did not have to prove that the instruments at issue had legal validity but that they were entitled to repayment because their funds had been used to partially satisfy the defendant's debt to Szulik. The court was free to reject the portions of Tagliaferri's testimony that would have supported the assignee claim while relying on those portions of his testimony that supported the claim for equitable relief. In light of the foregoing, the defendant has failed to demonstrate that the court's findings were clearly erroneous.

H

Finally, the defendant claims that the court erred by finding that the plaintiffs had satisfied the defendant's

debt obligation to Szulik despite the fact that the debt was not discharged pursuant to the terms of the note at issue. We disagree.

The promissory note executed by Muscato, as chief executive officer, on behalf of the defendant on July 25, 2006, provides in relevant part: "No modification or waiver of any of the provisions of this [n]ote shall be effective unless in writing and signed by [p]ayee and only then to the extent set forth in such writing, or shall any such modification or waiver be applicable except in the specific instance for which it is given. This [n]ote may not be discharged orally but only in writing duly executed by [p]ayee."[17] Relying on this portion of the original note, the defendant argues in relevant part: "In addition to the fact that [the plaintiffs] produced no credible evidence establishing that Szulik was paid any of the moneys taken from the [plaintiffs'] accounts, [the plaintiffs] failed to produce any writing, duly executed by Szulik, discharging [the defendant's] debt obligation pursuant to the note." The defendant argues that the plaintiffs failed to sustain their burden of proof by failing to present such evidence.

As we stated previously in this opinion, "[p]laintiffs seeking recovery for unjust enrichment must prove (1) that the defendants were benefited, (2) that the defendants unjustly did not pay the plaintiffs for the benefits, and (3) that the failure of payment was to the plaintiffs' detriment." (Internal quotation marks omitted.) *Horner* v. *Bagnell*, supra, 324 Conn. 708. The defendant does not cite to any authority that stands for the proposition that the plaintiffs bore the *additional* burden of proving that the benefit that they conferred on the defendant by means of repayment of the debt thereafter caused Szulik to discharge the note in writing. For the reasons already discussed in this opinion, the evidence, including Tagliaferri's deposition testimony, supported a finding that the plaintiffs' funds were used to pay the debt

[17] In the note, Szulik was identified as the "payee."

that the defendant owed to Szulik. The fact that the plaintiffs did not demonstrate that repayment of the debt satisfied the technical requirements of a note to which they were not a party is of no consequence to our analysis of whether funds removed from their accounts at the bank benefited the defendant. Accordingly, the court did not err in finding that the plaintiffs were entitled to recover under a theory of unjust enrichment despite the failure to produce evidence of a written discharge of the note.

II

THE PLAINTIFFS' APPEAL

In the present appeal from the court's denial of the plaintiffs' motion for attorney's fees and expenses, the plaintiffs claim that the court erred by denying their motion for attorney's fees and expenses after rendering judgment in their favor with respect to their unjust enrichment cause of action. We disagree.

The following additional procedural history is necessary to our analysis of the present claim. In December, 2016, after the court's judgment in favor of the plaintiffs with respect to their unjust enrichment claim, the plaintiffs filed a motion in which they requested (1) an award of attorney's fees and expenses they incurred during the trial, and (2) "that the consideration of the attorney's fees issue be bifurcated so that liability is determined before the calculation of fees and expenses is considered." With respect to their motion for attorney's fees, the plaintiffs argued that, under the terms of the original promissory note that the defendant executed in Szulik's favor in 2006, such a remedy was available to Szulik in the event that the defendant defaulted on the note by failing to make payment when due. Relying on paragraph 7 (b) of the note,[18] the plaintiffs argued "that, by

[18] Paragraph 7 (b) provides in relevant part: "Upon the occurrence of an [e]vent of [d]efault . . . all [o]bligations then remaining unpaid hereunder shall immediately become due and payable in full, plus interest on the unpaid

purchasing interests in [the note] they paid [the defendant's] obligation under it, became equitable assignees, subrogees, of [Szulik's] interest in the note and were entitled to all legal rights held by [Szulik] against [the defendant]. As such, they were entitled to seek payment of the note by its maker, [the defendant], plus attorney's fees and costs of collection."

The defendant objected to the plaintiffs' motion for attorney's fees on the ground that, under the American rule, attorney's fees generally are disallowed unless they are provided to the prevailing party by contract or statute. The defendant argued that, although the plaintiffs were attempting to claim a right to such fees as assignees of the note, the court had expressly rejected their assertion of rights as assignees of the note and had awarded them damages under their equitable cause of action only. The defendant argued that the court did not find that the plaintiffs had been equitably subrogated into "the shoes of . . . Szulik" with respect to the note. Moreover, the defendant argued that the facts of this case did not support such relief because "it is undisputed that [the] plaintiffs' total contributions, as a group, did not satisfy the entire debt obligation reflected in the original [defendant's] note." The defendant also argued that the plaintiffs did not rely on a statutory ground for attorney's fees or assert that a departure from the American rule was warranted in the present case.

The plaintiffs filed a reply in which they argued, in part, that the court had not made any determinations with respect to their rights under the doctrine of "equitable subrogation" or "equitable assignment" because it

portion of the [o]bligations at the highest rate permitted by applicable law, without notice to [m]aker and without presentment, demand, protest or notice of protest, all of which are hereby waived by [m]aker together with all reasonable costs and expenses of the collection and enforcement of this [n]ote, including reasonable attorney's fees and expenses, all of which shall be added to the amount due under this [n]ote."

had not been asked to do so until the plaintiffs filed the motion for attorney's fees. Moreover, in responding to the arguments raised by the defendant, the plaintiffs did not dispute the defendant's reliance on the fact that, the funds of the plaintiffs, as a group, did not repay the entire debt. Instead, they argued that the defendant had failed to demonstrate that this fact was legally significant with respect to their claim for equitable subrogation.

On January 25, 2017, Judge Thim issued an order stating that he had considered the parties' filings and then summarily denied the plaintiffs' motion for attorney's fees.

Thereafter, the plaintiffs filed a motion for reargument in which they reasserted their legal argument that, because they had discharged a portion of the defendant's obligation under the note, they had been subrogated to the position of Szulik with respect to the note. The plaintiffs argued that, to the extent that the defendant argued that equitable subrogation was not a proper remedy because the plaintiffs' funds had not satisfied the entire debt, such an argument was waived because it was not raised at the time of trial.

The defendant filed an objection related thereto. The defendant argued in relevant part: "In this case, there is no guarantee, note, or any other written document running from [the defendant] to any of the plaintiffs that authorizes the recovery of attorney's fees. The court specifically found in favor of [the defendant] on the assignment claims and only found for the plaintiffs on the unjust enrichment claim. The decision contains no finding whatsoever that any plaintiffs established any claims for subrogation, and it is undisputed [that] the plaintiffs' contributions, as a group, did not satisfy the entire debt obligation. Therefore, there is no basis whatsoever for [the] plaintiffs to 'step into the shoes' of [Szulik] under the . . . note."

The plaintiffs filed a reply in which they disagreed with the defendant's argument that a claim for subrogation was not part of the action because equitable subrogation claims had been stricken by the court, *Sommer*, *J.*, prior to trial. The plaintiffs argued that the argument advanced by the defendant was flawed because, as a matter of law, subrogation is a proper remedy for a claim of unjust enrichment and, thus, need not have been specifically alleged apart from its unjust enrichment claim.

In its May 3, 2017 order denying the plaintiffs' motion for reargument, the court stated in relevant part: "This court denies the plaintiffs' motion to reargue their postjudgment motion for attorney's fees . . . . This court initially denied the plaintiffs' motion for attorney's fees on the ground [that] the defendant, in articulating its objection to the motion, had incorrectly interpreted this court's memorandum of decision dated November 23, 2016, wherein this court stated the following: 'To the extent [that] the plaintiffs rely on the contention [that] they are assignees of the [defendant's] note, this court finds the issues in favor of the defendant . . . .' The plaintiffs claim they have acquired by assignment or subrogation a contractual right under the terms of the [defendant's] note to recover attorney's fees. This assertion is contrary to the court's finding with respect to the assignment claim. The plaintiffs did not obtain a contractual or quasi-contractual right to recover attorney's fees. The 'American rule' is that attorney's fees are not allowed to the successful party absent a contractual or statutory exception. . . . There is no contractual or statutory basis for a recovery of legal fees. Furthermore, there is no evidence of bad faith to justify a deviation from the American rule."[19] (Citations omitted.)

[19] In a subsequent articulation filed May 14, 2019, the court provided the following additional rationale concerning its ruling with respect to attorney's fees: "The plaintiffs contend [that] their claim for counsel fees was previously ruled upon by another judge in a pretrial proceeding in this case. The law of the case doctrine is not a limitation on a trial court's powers. . . . This court found that there was no privity of contract. Further, this court found

In the present claim, the plaintiffs advance arguments similar in nature to the arguments that they raised before the trial court. Essentially, they argue that, by virtue of the fact that they were entitled to relief under a theory of unjust enrichment, they were entitled as a matter of right to be awarded attorney's fees and expenses as equitable subrogees. They argue that, by virtue of their funds having been used to pay the defendant's indebtedness, they stand "in the shoes" of Szulik with respect to the rights set forth in the note. They urge us to conclude that, "[o]nce unjust enrichment has been determined, as here, the remedy of equitable subrogation follows . . . ." The plaintiffs reason that, if the defendant was obligated to pay Szulik directly, an award of attorney's fees and expenses would have been Szulik's right, and it would unjustly enrich the defendant if it was not ordered to pay an award of attorney's fees and expenses to them. The plaintiffs also argue: "As a matter of equity, the plaintiffs should be subrogated to the Szulik right to recover attorney's fees and costs. The defendant should not be permitted to choose what subrogated obligations it will pay."

