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STATE OF CONNECTICUT *v.* RODERICK ROGERS

The defendant's petition for certification to appeal from the Appellate Court, 183 Conn. App. 669 (AC 40125), is granted, limited to the following issues:

"1. Does this court's decision in *State* v. *Jackson*, 334 Conn. 793, 224 A.3d 886 (2020), which directed that the conviction of the defendant in that case, Raashon Jackson, be reversed, require that this court also reverse the conviction of Jackson's codefendant in the present case?

"2. Is the defendant's unpreserved claim regarding the state's late disclosed expert witness on cell site location information reviewable?

"3. Was the testimony of the state's late disclosed expert's on cell site location information, as well as any evidence admitted in connection with that testimony, harmful to the defendant?"

ROBINSON, C. J., and KAHN, J., did not participate in the consideration of or decision on this petition.

Megan L. Wade, assigned counsel, and *James P. Sexton*, assigned counsel, in support of the petition.

Nancy L. Chupak, senior assistant state's attorney, in opposition.

Decided April 29, 2020

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judgment filed by the C Co. plaintiffs. R Co. thereafter filed motions for partial summary judgment as against the C Co. plaintiffs, F Co. and E Co. R Co. maintained that it was entitled to coverage under its excess policies and that, pursuant to controlling California law and the language of the excess policies, it was required to satisfy only a single per occurrence limit of $2 million to reach the excess insurers' coverage. R Co. further claimed that vertical exhaustion was mandated by the excess policies and that recovery from the excess insurers was not precluded by its settlement under the I Co. primary policies. The trial court rendered judgment granting the motion for partial summary judgment filed by the C Co. plaintiffs, and the joinder motions filed by F Co. and E Co., and denying the motions for partial summary judgment filed by R Co. The court determined that the I Co. primary policies had been in force for four consecutive policy periods, each of which provided $2 million in coverage per occurrence, for a total of $8 million per occurrence for the years the I Co. policies were in effect. The court also determined that the underlying primary policies had to be horizontally exhausted before any of the C Co. plaintiffs' excess policies could attach to provide coverage. The court further determined that R Co. was required to be paid the limits of its underlying primary policies before it could access certain of the excess policies. The court determined that a 1982–1983 policy that was issued by F Co. was specifically excess to a certain excess policy issued by T Co. that provided $10 million in coverage above an additional $40 million in other underlying insurance. The court also determined that a 1984 policy and a 1985 policy that were issued by F Co. were general excess policies and that the limits of all three F Co. policies could not be triggered because certain underlying policies issued by S Co., T Co. and I Co. constituted other valid insurance that was collectible by the insured. The court determined that the coverage limits of a 1984–1985 excess policy and three 1985–1986 excess policies that were issued by E Co. could not be triggered because underlying policies issued by S Co., T Co., U Co. and I Co. constituted other valid insurance that was collectible by the insured. R Co. filed separate appeals challenging the trial court's judgment for the C Co. plaintiffs and for F Co. and E Co., and the C Co. plaintiffs cross appealed. *Held*:

1. The trial court improperly granted the motion for partial summary judgment filed by the C Co. plaintiffs, as the court's conclusion that their excess policies could never attach was incorrect because A Co. had paid R Co. more than the per occurrence limits of the underlying I Co. primary policies:

   a. The C Co. plaintiffs could not prevail on their claim that the I Co. primary policies had a total liability of $24 million over the 1959–1971 period, which was based on their assertion that the three year policy period endorsements to the primary policies were to be treated as annual periods that were subject to a per occurrence limit and that the policy period of each multiyear primary policy was defined as three consecutive annual periods: the trial court properly concluded that each I Co. policy

provided a per occurrence limit of $2 million that could not be annualized, the court having correctly determined that the limit of liability provision in each policy set a per occurrence limit for each three year period of the policy and an aggregate limit for multiple occurrences during any annual period; moreover, the provisions of the policies were not ambiguous, as the endorsements stated that the three year policy periods were made up of three annual periods, which was relevant in that rates were based on annual periods, nowhere in the policies or their endorsements was the policy period defined as three consecutive annual periods, and there was no language in the policies or their declarations that provided for coverage on a per occurrence, per year basis.

b. Contrary to the trial court's determination that the I Co. primary policies provided $8 million in coverage because their $2 million per occurrence limits were in force for four consecutive policy periods, R Co. was entitled to $2 million in coverage per policy for a total of $4 million in coverage; the policies' renewal certificates and endorsements constituted continuations of the original contracts such that the limit of liability was the amount stated in the contracts regardless of the number of years involved or the number of premiums that were paid.

c. This court concluded, after an examination of California law, that the trial court did not err in determining that R Co. was required to horizontally exhaust all of its primary insurance before the liability of its excess insurers could attach: this court determined that it would apply the rule of horizontal exhaustion set forth by the California Court of Appeal in *Community Redevelopment Agency* v. *Aetna Casualty & Surety Co.* (50 Cal. App. 4th 329) and other California cases that adhere to the settled rule under California law that an excess policy does not cover a loss until all primary insurance has been exhausted.

d. Although the trial court properly determined that payment of the full limits of the primary policies was necessary for exhaustion to be satisfied, it improperly determined that the necessary exhaustion of the I Co. primary policies remained unsatisfied: because R Co. received payment pursuant to the settlement of the I Co. primary policies for an amount that exceeded the $4 million in coverage under those policies, under the circumstances here, the obligations of the Continental plaintiffs may arise if it is determined on remand that Arrowood's payment satisfies the exhaustion requirement of those policies with respect to any one occurrence, and, as that determination also applied to the H Co. and London excess policies, the trial court improperly determined that a certain London market insurance policy was inaccessible and that no liability could attach under a certain H Co. umbrella policy.

2. R Co.'s claim that the trial court improperly granted F Co.'s motion for summary judgment was unavailing, as R Co. failed to exhaust certain of its excess insurance policies when it entered into settlement agreements with S Co. and T Co.; F Co.'s 1982–1983 and 1984 and 1985 excess policies applied only after the exhaustion of the T Co. and S Co. $10 million excess policies and $40 million in other underlying insurance, and even if R Co. had horizontally exhausted the $40 million in underlying

determination that payment of the full limits of the primary policies was necessary for exhaustion to be satisfied was proper. The court, however, nevertheless improperly determined that the necessary exhaustion of the Royal primary policies remained unsatisfied. This court has determined that the exhaustion of all primary insurance is required before an excess insurer is obligated to respond; see part III B of this opinion; and that the Royal primary policies each provide coverage of $2 million per occurrence for a combined total of $4 million. See part III A of this opinion. Because Rohr has entered into and received payment pursuant to a settlement concerning the Royal primary policies for an amount that exceeds $4 million, under the circumstances here, exhaustion by payment of the full amount of the limits of the Royal primary policies has been satisfied.[27] This determination applies to the Harbor and London excess policies with two noted distinctions. With respect to London policy V20621, which was found to be specifically excess to London policy V20620, the trial court found that policy V20621 will be immediately triggered upon exhaustion of policy V20620, but that because V20620 could not be accessed prior to exhaustion of all primary policies, which the court found could not take place, policy V20621 likewise would be inaccessible. In light of our determination of the liability limits of the Royal primary policies and that, because the amount of the settlement with and payment by Arrowood under

[27] The trial court noted that it made "no determination at [that] time that the primary policies are the *only* policies that must be exhausted before the Harbor and London policies will provide coverage. As previously noted, some of the policies may have other levels of coverage intervening between them and the primary policies. The present motions, however, seek only a determination of whether coverage under the Harbor and London policies is unavailable *because the primary policies have not been exhausted*. Accordingly, the court is not called upon at this time to determine whether any additional policies within Rohr's insurance coverage portfolio must also be exhausted before coverage is available under the Harbor and London policies." (Emphasis in original.)

those policies exceeded their limits, exhaustion of those primary policies has been satisfied, we disagree with the trial court's conclusion regarding the inaccessibility of policy V20621.[28] Moreover, with respect to Harbor umbrella policy 108909, the trial court again determined that no liability under the umbrella policy could attach until the underlying primary insurance has been exhausted by payment of the liability limits. Given our determination regarding the exhaustion of the underlying insurance, liability under the Harbor umbrella policy attaches.

D

Conclusion

In summary, because Arrowood, as successor to Royal, has paid Rohr more than the per occurrence limits of its 1959 to 1971 policies, the obligations of the Continental plaintiffs may arise if it is determined on remand that Arrowood's payment satisfies the exhaustion requirement of those policies with respect to any one occurrence. Thus, the trial court's conclusion that the excess policies of the Continental plaintiffs could never attach was incorrect. Therefore, the trial court improperly granted the motion for partial summary judgment filed by the Continental plaintiffs and determined that they were entitled to judgment as a matter of law. Instead, the court should have granted the motion for summary judgment filed by Rohr with respect to the Continental plaintiffs.

IV

FEDERAL'S MOTION FOR SUMMARY JUDGMENT

In its appeal in Docket No. AC 41537, Rohr challenges the judgment of the trial court granting the motion for

[28] We further note that London policy V20621 lists Royal Indemnity Company as one of four primary insurers under the policy. See footnote 15 of this opinion. Our determination that the exhaustion requirement has been satisfied is limited to the exhaustion of the Royal primary policies only. See footnote 27 of this opinion.

ORDERS

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KATHLEEN BUDRAWICH *v.* EDWARD BUDRAWICH, JR.

The plaintiff's petition for certification to appeal from the Appellate Court, 200 Conn. App. 229 (AC 41125), is denied.

Kathleen Budrawich, self-represented, in support of the petition.

Decided January 26, 2021

SUSANNE P. WAHBA *v.* JPMORGAN CHASE BANK, N.A.

The plaintiff's petition for certification to appeal from the Appellate Court, 200 Conn. App. 852 (AC 42389), is denied.

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

Thomas P. Willcutts, in support of the petition.

Brian D. Rich, in opposition.

Decided January 26, 2021

SHERI SPEER *v.* DONNA SKAATS ET AL.

The plaintiff's petition for certification to appeal from the Appellate Court, 200 Conn. App. 903 (AC 43096), is denied.

Sheri Speer, self-represented, in support of the petition.

Decided January 26, 2021

STATE OF CONNECTICUT *v.* BRIAN MANSFIELD

The defendant's petition for certification to appeal from the Appellate Court, 201 Conn. App. 748 (AC 41587), is denied.

Timothy H. Everett, assigned counsel, in support of the petition.

Jonathan M. Sousa, deputy assistant state's attorney, in opposition.

Decided January 26, 2021

STEPHEN M. TUNICK ET AL. *v.* BARBARA TUNICK ET AL.

The named plaintiff's petition for certification to appeal from the Appellate Court, 201 Conn. App. 512 (AC 42031), is denied.

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

William W. Taylor, in support of the petition.

Robert C.E. Laney, in opposition.

Decided January 26, 2021

STATE OF CONNECTICUT *v.* MUHAMMAD A. QAYYUM

The defendant's petition for certification to appeal from the Appellate Court, 201 Conn. App. 864 (AC 42456), is granted, limited to the following issues:

"1. Did the Appellate Court correctly conclude that the trial court had properly admitted evidence of the defendant's lack of income?

"2. Did the Appellate Court correctly conclude that the trial court had not abused its discretion in permitting expert testimony regarding the defendant's intent to sell narcotics?"

Robert L. O'Brien, assigned counsel, in support of the petition.

Linda F. Currie-Zeffiro, senior assistant state's attorney, in opposition.

Decided January 26, 2021

IN RE JA'MAIRE M.

The petition of the respondent father for certification to appeal from the Appellate Court, 201 Conn. App. 498 (AC 43710), is denied.

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

Seon Bagot, assistant attorney general, in opposition.

Decided January 26, 2021

ERIC T. KELSEY *v.* COMMISSIONER OF CORRECTION

The petitioner Eric T. Kelsey's petition for certification to appeal from the Appellate Court, 202 Conn. App. 21 (AC 42932), is granted, limited to the following issues:

"1. Did the Appellate Court correctly determine that 'abuse of discretion' is the appropriate standard of review for dismissals of habeas petitions pursuant to General Statutes § 52-470?

"2. Did the Appellate Court correctly determine that the petitioner had failed to establish good cause necessary to overcome the rebuttable presumption of unreasonable delay as set forth in § 52-470?"

Naomi T. Fetterman, assigned counsel, in support of the petition.

Laurie N. Feldman, special deputy assistant state's attorney, in opposition.

Decided January 26, 2021

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CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

IN RE MARCQUAN C.*
(AC 43892)

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

Syllabus

The respondent mother appealed to this court from the trial court's order requiring her to participate in a psychological evaluation, issued in the same memorandum of decision with its judgment denying her motion to revoke the commitment of her minor child to the custody and care of the petitioner, the Commissioner of Children and Families. The mother claimed the order was a part of the judgment denying her motion to revoke commitment, alleging that the order, inter alia, violated her right to remain silent in neglect proceedings. *Held* that this court lacked jurisdiction over the respondent mother's appeal, as the order from which the mother appealed was not a final judgment: the trial court's order for a psychological examination was not a part of the court's judgment denying the motion to revoke commitment, as the court's denial of the motion to revoke commitment was not based on its decision to order the psychological examination; moreover, the trial court's order for a psychological examination was not immediately appealable as it did not satisfy either of the prongs of the test set forth in *State* v. *Curcio* (191 Conn. 27) that govern when an interlocutory order is appealable, as the order was an integral part of the ongoing proceedings involving the mother and her child following the uncared for petition brought by the petitioner in that the results of the evaluation could affect the ultimate outcome of a later adjudication of the mother's parental rights, and, thus, the resolution of the issue did not constitute a separate and distinct proceeding; furthermore, no presently existing right of the mother had been concluded by the court's order to undergo a psychological evaluation, as the order did not risk irreparable harm to the mother's custody or visitation rights or to the parent-child relationship, and the order did not directly infringe on or threaten irreparable harm to the mother's right to remain silent or rule on the admissibility of any statement made by her, and, accordingly, the appeal was dismissed.

Argued October 8, 2020—officially released February 2, 2021**

* 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 on to persons having a proper interest therein and upon order of the Appellate Court.

** February 2, 2021, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Procedural History

Petition by the Commissioner of Children and Families to adjudicate the respondents' minor child uncared for, brought to the Superior Court in the judicial district of New Haven, Juvenile Matters, where the court, *Conway, J.*, adjudicated the child uncared for and ordered protective supervision with custody vested in the respondent mother; thereafter, the court, *Conway, J.*, extended the period of protective supervision and sustained an order of temporary custody vesting custody of the minor child with the respondent father; subsequently, the court, *Hon. Richard E. Burke*, judge trial referee, vacated the order of temporary custody and ordered shared custody and guardianship of the child between the respondent parents with primary physical custody vesting in the respondent father; thereafter, the court, *Hon. Richard E. Burke*, judge trial referee, sustained an order of temporary custody vesting custody of the minor child in the petitioner; subsequently, the court, *Hon. Richard E. Burke*, judge trial referee, granted the motion filed by the petitioner to open and modify the dispositive order of protective supervision, and committed the child to the custody of the petitioner; thereafter, the court, *Conway, J.*, denied the respondent mother's motion to revoke commitment, and the respondent mother appealed to this court. *Appeal dismissed.*

Albert J. Oneto IV, assigned counsel, for the appellant (respondent mother).

Seon Bagot, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Benjamin Zivyon* and *Evan O'Roark*, assistant attorneys general, for the appellee (petitioner).