"Ordinarily, we review the trial court's decision to award attorney's fees for abuse of discretion. . . . This standard applies to the amount of fees awarded . . . and also to the trial court's determination of the factual predicate justifying the award. . . . When, however, a damages award is challenged on the basis of a question of law, our review is plenary." (Citation omitted; internal quotation marks omitted.) *Chicago Title Ins. Co.* v. *Accurate Title Searches, Inc.*, 173 Conn. App. 463, 496, 164 A.3d 682 (2017). "The trial court's determination of the proper legal standard in any given case is a question of law subject to our plenary review." (Internal quotation marks omitted.) *Total Recycling Services of Connecticut, Inc.* v. *Connecticut Oil Recycling Services*,

that the plaintiffs failed to show that this court should exercise equitable powers and impose on [the defendant] an obligation to pay legal fees." (Citation omitted.)

LLC, 308 Conn. 312, 326, 63 A.3d 896 (2013). The issue presented does not implicate an amount of attorney's fees awarded or whether there was a factual predicate justifying such an award. Instead, the issue before us is whether, as the plaintiffs argue, they were entitled as a matter of right to be awarded attorney's fees and expenses as equitable subrogees. With respect to this question of law, we will exercise plenary review.

"The general rule of law known as the American rule is that attorney's fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or statutory exception. . . . Connecticut adheres to the American rule. . . . There are few exceptions. For example, a specific contractual term may provide for the recovery of attorney's fees and costs . . . or a statute may confer such rights. . . . This court also has recognized a bad faith exception to the American rule, which permits a court to award attorney's fees to the prevailing party on the basis of bad faith conduct of the other party or the other party's attorney." (Internal quotation marks omitted.) *ACMAT Corp.* v. *Greater New York Mutual Ins. Co.*, 282 Conn. 576, 582, 923 A.2d 697 (2007).

To the extent that the plaintiffs suggest in their analysis that, as a matter of law, a right of equitable subrogation emanates from the fact that they prevailed in their equitable cause of action sounding in unjust enrichment, the plaintiffs have failed to demonstrate that the law so requires. The plaintiffs have cited no binding authority in support of their claim that attorney's fees are a necessary component of an award in which a party has unjustly enriched another by payment of a debt.[20] "The law has recognized two types of subrogation: conventional; and legal or equitable. . . . Conventional subrogation can take effect only by agreement and has been

[20] The plaintiffs rely on the decision of a federal District Court in *Seabright Ins. Co.* v. *Matson Terminals, Inc.*, 828 F. Supp. 2d 1177 (D. Haw. 2011), which we do not find to be persuasive authority. It suffices to observe that

said to be synonymous with assignment. It occurs where one having no interest or any relation to the matter pays the debt of another, and by agreement is entitled to the rights and securities of the creditor so paid. . . . By contrast, [t]he right of [legal or equitable] subrogation is not a matter of contract; it does not arise from any contractual relationship between the parties, but takes place as a matter of equity, with or without an agreement to that effect. . . . The object of [legal or equitable] subrogation is the prevention of injustice. It is designed to promote and to accomplish justice, and is the mode which equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, should pay it. . . . As now applied, the doctrine of [legal or] equitable subrogation is broad enough to include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Westchester Fire Ins. Co.* v. *Allstate Ins. Co.*, 236 Conn. 362, 370–71, 672 A.2d 939 (1996). In other words, "[a] party advancing properly a claim of equitable subrogation is stepping into the

Seabright Ins. Co. is factually distinguishable in that the plaintiff in that case, an insurer, sought to recover attorney's fees from the defendant that it paid on behalf of its insured in connection with a workers' compensation action. Id., 1179. In denying a motion for summary judgment, the court reasoned that the claim for attorney's fees by the plaintiff was dependent on its ability to enforce rights codified in an insurance contract that had been entered into by its insured. Id., 1192. In the context of a claim that *an insurer* is entitled to the right of subrogation, the court observed: "The right of subrogation is derivative. An insurer entitled to subrogation is in the same position as an assignee of the insured's claim, and succeeds only to the rights of the insured. The subrogated insurer is said to stand in the shoes of its insured, because it has no greater rights than the insured and is subject to the same defenses assertable against the insured. Thus, an insurer cannot acquire by subrogation anything to which the insured has no rights, and may claim no rights which the insured does not have." (Internal quotation marks omitted.) Id.

shoes of the party *it paid* in order to recover the payments *that it made* . . . .'' (Emphasis altered; internal quotation marks omitted.) *Warning Lights & Scaffold Service, Inc.* v. *O & G Industries, Inc.*, 102 Conn. App. 267, 275, 925 A.2d 359 (2007).

The dispositive factor in our review is that the court expressly determined that the plaintiffs were entitled to recover under an unjust enrichment theory, but the court did not find that the plaintiffs were assignees of the original note that the defendant executed in Szulik's favor in 2006. Had the plaintiffs been assignees of the note, they could have sought to enforce the note, including the provision for payment of attorney's fees and expenses. The court, however, clearly drew a distinction between finding that the elements of the unjust enrichment cause of action had been proven and finding that the plaintiffs had stepped into the shoes of Szulik as a result of their partial payment of the defendant's debt. The court found that the plaintiffs were entitled to a recovery for their payment of a portion of the debt owed to Szulik but did not find that they had obtained contractual or quasi-contractual rights to enforce the terms of the note against the defendant.

Moreover, as the defendant argued both before the trial court and this court, there is another impediment to the plaintiffs' argument that they are entitled to the relief of equitable subrogation. The court found, the evidence reflects, and the plaintiffs do not dispute, that Tagliaferri did not use the plaintiffs' funds to repay the entire debt that the defendant owed Szulik. Indeed, before this court, the plaintiffs assert that, as a group, their funds repaid $1,848,000 of that debt.[21] See footnote 4 of this opinion. As a general rule, ''[e]quitable subrogation requires the subrogee to discharge *the entire debt*

[21] This amount includes Lamm's contribution, if any, to the payment of the debt. As we determined in part I A of this opinion, Lamm's interest was not properly before the trial court.

held by the original obligor." (Emphasis added.) 73 Am. Jur. 2d, Subrogation § 25 n.1 (2012). "Generally, a person is not entitled to be subrogated to the rights of another until the claim of the creditor against the debtor has been paid in full; this antisubrogation rule is known as the 'made whole doctrine.' *Part payment will not create a right of subrogation.* Until the debt is paid in full, there can be no interference with the creditor's rights or securities that might, even by a bare possibility, prejudice or in any way embarrass him in the collection of the residue of his debt." (Emphasis added; footnotes omitted.) Id., § 25. Although some evidence before the court suggested that the entire debt was paid at the time that Tagliaferri used the plaintiffs' funds to satisfy a large portion of that debt, the court's findings, to which we must defer unless they are successfully challenged on appeal, reflect that the funds of the plaintiffs and Lamm satisfied $1,848,000 of the defendant's debt obligation; the court did not find that the *entire* debt had been paid in full by the plaintiffs.

Accordingly, the court properly applied the American rule and determined that, in the absence of a contractual or statutory basis to award attorney's fees, and in the absence of an allegation of bad faith, the plaintiffs' motion for such fees should be denied. The plaintiffs have failed to demonstrate that the ruling was legally erroneous.

The judgment is reversed with respect to Douglas Lamm and the case is remanded with direction to vacate the judgment as to Douglas Lamm only; the judgment is affirmed in all other respects, and the denial of the plaintiffs' motion for attorney's fees is affirmed.

In this opinion the other judges concurred.

JAN G. *v.* SCOTT SEMPLE ET AL.*
(AC 43794)

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

Syllabus

The self-represented, incarcerated plaintiff sought declaratory and injunctive relief as well as monetary damages against the defendants, state correctional employees, claiming state tort claims and violations of his federal constitutional rights. Following the trial court's termination of a protective order barring the plaintiff's contact with his mother, M, a victim of a crime he had committed, the plaintiff and M submitted various requests to the Department of Correction to approve contact visits between them while the plaintiff is incarcerated, which were denied. The plaintiff then submitted two inmate grievance forms, which were also denied. The plaintiff commenced this action against the defendants in both their individual and official capacities. The trial court granted the defendants' motion to dismiss, concluding that the plaintiff's claims against them in their individual capacities were barred by statutory (§ 4-165) immunity and the claims against them in their official capacities were barred by sovereign immunity. On the plaintiff's appeal to this court, *held*:

1. The trial court did not improperly conclude that it lacked subject matter and personal jurisdiction over the plaintiff's claims brought against the defendants in their individual capacities:

   a. The trial court did not improperly conclude that the defendants were entitled to statutory immunity pursuant to § 4-165 (a) to the extent that the plaintiff alleged state tort claims; in his complaint, the plaintiff merely alleged that the defendants had denied his requests for contact visitation with M during his incarceration in the discharge of their duties pursuant to a certain Department of Correction administrative directive, and did not allege that the defendants denied his requests in a wanton, reckless, or malicious manner; accordingly, the court lacked subject matter jurisdiction.

   b. The trial court properly dismissed the plaintiff's federal civil rights claims brought pursuant to the applicable federal statute (42 U.S.C. § 1983) against the defendants in their individual capacities on the alternative basis of qualified immunity, as the plaintiff failed to plead facts showing that the defendants violated a statutory or constitutional right: the plaintiff failed to allege any incursion upon a constitutionally protected liberty interest, as an inmate does not have a liberty interest in

* 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.

access to visitors, and, thus, the plaintiff failed to allege a violation of his due process rights as guaranteed by the fourteenth amendment to the United States constitution; moreover, the plaintiff failed to allege a violation of his right to freedom of association as guaranteed by the first amendment to the United States constitution because preventing or limiting contact visits between inmates and the victims of their crimes, even when such victims are immediate family members, bears a rational relation to legitimate penological interests; accordingly, the court lacked subject matter jurisdiction.

c. The trial court properly dismissed the plaintiff's claims brought against the defendants in their individual capacities on the alternative basis of lack of personal jurisdiction, as the plaintiff only effected service on the defendants in their official capacities; by serving each defendant at the Office of the Attorney General and not at their usual places of abode, as required by statute (§ 52-57 (a)), the defendants were not served properly in their individual capacities.

2. The trial court properly dismissed the plaintiff's claims brought against the defendants in their official capacities for lack of subject matter jurisdiction, as the claims were barred by the doctrine of sovereign immunity: the plaintiff's claims for monetary damages were barred because the plaintiff failed to allege in his complaint that the state had waived sovereign immunity or that the claims commissioner had authorized the plaintiff's claims; moreover, the plaintiff's claims for declaratory and injunctive relief brought pursuant to 42 U.S.C. § 1983 were barred because the plaintiff failed to plead facts showing that the defendants violated a statutory or constitutional right.

Argued October 15, 2020—officially released January 12, 2021

Procedural History

Action to recover damages for, inter alia, the alleged deprivation of the plaintiff's federal constitutional rights, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Abrams*, *J.*, granted the defendants' motion to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

Jan G., self-represented, the appellant (plaintiff).

Jacob McChesney, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Clare E. Kindall*, solicitor general, for the appellees (defendants).

Opinion

ALVORD, J. The self-represented plaintiff, Jan G., appeals from the judgment of the trial court dismissing his action against the defendants, state employees of the Department of Correction (department).[1] On appeal, the plaintiff claims that the court improperly concluded that it lacked subject matter jurisdiction over (1) his claims against the defendants in their individual capacities on the basis of statutory immunity pursuant to General Statutes § 4-165, and (2) his claims against the defendants in their official capacities on the basis of the doctrine of sovereign immunity.[2] We affirm the judgment of the trial court.

The following facts are alleged in the plaintiff's complaint. At all times relevant to this appeal, the plaintiff

[1] The defendants, at all times relevant, were employees of the department. The employees of the department named as defendants are Scott Semple, former Commissioner of Correction, Scott Erfe, former warden of the Cheshire Correctional Institution, and Angel Quiros, former district administrator.

[2] Throughout his complaint, the plaintiff alleged claims on behalf of his mother. In the defendants' memorandum of law in support of their motion to dismiss, the defendants argued that the plaintiff lacked standing to raise claims on behalf of his mother. In its memorandum of decision dismissing the complaint, the court agreed with the defendants that it was "without jurisdiction over any claims the plaintiff [was] making on behalf of his mother." On appeal, the plaintiff claims that the trial court improperly determined that it lacked jurisdiction over the claims that the plaintiff raised on behalf of his mother. In support of his argument, the plaintiff maintains that his mother is "infirm and speak[s] little English . . . ." We conclude that the trial court properly determined that the plaintiff lacked standing to raise such claims on behalf of his mother. See *State* v. *Iban C.*, 275 Conn. 624, 665, 881 A.2d 1005 (2005) ("[u]nder long established principles, a party is precluded from asserting the constitutional rights of another" (internal quotation marks omitted)); *Frillici* v. *Westport*, 264 Conn. 266, 281, 823 A.2d 1172 (2003) ("[i]t is axiomatic that a party does not have standing to raise the rights of another"); see also *Collins* v. *West Hartford Police Dept.*, 324 Fed. Appx. 137, 139 (2d Cir. 2009) (affirming dismissal of 42 U.S.C. § 1983 claims because plaintiff lacked "standing to challenge constitutional deprivations alleged to have been experienced by his mother").

In his principal appellant brief, the plaintiff also vaguely references undefined freedom of religion and freedom of speech violations. The plaintiff did not allege such constitutional violations in his complaint. We, therefore, do not consider these references.

has been incarcerated at the Cheshire Correctional Institution (Cheshire). Prior to 2015, the court issued a protective order barring the plaintiff's contact with his mother. In February, 2015, the court terminated the protective order against the plaintiff. Following the court's termination of the protective order, the plaintiff and his mother submitted to the department various requests to approve contact visits between them while the plaintiff is incarcerated. The defendant Scott Erfe, then the warden of Cheshire, denied the plaintiff's and his mother's requests.

In response to Erfe's denial of the contact visitation requests, the plaintiff submitted to the department two inmate grievance forms—a May 9, 2018 inmate administrative remedy form (level one grievance), and a June 22, 2018 inmate grievance appeal form (level two grievance). The plaintiff attached as exhibits to his complaint, inter alia, his level one grievance, his level two grievance, and the department's responses to each. In those grievance forms, the plaintiff again requested that the department add his mother to his contact visitation list, and he referenced the court's termination of the protective order against him. On June 21, 2018, the department denied the plaintiff's level one grievance, stating: "Per Administrative Directive 10.6 [§ 5 (e) (iii), a] visit between an inmate and the inmate's victim shall not be permitted unless approved in writing by the [u]nit [a]dministrator. Your grievance is denied."[3] On August 1, 2018, the department denied the plaintiff's level two grievance, stating: "You are appealing a level one grievance regarding visiting at [the] Cheshire [Correctional Institution]. The response given by [the department] was appropriate. The removal of the protective order

[3] Department of Correction, Administrative Directive 10.6 § 5 (e) (iii) (effective October 23, 2013) provides in relevant part: "A visit between an inmate and the inmate's victim shall not be permitted unless approved in writing by the [u]nit [a]dministrator or [d]irector of [p]arole and [c]ommunity [s]ervices or designee. . . ."

does not negate the fact that [your mother] is a victim of your crime. Your level [two] grievance appeal is denied."[4]

On January 2, 2019, the plaintiff commenced this action against the defendants in both their individual and official capacities. In his complaint, the plaintiff alleged federal civil rights claims pursuant to 42 U.S.C. § 1983.[5] Specifically, the plaintiff alleged that the defendants, by denying requests for contact visitation with his mother, violated his right to freedom of association and his right to due process of law as guaranteed by the first and the fourteenth amendments to the United States constitution.[6] Additionally, in an "[i]ntroduction"

[4] In the department's response to the plaintiff's level two grievance, the department indicated that the plaintiff had "exhausted the [d]epartment's [a]dministrative [r]emedies," and that an "[a]ppeal to [l]evel [three] will not be answered."

[5] Title 42 of the United States Code, § 1983, provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. . . ."

"Section 1983 provides a civil claim for damages against any person who, acting under color of state law, deprives another of a right, privilege or immunity secured by the [c]onstitution or the laws of the United States. . . . Section 1983 itself creates no substantive rights; it provides only a procedure for redress for the deprivation of rights established elsewhere." (Citations omitted.) *Sykes* v. *James*, 13 F.3d 515, 519 (2d Cir. 1993), cert. denied, 512 U.S. 1240, 114 S. Ct. 2749, 129 L. Ed. 2d 867 (1994).

[6] In a section of his complaint titled "[i]ntroduction," the plaintiff alleged that the defendants were in "violation of [the first] amendment of the United States constitution of freedom of association of families, children, relatives, [etc.], and in violation of the due process clause of the fourteenth amendment of the United States constitution." Despite apparent references in the introduction of his complaint to two constitutional violations, the plaintiff's complaint contained only one cause of action for "Violation of the Due Process." This claim, however, appeared to have incorporated a freedom of association claim by reference to being denied such rights "without due process of law."

to his complaint, the plaintiff alleged "the torts of denial of visits of elderly infirm (80 year old) mother" and "denial of freedom of association."[7] The plaintiff sought declaratory and injunctive relief, as well as monetary damages.

On February 25, 2019, the defendants moved to dismiss the plaintiff's action. With respect to the plaintiff's claims brought against them in their individual capacities, the defendants provided three bases for dismissing the plaintiff's claims. The defendants first argued that the court lacked personal jurisdiction over them in their individual capacities due to the plaintiff's failure to serve them in that capacity, as required by General Statues § 52-57 (a).[8] Second, the defendants argued that the court lacked subject matter jurisdiction over the plaintiff's claims brought against them in their individual capacities as they are entitled to statutory immunity pursuant to § 4-165.[9] Third, the defendants argued that they additionally are entitled to qualified immunity, barring the plaintiff's § 1983 claims brought against them in their individual capacities. With respect to the plaintiff's claims brought against the defendants in their official capacities, the defendants argued that those claims are barred by sovereign immunity.

On April 1, 2019, the plaintiff filed an objection to the defendants' motion to dismiss in which he argued that "statutory and sovereign immunity does not apply

[7] In his complaint, the plaintiff subsequently noted that the "tort" referenced by the plaintiff in the introduction of his complaint was actually a "tort action of civil rights under 42 U.S.C. § 1983, under the law within the state of Connecticut."

[8] General Statues § 52-57 (a) provides: "Except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state."

[9] General Statutes § 4-165 (a) provides in relevant part: "No state officer or employee shall be personally liable for damage or injury, not wanton, reckless or malicious, caused in the discharge of his or her duties or within the scope of his or her employment. . . ."

in a § 1983 federal civil rights action filed in state court" because "[t]he supremacy clause preempts state statutes and state common law of Connecticut." The plaintiff further argued that the defendants are "not entitled to any qualified immunity."[10]

On August 20, 2019, the trial court granted the defendants' motion to dismiss, concluding that the plaintiff's claims against the defendants in their individual capacities are barred by statutory immunity pursuant to § 4-165, and that his claims against the defendants in their official capacities are barred by sovereign immunity.[11] This appeal followed.

We begin by setting forth our standard of review. "A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . .

"Claims involving the doctrines of common-law sovereign immunity and statutory immunity, pursuant to § 4-165, implicate the court's subject matter jurisdiction. . . . A determination regarding a trial court's subject matter jurisdiction is a question of law. When . . . the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record. . . .

"When a . . . court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable

[10] The plaintiff's objection to the defendants' motion to dismiss failed to address the defendants' argument that the court lacked personal jurisdiction over them in their individual capacities.

[11] The court did not reach the defendants' alternative arguments that the court lacked personal jurisdiction over them in their individual capacities or that, with respect the plaintiff's § 1983 claims against the defendants in their individual capacities, the defendants are entitled to qualified immunity.

light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Citations omitted; internal quotation marks omitted.) *Lawrence* v. *Weiner*, 154 Conn. App. 592, 596–97, 106 A.3d 963, cert. denied, 315 Conn. 925, 109 A.3d 921 (2015).