Opinion

SUAREZ, J. The respondent mother, Monica C.,[1] appeals from the trial court's order requiring her to

[1] The mother is referred to herein as the respondent. The father, Mark B., although also a respondent in the underlying proceedings, is not a party to this appeal and for convenience is referred to herein as the father.

participate in a psychological evaluation. The court ordered the evaluation immediately after it denied the respondent's motion to revoke commitment with respect to her minor child, Marcquan C.[2] The respondentdoes not challenge on appeal the judgment denying her motion to revoke commitment. Her appeal is limited to her claim that the court abused its discretion by compelling her to participate in the psychological evaluation. We do not reach the respondent's claim because we agree with the petitioner, the Commissioner of Children and Families, that the order for a psychological evaluation was not part of the court's judgment denying the respondent's motion to revoke commitment and is not otherwise an appealable final judgment.[3] Accordingly, we dismiss the appeal.

The following facts, which are either undisputed or were found by the court, and procedural history are relevant to this appeal. On January 13, 2017, the petitioner filed a neglect petition alleging that Marcquan was being neglected. On May 16, 2017, Marcquan was

[2] The attorney for the minor child has filed a statement, pursuant to Practice Book §§ 67-13 and 79a-6 (c), adopting the brief of the Commissioner of Children and Families.

[3] The respondent also claims that, as part of its order requiring her to participate in a psychological evaluation, the court abused its discretion by ordering that confidential records related to her past treatment with a counselor be disclosed to the court-appointed evaluator. The respondent argues that the court failed to make a necessary finding pursuant to General Statutes § 52-146s that the records should be disclosed and that, even if such a finding was made by the court, the evidence did not support such finding.

For the same reasons that we conclude in this opinion that the appeal from the court's order for a psychological evaluation is not an immediately appealable interlocutory order, we likewise conclude that we lack jurisdiction over this claim, which, according to the respondent, is a component of the order for a psychological evaluation. As the respondent acknowledges in her appellate brief, however, the record, including the court's December 26, 2019 memorandum of decision, wherein it denied the respondent's motion to revoke commitment and ordered her to participate in a psychological evaluation, does not reflect that the court made any ruling concerning the disclosure of her counseling records. Accordingly, even if we did have jurisdiction to review this claim, the lack of an order leaves us with no ruling to review.

adjudicated uncared for and the court, *Conway*, *J.*, ordered that he remain in the care and custody of the respondent under protective supervision for a period of six months.[4] Subsequently, the order was extended for an additional six months.

On February 5, 2018, Marcquan appeared in school with a swollen eye and lines resembling belt marks on his temple. The respondent admitted disciplining him on his buttocks with a belt and theorized that she may have inadvertently struck him on the head. On February 7, 2018, the court, *Conway*, *J.*, vested temporary custody of Marcquan with his father. On April 11, 2018, by agreement of the parties, the court, *Hon. Richard E. Burke*, judge trial referee, ordered that the order of temporary custody be vacated and that the father and the respondent share custody and guardianship of Marcquan, with the father having primary physical residence. Protective supervision remained in place until August 11, 2018.

On July 10, 2018, at an in-court review hearing, the father reported that he could no longer care for Marcquan and, on July 12, 2018, the court vested temporary care and custody of the child with the petitioner. On July 27, 2018, the court granted the petitioner's motion to modify the order of protective supervision and committed Marcquan to the care and custody of the petitioner. Since that time, he has remained committed to the petitioner. Marcquan was placed in nonrelative foster care until September, 2019, when he was placed with his godmother.

On September 30, 2019, the respondent filed a motion to revoke commitment.[5] On October 19, 2019, the petitioner filed a motion for a psychological evaluation of

[4] On May 16, 2017, the neglect petition was orally amended to allege that Marcquan was uncared for.

[5] Motions to revoke commitment are governed by General Statutes § 46b-129 (m), which provides in relevant part: "The commissioner, a parent or the child's attorney may file a motion to revoke a commitment, and, upon

Marcquan and the respondent. On October 29, 2019, the court, *Conway, J.*, held a hearing on the petitioner's motion for a psychological evaluation and, expressing its belief that the requested order would be futile, denied the motion on the ground that "[the respondent] refuses to cooperate."

On November 25 and December 18, 2019, the court, *Conway, J.*, held a hearing on the respondent's motion to revoke commitment. On December 26, 2019, the court issued a memorandum of decision wherein it found the following facts. The permanency plan for Marcquan was reunification with the respondent.[6] To that end, the respondent and Marcquan were working with R'kids, a reunification service provider, from May to August, 2019, to provide a safe transition of Marcquan from out of home care to the respondent. R'kids identified three

finding that cause for commitment no longer exists, and that such revocation is in the best interests of such child . . . the court may revoke the commitment of such child . . . . No such motion shall be filed more often than once every six months."

Practice Book § 35a-14A provides in relevant part: "Where a child or youth is committed to the custody of the Commissioner . . . the commissioner, a parent or the child's attorney may file a motion seeking revocation of commitment. The judicial authority may revoke commitment if a cause for commitment no longer exists and it is in the best interests of the child . . . . Whether to revoke the commitment is a dispositional question, based on the prior adjudication, and the judicial authority shall determine whether to revoke the commitment upon a fair preponderance of the evidence. The party seeking revocation of commitment has the burden of proof that no cause for commitment exists. If the burden is met, the party opposing the revocation has the burden of proof that revocation would not be in the best interests of the child. If a motion for revocation is denied, a new motion shall not be filed by the movant until at least six months have elapsed from the date of the filing of the prior motion unless waived by the judicial authority."

[6] General Statutes § 46b-129 (k) (1) (A) requires that nine months after a child is placed in the care and custody of the petitioner, the petitioner must file a permanency plan and the court must have a hearing on such permanency plan. Section 46b-129 (k) (2) provides that such permanency plan may include the goal of (1) revocation of commitment and reunification of the child with the parent, (2) transfer of guardianship to a third person, (3) termination of parental rights and adoption, or (4) a plan for a permanent living arrangement.

goals for the respondent. First, she was to consistently participate and exhibit progress in her mental health treatment. Second, she was to engage in appropriate conversations with Marcquan during visits. Specifically, the "respondent . . . [was] to gain a better understanding of her son's mental health/cognitive capabilities as it relates to engagement in age appropriate conversations; for [her] to have age appropriate expectations of Marcquan, and for [her] to gain a better understanding of her son's needs and challenges and for her to learn effective, age appropriate ways to assist her son in managing his behaviors." Third, she was to acquire skills and knowledge regarding positive and effective forms of discipline.

The court found that, in September, 2019, R'kids recommended to the petitioner that Marcquan not return to the respondent's care. It found that, although the respondent participated in supervised visits with her son, she continued to make inappropriate comments and engaged in inappropriate conversations in Marcquan's presence. Moreover, she failed to develop skills or a working knowledge of positive and effective forms of discipline.

The court also found that the respondent participated in weekly individual therapy with a licensed professional counselor at the Shoreline Wellness Clinic for approximately two years. The respondent made improvements in managing her anxiety and using coping skills. On the basis of its subordinate findings of fact, the court concluded, however, that there had not been any discernable improvement in her ability to conform her behavior so as to make it in Marcquan's best interest to reunify with the respondent. The court expressly found that the benefits the respondent derived from her therapy sessions did not assist her in her reunification effort with her son and her ability to properly care for him. The court found that the respondent's therapist did not offer any insight as to her emotional and mental makeup and was

unable to identify appropriate interventions or services that could constructively advance the reunification process.

The court concluded that "absent a credible psychological evaluation, it is impossible to understand or to predict how [the respondent] will react to and with others, including Marcquan. The past and present reality has stalled Marcquan's return to her care and has undoubtedly negatively impacted Marcquan's fragile well-being." As a result of these findings, the court determined that grounds for commitment continued to exist and denied the motion to revoke. The permanency plan remained reunification of Marcquan with the respondent.[7]

After observing that it lacked a credible psychological evaluation of the respondent, the court also reconsidered its October 29, 2019 denial of the petitioner's motion for a psychological evaluation and ordered the respondent to participate in one. The court stated in relevant part: "[From the denial of] her motion to revoke today, the respondent . . . has to understand that until she demonstrates an ability to collaboratively and effectively interact with [the Department of Children and Families] and services providers and she demonstrates a sustained ability to parent Marcquan in a manner which affords him both physical and emotional safety, reunification is highly unlikely. While no guarantee, her participation in a court-ordered evaluation and her sustained and effective follow-through with treatment recommendations may potentially be the key to a reinvigorated reunification process." This appeal followed.[8]

[7] At the revocation hearing, Marcquan's attorney represented that Marcquan's desire was to go home to the respondent, but that he wanted and needed her to work on her issues while he remained in foster care with his godmother.

[8] Prior to the time of oral argument, the petitioner filed a motion to dismiss the appeal for lack of an appealable final judgment. The petitioner argued that the order for a psychological evaluation was not part of the court's judgment denying the respondent's motion to revoke commitment, which

In the respondent's principal brief, she contends that the court improperly issued the order to participate in a psychological evaluation, sua sponte, because the court's earlier ruling denying the petitioner's motion for a psychological evaluation was res judicata, the motion was

order, as we explain in this opinion, is a final judgment from which she properly may have appealed. Viewing the order for a psychological evaluation as an interlocutory ruling, the petitioner argued that the order was not appealable under the test set forth in *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983). See id. ("[a]n otherwise interlocutory order is appealable in two circumstances: (1) where the order or action terminates a separate and distinct proceeding, or (2) where the order or action so concludes the rights of the parties that further proceedings cannot affect them"). With respect to the first prong of *Curcio*, the petitioner argued that, unlike the court's denial of the respondent's motion to revoke, the order for a psychological evaluation did not terminate a separate and distinct proceeding. With respect to the second prong of *Curcio*, the petitioner argued that the respondent was unable to demonstrate that the order risked irreparable harm to her. Accordingly, the petitioner argued that the appeal should be dismissed.

In the respondent's objection to the motion to dismiss, she argued that, contrary to the petitioner's characterization of the order, it was not interlocutory in nature, but "part of a final judgment from which [she] was entitled to appeal under General Statutes § 51-197a." She also argued that the denial of her motion to revoke commitment concluded all matters that were pending before the court and that the order for a psychological evaluation was made merely "in anticipation of hypothetical future proceedings that had not yet been initiated." Thus, the respondent argued, the court was without authority to order the evaluation.

The respondent also argued that, if the order was interlocutory in nature, the order was immediately appealable under *Curcio* in that the order "directed [her] to speak to a court-appointed psychologist in violation of her right to remain silent in neglect proceedings under General Statutes § 46b-137 . . . ." She also argued that the order "authorized the petitioner to obtain from [her] licensed professional counselor statutorily privileged information within the counselor's control in violation of General Statutes § 52-146s." The respondent argued that she was without the ability to prevent the disclosure of the counseling records because they were in the control of her counselor and that "[t]he only judicial recourse available to [her] in protecting the privileged information . . . was by immediate appeal to this court."

On July 22, 2020, this court denied the petitioner's motion to dismiss the appeal "without prejudice to the petitioner addressing in her appellee's brief on the merits, and the [respondent] addressing in her reply brief, the question [of] whether there is an appealable final judgment in this matter."

not before the court at the time of the order, and the order violated her right to remain silent. Reiterating in substance the arguments that she advanced in her motion to dismiss the appeal; see footnote 8 of this opinion; the petitioner responds that the court's order for a psychological evaluation is not an immediately appealable final judgment, and, therefore, this court does not have jurisdiction over this appeal. The respondent did not file a reply brief, so we are left to consider the jurisdictional analysis that she set forth in her opposition to the petitioner's motion to dismiss the appeal.

We begin our analysis by considering the jurisdictional issue raised by the petitioner and the standard of review that applies to the issue. "The lack of a final judgment implicates the subject matter jurisdiction of an appellate court to hear an appeal. A determination regarding . . . subject matter jurisdiction is a question of law [over which we exercise plenary review]. . . . The appellate courts have a duty to dismiss, even on [their] own initiative, any appeal that [they lack] jurisdiction to hear." (Citation omitted; internal quotation marks omitted.) *State* v. *Jamar D.*, 300 Conn. 764, 770, 18 A.3d 582 (2011).

"The right of appeal is purely statutory. It is accorded only if the conditions fixed by statute and the rules of court for taking and prosecuting the appeal are met." *State* v. *Curcio*, 191 Conn. 27, 30, 463 A.2d 566 (1983). "Because our jurisdiction over appeals, both criminal and civil, is prescribed by statute, we must always determine the threshold question of whether the appeal is taken from a final judgment before considering the merits of the claim." Id.

We first consider, as the respondent argued in her opposition to the petitioner's motion to dismiss the appeal, whether the order for a psychological examination, from which the respondent appeals was a part of the court's judgment denying the respondent's motion

to revoke commitment, from which she had a right of appeal. See, e.g., *In re Shawn S.*, 262 Conn. 155, 167, 810 A.2d 799 (2002) (acknowledging right to appeal from denial of motion to revoke commitment); *In re Zoey H.*, 183 Conn. App. 327, 330, 192 A.3d 522 (appeal from denial of motion to revoke commitment), cert. denied, 330 Conn. 906, 192 A.3d 425 (2018).

As an initial observation, the respondent's assertion that the order for a psychological evaluation was merely a part of the judgment denying her motion to revoke commitment is somewhat belied by the fact that, on her appeal form in the present appeal, she did not state that she was appealing from the judgment denying the motion to revoke commitment. Instead, she characterized "the action that constitutes the appealable final judgment or decision" as "[a] *postjudgment order* compelling psychological evaluation." (Emphasis added.)

As this court has observed, "[t]he construction of a judgment is a question of law for the court. . . . To determine the meaning of a judgment, we must ascertain the intent of the court from the language used and, if necessary, the surrounding circumstances." (Citations omitted; internal quotation marks omitted.) *Ottiano* v. *Shetucket Plumbing Supply Co.*, 61 Conn. App. 648, 652, 767 A.2d 128 (2001). A review of the court's memorandum of decision and the surrounding circumstances leads us to conclude that the judgment denying the respondent's motion to revoke commitment was separate from the court's order for a psychological evaluation.

As we have explained, after the respondent brought her motion to revoke commitment, the petitioner sought an order for a psychological evaluation. Prior to the hearing on the motion to revoke commitment, the court denied the motion for a psychological evaluation. The court denied the motion to revoke commitment on its merits, and the court's memorandum of decision encompassed

its findings and conclusions of law with respect to the motion to revoke commitment. In addition to denying the motion to revoke commitment, it sua sponte revisited its prior ruling denying the petitioner's motion for a psychological evaluation.

The court's ruling on the motion to revoke commitment and its ruling to order a psychological evaluation are addressed in the same memorandum of decision, but this fact is not dispositive of whether the rulings should be viewed as a single, immediately appealable judgment. In setting forth its rationale for denying the motion to revoke commitment, the court observed that it did not have before it a credible psychological evaluation of the respondent, but it did not suggest that its denial of the motion to revoke commitment was based on its decision to order a psychological evaluation. To the contrary, undoubtedly mindful of the fact that a final decision concerning the care and custody of Marcquan in this ongoing child protection matter will be made in future proceedings, it expressly characterized its order for a psychological examination as potentially benefitting the *future prospect of reunification* following its denial of the motion to revoke commitment. The court aptly recognized that its order was merely a tool in the process that began with the petitioner's uncared for petition and that an ultimate decision regarding reunification was yet to be made. In this regard, the court explained its order in relevant part: "While no guarantee, [the respondent's] participation in a court-ordered evaluation and her sustained and effective follow-through with treatment recommendations may potentially be the key to a reinvigorated reunification process." Indeed, there is no basis on which to conclude that the order for a psychological evaluation affected the court's ruling to deny the motion to revoke commitment. Accordingly, we are not persuaded that, for appeal purposes, the order from which the respondent

appeals was part of the court's judgment denying the motion to revoke commitment.[9]

We next address the respondent's alternative argument that, even if the order to undergo a psychological evaluation is interlocutory in nature, it nonetheless is immediately appealable. Our Supreme Court has recognized that certain otherwise interlocutory orders may be final judgments for purposes of an appeal, and the court may deem an interlocutory order or ruling to have the attributes of a final judgment if the ruling or order falls within either of the two prongs of the test set forth in *Curcio*. "Under *Curcio*, interlocutory orders

[9] In her opposition to the petitioner's motion to dismiss the present appeal, the respondent heavily relied on this court's decision in *Savage* v. *Savage*, 25 Conn. App. 693, 596 A.2d 23 (1991), for the proposition that the order for a psychological evaluation was not interlocutory but part of the judgment of the trial court denying the motion to revoke commitment. *Savage* involved an appeal in a dissolution action. The plaintiff wife appealed from the judgment dissolving her marriage to her former husband, the defendant, as well as from postjudgment orders. Id., 694. The respondent in the present case focuses on the plaintiff's claim in *Savage* that the trial court abused its discretion in ordering, as part of its judgment, that the parties and their minor children engage in postjudgment consultation with a child expert. Id., 698. This court agreed with the plaintiff that the order was improper and reasoned: "The trial court's order here compelling consultation with [the child expert] for two years into the future is not a proper custody order but rather is an attempt to force consultation for purposes of a postjudgment evaluation. There is no statutory authorization for such an evaluation without a pending motion or matter before a court." Id., 701.

The respondent's reliance on *Savage* is misplaced. In *Savage*, this court did not expressly address an issue concerning this court's subject matter jurisdiction or whether the plaintiff had appealed from a final judgment. More importantly, *Savage* was an appeal from a judgment of dissolution and postdissoluton orders, not a child protection matter. The judgment rendered by the trial court in *Savage* disposed of pending matters between the parties until such time as one or both parties brought before the court a new postjudgment motion. The procedural posture of the court's order in the present case is materially distinguishable from that at issue in *Savage*. Judicial involvement in the present child protection matter will be ongoing until such time as reunification between the respondent and Marcquan has been achieved, the court has terminated the respondent's parental rights with respect to Marcquan, or the court has made some other final determination regarding his custody and placement.

are immediately appealable if the order or ruling (1) terminates a separate and distinct proceeding, or (2) so concludes the rights of the parties that further proceedings cannot affect them." (Internal quotations marks omitted.) *State* v. *Jamar D.*, supra, 300 Conn. 771.

"The first prong of the *Curcio* test . . . requires that the order being appealed from be severable from the central cause of action so that the main action can proceed independent of the ancillary proceeding. . . . If the interlocutory ruling is merely a step along the road to final judgment then it does not satisfy the first prong of *Curcio*. . . . It must appear that the interlocutory ruling will not impact directly on any aspect of the [action]." (Internal quotation marks omitted.) *Abreu* v. *Leone*, 291 Conn. 332, 339, 968 A.2d 385 (2009).

We conclude that, unlike the court's denial of the respondent's motion to revoke commitment, the order for psychological evaluation did not terminate a separate and distinct proceeding. Rather, contrary to her assertion that the order was not made "in connection with any pending matter before the court," the order is an integral part of the ongoing proceedings involving the respondent and Marcquan following the uncared for petition brought by the petitioner. See General Statutes § 46b-129 (i).[10] As the respondent seems to have recognized in her opposition to the motion to dismiss; see

[10] General Statutes § 46b-129 (i) authorizes the court to order a psychological evaluation when a neglect or uncared petition is filed in said court. It provides in relevant part: "When a petition is filed in said court for the commitment of a child . . . the Commissioner of Children and Families shall make a thorough investigation of the case and shall cause to be made a thorough physical and mental examination of the child or youth if requested by the court. The court after hearing may also order a thorough physical or mental examination, or both, of a parent or guardian whose competency or ability to care for a child or youth before the court is at issue. . . ." General Statutes § 46b-129 (i).

Practice Book § 34a-21 (a) provides: "The judicial authority, after hearing on a motion for a court-ordered evaluation or after an agreement had been reached to conduct such an evaluation, may order a mental or physical examination of a child or youth. The judicial authority after hearing or after

footnote 8 of this opinion; the results of the evaluation may affect the ultimate outcome of a later adjudication of her parental rights. It is not in dispute that, at the time that the court issued its order, Marcquan was adjudicated uncared for. He remains committed to the petitioner, and the court has an ongoing statutory obligation to ascertain whether the petitioner's permanency plan for Marcquan is in his best interest. See General Statutes § 46b-129 (k). Stated otherwise, the order is not severable from the central cause of action involving the respondent and Marcquan and whether reunification is possible but is merely a step along the road to a final judgment in that action. Accordingly, we conclude that the order does not satisfy the first prong of the *Curcio* test.

Likewise, we conclude that the order does not satisfy the second prong of the *Curcio* test. "[F]or an interlocutory ruling in either a criminal or a civil case to be immediately appealable under the second prong of *Curcio*, certain conditions must be present. There must be (1) a colorable claim, that is, one that is superficially well founded but that may ultimately be deemed invalid, (2) to a right that has both legal and practical value, (3) that is presently held by virtue of a statute or the state or federal constitution, (4) that is not dependent on the exercise of judicial discretion and (5) that would be irretrievably lost, causing irreparable harm to the [appellant] without immediate appellate review." *Sharon Motor Lodge, Inc.* v. *Tai*, 82 Conn. App. 148, 158–59, 842 A.2d 1140, cert. denied, 269 Conn. 908, 852 A.2d 738 (2004). "The second prong of the *Curcio* test focuses on the nature of the rights involved. It requires the parties seeking to appeal to establish that the trial court's order threatens the preservation of a right already secured to them

an agreement has been reached may also order a thorough physical or mental examination of a parent or guardian whose competency or ability to care for a child or youth is at issue."

and that that right will be irretrievably lost and the [parties] irreparably harmed unless they may immediately appeal. . . . One must make at least a colorable claim that some recognized statutory or constitutional right is at risk." (Internal quotation marks omitted.) *State* v. *Jamar D.*, supra, 300 Conn. 771.

Guided by several relevant appellate decisions that pertain to rulings in family matters, we are not persuaded that the court's order is immediately appealable under *Curcio* on the ground that it risks irreparable harm to the respondent's custody or visitation rights. Relying on the second prong of *Curcio*, our Supreme Court in *Madigan* v. *Madigan*, 224 Conn. 749, 754–55, 620 A.2d 1276 (1993), concluded that a temporary order of custody is a final judgment for purpose of an immediate appeal "because a parent's custodial rights during the course of dissolution proceedings cannot otherwise be vindicated at any time, in any forum." The court, considering the nature of the right to be vindicated in such an appeal, observed that temporary custody orders fall within the narrow class of otherwise interlocutory orders that are immediately appealable under *Curcio* because they "affect the irreplaceable time and relationship shared between parent and child." Id., 755. The court in *Madigan* also reasoned: "[A] temporary custody order may have a significant impact on a subsequent permanent custody decision. Especially if both parents would be suitable custodians, an order of temporary custody may establish a foundation for a stable long-term relationship that becomes an important factor in determining what final custodial arrangements are in the best interests of the child. . . . Accordingly, not only is any impropriety in granting an initial order for temporary custody not subsequently reversible, but it may also have an adverse spillover effect on the ultimate determination of custody." (Citations omitted.) Id., 756–57. It

has long been recognized that orders extending the commitment of children to the petitioner also satisfy the second prong of *Curcio*. In *In re Todd G.*, 49 Conn. App. 361, 364–65, 713 A.2d 1286 (1998), this court, relying on *Madigan*, held that a trial court's granting of an extension of commitment of a minor child to the petitioner pursuant to General Statutes § 46b-129 (e) is a final judgment for purposes of bringing an immediate appeal. In determining that the order extending the child's commitment, which was dispositional in nature, was immediately appealable, this court stated: "The parent-child relationship in the present case would be . . . disrupted for a significant period of time if no appeal were possible. There are no further proceedings in the underlying action brought pursuant to § 46b-129 (d) that will affect the commitment order until the petitioner either moves to extend the commitment again or to terminate the respondent's parental rights." (Footnote omitted.) Id.

We also note that, in *Taff* v. *Bettcher*, 243 Conn. 380, 387, 703 A.2d 759 (1997), our Supreme Court, relying on *Madigan*, held that an order of the trial court which barred the parties for one year from seeking review on the issues of custody and visitation was an immediately appealable final judgment. The court's rationale further illustrates the principles expressed in *Madigan*: "The considerations that informed our decision in *Madigan* apply equally to the facts of this case. Just as a temporary custody order may have a significant impact on a subsequent permanent custody decision, a court order barring the parties for one year from seeking review on the issues of custody and visitation may interfere with a parent's custodial rights over a significant period in a manner that cannot be redressed at a later time. A lost opportunity to spend significant time with one's child is not recoverable. . . . Any chance by the noncustodial parent to restructure custody and visitation to enhance the relationship or further establish a foun-

dation in that interval cannot be replaced by a subsequent modification one year later. Nor can any harm to the child caused by the custodial arrangement be meaningfully addressed one year after it occurs. We are persuaded that, as in the case of a temporary order of custody, an immediate appeal of the court order in this case is the only reasonable method of ensuring that the important rights surrounding the parent-child relationship are adequately protected." (Citation omitted; internal quotation marks omitted.) Id., 386–87.

In the present case, the respondent does not raise a claim related to the court's denial of her motion to revoke commitment or to any other type of order that interferes, for any length of time, with custody or visitation rights. The order for a psychological evaluation is not dispositional in nature, and it does not affect the irreplaceable time and relationship that exists between a parent and a child. Nor does it risk establishing a relationship between a child and another suitable custodian that may impact a subsequent decision concerning custody rights.

In her opposition to the petitioner's motion to dismiss, the respondent asserted that an immediate appeal was necessary to avoid irreparable harm to "her right to remain silent in neglect proceedings under General Statutes § 46b-137." Section 46b-137 (d) provides in relevant part: "Any confession, admission or statement, written or oral, made by the parent or parents or guardian of the child or youth after the filing of a petition alleging such child or youth to be neglected, uncared for or abused shall be inadmissible in any proceeding held upon such petition against the person making such admission or statement unless such person shall have been advised of the person's right to retain counsel, and that if the person is unable to afford counsel, counsel will be appointed to represent the person, that the person has a right to refuse to make any statement and

that any statements the person makes may be introduced in evidence against the person . . . .”[11]

In an effort to obtain immediate review of the order, the respondent relies on her right to remain silent, which is safeguarded by the advisement of rights mandated by § 46b-137. We observe that the court's order, which required her to submit to a psychological evaluation, did not directly infringe on or threaten irreparable harm to her right to remain silent or rule on the admissibility of any statement made by her. The order did not address her right to remain silent.

Beyond bringing the present appeal, the respondent has not taken any action with respect to complying with the order, let alone asserted her right to remain silent instead of complying with the order. It is possible that she may refuse to comply with the order and as a result be found in contempt, at which time she may bring an immediate appeal. See *Khan* v. *Hillyer*, 306 Conn. 205, 216, 49 A.3d 996 (2012) (“a contempt order is considered final for appellate purposes when the order so substantially resolves the rights and duties of the parties that further proceedings relating *to the judgment of contempt* cannot affect them” (emphasis in original; internal quotation marks omitted)). Alternatively, the court, at a future proceeding, might enter an appealable judgment against the respondent based on an adverse inference drawn from her failure to participate in the psychological evaluation. In such a circumstance, the respondent would be able to challenge the

[11] As we stated previously; see footnote 8 of this opinion; the respondent also argued that an immediate appeal was necessary so that she could protect statutorily protected counseling records that were in the custody of her counselor. She argued that, as part of its order for a psychological evaluation, the court had authorized the petitioner to obtain these records from her counselor. As we determined previously in this opinion, however, the record does not reflect that the court ordered such disclosure. See footnote 3 of this opinion. Accordingly, this aspect of the respondent's argument is unavailing because it is based on an inaccurate interpretation of the court's order.

judgment on the basis that the order for a psychological evaluation was improper.

It is also possible that the respondent could choose to attend the psychological evaluation but refuse to answer some or all of the questions asked of her based on her right to remain silent. Although under that circumstance it is unlikely that the court would hold the respondent in contempt for exercising a constitutional and statutory right, to the extent the court issued a judgment adverse to the respondent based on her exercise of that right, the respondent could challenge on appeal that judgment and the propriety of the court's psychological evaluation order.

It is also a possibility that the respondent may comply with the order for a psychological evaluation. Doing so may benefit her with respect to her efforts to be reunited with Marcquan, be detrimental with respect to those efforts, or have no effect on those efforts. The respondent will have an opportunity to challenge the propriety of the order in the event that there is a final judgment adverse to her that results from the use, if any, of the evidence obtained as a result of the order. What all of these potential scenarios demonstrate is that the respondent's rights are far from being finally resolved.[12]

Although the hearing on the respondent's motion to revoke commitment has come to an end, the court's involvement in the ongoing child protective case involving Marcquan and the respondent is continuing. "The policy concerns underlying the final judgment rule are to discourage piecemeal appeals and to facilitate the

[12] The respondent does not dispute that Marcquan remains committed to the petitioner following the filing of an uncared for petition. In claiming that a presently held right is at risk for purposes of the issue before us, she has focused on her right to remain silent but has not argued that she has a presently held statutorily or constitutionally protected right to not undergo a psychological evaluation.

speedy and orderly disposition of cases at the trial court level." (Internal quotation marks omitted.) *Pritchard* v. *Pritchard*, 281 Conn. 262, 270, 914 A.2d 1025 (2007). To permit an appeal at this juncture would interfere with the speedy and orderly disposition of that ongoing case and encourage piecemeal appeals. If the psychological evaluation required by the order yields evidence that is used by the court in a final judgment from which the respondent appeals, or if the respondent's refusal to participate fully in the psychological evaluation results in an adverse judgment, a reviewing court will have an opportunity to evaluate the propriety of the order at that time, when it may fully apprehend its import following a trial. Thus, in the absence of an immediate right to appeal, the respondent's right to challenge the order has not been irretrievably lost.

The type of order at issue in the present case merely is an intermediate step along the road to facilitate reunification, if possible, and provides a factual predicate for future custody determinations. The order at issue does not threaten irrevocable harm to the parent-child relationship or to the rights of the respondent. In light of the foregoing, we are persuaded that the order from which the respondent appeals is not part of the judgment denying her motion to revoke commitment. It is an interlocutory order that is not an immediately appealable final judgment under either prong of the *Curcio* test. Thus, we dismiss the appeal and do not consider the merits of the respondent's claim that the court abused its discretion in ordering the psychological evaluation. See, e.g., *State* v. *Jamar D.*, supra, 300 Conn. 770.

The appeal is dismissed.

In this opinion the other judges concurred.

THE BANK OF NEW YORK MELLON *v.* ACHYUT M. TOPE ET AL.
(AC 40959)

Elgo, Cradle and Devlin, Js.