I

On appeal, the plaintiff first claims that the trial court improperly concluded that it lacked subject matter jurisdiction over his claims brought against the defendants in their individual capacities on the basis of statutory immunity pursuant to § 4-165 (a). The defendants contend that the court properly dismissed the plaintiff's state tort claims brought against them in their individual capacities on the basis of statutory immunity pursuant to § 4-165 (a). The defendants concede, however, that there was "apparent error in [the court's] overbroad application of . . . § 4-165" to the plaintiff's § 1983 claims brought against them in their individual capacities.[12] Consistent with the defendants' arguments set forth in their memorandum of law in support of their motion to dismiss, the defendants provide two alternative bases for affirming the court's dismissal of the plaintiff's § 1983 claims brought against them in their individual capacities: that the court lacked subject matter jurisdiction over the plaintiff's claims on the basis of the doctrine of qualified immunity, and that the court

[12] Although "[s]tate courts have concurrent jurisdiction over claims brought under § 1983 . . . [c]onduct by persons acting under color of state law which is wrongful under . . . § 1983 . . . cannot be immunized by state law." (Citations omitted; internal quotation marks omitted.) *Sullins* v. *Rodriguez*, 281 Conn. 128, 133–34, 913 A.2d 415 (2007). Accordingly, we conclude that the court erred in determining that it lacked subject matter jurisdiction over the plaintiff's § 1983 claims brought against the defendants in their individual capacities on the basis of statutory immunity pursuant to § 4-165 (a).

lacked personal jurisdiction over the defendants in their individual capacities.

We agree with the defendants that (A) the court lacked subject matter jurisdiction over the plaintiff's state tort claims brought against them in their individual capacities on the basis of statutory immunity pursuant to § 4-165 (a), and (B) the court lacked subject matter jurisdiction over the plaintiff's § 1983 claims brought against them in their individual capacities on the basis of the doctrine of qualified immunity. Furthermore, we agree with the defendants that (C) the court lacked personal jurisdiction over them in their individual capacities. Accordingly, we conclude that the court properly dismissed the plaintiff's claims brought against the defendants in their individual capacities.

A

We first address the plaintiff's claim that the court improperly concluded that the defendants are entitled to statutory immunity pursuant to § 4-165 (a). The defendants contend that, to the extent that the plaintiff alleged state tort claims, the court properly dismissed such claims brought against them in their individual capacities on the basis of statutory immunity. We agree with the defendants.

Section 4-165 (a) provides in relevant part: "No state officer or employee shall be personally liable for damage or injury, not wanton, reckless or malicious, caused in the discharge of his or her duties or within the scope of his or her employment. . . ." Section 4-165 "grants state employees immunity from suit from negligence claims regarding conduct arising out of the scope of their employment, but such immunity does not extend to conduct by a state employee that is alleged to be wanton, reckless, or malicious." *Lawrence* v. *Weiner*, supra, 154 Conn. App. 594.

"In the posture of this case, we examine the pleadings to decide if the plaintiff has alleged sufficient facts . . .

with respect to personal immunity under § 4-165, to support a conclusion that the [defendant was] acting outside the scope of [his] employment or wilfully or maliciously. . . . The question before us, therefore, is whether the facts as alleged in the pleadings, viewed in the light most favorable to the plaintiff, are sufficient to survive a motion to dismiss on the ground of statutory immunity. . . .

"We thus turn to the matter of whether the plaintiff has alleged facts that, if proven, are sufficient to demonstrate that the defendant acted wantonly, recklessly, or maliciously.[13] In applying § 4-165, our Supreme Court has understood wanton, reckless or malicious to have the same meaning as it does in the common-law context. . . . Under the common law, [i]n order to establish that the defendants' conduct was wanton, reckless, wilful, intentional and malicious, the plaintiff must prove, on the part of the defendants, the existence of a state of consciousness with reference to the consequences of one's acts . . . . [Such conduct] is more than negligence, more than gross negligence. . . . [I]n order to infer it, there must be something more than a failure to exercise a reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them. . . . It is such conduct as indicates a reckless disregard of the just rights or safety of others or of the consequences of the action. . . . [In sum, such] conduct tends to take on the aspect of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent." (Citation omitted; footnote added; internal quotation marks omitted.) Id., 598.

[13] It is undisputed that the defendants were acting in the scope of their employment when they undertook the actions that form the basis of the plaintiff's complaint.

In his complaint, the plaintiff merely has alleged that the defendants had denied his requests for contact visitation with his mother during his incarceration. The plaintiff has not alleged that the defendants denied his requests in a wanton, reckless, or malicious manner. Rather, in his complaint, the plaintiff indicated that the defendants denied his requests in the discharge of their duties pursuant to Administrative Directive 10.6. Accordingly, we conclude that the defendants are entitled to statutory immunity pursuant to § 4-165 (a). The court, therefore, lacked subject matter jurisdiction over the plaintiff's state tort claims brought against the defendants in their individual capacities, and the court properly dismissed such claims.

B

We next address the defendants' argument for affirming the court's dismissal of the plaintiff's § 1983 claims brought against them in their individual capacities on the alternative basis of the doctrine of qualified immunity. The plaintiff contends that the defendants are not entitled to qualified immunity. We agree with the defendants.

The following well established legal principles guide our analysis. "[A] claim for qualified immunity from liability for damages under § 1983 raises a question of federal law . . . and not state law. Therefore, in reviewing these claims of qualified immunity we are bound by federal precedent, and may not expand or contract the contours of the immunity available to government officials." (Citation omitted; internal quotation marks omitted.) *Schnabel* v. *Tyler*, 230 Conn. 735, 742–43, 646 A.2d 152 (1994).

"Under federal law, the doctrine of qualified immunity shields officials from civil damages liability for their discretionary actions as long as their actions could reasonably have been thought consistent with the rights

they are alleged to have violated. *Anderson* v. *Creighton*, 483 U.S. 635, 638, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987). Qualified immunity is an immunity from suit rather than a mere defense to liability and, therefore, protects officials from the burdens of litigation for the choices that they make in the course of their duties. . . . *Mitchell* v. *Forsyth*, 472 U.S. 511, 526, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985). Thus, the United States Supreme Court has recognized qualified immunity for government officials [when] it [is] necessary to preserve their ability to serve the public good or to ensure that talented candidates [are] not deterred by the threat of damages suits from entering public service. *Wyatt* v. *Cole*, 504 U.S. 158, 167, 112 S. Ct. 1827, 118 L. Ed. 2d 504 (1992). Whether an official is entitled to qualified immunity presents a question of law that must be resolved de novo on appeal. *Elder* v. *Holloway*, 510 U.S. 510, 516, 114 S. Ct. 1019, 127 L. Ed. 2d 344 (1994)." (Internal quotation marks omitted.) *Brooks* v. *Sweeney*, 299 Conn. 196, 216, 9 A.3d 347 (2010).

"Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct. . . . *Ashcroft* v. *al-Kidd*, 563 U.S. 731, 735, 131 S. Ct. 2074, 79 L. Ed. 2d 1149 (2011) . . . . If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity." (Citation omitted; internal quotation marks omitted.) *Braham* v. *Newbould*, 160 Conn. App. 294, 302, 124 A.3d 977 (2015).

The plaintiff has alleged two constitutional bases for his § 1983 claims: that the defendant's denial of his requests for contact visitation with his mother during his incarceration violated his right to freedom of association under the first amendment to the United States

constitution and his right to due process of law under the fourteenth amendment to the United States constitution.

We begin with the plaintiff's due process claim pursuant to the fourteen amendment to the United States constitution, which provides in relevant part that "[n]o State shall . . . deprive any person of life, liberty or property, without due process of law . . . ." U.S. Const., amend. XIV, § 1. In the present case, the interest at stake is the plaintiff's liberty interest. " 'There are two elements [that] must be established in order to find a due process violation. First, because not every liberty interest is protected, [the plaintiff] must establish that he has a liberty interest that comes within the ambit of the fourteenth amendment. *Hewitt* v. *Helms*, 459 U.S. 460, 466, 103 S. Ct. 864, 74 L. Ed. 2d 675 (1983); *Meachum* v. *Fano*, [427 U.S. 215, 223–24, 96 S. Ct. 2532, 49 L. Ed. 2d 451] (1976); *Board of Regents* v. *Roth*, 408 U.S. 564, 571, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); *Society for Savings* v. *Chestnut Estates, Inc.*, 176 Conn. 563, 571, 409 A.2d 1020 (1979). If it is determined that a protected liberty is implicated, then the second element that must be addressed is what procedural protections are due. *Goss* v. *Lopez*, 419 U.S. 565, 577, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975); *Board of Regents* v. *Roth*, supra, 569–70; *Morrissey* v. *Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972); see *Williams* v. *Bartlett*, 189 Conn. 471, 477, 457 A.2d 290 (1983). . . .

" 'Due process analysis begins with the identification of the interests at stake. Liberty interests protected by the [f]ourteenth [a]mendment may arise from two sources—the [d]ue [p]rocess [c]lause itself and the laws of the [s]tates.' . . . *State* v. *Patterson*, 236 Conn. 561, 568–69, 674 A.2d 416 (1996)." *State* v. *Rupar*, 293 Conn. 489, 502–503, 978 A.2d 502 (2009). Accordingly, we must consider whether, under the fourteenth amendment or under the laws of this state, the plaintiff has a constitu-

tionally protected liberty interest in access to contact visits with his mother during his incarceration.