Syllabus

The plaintiff bank sought to foreclose a mortgage on certain real property owned by the defendant T. The action was commenced in July, 2014, and the trial court first entered a judgment of foreclosure by sale in November, 2014. Subsequently, T filed multiple motions to open and extend the sale date. The court again entered a judgment of foreclosure by sale in November, 2016. T then filed several motions to dismiss, alleging that the court did not have subject matter jurisdiction on the ground that the plaintiff did not have standing to commence this action. In September, 2017, T filed a motion to open and stay the judgment, again challenging the plaintiff's standing and the subject matter jurisdiction of the court. The court denied T's motion, and T appealed to this court. *Held* that T could not prevail on his claim that the trial court erred in denying his motion to open and vacate the foreclosure judgment on the ground that the plaintiff lacked standing and the court lacked subject matter jurisdiction: this court was presented with a collateral attack by T on the foreclosure judgment because, although T appeared in this case approximately thirty days prior to the entry of the first foreclosure judgment, he never directly challenged that judgment or the second judgment of foreclosure by sale, did not challenge the plaintiff's standing or the court's jurisdiction until more than two years after he filed his appearance, and failed to demonstrate or even argue that the court's lack of subject matter jurisdiction was entirely obvious, failing to rebut the presumption of the validity of the foreclosure judgment; moreover, the facts and circumstances did not constitute the exceptional case in which the lack of jurisdiction was so manifest as to warrant review, as the record revealed that three different trial court judges examined the record and considered T's arguments and reviewed the documents he submitted, and one judge examined the original note upon which both foreclosure judgments were based, specifically finding that the plaintiff had standing to commence the action; furthermore, because T was afforded multiple opportunities to present his arguments in full to the trial court, it could not reasonably be argued that he was deprived of a fair opportunity to litigate the issue of standing, and he similarly failed to furnish any strong policy reason to allow the otherwise disfavored collateral attack on the foreclosure judgment.

(*One judge dissenting*)

Argued September 10, 2020—officially released February 9, 2021

Procedural History

Action to foreclose a mortgage on certain of the defendants' real property, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the defendants were defaulted for failure to appear; thereafter, the named defendant was defaulted for failure to plead; subsequently, the matter was tried to the court, *Hon. Thomas J. Corradino*, judge trial referee; judgment of foreclosure by sale; thereafter, the court denied the named defendant's motion to open and vacate the judgment, and the named defendant appealed to this court. *Affirmed.*

Thomas P. Willcutts, for the appellant, with whom, on the brief, was *Achyut M. Tope*, self-represented, the appellant (named defendant).

William R. Dziedzic, for the appellee (plaintiff).

Opinion

CRADLE, J. The defendant Achyut M. Tope[1] appeals from the denial of his motion to open and vacate the judgment of foreclosure by sale rendered by the trial court in favor of the plaintiff, The Bank of New York Mellon, formerly known as The Bank of New York, as Successor to JPMorgan Chase Bank, N.A., as Trustee for Structured Asset Mortgage Investments II, Inc., Bear Stearns Alt-A Trust, Mortgage Pass-Through Certificates, Series 2004-3. The defendant claims that the trial court erred in denying his motion to open and vacate because the plaintiff lacked standing to commence this action and, consequently, the trial court lacked subject matter jurisdiction over it. The plaintiff contends that it had standing to commence this action and that this appeal constitutes an impermissible collateral attack

[1] Geeta A. Joshi-Tope also was named as a defendant in the underlying foreclosure action, but she is not a party to this appeal. We therefore refer in this opinion to Achyut M. Tope as the defendant.

on the court's foreclosure judgment, which initially was entered in 2014 and from which the defendant did not appeal. We agree with the plaintiff that the defendant's appeal from the motion to open and vacate constitutes an impermissible collateral attack on the foreclosure judgment, and, accordingly, affirm the trial court's denial of the defendant's motion to open and vacate.

The record reveals the following relevant factual and procedural history. On October 31, 2003, the defendant executed a promissory note in the amount of $134,000, payable to HSBC Mortgage Corporation (USA) (HSBC). To secure that note, the defendant mortgaged property located at 387 Sherman Avenue in New Haven (property) to HSBC. The note was later endorsed to "JPMorgan Chase Bank, as Trustee." On January 15, 2014, HSBC assigned the mortgage to the plaintiff.[2]

On July 17, 2014, the plaintiff filed the present action seeking to foreclose on the mortgage. The defendant filed his appearance on October 9, 2014, and, on October 28, 2014, he was defaulted for failing to plead. On November 10, 2014, the court, *Hon. Thomas J. Corradino*, judge trial referee, entered a judgment of foreclosure by sale, with a sale date set for February 7, 2015.

On January 20, 2015, the defendant filed his first motion to open and extend the sale date. The court granted the motion and set a new sale date for June 20, 2015. The defendant subsequently filed three additional motions to open the foreclosure judgment—on March 9, 2015, August 31, 2015, and January 6, 2016—resulting

[2] HSBC assigned to the plaintiff: "[T]he said Mortgage having an original principal sum of $134,000.00 with interest, secure thereby, with all moneys now owing or that may hereafter become due or owing in respect thereof, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's interest under the Mortgage."

in further extensions of the sale date.[3] On March 8, 2016, the defendant filed a fifth motion to open, claiming that there was more than $100,000 of equity in the property and he had applied for a loan modification. On April 11, 2016, the court granted the defendant's motion and vacated the foreclosure judgment.

On June 17, 2016, the plaintiff filed a motion for a judgment of strict foreclosure. On November 21, 2016, the court, *Avallone*, *J.*, entered a judgment of foreclosure by sale and set a sale date for February 11, 2017.[4]

On January 3, 2017, the defendant filed a motion to open and stay the judgment on the ground that he had obtained a financial audit that "provides strong supporting documentation that the plaintiff does not have standing to pursue a foreclosure action with respect to the property in this action."[5] The defendant sought to stay this action "to preserve his rights" because he filed a new action involving additional properties that he owns, which, he claimed, was being removed to federal court.

On January 4, 2017, the defendant filed a motion for summary judgment alleging, inter alia, that the plaintiff lacked standing to bring this action because the plaintiff failed to show "the proper chain of ownership, assignment and control of the note and mortgage and property

[3] The sale date was extended to September 26, 2015, February 27, 2016, and April 30, 2016, respectively. We note that the court held hearings on each of these motions and the defendant appeared and was afforded the opportunity to be heard at those hearings.

[4] At the November 21, 2016 hearing, at which the defendant was present, the court expressly indicated that it was "reviewing the note of October 31, 2003. I find it to be in order, initialed as an original on each page, signed by the borrowers as an original.

"Open ended mortgage of even date likewise signed and appropriate.

"There's an assignment of that mortgage dated January 15, 2014. . . .

"[The] plaintiff is entitled to bring the action."

[5] The plaintiff refers to "attached exhibit A," but there were no exhibits attached to his motion.

with affidavits from persons with knowledge . . . .''[6] At the February 6, 2017 hearing on the defendant's motion to open, the defendant represented to the court, *Avallone*, *J.*, that the arguments in his motion to open and motion for summary judgment were "generally" the same. Accordingly, the court allowed the defendant, at his request, to argue his motion for summary judgment at that hearing. Following extensive argument by the defendant, the court denied both of his motions. The court expressly rejected the defendant's challenge to the plaintiff's standing, stating: "I've given you sufficient opportunity to make your arguments. I don't believe that they hold water." On March 1, 2017, the defendant filed a motion to reargue both motions, which the court summarily denied.

On February 10, 2017, the defendant filed a motion to dismiss, again alleging lack of subject matter jurisdiction on the ground that the plaintiff did not have standing to commence this action.[7] On February 27, 2017, the defendant filed another motion to dismiss the action for lack of subject matter jurisdiction, citing to the arguments that he previously raised in his motion for summary judgment. On March 24, 2017, the defendant filed a third motion to dismiss, "in addition to and [in] further [support of]" his prior two motions to dismiss and his motion for summary judgment, for lack of subject matter jurisdiction.

On April 17, 2017, the court, *Avallone*, *J.*, held a hearing on the defendant's motion to dismiss dated February

[6] In his motion for summary judgment, the defendant also alleged "fraud in the concealment"; "fraud in inducement"; "intentional infliction of emotional distress"; "slander of title"; "quiet title"; "violation of . . . 15 U.S.C. § 1601 et seq."; and "violation of . . . [12] U.S.C. § 2601 et seq."

[7] We note that the foreclosure auction proceeded as scheduled on February 11, 2017. The court, however, denied the committee's motion to approve the sale because the high bid was too low, and ordered the deposit to be returned to the high bidder.

27, 2017. At the hearing, the defendant argued that he had two copies of the note which were irreconcilably different, thereby proving that the plaintiff was not the holder of the note and therefore did not have standing. The defendant presented those two copies to the court. The defendant argued: "[T]he original note that I signed . . . which I have asked over and over and over in . . . court, docketed in many times, many motions, many pleadings, has not been shared. And I don't know whether . . . the first time when the court approved . . . the foreclosure sale and the second time when it did, the court must have looked at the two original documents." In response, the plaintiff presented the original note to the defendant. The defendant acknowledged that his signature was on the original note.

The court then asked the defendant how the two copies of the note that he had presented were relevant since the foreclosure judgment was entered on the basis of the original note. The defendant "object[ed] [to] whether Judge Corradino had possession of the original note" when he entered the foreclosure judgment in 2014. The court explained to the defendant that it had already heard the defendant's arguments a "multitude" of times, but agreed to review the proceedings that occurred before Judge Corradino in 2014. The court recessed briefly to do so.

Upon resuming the hearing, the court stated that it had listened to the recording of the proceeding before Judge Corradino in 2014 and explained that "[t]here is nothing out of order . . . in Judge Corradino's actions in the court that day that would lead me to believe that there is any evidence, that there is anything improper as to the documents that were . . . filed." The court explained to the defendant: "I've listened to your arguments consistently. You've made an argument about the notes. I don't accept your argument that there is anything inappropriate by there being copies, multiple copies of a note." The defendant pressed his argument

regarding his claimed improprieties with the assignments, and the court responded: "I have looked at the original note. That's what . . . I'm concerned with. And I'm satisfied that there is nothing inappropriate . . . by this court's action or by the actions of Judge Corradino. And you've presented nothing to me that . . . would . . . make me think otherwise. And so I've denied your motion to dismiss." The court set a new sale date of August 19, 2017. On April 24, 2017, the court, *Avallone*, *J.*, marked off the defendant's motion to dismiss that was filed on February 10, 2017. On May 1, 2017, the defendant filed another motion to dismiss challenging the plaintiff's standing to pursue this action.

On May 30, 2017, the court, *Pittman*, *J.*, held a hearing on the defendant's February 10, 2017 motion to dismiss. At that hearing, the defendant again was afforded the opportunity to present his arguments challenging the plaintiff's standing, the same arguments that he made in his previous motion to dismiss dated February 27, 2017, and his motion for summary judgment. The defendant summarized his argument by again asserting that the plaintiff was not the holder of the note. The court told the parties that it would consider all of the prior filings regarding standing and indicated that it would issue a written decision. On June 6, 2017, the court, *Pittman*, *J.*, issued a written order denying the February 10, 2017 motion to dismiss. The court explained: "This motion, #162, was previously considered by Judge Avallone in open court on April 24, 2017. At that time, Judge Avallone marked this motion off, having determined that it raised the same issues as #164, which was denied by Judge Avallone on April 17, 2017, #164. The court will not continue to revisit issues that have been previously decided and that constitute the law of the case. Moreover, a judgment has entered in this matter and a motion to dismiss is not properly before the court in the absence of an order granting a motion to open the judgment."

On June 28, 2017, the defendant filed a motion to open and to extend the sale date on the ground that he was making progress in his efforts to sell the subject property. The court extended the sale date to October 21, 2017.

On September 28, 2017, the defendant filed a motion to open and to vacate the judgment of foreclosure by sale, wherein he again argued that the plaintiff lacked standing to commence this action and, consequently, the court lacked subject matter jurisdiction over it, and asked that the action be dismissed "in its entirety with prejudice." On October 16, 2017, the court, *Hon. Thomas J. Corradino*, judge trial referee, held a hearing on the defendant's motion, at which the defendant again presented his argument to the court. On October 17, 2017, the court, *Hon. Thomas J. Corradino*, judge trial referee, issued an order denying the defendant's motion to open and vacate the foreclosure judgment.[8] It is from this denial of the defendant's September 28, 2017 motion to open and vacate the foreclosure judgment, which first entered on November 10, 2014, and was entered again on November 21, 2016, that the defendant now appeals.

The defendant claims that the trial court erred in denying his motion to open and vacate the foreclosure

[8] Judge Corradino issued the following written order on October 17, 2017: "This complaint was filed in July of 2014. The defendant did not raise arguments as to the plaintiff's standing for over two years. The affidavit filed by the servicer of the loan which was taken out in 2003, and on which no payments have been made since 2013, clearly states that the plaintiff is the holder of the note and the mortgage—this affidavit was filed under oath in September of 2014. It was filed under oath by a party who would have no apparent interest in falsifying its report. For the reasons set forth concisely at pages 5 through 10 of the plaintiff's memorandum in opposition to a prior motion to dismiss (#186) as holder of the note the plaintiff has standing. *Fleet National Bank* v. *Nazareth*, 75 Conn. App. 791, 818 A.2d 69 (2003), is not applicable to the facts of this case. This court's conclusion on the lack of standing issue is consistent with the prior rulings raising this issue previously on this case."

judgment because the plaintiff lacked standing to pursue foreclosure against him and thus the trial court lacked subject matter jurisdiction over this action. The plaintiff has steadfastly maintained throughout the litigation of the defendant's myriad of postjudgment motions that it is the holder of the note and thus has standing to pursue this action. The plaintiff argues that this appeal constitutes an impermissible collateral attack on the foreclosure judgment. We agree with the plaintiff.

We begin by noting that "[i]t is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Financial Consulting, LLC* v. *Commissioner of Ins.*, 315 Conn. 196, 226, 105 A.3d 210 (2014). "To be sure, it is often stated that [a] claim that a court lacks subject matter jurisdiction may be raised at any time during the proceedings . . . including on appeal . . . ." (Internal quotation marks omitted.) *Rider* v. *Rider*, 200 Conn. App. 466, 478, 239 A.3d 357 (2020).

"Our jurisprudence, however, has recognized limits to raising a collateral attack setting forth a claim of lack of subject matter jurisdiction. . . . Although challenges to subject matter jurisdiction may be raised at any time, it is well settled that [f]inal judgments are . . . presumptively valid . . . and collateral attacks on their validity are disfavored. . . .

"The reason for the rule against collateral attack is well stated in these words: The law aims to invest judicial transactions with the utmost permanency consistent with justice. . . . Public policy requires that a term be put to litigation and that judgments, as solemn records upon which valuable rights rest, should not lightly be disturbed or overthrown. . . . [T]he law has established appropriate proceedings to which a judgment party may always resort when he deems himself wronged by the court's decision. . . . If he omits or neglects to test

the soundness of the judgment by these or other direct methods available for that purpose, he is in no position to urge its defective or erroneous character when it is pleaded or produced in evidence against him in subsequent proceedings. Unless it is *entirely invalid* and that fact is disclosed by an inspection of the record itself the judgment is invulnerable to indirect assaults upon it. . . .

"[I]t is now well settled that, [u]nless a litigant can show an absence of subject matter jurisdiction that makes the prior judgment of a tribunal entirely invalid, he or she must resort to direct proceedings to correct perceived wrongs . . . . A collateral attack on a judgment is a procedurally impermissible substitute for an appeal. . . . [A]t least where the lack of jurisdiction is not entirely obvious, the critical considerations are whether the complaining party had the opportunity to litigate the question of jurisdiction in the original action, and, if he did have such an opportunity, whether there are strong policy reasons for giving him a second opportunity to do so. . . . Our Supreme Court further explained that such a collateral attack is permissible only in rare instances when the lack of jurisdiction is entirely obvious so as to amount to a fundamental mistake that is so plainly beyond the court's jurisdiction that its entertaining the action was a manifest abuse of authority . . . [or] the exceptional case in which the court that rendered judgment lacked even an arguable basis for jurisdiction." (Citations omitted; internal quotation marks omitted.) Id., 479–80.

Here, although the defendant appeared in this case approximately thirty days prior to the entry of the first foreclosure judgment, he never directly challenged that judgment or the November 21, 2016 judgment of foreclosure by sale.[9] See *Saunders* v. *KDFBS, LLC*, 335 Conn.

[9] The defendant also never challenged the default that had been entered against him.

586, 592–94, 239 A.3d 1162 (2020) (judgment of foreclosure by sale is final appealable judgment). We therefore are presented with a collateral attack by the defendant on the foreclosure judgment rendered on November 21, 2016, by way of his September 28, 2017 motion to open, on the basis of a claim that the trial court lacked subject matter jurisdiction over this case.[10] The defendant has failed, however, to demonstrate, or even argue, that the trial court's lack of subject matter jurisdiction is entirely obvious. The defendant did not challenge the plaintiff's standing or the court's jurisdiction until more than two years after he filed his appearance. Following the entry of the second foreclosure judgment, the defendant challenged the plaintiff's standing multiple times, as set forth in detail herein. In response to the defendant's multiple postjudgment motions challenging the plaintiff's standing, three different trial court judges examined the record, considered the defendant's arguments and reviewed the documents that he submitted, and rejected the defendant's challenge to the court's subject matter jurisdic-

[10] We disagree with the dissent's contention that the November 21, 2016 foreclosure judgment was no longer operative after the court opened it to extend the sale date. In *RAL Management, Inc.* v. *Valley View Associates*, 278 Conn. 672, 899 A.2d 586 (2006), our Supreme Court emphasized the "substantive distinction between opening a judgment to modify or to alter incidental terms of the judgment, leaving the essence of the original judgment intact, and opening a judgment to set it aside." Id., 690. The court concluded that "when the only change to the original judgment involved the extension of a sale date—an incidental term—the substantive terms of the original judgment remained intact, and the opening of the judgment did not render the original judgment void." *Nelson* v. *Dettmer*, 305 Conn. 654, 678 n.19, 46 A.3d 916 (2012), citing *RAL Management, Inc.* v. *Valley View Associates*, supra, 691. Thus, because the motions to open that followed the November 21, 2016 judgment only extended the sale date of the property, an incidental term ordered to effectuate that judgment, the November 21, 2016 judgment remained intact. And, because the defendant failed to appeal from the November 21, 2016 foreclosure judgment, and the motion to open from which he now appeals was not filed within four months of that judgment, as prescribed by General Statutes § 52-212a, this appeal, in our view, is a collateral attack on the November 21, 2016 foreclosure judgment.

tion.[11] The record reflects that Judge Avallone examined the original note upon which both foreclosure judgments were based and specifically found that the plaintiff had standing to commence this action.[12] The record does not reveal a clear lack of standing. Because the defendant has not proven that it was entirely obvious that the trial court lacked jurisdiction in this matter, he has failed to rebut the presumption of the validity of the foreclosure judgment.

Moreover, because the defendant was afforded multiple opportunities to present his arguments in full to the trial court, it cannot reasonably be argued that the defendant was deprived of a fair opportunity to litigate the

[11] We note that the fact that three different trial court judges heard the defendant's standing arguments and examined the documentary evidence that he submitted, in itself, belies any argument that the lack of subject matter jurisdiction is entirely obvious.

[12] Although the record of the 2014 foreclosure hearing does not expressly reflect that Judge Corradino reviewed the note, our Supreme Court has held that the lack of such an explicit finding is not indicative of error. To the contrary, the court reasoned that in entering the foreclosure judgment, "necessary to the court's finding that the plaintiff had standing to enforce the note is the subsidiary or threshold finding that the plaintiff was, in fact, the holder of that instrument, as the plaintiff alleged in its complaint. See General Statutes § 42a-3-301. Indeed . . . under Practice Book § 23-18, the court was required to review the note, mortgage and affidavit of debt before finding . . . the [amount of the] debt [and] . . . the value of the property and . . . [entering the judgment of] foreclosure [by sale]. It is well established that, 'under the law of evidence, it is presumed, unless the contrary appears, that judicial acts and duties have been duly and regularly performed, the presumption of regularity attending the acts of public officers being applicable to judges and courts and their officers . . . . The general rule that a judgment, rendered by a court with jurisdiction, is presumed to be valid and not clearly erroneous until so demonstrated raises a presumption that the rendering court acted only after due consideration, in conformity with the law and in accordance with its duty. . . . The correctness of a judgment of a court of general jurisdiction is presumed in the absence of evidence to the contrary. We do not presume error. The burden is on the appellant to prove harmful error.' . . . *Brookfield* v. *Candlewood Shores Estates, Inc.*, 201 Conn. 1, 6–7, 513 A.2d 1218 (1986); see also *Rosenblit* v. *Danaher*, 206 Conn. 125, 134, 537 A.2d 145 (1988) ('we are entitled to assume, unless it appears to the contrary, that the trial court . . . acted properly'). Consequently, in the absence of any evidence or other indication to the

issue of standing. The defendant has similarly failed to furnish, nor are we aware of, any strong policy reason to allow this otherwise disfavored collateral attack on the foreclosure judgment. Accordingly, we are not persuaded that the facts and circumstances of this matter constitute the exceptional case in which the lack of jurisdiction was so manifest as to warrant review at this point in the proceedings.[13] We therefore decline to consider this collateral attack to the subject matter jurisdiction of the court.

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

In this opinion, ELGO, J., concurred.

DEVLIN J., dissenting. The leading Connecticut treatise on mortgage foreclosures observes that "[t]he foreclosure process differs substantially from the more typical form of civil action: Not only can the nature of the judgment vary, [i.e.] strict foreclosure as opposed to a sale, but various interlocutory rulings occur routinely." 2 D. Caron & G. Milne, Connecticut Foreclosures (9th Ed. 2019) § 20-1, p. 32.[1] In the present case, the majority treats the jurisdictional attack on the judgment by the self-represented defendant Achyut M. Tope[2] as collateral, declines to consider it and affirms the judgment of the trial court. I do not see the attack as collateral

contrary, it is reasonable to presume that the trial court acted in accordance with law and examined the note and mortgage prior to rendering judgment of . . . foreclosure." (Citation omitted.) *Equity One, Inc.* v. *Shivers*, 310 Conn. 119, 131–32, 74 A.3d 1225 (2013).

[13] At oral argument before this court, the plaintiff suggested that this court take judicial notice of documents that it submitted showing succession of the trustee. Because those documents were not presented to the trial court, and are immaterial to our resolution of this appeal, we decline to take judicial notice of them.

[1] This is one of the reasons why the four month limitation on opening judgments contained in General Statutes § 52-212a is inapplicable to judgments of strict foreclosure. See General Statues § 49-15.

[2] References to the defendant in this dissent are to Tope.

but, rather, as direct. Moreover, the attack has merit because there can be little doubt that, in the trial court, the plaintiff, The Bank of New York Mellon, did not prove its authority to enforce the note at issue in this case. I would therefore remand the case to the trial court so that an evidentiary hearing can take place to determine the plaintiff's standing. Accordingly, I respectfully dissent.

"A collateral attack is an attack upon a judgment, decree or order offered in an action or proceeding other than that in which it was obtained, in support of the contentions of an adversary in the action or proceeding . . . ." (Internal quotation marks omitted.) *Warner* v. *Brochendorff*, 136 Conn. App. 24, 32 n.7, 43 A.3d 785, cert. denied, 306 Conn. 902, 52 A.3d 728 (2012). This definition of collateral attack has been applied in a number of cases. See, e.g., *Upjohn Co.* v. *Zoning Board of Appeals*, 224 Conn. 96, 97, 616 A.2d 793 (1992) (in zoning enforcement action, company challenged validity of condition attached to permit issued three years prior by planning and zoning commission); *Rider* v. *Rider*, 200 Conn. App. 466, 477, 239 A.3d 357 (2020) (in quiet title action, plaintiff challenged validity of prior Probate Court order appointing plaintiff's brother as conservator for their father); *Federal National Mortgage Assn.* v. *Farina*, 182 Conn. App. 844, 846, 191 A.3d 206 (2018) (in summary process action, defendant challenged validity of prior mortgage foreclosure judgment); *Warner* v. *Brochendorff*, supra, 27–28 (in action to foreclose judgment lien, defendant attacked validity of underlying judgment); *Morris* v. *Irwin*, 4 Conn. App. 431, 434, 494 A.2d 626 (1985) (in declaratory judgment action, plaintiff sought to challenge two and one-half year old marital dissolution judgment).

Connecticut cases have also used the term "collateral attack" in situations in which the attack was made in the same case but, due to the passage of time, the judgment has become final and is beyond the jurisdiction

of the court to open. See, e.g., *Sousa* v. *Sousa*, 322 Conn. 757, 763, 143 A.3d 578 (2016) (defendant sought to open and vacate modified marital dissolution judgment four years after modification); *In re Shamika F.*, 256 Conn. 383, 398–99, 773 A.2d 347 (2001) (in appeal from termination of parental rights proceeding, father sought to challenge order of temporary custody entered three years prior); *Vogel* v. *Vogel*, 178 Conn. 358, 358–60, 422 A.2d 271 (1979) (plaintiff sought to attack nineteen year old marital dissolution judgment); *Monroe* v. *Monroe*, 177 Conn. 173, 174, 413 A.2d 819 (plaintiff sought to attack marital dissolution judgment five years after judgment was rendered), appeal dismissed, 444 U.S. 801, 100 S. Ct. 20, 62 L. Ed. 2d 14 (1979); *CUDA & Associates, LLC* v. *Smith*, 144 Conn. App. 763, 764, 73 A.3d 848 (2013) (in debt collection case, defendant sought to attack plaintiff's standing twenty-eight months after default judgment was rendered); *Urban Redevelopment Commission* v. *Katsetos*, 86 Conn. App. 236, 237–38, 860 A.2d 1233 (2004) (defendant attacked jurisdiction in condemnation proceeding three years after judgment was rendered pursuant to stipulation), cert. denied, 272 Conn. 919, 866 A.2d 1289 (2005).

In each of the previously cited cases, even those challenging the court's subject matter jurisdiction, the court rejected the collateral attack without considering its merits. The rationale for this approach was first articulated in *Monroe* v. *Monroe*, supra, 177 Conn. 178, in which our Supreme Court stated that "[t]he modern law of civil procedure suggests that even litigation about subject matter jurisdiction should take into account the importance of the principle of the finality of judgments, particularly when the parties have had a full opportunity originally to contest the jurisdiction of the adjudicatory tribunal. James & Hazard, Civil Procedure (2d Ed. 1977) § 13.16, esp. 695–97; Restatement (Second), Judgments § 15 (Tent. Draft No. 5 1978)."

In the present appeal, the majority adopts the plaintiff's position that the defendant's attack on its standing should be considered collateral and rejected in favor of the finality of the foreclosure judgment. The problem with this approach is that the motion to open the judgment in the present case was not made in a separate action, nor was it filed after the trial court lost jurisdiction to act. More specifically, unlike the parties in *Warner*, *Upjohn Co.*, *Rider*, *Farina*, and *Morris*, the defendant in the present case has not challenged the foreclosure judgment in a separate action such as an action for a declaratory judgment or as a defense in a summary process action. In addition, unlike in *Sousa*, *In re Shamika F.*, *Vogel*, *Monroe*, *CUDA & Associates, LLC*, and *Urban Redevelopment Commission*, the trial court in the present case never lost jurisdiction to consider the defendant's claims. Although the case has been pending for several years, it is largely due to various actions by the trial court giving the parties the opportunity to mediate the dispute and the defendant the opportunity to sell the property, and not because the case had reached a stage beyond which the trial court could not act.

In the present case, the trial court rendered a judgment of foreclosure by sale. With respect to such a judgment, the court's jurisdiction to open and modify the judgment generally ends with the approval of the sale and expiration of the applicable appeal period. See, e.g., *Wells Fargo Bank of Minnesota, N.A.* v. *Morgan*, 98 Conn. App. 72, 79, 909 A.2d 526 (2006); see also 1 D. Caron & G. Milne, supra, § 10-1:2, p. 616 ("[T]he court's jurisdiction to modify a judgment generally ends with the approval of the sale. . . . [This] approval . . . operates to divest the owner of [the] equity of redemption and consequently places the property beyond the power of the court.").[3]

[3] Our Supreme Court has gone even further, concluding that, for purposes of the four month limitation on opening judgments contained in General

The majority suggests that the defendant's September 28, 2017 motion to open and vacate the judgment of foreclosure by sale was an impermissible collateral attack on the prior judgments entered on November 10, 2014, and November 21, 2016. These judgments, however, were not operative at the time of the defendant's September 28, 2017 motion. Following the entry of the default judgment on November 10, 2014, that judgment was opened, modified, and reentered twice; once on January 26, 2015, by the court, *Ecker*, *J.*, and again on September 21, 2015, by the court, *Avallone*, *J.* Additionally, Judge Avallone opened and vacated the judgment on April 11, 2016. Thereafter, the plaintiff moved for entry of judgment of strict foreclosure. Pursuant to this motion, on November 21, 2016, Judge Avallone rendered a judgment of foreclosure by sale, which also was twice opened and reentered—first on April 17, 2017, and again on July 3, 2017. In each instance, the order stated: "JUDGMENT OF FORECLOSURE BY SALE ORDERED REOPENED, MODIFIED AS FOLLOWS, AND REENTERED . . . ."[4]

On September 28, 2017, the defendant filed a motion to open and vacate the judgment asserting that the plain-

Statutes § 52-212a, the court's jurisdiction to open a judgment of foreclosure by sale extends to the date the court renders its supplemental judgment distributing the proceeds of the sale. *Citibank, N.A.* v. *Lindland*, 310 Conn. 147, 172, 75 A.3d 651 (2013).

[4] The majority suggests that these actions by the court in opening and modifying the judgment did not affect the operative status of the earlier November 21, 2016 foreclosure judgment. In support of this position, the majority cites to *RAL Management, Inc.* v. *Valley View Associates*, 278 Conn. 672, 899 A.2d 586 (2006). That case, however, dealt with the opening and modification of a judgment that was on appeal and whether such action rendered the appeal moot. Id., 674. The modifications in the present case did not affect a judgment on appeal; but, more importantly, the opinion acknowledges that the opening and modification of a judgment triggers a new four month period under General Statutes § 52-212a. Id., 689. Accordingly, at the time that the defendant in the present case made his standing challenge, the door was still open to modification and the challenge was not collateral.

tiff lacked standing to bring the action. The operative judgment at the time the defendant filed this motion was the judgment rendered by Judge Avallone on July 3, 2017, because the earlier judgments had all been superseded by orders issued by the court opening and reentering the judgment. See *Coxe* v. *Coxe*, 2 Conn. App. 543, 547, 481 A.2d 86 (1984) ("when a court opens a judgment of sale to change the sale date . . . the modified judgment . . . becomes the only valid judgment in the case"). Because the defendant filed this motion two months and twenty-five days from the July 3, 2017 entry of judgment, well within the four month limit on the court's authority to open judgments under General Statutes § 52-212a,[5] the trial court clearly had authority to consider the motion and, in fact, did consider it; on October 17, 2017, the court, *Hon. Thomas J. Corradino*, judge trial referee, denied the motion. In support of its denial of the motion, the court ruled that, as the holder of the note, the plaintiff had standing to foreclose the mortgage. On appeal, the defendant challenges that ruling. This situation is completely distinguishable from cases in which a judgment is attacked in a separate proceeding or long after the rendering court lost jurisdiction, because the defendant's motion to dismiss was a direct attack on the operative judgment.