An inmate "does not have a liberty interest in access to visitors." *Henderson* v. *Commissioner of Correction*, 66 Conn. App. 868, 869, 786 A.2d 450 (2001); see also *Kentucky Dept. of Corrections* v. *Thompson*, 490 U.S. 454, 461, 109 S. Ct. 1904, 104 L. Ed. 2d 506 (1989) ("denial of prison access to a particular visitor is well within the terms of confinement ordinarily contemplated by a prison sentence . . . and therefore is not independently protected by the [d]ue [p]rocess [c]lause" (citation omitted; internal quotation marks omitted)); *Santiago* v. *Commissioner of Correction*, 39 Conn. App. 674, 680, 667 A.2d 304 (1995) ("inmates have no protected liberty interest in access to visitors"). Moreover, the "[D]epartment of [C]orrection Administrative Directive § 10.6 provides in relevant part that 'visitation shall be considered a privilege and no inmate shall have entitlement to a [social] visit.' " *Henderson* v. *Commissioner of Correction*, supra, 869; see Department of Correction, Administrative Directive 10.6 § 4 (b) (effective November 6, 2020). The plaintiff fails to allege in his complaint any incursion upon a constitutionally protected liberty interest and, accordingly, we conclude that the plaintiff has failed to allege a violation of his due process rights as guaranteed by the fourteenth amendment to the United States constitution.

We next turn to the plaintiff's allegation that the defendants violated his freedom of association as guaranteed by the first amendment to the United States constitution. "The fact of confinement and the needs of the penal institution impose limitations on constitutional rights, including those derived from the [f]irst [a]mendment, which are implicit in incarceration. . . . [A] prison inmate retains those [f]irst [a]mendment rights that are not inconsistent with his status as a prisoner

or with the legitimate penological objectives of the corrections system. Thus, challenges to prison restrictions that are asserted to inhibit [f]irst [a]mendment interests must be analyzed in terms of the legitimate policies and goals of the corrections system, to whose custody and care the prisoner has been committed in accordance with due process of law.

"Perhaps the most obvious of the [f]irst [a]mendment rights that are necessarily curtailed by confinement are those associational rights that the [f]irst [a]mendment protects outside of prison walls. The concept of incarceration itself entails a restriction on the freedom of inmates to associate with those outside of the penal institution. Equally as obvious, the inmate's 'status as a prisoner' and the operational realities of a prison dictate restrictions on the associational rights among inmates." *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 125–26, 97 S. Ct. 2532, 53 L. Ed. 2d 629 (1977).

The United States Supreme Court has explained that "the [c]onstitution protects certain kinds of highly personal relationships . . . . And outside the prison context, there is some discussion . . . of a right to maintain certain familial relationships, including association among members of an immediate family and association between grandchildren and grandparents. . . . Some curtailment of that freedom must be expected in the prison context." (Citations omitted; internal quotation marks omitted.) *Overton* v. *Bazzetta*, 539 U.S. 126, 131, 123 S. Ct. 2162, 156 L. Ed. 2d 162 (2003).

To the extent that a prison regulation curtails an inmate's freedom of association, an inmate's constitutional right is not violated if the regulation "bear[s] a rational relation to legitimate penological interests." Id., 132. In determining whether the prison regulation bears a rational relation to legitimate penological interests,

"[w]e must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them." Id.

It is apparent from the plaintiff's complaint that the department denied the plaintiff's requests for contact visits with his mother during his incarceration because the department determined that the plaintiff's mother was the victim of a crime that he had committed. The department denied the plaintiff's requests pursuant to its Administrative Directive 10.6 § 5 (e) (iii), which provides in relevant part: "A visit between an inmate and the inmate's victim shall not be permitted unless approved in writing by the [u]nit [a]dministrator or [d]irector of [p]arole and [c]ommunity [s]ervices or designee. . . ." Evaluating the department's regulation in the light of safeguarding institutional security, a central objective of prison administration; see *Bell* v. *Wolfish*, 441 U.S. 520, 547, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979); we conclude that preventing or limiting contact visits between inmates and the victims of their crimes, even when such victims are immediate family members, bears a rational relation to legitimate penological interests.[14] Accordingly, we conclude that the plaintiff has

[14] We note that the plaintiff has alleged in his complaint only that the defendants denied the plaintiff contact visits with his mother. The plaintiff has not alleged that the defendants denied the plaintiff alternative means of associating with his mother. Courts addressing the constitutionality of prison policies that are alleged to curtail a prisoner's freedom of association consider "whether alternative means are open to inmates to exercise the asserted right . . . ." *Overton* v. *Bazzetta*, supra, 539 U.S. 132; see also *Pell* v. *Procunier*, 417 U.S. 817, 823, 94 S. Ct. 2800, 41 L. Ed. 2d 495 (1974) (regulations must be "viewed in . . . light of the alternative means of communication permitted under the regulations with persons outside the prison"). "We need not attempt to explore or define the asserted right of association at any length or determine the extent to which it survives incarceration because the challenged [regulation] bear[s] a rational relation to legitimate penological interests." *Overton* v. *Bazzetta*, supra, 131–32.

failed to allege a violation of his right to freedom of association as guaranteed by the first amendment to the United States constitution.

In light of our determinations that the plaintiff fails to allege a violation of his right to freedom of association or his right to due process of law as guaranteed by the first and fourteenth amendments to the United States constitution, we further conclude that the plaintiff has failed to plead facts showing that the defendants violated a statutory or constitutional right. Therefore, the plaintiff's § 1983 claims asserted against the defendants in their individual capacities are barred on the basis of qualified immunity, and the trial court properly dismissed such claims for lack of subject matter jurisdiction. See *Braham* v. *Newbould*, supra, 160 Conn. App. 306–307 (affirming dismissal of § 1983 claims on basis of qualified immunity).

C

We next address the defendants' argument for affirming the court's dismissal of the plaintiff's claims brought against them in their individual capacities on the alternative basis that the court lacked personal jurisdiction over them in their individual capacities. Specifically, the defendants assert that the plaintiff only effected service on them in their official capacities by serving each defendant at the Connecticut Office of the Attorney General on January 2, 2019. The defendants argue that because the plaintiff failed to effect proper service against them personally or at their usual place of abode as required by § 52-57 (a), the court lacked personal jurisdiction over them in their individual capacities. The plaintiff declined to address this argument in his objection to the defendants' motion to dismiss and in his briefing before this court. We agree with the defendants.

Practice Book § 10-30 (b) provides that "[a]ny defendant, wishing to contest the court's jurisdiction, shall

do so by filing a motion to dismiss within thirty days of the filing of an appearance." Practice Book § 10-30 (a) (2) provides in relevant part that "[a] motion to dismiss shall be used to assert . . . lack of jurisdiction over the person . . . ." In this case, the defendants properly contested the court's personal jurisdiction over them in their individual capacities.[15]

"[T]he Superior Court . . . may exercise jurisdiction over a person only if that person has been properly served with process, has consented to the jurisdiction of the court or has waived any objection to the court's exercise of personal jurisdiction. . . . [S]ervice of process on a party in accordance with the statutory requirements is a prerequisite to a court's exercise of [personal] jurisdiction over that party." (Internal quotation marks omitted.) *Sosa* v. *Commissioner of Correction*, 175 Conn. App. 831, 837, 169 A.3d 341 (2017).

To serve a defendant properly in his or her individual capacity, service of process must be made in accordance with § 52-57 (a). Section 52-57 (a) provides that "[e]xcept as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state." By contrast, where a plaintiff commences a civil action against "the state or against any institution, board, commission, department or administrative tribunal thereof, or against any officer, servant, agent or employee of the state or of any such institution, board, commission, department or administrative tribunal" in their official capacity, service of process "may be made by a proper officer . . . [on] the Attorney General at the office of the Attorney General in Hartford . . . ." General Statutes § 52-64 (a).

[15] The defendants filed their initial appearance on January 29, 2019, and their motion to dismiss and memorandum of law in support of their motion to dismiss on February 25, 2019, within thirty days of the filing of their appearance.

"Pursuant to . . . § 52-57 (a), a defendant in any civil action must be served in hand or at his usual place of abode. This requirement includes civil suits brought against state defendants who are sued in their individual capacities. . . . Thus, a plaintiff who serves a state defendant pursuant to . . . § 52-64 (a) by leaving a copy of the process at the Office of the Attorney General has properly served the defendant only in his or her official capacity and has failed to properly serve the defendant in his or her individual capacity." (Citation omitted; footnotes omitted.) *Sosa* v. *Commissioner of Correction*, supra, 175 Conn. App. 837–38.

Here, the plaintiff served the defendants at the Office of the Attorney General and not at their usual places of abode. The defendants, therefore, were not served properly in their individual capacities. Accordingly, we conclude that the court lacked personal jurisdiction over the defendants in their individual capacities and that the court properly dismissed the plaintiff's claims against them in their individual capacities. See id., 838; *Harnage* v. *Lightner*, 163 Conn. App. 337, 347, 137 A.3d 10 (2016), aff'd in part, 328 Conn. 248, 179 A.3d 212 (2018).

II

The plaintiff next claims that the trial court improperly concluded that it lacked subject matter jurisdiction over his claims brought against the defendants in their official capacities on the basis of the doctrine of sovereign immunity. The defendants contend that the court properly determined that the plaintiff's claims brought against them in their official capacities, both for injunctive and declaratory relief as well as for monetary damages, are barred by the doctrine of sovereign immunity. We agree with the defendants.

"It is well established that [t]he doctrine of sovereign immunity implicates subject matter jurisdiction and

is therefore a basis for granting a motion to dismiss." (Internal quotation marks omitted.) *Machado* v. *Taylor*, 326 Conn. 396, 403, 163 A.3d 558 (2017). "The principle that the state cannot be sued without its consent, or sovereign immunity, is well established under our case law. . . . It has deep roots in this state and our legal system in general, finding its origin in ancient common law. . . . Not only have we recognized the state's immunity as an entity, but [w]e have also recognized that because the state can act only through its officers and agents, a suit against a state officer concerning a matter in which the officer represents the state is, in effect, against the state." (Internal quotation marks omitted.) *Allen* v. *Commissioner of Revenue Services*, 324 Conn. 292, 298–99, 152 A.3d 488 (2016), cert. denied, U.S. , 137 S. Ct. 2217, 198 L. Ed. 2d 659 (2017). "Exceptions to this doctrine are few and narrowly construed under our jurisprudence." (Internal quotation marks omitted.) *Columbia Air Services, Inc.* v. *Dept. of Transportation*, 293 Conn. 342, 349, 977 A.2d 636 (2009).