Considering the attack as direct and therefore within the traditional rule—that subject matter jurisdiction can be challenged at any time, even on appeal—is in accord with other cases from this court that are procedurally comparable to the present case. For example, in *Deutsche Bank National Trust Co.* v. *Thompson*, 163 Conn. App. 827, 830, 136 A.3d 1277 (2016), the plaintiff, on August

[5] General Statutes § 52-212a provides in relevant part: "Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed. . . ."

18, 2009, filed a motion for default for failure to plead and a motion for judgment of strict foreclosure. Due to, inter alia, an intervening foreclosure mediation effort, the trial court did not render judgment until September 16, 2013. Id. Thereafter, the defendant filed a bankruptcy petition and, on August 22, 2014, after the bankruptcy stay was lifted, the plaintiff filed a motion to open the judgment and reset the law days. Id. This motion was granted by the court on September 22, 2014, after which the defendant appealed. Id. On appeal, for the first time and one year after the original judgment, the defendant challenged the plaintiff's standing and the court's subject matter jurisdiction. Id., 830–31. This court considered the claim on its merits, noting that "subject matter jurisdiction . . . can be raised by any of the parties, or by the court sua sponte, at any time"; (internal quotation marks omitted) id., 831; and that, "because standing implicates the court's subject matter jurisdiction, the issue of standing is not subject to waiver . . . ." (Internal quotation marks omitted.) Id., 832. Finding that the plaintiff had not established its standing, this court remanded the case for further proceedings. Id., 836.

Thus, despite the significant passage of time and various intervening events such as foreclosure mediation and bankruptcy in *Deutsche Bank National Trust Co.*, the defendant's claim challenging the plaintiff's standing was not dismissed as a collateral attack on a final judgment. To the contrary, this court considered the merits of the jurisdictional claim. In my view, the defendant's claims in the present case should be considered on the merits as well.

I now turn to the merits. The defendant asserts that the court lacked subject matter jurisdiction because the plaintiff lacked standing due to the fact that it was not the holder of the note and not otherwise entitled to enforce the note. "Standing is the legal right to set

judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . [When] a party is found to lack standing, the court is consequently without subject matter jurisdiction to determine the cause." (Citation omitted; internal quotation marks omitted.) *Equity One, Inc.* v. *Shivers*, 310 Conn. 119, 125, 74 A.3d 1225 (2013).

Generally, in order to have standing to bring a foreclosure action the plaintiff must, at the time the action is commenced, be entitled to enforce the promissory note. *Deutsche Bank National Trust Co.* v. *Cornelius*, 170 Conn. App. 104, 110–11, 154 A.3d 79, cert. denied, 325 Conn. 922, 159 A.3d 1171 (2017). The question, therefore, is whether the plaintiff has the right to enforce the note signed by the defendant as maker and payable to HSBC Mortgage Corporation (USA) (HSBC). "A plaintiff's right to enforce a promissory note may be established under the [Uniform Commercial Code (UCC)]. . . . Under the UCC, a [p]erson entitled to enforce an instrument means [inter alia] (i) the holder of the instrument, [or] (ii) a nonholder in possession of the instrument who has the rights of the holder . . . ." (Citations omitted; footnote omitted; internal quotation marks omitted.) *J.E. Robert Co.* v. *Signature Properties, LLC*, 309 Conn. 307, 319, 71 A.3d 492 (2013).

The UCC defines the "[h]older" of a negotiable instrument as, inter alia, "[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession . . . ." General Statutes § 42a-1-201 (b) (21) (A). As the majority aptly explains, the defendant executed a promissory note in the amount of $134,000 payable to HSBC. The note was later endorsed to "JPMorgan Chase Bank, as Trustee." The note was not further

endorsed. The note, therefore, is not a bearer note nor is it payable to the person in possession, the plaintiff. To be a holder, the plaintiff would have to be either (1) in possession of a bearer note,[6] or (2) in possession of a note made payable to it. Because, in the present case, the plaintiff possesses a note made payable to JPMorgan Chase Bank, as Trustee, the plaintiff does not meet the UCC definition of a holder.

The issue then becomes whether the plaintiff is a nonholder with the rights of a holder. "A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument . . . . General Statutes § 42a-3-301. . . . The UCC's official comment underscores that a person entitled to enforce an instrument . . . is not limited to holders. . . . A nonholder in possession of an instrument includes a person that acquired rights of a holder . . . under [General Statutes § 42a-3-203 (a)]. . . . Under § 42a-3-203 (b), [t]ransfer of an instrument . . . vests in the transferee any right of the transferor to enforce the instrument . . . . An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument. General Statutes § 42a-3-203 (a). Thus, there are two requirements to transfer an instrument under § 42a-3-203 (a): (1) the transferor must intend to vest in the transferee the right to enforce the instrument; and (2) the transferor must deliver the instrument to the transferee so that the transferee has either actual or constructive possession." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *J.E. Robert Co.* v. *Signature Properties, LLC*, supra, 309 Conn. 319–20.

In the present case, the defendant asserts that the plaintiff has not demonstrated that it is a person entitled

[6] A "[b]earer," as is relevant here, means "a person in possession of an instrument . . . payable to bearer or endorsed in blank." General Statutes § 42a-1-201 (b) (5).

to enforce the note. As discussed previously, although the plaintiff has possession of the note, the note is not payable to bearer and has been endorsed to JPMorgan Chase Bank, as Trustee and not further endorsed to the plaintiff. Accordingly, the plaintiff does not meet the UCC definition of a holder set forth in § 42a-1-201 (b) (21) (A), and the trial court's finding that the plaintiff was a holder entitled to foreclose on the note was incorrect.[7] The plaintiff, however, can enforce the note if it can demonstrate that it is a nonholder in possession with the rights of a holder. See General Statutes § 42a-3-301. That, in turn, requires proof that the transferor delivered the note to the plaintiff intending to vest in it the right to enforce the instrument. See General Statutes § 42a-3-301. The defendant claims that there is no proof in the record to establish such a transfer.

In an apparent attempt to establish its right to enforce the note, the plaintiff asks this court to take judicial notice of a purported transfer of trusteeship from JPMorgan Chase Bank to the plaintiff, as set forth in a document contained in the plaintiff's appendix. This document was not submitted to the trial court, and no findings were made regarding its relevance or authenticity. In addition, the document is outside the type of fact judicially noticed by Connecticut courts. See Conn. Code Evid. § 2-1 (c) ("[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) within the knowledge of people generally in the ordinary course of human experience, or (2) generally accepted as true and capable of ready and unquestionable demonstration"). The purported transfer of trusteeship satisfies neither of these conditions. Moreover, it does not appear that the defendant had any

[7] This finding, as well as the position of the servicer of the loan and the plaintiff referenced in the trial court's order, appear to conflate possession of the original note with UCC holder status. Under the circumstances of this case, more is required.

opportunity to be heard regarding the admissibility and use of this purported transfer of trusteeship as required by § 2-2 (a) of the Connecticut Code of Evidence.[8] Accordingly, judicial notice of this document would be inappropriate.[9]

At oral argument before this court, the plaintiff argued that *J.E. Robert Co.* v. *Signature Properties, LLC*, supra, 309 Conn. 307, supports its claim of standing. *J.E. Robert Co.*, however, concerned the question of whether a mortgage servicing company had standing to bring a foreclosure action. Id., 310–11. In answering that question, our Supreme Court held that, because the mortgage servicing pooling agreement explicitly gave the servicer the right to enforce the note, the plaintiff had standing. Id., 328–31.

In *Ditech Financial, LLC* v. *Joseph*, 192 Conn. App. 826, 831, 218 A.3d 690 (2019), this court addressed a claim that the plaintiff bank was not the holder of the note and, therefore, lacked standing. Upon concluding that the record did not permit review of the defendant's jurisdictional claim, this court remanded the matter for further proceedings. Id., 836.

In the present case, the trial court, on the record, did examine the original note. At that time, the court stated that the plaintiff was the successor trustee to JPMorgan Chase Bank. There is nothing in the record, however, as to the basis for that statement or what that successor status entailed vis-à-vis the defendant's note. The court made no findings as to the plaintiff's right to enforce the

[8] Section 2-2 (a) of the Connecticut Code of Evidence provides: "A party requesting the court to take judicial notice of a fact shall give timely notice of the request to all other parties. Before the court determines whether to take the requested judicial notice, any party shall have an opportunity to be heard."

[9] Even if one took judicial notice of this purported transfer, without further explanation, it is impossible to determine if the document transfers to the plaintiff the right to enforce the defendant's note.

note, which, as discussed, bore only the endorsement to JPMorgan Chase Bank, as Trustee. Nowhere in the record of the trial court is there a finding, one way or the other, that JPMorgan Chase Bank transferred its right to enforce the note to the plaintiff. Where gaps of this nature exist in the record—specifically, gaps relating to documents proving standing or authority to foreclose—this court has consistently held that a case must be remanded for further proceedings. See id.; *Deutsche Bank National Trust Co.* v. *Thompson*, supra, 163 Conn. App. 836; *Deutsche Bank National Trust Co.* v. *Bialobrzeski*, 123 Conn. App. 791, 799–800, 3 A.3d 183 (2010). Because such a gap exists in the present case, I would reverse the judgment and remand the case for a determination of the jurisdictional issue and for further proceedings according to law.

CHARLES WILLIAM COLEMAN *v.* COMMISSIONER OF CORRECTION
(AC 43122)

Elgo, Alexander and DiPentima, Js.

Syllabus

The petitioner, who had been convicted of various crimes, appealed to this court from the judgment of the habeas court, which dismissed his petition for a writ of habeas corpus pursuant to statute (§ 52-470). Following the filing of the petition, the habeas court, at the request of the respondent, the Commissioner of Correction, issued an order to the petitioner to show cause, pursuant to § 52-470, why the petition should be permitted to proceed in light of the fact that the judgment on his prior habeas petition became final in 2014, but the petitioner had failed to file this petition until almost four years later, beyond the presumptive deadlines for doing so set forth in § 52-470 (d). After an evidentiary hearing, the court found that the petitioner's claim that he had difficulty obtaining the transcripts from his prior proceedings in order to find new issues to raise lacked credibility and that the petitioner's argument that he had not been informed by his prior attorneys of the retroactive application of *State* v. *Salamon* (287 Conn. 509) in collateral proceedings was unavailing. The court thus concluded that the petitioner failed to show good cause for the delay in filing the petition and dismissed it pursuant

to § 52-470 (d) and (e). The court thereafter denied the petition for certification to appeal, and the petitioner appealed to this court, claiming that § 52-470 was unconstitutional, his inability to obtain the transcripts from his prior proceedings and the ineffective assistance of his prior counsel constituted good cause, and the court abused its discretion in denying the petition for certification to appeal. *Held* that the habeas court did not abuse its discretion in denying the petition for certification to appeal, as the petitioner did not distinctly raise his constitutional challenge to § 52-470 in the petition for certification and, thus, this court declined to review this claim; moreover, the petitioner could not prevail on his claim that good cause existed for his delay in commencing his petition for a writ of habeas corpus, as the petitioner's inability to obtain transcripts from prior proceedings did not prevent him from filing a petition within the statutorily prescribed time period and this court was bound by the habeas court's determination that the petitioner's claimed difficulty in obtaining the transcripts was not credible; furthermore, the petitioner's ignorance of the possible retroactive application of *Salamon* did not constitute good cause to proceed with his otherwise untimely habeas petition, and the petitioner's failure to raise his claim of the ineffective assistance of prior counsel before the habeas court was fatal to his claim that this allegedly ineffective assistance constituted good cause, and, accordingly, the appeal was dismissed.

Argued October 14, 2020—officially released February 9, 2021

Procedural History

Petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the court, *Newson, J.*, rendered judgment dismissing the petition; thereafter, the court denied the petition for certification to appeal, and the petitioner appealed to this court. *Appeal dismissed.*

Deborah G. Stevenson, assigned counsel, for the appellant (petitioner).

Jonathan M. Sousa, deputy assistant state's attorney, with whom, on the brief, were *Patrick J. Griffin*, state's attorney, and *Adrienne Russo*, assistant state's attorney, for the appellee (respondent).

Opinion

ALEXANDER, J. The petitioner, Charles William Coleman, appeals from the denial of his petition for certification to appeal from the judgment of the habeas court

dismissing his petition for a writ of habeas corpus. On appeal, the petitioner claims that the habeas court (1) improperly determined that he had failed to establish good cause for the filing of his untimely habeas petition and (2) abused its discretion in denying his petition for certification to appeal. We disagree, and, accordingly, dismiss the petitioner's appeal.

As this court previously observed, "[t]he factual and procedural history of the petitioner's criminal case and prior habeas cases is lengthy and well documented. See *Coleman* v. *Commissioner of Department of Corrections*, United States District Court, Docket No. 2:91-CV0005 (PCD) (D. Conn. December 30, 1991), aff'd, 969 F.2d 1041 (2d Cir. 1992); *Coleman* v. *Commissioner of Correction*, 274 Conn. 422, 876 A.2d 533 (2005); *State* v. *Coleman*, 251 Conn. 249, 741 A.2d 1 (1999), cert. denied, 529 U.S. 1061, 120 S. Ct. 1570, 146 L. Ed. 2d 473 (2000); *State* v. *Coleman*, 242 Conn. 523, 700 A.2d 14 (1997); *State* v. *Coleman*, 241 Conn. 784, 699 A.2d 91 (1997); *Coleman* v. *Commissioner of Correction*, 108 Conn. App. 836, 949 A.2d 536, cert. denied, 289 Conn. 913, 957 A.2d 876 (2008); *Coleman* v. *Commissioner of Correction*, 99 Conn. App. 310, 913 A.2d 477, cert. denied, 281 Conn. 924, 918 A.2d 275 (2007); *State* v. *Coleman*, 38 Conn. App. 531, 662 A.2d 150, cert. denied, 235 Conn. 906, 665 A.2d 903 (1995); *State* v. *Coleman*, 17 Conn. App. 307, 552 A.2d 442 (1989)." *Coleman* v. *Commissioner of Correction*, 149 Conn. App. 719, 721–22, 87 A.3d 1208, cert. denied, 312 Conn. 905, 93 A.3d 156 (2014).

The petitioner was convicted of burglary in the first degree, burglary in the second degree, sexual assault in the first degree and unlawful restraint in the first degree. *Coleman* v. *Commissioner of Correction*, supra, 274 Conn. 423–24. "The convictions arose out of an incident that occurred on July 7, 1986, in which an assailant broke into a New Haven residence and sexually assaulted a woman." Id., 424. This court

vacated the petitioner's conviction of burglary in the second degree and affirmed his other convictions. Id.

The self-represented petitioner commenced the present habeas action on May 7, 2018, alleging ineffective assistance by his criminal trial counsel, Thomas E. Farver. On October 31, 2018, the respondent, the Commissioner of Correction, requested that the habeas court order the petitioner to show cause as to why this petition should not be dismissed as untimely pursuant to General Statutes § 52-470 (d) and (e). The respondent claimed that the present habeas petition had been filed more than two years after the conclusion of appellate review of the prior petition challenging the same conviction and, therefore, was presumptively untimely.

On February 22, 2019, the court, *Newson*, *J.*, held a hearing on the respondent's request. Only the petitioner, who was now represented by counsel, testified at this proceeding. On May 10, 2019, the court issued a memorandum of decision dismissing the habeas petition. In its memorandum, the court noted: "The only contested issue in the present case is whether the petitioner can establish 'good cause' for the delay in filing the petition. Since the decision on his last petition is deemed to have become final on May 29, 2014, when the Supreme Court issued the notice denying the petition for certification, the petitioner had until May 29, 2016, to file a subsequent petition challenging the same conviction. General Statutes § 52-470 (d) (1). Since it was not, the petition is subject to dismissal, unless he can establish 'good cause' for the delay in filing." (Footnote omitted.)

The habeas court then turned to the issue of whether the petitioner had established good cause for the delay. The petitioner argued that his difficulty in obtaining the transcripts from his prior proceedings to "find new issues to raise" constituted good cause. The court rejected this argument, concluding that it lacked cred-

ibility.[1] The court also was not persuaded by the petitioner's argument that his prior habeas and appellate attorneys had failed to inform him of the retroactive application of *State* v. *Salamon*, 287 Conn. 509, 542, 949 A.2d 1092 (2008), in collateral proceedings pursuant to *Luurtsema* v. *Commissioner of Correction*, 299 Conn. 740, 751, 12 A.3d 817 (2011).[2] The court concluded that the petitioner's ignorance of the change to our kidnapping jurisprudence did not constitute good cause for the purpose of § 52-470. Accordingly, the court dismissed the petition for a writ of habeas corpus, and, subsequently, denied the petition for certification to appeal from the dismissal of the habeas petition. This appeal followed.

On appeal, the petitioner claims, for the first time, that § 52-470, both on its face and as applied, violates both the federal and state constitutions by effectively suspending the privileges of the writ of habeas corpus. He also contends that his inability to obtain the transcripts of his prior proceedings, despite his due diligence, constituted good cause. Additionally, he argues that good cause exists as a result of public defender error and the ineffective assistance of prior counsel. He contends that his prior counsel had failed to advise him of the time limits to file his habeas petition, to pro-

[1] Specifically, the court stated: "Considering all of the testimony and evidence, the claim is simply not a credible one, especially given the extensive litigation the petitioner has engaged [in] to challenge these convictions."

[2] "Stated succinctly, [p]ursuant to the holdings of these decisions, a defendant who has been convicted of kidnapping may collaterally attack his kidnapping conviction on the ground that the trial court's jury instructions failed to require that the jury find that the defendant's confinement or movement of the victim was not merely incidental to the defendant's commission of some other crime or crimes." (Internal quotation marks omitted.) *Nogueira* v. *Commissioner of Correction*, 168 Conn. App. 803, 807, 149 A.3d 983, cert. denied, 323 Conn. 949, 169 A.3d 792 (2016); see also *Pereira* v. *Commissioner of Correction*, 176 Conn. App. 762, 768–70, 171 A.3d 105, cert. denied, 327 Conn. 984, 175 A.3d 43 (2017); *White* v. *Commissioner of Correction*, 170 Conn. App. 415, 421 n.4, 423–24, 154 A.3d 1054 (2017).

vide him with transcripts of the various proceedings in a timely fashion and to advise him of the possibility of raising a claim involving the retroactive application of *State* v. *Salamon*, supra, 287 Conn. 509. Finally, the petitioner claims that the habeas court abused its discretion in denying his petition for certification to appeal. We are not persuaded.

We begin with the relevant legal principles. "Pursuant to . . . § 52-470 (g), a petitioner may appeal from the decision of the habeas court if the judge before whom the case was tried . . . [certifies] that a question is involved in the decision which ought to be reviewed by the court having jurisdiction . . . . Section 52-470 (g) was enacted to discourage frivolous habeas corpus appeals by conditioning the petitioner's right to appeal upon obtaining certification from the habeas court. See *Simms* v. *Warden*, 230 Conn. 608, 616, 646 A.2d 126 (1994). A petitioner who was denied certification to appeal but nonetheless appeals must first demonstrate that the denial of certification constituted an abuse of the habeas court's discretion." (Internal quotation marks omitted.) *Turner* v. *Commissioner of Correction*, 201 Conn. App. 196, 206–207, 242 A.3d 512 (2020).

This court repeatedly has explained that "[f]aced with a habeas court's denial of a petition for certification to appeal, a petitioner can obtain appellate review of the dismissal of his petition for habeas corpus only by satisfying the two-pronged test enunciated by our Supreme Court in *Simms* v. *Warden*, 229 Conn. 178, 640 A.2d 601 (1994), and adopted in *Simms* v. *Warden*, [supra, 230 Conn. 612]. First, he must demonstrate that the denial of his petition constituted an abuse of discretion. . . . Second, if the petitioner can show an abuse of discretion, he must then prove that the decision of the habeas court should be reversed on its merits. . . . A petitioner may establish an abuse of discretion by demonstrating that the issues are debatable among

jurists of reason . . . [the] court could resolve the issues [in a different manner] . . . or . . . the questions are adequate to deserve encouragement to proceed further." (Citation omitted; internal quotation marks omitted.) *Humble* v. *Commissioner of Correction*, 180 Conn. App. 697, 703, 184 A.3d 804, cert. denied, 330 Conn. 939, 195 A.3d 692 (2018).

"In determining whether the habeas court abused its discretion in denying the petitioner's request for certification, we necessarily must consider the merits of the petitioner's underlying claims to determine whether the habeas court reasonably determined that the petitioner's appeal was frivolous. In other words, we review the petitioner's substantive claims for the purpose of ascertaining whether those claims satisfy one or more of the three criteria . . . adopted by [our Supreme Court] for determining the propriety of the habeas court's denial of the petition for certification." (Internal quotation marks omitted.) *Sanders* v. *Commissioner of Correction*, 169 Conn. App. 813, 821–22, 153 A.3d 8 (2016), cert. denied, 325 Conn. 904, 156 A.3d 536 (2017).

In the present case, the petitioner filed his petition for certification to appeal the dismissal of his habeas petition on May 15, 2019. He set forth the following as the grounds for his request for certification to appeal to this court: "Whether the habeas court erred in dismissing [the] [p]etitioner's case for lack of good cause; any other grounds revealed in [the] transcripts or record." The petition for certification to appeal did not include a challenge to the constitutionality of § 52-470.

We review only the merits of claims specifically set forth in the petition for certification to appeal. See *Johnson* v. *Commissioner of Correction*, 181 Conn. App. 572, 578, 187 A.3d 543, cert. denied, 329 Conn. 909, 186 A.3d 13 (2018). "This court has declined to review issues in a petitioner's habeas appeal in situations where the

habeas court denied certification to appeal and the issues on appeal had not been raised in the petition for certification. . . . A habeas petitioner cannot establish that the habeas court abused its discretion in denying certification on issues that were not raised in the petition for certification to appeal." (Citation omitted; internal quotation marks omitted.) Id., 578–79; see also *Pereira* v. *Commissioner of Correction*, 176 Conn. App. 762, 775, 171 A.3d 105 (because it is impossible to review exercise of discretion that did not occur, Appellate Court confined to reviewing only those issues which had been brought to attention of habeas court in petition for certification to appeal), cert. denied, 327 Conn. 984, 175 A.3d 43 (2017); *Ouellette* v. *Commissioner of Correction*, 159 Conn. App. 854, 858 n.2, 123 A.3d 1256 (use of broad language in petition for certification to appeal does not serve as basis for this court to consider claims not raised specifically in petition), cert. denied, 320 Conn. 907, 128 A.3d 952 (2015); *Campbell* v. *Commissioner of Correction*, 132 Conn. App. 263, 267, 31 A.3d 1182 (2011) (consideration of issues not distinctly raised in petition for certification would amount to ambuscade of habeas judge).

The petitioner did not distinctly raise his constitutional challenge to § 52-470 in his petition for certification to appeal. Pursuant to our well established jurisprudence, we therefore decline to review this claim.[3] See *Johnson* v. *Commissioner of Correction*, supra, 181 Conn. App. 580 (no basis to conclude habeas court abused discretion when petition for certification to

[3] We have recognized that an appeal following the denial of a petition for certification to appeal from the judgment of the habeas court denying or dismissing a petition for a writ of habeas corpus is not the appellate equivalent of a direct appeal following a criminal conviction. See *Tutson* v. *Commissioner of Correction*, 144 Conn. App. 203, 216, 72 A.3d 1162, cert. denied, 310 Conn. 928, 78 A.3d 145 (2013). "Our limited task as a reviewing court is to determine whether the habeas court abused its discretion in concluding that the petitioner's appeal is frivolous." Id.

appeal raised issues relating to petitioner's competency to stand trial and appellate arguments raised ineffective assistance of counsel claim); *Sanders* v. *Commissioner of Correction*, supra, 169 Conn. App. 817–18 n.2 (noting that habeas petitioner could not establish that habeas court had abused its discretion with respect to due process claim where petition for certification to appeal addressed ineffective assistance of counsel claim and "such other claims of error found after a complete review of record" (internal quotation marks omitted)); *Melendez* v. *Commissioner of Correction*, 141 Conn. App. 836, 841, 62 A.3d 629 (habeas court could not abuse its discretion in denying claims about matters not raised in petition for certification to appeal), cert. denied, 310 Conn. 921, 77 A.3d 143 (2013); see also *Whistnant* v. *Commissioner of Correction*, 199 Conn. App. 406, 418–19, 236 A.3d 276 (noting that review pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015), was not available for claim raised for first time on appeal and not raised in or incorporated into petition for certification to appeal), cert. denied, 335 Conn. 969, 240 A.3d 286 (2020).

We next turn to § 52-470 and good cause.[4] In *Langston* v. *Commissioner of Correction*, 185 Conn. App. 528,

[4] General Statutes § 52-470 provides in relevant part: "(d) In the case of a petition filed subsequent to a judgment on a prior petition challenging the same conviction, there shall be a rebuttable presumption that the filing of the subsequent petition has been delayed without good cause if such petition is filed after the later of the following: (1) Two years after the date on which the judgment in the prior petition is deemed to be a final judgment due to the conclusion of appellate review or the expiration of the time for seeking such review; (2) October 1, 2014; or (3) two years after the date on which the constitutional or statutory right asserted in the petition was initially recognized and made retroactive pursuant to a decision of the Supreme Court or Appellate Court of this state or the Supreme Court of the United States or by the enactment of any public or special act. For the purposes of this section, the withdrawal of a prior petition challenging the same conviction shall not constitute a judgment. The time periods set forth in this subsection shall not be tolled during the pendency of any other petition challenging the same conviction. Nothing in this subsection shall create

532, 197 A.3d 1034 (2018), appeal dismissed, 335 Conn. 1, 225 A.3d 282 (2020), this court set forth a definition of "good cause" in the context of § 52-470. "For the purposes of . . . [§ 52-470 (e)], good cause includes, but is not limited to, the discovery of new evidence which materially affects the merits of the case and which could not have been discovered by the exercise of due diligence in time to meet the requirements of subsection (c) or (d) of this section. . . . The parties also agree that good cause has been defined as a substantial reason amounting in law to a legal excuse for failing to perform an act required by law . . . [a] [l]egally sufficient ground or reason." (Citation omitted; internal quotation marks omitted.) Id.

More recently, in *Kelsey* v. *Commissioner of Correction*, 202 Conn. App. 21, 23, A.3d (2020), cert. granted, 336 Conn. 912, A.3d (2021), we delineated "the 'good cause' standard that a petitioner must satisfy to overcome the rebuttable presumption that a successive petition for a writ of habeas corpus filed outside of statutorily prescribed time limits is the result of unreasonable delay that warrants dismissal of the

or enlarge the right of the petitioner to file a subsequent petition under applicable law.

"(e) In a case in which the rebuttable presumption of delay under subsection (c) or (d) of this section applies, the court, upon the request of the respondent, shall issue an order to show cause why the petition should be permitted to proceed. The petitioner or, if applicable, the petitioner's counsel, shall have a meaningful opportunity to investigate the basis for the delay and respond to the order. If, after such opportunity, the court finds that the petitioner has not demonstrated good cause for the delay, the court shall dismiss the petition. For the purposes of this subsection, good cause includes, but is not limited to, the discovery of new evidence which materially affects the merits of the case and which could not have been discovered by the exercise of due diligence in time to meet the requirements of subsection (c) or (d) of this section. . . ."

See also *Dull* v. *Commissioner of Correction*, 175 Conn. App. 250, 252, 167 A.3d 466, cert. denied, 327 Conn. 930, 171 A.3d 453 (2017); see generally *Kelsey* v. *Commissioner of Correction*, 329 Conn. 711, 715–26, 189 A.3d 578 (2018); *Kaddah* v. *Commissioner of Correction*, 324 Conn. 548, 566–68, 153 A.3d 1233 (2017).

petition . . . and [clarified] the appellate standard of review applicable to a habeas court's determination of whether a petitioner has satisfied the good cause standard." (Citation omitted; footnote omitted.) After a review of § 52-470; see id., 28–31; we then synthesized "a more fulsome definition of good cause as that term is used in § 52-470 (d) and (e) . . . ." Id., 33. "We conclude that to rebut successfully the presumption of unreasonable delay in § 52-470, a petitioner generally will be required to demonstrate that something outside of the control of the petitioner or habeas counsel caused or contributed to the delay. Although it is impossible to provide a comprehensive list of situations that could satisfy this good cause standard, a habeas court properly may elect to consider a number of factors in determining whether a petitioner has met his evidentiary burden of establishing good cause for filing an untimely petition. Based on the authorities we have discussed and the principles emanating from them, factors directly related to the good cause determination include, but are not limited to: (1) whether external forces outside the control of the petitioner had any bearing on the delay; (2) whether and to what extent the petitioner or his counsel bears any personal responsibility for any excuse proffered for the untimely filing; (3) whether the reasons proffered by the petitioner in support of a finding of good cause are credible and are supported by evidence in the record; and (4) how long after the expiration of the filing deadline did the petitioner file the petition. No single factor necessarily will be dispositive, and the court should evaluate all relevant factors in light of the totality of the facts and circumstances presented." Id., 34–35.

Next, we considered the proper appellate standard of review. We concluded that "a habeas court's determination of whether a petitioner has satisfied the good cause standard in a particular case requires a weighing

of the various facts and circumstances offered to justify the delay, including an evaluation of the credibility of any witness testimony. As such, the determination invokes the discretion of the habeas court and is reversible only for an abuse of that discretion." Id., 35–36. We also noted, however, that "in applying the abuse of discretion standard, [t]o the extent that factual findings are challenged, this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous . . . ." (Internal quotation marks omitted.) Id., 36 n.12. It is axiomatic that "[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. . . . A reviewing court ordinarily will afford deference to those credibility determinations made by the habeas court on the basis of [the] firsthand observation of [a witness'] conduct, demeanor and attitude." (Internal quotation marks omitted.) *Rose* v. *Commissioner of Correction*, 202 Conn. App. 436, 442, A.3d (2021). Guided by these principles, we consider the petitioner's remaining arguments.