"[T]he sovereign immunity enjoyed by the state is not absolute. There are [three] exceptions: (1) when the legislature, either expressly or by force of a necessary implication, statutorily waives the state's sovereign immunity . . . (2) when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights . . . and (3) when an action seeks declaratory or injunctive relief on the basis of a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority. . . . In the absence of a proper factual basis in the complaint to support the applicability of these exceptions, the granting of a motion to dismiss on sovereign immunity grounds is proper." (Citations omitted; internal quotation marks omitted.) Id., 349–50. For the purposes of this appeal, only the first and the

second exceptions to the state's sovereign immunity are relevant.[16]

The first exception to the state's sovereign immunity is relevant to the plaintiff's claims for monetary damages brought against the defendants in their official capacities. "In the absence of a statutory waiver of sovereign immunity, the plaintiff may not bring an action against the state for monetary damages without authorization from the claims commissioner to do so." Id., 351; see also *Miller* v. *Egan*, 265 Conn. 301, 315–16, 828 A.2d 549 (2003) (plaintiffs seeking monetary damages for constitutional violations required to seek waiver from claims commissioner). "When a plaintiff brings an action for money damages against the state, he must proceed through the [O]ffice of the [C]laims [C]ommissioner pursuant to chapter 53 of the General Statutes, §§ 4-141 through 4-165. Otherwise, the action must be dismissed for lack of subject matter jurisdiction under the doctrine of sovereign immunity." *Prigge* v. *Ragaglia*, 265 Conn. 338, 349, 828 A.2d 542 (2003). "This is true even where, as here, claims are brought pursuant to the United States constitution." *Tuchman* v. *State*, 89 Conn. App. 745, 752, 878 A.2d 384, cert. denied, 275 Conn. 920, 883 A.2d 1252 (2005); see also *Prigge* v. *Ragaglia*, supra, 349 (dismissing claims seeking damages brought under first and fourteenth amendments to United States constitution where permission not received from claims commissioner). "In each action authorized by the Claims Commissioner . . . the claimant shall allege such authorization and the date on which it was granted . . . ." General Statutes § 4-160 (c).

In the present action, the plaintiff fails to allege in his complaint that the state had waived sovereign immunity or that the claims commissioner had authorized

[16] The plaintiff's complaint lacks any allegations that the defendants perpetuated wrongful conduct to promote an illegal purpose in excess of their statutory authority.

the plaintiff's claims. Accordingly, we conclude that the plaintiff has failed to meet the first exception to the state's sovereign immunity and that his claims for monetary damages brought against the defendants in their official capacities are barred.

The second exception to the state's sovereign immunity is relevant to the plaintiff's claims for declaratory and injunctive relief brought against the defendants in their official capacities. "For a claim made pursuant to the second exception, complaining of unconstitutional acts, we require that [t]he allegations of such a complaint and the factual underpinnings if placed in issue, must clearly demonstrate an incursion upon constitutionally protected interests." (Internal quotation marks omitted.) *Columbia Air Services, Inc.* v. *Dept. of Transportation*, supra, 293 Conn. 350.

In part I B of this opinion, we concluded that the plaintiff has failed to plead facts showing that the defendants violated a statutory or constitutional right. For those foregoing reasons, we conclude that the allegations in the plaintiff's complaint fail to clearly demonstrate an incursion upon constitutionally protected interests and, therefore, that the plaintiff has failed to meet the second exception to the state's sovereign immunity. Accordingly, the plaintiff's § 1983 claims for declaratory and injunctive relief brought against the defendants in their official capacities are barred.

We conclude that the court properly dismissed the plaintiff's claims brought against the defendants in their official capacities for lack of subject matter jurisdiction.

The judgment is affirmed.

In this opinion the other judges concurred.

A AND R ENTERPRISES, LLC *v.* SENTINEL INSURANCE COMPANY, LTD.
(AC 42774)

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

Syllabus

The plaintiff auto repair shop sought to recover damages from the defendant insurance company for breach of a commercial automobile insurance policy in connection with the defendant's failure to pay the full cost of repairs that the plaintiff had made to a vehicle owned by the defendant's insured, which assigned its rights under the insurance policy to the plaintiff. The defendant asserted as a special defense that the plaintiff's claim was barred because the insured failed to comply with the voluntary payment provision of the policy, which required the insured to obtain the defendant's consent before incurring any expense, except at the insured's own cost. The trial court rendered judgment in favor of the defendant, from which the plaintiff appealed to this court. *Held*:

1. This court declined to review the plaintiff's claim that the trial court erred in concluding that recovery of the full cost of the repairs was precluded by the insured's failure to comply with the voluntary payment provision of the policy, as none of the plaintiff's specific claims of error was distinctly raised before the trial court.
2. The plaintiff could not prevail on its claim that the trial court erred in concluding that the defendant's reliance on the insured's alleged noncompliance with the voluntary payment provision of the policy did not constitute an improper attempt to steer the insured to the defendant's preferred auto repair shop in violation of the applicable statute (§ 38a-354 (b)); although the defendant refused to pay the full cost of repairs charged by the plaintiff, there was no evidence presented at trial that the defendant required the insured to use a specific person, and, in the absence of such evidence, the court's determination that the plaintiff failed to prove a violation of § 38a-354 (b) was not clearly erroneous.

Argued October 29, 2020—officially released January 12, 2021

Procedural History

Action to recover damages for breach of an insurance contract, and for other relief, brought to the Superior Court in the judicial district of Hartford and tried to the court, *Hon. Robert B. Shapiro*, judge trial referee;

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

judgment for the defendant, from which the plaintiff appealed to this court. *Affirmed.*

Matthew J. Forrest, for the appellant (plaintiff).

Joseph M. Busher, Jr., for the appellee (defendant).

Opinion

CRADLE, J. In this action seeking recovery of the cost to repair a motor vehicle that was damaged in an accident, the plaintiff, A & R Enterprises, LLC, appeals from the judgment of the trial court, rendered after a court trial, denying its claim for the full cost of the repairs on the ground that the insured, Creative Electric, LLC (insured), which assigned its rights to the plaintiff, failed to comply with the voluntary payment provision of the insurance policy pursuant to which the plaintiff sought recovery from the defendant, Sentinel Insurance Company, Ltd. On appeal, the plaintiff claims that the trial court erred by (1) concluding that the recovery of the full cost of the repairs was precluded by the insured's failure to comply with the voluntary payment provision and (2) rejecting its claim that the defendant's reliance on that provision constituted an improper attempt to steer the insured to the defendant's preferred auto body repair shop in violation of General Statutes § 38a-354 (b). We affirm the judgment of the trial court.

The following factual and procedural history, as set forth by the trial court in its memorandum of decision, is relevant to the resolution of the plaintiff's claims on appeal. "The plaintiff . . . commenced this action for breach of an insurance policy against the defendant . . . in June, 2016, seeking damages in the amount of $3278.58 for repairs made to a motor vehicle owned by [the insured] in June, 2015. The plaintiff is the assignee of [the insured].

"The plaintiff alleges that, on May 7, 2015, [the insured's] vehicle was damaged in a one vehicle accident and

the vehicle was covered by a commercial automobile insurance policy issued by the defendant. [The insured] entered into a contract with the plaintiff to complete all reasonable and necessary repairs. The plaintiff alleges that it completed all reasonable and necessary repairs for a total cost of $9681.84, of which only $6403.26 was paid by the defendant. The plaintiff claims that a balance of $3278.58 remains due and owing from the defendant. It also alleges that the defendant's failure to pay for the repairs is an attempt at 'steering' its insured to an auto body shop other than the plaintiff's by placing financial pressure on the insured to choose another repair facility.

"In response, the defendant admits that it issued an auto insurance policy to [the insured] and that the policy covered the damaged vehicle. The defendant generally denies all other allegations or leaves the plaintiff to its proof. In addition, the defendant set forth various special defenses, including, in its fourth special defense, that the plaintiff's claim is barred by applicable policy language providing that no one may bring legal action against the defendant until there has been full compliance with the terms thereof . . . and there has not been full compliance with all such terms, in that consent was not obtained before the obligations and expenses claimed by the plaintiff were incurred.

"The defendant relies on [§] IV.A.2.b (1) [of the policy, known as the voluntary payment provision], which provides, under Business Auto Conditions, that the defendant 'has no duty to provide coverage under this policy unless there has been full compliance with the following duties,' including that an insured 'must . . . [a]ssume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.' "[1]

[1] Other special defenses were stricken by the court.

Following a one day trial and the submission of post-trial briefs by the parties,[2] the court, on March 19, 2019, issued a memorandum of decision, in which it found in favor of the defendant on its special defense that the insured failed to comply with the provision of the insurance policy that required it to incur no expense without the defendant's consent. Specifically, the court found: "The alleged loss occurred on May 7, 2015. [The defendant's appraiser, Harry] Bassilakis went to the plaintiff's repair facility in Torrington . . . on June 24, 2015, where he met with the insured and inspected the vehicle. He discussed the scope of repairs with the plaintiff's representative, Randall Serkey. While they agreed on the scope of damage, no agreement was reached on the total cost of repairs. Bassilakis provided the defendant's estimate and explained to the insured and to Serkey that the defendant was in a nonagreed position with the insured's body shop of choice and that it was solely the insured's choice as to where to have the vehicle repaired. He advised that a letter [stating this position] would be issued.

"By letter issued the next day, June 25, 2015 . . . the defendant advised the insured that it had been unable to reach an agreed price with the plaintiff, the 'repairer of your choice.' The defendant offered the sum of $4981.42 plus the insured's deductible of $500 as sufficient to repair the vehicle 'at a repair shop located reasonably convenient to you.' Its claim representative asked the insured to contact her to discuss how it wished to proceed. . . .