The petitioner first argues that he demonstrated good cause for the delay in commencing this habeas action through his diligent efforts to obtain the transcripts from his prior proceedings in order to present possible "new" issues that had not previously been raised. The habeas court, in rejecting this contention, stated: "Considering all of the testimony and evidence, the claim is simply not a credible one, especially given the extensive litigation the petitioner has engaged [in] to challenge these convictions. Further, while the lack of transcripts may have made it difficult to 'fine tune' issues, it definitely did not prevent the petitioner from actually filing a petition within the two year period. In fact, an active petition would have given the petitioner the ability to

seek the appointment of assigned counsel, who could have assisted with locating [the] transcripts, and to file [a waiver] of costs and fees."

To the extent that the habeas court found the petitioner's claimed difficulty in obtaining transcripts not credible, we defer to and are bound by that determination. See *Watts* v. *Commissioner of Correction*, 194 Conn. App. 558, 567, 221 A.3d 829 (2019), cert. denied, 334 Conn. 919, 222 A.3d 514 (2020); *Noze* v. *Commissioner of Correction*, 177 Conn. App. 874, 885–86, 173 A.3d 525 (2017); see also *Bagalloo* v. *Commissioner of Correction*, 195 Conn. App. 528, 536, 225 A.3d 1226 (habeas judge sole arbiter of credibility of witnesses and Appellate Court does not retry case or evaluate credibility of witnesses), cert. denied, 335 Conn. 905, 226 A.3d 707 (2020). Additionally, as noted by the habeas court, nothing prevented the petitioner from first filing the petition and then making efforts to obtain the transcripts, with the assistance of appointed counsel. See *Kelsey* v. *Commissioner of Correction*, supra, 202 Conn. App. 34 (petitioner generally required to demonstrate that something outside of his control caused or contributed to delay). We agree with the habeas court and conclude that this argument is without merit.

Second, the petitioner argues that prior counsel had failed to advise him of the possibility of raising a claim involving the retroactive application of *State* v. *Salamon*, supra, 287 Conn. 509. The petitioner claimed that he only recently had become aware of *Salamon* and that his failure to raise the claim earlier constituted good cause. In rejecting this argument, the habeas court stated: "It is important to note that [the] petitioner does not claim that counsel misadvised him on the applicability of these cases, but that they simply failed to discuss them. Even if we assume for purposes of argument that *Salamon* and *Luurtsema* are applicable, since there is nothing in the record before this court to indicate that he was convicted of a kidnapping charge, this reason

is also insufficient to establish good cause for the delay. *Salamon* was decided in 2008, three years before the petitioner's last habeas petition was even tried, and eight years before this petition was filed. [E]veryone is presumed to know the law, and that ignorance of the law excuses no one . . . . Thus, the [petitioner] is charged with knowledge of the law." (Emphasis omitted; internal quotation marks omitted.)

In *Kelsey* v. *Commissioner of Correction*, supra, 202 Conn. App. 40–41, we concluded that ignorance of the law did not constitute good cause to proceed with an otherwise untimely habeas petition. Nothing in the petitioner's appellate brief persuades us that a different result is warranted in the present case.[5] We conclude, therefore, that this argument must fail.

Finally, the petitioner contends that good cause exists as a result of public defender error and the ineffective assistance of prior counsel. Specifically, he argues that his prior counsel had failed to advise him as to the time limits to file his habeas petition and to provide him with transcripts of the various proceedings in a timely fashion. The fatal flaw with this contention is that the petition failed to present these matters before the habeas court. As noted in the appellate brief of the respondent: "[T]he petitioner did not claim in his petition, in his response to the request for order to show cause, or during the good cause hearing that prior counsel's inability to find his transcripts in the years following his prior habeas action and/or failure to advise him about the timeliness provisions of § 52-470 (d) violated his sixth amendment right to [the] effective assistance of counsel." Furthermore, the habeas court did

[5] In his appellate brief, the petitioner's argument regarding *Salamon* consists of the statements that the habeas court is presumed to know the law and that it should have known that "a statute or court made law cannot conflict with the plain language of the constitution, cannot eliminate or suspend the writ of habeas corpus, and cannot be used to effectively deny counsel or the right of a petitioner to redress his grievances."

not address such matters in its memorandum of decision on the respondent's request for order to show cause. "We do not entertain claims not raised before the habeas court but raised for the first time on appeal." (Internal quotation marks omitted.) *Lopez* v. *Commissioner of Correction*, 142 Conn. App. 53, 57 n.2, 64 A.3d 334 (2013); see also *Eubanks* v. *Commissioner of Correction*, 329 Conn. 584, 598, 188 A.3d 702 (2018) (appellate review of claims not raised before habeas court would amount to ambuscade of habeas judge); *Walker* v. *Commissioner of Correction*, 176 Conn. App. 843, 846 n.2, 171 A.3d 525 (2017) (Appellate Court is not compelled to consider issues neither alleged in habeas petition nor considered at habeas proceeding); *Sewell* v. *Commissioner of Correction*, 168 Conn. App. 735, 736–37 n.2, 147 A.3d 196 (2016) (Appellate Court did not consider issues not alleged in habeas petition or considered at trial during habeas proceeding), cert. denied, 324 Conn. 907, 152 A.3d 1245 (2017).

The appeal is dismissed.

In this opinion the other judges concurred.

RONALD F. BOZELKO *v.* STATEWIDE CONSTRUCTION, INC., ET AL
(AC 43795)

Alvord, Suarez and Pellegrino, Js.

Syllabus

The plaintiff in error, C, challenged the judgment of the trial court rendered in favor of the defendants in the underlying action. C is the daughter of R, the plaintiff in the underlying action who sought to quiet title to certain real property in East Haven. Following a trial in the underlying action, the court concluded that the defendants were the owners of the property. R appealed to this court, which affirmed the judgment of the trial court, and our Supreme Court denied R certification to appeal from that judgment. Subsequently, C, who was not a party to the underlying action, filed the present writ of error in our Supreme Court, which transferred the matter to this court. C challenged the trial court's factual

findings underlying its determination that the defendants were the owners of the subject property. *Held* that C lacked standing to challenge the trial court's judgment and, accordingly, the writ of error was dismissed: C relied solely on her claimed status as a holder of a mortgage alleged to include the subject property to establish aggrievement, but C's reliance on the mortgage was not sufficient to establish aggrievement, as C offered no proof as to how, or to what extent, her claimed interest as a mortgage holder had been impaired by the trial court's judgment, and, accordingly, C did not establish aggrievement and, therefore, lacked standing to challenge the judgment.

Argued November 18, 2020—officially released February 9, 2021

Procedural History

Writ of error from the judgment of the Superior Court in the judicial district of New Haven, *Hon. Richard E. Burke*, judge trial referee, rendered for the defendants in error with respect to certain real property, brought to our Supreme Court, which transferred the matter to this court. *Writ of error dismissed.*

Chandra A. Bozelko, self-represented, the plaintiff in error.

Michael E. Burt, for the defendants in error (Statewide Construction, Inc., et al.).

Opinion

PER CURIAM. This case comes before the court on a writ of error brought by the plaintiff in error, Chandra A. Bozelko (plaintiff in error), who is the daughter of Ronald F. Bozelko (Bozelko), the plaintiff in the underlying action. Bozelko initiated the underlying action pursuant to General Statutes § 47-31, seeking to quiet title to property known as 105 McLay Avenue in East Haven. The writ of error challenges the judgment of the trial court rendered in favor of the defendants in the underlying action, Statewide Construction, Inc., and Robert Pesapane (defendants in error). We conclude that the plaintiff in error lacks standing to challenge the judgment and, accordingly, we dismiss the writ of error.[1]

[1] Because we conclude that the plaintiff in error does not have standing to challenge the judgment of the trial court, we lack subject matter jurisdiction over, and do not reach the merits of, the claim made in her writ of error.

The relevant facts and procedural history are set forth in this court's opinion in *Bozelko* v. *Statewide Construction, Inc.*, 189 Conn. App. 469, 470, 207 A.3d 520, cert. denied, 333 Conn. 901, 214 A.3d 381 (2019). "In 2011, [Bozelko] commenced an action against the defendants [in error] seeking to quiet title to property known as 105 McLay Avenue in East Haven [(underlying action)]. In their amended answer, the defendants [in error] admitted the allegation in the operative complaint that they may claim an interest in whole or in part in 105 McLay Avenue. The defendants [in error] denied the remainder of the allegations in the complaint and did not assert any special defenses or counterclaims, but made a statement in their amended answer, pursuant to § 47-31 (d), that they each owned a portion of 105 McLay Avenue. At trial, the parties submitted evidence of their chains of title. Following trial, the court found in its memorandum of decision [issued on January 19, 2017], that the defendants [in error] are the owners of 105 McLay Avenue 'in various proportions.' " Id.

On appeal to this court, Bozelko argued that "the court erred in its conclusion as to the ownership of 105 McLay Avenue." Id. Specifically, he argued that "the evidence he submitted at trial established that he has title to 105 McLay Avenue." Id. This court concluded that the trial court's finding that there was a break in Bozelko's chain of title was not clearly erroneous, as there was evidence in the record to support it, and affirmed the judgment of the trial court. Id., 474–76. On September 11, 2019, our Supreme Court denied Bozelko certification to appeal from the judgment of this court. See *Bozelko* v. *Statewide Construction, Inc.*, 333 Conn. 901, 214 A.3d 381 (2019).

On October 9, 2019, the plaintiff in error, who was not a party to the underlying action, filed the present writ of error with our Supreme Court.[2] In her writ of

[2] On January 9, 2020, our Supreme Court transferred the writ of error to this court pursuant to Practice Book § 65-1.

error, the plaintiff in error challenges the trial court's factual findings underlying its determination that the defendants in error own 105 McLay Avenue. She contends that she "is the owner of a mortgage on 105 McLay Avenue . . . dated October 23, 2008, and recorded in Volume 2060 on page 205 of the East Haven land records." She further alleges that the trial court "did not make an official determination of marketable record title to 105 McLay Avenue." She maintains that the trial court's failure to find that Bozelko has marketable record title "has damaged the interests of the plaintiff in error, whose mortgage on 105 McLay [Avenue] has a questionable validity as a result of the trial court's errors." She requests in her writ of error that this court vacate the judgment of the trial court and "conduct a de novo review of the deeds in evidence to determine which party in the underlying action holds marketable record title under [General Statutes] § 47-33 (b) et seq."[3]

We first must decide whether we have jurisdiction to consider the writ of error. The defendants in error contend that the plaintiff in error lacks standing because she is not aggrieved.

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless [one] has, in an individual or representative capacity, some real interest in the cause of action . . . . Standing is established by showing that the party claiming it is authorized by statute to bring suit or is classically aggrieved. . . . The fundamental test for establishing classical aggrievement is well settled: [F]irst, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision . . . . Second, the party claiming aggrievement also must

[3] In her appellate brief, the plaintiff in error requests that this court "vacate the judgment of the trial court and either remand with instructions to enter judgment quieting title to 105 McLay Avenue in [Bozelko] or order a retrial."

demonstrate that its asserted interest has been specially and injuriously affected in a way that is cognizable by law." (Citations omitted; internal quotation marks omitted.) *Crone* v. *Gill*, 250 Conn. 476, 479–80, 736 A.2d 131 (1999); see also Practice Book § 72-1 (a) ("[w]rits of error for errors in matters of law only may be brought from a final judgment of the Superior Court to the Appellate Court in the following cases: (1) a decision binding on an aggrieved nonparty; (2) a summary decision of criminal contempt; (3) a denial of transfer of a small claims action to the regular docket; and (4) as otherwise necessary or appropriate in aid of its jurisdiction and agreeable to the usages and principles of law").

In her principal appellate brief, the plaintiff in error maintains that she "has an interest in the property in question by virtue of being assigned a 2008 mortgage on 105 McLay Avenue." With respect to the plaintiff in error's purported mortgage, the defendants in error emphasize that it was not assigned to her until September 26, 2019, and that the assignor of the mortgage, the mother of the plaintiff in error, was not made a party to the underlying action. The defendants in error contend that the plaintiff in error is "merely attempting to create [an] aggrievement after the fact by taking assignment of a mortgage twelve years after its inception and after issues involved in the underlying quiet title action have been fully litigated and reviewed." In her reply brief, the plaintiff in error responds that she is aggrieved because "[h]er mortgage becomes worthless unless title vests in the owner . . . determined by the deeds in the land records of the town of East Haven."

The plaintiff in error relies solely on her claimed status as a holder of a mortgage alleged to include property known as 105 McLay Avenue to establish aggrievement. We conclude that the plaintiff in error's reliance on the mortgage is not sufficient to establish aggrievement. Specifically, she has offered no proof as to how, or to

what extent, her claimed interest as a mortgage holder has been impaired by the trial court's judgment. "Allegations and proof of mere generalizations and fears are not enough to establish aggrievement." (Internal quotation marks omitted.) *Crone* v. *Gill*, supra, 250 Conn. 480. Accordingly, we conclude that the plaintiff in error has not established aggrievement and, therefore, lacks standing to challenge the judgment.[4]

The writ of error is dismissed.

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[4] In her reply brief, the plaintiff in error argues that our Supreme Court's transfer of the writ of error to this court; see footnote 2 of this opinion; should be construed as a determination by our Supreme Court that this court has jurisdiction over the writ of error. We reject the notion that our Supreme Court's transfer of a matter to this court pursuant to Practice Book § 65-1 should be construed as a determination that the plaintiff in error has standing. Moreover, we note that Practice Book § 72-1 (a), governing writs of error, was amended effective January 1, 2020, to require that writs of error be brought to this court, rather than to our Supreme Court.

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NOTICE OF CONNECTICUT STATE AGENCIES

Notice of Intent to Amend Connecticut Green Bank C-PACE Program Guidelines

In accordance with Section 1-121 of the General Statutes of Connecticut, NOTICE IS HEREBY GIVEN that the Connecticut Green Bank (the ''Green Bank'') proposes to update the program guidelines (the ''Program Guidelines'') for the commercial sustainable energy program authorized pursuant to Section 16a-40g of the General Statutes of Connecticut (the ''C-PACE Program'').

Summary of written procedures: The Program Guidelines for the C-PACE Program establish the rules for all program participates (e.g. capital providers, technical reviewers, borrowers etc.). The primary change being proposed in this amendment to the Program Guidelines is a change from billing of C-PACE Program liens by participating municipalities to such billing being done by Green Bank.

Statement of purpose: To adopt the updated Program Guidelines for the C-PACE Program.

The proposed Program Guidelines may be viewed on Green Banks website, at the following address: www.ctgreenbank.com/cpacecomment/. Due to COvid-19 restrictions, the offices of the Green Bank are not open to the public, however a copy may be requested via e-mail at: barbara.johnson@ctgreenbank.com. All interested parties may submit comments in connection with the proposed Program Guidelines, within thirty (30) days following publication of this notice, to Barbara Johnson, the Administrative Coordinator at the Connecticut Green Bank, 845 Brook Street, Rocky Hill, CT 06067 or via e-mail at: publiccomment@ctgreenbank.com.

NOTICE

Appointment of Trustee

Pursuant to Practice Book § 2-64, on December 29, 2020 in docket number HHD-CV20-6136610-S Attorney Mary T Bergamini (Juris No. 404072) of Enfield, Connecticut is appointed as trustee to inventory the late John J. Liquori's (Juris No. 305969) files, to secure his clients' fund account(s), take and review the office mail, and take such action as seems indicated to protect the interests of John J. Liquori's clients and to provide an accounting to the Court.

David Sheridan
Presiding Judge