"While the plaintiff argues that this letter was drafted and sent after the insured had signed a repair contract with the plaintiff . . . evidence of agreement between the plaintiff and the insured does not evidence consent by the defendant. The defendant's position that it did

[2] The parties also filed position statements with the court prior to trial.

not agree with the plaintiff's price was clearly stated. The plaintiff's arguments that the insured had a reasonable expectation that the defendant would cover the cost of the repairs which the insured incurred and that [it] is reasonable that an insured would believe that he was acting with the defendant's knowledge and consent, are unfounded. The insured did not have the requisite consent from the defendant." (Citations omitted.) On that basis, the court rendered judgment in favor of the defendant. This appeal followed.

I

The plaintiff first claims that the trial court erred when it denied recovery of the full cost of repairs to the insured's vehicle on the ground that the insured failed to comply with the voluntary payment provision of the insurance policy[3] because (1) it did not consider whether the defendant was prejudiced by the insured's

[3] We note that, "[a]lthough the general rule is that a defendant who pleads a special defense bears the burden on that issue, we have recognized an exception in the context of a special defense based on a claim that an insured has failed to comply with the terms of the insurance policy. . . . When an insured brings an action against an insurer for breach of the insurance contract, the insured bears the burden of proving that it complied with the terms of the contract, including the conditions. . . . When a defendant pleads failure to comply with the terms of an insurance policy as a special defense, the usual presumption of compliance is extinguished, and the insured carries the burden of proving compliance with the insurance contract, including the conditions precedent to coverage." (Citations omitted; internal quotation marks omitted.) *National Publishing Co.* v. *Hartford Fire Insurance Co.*, 287 Conn. 664, 673–74, 949 A.2d 1203 (2008).

The plaintiff argues that the trial court mistakenly relied on this language from *National Publishing Co.* because "the Connecticut Supreme Court . . . in 2012 explicitly overturned the *National Publishing* [*Co.*] burden of proof paradigm." We disagree. Although our Supreme Court in *Arrowood Indemnity Co.* v. *King*, 304 Conn. 179, 203, 39 A.3d 712 (2012), abandoned its prior jurisprudence that the insured must prove a lack of prejudice to the insurer from the insured's failure to comply with a condition of the contract, it did not abandon the burden discussed previously and relied on by the trial court that the insured bears the burden of proving compliance with the condition.

noncompliance with that provision, (2) voluntary payment provisions are applicable only to expenses incurred prior to the insurer being notified of the claim of loss, (3) it failed to apply the "rule of contra proferentem against the [defendant] where the consent provision [was] ambiguous," and (4) compliance with that provision was not a condition precedent to recovery. The defendant argues that the plaintiff's claims were not raised before the trial court and, thus, cannot be considered by this court on appeal. We agree with the defendant.

"Our rules of practice provide that we are not bound to consider a claim unless it was distinctly raised at trial or arose subsequent to the trial. Practice Book § 60-5. . . . A claim is distinctly raised if it is so stated as to bring to the attention of the court the *precise* matter on which its decision is being asked. . . . A claim briefly suggested is not distinctly raised." (Emphasis added; internal quotation marks omitted.) *Connecticut Bank & Trust Co.* v. *Munsill-Borden Mansion, LLC*, 147 Conn. App. 30, 36–37, 81 A.3d 266 (2013). "Our rules of procedure [also] do not allow a [party] to pursue one course of action at trial and later, on appeal, argue that a path he rejected should now be open to him. . . . To rule otherwise would permit trial by ambuscade." (Internal quotation marks omitted.) *Ferri* v. *Powell-Ferri*, 317 Conn. 223, 236–37, 116 A.3d 297 (2015).

Our examination of the trial court record reveals that the plaintiff did not argue to the trial court that the defendant was required and failed to prove prejudice as a result of the plaintiff's alleged noncompliance with the voluntary payment provision of the policy or that voluntary payment provisions apply only to expenses incurred prior to an insurer being notified of a claim of loss. Those claims are not properly before this court, and we therefore decline to review them.

The plaintiff's claims that the voluntary payment provision is ambiguous and is not a condition precedent to recovery are also unpreserved. At trial, the plaintiff argued that the voluntary payment provision of the policy was "designed to allow the insurer to be notified of a claim, suit or accident and to investigate it for purposes of determining coverage, liability, and asserting rights the insurer may have, not to limit the ability of the insured to rectify damage to the insured property." Alternatively, the plaintiff argued that, even if the policy did require the consent of the defendant "before the repairs could be completed (which it does not), the facts demonstrate that the insured did have the consent of the defendant to have his vehicle repaired."

On appeal, the plaintiff now argues that the voluntary payment provision of the policy is ambiguous in that the term "consent" can mean either consent to repair or consent to the cost of the repairs. In its posttrial brief, the plaintiff argued that the insured was not required to obtain the consent of the defendant to repair the vehicle, and, even if that consent was required by the policy, the insured had obtained it. Later in that brief, the plaintiff cited case law pertaining to the interpretation of contractual terms that may be susceptible to more than one interpretation. Aside from a singular characterization of the voluntary payment provision as "an ambiguous clause tucked into an eighty-three page insurance policy drafted by [the defendant]," the plaintiff did not, however, explicitly allege any ambiguity in the language of the voluntary payment provision of the policy. The plaintiff did not clearly argue—in the position statement that he filed with the court prior to trial, at trial, in his posttrial brief, or in his reply to the defendant's posttrial brief—that the term "consent" in the voluntary payments provision of the insurance policy is ambiguous. The first time the plaintiff distinctly addresses this claim is on appeal. Even if we assume that the plaintiff's reference to case law pertaining to

contractual ambiguities pertained to the term "consent" in the voluntary payment provision, as he now argues on appeal, the plaintiff failed to develop that argument. Because the plaintiff, at most, briefly suggested such an argument, it was not distinctly raised. See *Connecticut Bank & Trust Co.* v. *Munsill-Borden Mansion, LLC*, supra, 147 Conn. App. 37. Because the plaintiff raises this distinct claim for the first time on appeal, it was not properly preserved for this court to consider. The plaintiff likewise failed to present a clear or distinct argument at trial that compliance with the voluntary payment provision was not a condition precedent to recovery.[4] Because these claims were not distinctly raised before the trial court, we decline to address them.

II

The plaintiff also claims that the trial court erred in concluding that the defendant's reliance on the insured's alleged noncompliance with the voluntary payment provision of the policy did not constitute an improper attempt to steer the insured to the defendant's preferred auto body repair shop in violation of § 38a-354 (b).[5] We are not persuaded.

Section 38a-354 (b) provides in relevant part that "[n]o insurance company doing business in this state, or agent or adjuster for such company shall (1) require any insured to use a specific person for the provision

[4] We also note that the plaintiff has provided no legal authority in support of the argument that the voluntary payment provision was not a condition precedent to recovery. Thus, even if it had been properly preserved, it is not adequately briefed. See *Gorski* v. *McIsaac*, 156 Conn. App. 195, 209, 112 A.3d 201 (2015) ("We are not obligated to consider issues that are not adequately briefed. . . . [M]ere conclusory assertions regarding a claim, with no mention of relevant authority and minimal or no citations from the record, will not suffice." (Internal quotation marks omitted.)).

[5] The plaintiff also argues that "[p]ublic policy favors the reversal of the trial court's decision, which creates uncertainty for insured consumers while offering insurers a way to avoid liability for otherwise covered claims . . . ." Because this claim was not raised before the trial court, we decline to review it.

of automobile physical damage repairs . . . .'' The question of whether the defendant required the insured to have the repairs done at a specific repair shop is a factual determination that is subject to our clearly erroneous standard of review. ''The trial court's findings are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . .

''In applying the clearly erroneous standard of review, [a]ppellate courts do not examine the record to determine whether the trier of fact could have reached a different conclusion. Instead, we examine the trial court's conclusion in order to determine whether it was legally correct and factually supported. . . . This distinction accords with our duty as an appellate tribunal to review, and not to retry, the proceedings of the trial court.'' (Internal quotation marks omitted.) *DeMattio* v. *Plunkett*, 199 Conn. App. 693, 711, 238 A.3d 24 (2020). ''Under the clearly erroneous standard of review, a finding of fact must stand if, on the basis of the evidence before the court and the reasonable inferences to be drawn from that evidence, a trier of fact reasonably could have found as it did.'' (Internal quotation marks omitted.) *Wells Fargo Bank, N.A.* v. *Lorson*, 183 Conn. App. 200, 210, 192 A.3d 439, cert. granted on other grounds, 330 Conn. 920, 193 A.3d 1214 (2018).

At trial, the plaintiff argued that the defendant constructively steered the insured away from one repair shop to another by setting a price cap on the cost of repairs. The plaintiff argued: ''The price cap does not allow the insured to receive service from their auto

body shop of choice without a penalty and thereby steers the insured from using the auto body shop they have chosen. With this price cap, the options for repair shops for the insured are limited and the defendant is in violation of . . . § 38a-354 [(b)]."

The trial court rejected the plaintiff's steering claim, finding that there was no evidence of any violation of § 38a-354 (b). The court cited to Bassilakis' testimony that it was the right of the insured to choose the repair shop and to the estimate that he prepared and provided to the plaintiff and the insured, which "clearly stated this."[6]

On appeal, the plaintiff contends that the trial court erred in so finding because the letter sent by the defendant refusing to pay the estimate provided by the plaintiff "limits consumer choice in repair shops. It specifies that the insurer will not cover the cost of repair at the consumer's chosen shop, and also directs the consumer to the insurer's (unnamed) shop that offers a 'written guarantee'." The plaintiff argues that "[a]llowing insurers to set price caps, dictate repair shops, or both, violates the anti-steering statute . . . ." We disagree.

Although the defendant refused to pay the full cost of the repairs charged by the plaintiff—the insured's repair shop of choice—there was no evidence presented at trial that the defendant "require[d]" the insured to "use a specific person" to repair the vehicle. General Statutes § 38a-354 (b). In the absence of any such evidence, the trial court's determination that the plaintiff failed to prove a violation of § 38a-354 (b) was not clearly erroneous.

The judgment is affirmed.

In this opinion the other judges concurred.

[6] The estimate prepared by Bassilakis on behalf of the defendant provided, inter alia: "YOU HAVE THE RIGHT TO CHOOSE THE LICENSED REPAIR SHOP WHERE THE DAMAGE TO YOUR MOTOR VEHICLE WILL BE REPAIRED."

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NOTICE OF CONNECTICUT STATE AGENCIES

CONNECTICUT RETIREMENT SECURITY AUTHORITY

Notice of Intent to Adopt Procedures

In accordance with Section 1-121(a) of the Connecticut General Statutes, notice is hereby given that the Connecticut Retirement Security Authority (the ''Authority'') is proposing to adopt the operating procedures outlined below for the purpose of operating the Authority pursuant to Section 31-417(j) and Section 3-13j(b) of the Connecticut General Statutes. The procedures include: (a) Procurement: Acquisition of Real and Personal Property and Contracting for Personal Services; (b) Adoption of Annual Budget and Plan of Operations; (c) Compensation and Benefits; (d) Hiring and Promotion; Discipline and Termination; (e) Equal Employment Opportunity and Affirmative Action; (f) Using Surplus Funds; (g) Making Modifications to the Program; (h) Disclosure of Third Party Fees by Persons or Entities Providing Investment Services; and (i) Ethics.

The Authority is also proposing to adopt bylaws dealing with governance matters.

The proposed procedures and bylaws are available by sending an email to the Authority at Jessica.Muirhead@ct.gov (please include ''Operating Procedures/Bylaws'' in the subject line and specify which documents you wish to receive).

Interested persons wishing to present their views on the procedures and/or the bylaws are invited to do so in writing within thirty (30) days following publication of this notice. Comments can be submitted electronically to the Authority at Jessica.Muirhead@ct.gov (please include ''Operating Procedures/Bylaws'' in the subject line). Comments can also be mailed to Ms. Jessica Muirhead, Senior Program Administrator, Office of the State Comptroller, 165 Capitol Avenue, Hartford, CT 06106-1775.

NOTICES

CONNECTICUT BAR EXAMINING COMMITTEE

The following individuals applied for admission to the Connecticut bar by Uniform Bar Examination score transfer in November 2020. Written objections or comments regarding any candidate should be addressed to the Connecticut Bar Examining Committee, 100 Washington Street, 1st Floor, Hartford, CT 06106 as soon as possible.

Kathleen B. Harrington
Deputy Director, Attorney Services

Bryant, Dane John Anthony of New Rochelle, NY
Gross, Nicholas R. of Monroe, CT
Jacobson, Adam M. of Boynton Beach, FL
Jafri, Farva Batool of Armonk, NY
Moore, Ashley Frances of New Haven, CT
Reilly, Dominic Michael of Chicago, IL
Sambrook, Lucas Christopher of New York, NY
Sullivan, Jason Michael of Highland Heights, OH
Yagoobian, Christopher J. of Attleboro, MA

CONNECTICUT BAR EXAMINING COMMITTEE

The following individuals applied for admission to the Connecticut bar without examination in November 2020. Written objections or comments regarding any candidate should be addressed to the Connecticut Bar Examining Committee, 100 Washington Street, 1st Floor, Hartford, CT 06106 as soon as possible.

Kathleen B. Harrington
Deputy Director, Attorney Services

Banar, Elaine of Darien, CT
Brinkley, Marissa Cashy of Stamford, CT
Burnsed, Carrie Lynn of Oklahoma City, OK
Hausberg, Abigail of Darien, CT
Kalinowski, John M. of West Hartford, CT
Liao, Nancy of New Haven, CT
Liebman, Arin Mossovitz of New Canaan, CT
Mackey, Joshua E. of Millbrook, NY
Pergament, Benjamin David of Pleasantville, NY
Snellings, Michael Orin of Chesapeake, VA
Valat De Crdova, Thierry of Stamford, CT
Yegyazarian, Anush of Greenwich, CT

Notice of Suspension of Attorney and Appointment of Trustee

Pursuant to § 2-54 of the Connecticut Practice Book, notice is hereby given that on December 14, 2020, in Docket No. HHD-CV20-6125836-S, Jeffrey D. Cedarfield, Juris No. 417470 of Canton, Connecticut, was suspended from the practice of law in Connecticut for a period of six (6) months, commencing on December 1, 2020.

Pursuant to Practice Book § 2-64, Attorney Patrick Rosenberger, Juris No. 309309 of Hartford, Connecticut, is hereby appointed as Trustee to take such steps as are necessary to take control of the Respondent's clients' funds account(s). The Respondent shall cooperate with the Trustee in this regard. The Respondent shall not deposit to, or disburse any funds from his clients' funds account.

During the term of suspension the Respondent shall comply with all terms and conditions of Practice Book § 2-47B; Restrictions on the Activities of Deactivated attorneys.

David Sheridan
Presiding Judge

Appointment of Trustee

Pursuant to Practice Book § 2-64, on November 3, 2020 in docket number HHD-CV20-6131277-S, Attorney Barbara Taylor (Juris no. 417603) of Hartford, Connecticut is appointed as Trustee to inventory the late Attorney Michael J McAndrew's (Juris no. 405968) files, to secure his IOLTA account, take and review the office mail, and take such action as seems indicated to protect the interests of Attorney McAndrews' clients and to provide an accounting and report to the Court.

David Sheridan
Presiding Judge

Appointment of Trustee

Pursuant to Practice Book § 2-64, on June 12, 2020 in docket number HHD-CV20-6127734-S, Attorney Kathleen M. Nevins (Juris No. 413356) of Glastonbury, Connecticut is appointed as trustee to inventory the late Daniel Blume's (Juris No. 004937) files, to secure his clients' fund account(s), if any, take and review the office mail, and take such action as seems indicated to protect the interests of David Blume's clients and to provide an accounting to the Court.

David Sheridan
Presiding Judge

Notice of Reprimand of Attorney

Pursuant to § 2-54 of the Connecticut Practice Book, notice is hereby given that on November 3, 2020, in Docket Number HHD-CV20-6131809-S, Attorney Lisa A. Greenberg, Juris No. 304361 was reprimanded.

David Sheridan
Presiding Judge

Notice of Reprimand of Attorney

Pursuant to § 2-54 of the Connecticut Practice Book, notice is hereby given that on August 20, 2020, in Docket Number HHD-CV20-6125421-S, Attorney Sonya N. Armfield, Juris No. 419550, is reprimanded.

David Sheridan
Presiding Judge

Notice of Reprimand of Attorney

Pursuant to § 2-54 of the Connecticut Practice Book, notice is hereby given that on September 10, 2020, in Docket Number HHD-CV20-6125835-S, Attorney Stephen Louis Rockmacher, Juris No. 403462, is reprimanded.

David Sheridan
Presiding Judge

Notice of Suspension of Attorney

Pursuant to Practice Book § 2-54, notice is hereby given that on March 11, 2020, in Docket Number HHD-CV19-6108777-S, Musa P Sebadduka, Juris No. 425881, of West Hartford, CT was suspended from the practice of law for a period of six (6) months, commencing at the conclusion of any other period of suspension imposed by this or any other court.

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

After the conclusion of all periods of suspension, the Respondent may apply for reinstatement pursuant to § 2-53 of the Connecticut Practice book.

David Sheridan
Presiding Judge

Notice of Suspension of Attorney

Pursuant to Practice Book Section § 2-54, notice is hereby given that on February 11, 2020, in Docket Number HHD-CV20-6122615-S, David V. Chomick, Juris No. 428595 of East Hartford, CT was suspended from the practice of law in Connecticut as follows:

As to COUNT ONE:

The Respondent is hereby suspended form the practice of law for a period of nine (9) months, commencing on February 11, 2020.

On or before March 13, 2020 the Respondent shall make restitution.

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

The Respondent shall apply for reinstatement pursuant to the provisions of Practice Book § 2-53 of the Connecticut Practice Book.

As to COUNT TWO:

The Respondent is hereby suspended form the practice of law for a period of nine (9) months, commencing on February 11, 2020.

On or before March 13, 2020 the Respondent shall make restitution.

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

The Respondent shall apply for reinstatement pursuant to the provisions of Practice Book § 2-53 of the Connecticut Practice Book.

David Sheridan
Presiding Judge

Notice of Interim Suspension of Attorney

Pursuant to § 2-54 of the Connecticut Practice Book, notice is hereby given that on November 17, 2020, in Docket No. HHD-CV20-6125382-S, Michael J Cronin, Juris No. 410876 is placed on interim suspension from the practice of law, effective immediately, until further order of the court as to the SECOND COUNT only.

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

The Respondent's failure to comply with this order shall be considered misconduct and may subject the Respondent to additional discipline.

In the event this interim suspension continues for a period of one year or more, any application for reinstatement shall be made pursuant to the provisions of Practice Book § 2-53.

David Sheridan
Presiding Judge

Notice of Disbarment of Attorney

Pursuant to § 2-54 of the Connecticut Practice Book, notice is hereby given that on November 17, 2020, in Docket Number HHD-CV-18-6095358, Dale James Morgado, Juris No. 427675, was ordered disbarred as follows:

1. As to the SECOND COUNT only:

The Court hereby finds that the Respondent was disbarred by the Supreme Court of Florida, effective February 7, 2019.

The Respondent is disbarred from the practice of law in Connecticut for a period of twelve (12) years, effective February 7, 2019, and subject to any further orders of the Supreme Court of Florida.

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

Any application for reinstatement shall be made pursuant to the provisions of Practice Book § 2-53; however, the Respondent shall not be eligible to apply for reinstatement unless and until such time as he is eligible for reinstatement to the bar in the State of Florida.

2. As to the FOURTH COUNT only:

The Respondent is disbarred from the practice of law in Connecticut for a period of twelve (12) years, effective November 17, 2020.

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

The Respondent shall apply for reinstatement pursuant to the provisions of § 2-53 of the Practice Book. However, the Respondent shall not be eligible to apply for reinstatement until he has satisfied the judgment entered on July 26, 2019 in the United States District Court, Northern District of Illinois, Case No. 18-CV-5754, in the amount of $395,237.58.

David Sheridan
Presiding Judge